



Ursel
Phillips
Fellows
Hopkinson LLP

CD31.7.103

JUSTICE AT WORK

Andrea Wobick
Direct Dial: 416-969-3517
E-mail: awobick@upfhlaw.ca

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City Councillors
Toronto City Hall
100 Queen Street West
Toronto, ON M5H 2N2

Attention: URGENT

Dear Councillors of the City of Toronto,

Re: **Cornerstone Place Shelter - 616 Vaughan Road**

We have been retained by Cornerstone Baptist Tabernacle of Ontario ("Cornerstone") in regards to the relocation of Cornerstone Place Shelter ("Shelter").

As you are aware, Cornerstone Place Shelter is a 50-bed emergency shelter for single men run by the Cornerstone Baptist Church.

For the last 14 years, the Shelter has provided a safe space to sleep for thousands of members of Toronto's most vulnerable communities. The men who reside at the Shelter rely on it for clean, safe, and dignified housing.

As set out below, should Council fail to approve the Shelter's relocation, this failure may be considered both discriminatory and a violation of the Shelter's clients' rights to life, liberty, and security of person and equality under ss. 7 and 15 of the *Charter of Rights and Freedoms*, Part I of the *Constitution Act*, 1982, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11 ("Charter").

Should Council continue to delay or refuse the approval of the Shelter's relocation, Cornerstone is prepared to consider the full ambit of legal options at its disposal.

Background Facts

(i) Fourteen Years of Serving Vulnerable Communities

The City of Toronto is the Consolidated Municipal Service Manager for housing and homelessness programs under the *Housing Services Act, 2011*,¹ which governs the administration of social housing in Ontario.²

As Service Manager, the City is responsible for planning, administering, and delivering affordable housing programs and service initiatives that help individuals at risk of experiencing homelessness.³

The Shelter has operated since 2000 with the approval and assistance of the City.

From September 2000 to July 31, 2014, the Shelter was run out of the second floor of 833 St. Clair Avenue West, which is located in Ward 21. The Shelter offers emergency shelter beds to single men who are homeless. Many of the individuals who access the Shelter's services are elderly and / or disabled. At least 20% of users of the Shelter's services have some paid employment, but struggle to make ends meet.⁴

The City has acknowledged that emergency shelter services "must play an important role in any overall housing and homelessness services system" and that they are the only service available "at times of crisis."⁵ In addition, because of the limited availability of affordable housing and reductions of social services in recent years, emergency shelters have expanded to provide transitional and even *de facto* permanent housing when there are not better options available to meet clients' needs.⁶

As an emergency shelter and a *de facto* permanent home, the Shelter has a fourteen-year track-record of management and operational success. There has never been an arrest or public disturbance reported at Cornerstone Place. It is one of the few shelters in the city that provides support programming for single men, including skills and job training and recreational activities. It also provides access to nurses, doctors, and other

¹ *Housing Services Act, 2011*, SO 2011, c 6.

² *Ibid.*

³ Shelter, Support and Housing Administration, *Housing Stability Service Planning Framework*, p. 36.

⁴ General Manager, Shelter, Support and Housing Administration, *Update on the Relocation of Cornerstone Place* (July 30, 2013) at p 3.

⁵ *Supra* note 3 at p. 37.

⁶ *Supra* note 3 at p. 37.

healthcare professionals. The Shelter has played a pivotal role in reuniting some men with their families.⁷

As noted in the General Manager of Shelter, Support and Housing Administration ("SSHA")'s Report, dated July 30, 2014, the Shelter is an important part of the men's shelter system in the City of Toronto.⁸ This is demonstrated by the fact that the City of Toronto requested that the Shelter expand from a 30-bed shelter to a 50-bed shelter in September 2000.

The Shelter is staffed by 17 employees, 5 of whom are full-time.

(i) Move to 616 Vaughan Road

Following the sale of the former shelter site at 833 St Clair Ave. W., Cornerstone retained a real estate agent to assist in securing a new space for the Shelter to lease in the vicinity of the former site. This process was unsuccessful as many landlords were unwilling to lease their space for the purposes of a homeless shelter.

In December 2013, Cornerstone's Board of Directors decided the best course of action was to purchase a building to be retrofitted to the needs of a shelter. It then commenced a search for a new property with the assistance of a real estate agent and the SSHA. In the meantime, the Shelter continued to operate at the former site, which was leased back to Cornerstone from the new owners.

In May 2014, the Shelter learned that it would need to vacate the premises of 833 St. Clair Ave. W. no later than July 31, 2014.

Cornerstone continued its search for a new location with SSHA. Since late May 2014, it has been working with SSHA to develop a transition plan to ensure service continuity for the Shelter's residents. After reviewing multiple options, Cornerstone determined that 616 Vaughan Rd., which is located in Ward 15, would be the most suitable location for the shelter.

The primary reasons for choosing 616 Vaughan are that it was already zoned for a municipal shelter and it was in the general vicinity of the Shelter's previous location (approximately 1.7 kms away). This would allow some continuity in the services offered to the Shelter's clientele. Cornerstone also considered the location desirable because it had more space than the previous location, allowing for safer and more private rooms

⁷ Pastor Reid's submissions to the Community Development and Recreation Committee, August 14, 2014.

⁸ *Supra* note 4 at p 3.

for its clientele. Additionally, because of the new building's condition and prior uses, low renovation costs were necessary to convert the space to a shelter.

On June 3, 2014, Cornerstone made an offer to purchase the building at 616 Vaughan Rd. This offer was supposed to close August 29, 2014, but has been extended to September 3, 2014. It will not be extended any further.

Pursuant to s. 2(iv) of the *Municipal Shelter By-law* 138-2003, Cornerstone sought Council's approval of its request to relocate the Shelter to 616 Vaughn St.

Council's Process for Approval

Given the immediate threat to its clients' security and well-being, the Shelter made every effort to have this matter addressed by Council as soon as possible.

On June 20, 2014, the General Manager of SSHA prepared and issued a report on the Shelter for the Community Development and Recreation Committee ("CDRC"). The report recommended City Council approve the permanent relocation of Cornerstone Place Shelter to 616 Vaughan Road, subject to:

- a) Cornerstone Place providing a business case that demonstrates the viability of the shelter's operations at the new location, to the satisfaction of the General Manager of SSHA; and
- b) conducting a community meeting.

In accordance with (a), Cornerstone has completed its business plan and submitted it to the General Manager of SSHA.

On June 25, 2014, the General Manager's recommendation was considered and adopted by the CDRC.

On July 8,9,10 and 11 2014, the matter was brought before City Council. While Council could have approved the relocation at this meeting, it instead voted to refer the report back to staff and requested that the General Manager of SSHA engage in community outreach and consultation and report back to the CDRC on August 14, 2014.

Accordingly, community outreach was undertaken. An open community meeting was held on July 28, 2014 to discuss the planned shelter location, answer residents' questions, and listen to their concerns. Approximately 335 individuals attended and approximately 40 people took the opportunity to ask questions or comment. The meeting ran for approximately four hours. In addition to this process, SSHA engaged

with several community stakeholders through one-on-one interviews, site visits, and other means.⁹

On August 14, 2014, the matter came before the CDRC a second time. During this meeting, forty-one individuals spoke to the issue, including staff and clients of the Shelter, and residents that were both for and against the Shelter's relocation.

At the conclusion of the August 14, 2014 meeting, CDRC recommended that City Council approve the permanent relocation of the Shelter at 616 Vaughn Road, with certain conditions.

Actual Approval Process Requirements

The Municipal Shelter By-Law No. 138-2003 does not contain any specific requirements for community consultation. It only requires:

- a) any new buildings or additions comply with all other applicable zoning provisions of the zone or district;
- b) the lot on which the municipal shelter is located is on a major arterial road or minor arterial road as described on the Road Classification System, as amended, for the City of Toronto;
- c) the lot on which the municipal shelter is located is at least 250 metres from any other lot with a municipal shelter or emergency shelter, hostel or crisis care facility; and
- d) the municipal shelter, including its location, has been approved by City Council.

There is no dispute that the Shelter relocation site meets the first three requirements.

Despite the fact that no community meeting was required under the By-Law, the process outlined above was undertaken so that the community could learn and comment on the shelter's plan.

The Shelter Residents' Charter Rights

(I) The Right to Life, Liberty, and Security of the Person

As Council may be aware, the right to basic shelter under s. 7 of the Charter has been considered by the BC Court of Appeal in recent years.¹⁰

⁹ *Supra* note 4 at pp. 4-5.

Section 7 of the Charter provides:

7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

In the BC Court of Appeal's landmark decision in *Adams v. Victoria (City)*, 2009 BCCA 563, the Court of Appeal found that a by-law preventing homeless people from erecting structures to protect themselves during the night violated their s. 7 rights where the shelter system as a whole in Victoria did not provide for adequate beds. The Court determined:

[T]he homeless represent some of the most vulnerable and marginalized members of our society, and the allegation of the respondents in this case, namely that the Bylaws impair their ability to provide themselves with shelter that affords adequate protection from the elements, in circumstances where there is no practicable shelter alternative, invokes one of the most basic and fundamental human rights guaranteed by our Constitution - the right to life, liberty and security of the person.¹¹

The Court of Appeal upheld the trial judge's finding that the By-laws violated the rights of the homeless "to life, by prohibiting the erection of overhead shelter, leading to a risk of a number of serious and life threatening conditions"; "to liberty, by interfering with the ability of the homeless to choose to protect themselves from the elements, a matter of dignity and independence; "and to security of the person, by depriving the homeless persons of access to shelter, and thereby exposing them to a risk of significant health problems and even death."¹²

In coming to its conclusion, the Court cited the following excerpt from Martha Jackman, "The Protection of Welfare Rights Under the Charter" (1988) 20 Ottawa L. Rev. 257 at 326 on the content of the s. 7 right:

... [A] person who lacks the basic means of subsistence has a tenuous hold on the most basic of constitutionally guaranteed human rights, the right to life, to

¹⁰ The issue of the right to shelter under s. 7 of the Charter is also currently before the Court of Appeal in Ontario. In *Tanudjaja v. Ontario*, the Applicants have challenged the province's inaction over the last twenty years to address Ontario's growing homelessness crisis. The applicants in that matter have alleged that by reducing social assistance and the support structures that were in place in the 1990s to provide social housing, the province has directly threatened the applicants' security of person and life interests, which are protected by s. 7 of the Charter. The decision is currently under reserve.

¹¹ *Adams, supra*, at paras. 75 and 195.

¹² *Ibid* at paras. 38-39.

liberty, and to personal security. Most, if not all, of the rights and freedoms set out in the *Charter* presuppose a person who has moved beyond the basic struggle for existence. The *Charter* accords rights which can only be fully enjoyed by people who are fed, are clothed, are sheltered, have access to necessary health care, to education, and to a minimum level of income. As the United Church's brief to the Special Joint Committee declared: "Other rights are hollow without these rights".

The Court went on to find that such a violation could not be justified under s. 1 of the Charter.

It is Cornerstone's position that all of the same risks to the s. 7 rights of the claimants in *Adams* would be present for its residents should the City deny approving the Shelter's relocation. The housing crisis in Toronto is well-documented.¹³ Men's shelter occupancy is at 94%, well-above the requisite 90%.¹⁴ The Report of the General Manager of SSHA indicates that, as of July 31, 2014, twenty-six of the Shelter's former residents have not found shelter accommodation elsewhere. Their present housing circumstances are unknown.¹⁵ Council's continued inaction directly puts at risk the security and dignity of these individuals – by exposing them to, for example, a Toronto winter in the cold. There are already a significant number of people in Toronto living on the streets. SSHA reports that about 17,500 individuals accessed the City administered shelter system in 2012.¹⁶ In April 2013, 76% of the City's homeless population were staying indoors in the City's shelter system. The remaining 24% stayed outdoors.¹⁷

There are also parallels between the facts at hand and the Supreme Court of Canada's decision in *Canada (Attorney General) v. PHS Community Services*, 2011 SCC 44 ("*Insite*"). In that case, the Court determined that the federal Health Minister's refusal to extend an exemption under *The Controlled Drugs and Substances Act*¹⁸ to a safe-injection site violated the s. 7 rights of *Insite*'s clients. *Insite*, the safe-injection site at issue, provided access to healthcare and a safe means of injection to individuals suffering from drug addictions in Vancouver's downtown eastside. The program's success in preventing overdoses and the spread of disease was well-documented. The trial judge accepted that the *Insite* program saved lives. The Court of Appeal concluded

¹³ See generally *supra* note 4; City of Toronto 2013 Street Needs Assessment, indicating a 24% increase of homeless sleeping outdoors, and the doubling of the number of seniors sleeping outdoors (p. 41)

¹⁴ Brenda Patterson, Shelter, Support and Housing Administrative, 2014 Operating Budget Briefing Note at p. 2, available online www1.toronto.ca/City%20Of%20Toronto/.../BN%2014%20-SSHA%20-

¹⁵ *Supra* note 4 at p 7-8.

¹⁶ *Supra* note 3 at p. 8.

¹⁷ *Ibid.*

¹⁸ *Controlled Drugs and Substances Act*, SC 1996, c 19.

that, given the program's history of success, it would be unconstitutional in the circumstances not to extend Insite's exemption from prosecution for drug offences. In coming to this conclusion, the Court said the following about the right to security of person and life under s. 7:

Where a law creates a risk to health by preventing access to health care, a deprivation of the right to security of the person is made out... Where the law creates a risk not just to the health but also to the lives of the claimants, the deprivation is even clearer.¹⁹

There is little doubt that the Shelter, too, provides access to health care to segments of the population that otherwise would not receive health care. Like Insite, the Shelter has a track-record of saving lives. Having provided access to the Shelter for a number of years, like with the Insite program, the City cannot now take it away on an arbitrary or discriminatory basis pursuant to its legislative discretion.²⁰

The significance of providing basic shelter to the security of person is also recognized in City's Housing Stability Service Planning Framework:

Housing is fundamental to the well-being of individuals and families. It creates a foundation from which a household can prosper and grow. Freedom from constant worry about becoming homeless or maintaining decent housing without sacrificing other basic necessities is fundamental to residents...²¹

Council itself has acknowledged that:

All residences should have a safe, secure, affordable and well-maintained home from which to realize their full potential.

All residents should be able to live in their neighbourhood of choice without discrimination.²²

Through the above actions and measures, Council has undertaken to provide a minimum level of security through housing for all its citizens. Once a government acts to provide a certain program, it must do so in a way that is consistent with the Charter.²³ To now take away what has been provided to the 50 men who reside at Cornerstone Place at any given time is to directly threaten their life, liberty, and security of person.

¹⁹ *Insite, supra*, at para. 93.

²⁰ This would be inconsistent with the principles of fundamental justice, see *Insite, supra*, at para.127.

²¹ *Supra* note 3 at p. 2.

²² *Toronto Housing Charter – Opportunity For All*, as quoted in Housing Stability Service Planning Framework at p. 2.

²³ *Chaoulli v. Quebec (Attorney General)*, [2005] 1 SCR 791 at para. 104.

(ii) Right to Equality

It is also our client's position that forcing Cornerstone through such a lengthy and extensive process for approval has itself had an adverse impact on the Shelter's clients, many of whom are disabled or members of other Charter-protected groups. Such a process may also amount to discrimination under s. 15(1) of the Charter and ss. 1 and 2 of Ontario's *Human Rights Code*, RSO 1990 c. H-19 ("Code").

Section 15(1) of the Charter provides:

15. (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.

The relevant sections of the Code provide:

Services

1. Every person has a right to equal treatment with respect to services, goods and facilities, without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, marital status, family status or disability.

Accommodation

2. (1) Every person has a right to equal treatment with respect to the occupancy of accommodation, without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, marital status, family status, disability or the receipt of public assistance.

When planning policies or practices create further hurdles for certain protected groups, they may be found to be discriminatory.²⁴ This includes creating a process that involves additional public meetings or a lengthy approval process, particularly where the continuity of the shelter's services are paramount to the residents' well-being. The Ontario Human Rights Commission has recognized that opposition to affordable housing projects can violate the Code when it results in changes to existing planning

²⁴ Ontario Human Rights Commission, *Policy on Human Rights and Rental Housing* (21 July 2009) at p 51.

processes, barriers to access to housing, or exposes proposed residents to discriminatory conduct or comment.²⁵

It is our client's position that the first three requirements of the Shelter By-Law sufficiently account for all valid planning/development concerns that can relate to Shelter. Cornerstone has established that the relocation of the Shelter clearly meets these three requirements.

Any further concerns – i.e that the residents will be exposed to bars, children, or other external issues – are grounded in discriminatory assumptions about the residents of the Shelter. It should not be assumed that because the Shelter's clients are in a difficult financial situation, they will be a risk to children. Cornerstone's history in the community unequivocally demonstrates that this is not true.

Likewise, it should not be assumed that because some of the Shelter's residents are suffering from addiction, they cannot live in a neighbourhood which has bars or even "booze cans". These types of attitudes – which were very apparent at the community outreach meetings conducted on July 28, 2014 – are rooted in unfair assumptions disguised as paternal concerns about the residents' well-being. Indeed, consider the following comments made about the Shelter's residents at the CRDC meeting on August 14, 2014 which have the air of discriminatory attitudes and assumptions:

"I've been a caretaker in Toronto for 18 years and know first-hand about dealing with homeless people – mostly men. Some defecate, urinate, drink and break bottles, do drugs and leave needles. Some sleep on stairways, on grates, benches - wherever they can. Often their belongings are thrown out because of health concerns. And yes some do harass and become confrontational. They need proper professional help and if they move to 616 Vaughan they will not find it there. They need a better location."

"While people are homeless for many reasons, for those with mental health and substance abuse issues, putting them at Oakwood and Vaughan is putting them in harm's way - at the epicentre of what likely drove them to be homeless"

"Having a men's shelter close to family dwellings, having children see the hardship of homelessness and other difficulties is much too difficult to explain to the children in our area"

²⁵ *Ibid.*

"This isn't just about homeless people who may have drug addictions or mental health issues. This is about all the other men coming into this area who are walking home from their jobs who may be inadvertently be bonked while they are going at it"

"... and the community around the intersection of Oakwood and Vaughan, barely keeping its head above the water and criminality in check, we are being told to accept this load."

".. This area is full of drugs, drug dealers, prostitution, bars, booze cans, violence and gangs. Gun shots are still common. This spring the police closed down the end of my street because of gun shots. All of these are still there and you want to put a shelter in all of this? It will become a cash cow for dealers and booze cans."

"We do not want a shelter anywhere in our neighbourhood of Vaughan and Oakwood. The thought of several men lining up every day to go in for a spot gives me no comfort."²⁶

Considerations like those outlined above are improper and irrelevant considerations to influence Council's exercise of discretion, which, on its own accord, could open the decision to a judicial review application.²⁷ The CRDC did the right thing by voting to recommend the approval of the relocation of the Shelter and we request that all city councillors do the same.

In *Alcoholism Foundation of Manitoba v. Winnipeg (City)*, (1990) 69 DLR (4th) 697, the Manitoba Court of Appeal found that a zoning by-law was discriminatory because it defined exclusions from zoning based on the characteristics of certain individuals. Similarly, it is also discriminatory to yield to community opposition to a shelter which is largely premised on stereotypical views of those who suffer from addiction issues or homeless.

The lengthy consultation process to date has imposed additional burdens on the residents of the Shelter that have not been faced by other groups seeking building approval from Council, for example recreational shelters or even women's/family shelters.

²⁶ As transcribed from the video footage of the CRDC, August 14, 2014.

²⁷ See i.e. *Maple Lodge Farms Ltd. v. Government of Canada*, [1982] 2 SCR 2 at pp. 7-8, 137 DLR (3d) 558 and *Shell Canada Products Ltd. v. Vancouver (City)*, [1994] 1 SCR 231, 110 DLR (4th) 1 on the improper exercise of delegated discretionary powers.

The City through the SSHA has explicitly acknowledged the emergency shelter system's role in equality:

The emergency shelter system in Toronto serves equity-seeking groups such as seniors, people with disabilities, individuals with mental health issues, the working poor, and other vulnerable groups. Effective operation of the shelter system is important in ensuring that temporary accommodation is available to a variety of equity-seeking groups.²⁸

Again, it must be emphasized that approving the Shelter's relocation is not a request to add a new service to be delivered in part by the City. It is merely maintaining the availability of a program that has had a positive influence on the lives of thousands of the City's most vulnerable individuals. Funding for the ongoing operation of the Shelter has already been approved by Council and forms part of the 2014 Operating Budget.²⁹ In Cornerstone's view, it would be unconstitutional to now deny the Shelter the ability to use that funding by failing to approve the new location immediately.

If Council does not approve the Shelter at its August 25 meeting, there is no reasonable prospect that the Shelter will be able to service its clients for at least six months, if ever. This will only compound the discrimination suffered by the Shelter's residents to date, and give rise to serious violations of their Charter rights.

Conclusion

All residents of Toronto deserve access to dignified and secure shelter and to not be seen solely through the lens of disability, addiction, age or poverty.

Any failure to approve the Shelter's relocation will result in the denial of services that sorely needed for many. Cornerstone asks that all members of City Council respect the Charter rights of Toronto residents in all areas of the City and from all walks of life. Cornerstone respectfully requests that Council immediately approve the relocation of the Cornerstone Shelter.

Your truly,

Ursel Phillips Fellows Hopkinson LLP



Andrea K. Wobick

²⁸ *Supra* note 4 at p. 2.

²⁹ *Ibid.*