

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

A.A.

Applicant

and

SIMCOE MUSKOKA CHILD, YOUTH AND FAMILY SERVICES

Respondent

APPLICATION UNDER section 97 of the *Court of Justice Act* and rule 14.05 of the *Rules of Civil Procedure*.

NOTICE OF APPLICATION TO DIVISIONAL COURT FOR JUDICIAL REVIEW

TO THE RESPONDENT

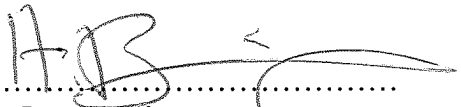
A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicant. The claim made by the applicant appears on the following page.

THIS APPLICATION for judicial review will come on for a hearing before the Divisional Court on **Friday, July 12, 2019 at 9:30 a.m.** at the place of hearing requested by the applicant. The applicant requests that this application be heard at **Oshawa**.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the Rules of Civil Procedure, serve it on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the office of the Divisional Court, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicant's lawyer or, where the applicant does not have a

lawyer, serve it on the applicant, and file it, with proof of service, in the office of the Divisional Court within thirty days after service on you of the applicant's application record, or not later than 2 p.m. on the day before the hearing, whichever is earlier.

Date June 14, 2019 Issued by 

Local registrar
(Oshawa) Durham
Consolidated Courthouse
150 Bond Street East
Oshawa, ON
L1G 0A2

TO: Simcoe Muskoka Child, Youth and Family Services
60 Bell Farm Road, Unit 7
Barrie, Ontario L4M 5G6

AND TO: Attorney General of Ontario
Crown Law Office – Civil
720 Bay Street
8th Floor
Toronto, Ontario M5G 2K1

APPLICATION**The Applicant makes application for:**

1. An Order requiring people identified herein by anonymized initials to be referred to by those initials (that is, the Applicant A.A., his wife B.A., and the Respondent's social worker S.W.) in documents filed with the Court in this proceeding; or, alternatively,
2. An Order permitting people identified herein by anonymized initials to be referred to by those initials (that is, the Applicant A.A., his wife B.A., and the Respondent's social worker S.W.) in documents filed with the Court in this proceeding; and
3. An Order directing the Respondent to deliver reasonable particulars of its position in response to this application to the Applicant and file them with the Court at a time to be specified by the Court; and
4. A Declaration that, by letter decision dated October 1, 2018, the Respondent unreasonably rejected an application to foster children by the Applicant and his wife; and
5. A Declaration pursuant to section 24(1) of the *Charter* that in rejecting the application to foster children by the Applicant and his wife, the Respondent unreasonably impaired their freedom of religion and conscience and their freedom of thought, belief and opinion of, contrary to sections 2(a) and 2(b) of the *Charter*; and
6. A Declaration that the Respondent has, through its actions, undermined the possibility of a successful working relationship between the Applicant and his wife and the Respondent with a view to providing foster care to children;
7. An Order directing the Respondent to retain the Reasons and Judgment of this Court in its files relating to the Applicant and his wife, and to provide those to any organization entrusted with the statutory care of children that inquires regarding the suitability of the Applicant or his wife to be foster or adoptive parents;
8. The costs of this proceeding; and
9. Such other relief as may be requested by counsel and granted by the Court.

The grounds for the application are:

a) General Grounds

1. The Applicant, A.A., is a pastor of an evangelical Christian church in Simcoe County, Ontario. He and his wife B.A. (“the Couple”) had two young children at the time of the events that give rise to this Application. A third child was born to them in late March, 2019.
2. The Respondent, Simcoe Muskoka Child, Youth and Family Services, is a Children’s Aid Society acting under authority of the Child, Youth and Family Services Act. It derives any and all of its powers from that legislation. It generally operates under the name “Simcoe Muskoka Family Connexions”.
3. In October 2017, the Couple applied to the Respondent to foster children under the age of one year.
4. The Respondent refused the Couple’s application to foster by letter dated October 1, 2018. The Couple received the letter on October 24, 2018. The letter read:

Please accept this letter as acknowledgment of the closing of your file with our agency. Thank you for bringing to our attention that your family will be expanding again, and we want to congratulate you on this wonderful upcoming event.

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.

5. The Respondent in its letter expressly relies on the Couple’s “values and beliefs” as the reason why their application was rejected, but does not elaborate on how this might be so. None of the Couple’s “values and beliefs” can reasonably or fairly be taken to detract from their ability to successfully provide foster care to children, either in general or to children under the age of one year in particular. Their values and beliefs are consistent with any and all of the Respondent’s proper requirements of foster parents, including those in its Policies and Care Provider Service Agreements.
6. Despite this, the Respondent rejected the Couple’s application to foster. The Respondent imposed an ideological and religious test on the Couple: the Couple were rejected as foster parents because the Respondent took issue with their values and beliefs and not for any reason

properly related to its statutory mandate. The Respondent was unwilling to work with the Couple as foster parents because of the values and beliefs it attributed to the Couple.

7. In rejecting their application to foster, the Respondent unreasonably restricted the Couple's freedom of religion and conscience, and their freedom of thought, belief and opinion contrary to sections 2(a) and s.2(b) of the *Charter*.

b) Particular Allegations

8. After receiving the Couple's application to foster, the Respondent conducted an initial interview of the Couple on November 16, 2017. The interview was successful. The Couple completed 27 hours of required Parent Resources for Information, Development and Education ("PRIDE") training in January through March, 2018.
9. The disqualifying "values and beliefs" that the Respondent attributed to the Couple relate to their belief that that spanking can be a legitimate form of discipline for their own children and their belief that homosexual behaviour is sinful.
10. On May 1, 2018 the Couple were separately interviewed by S.W., a social worker representing the Respondent. Those interviews form the basis for the Respondent's denial of their application to be foster parents.
11. In the course of the interview with A.A. they discussed the Respondent's policy regarding spanking:
 - A.A. said he would never spank a foster child, because the child was not his child, or spank his own children in the presence of a foster child, because discipline is a private matter and because it could trigger memories of abuse in a foster child; that
 - He was not a spanking advocate, but that it was a tool he currently had to raise his children, and that he had only spanked his son twice;
 - A.A. asked if he could discipline his children as he saw fit while fostering children; and, on being told he could not,
 - A.A. said he would sign and honour the Respondent's undertaking to not spank any children in his home, as the Couple would not let spanking get in the way of fostering.

12. Despite the Couple's credible agreement to abide by the Respondent's policy and to not spank any child in their home, the Respondent rejected the Couple's application, because it disagreed with their general belief that spanking can sometimes be appropriate.
13. S.W. also asked about the Couple's religious beliefs, asking A.A. what kind of church he pastored. On being told the denomination of the church, S.W. asked if it was a "fundamental" church, one that believes in outdated parts of the Bible, written thousands of years ago. She commented that her son is gay, and has felt hurt, excluded and uncomfortable when attending churches that preach that homosexuality is a sin. A.A. responded that:
- He preaches the Bible, and believes the Bible remains relevant;
 - The Bible teaches that homosexuality is a sin;
 - He believes all people are created in the image of God and that all are worthy of respect, dignity and honour;
 - He would not tolerate harassment or bullying of anyone who might be gay;
 - He realizes that homosexuality is a very sensitive issue and, when he is called on to preach a text that speaks of homosexuality, never preaches in a way that treats homosexuality as more sinful than any other sin or singles out any particular sin; and
 - The Couple is committed to loving all children in their home.
14. Despite the Couple's commitment to love all children in their home and to care for them with respect, dignity and honour, the Respondent rejected the Couple's application because it disagreed with their belief, rooted in the Bible, that homosexual behaviour is sinful.
15. A large number of evangelical Christian families, with beliefs indistinguishable from the Couples', successfully foster children for the Respondent.
16. The Respondent informed the Couple that their application to become foster parents had been denied some five months later, as described above. The parts of the May 1, 2018 conversation between S.W. and A.A. recounted here are the basis on which the Couple's application to become foster parents was denied.
17. After receiving correspondence from the Couple's counsel in January, 2019, the Respondent offered through counsel to meet with the Couple to discuss "your clients' issues, to canvass

whether we can resolve the complaint” at the meeting. A meeting was arranged for March 8, 2019. Respondent’s counsel suggested that there were discrepancies between the Respondent’s “contact logs” and A.A.’s description of events, which could be addressed and resolved at the meeting.

18. The meeting planned for March 8, 2019 did not occur. Two days before the scheduled meeting the Respondent advised the Couple through counsel that it would not reconsider its decision to deny the Couple’s application to foster regardless of what happened at the meeting, and that the purpose of the meeting was merely to give the Couple an opportunity to be heard. Under the circumstances, the Couple declined to participate.
19. The Respondent’s rejection of the Couple’s application will impair their ability to foster children through other organizations entrusted with the statutory care of children, as the application process invariably includes inquiry into whether a person applying has previously been rejected as a foster parent.

The following documentary evidence will be used at the hearing of the application:

1. The Record of Proceedings herein, to be filed by the Respondent;
2. The Affidavit of the Applicant, to be filed after receipt of the Record of Proceedings;
3. Such other documentary evidence as should be provided by Counsel.

June 14, 2019

Justice Centre for Constitutional Freedoms
#253 - 7620 Elbow Drive SW
Calgary, AB T2V 1K2

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A.A.

and

SIMCOE MUSKOKA CHILD, YOUTH AND FAMILY SERVICES

APPLICANT

RESPONDENT

Court File No. DC-1770/19

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Oshawa

NOTICE OF APPLICATION

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