

Form 49
[Rule 13.19]

Clerk's stamp:

COURT FILE NUMBER

1703-21661

COURT

COURT OF QUEEN'S BENCH
OF ALBERTA

JUDICIAL CENTRE

EDMONTON

APPLICANTS

C.D. and N.D.

RESPONDENT

HER MAJESTY THE QUEEN IN RIGHT OF THE
PROVINCE OF ALBERTA AS REPRESENTED BY
CHILD AND FAMILY SERVICES

DOCUMENT

AFFIDAVIT OF C.D.

ADDRESS FOR
SERVICE AND OF
CONTACT INFORMATION
PARTY FILING
THIS DOCUMENT

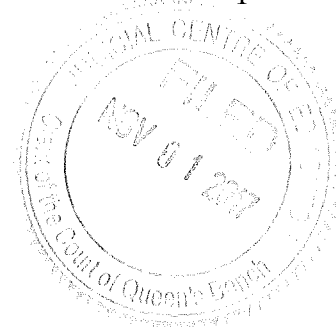
Justice Centre for Constitutional Freedoms
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AFFIDAVIT OF C.D.

October 31
Sworn on ~~November 1~~, 2017

I, C.D., of Edmonton, Alberta, SWEAR AND SAY THAT:

1. My husband, N.D. and I reside in Edmonton. We have no biological children. Due to medical complications, we are currently unable to conceive.
2. My husband and I have considered adopting children since we were married. My husband was adopted as a newborn. I have considered adoption all my adult life, as I have worked with children over the years. My heart has ached for the older children in foster care that I have met, who I know are unlikely to ever get adopted because of their age. I want to offer kids like these a home and show them that they are valued.



3. On October 7, 2016, we met with a Child and Family Services intake worker ("CFS Intake Worker") to submit our Application to Adopt a Child (attached as **Exhibit "A"**) and to discuss the process.

4. The CFS Intake Worker explained that we must complete the Caregiver Orientation Training course facilitated by Child and Family Services (the "COT Course"). After that, we would be contacted by a social worker to conduct a home study. The intake worker explained that Child and Family Services contracts with three agencies to conduct home studies and to submit a recommendation regarding approval for adoption to Child and Family Services. She listed the three agencies and asked if we had a preference. We said that any agency would be fine. The CFS intake worker assigned our file to Catholic Social Services ("CSS")

5. We attended the COT Course on October 22-23 and 29-30, 2016 and received our certificates of completion (attached as **Exhibit "B"**) on October 30.

6. All potential adoptive parents are required to complete the COT Course before approval. Many topics were discussed during the COT Course, with a particular emphasis on Aboriginal issues. We were told that approximately 75% of the children in the foster care system came from an Aboriginal background. At no time during the COT Course was sexual orientation or gender identity mentioned.

The Home Study Process and Home Study Report

7. In January, a CSS Social Worker and Home Study Practitioner ("CSS Home Study Practitioner") contacted us to schedule a home study (the "Home Study"). In addition to phone conversations, the CSS Home Study Practitioner inspected our home, conducted in-person interviews with us on three separate days, and called three references for each of us.

8. During the Home Study, the CSS Home Study Practitioner asked a series of questions regarding sexuality. She asked us how we would handle a child who was questioning their sexuality. In response, I said that we would communicate openly with the child about the struggles the child was experiencing. We would explain our beliefs so the child would understand our perspective and we would reassure the child of our love. She also asked us how we would handle a child who was engaged in "sexual exploration" and if we would encourage it. I responded by saying that, although we are willing to engage in discussion and address all issues and questions our child may have, we would not encourage "sexual exploration". Our belief system or worldview, rooted in common sense, science, our own life experience and our sincerely-held religious beliefs, includes the belief that children should be taught about sexuality in an age-appropriate manner, and that sexuality should not be experienced or "explored" until a person is an adult and enters into a committed marriage relationship. This prevents contracting sexually transmitted diseases by having multiple sex partners, and spares young people the emotional toll and psychological damage that can result from having multiple sexual relationships during one's youth.

9. The Home Study commenced on January 21, 2017, and was completed on February 14, 2017. A SAFE Home Study Report (the "Home Study Report" attached as **Exhibit "C"**) was completed and provided to us via email on February 21, 2017 (the "February 21 Email" attached as **Exhibit "D"**). The CSS Home Study Practitioner stated in the February 21 Email that she was "pleased to recommend you for adoption" (the "First Recommendation").

10. The Home Study Report notes that my husband and I possess characteristics favourable to raising children. In particular, the Home Study Report stated that my husband had an "inviting presence" and was "dependable", and that I am "cheerful with a warm and inviting smile". The

Home Study Report further notes that we are both "mature, healthy and responsible adults". In my view, these qualities are crucial to creating a warm and loving home environment for children.

11. However, the Home Study Report stated that my husband's "belief system is not accepting of homosexuality". No explanation for this claim is provided, in particular, no clarification as to what the word "accepting" means. No details about the alleged deficiency are provided.

12. My husband and I have sincere religious beliefs regarding sexuality that are identical to many Canadians' views, including hundreds of thousands of who have children. We believe sex should be exclusively reserved for marriage between a man and a woman. Of course we recognize that many Canadians do not adhere to, or practice, this belief. We accept that same-sex relationships exist, and that same-sex marriage is a legal reality. Further, we accept that other people have different views than ours on this subject, and we respect their freedom to both hold that view and act in accordance with that view. Further still, and most importantly, we have and will continue to treat all same-sex attracted individuals with respect. At no time did we state that our child would not be wholly loved, respected and valued due to their attraction to people of the same sex.

13. Our views on marriage and sexuality are typical and orthodox, founded on the Bible and on thousands of years of Christian thought and teaching, and are referred to in well-known works such as the protestant Heidelberg catechism, a confession of faith from the Protestant Reformation. Similar or identical views are espoused by the Roman Catholic Church, other religions and denominations affiliated with Christianity, and other religions, including Islam and Orthodox Judaism. According to Statistics Canada, Christian religions and denominations, including Catholicism, that share identical or similar views to our own regarding sexuality comprise

approximately 50.3% of the Canadian population as of 2011. Attached as **Exhibit "E"** hereto is a copy of the most recent Statistics Canada circular on the religious affiliations of Canadians.

14. The Home Study Report also stated that I, as an individual, "would not be accepting of homosexuality" and that this was a "concern that cannot be mitigated". This assertion in the Home Study Report is not correct. At no point during the Home Study did I say that I do not "accept" homosexuality. To the contrary, I accept the reality and legality of same-sex relationships. I treat every person, including people who feel attracted to the same sex, with dignity and respect. The Home Study did not allege that my beliefs or my practice and conduct would prevent the creation of a loving, secure and happy home for a child.

15. The Home Study Report claims that the "concern" regarding "homosexuality" is that my husband and I are not "accept[ing] of differences". This allegation is incorrect. The Home Study Report explicitly stated that my husband and I are both "sensitive to and respectful of different cultures" and have regular interaction with individuals "from different backgrounds and beliefs".

16. Further, contrary to the claim in the Home Study Report, we do not reject or deny the "differences" of individuals, nor do we discriminate towards individuals based on any of their differences. Rather, we accept that all individuals have personal and group identities that are different from others, including identities involving sexuality, and we respect all individuals regardless of their differences. Our views on marriage and sexuality are not uncommon, nor are they harmful or contrary the public interest.

Questions from Child and Family Services regarding our religious beliefs

17. On March 6, 2017, the CSS Home Study Practitioner emailed us and advised us that Child and Family Services had received the Home Study Report and the Original Recommendation and had further questions regarding our views about sexuality. Attached as **Exhibit "F"** are the three

emails sent between the CSS Home Study Practitioner and myself on March 6-7, 2017. The CSS Home Study Practitioner listed in the March 6 Email the questions Child and Family Services they required us to answer. They were as follows:

In my report I indicated that you do not accept homosexuality but are respectful of it. What does being respectful and accepting look like for you? For example, should a child be placed with you and start questioning their own sexuality how would you support them? Should your adopted child have a biological family member who is homosexual how would you support this? Are you ready, willing and able to love and support a child regardless of their sexuality?

18. I responded to the March 6 Email on March 7. At 5:08 PM on March 7, I answered, via email, the questions posed by Child and Family Services in the March 6 Email. My answer included the following:

Biblical principals *[sic]* are the foundation of our home. Our values, priorities, and perspective of the world reflect these principals. As such, we believe that homosexuality is wrong. We will not treat sexuality as something to be "discovered or explored". Gender and sexuality are determined at birth and God has given parameters for people to enjoy the gift of sex - within the confines of a marriage between a man and a woman. This is the message that will be given to the children in our home. Should our adopted child have a bio family member who is homosexual, we would continue to support our child in maintaining a relationship with him/her. The message would be that while we don't support the lifestyle that person has chosen, he/she is still a loved child of God and should be treated as such. If our child began to question his/her own sexuality, our answers would be based on biblical perspectives. We would talk with them and get support for them. We understand that the decisions our child/ren make are not under our control. Young adults will choose what they wish to choose. Our hope is that by providing a stable, loving home and openly discussing our values (and reasons for them) with our child/ren, they would want to follow our example. Ultimately, a parents *[sic]* love is not, and should not be, given based on the decisions and actions of a child. It's unconditional and filled with grace and mercy...

19. At 9:14 PM on March 7, the CSS Home Study Practitioner again emailed us with the following questions:

Thank you for the response. I want to make sure I fully understand. When you say that gender and sexuality is determined at birth, what does that mean? Does that mean there are two genders (male/female) and one sexual orientation (heterosexual) assigned at birth, or do you believe that there are people that are born as homosexual

(attracted to the same gender), and you accept that, but do not accept people acting on their homosexuality (having sex with the same gender)? Another way of asking this, would be, do you believe that people choose to be homosexual, or that they choose to act on their homosexuality?

20. At 10:02 PM on March 7, I responded again via email, stating:

We do not agree with the argument that people are born homosexual. We know that some people experience same gender attraction while others do not, but it is a temptation like any other temptation. (Ex. some people exhibit more addictive behaviour than others - some choose to fight it and some believe they just can't). I believe [N.D.] mentioned an acquaintance of his to you that admits to having same gender attraction but has chosen not to live that way as he believes it to be wrong. I also had a friend in college who very much wanted a wife and kids but when he was rejected too many times by girls he dated, he chose to date men to find acceptance. In our many conversations, he never once tried to suggest that he was "born" that way, but that he simply wanted to be loved. In summation, our view is that acting on feelings of same sex attraction is a choice and thus, homosexuality is a choice.

The initial rejection of our application to adopt

21. On March 13, we received a phone call from the CSS Home Study Practitioner. I answered and activated the speaker so N.D. could also hear. By the tone of the CSS Home Study Practitioner's voice, I immediately knew the outcome. I remember hearing "non-approval" and felt like I had been sucker punched in the stomach. My eyes teared up and I slowly lowered into the chair that I had been standing beside at our kitchen table. The CSS Home Study Practitioner started the conversation with compliments: "you are a great couple"; "you'd be great parents"; "you have a solid relationship"; and "your finances are good". But, she explained that because of our religious beliefs regarding sexuality, her supervisors were very concerned that a "match could break down" and potentially we would "return" a child placed with us if that child struggled with their sexuality. As we explained to the CSS Home Study Practitioner, we would never do such a thing, as such actions would be antithetical to our religious beliefs regarding unconditional love. As the call

ended, tears were streaming down my face and I could barely speak. I went upstairs and spent hours crying while my husband attempted to comfort me.

22. At 7:13 PM on March 13, we received an email from the CSS Home Study Practitioner. Attached was a "non-approval" letter from CSS stating that the we would not be recommended for adoption (the "Rejection Letter", attached as **Exhibit "G"**) and a revised SAFE Home Study Report (the "Revised Home Study Report", attached as **Exhibit "H"**) The Revised Home Study Report included a recommendation that we not be approved as adoptive parents because, according to CSS, we "would be unable to help a child who has sexual identity issues" (the "Second Recommendation").

23. We were confused at the intrusion (and influence) of Child and Family Services on the Home Study process because it had been communicated to us that CSS was an independent adoption agency, contracted to perform home studies and make recommendations. We were further confused and surprised regarding the Second Recommendation and the stated reason given in the Revised Home Study Report. We had made it clear in our communications with the CSS Home Study Practitioner that we are, in fact, able to help a child who has sexual identity issues and are ready, willing, and able to love and care for such a child. We candidly and repeatedly explained our beliefs, values, and intentions to the CSS Home Study Practitioner, but it seemed as though all our answers to her questions were not the answers she was looking for or were grossly misinterpreted.

24. We would never reject a child in our care, as we explained to the CSS Home Study Practitioner; we would unconditionally love our adoptive child and strive to help them feel accepted and valued.

25. I was angry at the injustice of the situation. There are a lot of kids, especially older kids, who have nowhere to call home, no one to call Mom or Dad, and dwindling prospects of being adopted as they age. Despite our stability, our kindness, our dedication to helping people, despite our willingness to take a child in who needed parents, and consider him or her our own for the rest of our lives, we were being discriminated against based on our religious beliefs.

26. The Rejection Letter stated that we could appeal the Second Recommendation by contacting our assigned CSS Home Assessment Program Supervisor (the "Assigned CSS Supervisor").

27. On March 18, we emailed our Assigned CSS Supervisor to request an appeal of the Second Recommendation. Our Assigned CSS Supervisor responded via email on March 23. Attached as **Exhibit "I"** are the emails sent between us and our Assigned CSS Supervisor on March 6-7, 2017

28. A meeting was set for April 7, 2016. The CSS Home Study Practitioner, our Assigned CSS Supervisor and a third CSS staff member were to be present. There was no clarification from the Assigned CSS Supervisor as to the format or purpose of the meeting, but we believed the meeting was going to be an appeal proceeding in accordance with the invitation to appeal detailed in the Rejection Letter, and our request based on that invitation.

The April 7 meeting with Catholic Social Services

29. On April 7, 2017, we met with the CSS Home Study Practitioner, the Assigned CSS Supervisor, and a third CSS staff member (the "April 7 Meeting"). We were prepared to give submissions in support of our appeal. We anticipated that CSS would, in good faith, reconsider the Second Recommendation. But, when we attempted to explain how we would love and care for a child that was questioning their sexuality and how such a child would not feel rejected in our home, our Assigned CSS Supervisor did not consider our submission. Rather, she simply repeated the

same explanation for the Second Recommendation as was contained in the Revised Home Study Report.

30. During the April 7 Meeting, the Assigned CSS Supervisor stated that children who are questioning their sexuality "need a supportive and encouraging environment to find their identity" and asked us if we would "support them in this process if they wanted to explore it?". On several previous occasions, we had made clear that we would offer open discussion and counselling services to support our child. Since this answer was insufficient to them, I asked for examples of the kind of support CSS had in mind. After a period of silence by all three CSS staff, the CSS Home Study Practitioner asked if we would "support" that child by connecting them with other children and adults who question their sexuality and who live a LGBT lifestyle. The type of support that we proposed was not an acceptable alternative. We answered that by only offering this particular type of "support" we would be encouraging and affirming beliefs and behaviours that conflict with our sincere religious beliefs.

31. In further response to this statement, I explained that though we could not encourage a child we loved and were charged with caring for to pursue a lifestyle that we knew caused a higher proportion of anxiety, depression, and suicide attempts than other lifestyles, we would explain to a child in our care to believe that sexuality is not the only or the most important aspect of their identity. We would want them to pursue and find their identity in their interests and talents and personal attributes as well, especially at a young age.

32. I asked the CSS staff if they expected us to act against our religious beliefs. The Assigned CSS Supervisor said that CSS did not want us to act contrary to our beliefs and that nobody was trying to tell us what to believe. This, of course, was only partly true: CSS was not telling us to change our beliefs or act contrary to our religious beliefs, unless we wanted to be approved for

adoption, in which case we would, in fact, either have to change our religious beliefs, or act contrary to our religious beliefs. We were being told that if we did not agree with and adopt Child and Family Services' beliefs regarding sexuality, that we could not be approved to be adoptive parents. If we did not change our religious beliefs regarding sexuality, to conform to the beliefs of Child and Family Services, we would not be approved for adoption. I asked if there was anything that we could do or say that would alter the Second Recommendation, other than to change our beliefs, but I was told by CSS staff that there was nothing we could do or say that would do so.

33. At some points during the April 7 Meeting I teared up. I was frustrated and heartbroken. The third CSS staff member was also teary-eyed. She acknowledged that it was a very difficult situation for everybody because N.D. and I were "such great people and had so much to offer a child". The CSS Home Study Practitioner avoided eye contact with us for most of the meeting. Most of the communication during the meeting was with our Assigned CSS Supervisor.

34. No evidence, either verbal or written, was proffered by any CSS Home Study Practitioner, Assigned CSS Supervisor, CSS Staff or any other relevant party demonstrating that our sincerely-held religious beliefs at issue would negatively impact our ability to provide a loving, safe, secure and supportive home-life for a child.

35. At the end of the April 7 Meeting, our Assigned CSS Supervisor explained that we could choose whether the Revised Home Study Report and the Second Recommendation were submitted to Child and Family Services or not. But, if we chose to have the Revised Home Study Report and the Second Recommendation submitted to Child and Family Services, we must sign the Revised Home Study Report to acknowledge that we agreed with the contents of it. We did not agree with the contents of the Revised Home Study Report, but felt we had no choice but to sign it if we were to have any chance of ever being approved for adoption. N.D. and I told CSS that we did not

agree with the contents of the Revised Home Study Report, but in the hope that Child and Family Services would review our file and not accept the Second Recommendation, we signed the Revised Home Study Report and asked that Child and Family Services notify us once they made a decision regarding the Second Recommendation. I asked if Child and Family Services ever went against the recommendation of a contracted adoption agency. The CSS staff said it was possible.

36. On April 24, 2017, I emailed the Assigned CSS Supervisor to request the contact information for the Child and Family Services Manager that had received the Revised Home Study Report and the Second Recommendation from CSS. On April 25, the Assigned CSS Supervisor responded via email and provided me with the contact information for two Child and Family Services staff who had reviewed our file.

The May 3 meeting with Child and Family Services

37. On May 3, N.D. and I met with two Child and Family Services staff, an Adoptions Caseworker and a Casework Supervisor. At the meeting, Child and Family Services staff told us that they had accepted the Second Recommendation from CSS and decided to reject our application to adopt (the "Decision"). The Casework Supervisor explained that our religious beliefs regarding sexuality were incompatible with the adoption process. The Casework Supervisor said this stance was the "official position of the Alberta government". I suggested that such a position was likely disqualifying a significant portion of the adoptive parent applicant pool, but the Casework Supervisor said that there was "nothing she could do about that".

38. I asked the Child and Family Services staff if there was any way we could continue to live in accordance with our sincere religious beliefs and still be approved to adopt. The Child and Family Services staff replied that we could not because Child and Family Services must be "neutral" and that the decisions Child and Family Services made regarding the approval of

adoptive parents could not consider the religious beliefs of applicants. This statement made no sense to us; Child Family Services did consider our religious beliefs and, in fact, our religious beliefs were the determining consideration in the Decision. We were informed that the Decision was final, and that there was no further opportunity to appeal the Decision.

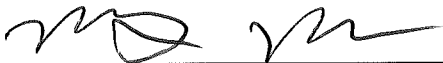
Conclusion

39. When we began the adoption process, we were confident that we would be approved. We never dreamed we would be disqualified from helping children in need because of our sincere and commonly-held religious beliefs.

40. The sad irony of the situation is lost on Child and Family Services. They are not just discriminating against us – they are discriminating against every child who needs a family, and doing so on the basis of beliefs that are shared by millions of Canadians from various faith backgrounds, are not against the public interest, and part of Canada’s diverse, multi-faith and multicultural society.

41. I swear this Affidavit in support of the Originating Application for Judicial Review, and specifically in support of the provisions that deal with the infringement of our rights under the *Canadian Charter of Right and Freedoms*, the *Alberta Bill of Rights* and the *Alberta Human Rights Code*, and our claim for relief in the form of an Order allowing us to adopt a child in Alberta.

Sworn before me at Edmonton, in the
Province of Alberta, on November 1, 2017.



Marty Moore
Barrister and Solicitor
Commissioner of Oaths in and for the
Province of Alberta



C.D.