



**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

WAINFLEET ASSOCIATION OF RESPONSIBLE STRs

Applicant

- and -

THE CORPORATION OF THE TOWNSHIP OF WAINFLEET

Respondent

NOTICE OF APPLICATION

APPLICATION UNDER Section 273 of the *Municipal Act*, 2001, S.O. 2001, c. 25

TO THE RESPONDENT:

A LEGAL PROCEEDING HAS BEEN COMMENCED by the Applicant(s). The claim made by the Applicant(s) appears on the following pages.

THIS APPLICATION will come on for a hearing

- ☐ In person
☐ By telephone conference
☒ By video conference

At the following location: 102 East Main Street, Welland, Ontario, L3B 3W6

on August 30, 2024, at 10:00 a.m., at 102 East Main Street, Welland, Ontario, L3B 3W6.

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: _____
Local Registrar

Address: 102 East Main Street,
Welland, Ontario, L3B 3W6

TO: THE CORPORATION OF THE TOWNSHIP OF WAINFLEET
31940 Highway #3
PO Box 40
Wainfleet, ON
LoS 1Vo

APPLICATION

1. The Applicant makes this Application for:
 - a. An Order to quash By-Law 026-2023, passed by the Respondent on July 18, 2023 relating to short terms rentals (the “By-Law”), in whole or in part for illegality and unreasonableness.
 - b. A Declaration that the By-Law is void and/or *ultra vires* and/or without effect for vagueness and uncertainty, because it conflicts with provincial laws, falls outside the scope of the Respondent’s municipal authority, was enacted for an improper purpose, and fails to follow procedures required by the *Municipal Act*, 2001, S.O. 2001, c. 25 (the “Act”).
 - c. The costs of this proceeding on a substantial indemnity basis;
 - d. Harmonized Sales Tax as may be payable on any amount; and
 - e. Such further and other relief as counsel may advise and this Honourable Court may deem just.

THE GROUNDS FOR THE APPLICATION ARE:

2. The Applicant is a not-for-profit corporation incorporated pursuant to the laws of Canada, operating in the Province of Ontario. The Applicant primarily operates to promote the welfare of property owners within the Township of Wainfleet who intend to operate or already operate short term rentals (“STRs”).
3. The Respondent is a Township in the Province of Ontario (the “Township”).

4. On or about July 18, 2023, the Township enacted the By-Law purportedly to regulate STRs within the Township. The By-Law effectively prohibits the operation of STRs on any property in the Township owned for less than two years. Furthermore, the By-Law mandates that property owners seeking to advertise or rent their premises for periods of less than 28 days must obtain a licence from the Township.
5. Section 15.1 of the By-Law stipulates that any violation thereof constitutes an offence, subjecting the offender to penalties as prescribed under the *Act* and the *Provincial Offences Act*, R.S.O. 1990, c. P. 33 (the “POA”).
6. Section 15.2 of the By-Law empowers officers of the Township to issue penalty notices imposing Administrative Monetary Penalties (the “AMPs”) as detailed in Schedule “B” of the By-Law. However, the AMPs outlined in Schedule B are illegal and in conflict with the provisions of the *Act*, as they are punitive in nature and exceed reasonable measures required to ensure compliance with the By-Law.
7. Additionally, the provisions of the By-Law are unreasonable and discriminatory. The By-Law prohibits new owners from applying for a licence to operate STRs in the first two years of ownership. Furthermore, the By-Law neglected to consider agreements pertaining to STRs that were already in effect between property owners and third parties within the Township, prior to the By-Law's enactment.

8. The language used in the By-Law is vague and uncertain, particularly regarding provisions relating to offences and penalties. The By-Law does not adequately address properties jointly owned by multiple individuals within the Township, regarding licensing requirements and the imposition of fines/AMPs by the Township. The By-Law fails to clarify whether each owner of a property must obtain a separate licence to operate a short-term rental or whether a single licence is sufficient for a property owned by multiple owners. Additionally, section 15.1 of the By-Law does not contemplate scenarios where multiple owners of a property collectively commit a single violation. Pursuant to section 15.1 and/or 15.2, the Township, in bad faith, is charging multiple AMPs for a single offence committed at a property with several owners.
9. Additionally, section 15.4 of the By-Law references fines approved under the *POA* that are set out in Schedule "C" of the By-Law. However, Schedule "C" does not specify these fines and instead indicates that the fine schedule is "TBD", suggesting that no penalties for contravening the provisions of the By-Law have been formally approved. However, the AMPs provided within sections 4.3 and 4.5 of Schedule "B" of the By-Law appear to be fines disguised as AMPs.
10. The provisions of the By-Law lack sufficient clarity to facilitate meaningful legal debate and reasoned analysis. They fail to adequately delineate areas of risk and provide no framework for judicial or other interpretation.

11. The Township has enacted the By-Law beyond the scope of the powers conferred upon it by the *Act*.
12. The Township's implementation of the By-Law appears to serve an improper purpose, primarily aimed at penalizing owners within the Township for conducting STRs. The *Act* empowers municipalities to enact by-laws aimed at promoting the economic, social, and environmental well-being of the municipality, ensuring the health, safety, and well-being of individuals, and protecting persons and property. The preamble of the By-Law indicates that the Township implemented it to regulate and license STRs. However, the manner in which the By-Law has been implemented, particularly having no regard to pre-existing agreements related to the STRs, highlights that the Township has failed to enact the By-Law in accordance with the statutory objectives.
13. The Township has failed to adhere to the procedural requirements prescribed by the *Act* and other applicable by-laws governing the enactment and enforcement of the by-laws within the Township. This non-compliance raises concerns about the validity and procedural integrity of the By-Law.
14. As a result of the By-Law, the Township is exercising arbitrary control over STRs and is in direct conflict with the provisions of the regime implemented by the *Act*.
15. Sections 273 and 14 of the *Act*.
16. Rule 38 of the *Rules of Civil Procedure*; and

17. Such further and other grounds as the Applicant may advise and the Honourable court may consider.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of this application:

18. Affidavit of the Applicant.
19. Such further and other evidence as counsel may advise and this Honourable court may permit.

Date: July 17, 2024

JURIANSZ & LI
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Lawyers for the Applicant

WAINFLEET ASSOCIATION OF RESPONSIBLE STRs

- and -

Court File No./N° du dossier du greffe : CV-24-00014987-0000
THE CORPORATION OF THE TOWNSHIP OF WAINFLEET

(Applicant)

(Respondent)

Court File No.

ONTARIO SUPERIOR COURT OF
JUSTICE

Action commenced at Welland

NOTICE OF APPLICATION

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