

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

*GAIL HERRINGTON*

*Applicant*

*-and-*

*IAN HARVEY and LAURENTIAN BANK OF CANADA*

*Respondent*

**AFFIDAVIT OF *GAIL HERRINGTON***

I, *Gail Herrington*, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY:

1. I am the Applicant in this proceeding and as such have personal knowledge of the matters hereafter deposed to, except for such knowledge as stated to be based upon information and belief which later matters I believe to be true.
2. The Respondent Ian Harvey ("Respondent") is my former husband. We have two children, Meaghan Harvey who was born on May 15, 1986, and Jonathan Harvey who was born on January 29, 1990.
3. In April 1981, the Respondent and I purchased a property municipally known as 299 Warden Avenue in Toronto, Ontario ("the Property"). The Property is described as follows:

Parcel 1527, Section Scarborough  
Being part of Lot 8, Plan M-548  
City of Scarborough

City of Toronto  
Land Titles Division of Toronto (No.66)

4. Title to the Property was registered in the Respondent's name and my name, as joint tenants. The joint tenancy was subsequently severed and we now hold the Property as tenants in common. A copy of the Deed, and Title Abstract with respect to the Property, disclosing the manner in which title to the Property was taken, are attached hereto as **Exhibit "A"**.
5. The Respondent and I separated in June 1991 when I left the Property, which was our matrimonial home. We have never resumed cohabitation. The Respondent has enjoyed uninterrupted vacant possession and use of the Property since we separated.
6. I am entitled to occupancy rent by virtue of the Respondent's sole occupancy of the Property, to my exclusion.
7. I am advised by my children and I believe, that the Respondent has regularly permitted other persons to reside in the Property for extensive periods of time. I do not know if he has charged rent or occupancy fees. He has never accounted to me for any monies ever paid to him regarding the use of the Property.
8. The Respondent and I were divorced pursuant to an Order of this Court on October 1, 1996. The Divorce Order merely grants a divorce. It does not contain any provision with respect to the Property, or any corollary relief.
9. The Respondent and I did sign a Separation Agreement dated April 12, 1995, a copy of which is attached hereto as **Exhibit "B"**. We also signed Minutes of Settlement dated April 12, 1995, a copy of which is attached hereto as **Exhibit "C"**.
10. The Minutes of Settlement dated April 12, 1995 provides for the sale of the Property. While the Respondent and I have had other discussions over the years regarding the disposition of the Property, we have never reached any further agreement with respect thereto.
11. On November 27, 1991, I mortgaged my share in the Property to Robert Kernohan in Trust, for \$36,000. The mortgage ("Mortgage") was registered On November 27, 1991, as instrument number 747474. A copy of the Mortgage is attached hereto as **Exhibit "D"**.
12. The Mortgage was transferred to the Respondent Laurentian Bank of Canada on November 28, 1993 pursuant to a Transfer of Charge registered as instrument number C820125. A copy of the Transfer of Charge is attached hereto as **Exhibit "E"**.
13. Laurentian Bank of Canada commenced legal proceedings against me for the enforcement of the mortgage, pursuant to a Statement of Claim issued on November 29, 1993 in Court File No.: 93-CQ-45325. A copy of the Statement of Claim is attached hereto as **Exhibit "F"**.
14. I am advised by my lawyer John Freeman and I believe that in all likelihood the proceedings commenced by Laurentian Bank of Canada have been dismissed by way of an Administrative Dismissal. At no time since commencing its legal proceedings against me for enforcement of the

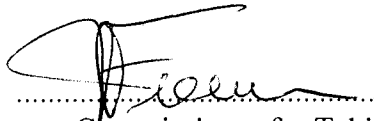
Mortgage, has Laurentian Bank of Canada or any other party on its behalf ever made demand for payment on account of the debt secured by the Mortgage.

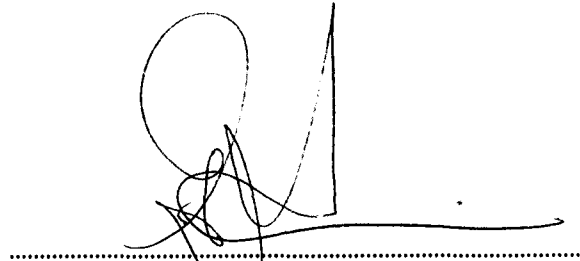
15. As a result of the above, it is my wish that the Property be partitioned, and sold under the supervision of an officer of this Court and that the Mortgage transferred to Laurentian Bank of Canada be deleted from title to the Property.

Sworn before me at the City, of Toronto,

in the Province of Ontario,

on April 5, 2017.

  
.....  
Commissioner for Taking Affidavits

  
.....  
Gail Herrington

RCP-E 4D (July 1, 2007)