

Emma Blanchard
T.613.369.4755
Eblanchard@blg.com

O'Neal Ishimwe
T 613.787.3571
oishimwe@blg.com

Borden Ladner Gervais LLP
World Exchange Plaza
100 Queen St, Suite 1300
Ottawa, ON, Canada K1P 1J9
T 613.237.5160
F 613.230.8842
F 613.787.3558 (IP)
blg.com



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Mayor Cleveland: lcleveland@cobourg.ca
Deputy Mayor Nicole Beatty: nbeatty@cobourg.ca
Councillor Adam Bureau: abureau@cobourg.ca
Councillor Randy Barber: rbarber@cobourg.ca
Councillor Miriam Mutton: mmutton@cobourg.ca
Councillor Aaron Burchat: aburchat@cobourg.ca
Councillor Brian Darling: bdarling@cobourg.ca
Chief Administrative Officer Tracey Vaughan: tvaughan@cobourg.ca

Office of the Mayor
55 King Street West,
Cobourg, ON
K9A 2M2

Members of Council

Re: Emergency Care Establishment Licencing By-Law No. 18-2024 (the “ECE Licensing By-law”) – Town of Cobourg (the “Town”)

We are legal counsel for the Transition House Coalition of Northumberland (“**Transition House**”). We are writing to urge Council to immediately repeal the ECE Licensing By-law.

Transition House is a registered charity which provides accommodation and support for adults at risk of or experiencing homelessness. It is the only provider of these services in the Town and in the County of Northumberland (the “**County**”).

Pursuant to the *Housing Services Act*, upper tier municipalities, including the County, are responsible for the administration of provincial funding for housing and support services for people at risk of or experiencing homelessness. Transition House receives a significant portion of its funding from the County and operates pursuant to an agreement with the County.

The Town is not a party to the agreement between Transition House and the County. Based on documents produced by the Town, including Staff Report No. LS-2024-009 published on February 21, 2024, (the “**February Report**”) as well as Minutes of the February 28, 2024 meeting of Council, it is clear that the ECE Licensing By-law was passed for the purpose of imposing terms of service on Transition House that the County has not agreed to fund or impose. Furthermore, as described in more detail below, the requirements of the By-law are so onerous and unreasonable they make compliance with the By-law practically impossible.

The ECE Licensing By-law was adopted with virtually no notice or consultation, targets Transition House as the only provider of housing and support services for people at risk of or experiencing homelessness in the Town, and jeopardizes the continued operation of Transition House. These are all indicia of bad faith. The ECE Licensing By-law should be repealed immediately.

(1) CURRENT OPERATIONS – 10 CHAPEL STREET

Transition House was established in 1999 through the collaboration of a number of community organizations committed to addressing the growing need for accommodation and support for individuals at risk of or experiencing homelessness. In 2003, Transition House purchased property at 10 Chapel Street and currently offers the following services in that location:

- Temporary housing with 24-hour support for up to 22 occupants;
- Counselling, financial management and employment;
- Social services referrals; and,
- Family diversion programs.

Transition House also manages a number of off-site services from its current location at 10 Chapel Street including a warming hub and a motel overflow program, which involves co-ordinating motel stays for individuals who cannot be accommodated on the premises.

(2) CHARACTERIZATION OF TRANSITION HOUSE USE

As confirmed by Town Staff in the February Report, Transition House is properly characterized as an “Institutional Use” for the purposes of the Town’s Zoning By-law and, as such, is a permitted use in the Main Central Commercial (MC) Zone where 10 Chapel Street is located. Institutional Uses comprise a wide range of uses for public or non-profit purposes including “Emergency Care Establishments” which “provide a means of immediate, temporary accommodation and assistance for a short-term period, generally less than one week for the majority of the residents.” Residential uses in an institutional building are also permitted in the MC Zone.

Given the severity of the housing shortage currently being experienced throughout the province of Ontario including in Cobourg and the County of Northumberland, the average stay for clients of Transition House is approximately 90 days, and therefore well in excess of the one week period contemplated in the definition of Emergency Care Establishments. To the extent that length of stay is the defining characteristic of an Emergency Care Establishment, Transition House may in fact be primarily engaged in the delivery of another form of residential accommodation, such as transitional housing, in an institutional setting; however, Transition House does accommodate

some individuals for shorter periods and in this regard may be considered to be operating an “Emergency Care Establishment” for the purposes of the ECE Licencing By-law.

While further investigation may lead to the conclusion that Transition House does not in fact operate an Emergency Care Establishment, it is clear from the February Report that the Town considers the ECE Licencing By-law to be directly applicable to Transition House’s operations and that enforcement action by the Town is likely to follow a failure of Transition House to obtain a licence under the By-law. Transition House therefore requires urgent action with respect to the repeal of the ECE Licencing By-law.

(3) NEW FACILITY AT 310 DIVISION STREET

Recognizing the need to increase the availability of accommodation and supportive services for persons at risk of or experiencing homelessness, in December of 2023 the County acquired new premises at 310 Division Street in the Town of Cobourg. 310 Division Street is a former retirement home which is located within the MC Zone with the full range of Institutional Uses permitted and which the County intends to repurpose to accommodate a multipurpose facility, including 35 emergency shelter spaces to meet immediate needs as well as transitional housing and other service offerings, including a warming and cooling hub (the “**310 Division Facility**”). The County and Transition House are currently in the process of negotiating an agreement to provide for the relocation of Transition House’s current operations to the 310 Division Facility and the future operation of the 310 Division Facility by Transition House.

As described in the February Report, following the initiation of community engagement processes by the County with respect to the 310 Division Facility, and in response to community concerns, the Town approached the County with a request that the County enter into agreement directly with the Town with respect to the operation of the 310 Division Facility similar to an agreement negotiated by the Town of Whitby and the Region of Durham (the “**Whitby/Durham Agreement**”). The Whitby/Durham Agreement was concluded following the Region of Durham’s decision to purchase lands for a new emergency shelter in order to avoid the passage of an interim control by law by the Town of Whitby prohibiting new low barrier shelters and transitional housing.

Town staff developed a list of requirements for the proposed agreement with the County including:

- The engagement of a mobile security team which would patrol each and night both at 310 Division Street and in its general vicinity;
- Provisions addressing public areas in the community including, the maintenance of roads, sidewalks, boulevards and parking lots free of additional refuse, shopping carts and luggage including but not limited to garbage, debris, temporary shelter materials, drug paraphernalia (including needle sharps) and portable heating implements;
- Tracking of statistics and trends related to crime, complaints, service calls and other data in an area within a 500-metre radius of 310 Division Street; and
- A requirement for “enforceable principles of a code of conduct...linked to the Town Nuisance By-law.”

The February Report also includes significant discussion of provisions of the Whitby/Durham Agreement which require for cost sharing as between the two municipalities with respect to costs associated with “incremental services for the general area in the agreed upon radius on an equal cost sharing basis.” The February Report goes on to note that “if Council elects to license Emergency Care Establishments the costs associated with [additional garbage, debris etc...] could be recovered to manage this type of business in the community and help offset the costs to the taxpayer.”

According to the February Report, during a meeting which occurred on February 14, 2024, the County declined to provide a commitment to negotiate an agreement with the Town, though the County did agree to consider the Town’s list of requests as it proceeds with the negotiation of an agreement with Transition House.

(4) THE ECE LICENCING BY-LAW

The ECE Licencing By-law adopted by Council on February 28th, 2024, contains numerous provisions which are problematic, and which are also directly related to the requests which the Town has made of the County, including as described above. These include but are not limited to:

- (1) **Personal liability for “agents, trustees or representatives”**: Pursuant Section 4.3 of the ECE Licencing By-law, “agents, trustees or representatives of persons operating an [Emergency Care Facility]” are “personally liable for compliancewith the by-law.” While the drafting of this provision is unclear, it can reasonable be construed to mean that Directors and Officers of Transition House and potentially its employees, contractors or subcontractors will be personally liable for any failure of Transition House to comply with the By-law and may be subject to administrative penalties or liable to fines of up to \$100,000 for each part of a day that the failure to comply continues. There is no reasonable basis for this type of provision in a by-law aimed at the delivery of social services and its inclusion in the By-law may dissuade directors, officers, employees or contractors of Transition House from continuing to serve this charitable organization.
- (2) **Grounds For Refusal of a Licence**: The ECE Licencing By-law creates extensive application requirements and provides for the refusal of an application for a licence if the requirements are not met (s. 5 and 6). These requirements include but are not limited to:
 - a. “Evidence that all property owners within a 500-metre radius are aware of the E.C.E. use.” Meeting this requirement would involve extensive title searching to confirm property ownership and significant effort to achieve the required awareness;
 - b. The delivery of a plan confirming that Transition House will provide “mobile security 24 hours/7 days per week to manage issues involving shelter occupants on the property **and such circumstances involving shelter occupants in the surrounding 500-metre radius**”;

- c. The delivery of a maintenance plan which includes “**a maintenance schedule to address litter, waste accumulation and debris arising from ...shelter occupants...in the surrounding 500-meter radius**”;
- d. “A Code of Conduct in alignment with a good neighbour policy and in accordance with the Town’s Nuisance By-law” which Transition House assumes would be required to provide that its clients will be denied access to accommodation and services in the event that the clients are found not to have complied with either the Town’s good neighbour policy or the Nuisance By-law.

In addition to the above, the ECE Licencing By-law provides for the delivery of affidavits in support of an application and requires the applicant to submit to investigations.

These requirements, among others in the ECE Licencing By-law, are patently unreasonable, would make a Transition House responsible for policing and maintaining municipal property in areas up to 500 metres away from its premises and would require Transition House to implement a Code of Conduct designed to prevent access to its services for clients who may have failed to comply with the Town’s Nuisance By-law and good neighbour policy. All of these requirements are premised on unsubstantiated assumptions that the delivery of assistance to members of the community who are unhoused or at risk of becoming unhoused results in an increase in crime and property damage.

Furthermore, the requirements are so onerous that there is no reasonable prospect that Transition House will be able to meet them and also continue to serve the vulnerable population which requires Transition House’s services . It is clear that the ECE By-law was enacted in bad faith, was aimed at Transition House and indirectly at the County, and was intended to prohibit Transition House from operating or to significantly limit its operation and thereby apply pressure on the County to accept the Town’s demands for a direct agreement including cost sharing for municipal services.

The lack of consultation and the timing for the implementation of the ECE By-law also demonstrate bad faith on the part of the Town. The ECE By-law was adopted on February 28th, 2024, without consideration by Standing Committee or public consultation and was published in draft for the first time on February 21st, 2024, one week prior to being enacted without amendment at the February 28th Council meeting. The ECE By-law comes into effect four weeks after its enactment, leaving no time for Transition House to attempt to comply with the extensive licencing requirements contained in the By-law and making it an offence for Transition House to offer accommodation comprising an “Emergency Care Establishment” after March 28th, 2024.

CONCLUSION

We understand that Town Council has been advised that there are no existing examples of a municipality in Ontario licensing an emergency shelter and that these public service uses are generally managed and administered through funding agreements such as the agreement between the County and Transition House. We urge this Council to consider that this is for good reason.

Emergency shelters are not businesses which may require the application of special fines “designed to eliminate or reduce any economic advantage or gain” associated with failing to comply with By-law requirements as contemplated in Section 24.4 of the ECE Licencing By-law. They provide basic necessities of life to the most vulnerable members of the community and their ability to respond to requirements imposed on them typically depends on the public funding available.

In our opinion, the ECE Licensing By-law is invalid and would not withstand a challenge. On this basis we request that Council immediately repeal the ECE Licencing By-law or, at a minimum, defer the effective date of the ECE Licensing By-law for a period of at least six (6) months to allow for proper consultation.

Yours very truly,



Emma Blanchard

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O'Neal Ishimwe

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