

Superior Court of Justice (Family Court)

(Name of court)

Court File Number

419/19

**Form 14A: Affidavit
General**

at **59 Church Street, St. Catharines ON L2R 7N8**
Court office address

Applicant(s)

<p><i>Full legal name & address for service — street & number, municipality, postal code, telephone & fax and e-mail address (if any).</i></p> <p>Kelly Nina Campbell 28 Talbot Road Canfield, ON NOA 1 CO</p>	<p><i>Lawyer's name & address — street & number, municipality, postal code, telephone & fax numbers and e-mail address (if any).</i></p> <p>Jeremie Nadeau YOUR Legal Services 43 Church Street Unit 705 St Catharines, ON L2R 7E1 Tel: (905) 641-4446 Fax: (905) 641-4469 jnadeau@yourlegalservices.net</p>
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Respondent(s)

<p><i>Full legal name & address for service — street & number, municipality, postal code, telephone & fax numbers and e-mail address (if any).</i></p> <p>Clayton Misener 29 Longford Crescent St. Catharines, ON L2N 6E7 clayton.misener@email.com</p> <p><u>Party to Motion Only</u></p> <p>Family and Children's Service Niagara Wayne Herter, Senior Counsel 654 South Pelham Road Welland, ON L3C 3C8 Tel: 905-937-7731 Fax: 905-646-7085 Email: legalnoticeofservice@facsnigara.on.ca</p>	<p><i>Lawyer's name & address — street & number, municipality, postal code, telephone & fax numbers and e-mail address (if any).</i></p>
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My name is Michelle Bernard.

I live in the Regional Municipality of Niagara, Province of Ontario

and I swear/affirm that the following is true:

1. I am the Director of Service for the Children's Aid Society of the Niagara Region (hereinafter referred to as the "Society"), and as such, have knowledge of matters hereinafter deposed to.

2. I have had knowledge of this matter since in and around September 2021.

3. All information contained in this affidavit is from my personal knowledge unless otherwise indicated. All information that is not from my personal knowledge is based on my reading of information in the Society's records or based on information provided through statements made to me by the other service providers, Society workers, and members of the family and/or community. I believe the information obtained from the Society's file, from other service providers, from other Society workers, and from members of the family/community to be true to the best of my knowledge, information and believe. I further rely on that information for the purpose of this proceeding.

PURPOSE OF AFFIDAVIT

4. I provide this affidavit in order to advise the court about the Society's position as it relates to the Applicant's request in the herein Family Court matter that the subject children, Paige Misener and Alexandra Misener, be placed in the temporary care and custody of the herein Society.

SOCIETY'S POSITION

5. The Society is opposed to the relief sought by the Applicant on the basis of both jurisdictional and substantive grounds.

6. At this time, the Society takes the position that the subject children fall short of meeting the test required for the Society to determine that they are in need of protection.

7. At the present time, there are quite a number of unknowns with respect to the children's physical/mental/emotional needs and the impact upon those needs that their removal from parental care and into foster care could have on the children's well-being. However, the Society is not aware of any specific protection concerns which would point to the children being at imminent risk of harm on reasonable and probable grounds.

8. The Society's Counsel had elaborated on the Society's position in a letter addressed to the Applicant's Counsel, dated July 7, 2022. **Attached hereto and marked as Exhibit "A" is a true copy of the July 7, 2022, letter, outlining the Society's position related to this matter.**

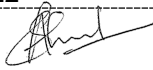
9. The Society remains concerned for the well-being of Paige and Alexandre but is unable to accede to the request that they be placed in the Society's care pursuant to this Motion.

10. This affidavit is made in good faith and not for any improper purpose.

Sworn/Affirmed before me at the City of Thorold, affirmed remotely by Michelle Bernard, at the City of St.Catharines, in the Regional Municipality of Niagara, in the Province of Ontario, and in accordance with O. Reg 431/20 Administering Oaths or Declaration Commissioner for Taking Affidavits.

Michelle Bernard

on the 8th day of July, 2022



Commissioner for taking affidavits

Signature

(This form is to be signed in front of a lawyer, justice of the peace, notary public or commissioners for taking affidavits.)

**Sarah Kettidathil Alexander,
a Commissioner, etc., Province of
Ontario, for the Children's Aid
Society.
Expires October 27, 2024.**

THIS is **Exhibit "A"** of the
Affidavit of M. Bernard
Affirmed remotely by
Michelle Bernard at the City
of St. Catharines
Ontario before me at the
City of Thorold in the
Regional Municipality of
Niagara, in the Province of
Ontario on the 8th day of
July, 2022 in accordance
with O. Reg 431/20.
Administering Oaths or
Declaration Commissioner
for Taking Affidavits.



A Commissioner of Oaths in
and for the Province of Ontario

Sarah Kettidathil Alexander,
a Commissioner, etc., Province of
Ontario, for the Children's Aid
Society.
Expires October 27, 2024.

July 7, 2022

Jeremie Nadeau
Barrister & Solicitor
303-43 Church Street
St. Catharines, ON
L2R 7E1

Fax – 905-641-4469

Dear Counsel:

RE: Alexandre Misener born 24/Dec/2008 and Paige Misener born 24/Dec/2008

Thank you for your Notice of Motion and Affidavit, receipt of which is hereby acknowledged.

I can advise that Family and Children's Services Niagara is opposed to the relief sought in your Notice of Motion as it relates to the placement of the children in the care of the Society.

This decision is premised on the jurisdictional and evidentiary issues at hand:

- a. The Superior Court of Ontario has no jurisdiction in a Children's Law Reform Act Application to order the children into the care of the Society,
- b. the Hague Court decision, a copy of which you had provided, is under Appeal and that the Appeal is scheduled to be heard on July 11, 2022,
- c. Since our original communication by way of letter dated September 30, 2021, the French Court has returned Paige and Alexandre to the care of their father,
- d. The above noted letter according to the Hague decision was considered and 'set aside' by the Children's Judge of the Appeal Court in St. Pierre,
- e. The Hague Court noted that separating Paige and Alexandre from their father at this point could result in an experience, "like a trauma and could create the conditions for a serious mental breakdown requiring their admission to hospital."
- f. We do not have any evidence at this point to indicate that Paige and Alexandre are experiencing any difficulties in their day to day functioning in so far as attending school and having their medical situation including their mental health monitored,
- g. Paige and Alexandre are at an age where their voices are essential in the determination of their best interests and they have clearly stated their position, although it is undermined by the recognized undue influence of their father,

- h. In summary of c, d and e above the Society notes that there is not a comprehensive assessment of Paige and Alexandra related to their well being and the potential impact of a forcible removal on them,
- i. The jurisdictional issues arising from this analysis include:
 - i. Paige and Alexandre based on the information available to FACS Niagara fall short of meeting the criteria for an intervention under the CYFSA, although clearly their current situation would be a change warranting CLRA intervention,
 - ii. The physical location of Paige and Alexandre significantly impacts the exercise of any of FACS Niagara's mandate under the CYFSA,
 - iii. Your client resides in Haldimand and Norfolk and if Paige and Alexandre are placed in her care that Agency is the Child protection authority that should be responding.

I would submit that based on the foregoing the relief you have requested in so far as it relates to placing the children in the care of the Society should be withdrawn.

I look forward to your confirmation that you will withdraw your request immediately as FACS Niagara will vigorously pursue opposition to your request to the Court as currently stated in your Motion.

Sincerely,



Wayne Herter
Senior Counsel
/eh

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