

F.L.D. No. 717

of 2006

**CANADA
PROVINCE OF SASKATCHEWAN**

**IN THE COURT OF QUEEN'S BENCH FOR SASKATCHEWAN
(FAMILY LAW DIVISION)
JUDICIAL CENTRE OF SASKATOON**

BETWEEN:

████████████████████

PETITIONER

AND:

████████████████

RESPONDENT

AND:

████████████████████ and ████████████████████

THIRD PARTY RESPONDENTS

NOTICE OF MOTION

TAKE NOTICE that an application will be made to the presiding judge in chambers at the Courthouse, 9th Floor, 224 4th Avenue South, in the City of Saskatoon, Saskatchewan, at 10:00 o'clock in the forenoon on Wednesday, the 25th day of OCTOBER, 2006, or so soon thereafter as counsel can be heard on behalf of the Third Party Respondents, **FOR AN ORDER THAT:**

1. The Affidavit of ██████████ dated October 19, 2006 be struck in its entirety, and including para. 4 and Exhibits "C", "D", "G", "I", and "J", pursuant to Queen's Bench Rules 602(10) and 603, or in the alternative, that at least para. 4 and Exhibits "C", "D", "G", "I", and "J" be struck.
2. Such other relief as requested by counsel for the Third Party Respondents, and seen fit by this Honourable Court.
3. The Petitioner, ██████████, shall pay to the Third Party Respondents, ██████████ and ██████████ costs of this application in the amount of \$ 1,000.00, or such other amount as ordered by this Court.

- Page 2 -

ON THE FOLLOWING GROUNDS:

1. The Affidavit of [REDACTED] dated October 19, 2006 does not comply with the Rules of Court, including Rules 602 and 603, and contains statements and Exhibits prohibited by the rules of affidavit evidence and the Rules of Court, and including extensive "without prejudice" privileged documents written by counsel for the Third Party Respondents to counsel for the Petitioner on an entirely without prejudice basis and for the sole purposes of settling (or assisting to settle) matters at issue between the parties.
2. Paragraph 4 of the impugned Affidavit simply lists various correspondence sent from counsel for the Petitioner to counsel for the Third Party Respondents and then also correspondence sent from counsel for the Third Party Respondents to counsel for the Petitioner, and then attaches all correspondence to Affidavit. The latter correspondence, from counsel for the Third Party Respondents, comprising Exhibits "C", "D", "G", "I" and "J" is clearly marked as "Without Prejudice".
3. The Affidavit does not properly disclose any grounds or evidence for the relief requested by the Petitioner and does not advance the Petitioner's case.
4. The Third Party Respondents strenuously object to the Petitioner simply attaching "Without Prejudice" correspondence, sent in good faith and with the objective of assisting in the resolution of matters between the parties, to his Affidavit, and without the Petitioner establishing and identifying the requisite special circumstances necessary and required to even attempt to justify the inclusion / attachment of such material to an affidavit.
5. Not only has the Petitioner and / or his counsel distributed this "Without Prejudice" correspondent to the media (see other Motion also set for this day, and the Affidavit of [REDACTED]), the Petitioner is now attempting to improperly attach such correspondence to his Affidavit, contrary to the rules of affidavit evidence and to the spirit and intent of without prejudice negotiations and discussions between counsel.

- 6. This is not the first time the Petitioner has filed inappropriate and inadmissible affidavit material. The Respondent and the Third Party Respondents both made application for the Hearing on October 4, 2006 to strike affidavits of the Petitioner. The Third Party Respondent is of the view that the material included in Petitioner's previous affidavits, including the May 9, 2006 Affidavit and the October, 2006 Affidavit, was entirely prohibited and offensive to the Rules. Those motions were adjourned to the Pre Trial Conference. The Petitioner is back filing the same prohibited nature of affidavits for this Hearing.
- 7. This application is brought upon the authority *inter alia* of Queen's Bench Rules 602 and 603.

AND FURTHER TAKE NOTICE that in support of the said application will be read:

- a.) The pleadings and proceedings had and taken herein; and
- b.) The Draft Order, all filed.

Dated at the City of Prince Albert, in the Province of Saskatchewan, this 20th day of OCTOBER, 2006.

ARNOT HEFFERNAN BLENNER-HASSETT
Barristers, Solicitors & Mediators

Fax: 

Solicitors for the Third Party Respondents


TO: The Petitioner, 
c/o Roe & Company By Fax, No. (306) 934 - 6827

TO: The Respondent, 
c / o Curtis Law Office By Fax, No. (306) 244 - 2599

This Motion prepared and delivered by:

ARNOT HEFFERNAN BLENNER-BASSETT

Barristers, Solicitors and Mediators

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Whose address for service is the same as above.

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