PICKARD LAW

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April 21, 2023

TO: **Superior Court of Justice**
245 Windsor Avenue
Windsor, ON
Attention: Honourable Justice Pomerance, Local Administrative Judge
via email to: Windsor.SCJ@ontario.ca

COPY: **City of Windsor**
350 City Hall Square West
Windsor, Ontario
Attention: Mark Nazarewich
via email to: mnazarewich@citywindsor.ca>

Your Honour,

Re: Stay of By-law provisions pursuant to section 273(4) of the Municipal Act, 2002

I am a lawyer representing Windsor Housing Providers Inc. with respect to the recent passage of Windsor By-law 14-2023.

The provisions of the By-law come into force on June 1, 2023, and my client alleges that the By-law is illegal and a violation of the *Charter*, the *Constitution*, and Ontario's *Human Rights Code* among other things.

I have attached the unissued draft application which we intend to submit forthwith, however, we ask the Court's assistance in procuring a return date on a semi-urgent basis to deal with the narrow issue of a stay of the By-law pending a ruling on its legality.

Such a hearing would have to provide the Applicant and Respondent sufficient time to prepare submissions, to hold a hearing, and to allow the presiding Judge time to render a decision.

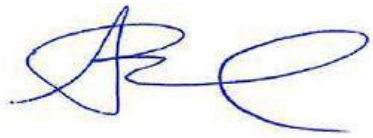
We would be content to have the Application first returned on a "regular Tuesday" or in writing, with a view to adjourning to a special appointment, should this Court deem that a hearing is required prior to the enactment of the terms of the By-law on June 1, 2023.

My client submits that it meets the RJR-MacDonald test required under sec 273(4) in that there is a serious issue to be tried, that the violation of Charter rights, etc. and the illegal collection of private information represents irreparable harm, and that the balance of inconvenience favours a stay. Of course, this is the very matter to be put before the hearing Judge and we are not

suggesting that any determination of these issues are made without a proper full hearing with proper notice to the Respondent.

However, we do wish to implore the Court the indulgence to be heard on an expedited basis so that all parties affected by said By-law, including the City of Windsor, can govern themselves in an orderly manner.

Thank you for your consideration,



Steven Pickard, B.A., B.Comm., J.D.

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

WINDSOR HOUSING PROVIDERS INC.

Applicant

- and -

WINDSOR (CITY)

Respondent.

NOTICE OF APPLICATION

(Re: Windsor By-law 14-2023)

TO THE RESPONDENTS

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicant. The claim made by the applicant appears on the following page.

THIS APPLICATION will come on for a hearing (*choose one of the following*)

X By video conference

at the following location

245 Windsor Avenue, Windsor, ON

on Tuesday _____, 2023 at 10:00 am *(or* on a day to be set by the registrar*)*.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the Rules of Civil Procedure, serve it on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

DATE _____ Issued by _____

Registrar

Address of court office: 245 Windsor Avenue, Windsor, ON

TO: WINDSOR (CITY)
350 City Hall Square West
Windsor, Ontario, N9A 6S1

A P P L I C A T I O N

1. THE APPLICANT makes application for:

a) An Order quashing Windsor by-law 14-2023 (the "By-Law");

b) An interim Order that the nothing shall be done under the By-law until the within application is disposed of pursuant to section 273(4) of the *Municipal Act, 2001*;

c) Costs; and

d) Such other relief that the Court deems just.

2. THE GROUNDS for this Application are:

a) *Municipal Act, 2001*, SO 2001, c 25.

b) *Constitution Act, 1897*.

c) *Canadian Charter of Rights and Freedoms*.

d) *Residential Tenancies Act*, SO 2006, c 17.

e) *Human Rights Code*, RSO 1990, c H.19.

f) The Respondent, the City of Windsor ("Windsor"), enacted the By-law on February 13, 2023.

g) the By-law is named: "*A By-Law To Establish A Licensing Program For The Regulation Of Residential Rental Housing In The City Of Windsor*".

h) The stated purpose of the By-law is "*to regulate the renting of residential premises for the purpose of protecting the health and safety of the persons residing in residential rental premises by ensuring that certain regulations are met, that the required essentials such as plumbing, heating and water are provided, for ensuring that the residential rental premises do not create a nuisance to the surrounding properties and neighbourhood and to protect the residential amenity, character and stability of residential areas*".

i) The requirement for compliance with the By-law comes into force June 1, 2023.

j) Windsor is comprised of ten municipal electoral wards numbered 1 to 10. Ward 1 is the home of St. Clair College. Ward 2 is the home of the University of Windsor.

k) The By-law was passed for an improper purpose, being the regulation of post-secondary student housing which is not the stated purpose of the By-law.

l) The main debate and decisions related to the of the substance, purpose and passing of the by-law was done in closed meetings of council contrary to s. 239(1) of the *Municipal Act, 2001*.

m) The By-law unlawfully and arbitrarily discriminates against businesses of the same class based on geography without any authority or purpose.

n) The By-law is illegal as it is ultra-vires Municipal powers by unlawfully and arbitrarily imposing further sentences/sanctions on those who have already been sentenced of a criminal offence and as such involves the exercise of the criminal law power exclusively vested in the Parliament of Canada pursuant to s. 91(27) of the *Constitution Act, 1897*.

o) The By-law contravenes the freedom of expression guaranteed to the Applicant and others under section 2(b) of the *Canadian Charter of Rights and Freedoms* (the *Charter*) which cannot be justified under section 1.

p) The By-law contravenes equality rights based on age guaranteed to the Applicant and others under sections 15(1) and 6(2) of the *Charter* which cannot be justified under section 1. These provisions also violate sections 4(1) and 5(1) of Ontario's *Human Rights Code*.

q) The By-law unlawfully, arbitrarily and without purpose or authority requires licensees to be subject to invasions of privacy.

r) The By-law unlawfully, arbitrarily and without purpose or authority requires licensees to be resident in Windsor or to have an agent resident in Windsor. This provision contravenes mobility rights to the Applicant and others under section 6 of the *Charter* which cannot be justified under section 1.

s) The By-law unlawfully conflicts with the *Residentital Tenancies Act* (the "*RTA*") by restricting the rights of tenants to sub-lease as provided for under Sec 95(5) or the *RTA*.

t) The By-law unlawfully, arbitrarily and without purpose or authority retains the right to deny a license on the basis of "*Financial impact to the City*".

u) The By-law unlawfully, arbitrarily and without purpose or authority requires licensees to permanently maintain licenses at a location despite the cessation of a rental business at a location and revokes the right to hold any license under the By-law at any other location for not maintaining the permanent license.

v) The By-law unlawfully, arbitrarily and without purpose or authority automatically cancels licenses should the any of the licensee's application information changes, including but not limited to phone number, address or name or in the case of a corporation, it's officers or directors.

w) The By-law unlawfully and without purpose or authority charges multiple persons the same licence fees for the same unit, thereby constituting a tax under the *Municipal Act, 2001*.

3. The following documentary evidence will be used at the hearing of the application:

a) An affidavit on behalf of the Applicant yet unsworn;

b) Such further and other evidence as counsel may advise and the Court may permit.

April 21, 2023

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Lawyers for the Applicants

WINDSOR HOUSING PROVIDERS INC. Applicant	and	**WINDSOR (CITY)** Respondent

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Windsor, Ontario

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