

**In the Supreme Court of British Columbia**

Claimant: Renata Frances Martinez

Respondent: Antonio Jacob Garcia

**NOTICE OF APPLICATION**

*[Rule 21-1 of the Supreme Court Family Rules applies to all forms.]*

**Name(s) of applicant(s):** Renata Frances Martinez

**To:** Antonio Jacob Garcia

TAKE NOTICE that an application will be made by the applicant(s) to the presiding judge or master at the courthouse at 1355 Water St, Kelowna, on 14/Oct/2021 at 9:30 AM for the order(s) set out in Part 1 below.

**Part 1: ORDER(S) SOUGHT**

1. Interim parenting order for the following parenting arrangements:
  - a. The children, Julie Catarina Martinez, born 13/Jun/2014, and Simon Alec Martinez, born 22/Jan/2012, will live primarily with the claimant. The respondent will have parenting time every second weekend from after school on Friday until 7:00 PM on Sunday.
  - b. If the day preceding or following the weekend is a statutory holiday or professional development day, the parenting time will include that extra day.
  - c. The children will be exchanged at the children's school, unless otherwise agreed between the parties.
  - d. The respondent will have reasonable telephone and/or electronic communication with the children.
2. The respondent will pay to the claimant child support pursuant to the Child Support Guidelines, commencing on 01/Jun/2021 for the support of the children:
  - a. Julie Catarina Martinez, born 13/Jun/2014; and,
  - b. Simon Alec Martinez, born 22/Jan/2012.
3. The respondent will pay to the claimant interim support pursuant to the Spousal Support Advisory Guidelines commencing on 01/Jun/2021.
4. The claimant will have exclusive occupancy of the family residence located at 7723 Hallow Street, Kelowna, BC, and described as PID: 01-234-567, Lot 65, Block 12, Section 1, Kelowna City, Plan 1234, pursuant to s. 90 of the *Family Law Act*.

5. Pursuant to s. 91 of the *Family Law Act*, rule 12-4 of the Supreme Court Family Rules, and section 39 of the *Law and Equity Act*, the respondent be restrained from disposing of, transferring, encumbering, assigning, or otherwise dealing with any property at issue or in which the other party has or may have an interest pending final determination of this action, without consent of the claimant or without order of this Court.
6. Other relief as the court determines appropriate.
7. Costs.

## **Part 2: FACTUAL BASIS**

1. The parties began cohabiting on or about 01/Jun/2003.
2. The parties were married on 20/Aug/2011.
3. The parties separated on 10/May/2020.
4. The parties are parents of the following children:
  - a. Julie Catarina Martinez, born 13/Jun/2014; and,
  - b. Simon Alec Martinez, born 22/Jan/2012.
5. Since separation, the parties' parenting schedule has been as follows:
  - a. On alternating weeks, the children spend Monday to Friday with the claimant, and have an overnight with the respondent on Wednesday. The children spend Friday after school until Monday morning with the respondent.
  - b. On the second week, the children spend Wednesday after school until Friday morning, with the respondent and the remainder of the time with the claimant.
6. The claimant is self-employed as a landscaper and has a guideline income of \$28,000.
7. The claimant believes that the income of the respondent is \$65,000 as that was his approximate income earned as an electrician during the relationship.
8. No child support is currently being paid. The parties share equally the costs related to the children's activities, school supplies, clothing, and out-of-school care.
9. The respondent has paid to the claimant \$300 a month since separation for spousal support.

## **Part 3: LEGAL BASIS**

1. The Child Support Guidelines
2. The Spousal Support Advisory Guidelines
3. The *Family Law Act*
4. Such further provisions as advised

## **Part 4: MATERIAL TO BE RELIED ON**

1. Affidavit #1 of Renata Frances Martinez, sworn 28/Sep/2020
2. Financial statement of Renata Frances Martinez, sworn 10/Sep/2020

The applicant(s) estimate(s) that the application will take 60 minutes.

*[Check the correct box.]*

- ☒ This matter is within the jurisdiction of a master.  
☐ This matter is not within the jurisdiction of a master.

**TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION:** If you wish to respond to this notice of application, you must, within the time for response to application described below,

- (a) file an application response in Form 32,
- (b) file the original of every affidavit, and of every other document, that
  - (i) you intend to refer to at the hearing of this application, and
  - (ii) has not already been filed in the family law case, and
- (c) serve on the applicant 2 copies of the following, and on every other party one copy of the following:
  - (i) a copy of the filed application response;
  - (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;
  - (iii) if this application is brought under Rule 11-3, any notice that you are required to give under Rule 11-3 (9).

**Time for response to application**

The documents referred to in paragraph (c) above must be served in accordance with that paragraph,

- (a) unless one of the following paragraphs applies, within 5 business days after service of this notice of application,
- (b) if this application is brought under Rule 11-3, within 8 business days after service of this notice of application, and
- (c) if this application is brought to change, suspend or terminate a final order, to set aside or replace the whole or any part of an agreement filed under Rule 2-1 (2) or to change, suspend or terminate an arbitration award filed under Rule 2-1.2(1), within 14 business days after service of this notice of application.

Date: [dd/Mmm/yyyy].

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Signature of

☒ applicant    ☐ lawyer for applicant(s)

RENATA FRANCES MARTINEZ

To be completed by the court only:

Order made

[ ] in the terms requested in paragraphs [number] of Part 1 of this notice of application

[ ] with the following variations and additional terms:

Date: [dd/mmm/yyyy]

Signature of

[ ] Judge

[ ] Master

## APPENDIX

### THIS APPLICATION INVOLVES THE FOLLOWING:

- ☐ discovery: comply with demand for documents
- ☐ discovery: production of additional documents
- ☐ other matters concerning document discovery
- ☐ extend oral discovery
- ☐ other matter concerning oral discovery
- ☐ amend pleadings
- ☐ add/change parties
- ☐ summary judgment
- ☐ summary trial
- ☐ service
- ☒ interim order
- ☐ change order
- ☐ adjournments
- ☐ proceedings at trial
- ☐ appointment of additional expert(s): financial matters
- ☐ other matters concerning experts

**PARTY'S CERTIFICATE**  
**(DIVORCE ACT (CANADA), S. 7.6)**

☒ By checking this box, I, Renata Frances Martinez, certify that I am aware of my duties under sections 7.1 to 7.5 of the *Divorce Act* (Canada), which say:

- 7.1 A person to whom parenting time or decision-making responsibility has been allocated in respect of a child of the marriage or who has contact with that child under a contact order shall exercise that time, responsibility or contact in a manner that is consistent with the best interests of the child.
- 7.2 A party to a proceeding under this Act shall, to the best of their ability, protect any child of the marriage from conflict arising from the proceeding.
- 7.3 To the extent that it is appropriate to do so, the parties to a proceeding shall try to resolve the matters that may be the subject of an order under this Act through a family dispute resolution process.
- 7.4 A party to a proceeding under this Act or a person who is subject to an order made under this Act shall provide complete, accurate and up-to-date information if required to do so under this Act.
- 7.5 For greater certainty, a person who is subject to an order made under this Act shall comply with the order until it is no longer in effect.

**LEGAL ADVISER'S CERTIFICATE**  
**(DIVORCE ACT (CANADA), S. 7.7(3))**

☐ By checking this box, I, \_\_\_\_\_, legal adviser for Renata Frances Martinez, certify that I have complied with section 7.7 of the *Divorce Act* (Canada), which says:

7.7 (1) Unless the circumstances of the case are of such a nature that it would clearly not be appropriate to do so, it is the duty of every legal adviser who undertakes to act on a spouse's behalf in a divorce proceeding

- (a) to draw to the attention of the spouse the provisions of this Act that have as their object the reconciliation of spouses; and
- (b) to discuss with the spouse the possibility of the reconciliation of the spouses and to inform the spouse of the marriage counselling or guidance facilities known to the legal adviser that might be able to assist the spouses to achieve a reconciliation.

(2) It is also the duty of every legal adviser who undertakes to act on a person's behalf in any proceeding under this Act

- (a) to encourage the person to attempt to resolve the matters that may be the subject of an order under this Act through a family dispute resolution process, unless the circumstances of the case are of such a nature that it would clearly not be appropriate to do so;
- (b) to inform the person of the family justice services known to the legal adviser that might assist the person
  - (i) in resolving the matters that may be the subject of an order under this Act, and
  - (ii) in complying with any order or decision made under this Act; and
- (c) to inform the person of the parties' duties under this Act.