

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 **ORIGINATING APPLICATION
FOR JUDICIAL REVIEW**

ADDRESS FOR SERVICE AND OF CONTACT INFORMATION PARTY FILING THIS DOCUMENT
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NOTICE TO THE RESPONDENT

This application is made against you. You are a respondent.

You have the right to state your side of this matter before the Court.

To do so, you must be in Court when the application is heard as shown below:

Date: April 18, 2018, or such time as determined hereafter.

Time: 10:00 AM

Where Law Courts Building Edmonton

Before: Justice in Chambers

Go to the end of this document to see what you can do and when you must do it.

Remedy sought:

The Applicants apply to this Court for:

1. An Order abridging time for the service of this Originating Application, if necessary;
2. An Order that reference to the Applicants in these proceedings shall be made using their initials instead of full names;
3. Judicial Review of the May 3, 2017 decision of the Respondent to deny adoption to the Applicants on the basis of their sincerely held religious beliefs in regard to marriage and sexuality (the “Decision”) and a declaration that the Decision is unreasonable and void by virtue of arbitrariness, bias, bad faith, as well as breaches of procedural fairness and natural justice;
4. A declaration pursuant to section 24(1) of the *Canadian Charter of Rights and Freedoms* that the decision of Child and Family Services to deny adoption to the Applicants (the “Decision”) violates sections 2(a) and 15 of the *Charter*;
5. Further, or in the alternative, a declaration pursuant to Rule 3.15(1)(b) of the *Alberta Rules of Court*, AR 124/2010 that the Decision violates the Applicants’ section 2(a) and 15 *Charter* freedoms;
6. A declaration that the decision violates the Applicants’ rights guaranteed by the *Alberta Bill of Rights* and the *Alberta Human Rights Code*;
7. An Order pursuant to Rule 3.15(1)(a) in the nature of *mandamus* directing that the Applicants be approved as adoptive parents;
8. In the alternative, an Order that this matter be returned to Child and Family Services to be reconsidered in accordance with the direction of this Honourable Court;
9. Such further and other relief as this Honourable Court considers just; and
10. Costs.

Factual Basis for this claim:

11. The Applicants, C.D. and N.D. are a married couple residing in Edmonton. They have no biological children. Due to medical complications, they are currently unable to conceive.
12. C.D. and N.D. have considered adopting children since they were married. N.D. was adopted as a newborn. C.D. has considered adopting all her adult life. C.D. has met a

number of older children in foster care, and is aware children like them are unlikely to ever be adopted because of their older age. C.D. has a compassionate interest in adopting older children. It is her desire and intention to offer them a permanent home and show them that they are valued, loved and respected.

The Application Process

13. On October 7, 2016, the Applicants met with a Child and Family Services intake worker to submit the Application to Adopt a Child form. Child and Family Services contracts with adoption agencies to conduct independent home studies and to submit a recommendation regarding approval for adoption to Child and Family Services. Child and Family Services assigned the Applicant's file to Catholic Social Services ("CSS") in Edmonton.
14. CSS inspected the Applicants' home and interviewed the Applicants a number of times between January 21, 2017 and February 14, 2017. CSS compiled a SAFE Home Study Report (the "Home Study Report") from these interviews and provided a copy of the Home Study Report to the Applicants on February 21, 2017.
15. In the course of the Home Study, the CSS Home Study Practitioner asked a series of questions regarding sexuality, such as how the Applicants would handle a child who was questioning his or her sexuality, or deal with a child engaging in "sexual exploration". The Applicants, who are Evangelical Christians with Biblical views on marriage, sexuality and gender, responded that, in accordance with their sincere religious beliefs, they would provide such a child with loving guidance and the support such a child needed. At no time did they suggest that their child would not be fully loved, respected and valued.
16. The Home Study Report was completed and recommended that the Applicants be approved for adoption (the "First Recommendation"). The Home Study Report was submitted to Child and Family Services. The Home Study Report speaks highly of the Applicants, their friendliness, their dependability, and their overall suitability to adopt.
17. On March 6, 2017, CSS advised the Applicants that Alberta Child and Family Services had further questions in regard to the Applicants' beliefs regarding sexuality (the "Additional Questions").

18. On March 7, the Applicants responded to the Additional Questions by emailing their answers to the CSS, who relayed them to Child and Family Services. The Applicants reiterated their commitment to treating any child in their care with unconditional love, respect, and compassion regardless of what the child chose to do, and regardless of the child's sexual behavior. The Applicants further explained that they would teach any children in their care what they believe about all aspects of human existence, including sexuality, but they understand children will decide for themselves what to think and how to behave. At no time did they provide a basis for believing that their adopted child would not be fully loved, respected and valued.
19. On the evening of March 7, 2017, the CSS Home Study Practitioner emailed to relay further questions from Child and Family Services regarding the Applicant's views on sexuality and gender. The Applicants responded to these further questions and the answers were relayed to Child and Family Services.
20. On March 13, the Applicants received a letter from Catholic Social Services stating it was reversing its recommendation that the Applicants be approved for adoption (the "Rejection Letter"). Enclosed with the Rejection Letter was a revised Home Study Report that stated the Applicants should not be approved as adoptive parents because, according to Catholic Social Services, the Applicants would be unable to "help" a child who "has sexual identity issues" (the "Second Recommendation"). The Rejection Letter stated that the Applicants could appeal the Second Recommendation by contacting their assigned Catholic Social Services Home Assessment Program Supervisor. The Second Recommendation was sent by CSS to Child and Family Services. The Rejection Letter did not explain how or why the Applicants would be unable to "help" a child that they valued, loved and respected.
21. The Applicants were devastated by the news that the First Recommendation had been reversed, and were confused at the intrusion (and influence) of Alberta Child and Family Services on the Home Study process. The Applicants had understood that the Home Study was conducted by an independent contractor, but it was apparent that Catholic Social Services was not independent, but was susceptible to interference and manipulation by the Respondent as evidenced by the different outcomes in the First Recommendation and Second Recommendation.

22. On March 18, the Applicants emailed CSS to request an appeal of the Second Recommendation. On April 7, 2017, the Applicants met briefly with CSS, whereupon CSS reiterated the Second Recommendation and prevented the Applicants from making appeal submissions.
23. On May 3, the Applicants met with two Child and Family Services staff, an Adoptions Caseworker and a Casework Supervisor. At the meeting, Child and Family Services staff informed the Applicants that they had accepted the Second Recommendation from CSS and had rejected the Applicants' application to adopt (the "Decision"). The Casework Supervisor explained that Child and Family Services considered the Applicants' religious beliefs regarding sexuality a "rejection" of children with LGBT sexual identities, and that this stance was the "official position of the Alberta government".
24. C.D. asked the Child and Family Services staff if there was any way the Applicants could continue to live in accordance with their sincere religious beliefs and still be approved to adopt. The Child and Family Services staff replied that there was no way to do so, 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 assertion was nonsensical, since it was clear that the religious beliefs of the Applicants were foundational for the rejection Decision.
25. The Applicants were subsequently informed that the Decision was final, and that there was no further opportunity to appeal the Decision.
26. The Applicants apply to this Honourable Court for Judicial Review of the Decision and for the declarations requested herein.

Legal Grounds

27. The Decision is discriminatory. The Respondent has displayed a marked bias against the Applicants on the basis of their religious beliefs. By rejecting the application to adopt exclusively due to the sincerely-held religious beliefs of the Applicants, Child and Family Services violated the Applicants' freedom of conscience and religion and right to equality protected under sections 2(a) and 15 of the *Canadian Charter of Right and Freedoms* (the "Charter"), the *Alberta Bill of Rights* and the *Alberta Human Rights*

Code. Child and Family Services has subjected the Applicants to a differential standard than that which applies to other adoptive parents, based on the Applicants' religious beliefs.

28. Further, Child and Family Services has also subjected the Applicants to a differential standard than that which applies to biological parents in Alberta (thereby violating their section 15 *Charter* freedoms). Biological parents are not subjected to screening in regard to their beliefs about marriage and sexuality as a prerequisite to raising children. The state cannot lawfully remove children from parents simply because of the opinions of the parents on marriage and sexuality; similarly, the state cannot refuse to permit adoption solely on the basis of an applicants views on marriage and sexuality.
29. The Respondent has created an ideological test that prospective adoptive parents must meet before they may adopt. The Respondent requires prospective adoptive parents to discard their sincerely-held religious beliefs, without providing any evidence that these beliefs would negatively affect adoptive children. The Respondent requires citizens to profess agreement with and support for its state-sanctioned beliefs in sexuality and gender.
30. The Decision is unreasonable. The Decision was made without the use of proper or sufficient evidence demonstrating that the sincerely-held religious beliefs of the Applicants would or should disqualify the Applicants from approval under any reasonable standard for adoption. The Respondent based its Decision on irrelevant considerations, without factual basis.
31. The Decision is arbitrary. The government of Alberta is aware that beliefs about marriage, sexuality and gender in Canada's pluralistic society are diverse. The Respondent knows that the Applicants' beliefs and opinions are shared by Catholics, other Christians, Muslims, Orthodox Jews, and members of other faiths and belief systems, who together constitute the majority of Canada's population. Yet the Respondent seeks to impose its own "secular" views on the Applicants, to the detriment of the Applicants. The Respondent's arbitrary Decision is also detrimental to the children who will be denied a loving, caring, accepting and permanent home due to the exclusion of the Applicants as adoptive parents. The Decision is not based on proper

or sufficient evidence of disqualification arising from the sincerely-held religious beliefs of the Applicants.

32. The Decision was made in bad faith. The First Recommendation of Catholic Social Services recommended the Applicants as eligible to adopt. The tendering of that opinion fulfilled the function of Catholic Social Services as an independent contractor. The Respondent coerced or otherwise influenced Catholic Social Services to change its recommendation to conform to the ideological biases of the Respondent. Thus, the Respondent interfered in the Home Study. The interference of the Respondent, coupled with Catholic Social Services failure to maintain impartiality, resulted in the denial of the Applicants' adoption application and the infringement of their constitutional freedoms.
33. The Decision is biased. The Respondent has a confessed agenda to prevent children from being adopted by parents who hold traditional religious beliefs in regard to marriage, sexuality and gender. The marked bias of the Respondent is prejudicial not just to Muslims, Christians, Sikhs, Jews and Hindus, but also to children who could be adopted by eligible couples but for the Respondent's bias.
34. The Decision is not neutral. It is not against the public interest to hold and express diverse views on marriage and sexuality. In preferring its own views on sexuality to the detriment of the Applicants, the Respondent has violated its duty of neutrality in regard to matters of conscience and religion.
35. Further, the Respondent has engaged in the type of coercion and constraint that has repeatedly been declared unconstitutional by the Supreme Court of Canada. The Respondent prohibits the Applicants from adopting with their current religious beliefs, and requires the Applicants to abandon these beliefs as a prerequisite to adoption. This is the essence of religious discrimination.
36. The Respondent has no statutory mandate to discriminate against adoptive parents on the basis of their beliefs. The Respondent has ignored the requirements of the *Child, Youth and Family Enhancement Act*, in pursuit of its own ideological agenda. The Respondent ignored the merits of the Applicants, including their commitments to love, nurture, and provide for any child that was placed in their care, regardless of the struggles or choices of that child.

37. Finally, the Applicants had an expectation of procedural fairness in the adoption process. They had a legitimate expectation that an independent home study would be generated free from government interference, as had been represented. Further, the right of the Applicants to appeal the Second Recommendation was tainted by similar interference of the Respondent. In interfering with Catholic Social Services, both in regard to the Home Study and in regard to the appeal of the Second Decision, the Respondent breached the Applicants' right to procedural fairness.

Fundamental Canadian Values, Charter values

38. Child and Family Services is required to exercise its statutory discretion in accordance with the fundamental values of Canadian society, the principles of the *Charter*, and the *Alberta Bill of Rights*, all of which include the protection of the religious freedoms of the Applicants. Child and Family Services has failed to exercise its discretion in accordance with these values by discriminating against the Applicants by, *inter alia*:
- a. Determining that the Applicants' constitutionally-protected beliefs regarding marriage and sexuality are abnormal, damaging or aberrant, when they are not;
 - b. Determining the Applicants' religious beliefs rendered them unfit to adopt and raise children when the Applicants' beliefs are not disqualifying, harmful or unusual, nor are they against the public interest;
 - c. Failing in its duty of neutrality in a pluralistic society by discriminating against the Applicants in finding that their constitutionally-protected beliefs in regard to marriage and sexuality are disqualifying for the purpose of adoption.

The Respondent is subject to public law

39. The Decision is subject to judicial review. The Decision must comply with the rule of law, including the public law principle that requires public decision-makers to act fairly and reasonably, and exercise their discretion in accordance with proper principles, including the fundamental values of Canadian society and *Charter* values.
40. The Respondent is subject to the rule of law. It does not have "absolute and untrammelled discretion", nor has it been granted unlimited arbitrary or capricious power by statutory authority: *Roncarelli v. Duplessis*, [1959] SCR 121.

The Duty of Fairness

- 41. The Respondent owes the Applicants the public legal duty to treat them fairly. While a decision-maker is entitled to deference in the proper exercise of its discretion, it is not entitled to deference when it exercises that discretion unreasonably or in bad faith, as in the instant case.

Affidavit or other evidence to be used in support of this application:

- 42. The Record of Proceedings in this matter;
- 43. The Affidavit of C.D., filed; and
- 44. Such further and other material as counsel may advise and this Honourable Court will permit.

Applicable Rules:

- 45. The Alberta *Rules of Court*, in particular Rules 3.15, 3.23, 3.24, and 6.12.

Applicable Acts and regulations:

- 46. The *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK), 1982*, c 11
- 47. *Child, Youth and Family Enhancement Act*, RSA 2000, c C-12 and regulations thereto
- 48. *Alberta Bill of Rights*, RSA 2000, c A-14
- 49. *Alberta Human Rights Code*, RSA 2000, c A-25.5
- 50. *Civil Marriage Act*, SC 2005, c 33
- 51. *Universal Declaration of Human Rights* and the *International Covenant on Civil and Political Rights*.

WARNING

You are named as a respondent because you have made or are expected to make an adverse claim in respect of this originating application. If you do not come to Court either in person or by your lawyer, the Court may make an order declaring you and all persons claiming under you to be barred from taking any further proceedings against the applicant(s) and against all persons claiming under the applicant(s). You will be bound by any order the Court makes, or another order might be given or other proceedings taken which the applicant(s) is/are entitled to make without any further notice to you. If you want to take part in the application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of this form. If you intend to rely on an affidavit or other evidence when the originating application is heard or considered, you must reply by giving reasonable notice of that material to the applicant(s).