



**STAFF REPORT  
ACTION REQUIRED**  
with Confidential Attachment

**Final Report on the City-wide Zoning By-law:  
Supplementary Report on Human Rights Challenge to  
Group Home Zoning Regulations**

<b>Date:</b>	February 28, 2013
<b>To:</b>	Planning & Growth Management Committee
<b>From:</b>	Chief Planner & Executive Director, City Planning Division City Solicitor, Legal Services
<b>Wards:</b>	All
<b>Reason for Confidential Information:</b>	This report is about litigation that affects the City and contains advice to communications that are subject to solicitor-client privilege.
<b>Reference Number:</b>	P:\2013\Cluster B\PLN\PGMC\PG13020

**SUMMARY**

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The City Solicitor recommended to City Council that a planning expert be retained to conduct a review of the land use planning and human rights issues related to group homes including the requirement of a separation distance between them, for the purposes of providing advice to City Council.

The report of the planning expert recommends that the definition of group home be amended and that any requirement for a separation distance between group homes be removed as there no suitable justification supported by good land use planning principles. This report recommends that the Chief Planner and Executive Director, City Planning prepare a report examining the regulations pertaining group homes including justification and appropriateness of a separation distance between group homes. Until such time, the City-wide Zoning By-law will continue to require a 250 metre separation distance.

## **RECOMMENDATIONS**

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### **The Chief Planner and Executive Director, City Planning Division and the City Solicitor recommend that:**

1. The Planning and Growth Management Committee request the Chief Planner and Executive Director, City Planning Division prepare a report for the October meeting of the Committee that reviews the provisions pertaining to Group Home and Residential Care Home found in the draft City-wide Zoning By-law in order to determine:
  - i) Whether a separation distance for group homes is justified on the basis of proper planning principles and considering the Human Rights Code as it applies to persons with disabilities
  - ii) Whether there are reasonable alternative approaches to the use of a separation distance between group homes; and
  - iii) Whether it is appropriate to establish a minimum number of occupants for the purposes of defining a group home.
2. All information contained in the Confidential Attachment remain confidential as it pertains to litigation and contains advice subject to solicitor-client privilege.

### **Financial Impact**

There is no financial impact beyond what has already been approved in the current year's budget.

## **DECISION HISTORY**

At its meeting held on October 30, 31 and November 1, 2012, City Council adopted the following Recommendations 1 to 3 contained in Confidential Attachment 1 to the report (October 23, 2012) from the City Solicitor and are now public:

City Council endorse the proposal that:

1. a planning expert be retained by the City Solicitor to conduct a review and provide advice to City Council on the land use planning and human rights issues related to the definition of "group home" and the requirement of a separation distance between group homes, in the draft City-wide Zoning By-law.
2. the expert opinion referred to in Part 1 above be submitted to the Planning and Growth Management Committee, as a public report, for City Council's consideration as part of the new City-wide Zoning By-law.
3. the Chief Planner and Executive Director, City Planning and the City Solicitor be requested to report to the Planning and Growth Management

Committee on the recommendations contained in the expert's report referred to in Part 2 above.

This report is in response to Recommendation 3.

## **ISSUE BACKGROUND**

The Dream Team, an advocacy organization representing persons with mental health issues, brought an Application to the Human Rights Tribunal of Ontario on behalf of eight of its members. The Ontario Human Rights Commission intervened in the Application, in support of the Dream Team.

The Application alleges that provisions in the zoning by-laws of the pre-amalgamation municipalities, which remain in force, and in the draft City-wide Zoning By-law, that impose mandatory separation distances for "group homes" and "residential care homes," discriminate against persons with disabilities contrary to the Ontario Human Rights Code ("the Code").

The Dream Team seeks an order from the Tribunal declaring the provisions discriminatory and directing the City to remove them from the by-laws or to refrain from enforcing or applying them while the City brings them into compliance with the Code.

The City originally filed a Response to the Application and brought a motion to the Tribunal, arguing that the Tribunal had no jurisdiction over the subject-matter and no jurisdiction to make the order sought by the Dream Team. The Tribunal decided it needed to hear the whole case first before it could address its jurisdiction. The City initiated a judicial review of the Tribunal's decision, at the Divisional Court of Ontario. On August 9, 2012, the Divisional Court found that the Tribunal's decision to determine jurisdiction at the end of a full hearing was reasonable and that the Application should be heard. As a result, the City filed a supplementary Response and the matter is now proceeding to a hearing before the Tribunal.

The City Solicitor recommended to City Council that a planning expert be retained to conduct a review of the land use planning and human rights issues related to group homes, including the requirement of a separation distance between them, for the purposes of providing advice to City Council.

## **COMMENTS**

Attached is a report and findings of the planning expert retained by the City Solicitor to examine planning and the human rights issues related the definition of group home and the requirement for a separation distance between group homes. The report entitled, *Opinion on the Provisions of Group Homes in the City-wide Zoning By-law of the City of Toronto* concerns a current challenge to the City's zoning by-laws under the Ontario Human Rights Code. The report makes the following recommendations:

- Delete the phrase “by reason of their emotional, mental, social or physical condition or legal status”.
- Replace “3 to 10 residents” with “a maximum of 10 persons.”
- Use the following definitions of group homes and residential care homes:

**Group Home:**

means premises used to provide supervised living accommodation as per the requirements of its residents, licensed or funded under the Province of Ontario or Government of Canada legislation, for a maximum of 10 persons, exclusive of staff, living together in a single housekeeping unit.

**Residential Care Home:**

means supervised living accommodation that may include associated support services, and is:

- i. Licensed or funded under Province of Ontario or Government of Canada legislation;
- ii. Meant for semi-independent or group living arrangements; and
- iii. For more than ten persons, exclusive of staff.

- Remove the requirement for a separation distance for group homes, but not for residential care homes.
- Before adopting the proposed City-wide Zoning By-law, review all its provisions in the context of the Ontario Human Rights Code, the Accessibility for Ontarians with Disabilities Act, and the Canadian Charter of Rights and Freedoms.
- If the City has reason to believe that a land use has an unwanted impact on its surroundings, then separation distances could be considered to alleviate such an impact. These distances, however, need to be appropriately rationalized based on the findings of a thorough study of the facilities, activities, and functions associated with the specified land use and their impacts, along with public consultation.
- Develop a Citizen’s Guide to the proposed City-wide Zoning By-law, which could include, among other things, clarifications about and considerations of respecting sensitive or incompatible uses and a brief rationale behind separation distances, if they are included.
- Initiate a training program for the City’s land use planners and policy makers to help them understand and apply the provisions of the Ontario Human Rights Code, the Accessibility for Ontarians with Disabilities Act, and the Canadian Charter of Rights and Freedoms in the context of municipal planning policies and practice.

## **Definition of Group Home**

The definitions of group home and residential care home in the November 8, 2012 draft are as follows:

### Current Group Home Definition

means premises used to provide supervised living accommodation, licensed or funded under Province of Ontario or Government of Canada legislation, for three to ten persons, exclusive of staff, living together in a single housekeeping unit because they require a group living arrangement by reason of their emotional, mental, social or physical condition or legal status.

### Current Residential Care Home Definition

means supervised living accommodation that may include associated support services, and is:

- (A) licensed or funded under Province of Ontario or Government of Canada legislation;
- (B) for persons requiring semi-independent or group living arrangements by reason of their emotional, mental, social or physical condition or legal status; and
- (C) for more than ten persons, exclusive of staff.

An apartment building used for the purpose of supportive housing or social housing is not a Residential Care Home.

The planning expert concluded that group homes should be defined as a separate use for zoning purposes because they are licensed facilities, are supervised and their residents are cared for by group home operators. It was recommended that both definitions be revised to remove any reference to personal characteristics of the occupants, as well as a minimum number of residents.

The recommended changes of the planning expert to the definitions are acceptable with the exception of eliminating the minimum number of persons that constitute a group home. All existing zoning by-laws provide for a minimum three persons as a means of defining a group home. The exception is the former City of Toronto where the minimum number of persons in a group home is six. Since all existing zoning by-laws state a minimum number of persons needed to declare a site to be a group home, it would be prudent to investigate the purpose of having a minimum number of persons in the definition before removing it.

### **Separation Distances**

The separation distance requirement for group homes and residential care homes in the November 8, 2012 draft of the City-wide Zoning By-law is as follows:

A group home or a residential care home must be a minimum distance of 250 metres from a lot with a group home or residential care home, measured in a straight line from nearest lot line to nearest lot line.

As the planning expert could not find evidence of a planning rationale to justify the required minimum 250 metres separation distance from another group home, his conclusion was that it that it be should be removed from the City-wide Zoning By-law.

The planning expert found that the City had not considered any evidence of the acceptable planning rationale for the current and proposed definitions for group homes and the distancing provisions and that they have not been subjected to any human rights analysis, including exploration and consideration of reasonable alternative options to zone the use. The expert report does not preclude the City from studying the issue to determine how best to zone group home use taking into consideration good land use planning principles and human rights requirements.

### **Recommended Approach**

It is already agreed that the phrase "by reason of their emotional, mental, social, or physical condition or legal status" would be removed as part of the definition. A revised definition is before the Committee for endorsement.

With respect to the concept of a separation distance between group homes, this should be further studied through the dual lens of good land use planning principles and the Ontario Human Rights Code. To this end, it is recommended that a report be prepared examining the regulations pertaining to group home taking into account the following:

- i) Whether a separation distance for group homes is justified on the basis of proper planning principles and considering the Human Rights Code as it applies to persons with disabilities
- ii) Whether there are reasonable alternative approaches to the use of a separation distance between group homes; and
- iii) Whether it is appropriate to establish a minimum number of occupants for the purposes of defining a group home.

Completion of this report is targeted for October, 2013.

The City Solicitor has provided a confidential attachment with respect to the litigation at the Human Rights Tribunal.

## **CONTACT**

Joe D' Abramo  
Director (A), Zoning By-law & Environmental Planning  
Tel. 416-397-0251  
E-mail: [Jdabramo@toronto.ca](mailto:Jdabramo@toronto.ca)

Antonella Ceddia  
Solicitor, Litigation, Legal Services  
Telephone: (416) 338-2338  
Fax: (416) 397-5624  
Email: [aceddia@toronto.ca](mailto:aceddia@toronto.ca)

## **SIGNATURE**

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Jennifer Keesmaat  
Chief Planner and Executive Director  
City Planning Division

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Anna Kinastowski  
City Solicitor  
Legal Services Office

## **ATTACHMENTS**

Attachment 1: Report on Group Homes  
Attachment 2: Confidential Information

## **Attachment 1: Report on Group Homes**

*Curriculum vitae: Sandeep Kumar Agrawal*

### **Dr. Sandeep Agrawal**

#### **Brief biography - Curriculum Vitae Attached**

Dr. Agrawal is Professor of Urban and Regional Planning and the founding Graduate Program Director of the School of Urban and Regional Planning at Ryerson University. He is a Registered Professional Planner, a member of the Canadian Institute of Planners, and a former member of the City of Toronto Committee of Adjustment from 2007-2011.

Dr. Agrawal has expertise related to planning for inclusive cities. He is a well-published and premier scholar with scores of publications focussed on land use planning and design, the effects of multiculturalism, disability, ethnicity and religion on urban structures and public policies. Dr. Agrawal has appeared before the Senate Standing Committee on Social Affairs, Science and Technology to present on planning for inclusive communities.

## CURRICULUM VITAE

### NAME

**AGRAWAL, Sandeep Kumar**, Professor  
Member of the Graduate Faculty: Yes  
Core Member of the Program: Master of Planning in Urban Development

Email: [sagrawal@ryerson.ca](mailto:sagrawal@ryerson.ca); Phone no.: 416-979-5000 ext 6767

### EDUCATION

<i>Degree</i>	<i>University</i>	<i>Department</i>	<i>Year</i>
B.Arch.	Indian Institute of Technology, Roorkee, India	Architecture and Planning	1991
M.C.P.	University of Manitoba	City Planning	1994
Ph.D.	University of Illinois, USA	Urban & Regional Planning	2001

### ACADEMIC AND PROFESSIONAL APPOINTMENTS

<i>Date</i>	<i>Rank and/or Position</i>	<i>Department</i>	<i>Institution</i>
Sept 2010	Professor	School of Urban & Regional Planning + Ted Rogers School Of Management	Ryerson University
2004 -2010	Associate Professor	School of Urban & Regional Planning	Ryerson University
1999-2004	Assistant Professor	School of Urban & Regional Planning	Ryerson University
2012-2015	Graduate Program Director	School of Urban & Regional Planning	Ryerson University
2008-2012	Founding Graduate Program Director	School of Urban & Regional Planning	Ryerson University
2008-2011	Associate School Director	School of Urban & Regional Planning	Ryerson University
1998 - 1999	GIS Analyst and Planner	Planning	Parsons HBA, St. Louis
1997-1998	Preservation Planner	Heritage and Urban Design	City of St. Louis
1994-1997	Graduate Assistant	Urban and Regional Planning	University of Illinois
1995-1996	GIS Modeling Analyst	Transportation Planning	Champaign County Regional Planning Commission, Urbana
1994-1995	Research Assistant	Land Use Planning	US Army Construction

*Curriculum vitae: Sandeep Kumar Agrawal*

1992-1993	Planner Assistant	Engineering Research Laboratory Downtown Business Improvement Zone Winnipeg
1990-1991	Architect	Revathi and Vasanth Kamath, an Architect Planner – Interior Designer firm, New Delhi, India.

**HONOURS: ACADEMIC, SCHOLARLY AND PROFESSIONAL**

2013	Consultant, University of Moratuwa, Sri Lanka.
2012-13	Visiting Faculty, Department of Architecture and Planning, IIT-Roorkee. India
2012-13	Visiting Fellow, Institute of Advanced Studies, Jawaharlal Nehru University, Delhi, India.
2012-13	Ryerson Visiting Scholar, Massey College, University of Toronto
2012	India Studies Fellowship. Shastri Indo-Canadian Institute. Funded by the Government of India.
2012-14	Senior Research Fellow, Asia-Pacific Foundation of Canada, Vancouver, Canada.
2012	Recipient of The Society of Ontario Adjudicators and Regulators' Adjudicator Training course.
2012	Organized two Workshop sessions and led a study tour on Ethnic Places of Worship at the Metropolis Conference, Toronto.
2011	Organized two Workshops at the Metropolis Conference, Vancouver.
2010	Organized Policy Symposium at The Ontario Metropolis Centre – CERIS
2010-12	Chair, Excellence in Planning Awards, Ontario Professional Planners Institute
2010	Recipient of Ryerson's Faculty Scholarly Research and Creative Activity Award 2008-09
2009	Guest editor (along with Caroline Andrew and John Biles), <i>Plan Canada</i> . Special issue on Welcoming Communities: Planning for Diverse Populations
2008- 2000	Received Ryerson Merit Award consecutively for 8 years
2008-2011	Domain Leader, The Ontario Metropolis Centre- CERIS

*Curriculum vitae: Sandeep Kumar Agrawal*

- 2005 Visiting Fellowship, IIT-Roorkee, India (declined because of extenuating circumstances)
- 2002 GREET Teaching Award for excellence in teaching at Ryerson.
- 1997 Outstanding Teaching Assistant Award from the Department of Urban and Regional Planning, the University of Illinois.
- 1997-1995 Ranked in the 'Incomplete List' of excellent teachers on the University of Illinois campus.
- 1994 Recipient of Best Master's Thesis Award, Department of City Planning, University of Manitoba.
- 1992 Recipient of the Corrigan Scholarship in the Department of City Planning, University of Manitoba. Awarded for academic excellence in the Master's program.
- 1987 -1991 Recipient of the University scholarship at IIT Roorkee, India in Bachelor's for highest merit.

**SCHOLARLY AND PROFESSIONAL ACTIVITIES**

- 2011-2015 Adjudicator, Toronto Licensing Tribunal, Appointed by the Toronto City Council
- 2011 Expert Witness, Ontario Human Rights Tribunal.
- 2011 Member of Search Committee for Program Director of Immigration and Settlement Studies
- 2011 Dean's Appointee, Faculty Promotion Committee
- 2010-present Member, Allocations and Agency Services Committee, United Way of Toronto
- 2010-11 Member, Provost's Working Group on Discrimination and Harassment
- 2010- present Member, School of Graduate Studies Council
- 2009- 2010 Appointed to the Ryerson Academic Restructuring Commission by The Provost
- 2008-2011 Reviewer of SSHRC Standard Research Grant applications.
- 2007- current Manuscript Reviewer for the following journals: *Planning Theory, the Canadian Review of Sociology and Anthropology, The Canadian Geographer, Growth and Change, International Journal of Urban Sustainable Development, International Journal of Urban Policy and Planning, Journal of International Migration and Integration and the Canadian Journal of Urban Research*

*Curriculum vitae: Sandeep Kumar Agrawal*

- 2008-2010 Adjudicating Member, Early Researcher Awards, Ontario Ministry of Research and Innovation.
- 2007-2011 Member, Committee of Adjustment (Toronto/East York); appointed by the Toronto City Council.
- 2009-2011 Member, Planning Committee, Woodgreen Community Services
- 2007 Member, Search Committee for the Dean of School Graduate Studies
- 2006-2008 Data Committee Chair, Centre of Excellence for Research on Immigration and Settlement, Toronto
- 2006-2008 Member, Faculty Promotion Committee
- 2005-2006 Member, Ontario Graduate Scholarship Selection Committee, Ontario Ministry of Training, Colleges and Universities
- 2008-2011 Chair, Ontario Graduate Scholarship Selection Committee, Ontario Ministry of Training, Colleges and Universities
- 1998- present Member of American Institute of Certified Planners
- 1998 – present Member of American Planning Association
- 2001- present Full member of the Canadian Institute of Planners
- 2001-present Registered Professional Planner in Ontario
- 2003-present Member of the Executive Committee of the Masters in Immigration and Settlement Studies program.
- 2003-present Member of the Executive committee of the Masters in Spatial Analysis program
- 2008-2010 Member of the Executive and Admissions committee of the PhD in Policy Studies
- 2006 Co-chair, Urban Design and Heritage track, World Planning Congress, Mexico City, Mexico.
- 2005-2006 Member of the FCS Dean Search Committee
- 2005-present Member of the Departmental Appointment Committee
- 2003-2005 School's representative on the Scholarly, Research and Creative Committee, Faculty of Community Services, Ryerson University

*Curriculum vitae: Sandeep Kumar Agrawal*

- 2005-2008 Member of the Faculty-wide Merit Committee
- 2001-2004 Member and Chair of the Research Committee of Community and Social Planning Council of Toronto.
- 2004-2007 Member of the Scarborough Preservation Panel (now defunct); appointed by the Toronto City Council.
- 2002-2006 Member of the Board of Directors of Heritage Toronto
- 2002-2005 Member of the steering committee of the Greater Toronto Area Forum. (now defunct)
- 2003-2004 Member of the research review committee of Canadian Mortgage and Housing Corporation
- 2005-2007 Member of a subcommittee of City of Toronto's Roundtable on a Beautiful City. Member of the City's design review symposium steering committee

**GRADUATE COURSES TAUGHT**

**Founding Director of the Master of Planning in Urban Development**

At University of Illinois:1994-1997

- UP 326 - Urban Design  
UP 402 - Planning techniques and Analysis  
UP 318 - Introduction to Geographic Information Systems

Ryerson University

- IS8922 Changing Multicultural Mosaic of the GTA 2003  
IS8934 Multicultural City and Planning Policies 2004-07  
PL8101 Multicultural City and Planning Policies 2008- present  
PL8107 Field Placement 2008-present  
CS8933 Directed Studies (Robert Deonarine; ECS; 2008)  
PL8311 Directed Studies (Anthony Greenberg and Ian Clending; MPL; 2010)  
MB8107 Real Estate Development and Planning Process (MBA Program) Winter 2011  
MB8207 Special Topics in International Business (Spring/summer 2011)

**GRADUATE SUPERVISION/EXTERNAL READER**

Completed: 22 Master's; in Progress: 3; PhD in Progress: 1

*Curriculum vitae: Sandeep Kumar Agrawal*

- 2012 Wafa Raza, PhD in Policy Studies, Ryerson University (committee member)
- 2012 Caitlin Barratt, M.A. in Immigration and Settlement Studies, Ryerson University  
*Inter-Faith Dialogue*
- 2012 Nadia Ali, Master of Planning in Urban Development, Ryerson University  
*Secondary Unites: Means of socio-economic integration of new immigrants in Mississauga*
- 2012 Arlene Beaumont, Master of Planning in Urban Development, Ryerson University  
*Barriers to development of mid-rise housing (Received FCS Dean's Best Master's Paper award)*
- 2012 Justin Leung, Master of Environmental Studies, York University.  
*Waterfront Redevelopment Planning and Civil Society Group Involvement along Hamilton's Waterfront*
- 2011 Houman Mortazavi, Master of Business Administration, Ryerson University.  
*Commercial Properties Valuation in the GTA*
- 2011 Corey Horowitz, Master of Planning in Urban Development, Ryerson University.  
*From Gentrification to re-urbanization; The new class character of spatial change*
- 2011 Alex Lader, Master of Planning in Urban Development, Ryerson University.  
*Creativity in Planning Practice (Received FCS Dean's Best Master's Paper award)*
- 2011 Aslam Sheikh, Master of Planning in Urban Development, Ryerson University.  
*Urban Social Sustainability*
- 2010 Vidooshi Chadha, Master of Business Administration, Ryerson University  
*Impact of Information Centralization on the success of an organization: case study of Pearson VUE*
- 2010 Nimesh Teliawala, Master of Business Administration, Ryerson University  
*Urban Rail Planning: A Case Study on Guangzhou, China*

*Curriculum vitae: Sandeep Kumar Agrawal*

- 2010 Aaron Sau, MBA in the Management of Technology and Innovation, Ryerson University  
*The Blackberry Market Penetration and its Social Acceptance in China*
- 2010 Yasir Amir, MBA in the Management of Technology and Innovation, Ryerson University  
*Outsourcing Beyond India*
- 2010 Jagmohan Bhatal, MBA in the Management of Technology and Innovation, Ryerson University  
*What sells the house? A Look at the Factors behind the Sale of a House*
- 2010 Marcanthony Franco, Master of Planning in Urban Development, Ryerson University  
*The Ideal Neighbourhood? Understanding the Growth of New Urbanist Communities in Toronto: A Markham Case Study*
- 2010 Kiran Marok, Master of Planning in Urban Development, Ryerson University  
*Park Planning in Ethnic Minority Neighbourhoods: Toronto's Priority Areas (received the FCS Dean's Best Master's Paper Award)*
- 2010 Irfan Ansari, Master of Planning in Urban Development, Ryerson University  
*Demographic Changes and Formation of Ethnic Enclaves*
- 2009 Angie Jang, M.Sc. in Urban Planning, University of Toronto  
*Little Italy & urban ethnic landscape*
- 2008 Johanna Laing, MA in Immigration and Settlement Studies, Ryerson University  
*LGBTQ Immigrant Exclusion: An Introduction*
- 2008 Sarah Thurston, MA in Immigration and Settlement Studies, Ryerson University  
*Attraction and Retention of Immigrants in Small Centres: The Case of Kingston, Ontario*
- 2008 Greg Newman, Master's in Urban and Regional planning, Queen's University.  
*Responding to ethno-cultural diversity through planning policy and*

*Curriculum vitae: Sandeep Kumar Agrawal*

*practice: an analysis of five select municipalities in the Toronto CMA.*

2006 Todd Masse, MA in Environmental Education and Communication, Royal Roads University

*Meta-analysis of planning issues involving the NIMBY phenomenon*

2006 Sabrina Lau, M.Sc. in Urban Planning, University of Toronto

*Towards Inclusive Public Transport: Immigrant Mothers and their Daily Mobility*

2006 Rebecca Meng, Master's in Spatial Analysis, Ryerson University

2005 Karima Ismail, Master's in Environmental Science and Management, Ryerson University

*Environmental and ethno-cultural groups working together: an examination of Toronto-based environmental programs*

2005 Masomeh Ghassemi, MA in Immigration and Settlement Studies, Ryerson University

*"Sharing power": representation of visible minorities on the boards of selected immigrant serving agencies in Peel*

2005 Charity-Ann Hannan, MA in Immigration and Settlement Studies, Ryerson University

*Multiculturalism: Is it uniting or fragmenting Canadian society?*

2003 Heather Anderson, Master's in Urban and Regional planning, Queen's University.

*The Evolution of the World Bank's Water Policy: An Explanation of the Policy Through an Examination of Changing Development Models*

#### RESEARCH GRANTS/CONTRACTS

<i>Year</i>	<i>Grantor</i>	<i>Purpose</i>	<i>PI</i>	<i>Type</i>	<i>Amount</i>
2012-13	Ministry of Higher Education, Sri Lanka	Research	Agrawal	G	\$10,000
2011-12	Ontario Planning Institute	Prof. Teaching	Agrawal et al.	O	\$10,000
2012	Asia Pacific Foundation	Research	Zhang	F	\$15,000

*Curriculum vitae: Sandeep Kumar Agrawal*

2012	Shastri Indo-Cdn Foundation	Research	Agrawal	F	\$14,000
2011	OCAD/Ryerson	Research	Agrawal& Rutgers	U	6,000
2011	SSHRC- Fine Arts	Research	Burley et al	G	112,700
2011	Ryerson University (DL release)	Research	Agrawal	U	20,000
2010	Canadian Institutes of Health Research	Research	Guruge	G	25,120
2010	The Ont. Metr. Centre	Research/Travel	Agrawal	O	6,000
2010	Ryerson University (DL release)	Research	Agrawal	U	20,000
2010	Ryerson University	Research	Agrawal	U	10,000
2009	The Ont. Metr. Centre	Research/Travel	Agrawal	O	6,000
2009	UNDP & NABARD	Research	Sharma & Rodgers	G	500,000
2009	Ryerson University	Research	Agrawal	U	5,000
2008	The Ont. Metr. Centre	Research/Travel/Release time	Agrawal	O	26,000
2008	The Metropolis Secretariat/CIC	Edit/Publish Journal	Agrawal et al.	G	50,000
2008	The POA Foundation	Endowment	Agrawal	F	66,500
2008	The Region of Peel	Research	Agrawal&Haider	G	37,000
2008	The Region of Peel	Research	Agrawal&Haider	G	44,000
2008	The Region of Peel	Research	Hyman et al.	G	80,000
2008-11	Ontario Planning Prof. Institute	Teaching	Agrawal et al.	O	31,000
2007	The POA Foundation Ryerson University	Research	Agrawal	F	30,000
2007	The Homelessness Secretariat	Research	Preston, Agrawal et al.	G	48,000
2007	Canadian Mortgage And Housing Corporation	Research	Harvey et al.	G	30,000
2006	The Ontario Trillium Foundation	Research	Stillich&Agrawal	F	18,000
2006	The Ontario Metropolis Centre	Research	Agrawal	O	5,000
2006	The Region of Peel	Research	Agrawal&Qadeer	G	6,000
2006	Ryerson University	Research	Agrawal	U	5,000
2006	Ryerson University	Research	Agrawal	U	7,000
2005	Centre of Excellence for Research on Immigration and Settlement	Research	Agrawal&Qadeer	O	14,000

*Curriculum vitae: Sandeep Kumar Agrawal*

2005	Ryerson University	Research	Agrawal	U	4,000
2005	Ryerson University	Research	Agrawal	U	5,000
2005	Ryerson University	Research	Agrawal	U	7,000
2004	Ryerson University	Research	Agrawal	U	4,000
2004	Ryerson University	Research	Agrawal	U	4,000
2004	Heritage Toronto	Research	Agrawal	O	11,000
2004	City of Toronto	Research	Agrawal et al.	G	5,000
2004	Ryerson University	Research	Agrawal	G	7,000
2004	Ryerson University	Travel	Agrawal	U	700
2003	Ryerson University	Research	Agrawal	U	9,900
2003	Ryerson University	Research	Agrawal	U	4,100
2003	Ryerson University	Research	Agrawal	U	4,000
2003	Ryerson University	Research	Agrawal	U	7,000
2003	Ryerson University	Research	Agrawal	U	7,000
2003	Ryerson University	Research	Agrawal	U	2,000
2003	Ryerson University	Travel	Agrawal	U	2,000
2003	Ryerson University	Travel	Agrawal	U	700
2002	Ryerson University	Research	Agrawal	U	2,000
2002	Ryerson University	Research	Agrawal	U	7,000
2002	Ryerson University	Research	Agrawal	U	2,500
2003	Ryerson University	Travel	Agrawal	U	700
2001	Ryerson University	Research	Agrawal	U	2,000
2001	Ryerson University	Travel	Agrawal	U	700
2000	Ryerson University	Research	Agrawal	U	1,250
1999	Ryerson University	Research	Agrawal	U	5,000
1999	Ryerson University	Research /teaching	Agrawal	U	2,500
1999	Ryerson University	Travel	Agrawal	U	700

Type: G – Government; F – Foundation; U – University; O- others.

**PUBLICATIONS**

1) Life-time summary (count) according to the following categories:

- Journal edited .....	1
- Papers in <u>refereed</u> journal .....	22
- Papers in conferences .....	21
- Book Reviews and Abstracts .....	6
- Professional reports/non-refereed .....	19
- Invited Speaking .....	33
- Media invitation.....	99

2) Details for same categories as above: journal edited, papers in refereed journals, papers in conferences, book reviews, professional reports; invited speaking and media invitation.

*Curriculum vitae: Sandeep Kumar Agrawal*

### **Journal Edited**

*Plan Canada*. Special issue on Welcoming Communities: Planning for Diverse Populations. Jan/Feb 2009. (with Caroline Andrew and John Biles) pp 100. 24 scholarly articles.

### **Refereed**

Agrawal, S. 2012. Toronto's Design Review Panel: is it effective? *Canadian Journal of Urban Research*. (under review)

Agrawal, S. 2012. Does proximity matter in promoting interfaith dialogue? *Journal of International Migration and Integration* (under review)

Agrawal, S. and Rutges, J. 2013. Welcoming Communities Initiative: A Test in Toronto's Thorncliffe Park. *Future Immigration Policies: Addressing Challenges and Opportunities during Integration into Canada*. (ed: Kenise Kilbride). Forthcoming.

Agrawal, S. 2012. Economic disparities Among South Asian immigrants in Canada. *South Asian Diaspora Journal*. Special issue on South Asian Diaspora in Canada. (ID: 720514 DOI:10.1080/19438192.2013.720514)

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Qadeer, M., Agrawal, S. Lovell, A. 2010. "Evolution of ethnic enclaves in the Toronto Metropolitan Area 2001-2006". *Journal of International Migration and Integration*. Vol. 11 No. 3. Pp 315-339. [Most downloaded article]

Agrawal, S.K. 2010. "Design Review in a Post Colonial City: The Delhi Urban Art Commission". *J. Cities*. Vol. 27. Pp 397-404.

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Agrawal, Sandeep. 2009. New Ethnic Places of Worship and Planning Challenges, *Plan Canada*. Special Edition. March. Pp. 64-67.

*Curriculum vitae: Sandeep Kumar Agrawal*

Agrawal, Sandeep Kumar. 2008. Faith-based Ethnic Residential Communities and Neighbourliness in Canada. *Planning Practice and Research* Vol. 23 No. 1. pp 41-56.

Agrawal, Sandeep Kumar, M. Qadeer, A. Prasad. 2007. Immigrants' Needs and Public Service Provisions in Peel Region. *Plan Canada* June/July issue [47(2)].Pp 45-49. Reprinted in *Our Diverse Cities* Vol. 4. Metropolis Project.

Agrawal, Sandeep and Ladouceur, Emma. 2007. Design Review: Lessons for Toronto. *Plan Canada*. Vol. 47 No. 1. Pp 32-35.

Qadeer, M. and Kumar, Sandeep. 2006. Ethnic Enclaves and Social Cohesion. *Canadian Journal of Urban Research*. Special Issue on Immigration and Cities. Vol. 15 No. 2. Pp 1-17.

Kumar, Sandeep. 2006. Housing Adaptations: A Study of Asian Indian immigrant homes in Toronto. *Canadian Ethnic Studies Journal*. Vol. XXXVIII No. 1. Pp 117-130

Kumar, Sandeep. 2005. Decision-Making in Urban Design: The Ontario Municipal Board Decisions in Toronto, *Canadian Journal of Urban Research* Vol. 14. No. 2. Pp 209-237.

Kumar, Sandeep and Leung, Bonica. 2005. Formation of an Ethnic Enclave: Process and Motivations. *Plan Canada* June. Pp 43-45.

Kumar, Sandeep and George, Varkki. 2004. Analyzing Planning and Design Discourses. *Environment and Planning B: Planning and Design*. Vol. 31, No. 6. Pp 829-846.

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Kumar, Sandeep. 2002. Canadian Urban Design Practice: A Review of Urban Design Regulations. *Canadian Journal of Urban Research*. Winter. Vol. 11, No. 2. pp 239-263.

Kumar, Sandeep and George, Varkki. 2002. Fallacious Argumentation in Design Review. *Urban Design International* Vol. 7 No. 2. Pp 83-95.

Kumar, Sandeep and Sandeepa Goel. 1994. Fuzzy Sets in Urban Design. *International Journal of Systems Science*, Vol. 25, No. 11. Pp 1727-1741.

#### **Book Reviews and Abstracts**

Agrawal, Sandeep. 2009. The Parking Garages. *Journal of Urban Technology*.

Kumar, Sandeep. 2006. Gandhinagar – Building National Identity in Postcolonial India. *Journal of Urban Design*. Vol. 11 No. 2 pp 282-283.

Kumar, Sandeep. 2003. Urban Development: The Logic of Making Plans, for the *Canadian Journal of Urban Research* Vol. 13 No. 1 2004. Pp 100-101.

*Curriculum vitae: Sandeep Kumar Agrawal*

Kumar, Sandeep. 2002. Planning the New Suburbia. *Journal of Planning Literature*. Vol.17 No. 2.

Kumar, Sandeep. 2001. The Spaces between Buildings. *Journal of American Planning Association*, Vol. 67, No. 3.

Kumar, Sandeep. 2001. Cities and Complexity: Making Intergovernmental Decisions. *Canadian Journal of Urban Research*, Vol. 10, Issue 2.

Kumar, Sandeep. 2001. The Role of Information in Design Review: A Case Study. Abstract of PhD dissertation. *Journal of Planning Literature*, Vol. 16.

**Professional Reports/ Non-refereed/Newspaper articles/others**

Agrawal, S., Rutges, J. and Tariq, H. Toronto's Thorncliffe Park – A Welcoming Neighbourhood? *Ontario Planning Journal* (forthcoming)

Ali, N. and Agrawal, S. 2012. Legalization of second units and immigrant integration. *Ontario Planning Journal*. (forthcoming)

Hammond, K. and Agrawal, S. 2012. Ontario Planning Schools: Urban design firmly entrenched. *Ontario Planning Journal*. July/August. Pp 22. Vol. 27 No. 4.

Agrawal, S. 2012. Income Disparities Among South Asian immigrants in Canada. Working Paper Series. IMDS. Jawaharlal Nehru University. New Delhi.

Haider, Murtaza and Agrawal, Sandeep. 2009. Analysis of Social Infrastructure Costs in the Region of Peel. Report produced for the Region of Peel.

Agrawal, Sandeep. Feb 04 2010. The New Ethnic Enclaves. Available at <http://www.themarknews.com/articles/884-the-new-ethnic-enclaves>. Or at <http://www.citytv.com/toronto/citynews/news/local/article/69439--opinion-toronto-s-new-ethnic-enclaves>.

Agrawal, Sandeep. 2010. Culturally Rich, Politically Influential. <http://www.themarknews.com/articles/882-culturally-rich-politically-influential>. Video Walkabout. Feb 04.

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*Curriculum vitae: Sandeep Kumar Agrawal*

Qadeer, Mohammad and **Agrawal, Sandeep**. *The Toronto Star*. Ethnic enclaves bloom amid city landscape. July 5<sup>th</sup> 2009.

Agrawal, Sandeep, Caroline Andrew and John Biles. 2009. Editorial. *Plan Canada*. Jan/Feb Special issue. Pp 4-5.

Report to Canadian Mortgage and Housing Corporation. 2008. Review of the Newcomer's Guide to Canadian Housing. (with Ted Harvey and Dr. R. Murdie)

Agrawal, Sandeep and Lovell, Alex. 2008. Indian Immigrants in Canada: The Shades of Economic Integration. Report produced for the POA Educational Foundation.

Stillich, John and **Agrawal, Sandeep**. 2008. Housing Alternatives Acceptability Study. Report produced for the Ontario Trillium Foundation with Sustainable Urban Development Association

Agrawal, Sandeep and Mohammad Qadeer. 2008. Faith-based ethnic Residential Communities and Neighbourliness. CERIS Working Paper No. 63.

Agrawal, Sandeep and Abdulhamid Hathyani. 2007. Funeral Sites, Rites and Rights in Multicultural Toronto. *Our Diverse Cities* Vol. 4. Pp 134-138.

Kumar, Sandeep and Mohammad Qadeer. 2006. Immigrants' Needs and the Provision of Public Services in the Region of Peel. Report prepared for the Region of Peel

Qadeer, Mohammad and **Kumar, Sandeep**. 2003. Toronto's Residential Mosaic. *Ontario Planning Journal*. Vol.18, No. 5. September/October. Pp. 7-9.

Kumar, Sandeep. 2003. The Ontario Municipal Board and the Urban Design Decisions. *Ontario Planning Journal*. Vol.18, No. 5. September/October. Pp. 34-36.

Kumar, Sandeep and Martin, George. 2004. A Case for Culturally Responsive Urban Design. *Ontario Planning Journal* Vol. 19 No. 5 pgs 5-7

Kumar, Sandeep. 1993. Urban Design Review by Natural Language Computation. *Design, Methods, Theories, Research, Education and Practice*, Vol. 2, No.3.

#### **Keynote / Invited Speaker**

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Keynote Speaker. 2012. Town of Markham – Diversity, Welcoming Community. Everyone Welcome – A Diversity Leadership Workshop for Executives at Town of Markham. Jun 8<sup>th</sup>.

Invited Speaker. 2012. Canadian Perspective on Interculturalism. Intercultural Cities network. Council of Europe. Vienna, Italy. June 21-23

Invited Speaker. 2012. Income disparities among South Asians. Ryerson Centre for Immigration and Settlement. March 21<sup>st</sup>.

*Curriculum vitae: Sandeep Kumar Agrawal*

Invited Speaker. Feb 18 2012. Devising an Appropriate Strategy for Urban Development, Global Summit on Changing Bihar. Patna, India.

Invited Speaker/Witness. Feb 15 2012. **Senate Standing Committee on Social Affairs, Science and Technology.** Ottawa.

Invited Speaker. Feb 01 2011. Religion and Society. Metropolis British Columbia. Vancouver, Canada

Invited Speaker. Dec. 22<sup>nd</sup> 2010. Migration, Multiculturalism and Planning Issues in Canada. American University of Sharjah, Sharjah, UAE.

Invited Speaker. Dec. 6<sup>th</sup> 2010. Is there something that we can learn from Canadian planning concepts? IIT-Roorkee, CBRI, India

Invited Speaker. Nov. 24<sup>th</sup> 2010. The Practice of Multiculturalism Planning in the cities of the US and Canada. At the invitation of Citizenship and Immigration Canada.

Keynote Speaker. Aug 22<sup>nd</sup> 2010. Multiculturalism in Canada: Challenges of Integration. South Asian Youth Conference. Toronto.

Invited Speaker. June 30<sup>th</sup> 2010. Multiculturalism, Integration, and Faith-based communities. At the invitation of Multiculturalism Program, Citizenship and Immigration Canada, Ontario Region.

Invited Speaker. June 29<sup>th</sup> 2010. Workshop entitled: Ethno-racial communities and relationship to audience segmentation. Cultural Pluralism in the Performing Arts Movement Ontario. Hart House Debates Room, University of Toronto.

Keynote Speaker. Feb 4-6 2010. Canadian Association of Planning Students Annual Conference. University of Guelph. Guelph, Ontario.

Keynote Speaker. Jan 25<sup>th</sup> 2010. Welcoming Communities Priority Seminar on "How Could Canadian Communities Be More Welcoming?" At the invitation of Citizenship and Immigration Canada. Ottawa.

Invited Speaker. October 27<sup>th</sup> 2009. Ethnic Enclaves in the Toronto Area and Social Integration: The City as Common Ground. At the invitation of Citizenship and Immigration Canada. Ottawa.

Keynote Speaker. Oct 14-16 2009. Forum on Multiculturalism and Ethnic Minorities in the Americas, University Center for Social Research, University of Colima, Mexico

Keynote Speaker. July 28<sup>th</sup> 2009. Indian Immigrants in Canada: Shades of Economic Integration. Presentation to Citizenship and Immigration Canada.

*Curriculum vitae: Sandeep Kumar Agrawal*

Invited Speaker. April 22<sup>nd</sup> 2009. Gerrard India Bazaar Past, Present and Future? Challenges and Opportunities. Invitation by the Gerrard India Bazaar Business Improvement Association.

Speaker, Organizer and Moderator. Peel Immigration Project. May 22, 2009. CERIS Public Seminar

Preston, V., Murdie, R., Wedlock, J., Agrawal, S. and Anucha, U. 2009. Immigrants and Homelessness – At Risk in Canada's Outer Suburbs. CERIS Seminar. Jan 9<sup>th</sup>

Qadeer, Mohammad and Agrawal, Sandeep. 2009. Evolution of Toronto's Ethnic Enclaves. CERIS public seminar. Feb 6<sup>th</sup>.

Agrawal, Sandeep and Alex Lovell. 2008. Indian Immigrants in Canada. CERIS Seminar. Nov. 28<sup>th</sup>.

Keynote Speaker. The Prosperity Agenda and Ontario's Successful South Asians: The importance of Social-Political and Economic Integration. Richard Florida's Martin Prosperity Institute. Sept 23rd. 2008.

Keynote Speaker. Planning in Good Faith. Canadian Urban Institute Leadership series. June 18<sup>th</sup> 2008

Keynote speaker. The Diversity Advantage. Canadian Urban Institute Leadership series. March 28<sup>th</sup> 2008.

Keynote Speaker. Planning Our Communities in an Age of Diversity. Lamda Alpha International. 2008.

Keynote Speaker, Public Seminar in the School of Interior Design on Multiculturalism in Design, Ryerson University. 2006

Guest Speaker, in the course "Public Library Services to Culturally Diverse Communities" in the Faculty of Information Studies, University of Toronto. 2006

Keynote Speaker, 'Proliferation of Ethnic Enclaves' at the invitation of the Society for the Aid of Sri Lankan Minorities (SACEM). 2005

Keynote Speaker, "Toronto's ethnic enclaves: sites of segregation or communities of choice", Centre of Excellence for Research on Immigration and Settlement Seminar. 2005.

Organizer/Speaker/Moderator, "Urban Design decision-making models: Comparing Toronto and Vancouver", Urban Design session at the CIP conference. July 2004.

Key Speaker, "Urban Challenge: Making Sustainable Communities a Reality", World Planning Day. 2003.

*Curriculum vitae: Sandeep Kumar Agrawal*

Keynote Speaker, "Toronto's Residential Mosaic", Canadian Urban Institute Lecture Series. Nov 3 2003.

Keynote Speaker, "Canadian urban design practice", Forum of Municipal Urban Designers, Ontario Professional Planners Institute. 2001.

Keynote Speaker, "Urban design education in Canada", Urban Design Working Group, Ontario Professional Planners Institute. 2001.

#### **Conference Paper Presentations**

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Agrawal, Sandeep. 2012. Interfaith dialogue or land use conflict. ACSP conference, Cincinnati

Agrawal, Sandeep. 2012. Multicultural Planning. AESOP Conference, Ankara, Turkey.

Agrawal, Sandeep. 2012. Panelist in the workshop "Supervising Graduate Students". Ryerson Faculty Conference. Toronto, Canada.

Agrawal, Sandeep and Rutgers, Job. 2012. Toronto's Thorncliffe Park - a welcoming community? National Metropolis Conference. Toronto, Canada.

Agrawal, Sandeep. 2012. Widening income gap and economic disparity among South Asians. National Metropolis Conference. Toronto, Canada.

Agrawal, Sandeep. 2011. Who Among South Asians does better economically? International Metropolis Conference. Azores, Portugal.

Agrawal, Sandeep. June 2011. How engaged are Indians in Canadian Economy? Engaging India, AShastri Institute Summit, Ottawa, Canada

Agrawal, Sandeep. May 2011. Indian and Pakistani immigrants in Canada: Shades of Economic Integration. South Asian Migration Conference. Waterloo, Canada

Agrawal, Sandeep. March 2011. Municipal Practices in the United States and Canada. National Metropolis Conference. Vancouver.

Agrawal, Sandeep. July 2010. Ethnic Enclaves in the Toronto area and Social Integration. AESOP Annual Conference, Helsinki, Finland.

Agrawal, Sandeep. Nov. 2009. Design Review in a Post Colonial City. Asian Planning Schools Association conference, Ahmedabad, India.

Agrawal, Sandeep. March 2009. Planning Responses to Multiculturalism. Metropolis Conference, Calgary.

*Curriculum vitae: Sandeep Kumar Agrawal*

Agrawal, Sandeep. 2008. Places of Worship and Planning Challenges. The National Metropolis Conference, Halifax.

Agrawal, Sandeep. 2007. Development of Bihar. Global Meet for a Resurgent Bihar. Patna, Bihar.

Agrawal, Sandeep and AbdulhamidHathiyani. 2007. Funeral Sites, Rites and Rights in Multicultural Toronto. The National Metropolis Conference. Toronto.

Agrawal, Sandeep. 2006. New Ethnic Places of Worship and Urban Planning Challenges. International Metropolis conference. Lisbon, Portugal.

Agrawal, Sandeep. 2006. Faith-based ethnic communities in the Greater Toronto Area: Process of Exclusion or Inclusion? International Metropolis conference. Lisbon, Portugal.

Kumar, Sandeep. 2006. Faith-based ethnic communities. World Planning Congress. Mexico City July 2006

Kumar, Sandeep 2005. Housing Adaptations. Paper presented at the EDRA conference, Vancouver.

Kumar, Sandeep. 2004. Urban Design decision-making models: Comparing Toronto and Vancouver. Panel moderator and presenter in the CIP-OPPI conference in Toronto.

Kumar, Sandeep. 2004. Housing Adaptations in Ethnic Enclaves. Paper presented in the AESOP conference, Grenoble, France.

Kumar, Sandeep. 2003. The Ontario Municipal Board and the Urban Design Decisions. Paper presented at the ACSP conference, Leuven, Belgium.

Kumar, Sandeep. 2003. Fostering Transactive Planning through technology. Paper accepted for presentation at the STLHE conference in Vancouver.

Kumar, Sandeep. 2002. Culturally Sensitive Urban Design. Paper accepted for presentation at the Association of Collegiate Schools of Planning Conference, Baltimore, MD.

Kumar, Sandeep and Mars, Jim. 2001. A Survey of Urban Design Regulations. Paper presented for presentation at the Association of Collegiate Schools of Planning Conference, Cleveland, OH.

Kumar, Sandeep. 2000. Exploring Geographic Information Systems as a pedagogical tool in urban design. Paper presented at the International conference on decision support systems in architecture and urban planning, The Netherlands.

*Curriculum vitae: Sandeep Kumar Agrawal*

Kumar, Sandeep. 2000. Information in Design Review: Applying Discourse Analysis. Paper presented for presentation at the Association of Collegiate Schools of Planning Conference, Atlanta, GA.

Kumar, Sandeep and Varkki George. 1999. Information, power and decision-making in design review. Paper presented at the Association of Collegiate Schools of Planning Conference, Chicago, IL.

Kumar, Sandeep and Varkki George. 1997. Role of Information in Design Review: A Case Study. Paper presented at the Association of Collegiate Schools of Planning Conference, Ft. Lauderdale, FL.

### **Media Interviews**

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The Globe and Mail. *Leave us alone, Humbertown residents say* by Stephen Spencer Davis. Oct 19<sup>th</sup> 2012.

Thestar.com. Experts weigh in on the new David Mirvish development. By Alamenciak, Tim. Oct 1 2012. <http://www.thestar.com/news/gta/article/1265160--experts-weigh-in-on-the-new-david-mirvish-development>

CBC National News. Newly proposed Mirvish-Gehry development in Toronto. Oct 1 2012

CBC Radio one. Discussion on David Mirvish's Vision for Downtown Toronto. Oct 1 2012.

CTV National news. Newly proposed Mirvish-Gehry development in Toronto. Oct 1 2012

CP24. Mirvish development in Toronto. Oct 1 2012.

OMNI news. New ridings in Ontario. Aug 28 2012.

Global TV. Report on Ontario Place. July 26 2012.

The Toronto Star. Condo boom puts squeeze on hospitals. Front page news. July 23 2012.

The Toronto Star. Marky's Deli & Restaurant, a Toronto landmark, closes after 43 years. July 16 2012

National Post. Can Yonge and Sheppard ever be like Yonge and Eglinton? July 14 2012.

OMNI News-Toronto. A 4 minute segment on Professor Agrawal's research in India. Aired on July 4 2012.

Featured in Ryerson Today. Researcher examines policies with a view to help transnational entrepreneurs succeed. Jun 20 2012.

[http://www.ryerson.ca/news/news/Research\\_News/20120620\\_agrawal.html](http://www.ryerson.ca/news/news/Research_News/20120620_agrawal.html).

The Globe and Mail. Quoted in "New Muslim cemeteries to give urgent last rites" by Carys Mills. June 21 2012.

Quoted in Smart Careers. Spring 2012. Pgs 24-25. Becoming a city planner by Trevor Graumann.

*Curriculum vitae: Sandeep Kumar Agrawal*

<http://content.yudu.com/Library/A1w0mm/SmartCAREERSMagazine/resources/24.htm>

Punjabi National Edition (CHNM-TV). Discussion with Prof. Sandeep Agrawal on StatsCanada's data on rising seniors' population. May 29th 2012.

OMNI News- Toronto. Discussion with Prof. Sandeep Agrawal on StatsCanada's data on rising seniors' population. May 29th 2012.

Interviewed and quoted in *The Ryersonian*. Save the High Park Zoo by Michael Hiscock. Feb 15<sup>th</sup> 2012.

Interviewed and quoted in *The Ryersonian*. Learning the Language of Diversity by Ishani Nath. Feb 15<sup>th</sup> 2012.

CBC-Overseas – Income Disparities among South Asians in Canada. 10 minute interview. Aired on Apr 4<sup>th</sup> 2012.

India Abroad. "South Asians, single largest visible minority group in Canada" by Ajit Jain features Sandeep Agrawal's study. March 16<sup>th</sup> 2012.

OMNI News- Toronto. Discussion with Prof. Sandeep Agrawal on his new study on south Asian community. March 13th 2012.

OMNI News-Calgary. Discussion with Prof. Sandeep Agrawal on his new study on south Asian community. March 13th 2012.

CHNM-TV-Vancouver. Discussion with Prof. Sandeep Agrawal on his new study on south Asian community. March 13th 2012.

*The Hindustan Times*. Quotes in "Urban Planning Should Avoid Double Standards for Rich and Poor". Feb 19 2012.

National Post. Quotes in "Canada: As Immigration Booms, Ethnic Enclaves swell and Segregate." Feb 11 2012.

OMNI News. Discussion features on census 2012 and immigration. Feb 8<sup>th</sup> 2012.

*National Post*. Getting wise; With the help of government programs, businesses are learning the advantages of hiring new immigrants. Oct 17th 2011.

OMNI News. Proposed crematorium in Malton, Mississauga. Oct 13<sup>th</sup> 2011

Globalnews.ca. Global News takes Canada's pulse. Sept 30<sup>th</sup> 2011.

Tulsa Beacon. Professional planners know don't know much about churches. Sept 29<sup>th</sup> 2011.

OMNI-TV. Discussion about a new city of Toronto website on community well-being. June 29<sup>th</sup> 2011.

Radio Canada International. About Conference that explores South Asian immigration in Canada. May 19<sup>th</sup> 2011

OMNI – TV. Discussion on multiculturalism as a success story in North America. May 17<sup>th</sup> 2011

*Curriculum vitae: Sandeep Kumar Agrawal*

Also telecasted on:

- a) OMNI: Studio Aperto (Italian) (CFMT-TV) Toronto
- b) South Asian News: Edmonton (CJEO-TV) Edmonton

CBC Radio One– Metro Morning. Empty storefronts in Toronto neighbourhoods. May 12 2011.

CBC Radio Two: Metro Morning - Hour Two (CBL-FM) Toronto. Immigrant Children and English as a second language. March 3<sup>rd</sup> 2011.

CBC.CA – Website. 30% of Canadian students need ESL: Peel board. Story quotes Sandeep Agrawal. March 8<sup>th</sup> 2011.

CBC – Metro Morning. Cemeteries and land use conflicts. Feb 24<sup>th</sup> 2011.

*The Toronto Star*. Diverse businesses could breathe life into struggling Little India. Feb 21<sup>st</sup> 2011.

OMNI-TV Feature News. Few immigrants arriving in Toronto. Jan 27 2011.

OMNI-TV Feature News. Few immigrants arriving in Toronto. Nov. 15 2010.

OMNI-TV Feature News. In Studio discussion on Toronto's Municipal Election Results. Oct 25 2010 (8 minute long interview)

OMNI-TV Feature News. Election Profile in Markham. Planning Issues. Oct 20 2010.

CBC- News – Mayoral Elections in Calgary and in Toronto. Oct 19 2010.

OMNI- TV Feature News. Canada not reaping full benefits of Indian immigrants. Oct 8<sup>th</sup> 2010.

Weinberg, Paul. Hope in Ford Country. NOW Magazine. Oct 7 2010.

CBC-Overseas – Canada not reaping full benefits of Indian immigrants. 10 minute interview. Oct 6<sup>th</sup> 2010. Available at <http://www.rcinet.ca/english/column/the-indo-canadian-report-with-rashi-khilnani/>

CKNW- Radio. Vancouver station. Live discussion with Sean Leslie about Indian diaspora in Canada. Oct 3<sup>rd</sup> 2010.

Global-TV – Discussion on Toronto's mayoral campaign. Sept 21<sup>st</sup> 2010.

*The Toronto Star*. Minority candidates stand good chance. Sept 15<sup>th</sup> 2010.

CJEO-TV – Discussion on India's economic growth. July 12<sup>th</sup> 2010.

OMNI-TV – Feature News. Discussion on Canada's population growth. July 7<sup>th</sup> 2010.

*Curriculum vitae: Sandeep Kumar Agrawal*

OMNI-TV – Feature News. Discussion on a new study on ethnic enclaves. June 4<sup>th</sup> 2010

OMNI-TV – In Studio Discussion on the expansion of suburbs around Toronto. April 22<sup>nd</sup> 2010

SunTV. Live discussion on Canada’s Increasing Diversity. March 10<sup>th</sup> 2010

OMNI-TV –News. Discussion on Canada’s Increasing Diversity. March 9<sup>th</sup> 2010

*Metro News*. Ryerson Urban Planning Gets Accredited. Feb 9<sup>th</sup> 2010.

*The Toronto Star* Indo-Canadian entrepreneurs make their mark. January 18<sup>th</sup> 2010. Based on my study on High-Income Indian Immigrants.

OMNI-TV – Feature News. January 4<sup>th</sup> 2010. On the role of visible minorities on the Toronto’s mayoral race.

*The Globe and Mail*. Fixing the Annex. Nov. 20th 2009

*The Toronto Star*. Boom Time for GTA’s ethnic enclaves. May 18<sup>th</sup> 2009 (based on our paper (co-authored with Dr. Qadeer and A. Lovell) entitled “Evolution of ethnic enclaves in the Toronto Metropolitan Area 2001-2006)

OMNI-TV –Feature news. April 23<sup>rd</sup> 2009

OMNI-TV –Feature news. April 9<sup>th</sup> 2009

OMNI-TV –Feature news. January 15 2009

OMNI-TV –News. January 9 2009.

OMNI-TV – Feature News. November 7<sup>th</sup> 2008

*The Globe and Mail*. Step aside, Pacific Mall, there’s a new Taj in town. November 1<sup>st</sup> 2008.

OMNI TV- News. October 7th 2008

OMNI TV- News. September 22<sup>nd</sup> 2008

*The Toronto Star*. Faith Groups plead with Planners. August 18<sup>th</sup> 2008

*The Toronto Star*. What’s Toronto’s brand? Ghettoes. August 16<sup>th</sup> 2008

*The Washington Post*. As Churches Build on Protected Land, Fears of Growth Raised. August 8 2008.

*The Toronto Star*. Blessed be they who park. July 19<sup>th</sup> 2008.

*Curriculum vitae: Sandeep Kumar Agrawal*

*Novae Res Urbis*. Planning for Worship Vol. 12 No. 5 June 20 2008.

CBC-Radio. Here & Now. Interviewed by Matt Galloway. June 23 2008

*The Toronto Star*. Churches kick start suburban sprawl, study shows. June 23 2008 (profiled my research on placed of worship and planning challenges)

Quoted in *The National Post*. Multicultural cash divides us: Mayor. March 07 2008

CBC News Website. Toronto's Mosaic: A Reality  
Check <http://www.cbc.ca/toronto/features/diversity/bigpicture.html>

CBC Radio. Here and Now. Social Cohesion in Toronto. March 6 2008

Radio-Canada (French). March 3 and March 6 2008. Multicultural Toronto.

CBC-TV. February 14 2008. Multicultural Toronto.

Featured in the January 2008 of the *Canadian Immigrant* magazine

Urban planning Prof explores the difficulties some minorities face when dealing with dead. *The Ryersonian*. 2007

CBC –RCI-R, Sirius Satellite Radio (The Link-2) October 31 2007. Reporter Marc Montgomery. Funeral Practices

*The Toronto Star* Editorial 'Death and Diversity' (Oct 30 2007) based on my research on barriers to practice final rites

OMNI-TV (News) September 24 2007. (profiled my research on barriers to practice final rites)

Fairchild TV news (September 21 2007) (profiled my research on barriers to practice final rites)

Interviewed and quoted in *The Toronto Star* (profiled my research on barriers to practice final rites) October 27 2007 (page A-7)

Interviewed for *The Toronto Star* on places of worship in the GTA

Interviewed on OMNI.2 News on July 20<sup>th</sup> 2007.

Interviewed on OMNI.2 (Channel 14).Aired on April 29<sup>th</sup>, May 2<sup>nd</sup>& 5<sup>th</sup> 2007.

Interviewed and quoted in *National Post* as an expert in Ethnic Enclaves. Dec 27 2006.

Interviewed and quoted in *The Ryersonian* as an expert in multiculturalism Nov. 22 2006.

*Curriculum vitae: Sandeep Kumar Agrawal*

Appeared as an expert on multiculturalism. OMNI NEWS (OMNI.2), Toronto, 13 Nov 2006.

CBC Radio Canada International, Canada Today - India, Sirius Satellite Radio, Oct 13 2006

CBC Radio Canada International, Canada Today - Europe, Sirius Satellite Radio. Oct 12 2006

*The Toronto Star*. June 25 2005 First page news and a centre spread on my research (with Dr. Qadeer) on ethnic enclaves

Live CBC Radio Interview on the 19<sup>th</sup> of May 2005 to talk about Toronto's ethnic enclaves

Featured in *Toronto Life*. September. 2005

Date:

Signature:

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# Opinion on the Provisions of Group Homes in the City- wide Zoning By-Law of the City of Toronto

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Submitted to the City  
Solicitor's Office of Toronto

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Sandeep K. Agrawal, PhD, AICP, MCIP

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### Terms of Reference

This report has been prepared at the request of the City Solicitor's Office of Toronto. The intent is to present an objective review and analysis of issues related to the definition of group homes (excluding correctional group homes), as well as the mandatory separation distances to which these homes are subject, and to provide an expert opinion for City Council's consideration. The following is the scope of work for this report:

1. Brief overview of the provincial and municipal legislative and policy framework governing group homes in Ontario and specifically in the City of Toronto.
2. Description and analysis of the nature and purpose of the "group home" use, as it is understood in provincial and municipal legislation and policies.
3. Literature review and analysis of the origins and development of the definition of "group home" in provincial and municipal land use legislation, specifically in the City of Toronto.
4. Literature review and analysis of the land use planning rationale/objective for separation distances in municipal by-laws and the origins and development of the separation distances provisions that apply to group homes in the City of Toronto through current zoning by-laws and the November 8, 2012, draft of the proposed City-wide Zoning By-law.
5. a) An opinion on whether each of the following is supported by accepted land use planning principles and objectives:
  - i] the definition of "group home" in the November 8, 2012, draft of the City-wide Zoning by-law for the City of Toronto and specifically the definition's use of the terms "by reason of their emotional, mental, social or physical condition or legal status"; and
  - ii] a separation distance between group homes generally and in particular, the one specified in the November 8, 2012, draft of the City-wide Zoning By-law for the City of Toronto
- b) This opinion should include consideration of the City's jurisdiction under the Ontario *Planning Act*, the Provincial Policy Statement 2005, and the City's Official Plan.
6. a) An opinion on whether each of the following is consistent with the Ontario *Human Rights Code* and section 15 of the *Canadian Charter of Rights and Freedoms*:
  - i. the definition of "group home" in the November 8, 2012 draft of the City-wide Zoning By-law of the City of Toronto and specifically the definition's

use of the terms "by reason of their emotional, mental, social or physical condition or legal status"; and

- ii. a separation distance between group homes, generally and as provided for in the November 8, 2012, draft of the City-wide Zoning By-law for the City of Toronto

b) This opinion should include analysis of whether, pursuant to the Ontario *Human Rights Code*, the definition of "group home" and the separation distance in the November 8, 2012 draft by-law are reasonable and bona fide, in the circumstances. The analysis should include a response to the following questions, required by human rights analysis:

- i) Are there reasonable alternative ways to define the "group home" use other than the definition in the November 8, 2012 draft of the City-wide Zoning By-law for the City of Toronto and its reference to the terms "by reason of their emotional, mental, social or physical condition or legal status?"
  - ii) Does a separation distance between group homes in the City of Toronto draft by-law accomplish the land use planning purpose/objective for which it was designed?; and
  - iii) Are there reasonable alternative ways to achieve the land use planning purpose/objective other than through the separation distance provisions? If so, what are they?
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## Summary

The definition of group homes in the City of Toronto zoning by-law (No. 438-86)<sup>1</sup> appears to have originated with the 1978 Provincial Policy on Group Homes and recommendations from the City's Working Committee on Group Homes in 1978. Initially, the City struggled with the definition of group homes and the idea of separation distances; separation distances were included in various versions of by-laws before 1978. The City of Toronto's efforts to tackle the issue of group homes through zoning by-laws started even before the City had any clear guidance from the Province. The validity of separation distances seemed to have gained force from the recommendations of a Provincial Inter-ministerial Working Group. In 1978, these recommendations became the Provincial Policy on Group Homes.

The City of Toronto (pre- and post-amalgamation) has followed the provincial interest and the objectives of provincial policies on deinstitutionalization and community living by allowing group homes in all residential zones. However, even though separation distance is a legitimate and valid zoning tool to mitigate unwanted impacts from particular types of land uses, the report<sup>2</sup> expresses reasonable concern that City's current and proposed definitions and separation distances for group homes fail to stand up when examined in relation to the Ontario *Human Rights Code* and the *Canadian Charter of Rights and Freedoms*.

*This report could not find a sound, accepted planning rationale behind the current definition and separation distance included for group homes in the City of Toronto's zoning by-law (No. 438-86). It also did not come across evidence of any reasonable alternative options explored by the City to accommodate residents of group homes. It does however find that the City's efforts to address the issue of group homes thus far have been done in good faith.*

The report recommends that the part of the definition that identifies the characteristics of the people in group homes be deleted from the by-law, as the Human Rights Tribunal of Ontario or a Court could deem this part of the definition inconsistent with section 35(2) of the *Planning Act* or the Ontario *Human Rights Code* and section 15 of the *Canadian Charter of Rights and Freedoms*.

Whether or not the Human Rights Tribunal or a Court would conclude that the separation distance for group homes is inconsistent with the Ontario *Human Rights Code* and the *Canadian Charter of Rights and Freedoms*, this report concludes that there is sufficient merit to this perspective that a different approach should be adopted.

Although I have not been provided with any evidence of hardship, under the City's current zoning by-law or without it, the changes proposed in this report should not cause any undue hardship to the City. In fact, they may reduce some of the hardship the City now experiences in its enforcement of the current zoning by-laws.

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<sup>1</sup> The current zoning by-law includes several different zoning by-laws from the pre-amalgamation municipalities. Here only the City of Toronto zoning by-law is being referred to.

<sup>2</sup> References reviewed and cited are listed at the end of this report. Cited case law is available in footnotes.

The report makes the following recommendations for the proposed City-wide Zoning By-law:

- Delete the phrase “by reason of their emotional, mental, social or physical condition or legal status”.
- Replace “3 to 10 residents” with “a maximum of 10 persons.”
- Use the following definitions of group homes and residential care homes:

*Group home means premises used to provide supervised living accommodation as per the requirements of its residents, licensed or funded under the Province of Ontario or Government of Canada legislation, for a maximum of 10 persons, exclusive of staff, living together in a single housekeeping unit.*

*Residential Care Home:*

*Means supervised living accommodation that may include associated support services, and is:*

- i. Licensed or funded under Province of Ontario or Government of Canada legislation;*
- ii. Meant for semi-independent or group living arrangements; and*
- iii. For more than ten persons, exclusive of staff.*

- Remove the requirement for a separation distance for group homes, but not for residential care homes.
- Before adopting the proposed City-wide Zoning By-law, review all its provisions in the context of the Ontario *Human Rights Code*, the *Accessibility for Ontarians with Disabilities Act*, and the *Canadian Charter of Rights and Freedoms*.
- If the City has a reason to believe that a land use has an unwanted impact on its surroundings, then separation distances could be considered to alleviate such an impact. These distances, however, need to be appropriately rationalized based on the findings of a thorough study of facilities, activities, and functions associated with the specified land use and their impacts, along with public consultation.
- Develop a Citizen’s Guide to the proposed City-wide Zoning By-law, which could include, among other things, clarifications about and considerations respecting sensitive or incompatible uses and a brief rationale behind separation distances, if they are included.
- Initiate a training program for the City’s land use planners and policy makers to help them understand and apply the provisions of the Ontario *Human Rights Code*, the *Accessibility for Ontarians with Disabilities Act*, and the *Canadian Charter of Rights and Freedoms* in the context of municipal planning policies and practice.

Recognizing the Province as a key and important player in the issue of group homes, the report offers the following as suggestions for the Province to consider:

- Remove the expression “by reason of their emotional, mental, social or physical condition or legal status” from the definition of group homes in the two key pieces of provincial legislation that guide municipal governance – the *Municipal Act* and the *City of Toronto Act*.
- Instruct municipalities across Ontario to modify their definitions of group homes and make them consistent with the Ontario *Human Rights Code* and the *Canadian Charter of*

*Rights and Freedoms* and remove separation distances for group homes, if they exist, from all zoning by-laws.

- Include a reference to the *Ontario Human Rights Code* as well as the *Accessibility for Ontarians with Disabilities Act* in the Provincial Policy Statement and advise readers that the Policy Statement should be read in conjunction with the *Ontario Human Rights Code* and the provisions in the *Accessibility for Ontarians with Disabilities Act*.
  - Add a provision to the Provincial Policy Statement requiring municipalities to ensure that their by-laws are consistent with the *Ontario Human Rights Code* and the *Accessibility for Ontarians with Disabilities Act*.
  - Initiate an educational program for municipal land use planners to help them understand the provisions of the *Ontario Human Rights Code*, the *Accessibility for Ontarians with Disabilities Act*, and the *Canadian Charter of Rights and Freedoms* and their implications for planning policies and practice at the municipal level.
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## 1. The provincial and municipal legislative and policy framework governing group homes in Ontario and the City of Toronto.

All three levels of government are involved in approving, licensing, funding, and siting group homes. For example, the federal and provincial governments, among others, have been largely responsible for funding these homes. Provincial government has the added responsibility of approving and licensing. Depending on the nature of group homes (whether they are for children, adults with specific disabilities, and so on), several ministries are involved in the licensing process. For example:

- The provincial Ministry of Children and Youth Services is authorized by law to approve and issue a licence to operate a group home that houses children with developmental disabilities and special needs. It is the Ministry's responsibility to assess whether basic care and safety requirements, set out in the *Child and Family Services Act*, as well as other regulations and policies, are being met and to take action when these requirements are not being met.
- The Ministry of Community and Social Services, under legislation such as the *Services and Supports to Promote the Social Inclusion of Persons with Developmental Disabilities Act*, the *Developmental Services Act* and regulations (repealed in 2011), and the *Charitable Institutions Act* (repealed in 2010), regulates certain group homes.
- The Ministry of Correctional Services through the *Ministry of Correctional Services Act* is involved in the operation of Correctional Group Homes. Given the agreed scope of work, Correctional Group Homes are not discussed in this report.
- The Ministry of Health and Long-Term Care under its mandate from the *Homes for Retarded Persons Act* (repealed in 2001) has in the past played a role in overseeing group homes.

Municipal governments, within the provisions of land use legislation such the *Planning Act*, the Provincial Policy Statement<sup>3</sup>, municipal official plans, zoning by-laws, site planning requirements, and minor variances guide the location of these facilities and make sure that the group homes comply with local building, health, occupancy, and fire safety standards. Under the *Municipal Act*, a municipality can issue a business licence to operate a group home (as long as a by-law has been passed under section 34 of the *Planning Act*) after confirmation of conformity with zoning by-laws, compliance with Building and Fire standards and other applicable by-laws, and above all, licensing and funding approval from the Provincial government.

The *City of Toronto Act 2006* allows the City to issue a licence for group homes, as long as the City has passed a by-law under section 34 of the *Planning Act* that permits the establishment and use of group homes in the City. However, to date the City has not adopted a by-law to license group homes.

The City of Toronto has taken the position that group homes are and should remain a provincial responsibility. Its representatives have long argued that since the Province of Ontario has legislative responsibility for group homes, as well as the major responsibility for funding them, it is logical that authority to license or approve group homes should rest with the Province. They

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<sup>3</sup> The Provincial Policy Statement provides policy direction on matters of provincial interest related to land use planning and development.

have further argued that “funding at the provincial level, combined with licensing at a municipal level, would lead to duplication and fragmentation of supervision, responsibility and fiscal accountability.”<sup>4</sup>

## **2. The nature and purpose of the "group home" use as it is understood in provincial and municipal legislation and policies.**

The idea of group homes emerged from shifts in the way society provided residential facilities for people who have physical or mental disabilities that prevent them from living in home situation without supports. For many years, these services were provided by the government in government-operated institutions, which tended to be large, self-contained, and separated from urban centres.

With the advent of the idea of community living and deinstitutionalization in the 1970s, it was thought that people who had earlier been confined to institutions could, if placed in a more homelike setting in the community and given appropriate supervision, training and support, lead more satisfying and productive lives. This transition from institutional to residential living led to the concept of group homes, as well as the group home zoning problem.

The *Municipal Act* of 1980 attempted to define and describe group homes. The Act has been amended and replaced several times, most recently in 2006, but the definition of group homes has remained unchanged:

a residence licensed or funded under a federal or provincial statute for the accommodation of three to 10 persons, exclusive of staff, living under supervision in a single housekeeping unit and who, by reason of their emotional, mental, social or physical condition or legal status, require a group living arrangement for their well being.

This same definition was used in the *City of Toronto Act 2006*, which created a framework of broad powers for the City.

A slightly different definition had been proposed by Ontario’s Cabinet Committee on Social Development for the Inter-ministerial Working Group on Group Homes in 1978. The Working Group had been formed in response to the government’s deinstitutionalization of living arrangements for people with disabilities and special needs to provide guidance for the orderly development of new homelike care facilities in a community setting. Two equal but opposite forces were in play at the same time – one to ensure that municipalities accepted group homes, and the other to support restrictive zoning by-laws.

The Working Group defined group homes in the following way:

A Group Home is a single housekeeping unit in a residential dwelling in which three to ten unrelated residents (excludes staff and receiving family) live as a family under responsible supervision consistent with the requirements of its residents. The home is licensed or approved under Provincial statute in compliance with municipal by-laws.

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<sup>4</sup> *Group Home Primer*, 1984.

A model by-law proposed by the Working Group supported and encouraged separation distances between group homes and other residential land uses.

While the City of Toronto largely followed the provincial guidelines emanating from the Working Group on Group Homes report, its definition of group homes remained slightly different from the provincial proposal. Its zoning by-law (No. 332-78) defined group homes as follows:

A residence for the accommodation of six to ten persons exclusive of staff, who by reason of their emotional, mental, social or physical condition or legal status require a group living arrangement for their well-being where:

- The facility is supervised, or members of the group are referred, by a hospital, court or government agency; or
- The facility is funded wholly or in part by a government, other than funding provided solely for capital purposes; or
- The facility is regulated or supervised under a general or special Act.

Although the provincial and city definitions were similar in many respects, they differed in the following three ways:

- In the City's zoning by-law (No. 332-78), a group home was called a *residential care facility*.
- The City's definition allowed for six to ten residents, because the City defined a group of up to five unrelated persons occupying a single dwelling unit as a family.
- The City's definition included the terms "by reason of their emotional, mental, social or physical condition or legal status."<sup>5</sup>

The City's definition, especially, the phrase "who by reason of their emotional, mental, social or physical condition or legal status" seems to have emerged from the recommendations of the City Working Committee on Group Homes 1978.

The definitions of group homes across Ontario municipalities (today and pre-amalgamation) are similar. However, some definitions encapsulate various types of group homes, such as foster homes, homes for the elderly, residential care facilities, crisis care facilities, emergency shelters, correctional group homes and others. Some use the terms "by reason of their emotional, mental, social or physical condition or legal status" – at least until very recently<sup>6</sup> – while others have restrictions placed on the locations of these facilities, including separation distances. In some municipalities, separation distances vary based on number of residents living in the dwelling unit as well as whether the group home is inside or outside of the urban boundary. Barring a handful, by and large, Ontario municipalities allow group homes in all residential zones.

### **3. The origins and development of the definition of "group home" in provincial and municipal land use legislation, specifically in the City of Toronto.**

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<sup>5</sup> Group Home Primer, 1984.

<sup>6</sup> Kitchener and Sarnia have removed the reference to prohibited grounds, as a result of reconsidering it, given the human rights challenge.

The origins and development of the definition of “group homes” at the provincial level can be traced to the report produced by the Inter-ministerial Working Group in 1978. Among other things, the Working Group was charged with defining group homes as well as recommending approaches to encourage or require municipalities to amend restrictive zoning by-laws. The following recommendations of the working group are relevant to this section.

1. That the following definition of a group home should be used:

*A Group Home is a single housekeeping unit in a residential dwelling in which three to ten unrelated residents (excludes staff and receiving family) live as a family under responsible supervision consistent with the requirements of its residents. The home is licensed or approved under Provincial statute in compliance with municipal by-laws.*

2. That planning guidelines and the model by-law should be conveyed to municipalities through municipal associations and promoted by the community planning advisory branch of Housing and the Ministry of Community and Services branch.
3. That municipalities should be encouraged to develop by-laws governing group homes.
4. That a letter should be sent to municipalities pointing out their responsibilities to provide accommodation for social service cases in a community setting and asking that they not prohibit group homes by zoning.
5. That a similar letter should be sent to the Ontario Municipal Board outlining the provincial policy on group homes in relation to municipal zoning.
6. That an amendment should be made to the *Municipal Act* to permit municipalities that already provided for group homes in their zoning by-laws to require that such homes be registered.<sup>7</sup>

Later the same year, the Working Group’s recommendations were accepted as the provincial group homes policy.<sup>8</sup>

In October 1979, following the recommendation of the Inter-ministerial Working Group, the Provincial Secretariat for Social Development, in cooperation with the Ministry of Housing, released draft planning guidelines for group homes.

The planning guidelines recommended that group homes be permitted in all designated residential zones. It went on to state:

in order to prevent an undue concentration of group homes in specific areas of municipality, standards requiring a minimum distance separation between these facilities will be incorporated in the implementing restricted area by-law.

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<sup>7</sup> *Group Homes*. 1978. Report of the Inter-ministerial Working Group.

<sup>8</sup> Marshall, J., 1984. *Zoning Law for Group Homes and Community Residences*; passing reference in Birch’s report 1983.

The response from the Association of Municipalities of Ontario (AMO) in January 1981 indicates confusion about what was required of the municipalities. The AMO was of the opinion that the guidelines were not mandatory. The AMO took exception to the Secretariat's recommendation to introduce separation distance factors in the by-laws in order to limit the number of group homes in a residential area and also raised the spectre of a municipality's being subject to litigation if it did so. This warning was prescient.

A year later, a section was added to the *Municipal Act 1980* to permit the council of a local municipality to pass by-laws requiring the registration of group homes, following the Provincial Policy of 1979.

This move was followed by the development of a resource manual on group homes prepared by Margaret Birch, Provincial Secretary for Social Development, in 1983. The report's objectives were to give municipal officials a clearer understanding of the provincial policy; the types of group homes that could be licensed or approved; the way in which group homes should be established, regulated, and assessed; and the most appropriate means of effecting corresponding changes in municipal official plans and zoning by-laws.

The question of group homes and related zoning arguably first arose in the City of Toronto in the early 1970s, well before the Province began to take action on the issue. The 1970s saw a trend towards community living for children and adults requiring special services who had previously been living in large, government-run institutions. This deinstitutionalization process resulted in service providers' setting up group homes in communities, but many ran into opposition from residents in the affected neighbourhoods. At the same time, other neighbourhoods were experiencing undue concentrations of group homes. To address these issues of neighbourhood opposition and unequal distribution, in 1974, Toronto council passed a motion of intent regarding group homes that included the following definition:

A group home is defined as one where an agency-operated home provides care for 4 or more children in a family-type setting where the emphasis is on meeting the specialized needs of adolescents or seriously disturbed youngsters for whom institutional care is contra-indicated, or on the study and/or treatment of disturbed children through the use of this setting.

To put the issue to rest, in 1977 the City passed a zoning by-law (No. 219-77) regarding Therapeutic Group Homes that included a definition of this type of facility:

Therapeutic group home means the whole of a building comprising a single habitable unit which is neither owned nor operated for the purpose of gain and which is occupied as the permanent residence of not more than 8 persons residing therein for the purpose of receiving medical, social or psychological care from, and being at all times under the control of, at least one adult person and not more than two adult persons qualified to provide such care, provided that where such home is occupied by children there is present in the home at all times that children are present one such adult person for every four children, or fraction thereof, under the age of sixteen years and one such adult person for

every six children, or fraction thereof, who are sixteen years of age or over, but does not include any use or establishment otherwise defined by this by-law.

This by-law raised concerns among almost everyone interested in the establishment or operation of group homes, from residents' associations to funders and providers such as the Ministry of Community and Social Services and the Children's Aid Society.

That same year, a Working Committee on Group Homes was struck by the City to look into the issue, which recommended repealing the Therapeutic Group Homes by-law and replacing it with a new one with the following definition:

A residential care facility is any community-based group living arrangement for six to ten individuals exclusive of staff with social, legal, emotional, mental or physical handicaps or problems that is developed for the well being of its residents through self-help and/or professional care, guidance, and supervision unavailable in the resident's own family or in an independent living situation.

- Residential care facility may locate in a single family dwelling, boarding or lodging house, or converted dwelling house, or any building built for that purpose, but which in all cases must be fully detached and occupied wholly by that use.
- Residential care facility includes group homes, group foster homes, halfway houses, residences for the physically or mentally handicapped or disabled persons and special care boarding or lodging houses, but does not include anything else defined in this by-law.

The City's Working Committee proposed replacing this definition with a new definition that would be more inclusive and would cover all types of residential care facilities for adults and children.

The City Council accepted the Committee's advice and passed a new zoning by-law (No. 332-78) that included the following, slightly different, version of the definition:

Residential care facility means a residence for the accommodation of six to ten persons, exclusive of staff, who by reason of their emotional, mental, social or physical condition or legal status require a group living arrangement for their well being, and

- a) Such facility is supervised, or the members of group are referred, by a hospital, court or government agency; or
- b) Such facility is wholly or in part by any government, other than funding provided solely for capital purposes; or
- c) Such facility is regulated or supervised under a general or special act.

This definition, adopted in 1978, remains in effect in the City of Toronto's current zoning by-law (No. 438-86).

Note that one of the mandates of the provincial Inter-ministerial Working Group, discussed earlier, was to address the controversy that had arisen in the City of Toronto at that time and, at

the same time, provide guidance for a consistent definition and acceptance of group homes across the city as well as the province.

It is important to note that the current zoning by-laws in the City of Toronto are a collection of 43 different zoning by-laws inherited from the six pre-amalgamation municipalities. These remain in force today. Each former municipality has its own history related to the definition of group homes, which are beyond the scope of this report. However, Appendix 1 lists the definitions as they current exist in the zoning by-laws and are applied in each former municipality.

#### **4. The land use planning rationale/objective for separation distances in municipal by-laws and the origins and development of the separation distance provisions applicable to group homes in the City of Toronto in force through zoning by-laws and the November 2012 draft of the City-wide Zoning By-law.**

Separation distances have long been used in municipal zoning by-laws. Zoning has its roots in New York City in 1916. It was developed to cure the ill-effects of incompatible land uses – for example, noxious industries located near homes – and to prevent nuisances by focusing on the designation and separation of land uses. Maximum heights and minimum setbacks were also added for public health reasons to ensure light and air in tenements.

Separation distances in zoning are intended to control the unwanted land-use impacts of a specific type property on the surrounding properties and on the city as a whole. Zoning is also used to manage the potential overconcentration of certain types of land use, services, or housing in a neighbourhood.

While zoning is an important and legal way of managing land use and future development in the Province of Ontario, it is subject to criticism. Many Canadian planning scholars (Finkler and Grant, 2011; Hodge and Gordon, 2008; Skelton, 2012) have proclaimed that zoning is inherently exclusionary, overly technical and rigid, and, more generally, irrelevant in today's cities.

According to Hodge and Gordon (2008), who wrote the well-known textbook *Planning Canadian Communities*, a land use determination is usually based on three components – facilities, activities, and functions<sup>9</sup>.

- **Facilities:** a description of the physical alterations made to parcels of land and public rights-of-way, especially buildings and other structural features. The type of building (e.g., detached house, office building) needs to be noted, because this designation will indicate the form and quantity of indoor space available to users.
- **Activities:** a description of what actually takes place on parcels of land and in public spaces. This involves observing the various users and the form their use takes, usually focusing on relationships of people obtaining goods and services and the mode of transportation involved. Thus, a house is normally used for residential activities, a fire hall for emergency protection activities, a parking lot for vehicle-storage activities.

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<sup>9</sup> Hodge and Gordon. 2008. P 144.

- Functions: a description of the basic purpose of an enterprise or establishment located on a parcel of land. Individuals, firms, and institutions use a specific location for places of residence, business, government, or assembly, and it is these latter purposes that need to be noted.

The origins of separation distance provisions applicable to group homes in the Toronto zoning by-law lie in the following motion of intent passed by Toronto City Council in 1974:

Be it resolved that City Council declare its intent to enact a by-law that would provide that no therapeutic group home be permitted to be established within a distance of 800 feet of any building being used for a similar purpose in all 'R' districts for the purpose of group home as defined above.

Your Committee also recommends that the intent declared by City Council in adopting Clause 4 of Report No. 5 of the Committee on Buildings and Development on February 22, 1974, which applied a minimum of 400 feet spacing between therapeutic group homes in the area bounded by Parliament Street, St. James Cathedral, the Don River and Gerrard Street be varied to conform to the above general intent for all 'R' districts.

Before this motion of intent, there was no separation distance requirement in Toronto's zoning by-law and the term "group home" was not used.

In 1977 the City passed a zoning by-law (No. 219-77), which included a definition of "Therapeutic Group Home," along with a distance requirement of 800 feet, the length of approximately two city blocks. The by-law caused considerable controversy. To respond to the controversy, the City set up a Working Committee on Group Homes, which recommended that the by-law concerning "Therapeutic Group Home" be repealed. The Working Committee also recommended varying distances between group homes, depending on the number of residents, while continuing to permit such facilities in all residential areas, subject to rigid spacing requirements. In Committee's view, "by controlling the factors of the numbers of residents, the distance between homes, and the type of dwelling house, neighbourhoods will be adequately protected from concentration and from reasonable or unmanageable intrusion."

The Committee clarified the intent behind its recommended policies by stating that "it was to distribute residential care facilities equitably throughout all residential areas..." (p. 915) and to address neighbourhood fears and anxieties regarding such facilities. It further said that the potential effect of the policies would be that "there would be no further concentration of residential care services in areas where the number of facilities were excessive."

While the definition of a residential care facility that included group homes was accepted, the proposal to vary separation distances was not included in the new 1978 Residential and Crisis Care by-law (No. 332-78). Heeding the view of the City Solicitor of the time that this provision could not be legally implemented, the Council settled on a uniform distance of 800 feet. In the subsequent reorganization of this by-law, the distance requirement was carried over, except that it was converted from feet to metres (that is, 800 feet became 245 metres).

The Inter-ministerial Working Group and subsequent Provincial Policy on Group Homes reinforced the idea of separation distances. The Working Group suggested:

The by-law should provide that a group home cannot locate closer than a specified distance to another group home facility. This spacing requirement would alleviate municipal and community fears concerning concentration of group homes and over-taxing of social/educational facilities. The requirement could be expressed in urban by-laws as a sliding scale of 600 to 1000 feet depending upon the number of residents or a standard distance in suburban or rural areas.

The City's zoning by-law (No. 438-86) currently in force allows group homes in any residential area, but requires a separation distance of 245 metres between them. In other pre-amalgamation municipalities, group homes are allowed in all residential zones, albeit the separation distance ranges between 300 metres and 800 metres.

Scarborough has a different zoning regime from the other former municipalities. It is governed by approximately 33 community by-laws, all of which require that group homes be at least 300 metres from any other group home, except for by-law no. 25278, the Upper Rouge – Hillside Community by-law, which has a minimum separation distance of 800 metres.

Table 1 contains a list of separation distances used in the by-laws of today and pre-amalgamation municipalities until 2007; it has been updated wherever information was available. This list is by no means exhaustive and may not have captured all recent changes. Nevertheless, it suggests a wide range of separation distances employed by Ontario municipalities.

##### **5 Support in land use planning principles for the definition of group homes and the use of separation distances, and consideration of the City's jurisdiction in these matters under the *Planning Act*, the Provincial Policy Statement, and the City's Official Plan.**

The City of Toronto regulates the use of land through its Official Plan, zoning by-laws, minor variances and other means. This authority is granted by the *Planning Act*, which sets out the ground rules for land use planning in Ontario and describes how land uses may be controlled, and who may control them. The Official Plan sets out the municipality's general planning goals and policies that will guide future land use. Zoning by-laws set the rules and regulations that control development as it occurs. Minor variances allow some relief from the zoning by-law and deals with minor problems in meeting provisions in the zoning by-law. A minor variance does not amend the zoning by-law, but allows variations to specific by-law requirements on a site specific basis, provided the applicable test under the *Planning Act* is met. In other words, it simply excuses an individual property owner from a specific requirement of the by-law and allows them to obtain a building permit. For this, one has to apply to the Committee of Adjustment appointed by the City Council. The Committee's decisions can be appealed to the Ontario Municipal Board (OMB).

Under the *Planning Act*, the Minister of Municipal Affairs and Housing may, from time to time, issue provincial statements on matters related to land use planning that are of provincial interest. In other words, the Provincial Policy Statement provides policy direction on matters of

provincial interest related to land use planning and development. For instance, the Provincial Policy Statement, 2005 contains overall policy directions to promote a planning system that recognizes the complex inter-relationships among and between environmental, economic and social factors in land use planning.

Before passing a zoning by-law, the City Council evaluates it against criteria such as:

- conformity with the official plan and compatibility with adjacent uses of land
- suitability of the land for the proposed purpose, including the size and shape of the lot(s) being created
- adequacy of vehicular access, water supply, sewage disposal

The Council's decision about a zoning by-law must be consistent with the Provincial Policy Statement issued under the Planning Act.

As discussed in the previous section, a land use is determined usually by looking at three components – facilities, activities, and functions – of land. No evidence has been provided by the City of external impacts such as parking, traffic, or garbage associated with group homes, beyond those of a normal residential use. Nor can I find any analysis of the facilities, activities, and functions of group homes that would justify treating group homes as a separate use. On these bases alone, one might choose to eliminate group homes as a separate use category. However, because group homes are licensed facilities, are supervised, and their residents are cared for by group home operators (as opposed to living independently), these facilities should be maintained as a separate residential use for zoning purposes.

In its November 8, 2012, draft of the City-wide Zoning By-law (Appendix 2), the City of Toronto uses the following definition of group homes:

Group home means premises used to provide supervised living accommodation, licensed or funded under the Province of Ontario or Government of Canada legislation, for three to ten persons, exclusive of staff, living together in a single housekeeping unit because they require a group living arrangement by reason of their emotional, mental, social or physical condition or legal status.

Residential Care Home:

Means supervised living accommodation that may include associated support services, and is:

- iv. Licensed or funded under Province of Ontario or Government of Canada legislation;
- v. Meant for semi-independent or group living arrangements by reason of their emotional, mental, social or physical condition or legal status.; and
- vi. For more than ten persons, exclusive of staff.

The proposed definition keeps the terms “by reason of their emotional, mental, social or physical condition or legal status” and allows 3 to 10 persons, as opposed to 6 to 10 in the by-law currently in force.

According to the City's *Primer on Group Homes*, published in 1984, the City's reason for limiting the number of residents to between 6 and 10 was the fact that the City defined a group of

up to 5 unrelated persons, occupying a single dwelling unit, as a family<sup>10</sup>. However, there may be good planning reasons for limiting the number of persons residing in one dwelling unit. Perhaps an explanation based on the intensity of the use, the density of the use, the character of the use, the purpose of the use and the needs of the users is better way to clarify this point.<sup>11</sup>

In any event, the range of 3 to 10 residents is consistent with the Inter-ministerial Working Group's suggestion, the Provincial Policy adopted in 1978, as well as the *Municipal Act* of 1980. The Working Group considered any home with more than 10 residents as a small institution and argued that such institutions should be located outside residential areas. The Metropolitan Toronto's Social Services and Housing Committee<sup>12</sup> report on group homes policy in 1979 also suggested capping the maximum number of residents at 10.

I see no reason for requiring a minimum of 3 residents. A maximum number could be justified based on the *intensity of use*, impact, and compatibility. In *Haydon Youth Services v. Kearney (Town) 1997*<sup>13</sup> ("Haydon"), the Ontario Municipal Board allowed a restriction on the number of residents living in a group home to reduce impact and increase compatibility. The Toronto proposed City-wide zoning by-law could stipulate the maximum number of residents, but should not set a minimum. The provincial licensing process also acts a control mechanism on the activities of group homes.

In the case of residential care home, which in the City-wide Zoning By-law is distinguished from group home as a facility accommodating more than 10 residents. Here, there is a merit in having a minimum of 10 as this number is usually more than number of people living together in a home setting and can be justified based on the intensity of use, negative impact and incompatibility that it may cause.

The use of terms "by reason of their emotional, mental, social or physical condition or legal status" is problematic, as it, in my view, refers to the personal characteristics or qualities of the users of the facility. This could amount to "people zoning" as per *Bell v. The Queen*<sup>14</sup> as well as section 35(2) of *Planning Act*.<sup>15</sup>

In the *Bell case*, the personal qualification in question was whether occupants were family, which triggered the enquiry into marital/family status, which the Court found inappropriate in a zoning by-law. The Supreme Court agreed with a lower-court judge who had said that the by-law "was not regulating the use of building, but who used it." The Supreme Court also agreed with the appellate judge, who said:

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<sup>10</sup> *Primer on Group Homes*. 1984. Pp 6.

<sup>11</sup> *Toronto (City) Zoning By-law No. 138-2003, 1984 OMB*.

<sup>12</sup> Until amalgamation in 1998, Metro Toronto was composed of the City of Toronto, the towns of New Toronto, Mimico, Weston, and Leaside; the villages of Long Branch, Swansea, and Forest Hill; and the townships of Etobicoke, York, North York, East York, and Scarborough.

<sup>13</sup> *Haydon Youth Services v. Kearney (Town) 1997 O.M.B.R. 124*

<sup>14</sup> *Bell v. The Queen*, [1979] 2 S.C.R. 212

<sup>15</sup> The relevant section of the Planning Act reads: "The authority to pass a by-law under section 34, subsection 38 (1) or section 41 does not include the authority to pass a by-law that has the effect of distinguishing between persons who are related and persons who are unrelated in respect of the occupancy or use of a building or structure or a part of a building or structure, including the occupancy or use as a single housekeeping unit."

I do not think personal qualifications of this type or other personal characteristics or qualities have even been suggested here as a proper basis for control of density or any issue relevant to land use or land zoning.

Case law subsequent to *Bell*, however, does not take such a strong position. Zoning definitions that refer to personal attributes have been upheld subsequently by the Courts. One such example is *Smith et al. v. Township of Tiny* 1980<sup>16</sup> ("*Smith*"), which came after *Bell*. In the *Smith* case, Robins J. noted:

Land use restricted to a particular type or group of persons may be unreasonable or discriminatory and hence ultra vires. However, in my view, a restriction based upon a definition of "family" which incorporates most types of arrangement usual for people living together as a simple housekeeping unit in premises commonly described as "single family" dwellings cannot be said to be either unreasonable or discriminatory or to constitute zoning based on the relationship of the occupants. In invoking the definition of "family" used in the by law, it appears to me the township employed a valid zoning device to regulate the "use" and "character" of residential premises.

Upholding a zoning restriction based upon a definition of "family", he further added:

I do not read the judgment of Spence, J., who spoke for the 3:2 majority in *Bell*, as rendering invalid every zoning by-law making occupation of residential premises referable to a definition of "family" which includes in it consanguinity and marriage simply because consanguinity and marriage are included. The decision, in my opinion, does not go that far and must be interpreted in light of the particular by-law prohibition in issue in the case and the Court's conclusion as to the unreasonable and inequitable consequences which flow from it...

However, in my view, a restriction based upon a definition of "family" which incorporates most types of arrangement usual for people living together as a simple housekeeping unit in premises commonly described as "single-family" dwellings cannot be said to be either unreasonable or discriminatory or to constitute zoning based on the relationship of the occupants. In invoking the definition of "family" used in the by-law, it appears to me the township employed a valid zoning device to regulate the "use" and "character" of residential premises. This argument of the plaintiff must accordingly fail.

The City, therefore, could argue that the reference to personal characteristics was merely a convention i.e. a general agreement on or acceptance of practice in planning to provide an accurate definition of the "use." It could further argue that a separation distance has been applied to group homes and not to some other uses, in order to create a distinction based upon valid land-use planning grounds of positive deconcentration, impact and compatibility. And for this, it

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<sup>16</sup> *Smith et al. v. Township of Tiny* (1980), 27 O.R. 690 (Div. Ct.); leave to appeal refused (1980), 29 O.R. (2d) 661n (Ont. C.A.).

could rely upon the above as well as OMB decisions in the *Haydon*,<sup>17</sup> *Kitchener Official Plan Amendment (No. 58) 2010*<sup>18</sup> (“*Kitchener*”), and *Toronto (City) Zoning By-law No. 138-2003 2004*<sup>19</sup> (“*Deveau*”) cases.

Having said this, if we refer again to the recommendations of the Provincial Inter-ministerial Working Group, which became the Provincial Policy on Group Homes, we find that there is no reference to the characteristics of the residents of group homes in its definition. The definition without people’s characteristics seems to provide an adequate idea of what the use is. The phrase describing the residents’ characteristics does not serve any valid legal or zoning purpose, in my opinion.

Regarding the separation distance, the draft harmonized by-law states:

A group home or a residential care home must be a minimum distance of 250 metres from any lot containing an existing group home or residential care home, measured in a straight line from nearest property line to nearest property line.

Although no clear documented evidence has been provided by the City, it is likely that the City chose 250 metres as it was the lowest minimum distance prescribed and thus the least restrictive measure among the six pre-amalgamation municipalities (East York, Etobicoke, North York, Scarborough, Toronto, and York). In a memo to the Planning and Growth Committee on June 4, 2012, the Acting Chief Planner of the City of Toronto justified the 250-metre distance by stating that this distance is consistent with the separation distance introduced by the City-wide Municipal Shelters By-law 138-2003, which was upheld by the Ontario Municipal Board in 2004 (*Toronto (City) Zoning By-law No. 138-2003*) (pp. 9).

This argument can be rebutted on two points. First, while there is merit in the point, shelters are different from group homes. Second, in *Toronto (City) Zoning By-law No. 138-2003, 2004*, the OMB upheld the by-law because there were sound planning reasons for trying to avoid the overconcentration of shelters, particularly family emergency shelters. Overconcentration of shelters could over-burden community services, intensify the use of the area, and possibly change the character of a neighbourhood permanently. No such planning evidence or justification has been put forward by the City with respect to group homes. The 2010 OMB decision *Advocacy Centre for Tenants Ontario v. Kitchener (City) (2010)*<sup>20</sup> (“*ACTO*”) upheld the idea of positive deconcentration as a valid planning tool, but said that such efforts must be balanced with the requirements of the *Ontario Human Rights Code*.

As discussed earlier, separation distances are a legitimate and valid zoning tool to mitigate the impacts, nuisances, and externalities generated by certain types of land use. However, I have not found any documented evidence of any kind of negative externality generated by group homes. For example, since most of the residents of group homes do not drive, they do not contribute to parking and traffic problems. It appears the separation distance was introduced as a compromise

<sup>17</sup> *Haydon Youth Services v. Kearney (Town)* 1997 O.M.B.R. 124.

<sup>18</sup> *Kitchener Official Plan Amendment (No. 58) 2010* O.M.B.D. 666.

<sup>19</sup> *Toronto (City) Zoning By-law No. 138-2003 2004* O.M.B.D. No. 280.

<sup>20</sup> *Advocacy Centre for Tenants Ontario v. Kitchener (City)* (2010) O.M.B.D. Case No. PL050611.

at the time solely to alleviate community fears concerning overconcentration of group homes and over-taxing of social/educational facilities, while allowing these homes to locate in residential areas. Such fears alone, without any evidence of nuisance caused by the use, are, however, not an accepted land use planning rationale that would justify a separation distance.

On the other hand, in the case of residential care home, I would argue for a separation distance as this is an accommodation with more than 10 residents that could increase the intensity of use, negative impact and incompatibility with its surrounding.

The City's amendment to the zoning by-law to create drive-through facilities as a separate use subject to separation distances presents itself as a useful model to rationalize a separate use and the separation distance associated with it. The amendment was based on a thorough study of such facilities and their functions and activities. The staff report to the Council on drive-through facilities (dated August 26, 2002) presented a cogent and convincing planning rationale for making this a separate type of land use. This drive-through study and its outcome should be used as a guide for developing a planning rationale for distinguishing other specific land uses.

**6 a. Consistency of the City's definition of group homes and use of separation distances with the Ontario Human Rights Code and section 15 of the Canadian Charter of Rights and Freedoms.**

The Ontario *Human Rights Code* protects individuals with disabilities or perceived disabilities from discrimination in several social areas, including the provision of services and occupancy of accommodation. Discrimination under the *Code* can be direct (such as a refusal to grant a job because of disability), indirect, or constructive (adverse effect). The *Code* defines constructive discrimination and the defences of *bona fide* occupational requirement or qualification ("BFOR") and undue hardship at section 11:

11. (1) A right of a person under Part I is infringed where a requirement, qualification or factor exists that is not discrimination on a prohibited ground but that results in the exclusion, restriction or preference of a group of persons who are identified by a prohibited ground of discrimination and of whom the person is a member, except where,
  - (a) the requirement, qualification or factor is reasonable and *bona fide* in the circumstances.
  - (b) it is declared in this Act, other than in section 17, that to discriminate because of such ground is not an infringement of a right.
- (2) The Tribunal or a court shall not find that a requirement, qualification or factor is reasonable and *bona fide* in the circumstances unless it is satisfied that the needs of the group of which the person is a member cannot be accommodated without undue hardship on the person responsible for accommodating those needs, considering the cost, outside sources of funding, if any, and health and safety requirements, if any.

Social actors bound by the *Code*, such as the City of Toronto, have a duty to accommodate individuals who are protected under the *Code* on the basis of grounds mentioned in the *Code*, such as disability. The City is required to make every reasonable effort, short of subjecting itself

to undue hardship, to accommodate a protected individual. If that individual can demonstrate that he or she is the subject of discrimination, the burden shifts to the City to establish that the *prima facie* discriminatory standard can be justified.

In analysing these questions, the courts have identified two main issues:

- whether a *prima facie* discriminatory standard is a *bona fide occupational requirement* (a “BFOR”), and
- whether accommodating the individual would impose undue hardship on the impugned party.<sup>21</sup>

The first issue, BFOR, reflects the concern that it would be unreasonable to prohibit employers (or other social actors like the City of Toronto) from imposing reasonable standards with regard to the abilities required of persons employed in particular positions. For example, while a policy requiring that all employees have the ability to see might be *prima facie* discriminatory against the blind, such a policy might be permissible as a BFOR for an airline pilot.<sup>22</sup>

In *British Columbia Public Service Employee Relations Commission v. BCGSEU* (commonly known as *Meiorin*),<sup>23</sup> the Supreme Court of Canada adopted a three-part test to determine whether a particular standard, requirement, factor or rule is a BFOR. Each of the following must be established on a balance of probabilities (that is, “more likely than not”):

- The standard, requirement, factor or rule was adopted for a purpose **rationaly connected** to the function being performed;
- The standard, requirement, factor or rule was adopted in an honest and **good faith** belief that it was necessary to the fulfillment of that purpose or goal; and
- The standard, requirement, factor or rule is **reasonably necessary** to the accomplishment of that purpose or goal. To show that the standard is reasonably necessary, it must be demonstrated that it is impossible to accommodate individuals sharing the characteristics of the claimant without imposing *undue hardship*.<sup>24</sup> Here the employer must thoroughly consider all reasonable options for accommodation.

The *Canadian Charter of Rights and Freedoms* also protects certain rights. Any laws or government programs that are inconsistent with the *Charter* are held to be of no force or effect. The first step of a *Charter* analysis is to determine whether a particular law is a *prima facie* infringement of one of the rights protected by the *Charter*. If so, it remains open to the state actor (in this case, the City) that passed the law to argue that the law is nevertheless justified under section 1 of the *Charter* as being “demonstrably justified in a free and democratic society.”

Section 15 of the *Charter* provides as follows:

*Equality before and under law and equal protection and benefit of law*

<sup>21</sup> Note that much of the case law refers to the obligations of an “employer,” because the cases have arisen in the employment context. The framework discussed here, however, applies equally to group homes.

<sup>22</sup> Canadian Human Rights Commission, “Preventing Discrimination: Bona Fide Occupational Requirement,” online: [http://www.chrc-ccdp.ca/preventing\\_discrimination/default-eng.aspx](http://www.chrc-ccdp.ca/preventing_discrimination/default-eng.aspx).

<sup>23</sup> [1999] 3 SCR 3.

<sup>24</sup> *Ibid* at 54. This test is essentially codified in s. 11(1) of the *Code*, which is reproduced above.

(1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

*Affirmative action programs*

(2) Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

The leading case on section 15 is *Andrews v. Law Society of British Columbia*<sup>25</sup> (“*Andrews*”). In that case, the Supreme Court of Canada articulated an interpretive framework for the application of section 15 in equality rights cases. In general terms, in order to prove discrimination, a claimant must show the following:

- The law imposes (directly or indirectly) on the claimant a disadvantage (in the form of a burden or withheld benefit) in comparison to other comparable persons.
- The disadvantage is based on a ground listed in or analogous to a ground listed in Section 15.
- The disadvantage constitutes an impairment of the human dignity of the claimant.

A claimant who establishes these three matters is entitled to a finding of discrimination—meaning that the challenged law is in breach of section 15. The burden then shifts to the state actor to justify the discriminatory law under section 1 of the *Charter* by following the steps laid out by the Supreme Court of Canada in *R. v. Oakes*<sup>26</sup> (“*Oakes*”), section 1 of the *Charter* provides as follows:

The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

In *Oakes*, the Supreme Court unanimously laid down the following criteria to establish that a limit is reasonable and demonstrably justified in a free and democratic society:

1. Sufficiently important objective: the law must pursue an objective that is sufficiently important to justify limiting a Charter right.
2. Rational connection: the law must be rationally connected to the objective.
3. Least drastic means: the law must impair the right no more than is necessary to accomplish the objective.
4. Proportionate effect: the law must not have a disproportionately severe effect on the persons to whom it applies.

Where these four criteria are met, a discriminatory law will be permitted to remain in force. However, the *Oakes* test is a high standard to meet. Only in a very few cases has a law that has been found to be *prima facie* discriminatory been upheld under section 1 of the *Charter*. Furthermore, all four parts of the *Oakes* test must be met for a piece of legislation to be “saved”

<sup>25</sup> *Andrews v. Law Society of British Columbia* [1989] SCR 143.

<sup>26</sup> *R. v. Oakes* [1986] 1 SCR 103.

—if one of the parts of the test cannot be met, a court will not move on to examine the following steps and the legislation will remain void.

In the context of these provisions of the Ontario *Human Rights Code* and the *Canadian Charter of Rights and Freedoms* and the tests involved in each, I now turn to the definition of group homes in the City-wide Zoning By-law and the associated separation distance and subject them to the two tests (the *Code* and the *Charter*).

#### *The Ontario Human Rights Code test*

*Step 1: Was the standard, requirement, factor or rule adopted for a purpose rationally connected to the function being performed?*

The focus at this step is not on the validity of the particular *standard*, but rather on the validity of its more general *purpose*. On this score, the City has not clearly demonstrated the *purpose* of using either the phrase “by reason of their emotional, mental, social or physical condition or legal status” in its definition nor the *purpose* of the separation distance of 250 metres in its proposed City-wide Zoning By-law. The definition and the separation distance seem to have been simply copied from definitions and measures put forward in the late 1970s and early 1980s.

I have not been provided with any clear evidence to show that these two provisions of group homes have ever been examined and tested in relation to a planning purpose or objective. The City documents prepared in late 1970s and early 1980s suggest that the separation distance was introduced to prevent overconcentration based upon some concerns that there would be negative externalities attached to group homes and their overconcentration (as acknowledged in some provincial documents).

The City, however, could argue that the reference to personal characteristics was merely a convention, a generally accepted practice in planning, to “make the bylaw specific and explicit” and to provide an accurate definition of the land use. It could further argue that a separation distance has been applied to group homes and not to some other uses, in order to create a distinction between group homes and other uses. This distinction is based upon valid land use planning grounds of positive deconcentration, impact, and compatibility. And for this, the City could rely upon the OMB decisions in the *Kitchener*, *Haydon*, and *Deveau* cases cited earlier.

The 2010 OMB decision in the *ACTO* case upheld the idea of positive deconcentration as a valid planning goal, but said that such efforts must be balanced with the requirements of the Ontario *Human Rights Code*. However, the City of Toronto has provided no clear evidence to support this concern or its purpose in achieving deconcentration, especially given the five-fold increase in group homes in the past 25 years or so<sup>27</sup>.

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<sup>27</sup> Today, there are about 500 group homes in the City of Toronto. While a locational study of these facilities is beyond the scope of this work, their street addresses suggest that most are located in the city centre. This pattern could be a product of the restrictive by-laws prevalent in various pre-amalgamation suburban municipalities, as well as the availability of transit, community services, and other facilities in the centre. Real estate prices also played a role in siting group homes at the time.

Therefore the definition of and separation distance applied to group homes in the zoning by-law does not meet the requirement of the first test under the Ontario *Human Rights Code*.

*Step 2: Was the standard, requirement, factor or rule adopted in an honest and good faith belief that it was necessary to the fulfilment of that purpose or goal?*

Once the legitimacy of the impugned standard's more general purpose is established, the impugned party (the City) must demonstrate that it adopted the particular standard with an honest and good faith belief that it was necessary to the accomplishment of its purpose, with no intention of discriminating against the claimant. Here, the analysis shifts from the general purpose of the standard to the particular standard itself.

Even though there are reasonable concerns about the rational purpose behind the parts of definition and separation distance, it appears that the City adopted the current wording of the definition as well as the separation distance in good faith. It is arguably the first municipality in Ontario (if not in Canada) that tried to clarify and implement the concepts of deinstitutionalization and community living while dealing with strong public opposition as well as negative public perception of group homes (such as claims that they reduce nearby property values, affect neighbourhood safety, and cause disruptions).

The City followed the provincial objectives and interest in good faith, even though the provincial policies and acts that governed the City had and still have conflicting language on group homes. Clearly, the wording of the definition and the inclusion of separation distance were not motivated by discrimination. Furthermore, the City was dealing with the group home zoning issue at a time when the Ontario *Human Rights Code* and the *Charter of Rights and Freedoms* were very new and not yet well understood.

Therefore the definition of and separation distance applied to group homes in the zoning by-law does meet the requirement of the second test under the Ontario *Human Rights Code*.

*Step 3: Is the standard, requirement, factor or rule reasonably necessary to the accomplishment of that purpose or goal? Is it possible to accommodate individuals sharing the characteristics of the claimant without imposing undue hardship on the City?*

To meet the third part of the *Meiorin* test, the impugned party (the City) must demonstrate that the impugned standard (the group home by-law) is reasonably necessary to accomplish its purpose, which by this point has been demonstrated to be rationally connected to the fulfillment of that purpose. The impugned party must establish that it cannot accommodate the claimant and others adversely affected by the standard without itself experiencing undue hardship.

Assessing the "reasonableness" of a standard is therefore inextricable from assessing whether undue hardship has been established. Put another way, the undue hardship analysis is part of assessing whether a standard is reasonable, and this test is often where most of the analysis will

occur. It has been held that in this analysis, the procedure to assess accommodation is as important as the substantive content of the accommodation.<sup>28</sup>

I did not find evidence that any other reasonable alternative options were considered by the City in the past, although the City in the proposed by-law has adopted the least restrictive distance of all the six pre-amalgamation municipalities. Minor variances, site-specific zoning, and site plan controls are among several other land use control options available, although these may be more onerous. But I have not come across any evidence that these or any less discriminatory approaches were considered or whether any other real and meaningful efforts were made to accommodate the needs of group homes while deciding upon the separation distance.

I have also not been provided with any evidence to support the conclusion that the removal of the separation distance and the modification to the proposed definition of group homes will cause the City any undue hardship. In the absence of any such evidence, one might ask if the enforcement of the current definition and separation distance is, on the contrary, causing greater hardship for the City (although no evidence to that effect has been provided to me either).

Therefore the definition of and separation distance applied to group homes in the zoning by-law does not meet the requirement of the third test under the Ontario *Human Rights Code*.

To remain within the scope of work, the following section limits itself to the analysis of section 15 of the *Charter* as it applies to the City's by-law. Under section 15, the onus is on the claimant to demonstrate the following test, not a public body such as the City in this case.

#### *The Charter (section 15) test*

*Step 1. Does the law impose, directly or indirectly, a disadvantage (in the form of a burden or withheld benefit) on the claimant in comparison with other comparable persons?*

The role of comparison at the first step is to establish a "distinction". In the recent decision of *Withler v. Canada (Attorney General) 2011*<sup>29</sup> ("Withler"), the Supreme Court held that:

[i]nherent in the word "distinction" is the idea that the claimant is treated differently than others. Comparison is thus engaged, in that the claimant asserts that he or she is denied a benefit that others are granted or carries a burden that others do not, by reason of a personal characteristic that falls within the enumerated or analogous grounds of s. 15(1).

...

In some cases, identifying the distinction will be relatively straightforward, because a law will, on its face, make a distinction on the basis of an enumerated or analogous ground (direct discrimination)... In other cases, establishing the distinction will be more difficult, because what is alleged is indirect discrimination: that although the law purports

<sup>28</sup> *British Columbia (Superintendent of Motor Vehicles) v. British Columbia (Council of Human Rights)*, [1999] 3 S.C.R. 868, at para. 66.

<sup>29</sup> *Withler v. Canada (Attorney General)* [2011] SCC 12

to treat everyone the same, it has a disproportionately negative impact on a group or individual that can be identified by factors relating to enumerated or analogous grounds.<sup>30</sup>

With more recent cases, such as *Withler*, the focus at this stage of the analysis has been on the distinction or disadvantage, rather than on identifying a comparator group. However, the distinction or disadvantage may be illustrated in this case, for example, by the claimant's showing that the law treats the claimant less favourably than it does a member of the comparator group. In this case, persons with disability living in group homes could be compared to individuals who reside in regular family residences.

It is possible for a claimant suffering from a disability to argue that the restrictive provisions in City's zoning by-law allow differential treatment of those who live in shared accommodation (i.e., group homes) because of their mental or physical abilities. The claimant could further argue that by including the characteristics of people housed in group homes, the City is in effect making its intention clear that people with disabilities are subject to additional restrictions and prohibitions, in relation to services and accommodation, restrictions that are not imposed on people who do not have disabilities.

As mentioned before, the City could argue that a separation distance has been applied to group homes to distinguish this land use from other land uses. This distinction is based upon valid land use planning grounds, not upon the personal characteristics of persons who reside in group homes. The reference to personal characteristics was merely a convention, an accepted practice in planning, to provide an accurate definition of the "use." And for this argument, it could rely upon the OMB decisions in the *Kitchener*, *Haydon*, and *Deveau* cases.

In *Haydon*, the OMB ruled:

The permission for "group homes" is in reality an exception that allows an institutional use to locate within a residential dwelling in a residential zone. As an exception, the by-law can be specific and explicit. In addition, it is not discriminatory in the constitutional meaning, but is discriminatory in the sense that a by-law must be in order to organize land use in such a fashion that a municipality can service and be satisfied that no adverse impact will befall the community.

In the absence of clear evidence (or cited evidence) from the City (or a claimant) going to the *Charter* test, as well as the uncertainty created by the jurisprudence, it is a hard to conclude whether the Human Rights Tribunal or a court may find the law impose, directly or indirectly, a disadvantage or burden on the claimant.

*Step 2: Is the disadvantage based on a ground listed in or analogous to a ground listed in section 15 of the Charter?*

Yes, the current definition of group homes describes the people living in group homes by citing their disabilities or status. Disability is a listed ground under section 15.

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<sup>30</sup> *Ibid.*, at paras. 62, 64.

*Step 3: Does the disadvantage constitute an impairment of the human dignity of the claimant?*

The analysis at the final stage of the test has shifted away from the “impairment of human dignity” requirement in *Andrews*, and now focuses on the less abstract concept of discrimination. In *Withler*, the Supreme Court restated the question at this stage as “whether, having regard to all relevant factors, the distinction the law makes between the claimant group and others discriminates by perpetuating disadvantage or prejudice to the claimant group, or by stereotyping it.”<sup>31</sup>

“Discrimination” was defined by the Supreme Court in *Andrews* as follows:

... discrimination may be described as a distinction, whether intentional or not but based on grounds relating to personal characteristics of the individual or group, which has the effect of imposing burdens, obligations, or disadvantages on such individual or group not imposed upon others, or which withholds or limits access to opportunities, benefits, and advantages available to other members of society. Distinctions based on personal characteristics attributed to an individual solely on the basis of association with a group will rarely escape the charge of discrimination, while those based on an individual’s merits and capacities will rarely be so classed.<sup>32</sup>

The analysis at this step involves looking at the circumstances of members of the group and the negative impact of the law on them. The inquiry is contextual and requires an examination of the actual situation of the group and the potential of the impugned law to worsen their situation. *Withler* suggests two manners in which substantive inequality may be established:

- (i) by showing that the impugned law, in purpose or effect, perpetuates prejudice and disadvantage to members of a group on the basis of personal characteristics within s. 15(1). Perpetuation of disadvantage typically occurs when the law treats a historically disadvantaged group in a way that exacerbates the situation of the group. Here, relevant evidence is that which goes to establishing a claimant’s historical position of disadvantage or to demonstrating existing prejudice against the claimant group, as well as the nature of the interest that is affected; or
- (ii) by showing that the disadvantage imposed by the law is based on a stereotype that does not correspond to the actual circumstances and characteristics of the claimant or claimant group. Typically, such stereotyping results in perpetuation of prejudice and disadvantage.<sup>33</sup>

*Withler* requires that the focus of the analysis be on the actual impact of the impugned law, taking full account of social, political, economic, and historic factors concerning the claimant group. The result may reveal differential treatment as discriminatory because of prejudicial impact or negative stereotyping. However, the inquiry may also show that differential treatment

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<sup>31</sup> *Ibid.*

<sup>32</sup> *Andrews*, *supra* note 1 at 174-175.

<sup>33</sup> *Withler*, *supra* note 3 at paras. 35 – 38.

is required in order to improve the situation of the claimant group, in which case discrimination and a violation of section 15, would not be established.<sup>34</sup>

The claimant could argue that provisions in the City's by-law are prejudicial towards them by restricting the supply of housing for people with disabilities, diminishing the well-being of people with disabilities, perpetuating negative attitudes towards people with disabilities, and increasing social costs for people with disabilities, as argued by The Dream Team in *The Dream Team v. The City of Toronto* 2012 at the Human Rights Tribunal of Ontario.

It is also important to cite a ruling from the Manitoba Court of Appeal, which said that a zoning by-law breached section 15 of the *Canadian Charter of Rights and Freedoms* because it restricted the location of group homes for older persons, people with disabilities, persons recovering from addictions, and discharged penal inmates to a limited number of zones and required minimum separation distances (*Alcoholism Foundation of Manitoba v. Winnipeg (City)*).<sup>35</sup> The City of Winnipeg did not offer any evidence to evaluate whether the infringement could be justified under section 1 of the *Charter*. If there had been sufficient evidence to meet the applicable test under section 1, in other words, the 4-part *Oakes* test, the violation of Section 15 could have been upheld.

### Summary

While the provisions for group homes in the City of Toronto's zoning by-law may (or may not) be rational and created in good faith, in the absence of evidence that a different approach would be an undue hardship on the City and its residents, it is difficult to regard it as meeting the Ontario *Human Rights Code* test.

Under the *Charter*, section 15, it is possible that a claimant could convincingly argue that the City's by-law provisions on group homes treat them differently, single them out, and discriminate against them by perpetuating disadvantage or by being prejudicial to them. If a claimant established these three findings at the Human Rights Tribunal or a court, the challenged zoning by-law on group homes might be considered in breach of section 15 of the *Canadian Charter of Human Rights and Freedoms*.

I have also not been presented with a section 1 "case" by the City. So, the section 1 test of the *Charter* analysis remains an open question. In the absence of evidence from the City or a claimant, compounded by the uncertainty created by the jurisprudence, I would suggest that the City err on the side of caution and modify the definition of group homes and remove the separation distance.

### 6 b. Questions required by human rights analysis

*Question 1: Are there reasonable alternative ways to define the "group home" use other than the definition in the November 8, 2012, draft of the City-wide Zoning By-law for the City of Toronto*

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<sup>34</sup> *Ibid.*, at para. 39.

<sup>35</sup> [1990] M.J. No. 212.

*and its reference to the terms "by reason of their emotional, mental, social or physical condition or legal status"?*

The suggested alternative definitions of group home and residential care home are:

Group home means premises used to provide supervised living accommodation as per the requirements of its residents, licensed or funded under the Province of Ontario or Government of Canada legislation, for a maximum of ten persons, exclusive of staff, living together in a single housekeeping unit.

**Residential Care Home:**

Means supervised living accommodation that may include associated support services, and is:

- a) Licensed or funded under Province of Ontario or Government of Canada legislation;
- b) Meant for semi-independent or group living arrangements; and
- c) For more than ten persons, exclusive of staff.

*Question 2: Does a separation distance between group homes in the City of Toronto draft by-law accomplish the land use planning purpose/objective for which it was designed?*

No. The provision relating to separation distance should therefore be removed.

*Question 3: Are there reasonable alternative ways to achieve the land use planning purpose/objective other than through the separation distance provisions? If so, what are they?*

Yes, within the current regime of the zoning by-law, there are other alternative ways to regulate group homes, for instance, through site-specific zoning, site plan control or minor variance. But they may be more onerous on the residents of group homes. The bigger question is: why are group homes being subjected to such special, potentially excessive measures? Other than to combat negative public perception, there is no planning rationale for subjecting this use to extra restrictive zoning measures.

In any event, site-specific zoning tends to result in the objection by immediate neighbours who may agree that group homes should exist, but do not want them next door. This process would be more burdensome than the current by-laws which permit such uses as of right in residential areas.

Site plan control is usually applied to large-scale developments. It allows the City to regulate over and above the provisions in applicable zoning by-laws and consider the design and technical aspects of the proposed development to ensure it is attractive and compatible with the surrounding area.

Minor variance is one mechanism currently available to allow a property owner to seek a variance—that is, ask for relief from the provisions of the by-law. In the City, these requests are heard by a locally appointed body called a Committee of Adjustment (CoA). Such appeals are meant only for “minor” variances to the by-law and not something major such as changes to the use of land, which require an amendment to the by-law by City Council. The CoA holds public

hearing on the application which allows input from the members of the immediate community for or against the variance sought. However, this process can be divisive.

Given the prevailing trends in planning thought, the City should devote more attention to allowing or even requiring appropriate mixes of uses and less to separating them. The Province's *Places to Grow Act 2005* encourages this approach.

Part of the group home zoning problem may be attributed to the static nature of zoning by-laws. Cities change over time and so do building types, development technologies, and the characters of neighbourhoods. City governments often play catch-up in trying to ensure that their zoning reflect these changes.

Performance zoning is another way to address the issue of the static nature of zoning. The logic of performance zoning goes like this – “Many zoning provisions are really trying to avoid a bad impact on neighbours by creating distance between them or setting a numerical limit on some dimension of development. Why don't we just prohibit the bad impact and let the developer figure out how to do it?” Elliott (2008, pp. 23-24). Performance zoning advocates for quantifying the levels of noise, smoke, emissions, density, traffic and other bad impacts that are tolerable at the property lines. This approach makes a lot more sense for commercial and industrial land uses where the amount of impacts can be “measured”. This level of flexibility makes it a useful tool, but also makes it difficult to administer. Currently, no large city has a zoning code based completely on performance zoning. Chicago has used a hybrid approach for its manufacturing districts, using performance standards in addition. Variations of this approach have also been tried in the Town of Morinville, Alberta and in the “Kings” in Toronto.

Perhaps a better approach to zoning is to include “dynamic” standards that change over time in predictable ways. One way of doing this is through “contextual” zoning provisions in certain situations, as Elliott (2008) suggests. For instance, instead of prescribing an exact distance for a setback, the required setback could be linked to the predominant front setback of existing buildings in the vicinity or to the setback used by either of the closest houses on either side. Interestingly enough, this approach is often used by property owners asking for a minor variance before the Committee of Adjustment.

Another example Elliott (2008, p. 176) proposes comes from land use separation distance provisions in zoning by-laws. Cities justifiably require that some land uses be separated from others of the same type (e.g. adult uses from one another) or from uses of other types that are perceived as sensitive (e.g. jails from schools). But the effect of these regulations can change over time. For example, if a new school is built, it may carry with it a “bubble” within which adult uses or jails cannot be built. Or, if a school closes down, that may open up new possible activities on land that would previously have been too close to the school. The point is that zoning could be made more common-sensical, with some added flexibility so that it is easier to keep pace with development trends and changing societal values, as also reflected in court decisions.

### **Final Considerations**

Looking beyond group homes, the City of Toronto should subject the entire City-wide Zoning By-law to a review under the *Human Rights Code* and *Disabilities Act*, and the *Canadian Charter of Rights and Freedoms* before adopting it. It should also invest in developing a Citizen's Guide to the City's zoning by-law, which could include, among other things, clarifications about and considerations respecting sensitive or incompatible uses and a brief rationale behind separation distances, if they are retained.

Another important and a key player here is the Province. Provincial interest in group homes and the Province's stand on separation distance for group homes should be consistent throughout all its planning and planning-related legislation and policy documents. To achieve this consistency, first, the Province should remove the expression "by reason of their emotional, mental, social or physical condition or legal status" from the definition of group homes in the two key pieces of provincial legislation that guide municipal governance—the *Municipal Act* and the *City of Toronto Act*.

Second, the Provincial Policy Statement regarding planning should include references to the *Human Rights Code* as well as the *Accessibility for Ontarians with Disabilities Act*.<sup>36</sup> These actions will help avoid any confusion in the future and bring further clarity to Province's respect and commitment to its *Human Rights Code* and *Disabilities Act* in planning matters.

A further way to mitigate future human rights issues concerning zoning is by initiating an educational program for municipal land use planners across Ontario to help them understand the provisions of the Ontario *Human Rights Code*, the *Accessibility for Ontarians with Disabilities Act*, and the *Canadian Charter of Rights and Freedoms* and their implications for planning policies and practice at the municipal level.

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<sup>36</sup> The *Accessibility for Ontarians with Disabilities Act* enacted in 2005 sets out accessibility standards to improve the identification, removal, and prevention of barriers faced by persons with disabilities. Therefore, it applies to group homes as well.

## Appendix 1: Definitions in the pre-amalgamation municipalities

32

### City of Toronto (Zoning By-Law No. 438-86)

#### Definitions

##### *"residential care facility"*

means a residence for the accommodation of six to ten persons, exclusive of staff, who by reason of their emotional, mental, social or physical condition or legal status require a group living arrangement for their well-being where:

- (i) the facility is supervised, or the members of the group are entered, by a hospital, court or government agency; or
- (ii) the facility is funded wholly or in part by a government, other than funding provided solely for capital purposes; or
- (iii) the facility is regulated or supervised under a general or special Act;

but does not include a use otherwise classified or defined in this by-law; (113-78)

#### Provisions

5. A residential care facility is a permitted use provided: (125-93)

(i) it occupies the whole of a fully detached building; and

(ii) it is at least 245 metres from another residential care facility or a crisis care facility. (159-89)

## **Borough of East York (Township) (Zoning By-Law No. 6752)**

### **Definitions**

#### **GROUP HOME:**

Means the use of a dwelling unit for a residential care facility accommodating persons who by reason of their emotional, mental, social or physical condition, or legal status require specialized residential care in a group living arrangement in a residential neighbourhood. (67-85)

### **Provisions**

#### **Group Homes:**

A Group Home is a permitted use in a one family detached dwelling in all residential R Zones, provided the Group Home:

- a) accommodates three to ten persons (exclusive of staff);
- b) accommodates only persons referred to it by a hospital, court, government agency or recognized social service agency or health professional;
- c) provides a minimum gross floor area of 20 square metres for each resident, exclusive of staff;
- d) complies fully with the restrictions, requirements and regulations for residential uses and structures within the relevant zoning category;
- e) provides and maintains at least one (1) off-street parking space on site;
- f) is located a minimum of 457 metres distant from any other Group Home, and any other residential care facility set out in Schedule "A" annexed hereto; such distance to be measured in a straight line from nearest property line to nearest property line;
- g) complies fully with all relevant by-laws of The Corporation of the Borough of East York;
- h) is registered annually with The Corporation of the Borough of East York;
- i) is funded wholly or in part by any government, other than funding provided for capital purposes or such facility is licensed or approved under Provincial statute.

(67-86)

### Schedule "B" – Existing Group Home By-law Provisions

#### Borough of East York (Leaside) (Zoning By-Law No. 1916)

##### Definitions

##### GROUP HOME:

"Group Home" shall mean the use of a dwelling unit for a residential care facility accommodating persons who by reason of their emotional, mental, social or physical condition or legal status require specialized residential care in a group living arrangement in a residential neighbourhood. (66-86)

##### Provisions

##### Group Homes:

1. A Group Home is a permitted use in a detached one family dwelling in all residential R zones, provided the Group Home:
  - a) accommodates three to ten persons exclusive of staff;
  - b) accommodates only persons referred to it by a hospital, court, government agency or recognized social services agency or health professional;
  - c) provides a minimum gross floor area of 23 square metres for each resident, exclusive of staff;
  - d) complies fully with the restrictions, requirements and regulations for residential uses and structures within the relevant zoning category;
  - e) provides and maintains at least one (1) off-street parking space on site;
  - f) is located a minimum of 457 metres distance from any other Group Home, such distance to be measured as a straight line from nearest property line to nearest property line;
  - g) complies fully with all relevant by-laws of The Corporation of the Borough of East York;
  - h) is registered annually with The Corporation of the Borough of East York;
  - i) is funded wholly or in part by any government, other than funding provided for capital purposes or such facility is licensed or approved under Provincial statute.

(66-86)

## Ethiocoche (Zoning Code Chapters 304-3 and 304-24.1B)

### Definitions

#### GROUP HOME:

A single supervised housekeeping unit in a dwelling used to accommodate three to 10 persons, exclusive of staff, who require a group living arrangement for their well-being due to their emotional, mental, social or physical condition or status and are referred by a hospital, court or government agency or recognized social services agency or health professional. The operation of such facility shall be at least partly publicly funded or licensed or approved in accordance with provincial statute.

### Provisions

#### Supplementary regulations for group homes.

[Amended 1986-01-13 by By-Law No. 1586-13]

No building or structure or land shall be used and no building or structure shall hereafter be erected, structurally altered, enlarged or maintained for the purpose of a group home, except in accordance with the following regulations, notwithstanding any other provision in this chapter to the contrary:

- A. Dwelling type. A group home may locate in any fully detached residential dwelling, duplex and triplex dwellings and in any two semi-detached dwellings which are joined to one another, provided that the building is occupied wholly by that use.
- B. Distance between group homes. There shall be a minimum radius of 800 metres measured from property line to property line between any two group homes, as defined in § 300-5B herein, and any form of residential care facility.
- C. Registration. No owner or operator of a group home shall commence operation without having registered the proposed group home with the City of Ethiocoche.
- D. Parking. Notwithstanding the provisions of § 320-18B, at least two on-site automobile parking spaces shall be provided. These spaces may be tandem and one may be in a garage.
- E. Minimum floor space. A minimum floor space of 25 square metres (exclusive of the basement area) shall be provided for each resident, exclusive of staff.
- F. Minimum lot area. There shall be a minimum lot area of 460 square metres for any group home.
- G. Minimum rear yard. There shall be a minimum rear yard area of 16 square metres for each group home resident, but not less than 116 square metres in total.
- H. General zoning requirement. The building shall comply with the requirements for residential development within the zoning category in which the group home is located.
- I. General health requirement. A group home shall be constructed and used so that it complies with the laws affecting the health and the inhabitants and any rule, regulation, direction or

order of the Local Board of Health and/or any direction or order of the Local Medical Officer of Health.

- J. All licensed group homes in existence prior to passage of this section shall continue to be deemed permitted uses.
- K. Conversional group homes shall only be located on a public road designated as an arterial road by the Municipality of Metropolitan Toronto.

## North York (Zoning By-Law No. 7625)

### Definitions

**Group Home:** means a building in which not less than three, nor more than ten unrelated persons requiring residential sheltered, specialized or group care reside, and which is licensed, approved or supervised by the Province of Ontario under any general or special Act. Without limiting the generality of the foregoing, Group Home includes a home for elderly persons, a home for mentally retarded or physically disabled persons, and a home for persons who are convalescing after hospital treatment and are under medical supervision, but does not include the following:

- (a) a group foster home;
  - (b) an institution maintained and operated primarily for persons:
    - (i) who have been placed on probation under the Probation Act, the Criminal Code (Canada) or The Juvenile Delinquents Act (Canada), or
    - (ii) who have been released on parole under the Ministry of Correctional Services Act or the Parole Act (Canada), or
    - (iii) who are admitted to the institution for correctional purposes;
  - (c) an institution for the temporary care of transient or homeless persons;
  - (d) an institution maintained and operated primarily for the treatment and rehabilitation of persons who are addicted to substances other than alcohol;
- (27223-78)

### Provisions

#### Group Homes

Group Homes are permitted in all One-Family Detached Dwelling Zones in accordance with the following provisions:

- (i) that the number of persons residing in a Group Home shall not exceed ten;
- (ii) that the building complies with the requirements for One-Family Detached Dwellings in the zone, and the district in which the Group Home is located;
- (iii) that not more than two persons occupy one bedroom;
- (iv) that there is no other group home in the same Neighbourhood;

- (v) no Group Home shall be located within 100m of any other Group Home.  
(27333-78)

## Scarborough (Various Community By-Laws)

### Definitions

#### Group Home:

shall mean a supervised single housekeeping unit in a dwelling for the accommodation of 3 to 10 persons, exclusive of staff, who by reason of their emotional, mental, social or physical condition, or legal status, require a group living arrangement for their well-being, and where:

- The members of the group are referred by a hospital, court or government agency, or recognized social services agency or health professional; and
- Such facility is funded wholly or in part by any government, other than funding provided for capital purposes only, or such a facility is licensed or approved under Provincial statute.

### Provisions

**Group Homes, correctional group homes and residential care facilities are not permitted in conjunction with any other Uses Permitted, including Ancillary Uses Permitted.**

**No group home or correctional group home shall be located within 300 m of any other group home or correctional group home, or residential care facility, the distance to be measured as a radius from the perimeter of the lot on which a group home, correctional group home or residential care facility is located.**

### City of York (Zoning By-Law No. 1-83)

#### Definitions

"**GROUP HOME**" means a supervised single housekeeping unit in a residential dwelling for the accommodation of three (3) to ten (10) persons, exclusive of staff, who by reason of their emotional, social or physical condition or legal status, require a group living arrangement for their well being, and

(a) the members of the group are referred by a hospital, court or government agency or recognized social services agency or health professional; and

(b) such facility is funded wholly or in part by any government, other than funding provided solely for capital purposes, or such facility is licensed or approved under Provincial statute.

(733-86)

#### Provisions

##### GROUP HOMES AND CORRECTIONAL GROUP HOMES:

The following regulations shall apply to group homes and correctional group homes:

(a) a group home or correctional group home shall occupy the whole of a detached house, a pair of semidetached houses or a duplex house;

(b) a group home or correctional group home shall be located at least 800.3 metres (measured property line to property line) from any other group home or correctional group home;

(c) a correctional group home shall be restricted to properties fronting an arterial road;

(d) a group home must be registered as a "Group Home" with the City of York pursuant to a By-law passed under Section 238 of the Municipal Act, R.S.O. 1980; and

(e) all group homes in existence prior to the passage of By-law 733-86 shall continue to be deemed permitted uses.

(733-86)

Table 2: Minimum separation distances for group homes in Ontario municipalities (as of April 2007)<sup>37</sup>

City	Separation distance	Metres specified
Barrie	Yes	Not specified
Belleville	Yes	250 m
Brampton	Yes	120 m (currently in force)
Brantford	Yes	180 m (currently in force)
Brockville	Yes	215 m (currently in force)
Burlington	Yes	400 m (currently in force)
Cambridge	Yes	200 m (currently in force)
Clarence-Rockland	No separation distance provisions for Group Home	
Cornwall	No separation distance provisions for Group Home	
Dryden	Yes	200 m (currently in force)
Elliot Lake	No zoning by-law concerning Group Home	
Guelph	Yes	100 m (currently in force)
Hamilton	Yes	300 m (currently in force)
Kawartha Lakes	Yes	300 m (currently in force)
Kenora	Yes	300 m (Where municipal sewer and water services are available)/500 m (Where municipal sewer and water services are not available) currently in force
Kingston	Yes	250 m
Kitchener	Yes	400m (removed in 2012)
London	Yes	Not specified
Mississauga	Yes	800 m (currently in force)
Niagara Falls	Yes	350 m
North Bay	Yes	200 m (currently in force)
Orillia	No zoning by-law concerning Group Home	
Oshawa	Yes	500 m (currently in force)
Owen Sound	Yes	Not specified
Pembroke	Yes	365 m (currently in force)
Peterborough	Yes	300 m (currently in force)
Pickering	No zoning bylaw concerning Group Home	
Port Colborne	Yes	300 m (inside urban boundary)/1000m (outside of urban boundary) currently in force
Quinte West	Yes	800 m/2000m (varies by wards)
Sarnia	Yes	200m (removed in 2012)

<sup>37</sup> Finkler and Grant. 2011. Pp 39. I have added pre-amalgamation municipalities to the list. I have updated some where information was available.

Sault St. Marie	No separation distance provisions for Group Home	
St. Catharines	Yes	300 m
St. Thomas	Yes	75 m
Startford	Yes	250 m
Sudbury	No separation distance provisions for Group Home	
Thunder Bay	Yes	240 m
Temiskaming Shores	Yes	200 m
Thorold	Yes	458 m (currently in force)
Timmins	Yes	300 m (currently in force)
Toronto	Yes	245 m (currently in force)
East York	Yes	457 m (currently in force)
York	Yes	800 m (currently in force)
Etobicoke	Yes	800 m (currently in force)
North York	Yes	300 m (currently in force)
Scarborough	Yes	300 m (currently in force)
Vaughan	Yes	300 m (currently in force)
Welland	No separation distance provisions for Group Home	
Windsor	No separation distance provisions for Group Home	
Woodstock	No separation distance provisions for Group Home	

## **Harmonized Zoning By-law (City of Toronto)**

### **Definitions**

#### **Group Home:**

means premises used to provide supervised living accommodation, licensed or funded under Province of Ontario or Government of Canada legislation, for three to ten persons, exclusive of staff, living together in a single housekeeping unit because they require a group living arrangement by reason of their emotional, mental, social or physical condition or legal status.

#### **Residential Care Home:**

means supervised living accommodation that may include associated support services, and is:

- (A) licensed or funded under Province of Ontario or Government of Canada legislation;
- (B) for persons requiring semi-independent or group living arrangements by reason of their emotional, mental, social or physical condition or legal status; and
- (C) for more than ten persons, exclusive of staff.

An apartment building used for the purpose of supportive housing or social housing is not a Residential Care Home.

### **Provisions**

#### **General**

##### **(1) Application of Regulations to Group Homes and Residential Care Homes**

The regulations in this section apply to every group home or residential care home and premises containing a group home or residential care home that are required to comply with the regulations contained in this Section 150.15.

##### **(2) Application of Regulations to Foster Group Homes**

Despite 150.15.1 (1), the regulations contained in this Section 150.15 do not apply to a dwelling unit where one or two adult persons live and provide care on a continuous basis for fewer than five children not of common parentage.

#### **Use Regulations**

##### **(1) Group Home or Residential Care Home - Use Restriction**

1

A group home or a residential care home must occupy the whole of a building and not be combined with any other use.

(2) Group Home - Type of Building in a Residential Zone Category

In a Residential Zone category, a group home must be located in:

(A) a building originally constructed as a detached house; and

(B) in an R zone, a building originally constructed as a semi-detached house if it occupies the whole of the building.

Lot Regulations

(1) Group Home or Residential Care Home - Separation Distance

A group home or a residential care home must be a minimum distance of 250 metres from any lot containing an existing group home or residential care home, measured in a straight line from nearest property line to nearest property line.

Parking

(1) Group Home - Parking Space Requirements

A group home must have a minimum of two parking spaces of which:

(A) a minimum of one parking space must be located according to the requirements for the zone and building type; and

(B) a maximum of one parking space may be located on the driveway in tandem with a parking space required in (A).

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- 2 City's Response to Application (August 17, 2010)
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- 5 HRTO Decision on Jurisdiction and Request to Amend (January 5, 2012)
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- 7 Divisional Court Decision on Jurisdiction (August 10, 2012)
- 8 City's Response to the Application (September 17, 2012)

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- 1 Former City of Toronto Zoning By-law #438-86
- 2 Former East York By-law #1916 (Leaside) and By-law 6752
- 3 Former North York By-law #7625
- 4 Former City of York By-law #1-83
- 5 Former Etobicoke Zoning Code Chapter 304-3 and 304-24.1B
- 6 Scarborough Community By-laws (Various)
- 7 City of Toronto -- Draft Harmonized Zoning By-law

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- 3 Letter from Chief Commissioner to Toronto Zoning By-law Project, "Members of Council" "Re: Final Report and Statutory Public Meeting on the Draft Zoning By-law (PG 10063)" (August 18, 2010)

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- 2 Ontario Association for the Mentally Retarded – Zoning Law for Group Homes and Community Residences (April, 1984)
- 3 Ontario Human Rights Commission – "In the Zone: Housing, Human Rights and Municipal Planning" (2012)
- 4 Ontario Human Rights Commission – "Minds That Matter: Report on the Consultation on Human Rights, Mental Health and Addictions" (2012)
- 5 Leisk, Signe – "Zoning by-laws: Human Rights and *Charter* Considerations Respecting the Regulation of the Use of Land" (Municipal Lawyer, Vol. 52, No. 1) (January / February 2012)

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*Ontario Secretariat for Social Development*

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- 2 Ontario Group Homes – Resource Manual (June 30, 1983)
- 3 Group Home Primer for the City of Toronto – Responses to Frequently Asked Questions of Community Concern (January 1984)

*Metropolitan Toronto*

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- 5 Report No. 12 of the Social Services and Housing Committee – Metropolitan Toronto Group Homes Policy (September 21, 1979)
- 6 Report No. 8 of the Planning Committee – Borough of York Restricted Area By-laws 3514-80 and 3515-80 (May 7, 1980)
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- 9 Report No. 4 of the Economic Development and Planning Committee – Implementation of Group Homes Policy (April 24, 1985)
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*City of Etobicoke*

- 14 Development Committee Report re Group Homes and Lakeshore By-laws (September 11, 1985)
- 15 Report to Council re Group Homes and Lakeshore By-laws (September 23, 1985)
- 16 City of Etobicoke Council Minutes (May 31, 1985)
- 17 City of Etobicoke – Council Orders of the Day (May 31, 1985)

*City of Toronto*

- 18 Buildings and Development Report No. 5 – Operation of Therapeutic Homes: Don Vale Area (February 22, 1974)
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- 20 Buildings and Development Report No. 5, Clause 16 – Group Homes in Residential Districts (April 18, 1976)
- 21 Buildings and Development Report No. 6 – Group Homes in Residential Districts (April 12, 1977)
- 22 By-law No. 219-77 to Amend By-law No. 20623 re Therapeutic Group Homes (April 12, 1977)
- 23 Excerpt from Report of the Working Committee on Group Homes re Therapeutic Group Homes By-law No. 219-77 (November 1977)
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- 31 Neighbourhoods Committee Report No. 10 – Resolution – Amendment to Metropolitan Toronto Official Plan (1988)
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*City of Scarborough*

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*Borough of York*

- 36 Planning Board Minutes (February 8, 1979)
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- 38 Report No. 3 of the Legislation and Property Committee (January 24, 1980)

*City of North York*

- 39 Report of Commission of Planning and Development re Group Homes to Planning Board (May 23, 1978)
- 40 Extract from the Minutes of Planning Board re Group Homes and Amendment to Zoning By-law No. 7625 (May 24, 1978)
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- 42 Minutes of Council re Group Homes (October 16, 1978)
- 43 OMB Decision re By-law No. 27223, as amended (11 O.M.B.R. 56) (May 2, 1980)
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- 2 Provincial Policy Statement, 2005
- 3 City of Toronto Official Plan (December 2010)
- 4 Ontario *Human Rights Code*, R.S.O. 1990, c. H.19
- 5 *Canadian Charter of Rights and Freedoms*
- 6 *City of Toronto Act*, 2006, S.O. 2006, c.11, Sched A
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## **Confidential Attachment 2**