

## Affidavit Evidence Checklist

This Checklist has been created as a starting-point for affidavit preparation. It is not a substitute for a proper review of the legislation, case law, and practice notes or other court procedures. It is not an opinion of what evidence is relevant or required.

**Hearsay caution:** if the application is for a “final” order/judgment to dispose of all or part of a claim, then Rule 13.18 requires that Affidavits be based on personal knowledge, not information and belief. This means that a third party’s evidence should be sworn by a person with firsthand knowledge to avoid exclusion as hearsay.

Remember to comply with **PAS Certificate** requirements, **Disclosure Statement** requirements, and in the Provincial Court: **Certificates of Lawyers**.

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- **All applications**

- Copies of relevant agreements.
- Copies all relevant emails, text messages, written correspondence.
- Expert’s qualifications (if applicable).
- Enforcing agreements
  - For spousal/partner support and matrimonial property: Evidence of ILA.
  - Authority of counsel.
  - Any bad faith dealing.
  - For support/property: evidence of disclosure exchange.
  - Any negligent or innocent misrepresentation, and whether there was a “whole agreement” clause.
  - Whether both parties were physically present when the other agreed.
  - Disadvantage/loss arising from failure to adhere to agreement.
  - Counsel correspondence if evidence of a settlement (use caution, see *Leonardis v Leonardis*, 2003 ABQB 577).
  - Any material inducement by misrepresentation, fraud, duress, or undue influence.
  - Support: Any oppression, pressure, or vulnerabilities.
  - Any promises/agreement evidenced on the court record.
  - Whether there was any professional assistance.

- Support: Any significant change in circumstances reasonably unforeseeable at the time.
- Dates if limitation issue.
- Variation: material change in circumstances, in the condition, means, needs, or other circumstances of the child since the last order (eg passage of time, acts of contempt).
    - If seeking to make a substantial change without oral evidence: evidence of urgency and in child's best interests.
  - Consider views of the child through PN7 Voice of the Child Report, independent counsel for the children, or other method.
  - Change in parenting arrangements
    - If no fixed schedule: list/calendar of days/times that you've had parenting time.
    - Letter from nursery or school, preferably confirming your client's involvement and contact information is listed with the school
    - Letter from the family doctor or dentist confirming who brings children to appointments or who is listed as the contact
    - A copy of the report card and previous years if wanting to show change
    - A copy of the school registration/enrolment/emergency contact sheet listing contact information
    - Registration form or a receipt from extra-curricular activities showing parent who enrolled.
    - Consulting or failure to consult the other parent on significant decisions.
    - Informing or failing to inform the other parent of significant decisions.
    - Other methods of interaction, such as the phone, Skype, or Facetime.
    - Suitability of residences.
    - Any gate keeping (eg unnecessary parenting conditions, itineraries and contact information for each activity, food log, emails from the child)
    - Shared parenting
        - Routines.
        - Logistics (geographic proximity, proximity of each residence to current or other convenient school, availability of bussing, length of commute).
        - Employment schedules, and whether they accommodate shared parenting.
        - Substantial conflict or a lack of communication and cooperation between parents, and ideally, whether one parent is clearly the principal source of that conflict.
        - Whether siblings or other children would be split.

- Any special needs of child (eg disability or inability to tolerate change well).
- *Family Law Act* considerations (can be useful in *Divorce Act* matters as well):
  - Protection of child's physical, psychological and emotional safety.
  - Child's physical, psychological, and emotional needs, including need for stability.
  - Child's age and stage of development.
  - History of care for the child.
  - Child's cultural, linguistic, religious, and spiritual upbringing and heritage.
  - Any plans proposed for the child's care and upbringing.
  - Any family violence, including impact of the safety of the child and other family/household members, child's general well-being, the ability of the person who engaged in the family violence to care for and meet the needs of the child, and the appropriateness of making an order that would require the guardians to co-operate on issues affecting the child.
  - Nature, strength, and stability of the relationship between the child, other household members, and other significant persons in the child's life (eg grandparents).
  - Ability and willingness of each party to care for the needs of the child.
  - Ability and willingness of each party to communicate and co-operate on issues affecting the child.
  - The views of the child's current guardians.
  - The benefit to the child of developing and maintaining meaningful relationships with each guardian or proposed guardian.
  - The ability and willingness of each guardian or proposed guardian to exercise the powers, responsibilities, and entitlements of guardianship.
  - Any civil or criminal proceedings that are relevant to the safety or well-being of the child.
- Relocation
  - Relationship with each parent.
  - Proposed parenting schedule.
  - Effect of relocation on parent-child relationship and methods to address.
  - Views of the children, if known (do not interrogate children).
  - Reasons for moving (if designed to thwart other parent, speaks to inability to meet children's needs, or parent has very negative behaviour).
  - Comparisons of both jurisdictions (education, health, crime, activities, recreational facilities, financial opportunities for the parent (including confirmed offers of employment or other guarantees of such financial stability)).
  - Comparison of close family, friends, or other close relations in new jurisdiction and current.

- Relationship of children with local relatives, friends, teachers, coaches, school, engagement with school and other activities, church, neighbourhood, community, doctors, dentists, other professionals, day-to-day routines such as homework and guidance.
- Address disruption of relocation on children (change in family, schools, and social and community support and routines).
- Address maintaining contact and cost (eg regular Skype/phone contact, travel arrangements and costs, proposed schedule, unaccompanied minor issues if under 8 yo).
- Involvement with schooling, healthcare, dentist, specialists, homework.
- Whether the child has already settled into a new location (eg started school, extra-curriculars, friends).
- Amount of notice given to non-moving parent.
- Travel time and cost.
- The willingness of each parent to ensure access will occur between the child and the other parent if they are successful.
- Any agreements about relocation.
- Each party's financial resources.
- Expected permanence of the new custodial environment.
- Continuation of the child's cultural and religious heritage by either parent.
- Parenting capabilities and the child's relationship with each parent and new partners.
- The role of the primary parent in the child's life should a move be allowed.
- The existing arrangement for both custody and access.
- The access to and support of the extended family of each parent.
- The psychological and emotional well-being of the child generally and with respect to the specific move.
- The impact of the proposed move on the well-being of each of the parents to the extent that it is relevant to the effect on the child.
- Benefits and detriments of the move (common law test).
  - Don't discuss whether parents would move/stay if mobility application granted/denied.
  - Don't forget to address best interests generally.
- Abduction (Hague Convention)
  - Rights of custody/guardianship.
  - When abduction occurred, and when the non-moving parent found out.
  - Any excuse for any delay in bringing the application.
  - Whether the child has already settled into a new location (eg started school, extra-curriculars, friends).
  - Any grave risk that a return would expose the child to physical or psychological harm, or otherwise place them in an intolerable situation.

- Whether mature child objects to a return.
- Weight to children's views (caution: parents generally should not question children to obtain this information)
  - Whether the children made good decisions in other situations.
  - Whether the child weighed multiple scenarios.
  - Whether the child's decision was reached with a reasonable measure of independence.
  - Child's fears and the reasonability thereof.
  - Maturity of child.
- Independent counsel for the children (appointing)
  - Allegations of child abuse.
  - Intractable conflict between the parents.
  - Alienation.
  - Real issues of cultural or religious difference affecting the child.
  - That the sexual preferences of the parents or other persons (eg allegations of sexual assault or pedophilia).
  - Anti-social conduct of the parents or other persons.
  - Significant medical, psychiatric, or psychological illness or personality disorder in relation to either party or a child or other persons.
  - That neither parent seems to be a suitable guardian (eg if acting for grandparents).
  - Strong views on parenting time by mature child.
  - Relocation.
  - Separation of siblings (also step-children and other children).
- Guardianship (determining Father's where not on birth certificate)
  - Evidence that they have acknowledged they are a parent.
  - Time of any marriage, any AIP status, or any conjugal relationship of interdependence of some permanence in relation to birth.
  - Length and timing of cohabitation with mother in relation to birth and conception.
  - Any agreement.
  - Consent or involvement with assisted reproduction.
  - Any death, decree of nullity or judgment of divorce within 300 days before birth.
  - Voluntarily providing or offer to provide direct or indirect financial support not ordered by the Court.
  - Any conception as a result of sexual assault.
- Custody, decision-making
  - Inability or unwillingness to cooperate.
  - Absence of a parent.
  - Illness of a parent.
  - Violence between parents or children.

- Drug abuse of a parent.
- Any criminal or drug charges or convictions.
- Any history of child welfare intervention.
- Decision-making: why one parent's decision should be preferred.
- Surname
  - The short and long-term effects of any change in the child's surname.
  - Any embarrassment likely to be experienced by the child if its name is different from that of the parent with custody or care and control.
  - Any confusion of identity which may arise for the child if his or her name is changed or is not changed.
  - The effect which any change in surname may have on the relationship between the child and the parent whose name the child bore during the marriage.
  - The effect of frequent or random changes of name.
- Supervised/restricted access
  - Any restraining order or EPO in place or in the past.
  - Proposed supervisors.
  - Incidents at visits, and whether or not they have been going well recently.
  - Any steps to address issues, such as anger management, communication courses, parenting courses, literature.
  - Long term harassment and harmful behaviours towards the custodial parent causing that parent and the child stress and/or fear.
  - History of violence, unpredictable, uncontrollable behaviour.
  - Alcohol or drug abuse which has been witnessed by the child and/or presents a risk to the child's safety and well being.
  - If prescribed drugs, evidence of prescription.
  - Extreme parental alienation which has resulted in changes of custody and, at times, no access orders to the former custodial parent.
  - Ongoing severe denigration of the other parent.
  - Lack of relationship or attachment between non-custodial parent and child.
  - Neglect or abuse to a child on the access visits.
  - Older children's wishes and preferences to terminate access.
  - Sexual abuse of children
    - Forensic psychiatric investigation.
    - Phalometric testing.
- Statements alleged to be false
  - Whether the child outwardly exhibits fear or reservations of being with a parent.
  - Any requests that allegations not be shared with the targeted aren't.

- Subsequent contact with a target parent and whether given an opportunity to refute.
  - Any conflict with prior statements (date, forum, specific language and content, who was present when said).
  - Whether alleging parent is in the room when child's statement given.
  - Any evidence of suggesting, or opportunities for suggestibility.
- Alienation and children who refuse to see a parent
  - Any inappropriate statements made in child's presence.
  - Alleged alienator's treatment and description of alienated parent when child not present.
  - History of interference or encouragement of parent-child relationship.
  - Child's rationale for any refusal.
  - History of parent-child relationship.
  - Any treatment or therapy.
  - Any steps taken to force a child to follow a court order (eg grounding them, telling them to follow).
- Jurisdiction
  - Location of witnesses.
  - Location where the parties have lived.
  - Location where the evidence will be found.
  - Physical presence of the child(ren).
  - Length of time the children have lived in each jurisdiction.
  - Strength of the child's bonds to the persons and circumstances in each jurisdiction.
  - Whether the removal of the child was wrongful.
  - Whether removal of the child to another jurisdiction was justifiable.
  - Where the matter can be most quickly and inexpensively resolved.
  - Whether moving the child to another jurisdiction would cause the child harm.
- **Support generally**
  - If no recent financial information for other party or imputation possible: Alberta **OCCinfo** earnings printout for relevant trade/industry.
  - MEP arrears/payment summaries.
  - Pattern of income (if fluctuating, eg commission-based).
  - Whether portions of income or losses are non-recurring.
  - Employment expenses (teacher's exchange fund contribution, railway employee's expenses, sales expenses, transport employee's expenses, travel expenses, motor vehicle travel expenses, dues and other expenses of performing duties, motor vehicle and aircraft costs, CPP/EI contributions paid in respect of another employee who acts as an assistant or substitute, salary reimbursement, forfeited amounts, musical instrument costs, artist's employment expenses).

- Any employer reimbursement.
- Spousal, partner, or child support included in ITR.
- Canada Child Benefit.
- Any social assistance not attributable to the person.
- Any carrying charges or interest expenses that would be deductible under the *Income Tax Act*.
- Any Capital Cost Allowance (amortization) deducted in relation to land.
- Any employee stock options from a CCPC, and any disposal of shares.
- Any split-pension amounts included in ITR.
- Any recurring loans.
- Any personal injury award, and whether allocated to lost earnings, and any return on investment on award.
- If seeking overpayment: whether the payee will ever have the resources to repay any overpayment.
- Trusts: whether set up during relationship, purpose.
- Imputing income (where applicable)
  - Applicant: Evidence of intentional unemployment or under-employment, and ideally evidence of intention to avoid or undermine child support obligations (or circumstances permitting inference).
  - Respondent: evidence that unemployment or under-employment is required by the needs of any dependent children, or educational or health needs.
  - Respondent: evidence of steps to find employment or pursue retraining (eg list of employers applied to, date, status).
  - Whether childcare would increase income.
  - Whether relying on new partner's income.
  - Whether living on significant financial assets.
  - Any steps to help upgrade.
  - Tax exempt status.
  - Foreign country's significantly lower tax rates and comparison to Canada.
  - Evidence income being diverted.
  - Property not reasonably utilized to generate income: ideally evidence as to how a reasonably prudent businessperson would use the property to generate income, the need for the funds for legitimate business objectives, whether non-liquid retained earnings, comparison of risks or potential investment losses, and whether a reserve..
  - Evidence of failure to provide income information when under a legal obligation to do so.
  - Significant portion of income from capital gains, dividends (unlikely in Canada), or other sources at a lower tax rate than employment or business income or are exempt from tax.
  - Trust deed or other evidence of terms of trust.



- Unemployment
  - ROE
  - Resume
  - List of applications, name of employers, date of application, position applied for, status.
  - Services.gc.ca Unemployment Rate & Benefit Table for applicable region.
  - MEP stay of enforcement (suspension)
    - Evidence unable to make payments for valid reasons, throughout period sought
    - Attempts to make payment arrangements with MEP, reasons why unsuccessful
- Undue hardship (need actual evidence)
  - Number of adults and children residing in each residence.
  - Income information (ITR, NOAs, and recent pay stubs) for new partners and any other adults residing in the residence.
  - Household Standards of Living Test.
  - If applicable, unusually high level of debts reasonably incurred to support the spouses and their children prior to the separation or to earn a living (ideally, evidence of monthly minimum debt payments).
  - If applicable, unusually high expenses in relation to exercising access to a child.
  - If applicable, legal duty under a judgment, order, or written separation agreement to support any person.
  - If applicable, legal duty to support any other dependent child.
  - If applicable, legal duty to support any person who is unable to obtain the necessities of life due to an illness or disability.
  - Evidence of any circumstances akin to the aforementioned.
  - If seeking to reduce arrears: evidence that the debtor cannot then pay, and will not at any time in the future be able to pay the arrears.
- MEP Stay of Enforcement (Applicant)
  - Debtor made attempts to establish a payment arrangement with MEP.
  - Valid reason why debtor and MEP were unable to enter into an arrangement.
  - Valid reason for not paying arrears or periodic maintenance payments during the period the stay is in effect.
- Arrears
  - Date of effective notice that the amount received was inadequate (any indication that support should be paid, or that a current amount needs to be re-negotiated).
  - Whether any agreement or order mandates annual recalculation or annual exchange of financial disclosure.
  - Details of past recalculation.

- Details of past disclosure exchange.
  - Any excuse as to why application not brought earlier (eg lack of financial means, lack of emotional means, inadequate legal advice, lack of knowledge/information about the payor's financial status, justifiable fear that the payor will react vindictively to the detriment of the family, or pressure/intimidation of the payee by the payor).
  - Whether the payor engaged in blameworthy conduct (failing to disclose, failing to disclose increase, or failing to pay any support).
  - Evidence of any hardship occasioned.
- Gifts
    - Regularity.
    - Duration of their receipt.
    - Whether part of the family's income during cohabitation that entrenched a particular lifestyle.
    - Circumstances of the gifts that earmark them as exceptional.
    - Whether the gifts do more than provide a basic standard of living.
    - The income generated by the gifts in proportion to the payor's entire income.
    - Whether they are paid to support an adult through a crisis or a period of disability.
    - Whether the gifts are likely to continue.
    - The true purpose and nature of the gifts.
  - Capital gains or capital losses
    - Actual amount of capital gains or capital losses.
    - Whether non-recurring.
    - Fluctuation of income.
    - Nature of the sale.
    - Related expenses, carrying charges, and interest expenses of associated debt.
    - Whether the proceeds are re-invested or would be expected to be re-invested.
    - Whether part of employment bonus, or other incentive payment akin to income for work done for that year (eg sale of a stock option).
    - Whether capital generated will be the basis for future income.
    - Whether liquidated for retirement, or partial retirement fund.
    - Whether person is in the business of buying and selling capital assets each year.
    - Was the sold asset already addressed in a property settlement between the parties?
    - Did a non-recurring gain generate cash, or was it merely a result of a restructuring of capital for tax or other legitimate business reasons?

- Whether there was any recapture.
- Businesses
  - Amount of dividend gross-up for all relevant years (look at T5, dividend cheque, or Financial Statements).
  - Any business investment loss.
  - Any revenues actually earned in a prior period, net of reserves.
  - Any partnership or sole proprietorship's capitalization requirements.
  - Financial Statements for all relevant years, including for subsidiaries.
  - Amounts paid to and personal benefits received by family, new partner, children, and close friends in all relevant years.
  - Whether family, new partner, children, or close friends actually worked for the corporation (and evidence, eg past emails sent by them, past contracts or forms with their name on them, logs of hours worked, etc).
  - Amounts and proportion of personal benefits for all relevant years.
  - Shareholder loan transactions for last 12 months or partnership draws for last three years.
  - General ledgers for all relevant years (recommended).
  - Whether losses are recurring.
  - Whether the business would have had to pay another person if a non-arm's length party was not hired.
  - Evidence of the principal portion of all loan/debt payments (recommended).
  - Legitimate business purposes for cash.
  - Guideline income analysis report
  - Breakdown of each expense in financial statements and whether or not you receive any direct or indirect personal benefit, with an explanation sufficient to facilitate an assessment of the reasonableness of these payments or benefits in the context of determining income available (eg vehicles, computers, cell phones, travel, entertainment and promotional expenses, expense accounts, home office deductions, life insurance, travel, meals, entertainment, insurance, etc).
    - See Business Expense Disclosure Statement and instructions, and paragraph 48 of *Sweezey v Sweezey*, 2016 ABQB 131.
    - Alternatively, for relatively minor share of ownership, letter from managing partner or similar person confirming whether or not expenses conferred any personal benefit.
    - Any time sheets.
    - Any evidence of projects assigned.
    - Invoices, receipts, records, or other documentation of personal expenses and payments to non-arm's length parties (recommended).

- Comparison of payments to non-arm's length parties to industry standards (eg OCCinfo).
- Degree of control they exercise.
- Whether they're the only shareholder.
- Depreciation
  - Intent to replace depreciated asset.
  - Whether money is being set aside to acquire a new asset.
  - Whether the asset is required for the business.
- Pre-tax net income
  - Nature of the company's business.
  - Any evidence of legitimate business.
  - Whether funds are needed to maintain the value of the business as a viable ground concern.
  - Whether there are plans for expansion and growth, and whether the company has in the past funded such expansion by means of retained earnings or through financing.
  - Depreciation.
  - Possible economic downturns.
  - Return on invested capital.
  - Historical spending patterns of the corporation.
  - Role the shareholder plays in the corporation.
  - Whether there are other shareholders.
  - Degree of control the shareholder exercises, including their relationship with the controlling shareholder.
  - Any restrictions on the business's business, including the amount and cost of capital equipment that the company requires.
  - The type of industry the corporation is involved in, and the environment in which it operates.
  - The potential for business growth or contraction.
  - Whether the company is still in its early development stage and needs to establish a capital structure to survive and grow.
  - The level of the company's debt.
  - How the company obtains it's financing and whether there are banking or financing restrictions.
  - Whether the access to income is restricted by the ownership structure.
  - Are the revenues or retained earnings primarily contributions from another related company?
  - Whether compensation is commensurate with industry standards.
  - Any need to acquire or replace inventory.
  - Any carrying accounts receivable for a significant period of time.
  - Any cyclical peaks or valleys in cash flow.

- Any allowances for bad debts.
  - Any allowances for anticipated business losses or extraordinary expenditures.
  - Any anticipated capital acquisitions.
  - Any evidence of plans or needs.
  - What was made available to the family during the relationship.
- If other shareholders or partners:
  - Incorporation documents showing the number of shares that each hold.
  - Any unanimous shareholder agreements.
  - Any past emails where they've opposed a withdrawal of funds.
- If control is disputed (ie shares in someone else's name)
  - Evidence of the party's involvement or lack thereof.
  - Evidence of the third party's involvement or lack thereof.
- Business investment loss
  - Whether investment was made in good faith in the expectation of profit.
  - Whether there was a reasonable likelihood of profit being made from the business in which the loss was incurred at the time the investment was made.
  - Documentary proof of the portion of the loan advanced by a family member, the interest rate paid on the loan, and proof of actual repayment.
  - Whether the entire loan has been repaid during the years over which retroactive child support is claimed and if no, what portion was repaid in each relevant year.
  - Whether any portion of the loan remains unpaid and, if so, when it is required to be paid by the underlying loan documentation.
  - The size of the loan in comparison to the payor's income from all other sources.
  - Whether the loss arose in relation to the party's main source of income or a side business/investment.
  - Related expenses, carrying charges, and interest expenses of associated debt.
  - Whether draws were made in a previous year.
- **Child support**
  - Variation: change in circumstances since the last order in relation to either spouse or of any child, not known at the time of the last order (eg inflation, age of the child, disability, change in the health of a parent or child, inheritance, new partner contributing to expenses, new dependent).
    - If income had been imputed: evidence that imputation is no longer necessary or appropriate, or that changed circumstances mean a different amount is appropriate.

- Section 21 disclosure (3 most recent income tax returns, 3 most recent notices of assessment/reassessment, most recent pay stub, financial statements, if trust beneficiary the trust settlement agreement and trust's 3 most recent financial statements, statement with YTD amount (or letter if statement if unavailable) for any income from EI, pension, WCB, disability, or any other source of income).
- Province in which payor resides, if not Alberta.
- Section 7
  - Child care: whether required for employment/illness/disability/training/education.
  - Medical/dental insurance: number of persons the plan covers.
  - Health: effect of any insurance reimbursement.
  - Educational
    - Post-secondary: whether RESP or other funding set aside.
    - Extra-curricular
    - Receipts or other evidence, at least an estimation.
    - Suitability of expense regarding child's station in life and requirements.
    - The means (income and financial resources) of each parent.
    - Pre-separation spending pattern.
    - Any consultation between parents (recommended).
    - Any subsidies or tax consequences.
- Shared parenting
  - Increased costs of arrangement (eg fixed cost of house bought after separation).
  - Budgets (recommended).
  - Each party's contribution to expenses (recommended).
  - Differences in standard of living between each household (recommended).
  - Any income that wouldn't usually be included in guideline income (recommended. Eg AISH child's benefit, CPP child's benefit, child tax).
  - Assets and debts and any imbalance (recommended).
- Income over \$150,000
  - Child expense budget (recommended. Current and prospective expenses).
  - Reasonability of budgeted expenses (recommended).
  - Historical standard of living, and standard of living they would have had but for the divorce.
  - Whether parties increased spending on the children when income increased during the relationship (recommended).
- Undue hardship
  - Detail circumstances (unusually high level of debts incurred for the family prior to separation or to earn a living, unusually high expenses in relation to exercising access to a child, legal duty under judgment/order/agreement to support any person, legal duty to support another child of a

- marriage/relationship, legal duty to support anyone who is unable to obtain the necessities of life due to an illness disability).
  - Information about new partners' incomes.
  - Names and birthdays of other dependents living in household.
- Imputation
  - Particulars of intentional under-employment/unemployment, tax exemption, low tax rates of their country, diverted income, not reasonably using property to generate income, trust beneficiary.
- Adult children
  - Post-secondary education:
    - Whether full-time.
    - Confirmation of enrollment.
    - Tuition and book receipts.
    - Transcripts.
    - Any applications or eligibility for student loans, bursaries, scholarships, or other financial assistance.
    - Career plans of the child and whether reasonable and appropriate.
    - Ability of child to contribute through part-time employment or summer employment.
    - Child's past academic performance and whether demonstrating success in studies.
    - What plans the parents made for the education of the child, particularly during cohabitation.
    - For mature adult child, whether they have unilaterally terminated a relationship from the parent from whom support is sought.
  - If adult high school: explanation for failure to complete by age 18 or 19, diligent pursuit, whether full-time.
  - Disability or impaired ability to work: medical letters, any disability benefits (eg AISH, EI, disability, employer plan, insurance coverage), and any additional costs resulting from the disability/impairment.
  - Advanced sports training: career plans, whether plans supported during parent's relationship, whether function similar to formal education, factors under post-secondary.
  - Payee
    - If estrangement: evidence of details of children attempting to maintain relationship with other parent.
    - Details of continued support (eg accommodation, meals, clothing, transportation).
- *In loco parentis*
  - Whether listed as contact for education, health, or extra-curriculars.
  - Any cards/gifts/notes/correspondence exchanged on Mother's/Father's Day.

- Whether the child refers to the parent as mom/dad, and the person's historical treatment of that issue.
- Any marriage.
- Whether Will was ever changed to include the child.
- Divorces
  - Whether the child participates in the extended family in the same way a biological child would.
  - Whether the person provides financially for the child and ability to pay.
  - Whether the person disciplines the child as a parent.
  - Whether the person represents to the child, the family, the world, either explicitly or implicitly, that he or she is responsible as a parent to the child.
  - Nature or existence of the child's relationship with the absent biological parent.
- *Family Law Act*
  - Spouses or AIPs.
  - Child's age.
  - Duration of the child's relationship with the person.
  - The child's perception of the person as a parental figure.
  - The extent to which the person is involved in the child's care, discipline, education, and recreational activities.
  - Any continuing contact or attempts at contact between the person and the child if the person is living separate and apart from the child's other parent.
  - Whether the person has considered applying for guardianship of the child, adopting the child, or changing the child's surname to that person's surname.
  - Whether the person has provided direct or indirect financial support for the child.
  - The nature of the child's relationship with any other parent of the child.
- **Spousal support**
  - Variation: change in the condition, means, needs, or other circumstances of either former spouse since the making of the previous order/agreement (eg inflation, substantial increase in post-separation income if sufficient causal connection to the relationship, retirement).
  - Budget (or confirm old budget still accurate).
  - Documents supporting major expenses (especially mortgage, rent, debts, health).
  - Any return to work.
  - Any progress at employment.



- Any upgrading or re-training.
- Whether any income in Income Tax Return is government assistance.
- Whether a post-separation increase in income is related to the relationship.
- Ages of each party and age at time of separation.
- History of care for children during and after relationship.
- Any hardship resulting from the relationship or its breakdown.
- Whether payor gained an advantage in their ability to earn income or acquire assets as a result of the relationship.
- Any financial need.
- Any inability to attain self-sufficiency (eg disability).
- Duration of cohabitation (ie cohabitation date and separation date).
- Any agreement or order relating to support.
- Each spouse's pecuniary resources, capital assets, income from employment or earning capacity, and other sources from which they receive a gain or benefit.
- Each spouse's prospective income.
- Functions performed by each spouse during the relationship (eg homemaking duties).
- Any sacrifice of employment opportunities or promotions as a result of the relationship.
- The potential effect of property equalization.
- Stages of each spouse's career.
- Standard of living during the relationship.
- Any ongoing childcare obligations.
- Each spouse's participation in household responsibilities.
- Availability of employment marking work skills.
- Any dissipation of matrimonial property.
- Whether a spouse has been out of the workforce.
- Any inheritance.
- Consequences of spousal misconduct (but not the misconduct itself).
- Arrears: any control over spending in relation to past payments.
- See "Unemployment" under "Support (general)".
- Payor
  - Section 7 expenses of either spouse (remember medical/dental benefit premiums).
  - Evidence of ongoing debt payments.
- Payee
  - Job history or resume
  - Medical letters if disability or impaired ability to work.
- Jurisdiction
  - Habitual residence of both spouses in Alberta, whether or not they were living together.
  - Last joint habitual residences of the parties.

- Whether the parties established another joint habitual residence since the time of marriage.

- **Property**

- Validity of agreements
  - Evidence of agreement (eg counsel's correspondence).
  - Evidence of formal compliance (eg ILA certificates).
  - Arbitration agreements.
  - Evidence of inducement by misrepresentation or fraud.
  - Evidence of undue influence or duress.
  - Evidence of financial disclosure exchanged unless comprehensive waiver.
- Exclusive possession
  - Applicant: impossibility of tolerating living situation (eg threat to spouse and/or child).
  - Respondent: evidence of comfortable living arrangement.
  - Availability of other accommodation within the means of either spouse (eg rental listings, foreign property).
  - Dependent children residing in the home.
  - Financial position of the parties (income, liquid assets, residences).
  - Any orders or agreements relating to partner/spousal support or payment of expenses.
  - Restrictions or conditions of any lease (*Family Law Act*).
  - Likely property division outcomes at trial (recommended).
  - Any expressed desire to not maintain property.
  - Failure to pay expenses associated with the property while living there.
  - Status quo (if longstanding) or regular attendance.
  - If *ex parte*: danger of injury to the spouse or a child as a result of the Respondent's conduct.
  - Any illness or disability, and corresponding convenience of the home.
  - Any adjoining family business, or business assets.
  - Household goods/contents
    - Used by the family for transportation, household, educational, recreational, social, or aesthetic purposes.
    - List of proposed division of household contents.
  - Foreign property
    - Whether the court has jurisdiction over the respondent (eg resides in Alberta, attorned, or they're the plaintiff).
    - Whether there is a contract or statute which creates rights or obligations between the parties.
    - Whether the local court can enforce.
    - Whether order would be illegal or impossible in the other jurisdiction.

- Occupation rent
  - Local rental costs for similar residences.
- Sale and partition of land
  - Certificate of Title to the lands.
  - If not on Title, whether the parties are otherwise co-owners (eg through Real Estate Purchase Agreement).
  - If seeking unequal distribution pursuant to the *Law of Property Act*:
    - Exclusion of a co-owner from the land.
    - Whether occupying co-owner was a tenant, bailiff, or agent of another co-owner.
    - Rents or profits received from third parties, or profits for the removal of natural resources.
    - Evidence of waste through an unreasonable use of the land.
    - Improvements or capital payments, ideally with proof of an increase in value of the land.
    - Non-capital expenditures relating to the land.
    - If seeking occupation rent, the same evidence under “occupation rent”, above.
    - Any compensation under the *Dower Act* for a disposition.
    - Whether the land is a “matrimonial home” or “family home”.
    - Whether there are unresolved property issues.
- Preservation orders and dissipation
  - Evidence of dissipation or intent to dissipate (recommended).
  - Whether the Applicant would be able to satisfy their claim through other resources (recommended).
  - If seeking to sell: that the property is perishable, likely to deteriorate, likely to lose its value, or another reason.
  - If seeking to freeze all of a party’s assets: special circumstances such as a reason to believe that the spouse is dissipating assets, or moving assets offshore, or will be defiant of the court process.
- **Procedures**
  - Advance costs
    - Evidence of impecuniosity to the extent of being unable to proceed
    - Comparison of each party’s available income and liquid assets
    - Merit to claim
    - Any special circumstances
    - Evidence of the respondent’s liquid funds (or lack thereof)
  - Security for costs
    - Whether the respondent has assets in Alberta.
    - Whether the respondent is impecunious (after property division & support).

- Bill of Costs or Schedule C amounts.
- Steps already taken compared to costs sought.
- Whether there is an issue important to the community at large.
- Merit and probability of costs, including probability of solicitor-client costs.
- Amending pleadings
  - Existence or lack of serious prejudice which is not compensable in costs (eg witness unavailability or health, past Questioning for Discovery).
  - Dates relating to limitation periods if adding a party.
  - Copy of what the amended pleading would look like (recommended).
- Third party documentation
  - Whether the person is in control of a record;
  - Whether there is reason to believe the record is possibly relevant and material.
  - Whether anything would render the record inadmissible at trial (eg privilege).
- Contempt
  - If applicant:
    - Proof beyond a reasonable doubt of the presence of an Order (form of Order or transcript).
    - Proof beyond a reasonable doubt of an intentional act or omission in breach of a clear order.
    - Proof beyond a reasonable doubt that the Respondent had notice or knowledge of the Order.
    - Amount of lost parenting time.
    - Any costs incurred as a result of breach.
    - Any history of breaches.
  - If respondent:
    - Evidence of excuse or attempts to avoid result.
    - If parenting: evidence of discipline of children to attempt to enforce order.
- Inordinate delay
  - Evidence of significant prejudice or a lack thereof.
  - Evidence of an excuse for the delay or lack thereof.
- Drop-dead applications (Respondent)
  - Evidence of standstill/tolling agreement (could be exchange of correspondence, agreement to not take further steps for a specific period of time, or oral, but cannot be implied, intended, or inferred).
  - Evidence of court order or litigation plan creating the delay.
  - Interim applications participated in by the applicant.
  - Evidence of service dates.

- Evidence of steps which significantly advanced the action towards resolution in a meaningful way.
- Setting aside or “opening up” a default judgment
  - Arguable defence.
  - Excuse for the default, inadvertence (eg illness or solicitor’s inadvertence).
  - Moved properly to open up after learning about it.
- Severance of corollary relief
  - Evidence of services booked for a new wedding (recommended if booked).
  - Evidence of delay or failure to reach an agreement (eg a failed mediation).
- Substitutional service
  - Why service is impractical.
  - Why another method of service is likely to bring the document to the attention of the person to be served.
  - If dispensing with service:
    - Why service would be impractical or impossible.
    - How all reasonable efforts to serve have been exhausted or are impractical or impossible.
    - Why there is no or little likelihood that the issue will be disputed (eg parent has had no contact with child for many years).
    - No other method of service appears to be available.
    - High cost of service (if applicable).
- Service *ex juris*
  - Real and substantial connection
    - Land in Alberta.
    - Contract made, performed, or breached in Alberta.
    - Claim governed by the law of Alberta.
    - Tort committed in Alberta.
    - Enforcement of a security against property other than land by the sale, possession, or recovery of the property in Alberta.
    - Injunction in which a person is to do or to refrain from doing something in Alberta.
    - Defendant resides in Alberta.
    - Defendant is a necessary or property party to the action brought against another person who was served in Alberta.
    - Breach of an equitable duty in Alberta.
- Vexatious litigants/proceedings
  - Persistent proceedings or collateral attacks to determine an issue that has already been determined by the Court.
  - Persistent proceedings that cannot succeed or have no reasonable expectation of providing relief.

- Persistent proceedings for improper purposes, such as to frustrate litigation, for an ulterior motive, to obtain a collateral advantage, or which are intended to extort a benefit, as revenge, harassment, or to cause harm.
- Persistently bringing proceedings for improper purposes.
- Persistently using previously raised grounds and issues in subsequent proceedings inappropriately.
- Persistently failing to pay the costs of unsuccessful proceedings on the part of the person who commenced those proceedings.
- Persistently taking unsuccessful appeals from judicial decisions.
- Persistently engaging in inappropriate courtroom behaviour.
- Relevant history of the dispute, inside and outside of the court process.
- Litigation and court history.
- Failure to abide by court orders.
- Unsubstantiated allegations of conspiracy, fraud, and misconduct, including allegations of bias, harassment, and offensive and defamatory allegations.
- Scandalous or inflammatory language in pleadings or before the court.
- Attempts to use the court processes to further criminal activity.
- Any psychiatric condition.
- Obsession with a single issue which they aggressively re-litigate.
- Litigating on the basis of false but allegedly legal principles intended to subvert correct legal principles and procedures (CPCA arguments).
- If seeking vexatious litigant designation: evidence of vexatious litigation against multiple groups.
- EPOs & Restraining Orders
  - Any criminal charges, convictions, or other proceedings, and their status/result.
  - Any other police involvement.
  - Any no-contact provisions in criminal proceedings.
  - Any past breaches of any order or agreement by the respondent.
  - Any drug or alcohol abuse by the respondent.
  - EPOs (but can still be relevant)
    - Whether married or AIPs.
    - Any intentional or reckless act or omission that causes injury or property damage and that intimidates or harms a family member.
    - Whether reasonable force to correct a child.
    - Any act or threatened act that intimidates a family member by creating a reasonable fear of property damage or injury to a family member.
    - Any forced confinement.
    - Any sexual abuse.
    - Any stalking.

- Whether there's any reason to believe the respondent will continue or resume carrying out family violence.
- Whether there's any reason for urgency.
- Any history of family violence to the claimant or other family members.
- Any controlling behaviour towards the claimant or other family members.
- Whether family violence is repetitive or escalating.
- Any immediate danger to persons or property.
- Whether claimants are elderly and vulnerable.
- Effect of exposure of any family violence on any child of the claimant or in the claimant's care and custody.
- Impact of order on any child.
- Any methods or plans to facilitate respondent's contact with any child affected by the order.
- Any need for a safe environment to arrange for longer-term protection (eg availability of other accommodation).
- Any requests to not contact.

- Other

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