

File No.

THE QUEEN'S BENCH

WINNIPEG CENTRE

BETWEEN:

KEVIN RICHARD KISILOWSKY

Applicant,

and

**HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF
MANITOBA**

Respondent,

AFFIDAVIT OF KEVIN RICHARD KISILOWSKY

Sworn the 12 day of March, 2014

I, Kevin Richard Kisilowsky, of the town of Stonewall, in the Province of Manitoba, as a self-employed individual owing a renovation business,

MAKE OATH AND SAY THAT:

1. I have personal knowledge of the matters and facts hereinafter deposed to by me, except where same are stated to be based upon information and belief, in which cases I believe them to be true.
2. I am of Christian faith and I am actively involved with House of the Rising Son Ministries in Winnipeg, Manitoba.
3. Part of my religious convictions involve the belief that homosexuality and lesbianism are proscribed by the Old and New Testaments and constitute a lifestyle and conduct that is sinful in the eyes of God and that any same-sex marriage

ceremony is sinful and contrary to God's laws. I also believe that it would be sinful for me to assist in a same-sex ceremony.

4. I believe that the Bible is the inerrant word of God and that marriage is a sacred institution ordained by God.

5. Prior to becoming a Christian, I was involved in a lifestyle of drug and alcohol addiction. After becoming a Christian, I have become involved with a Christian outreach to people in the lifestyle I was formerly involved with, including bikers.

6. I am a missionary evangelist and my outreach includes inner-city gang youth, street people, prison inmates and outlaw motorcycle gang members. This outreach I perform in part through the Bondslave motorcycle club which reaches out to bikers with the gospel of Jesus Christ. In that outreach I meet people, help them with their practical needs, engage in prayer with them and share the Christian faith,

7. As a result of requests for me to perform marriages, and my desire to serve the people in my outreach ministry by performing marriages for people not involved in a formal church but desiring a God-inspired marriage ceremony, I contacted the Manitoba Vital Statistics Agency in September, 2003, to enquire about becoming a marriage commissioner.

8. I explained to the Vital Statistics officials about the nature of my ministry and that I wished to perform marriage ceremonies involving Christian content. I explained that I would not be able to perform services that violated my Christian faith. I gave as examples of someone requesting a Wiccan marriage ceremony, or one involving religious content from a different religious background such as the

Muslim or Hindu religion. Vital Statistics officials told me that my objections were acceptable and that I would be put on a “private list” so that I could perform marriages with Christian content.

9. I applied for a marriage commission in September, 2003 and it was granted in October, 2003. Attached hereto and marked as Exhibit “A” to this my Affidavit is a copy of the Certificate of Registration to Solemnize Marriages granted to me. At the time that I applied for and received my marriage commission, same-sex marriage was not lawful in Canada.

10. Since being granted my marriage commission, I have performed marriage ceremonies with Christian content. A same-sex couple has never requested that I perform a same-sex marriage ceremony.

11. On September 16, 2004, the Vital Statistics Agency directed me by letter to provide my services as a marriage commissioner to same-sex couples when called upon to do so, and that in the event that I was opposed to doing to, I must return my Certificate of Registration to Solemnize Marriages, have my registration cancelled and my name removed from the listing of marriage commissioners. Attached hereto and marked as Exhibit “B” is a copy of the letter of September 16, 2004.

12. I refused to return my Certificate of Registration to Solemnize Marriages as directed, as I believe that the directive to me to do so, given my religious convictions constituted a breach of my religious rights protected under the *Manitoba Human Rights Code* and a violation of my freedoms of conscience and religion under the *Canadian Charter of Rights and Freedoms*.

13. As a result of the directive from the Vital Statistics Agency, I contacted the Manitoba Human Rights Commission (the "Commission") shortly after receiving the letter. It was my understanding that the Commission would assist me in rectifying the breach of my religious rights under the *Manitoba Human Rights Code* (the "Code").

14. Personnel at the Commission told me that I had grounds for a complaint and that I should submit it in writing along with any documents I had, which I did on October 12, 2004.

15. As a result of my concerns with respect to a lack of responsiveness of the Commission to my complaint, I retained legal counsel to assist me, securing the services of J. Scott Kennedy from the law firm of Monk Goodwin LLP.

16. By letter of September 16, 2005, I requested through Mr. Kennedy, of the legal counsel for the Vital Statistics Agency, that my religious beliefs be accommodated by the Vital Statistics Agency and that I be exempted from the requirement to perform same-sex marriages. Attached hereto and marked as Exhibit "C" is a copy of the letter from Mr. Kennedy.

17. By letter of September 19, 2005, from Mr. I. D. Frost of the Manitoba Department of Justice, a copy of which is attached hereto and marked as Exhibit "D", my request for accommodation was denied by the Vital Statistics Agency.

18. In June of 2005 I received the report of the Investigator, Tracy Lloyd, relating to her investigation of my complaint. I was disappointed to find that Ms. Lloyd had recommended to the Board of the Manitoba Human Rights Commission that my complaint be dismissed.

19. In early November, 2005, I received a copy of the decision of the Board of Commissioners of the Manitoba Human Rights Commission, dated November 2, 2005, a copy of which is attached hereto and marked as Exhibit "E". I was dismayed to find that the Board stated that there was not sufficient evidence to substantiate my complaint.

20. Shortly after the issuing of the Commission's decision, I received a letter from the Vital Statistics Agency, dated November 10, 2005, a copy of which is attached hereto and marked as Exhibit "F", revoking my appointment as a marriage commissioner and asking me to return my Certificate of Registration to Solemnize Marriages to the department.

21. I am not requesting that the government cease performing marriages for same-sex couples, only that my religious rights be respected and accommodated to enable me to continue my services as a marriage commissioner without being required to violate my religious conscience and perform same-sex marriage ceremonies.

22. In summary, this Affidavit is in support of my Application to find that the government of Manitoba, by refusing to accommodate my religious beliefs to the point of undue hardship, has violated my freedom of conscience and religion under s. 2(a) of the *Charter*.

SWORN BEFORE ME at STONEWALL,)
Manitoba, this 12 day of March, 2014)



) KEVIN RICHARD KISILOWSKY

A _____
in and for the Province of Manitoba

Douglas W. Grantham
A Notary Public
In and for the Province of Manitoba

Douglas W. Grantham
Barrister & Solicitor
P. O. Box 1400
Stonewall, Manitoba
R0C 2Z0

A

Registration No./Immatriculation n°

M0328

Manitoba
Consumer and
Corporate Affairs
Vital Statistics Agency

Consommation et
Corporations
Manitoba
Bureau de l'état civil

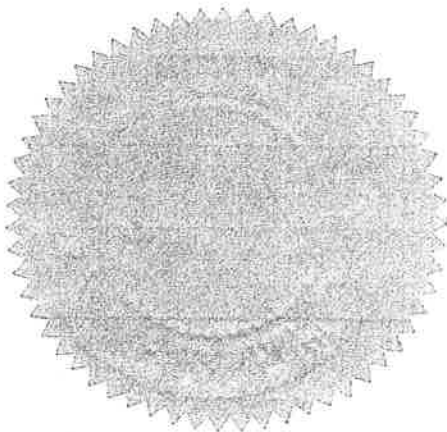


**Certificate of Registration
to Solemnize Marriages
Certificat d' immatriculation
pour la célébration de mariages**

This is to Certify that/Ce document atteste que

KEVIN RICHARD KISILOWSKY

is registered with Vital Statistics to Solemnize Marriages in and for the Province of Manitoba.
*est immatriculé(e) auprès du Bureau de l'état civil pour la célébration de mariages
dans et pour la province du Manitoba.*



Given under my Hand and the Seal of
Manitoba Consumer and Corporate
Affairs, at the City of Winnipeg.

*Accordé de ma main et sous le sceau
du ministère de la Consommation et
des Corporations du Manitoba en la
Ville de Winnipeg.*

Expiry Date:
December 31, 2005

THIS IS EXHIBIT " A "
referred to in the Affidavit of
Kevin Kisilowsky
Sworn before me this 12
day of March A.D. 20 14
Douglas W. Grantham
A Commissioner in and for the Province of Alberta

C.E. Kaus
Director of Vital Statistics.
Directrice de l'État civil.

Douglas W. Grantham
A Notary Public
In and for the Province of Manitoba

Douglas W. Grantham
Barrister & Solicitor
P.O. Box 1100
Stonewall, Manitoba
R0C 2Z0

B

THIS IS EXHIBIT " B " referred to in the Affidavit of

Kevin Kisilowski



Sworn before me this 12 day of March A.D. 2014

Vital Statistics Agency

[Signature]
A Commissioner in and for the Province of Alberta

Douglas W. Grantham
Barrister & Solicitor
P. O. Box 1400
Stonewall, Manitoba
R0C 2Z0

Douglas W. Grantham
A Notary Public
September 16, 2004

In and for the Province of Manitoba

TO ALL MARRIAGE COMMISSIONERS

This notice is to advise you that on September 16, 2004 the Honourable Mr. Justice Yard of the Manitoba Court of Queen's Bench (Family Division) made an order in the matter of *Vogel et. al. v. The Attorney General of Canada et. al.* declaring that the opposite sex requirement for marriage violates the equality provision of the *Canadian Charter of Rights and Freedoms* and such violation is not justified pursuant to section 1 of the *Charter*. Justice Yard further declared that the common law definition of marriage is changed in Manitoba to the voluntary union for life of two persons to the exclusion of all others.

This means that, as of September 16, 2004, the common law definition of marriage is changed in Manitoba from the union of one man and one woman to the union of two persons, to the exclusion of all others. Same-sex couples are now free to contract civil marriage in Manitoba. Religious officials may also solemnize same-sex marriages, if doing so accords with the tenets of their religious beliefs.

We anticipate your cooperation in providing your services to same-sex couples in the same manner as you have in the past to opposite-sex couples. As marriage commissioners, you act on behalf of the Province of Manitoba and as such are expected to comply with the changes to the law. In the event you are opposed to performing marriages for same-sex couples, please return your Certificate of Registration to Solemnize Marriages so we may cancel your registration and remove your name from our listings.

As a result of this court decision, changes will be made to a number of the regulated forms under *The Marriage Act*, including the form of the Marriage Licence and the forms relating to Banns. Issuers of marriage licences will receive information about these changes once they have been finalized.

Yours truly,

[Signature]
Caroline Kaus
Director

Vital Statistics Agency
254 Portage Avenue, Winnipeg, MB, R3C 0B6 Canada
Telephone: (204) 945-3701 Fax: (204) 948-3128
E-Mail: vitalstats@gov.mb.ca
Web-Site: www.gov.mb.ca/cca/vital

Bureau de l'état civil
254 avenue Portage, Winnipeg (Manitoba) R3C 0B6 Canada
Téléphone: (204) 945-5500 Télécopieur: (204) 948-3128
courriel: vitalstats@gov.mb.ca
Site Internet: www.gov.mb.ca/cca/vital

C



MONK GOODWIN LLP
BARRISTERS AND SOLICITORS

800 - 444 ST. MARY AVENUE
WINNIPEG, MANITOBA R3C 3T1

(P) (204) 956-1060
(F) (204) 957-0423
(W) www.monkgoodwin.com

September 16, 2005

Manitoba Justice
Civil Legal Service
730 - 405 Broadway
Winnipeg, Manitoba
R3C 3L6

THIS IS EXHIBIT " C "
referred to in the Affidavit of
Kevin Kisilowsky
Sworn before me this 12
day of March A.D. 2014
[Signature]
A Commissioner In and for the Province of Alberta.

J. SCOTT KENNEDY
EXTENSION: 238
EMAIL: skennedy@monkgoodwin.com

FILE NO. 18097-1/K

VIA FAX: 948-2041

Douglas W. Grantham
A Notary Public
In and for the Province of Manitoba

Douglas W. Grantham
Barrister & Solicitor
P. O. Box 1400
Stonewall, Manitoba
R0C 0A0

Attention: Irvin D. Frost

Dear Sir:

RE: Kisilowsky, Kevin

Please be advised that we are the counsel for Kevin Kisilowsky, the complainant in a complaint of discrimination pursuant to the Manitoba Human Rights Code issued against your client, the Government of Manitoba, Manitoba Finance.

The Vital Statistics branch of your client department sent a letter, dated September 16, 2004, to our client a Manitoba marriage commissioner, requiring that in the event he was unwilling to perform same sex marriage ceremonies, he return his Certificate of Registration to Solemnize Marriages. It is our understanding that our client did not make a formal request for accommodation from your client, asking that he be exempted from the requirement to perform same sex marriage ceremonies on the basis of his religious convictions and conscience. Apparently, he did not do so as a result of his impression from the letter received from your client that your client was leaving no room for accommodation.

At the time of his receiving the letter of September 16, 2004, our client was not represented by legal counsel, and we wish to clarify the record in this matter with respect to the issue of accommodation. Accordingly, this constitutes our client's formal request for accommodation by your client, exempting him from the requirement to perform same sex marriage ceremonies without him being required to return his Certificate of Registration of Solemnize Marriages. His request for accommodation is on the basis of his religious convictions and conscience. Our request is without prejudice to the arguments advanced on behalf of our client in this matter with respect to his complaint.

ROBERT HUCAL
ERNEST M. SHEWCHUK
BARRY L. GORLICK, Q.C.
LARRY J. BIRD
MICHEL L.J. CHARTIER
ALONA C. MERCADO

RICHARD N. HOESCHEN
JAMES H. DIXON
CELIA E. GORLICK, Q.C.*
BENJAMIN R. HECHT
SANDRA A. ZINCHUK
TED SPYRACOPOULOS

CHARLES J. PHELAN Q.C.
J. SCOTT KENNEDY
SUSAN E. ELENUIK
RHONDA M. HERCUS
DOMINIQUE J. ALFORD
YENNY TRINH

D



Justice

**Civil Legal Services
SOA**

Room 730
Woodsworth Building
405 Broadway
Winnipeg MB R3C 3L6

Delivered via Fax @ 957-0423


Phone: (204) 945-2839
Fax: (204) 948-2826
ifrost@gov.mb.ca
File No: VS0100 (79)

In reply, please refer to:
**I. D. Frost
Crown Counsel**

September 19, 2005

Monk Goodwin
Barristers and Solicitors
800 - 444 St. Mary Avenue
Winnipeg, MB R3C 3T1

Attention: Scott Kennedy

THIS IS EXHIBIT " D
referred to in the Affidavit of
Kevin Kisilowsky
Sworn before me this 12
day of MARCH A.D. 2014

A Commissioner in and for the Province of Manitoba

Dear Sir:

Douglas W. Grantham
A Notary Public

Douglas W. Grantham
Barrister & Solicitor
P. O. Box 1400
Stonewall, Manitoba
R0C 2Z0

Re: Kevin Kisilowsky

in and for the Province of Manitoba

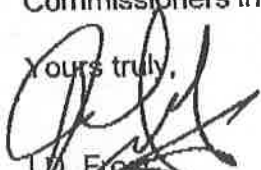
This is to acknowledge yours of the 16th of September, 2005.

I have had an opportunity to consult with the Manitoba Vital Statistics Agency (the "Agency") regarding your client's request for "accommodation on the basis of (his) religious convictions and conscience". I further note that your client's request is without prejudice to the arguments previously advanced by him before the Human Rights Commission.

I am instructed to advise that the Agency is unable to comply with your client's request in the circumstances.

A marriage commissioner performs a single essential function (civil marriages as requested). While this may be subject to availability in which case a potential client may have to choose between a brief delay in the timing of a ceremony or finding someone capable of meeting their timelines, the essential duty remains. The obligation to accommodate does not excuse individuals from performing the core duty of the position.

I trust that the Agency's reply addresses your client's formal request for accommodation. I understand that your client's complaint will be considered at the next session of the Board of Commissioners in October, 2005.

Yours truly,

I. D. Frost
Crown Counsel

IDF*dlm

E

THE MANITOBA
HUMAN RIGHTS
COMMISSION



LA COMMISSION DES
DROITS DE LA PERSONNE
DU MANITOBA


November 2, 2005

PRIVATE & CONFIDENTIAL

Mr. J. Scott Kennedy
800 - 444 St. Mary Ave.
Winnipeg MB R3C 3T1

Dear Mr. Kennedy:

Re: Complaint of Kisilowsky, Kevin v. Government of Manitoba
Our File No. 04 EN 462

THIS IS EXHIBIT " E "
referred to in the Affidavit of
Kevin Kisilowsky
Sworn before me this 12
day of March A.D. 20 14

A Commissioner in and for the Province of Alberta

Douglas W. Grantham
Barrister and Solicitor
in and for the Province of Manitoba

Douglas W. Grantham
Barrister & Solicitor
P. O. Box 1400
Stonewall, Manitoba
ROC 2Z0

I am writing to advise you that the above-noted complaint was considered by the Board of Commissioners on October 28, 2005.

The Board of Commissioners reviewed the evidence as outlined in the Investigation Assessment Report, a copy of which was sent to the Complainant, as well as the Supplemental Assessment Report, a copy of which was sent to you, and the Complainant's and the Respondent's responses to these Reports.

Based on all of the information which was before the Board of Commissioners, the Board determined that this case be dismissed pursuant to subsection 29(1)(c) as there did not appear to be sufficient evidence to substantiate the alleged contravention of *The Code*.

The Board determined that either section 13 (services) or section 14 (employment) of *The Code* could apply to the subject matter of this complaint. The Board was not satisfied that section 15 of *The Code* was engaged as any contract between the Respondent and the Complainant did not appear to be available to the public or a section of the public. In any event, satisfied that it had jurisdiction over the subject matter of the complaint, the Board proceeded to consider the evidence supporting the merits of the complaint. Its conclusion as regards the scope of section 15, therefore, did not affect the final disposition of the matter.

By way of preliminary comment, the Board disagreed with your description of the Board's duty under s. 29 of *The Code* when disposing of a complaint. It does not see its role as considering only whether there is a sufficient basis in the evidence of differential treatment (or failure to accommodate special needs) based on a protected characteristic (which is how the term *prima facie* case is used in the Report and the case law you have cited). Rather, it is directed by section 29 of *The Code* to consider whether there is a reasonable basis in the evidence before it of the alleged contraventions of *The Code*. Sections 13 and 14 do not prohibit all discrimination but

7TH FLOOR, 175 HARGRAVE STREET, WINNIPEG MANITOBA R3C 3R8
(204) 945-3007 TOLL FREE: 1-888-884-8681 FAX: 945-1292 TTY: 945-3442

E-MAIL: hrc@gov.mb.ca WEBSITE: www.gov.mb.ca/hrc

F



Vital Statistics Agency

November 10, 2005

Mr. Kevin Richard Kisilowsky
233 - 3rd Street East
Box 1292
Stonewall, MB R0C 2Z0

THIS IS EXHIBIT " F "
referred to in the Affidavit of
Kevin Kisilowsky
Sworn before me this 12
day of March A.D. 2014

Commissioner in and for the Province of Alberta

Douglas W. Grantham
Barrister & Solicitor
P. O. Box 1400
Stonewall, Manitoba
R0C 2Z0

Dear Mr. Kisilowsky:

Douglas W. Grantham
A Notary Public
In and for the Province of Manitoba

As indicated in our letter of September 16, 2004, the common law definition of marriage is changed in Manitoba from the union of one man and one woman to the union of two persons, to the exclusion of all others. Same sex couples are now able to marry in Manitoba. Also as indicated in our letter of September 16, 2004, we expect all marriage commissioners to comply with the changes to the law and perform marriages for same sex couples. This policy of the Government was found not to be a violation of *The Human Rights Code* by the Board of Commissioners of the Manitoba Human Rights Commission in its decision dated November 2, 2005.

Since you have indicated that you are unable to perform same sex marriages, your appointment as a marriage commissioner has been revoked. We ask that you please return your Certificate of Registration to Solemnize Marriage as soon as possible.

Thank you for the time you have served as a marriage commissioner.

Yours truly,

Caroline Kaus
Director
Vital Statistics

CK/lk