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Delivered by E-Mail

Emma Blanchard
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Dear Ms. Blanchard:

**Re: Town of Cobourg Re: Emergency Care Establishment By-law No. 018-2024
(the “ECE By-law”)
Our File No.: 20240428**

Thank you for your reply e-mail of March 27th, 2024, regarding the above-referenced matter. I have had the opportunity to review the letter that you sent to the Town of Cobourg on March 26th, 2024. I am writing to reply to your letter.

Your letter indicates that the Town of Cobourg should immediately repeal the ECE By-law for the following reasons:

1. The “requirements of the By-law are so onerous and unreasonable they make compliance with the By-law practically impossible”.
2. The “By-law was adopted with virtually no notice or consultation”.
3. The By-law “targets Transition House”.
4. Your client indicates that these alleged circumstances are “all indicia of bad faith”.

Transition House’s Allegation that the Town of Cobourg is Acting in Bad Faith

I will address each of the alleged indicia in a moment; however, it is very important for me to first state that the Town of Cobourg takes any suggestion that it is acting in bad faith very seriously. On a reciprocal basis, such an allegation should not be made lightly in this context, particularly when the Town of Cobourg is working hard to ensure that individuals that find themselves in crisis and require accommodation services from an ECE can reasonably expect that such ECE services meet basic health and safety (and other) standards of operation. In other words, the Town of Cobourg’s focus in this context is on seeing that the needs of ECE residents are met and that the well-being of Cobourg residents more broadly is enhanced and not on fostering a situation that tends to diminish the standard of services provided by ECEs.

That is, the Town of Cobourg believes that ECEs should be bound to deliver these critical care services to a reasonable standard. The Town of Cobourg believes that the needs of ECE residents should take priority and that ECEs should be required to meet stable, specific, identifiable standards of service for their residents. There are many examples, such as in the long-term care sector, where reasonable standards of service have been implemented in order to transform service delivery to resident-centred care from institutional-focused operations. The Town of Cobourg genuinely hopes that Transition House will join it in working towards meeting their resident-centred needs by meeting the standards set out in the ECE By-law.

To state it another way, the Town of Cobourg passed the ECE By-law to ensure that those individuals that find themselves in crisis and require emergency care from your client can reasonably expect that your client will live up to clearly identified standards of service for its residents. The ECE By-law focuses on the needs of individuals in crisis. For that reason, the Town of Cobourg will not accept an argument for lower standards. Instead, the Town of Cobourg will take the steps necessary to look out for vulnerable individuals seeking ECE services by requiring that ECE providers meet reasonable standards in service provision. These standards, in turn, have the additional benefit of improving the well-being of all Cobourg residents.

Finally, it was surprising for the Town of Cobourg to receive an argument from Transition House in your letter that Transition House may not even be an ECE but some other unidentified Institutional Use in order to support its position that it need not meet basic ECE standards of service as set out in the ECE By-law itself. This is surprising because both Northumberland County and Transition House have consistently argued that Transition House's proposed operations at 310 Division Street will be zoning compliant because Transition House will, it has stated, be operating an ECE. I believe that this is the first time that my client has received any indication from Northumberland County or Transition House that its operations may not be an ECE and, therefore, not zoning compliant. Therefore, I would appreciate if you let me know immediately if Transition House intends to operate 310 Division Street other than as an ECE.

The ECE By-law is Not Onerous nor Unreasonable

The Town of Cobourg does not agree with Transition House's assertion that the requirements of the ECE By-law are so onerous and unreasonable "they make compliance with the By-law practically impossible".

With reference to the examples identified in your letter:

1. Is it practically impossible for Transition House to let its neighbours know that Transition House is operating an Emergency Care Establishment?

No, it's not impossible for Transition House to let its neighbours know who Transition House is and what services they are providing.

2. Would it be acceptable to ask Transition House's security personnel to assist shelter occupants while on ECE property but practically impossible to ask them to assist residents that are in need the moment they walk off the property?

No, it's not impossible to look out for your residents if they are in need and within a short walking distance of the ECE.

3. Would it be practically impossible for Transition House to provide maintenance of its establishment and ask that they please clean up any litter, waste or debris arising from its occupants that is deposited onto its neighbours' properties?

No, it's not impossible. We should all be prepared to clean up any litter, waste or debris arising from places that we are responsible for.

4. The ECE By-law defines the "Code of Conduct" as meaning "the document produced by the E.C.E. that communicates expectations to shelter occupants of how the shelter engages, communicates and works with the surrounding community to foster a positive relationship, mitigate impacts and maintain the safety of neighboring residents including noise and nuisance mitigation and outlines the actions dealing with shelter occupants who violate Town By-laws, or who are violent or disorderly and provides guidance on Town bylaws and other information."

- a. Is it impossible to ask Transition House to produce a document for its residents that sets out expectations and informs them of Town by-laws?

No, in fact our rule of law requires that we let citizens know about laws that may affect them and as a charitable organization, Transition House should welcome the opportunity to set out their expectations for their residents.

5. Is it practically impossible for a not-for-profit corporation that employs full-time staff to provide affidavit information in support of an application for a license and then allow the Town of Cobourg to assess (inspect) the property to ensure that the laws it enforces, including the *Building Code* and *Fire Protection and Prevention Act, 1997*, are complied with?

No, it would not be impossible for Transition House to supply supporting documentation and comply with inspection requests.

6. Is it patently unreasonable to hold directors, officers, employees or contractors of not-for-profit corporations personally liable for their actions in certain circumstances and will this dissuade them from continuing to serve the charitable organization?

Well, these individuals are already subject to personal liability in certain circumstances under the *Not-for-Profit Corporations Act, 2010*. To mitigate personal liability, a not-for-profit commonly agrees to indemnify these individuals for personal liability and places officers' and directors' errors and omissions insurance coverage for them. However, directors and officers of not-for-profits are required to act honestly and in good faith with a view to the best interests of the corporation and exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

It is the Town of Cobourg's view that none of these standards of service are "patently unreasonable" or "practically impossible" to comply with. They are usual standards required of many not-for-profits providing health and safety services to the public.

The By-law was Passed with Proper Notice

The Town of Cobourg passed the ECE By-law with proper notice. Furthermore, the Town of Cobourg has been consulting with Northumberland County and Transition House about the matters addressed in the by-law for quite some time before the ECE By-law was passed.

Any timing issues now raised by Transition House stem from the fact that Northumberland County only purchased 310 Division Street as recently as December 8th, 2023, and subsequently confirmed that it intended for Transition House to operate the property as an ECE. The Town of Cobourg is entitled to regulate this institutional use for the benefit, health, safety and well-being of its future residents and the community at large.

The ECE By-law Does not “Target” Transition House

As you know, the *Municipal Act, 2001*, entitles the Town of Cobourg to pass by-laws that are general or specific in their application and such by-laws may differentiate in any way and on any basis the municipality considers appropriate.

The Town of Cobourg’s ECE By-law, by definition, applies to all ECE’s within the Town of Cobourg’s jurisdiction, including Cornerstone Family Violence Prevention Centre’s ECE.

Moving Forward

The Town of Cobourg sincerely hopes that Transition House will join it in implementing the resident-centred health and safety standards of service referenced in the ECE By-law.

In this regard, I have been provided with a copy of a letter that Alison Lester (in her capacity as secretary for Transition House) wrote to the Town of Cobourg’s CAO, Tracey Vaughan, on March 28th, 2024. See attached.

In response, Kevin Feagan, in his position as Manager of Bylaw Enforcement and Licensing for the Town of Cobourg, wrote a reply e-mail to Ms. Lester on March 28th, 2024, as follows:

“*Good Afternoon Alison:*

I am in receipt of your letter dated, March 28th and addressed to the Town’s CAO Tracy Vaughan (attached). Thank you for reaching out and seeking clarification concerning the implementation of the Town’s Emergency Care Establishment By-law. As indicated in our meeting, with the implementation of any new licensing initiative there is a period required at the onset of the process to allow for communication, education and assistance between Town staff and applicants to come into compliance with the provisions of the by-law. Municipal Law Enforcement and Licensing is the department which oversees this process and I can assure you that staff are committed to a compliance focused approach and will work with applicants to ensure that they have the necessary information, resources and documents to prepare a complete and compliant application. While a timeline of 30 days from the effective date of the by-law was suggested as sufficient to prepare and complete an application, if an applicant is genuinely working towards compliance and requires additional time or assistance then extensions of time may be granted. The goal is to work collaboratively with applicants throughout the process so that compliance can be achieved in the most effective and efficient manner. On that note, please note link below to the Town’s website information for applicants

to begin the process of obtaining an E.C.E. Licence as well as the attached printable forms. As always, do not hesitate to contact me directly for further clarification/assistance or you may also contact Angela Stewart, our Licensing Officer by e-mail ASTewart@cobourg.ca or telephone at extension 4205.”

That is, the Town of Cobourg is working cooperatively with your client towards the implementation of the ECE By-law and will continue to do so. I believe that this is moving in the right direction.

However, before I complete this letter, I thought it would be best to expressly address one further matter. Quite candidly, I hope that our clients will continue to work towards the implementation of the service standards set out in the ECE By-law. However, I can't help but think that based on your client's position as expressed in your letter, your client may be intending to commence proceedings to challenge the by-law. If your client chooses to do so, I ask that you call me to discuss a reasonable timetable for the proceeding before your client commences the proceeding so that the proceeding in a sensible way.

Thank you.

Yours very truly,

LLF Lawyers LLP

Per:

Jeffrey Lanctot

Jeffrey Lanctot

JDL
Encls.
cc. Town of Cobourg