



# Justice Centre

for Constitutional Freedoms

January 22, 2019

VIA FACSIMILE and EMAIL

Geraldine Dooley-Phillips  
Executive Director  
Simcoe Muskoka Child, Youth and Family Services  
60 Bell Farm Road, Unit #7  
Barrie, Ontario L4M 5G6  
Phone: 705-726-6587  
Fax: 705-726-9788

***RE: Unlawful Dismissal of Application to Foster***

We write on behalf of [REDACTED] and [REDACTED], a couple residing in [REDACTED], Ontario who recently applied to become foster parents. Simcoe Muskoka Child, Youth and Family Services (“Child Services”)<sup>1</sup> unlawfully dismissed [REDACTED] and [REDACTED] application, not due to any legitimate deficiency in their qualifications, but due solely to Child Services’ prejudice and bias against the religious beliefs of the [REDACTED]. In doing so, Child Services infringed [REDACTED] and [REDACTED] freedom of religion contrary to section 2(a) of the *Canadian Charter of Rights and Freedoms*.

We request that Child Services reverse its religious discrimination against [REDACTED] and [REDACTED] by neutrally processing their application. Refusal to do so will be met with legal action.

**Background**

In November 2017, [REDACTED] and [REDACTED] applied to become foster parents. [REDACTED] and [REDACTED] started the requisite training in January 2018 and completed it in March.

During the week of April 30 – May 4, 2018, [REDACTED] and [REDACTED] each met alone with a Child Services social worker, [REDACTED], to conduct an interview-based assessment.

During the interview with [REDACTED], [REDACTED] raised the issue of spanking and stated that prospective foster parents would only be approved if they made a commitment (by signing a form) to not spank both foster children and their own children. Although [REDACTED] had only ever spanked his children twice and considered this demand to be an overreach, he communicated to [REDACTED] his

---

<sup>1</sup> Also known as Simcoe Muskoka Family Connexions

commitment to not spanking any children in his care, including his own, and signing the relevant form.

Later in the interview, [REDACTED] questioned [REDACTED], who is a [REDACTED] pastor, regarding his religious beliefs. She asked him if his church was a “fundamental” church that “still believes in some of the more outdated parts of the Bible.” [REDACTED] responded that his church believes and adheres to all parts of the Bible.

[REDACTED] then commented that her son is “gay” and that he had been told by churches in the past that homosexuality is a “sin”.

[REDACTED] responded that although he believes in the Bible and the Bible does identify homosexual behaviour as “sin”, he believes all people are created in the image of God and are worthy of respect, dignity and honor, and that, in accordance with their beliefs, him and his wife would provide any child in their care with unconditional love, respect, and compassion regardless of the child’s sexuality.

Although the questions [REDACTED] asked [REDACTED] were less prejudicial, by the end of the interview process with [REDACTED] and [REDACTED] both felt that their sincerely-held religious beliefs were odious to [REDACTED]

[REDACTED] and [REDACTED] did not hear anything from Child Services for a few months. Then, on October 24, 2018 they received a letter from Child Services, dated October 1, 2018 and signed by [REDACTED] communicating the decision to dismiss [REDACTED] and [REDACTED] application to foster (the “Decision”). The letter stated, in part:

Please accept this letter as acknowledgement of the closing of your file with our agency.

...

We also wanted to let you know that we feel that the policies of our agency do not appear to fit with your values and beliefs and therefore, we will be unable to move forward with an approval for your family as a resources home.

We trust that you do understand this dilemma and we welcome your feedback or questions should any arise for you upon receipt of this letter.

On the morning of October 25, [REDACTED] phoned [REDACTED] to discuss the Decision. The phone call lasted about 10 minutes. [REDACTED] expressed confusion, sadness and hurt as a result of the Decision. [REDACTED] further related to [REDACTED] how much he appreciates Child Services and the work they do. [REDACTED] then asked [REDACTED] which “values and beliefs” had disqualified him and his wife?

[REDACTED] responded that there were two problems preventing [REDACTED] and [REDACTED] from being accepted as foster parents. The first was the issue of spanking. [REDACTED] reminded [REDACTED] that he and [REDACTED] had already committed to not spanking their own children in addition to not spanking any foster children. [REDACTED] then implied she did not expect [REDACTED] and [REDACTED] to honour their commitment and stated that most families who spank their children are unable to cease doing so.

█████ then stated that the other problem was Child Services' "anti-oppressive" policy and █████ and █████ views regarding homosexuality. █████ reiterated their commitment to treating any child in their care with unconditional love, respect, and compassion regardless of their sexuality, gender or anything else. █████ responded that she "had to put [Child Services'] policies first". █████ expressed his disappointment with the Decision and the call ended.

### **The *Charter's* Protection Against Religious Discrimination and Child Services' Duty to Remain Neutral Regarding Religious Beliefs**

The *Charter* guarantees Canadians the fundamental freedom of conscience and religion. The courts of Ontario have found that children's aid societies, such as Child Services, are subject to the *Charter*.<sup>2</sup>

Freedom of religion protects sincerely held religious beliefs from "non-trivial" government interference.<sup>3</sup> In *R v Big M Drug Mart*, the Supreme Court of Canada described freedom of religion in the following way:

The essence of the concept of freedom of religion is **the right to entertain such religious beliefs as a person chooses**, the right to declare religious beliefs openly and **without fear of hindrance or reprisal**, and the right to manifest religious belief by worship and practice or by teaching and dissemination. [...] **Freedom in a broad sense embraces both the absence of coercion** and constraint, and the right to manifest beliefs and practices. Freedom means that, subject to such limitations as are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others, **no one is to be forced to act in a way contrary to his beliefs or his conscience**.<sup>4</sup>

In *Mouvement Laïque Québécois v Saguenay (City)*, the Court explained the state's duty of neutrality in regard to belief, which applies to Child Services in this case:

[T]he evolution of Canadian society has given rise to a concept of neutrality according to which the state must not interfere in religion and beliefs. The state must instead remain neutral in this regard. **This neutrality requires that the state neither favour nor hinder any particular belief, and the same holds true for non-belief** (*S.L.*, at para. 32). It requires that the state abstain from taking any position and thus avoid adhering to a particular belief.<sup>5</sup>

<sup>2</sup> *Chatham-Kent Children's Services v. K. (J.)*, 2009 ONCJ 589, para 24; see also *Halton Children's Aid Society v JT*, 2014 ONCJ 314 at par 38-39 citing *New Brunswick (Minister of Health and Community Services) v JG* [1999] 3 SCR 46 ("In that case, the court held that the *Charter* applies to child protection cases").

<sup>3</sup> *Syndicat Northcrest v Amselem*, 2004 SCC 47 at para 58.

<sup>4</sup> [1985] 1 SCR 295 at para 94 [emphasis added].

<sup>5</sup> 2015 SCC 16 at para 72 [emphasis added].



In *Loyola High School v Quebec (Attorney General)*, the Supreme Court reaffirmed the importance of state neutrality, not forced secularity, under the *Charter*:

Part of secularism, however, is respect for religious differences.[...] **The pursuit of secular values means respecting the right to hold and manifest different religious beliefs. A secular state respects religious differences, it does not seek to extinguish them.**<sup>6</sup>

Courts have noted that “a well-intentioned majority acting in the name of tolerance and liberalism, can, if unchecked, impose its views on the minority in a manner that is in itself intolerant and illiberal.”<sup>7</sup> As the Supreme Court stated in 2012, “the Canadian approach in the last 60 years to potential conflicts between freedom of religion and other values has been to respect the individual’s religious belief and accommodate it if at all possible.”<sup>8</sup>

It is not against the public interest to hold and express diverse views regarding sexuality.<sup>9</sup> Further, governments at all levels are precluded from favouring any one belief system over another, including beliefs regarding sexuality, and from discriminating against the expression of minority beliefs.<sup>10</sup>

The Decision is discriminatory. Child Services has displayed a marked bias against [REDACTED] and [REDACTED] on the basis of their religious beliefs and an underlying *animus* in particular toward their religious beliefs regarding sexuality. Much like a similar recent case also involving discriminatory treatment of a Christian couple by a children’s aid society, by rejecting [REDACTED] and [REDACTED] application to foster exclusively due to negative stereotypes concerning their religious beliefs, Child Services infringed [REDACTED] and [REDACTED] freedom of religion and discriminated against them in violation of section 2(a) of the *Charter*.<sup>11</sup>

Child Services has imposed an unwritten, subjective “values test” that prospective foster parents must meet before they may be approved. The result is that prospective foster parents are required to discard their sincerely-held religious beliefs, even though there is no evidence that these beliefs would negatively affect foster children. This is a violation of Child Services’ duty of neutrality and is unconstitutional.

The Decision is also detrimental to the children who will be denied a loving and stable home due to the exclusion of [REDACTED] and [REDACTED] as foster parents.

Child Services is required to exercise its statutory discretion in accordance with the rule of law, the values of the *Charter*, and the Ontario *Human Rights Code*, all of which protect [REDACTED] and

<sup>6</sup> 2015 SCC 12 at para 43 [emphasis added].

<sup>7</sup> *TWU v LSBC*, 2016 BCCA 423 at para 193.

<sup>8</sup> *R. v. S. (N.)*, 2012 SCC 72 at para. 54.

<sup>9</sup> *Civil Marriage Act*, SC 2005, c 33, preamble; s 3.1.

<sup>10</sup> *Mouvement laïque québécois v Saguenay (City)* at paras 71-75.

<sup>11</sup> *B. v. Children’s Aid Society of Hamilton*, 2018 ONSC 1487 at paras 172-178; 200-202.

██████████ from being discriminated against on the basis of their beliefs (or Child Services' negative perception of those beliefs). Further, Child Services has a constitutional duty to be neutral in regard to the beliefs of Canadians, and not favour one belief over another in matters of conscience or religion. ██████████ and ██████████ have a constitutional right to be free of state discrimination in regard to their religious beliefs.


### Conclusion

Canada is a diverse, pluralistic, free and democratic society, not a police state where individuals are prohibited from being foster parents based solely on vague references to "values and beliefs". We request Child Services reverse the Decision, reopen ██████████ and ██████████ file and properly process their application to become foster parents in a non-discriminatory manner.

We request a response from Child Services no later than the close of business on February 5, 2019.

Govern yourselves accordingly.

Sincerely,

for   
Jay Cameron  
Justice Centre for Constitutional Freedoms  
Counsel for ██████████ & ██████████

Enclosure

cc: Simcoe Muskoka Child, Youth and Family Services Board of Directors  
██████████ Resource Manager  
██████████ Resource/Recruitment Worker