



**LEAF
FAEJ**

WOMEN'S LEGAL
EDUCATION & ACTION FUND
FONDS D'ACTION ET D'ÉDUCATION
JURIDIQUE POUR LES FEMMES

CANADIAN
CIVIL LIBERTIES
ASSOCIATION



ASSOCIATION
CANADIENNE DES
LIBERTES CIVILES

VIA EMAIL

August 3, 2022

John Taylor
Mayor of Newmarket

Tom Vegh
Deputy Mayor and Regional Councillor

Grace Simon
Councillor - Ward 1

Victor Woodhouse
Councillor - Ward 2

Jane Twinney
Councillor - Ward 3

Trevor Morrison
Councillor - Ward 4

Bob Kwapis
Councillor - Ward 5

Kelly Broome
Councillor - Ward 6

Christina Bisanz
Councillor - Ward 7

Dear Mayor Taylor, Deputy Mayor Vegh, and Councillors:

Re: By-Law 2020-31

We are writing to you on behalf of the Women's Legal Education and Action Fund ("LEAF") and the Canadian Civil Liberties Association ("CCLA") to express our deep concern about By-Law 2020-31 (the "By-Law"), which imposes new business licence requirements for Personal Wellness Establishments.

We are concerned that the By-Law has a discriminatory impact by forcing primarily low-income Asian massage parlour workers – most of whom are women – out of work, contravening their right to equality guaranteed under section 15 of the *Charter of Rights and Freedoms* ("the *Charter*").

About LEAF and CCLA

Founded in 1985, LEAF is a national, non-profit legal organization that seeks to advance substantive equality rights for all women, girls, trans, and non-binary people through litigation, law reform, and public legal education. LEAF has intervened in more than 100 cases that have helped shape the *Charter*.

The Canadian Civil Liberties Association (CCLA) is a national, non-profit organization that fights for the civil liberties, human rights, and democratic freedoms of all people across Canada. Founded in 1964, CCLA is an independent non-governmental organization, working in the courts, before legislative committees, in classrooms and in the streets, protecting the dignity and rights of people in Canada.



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About the By-Law

The Town of Newmarket amended its business licensing by-laws on June 21, 2021 to include and regulate a new category of businesses: Personal Wellness Establishments. The By-Law defines Personal Wellness Establishments as any premises where an “Alternative Massage” is provided. It requires the owner/operator of such a business to submit a “certificate, diploma, or other documentation certifying that the Personal Wellness Attendant has, in respect to the Alternative Massage services intended to be offered or provided, successfully completed a training program from an accredited educational institution in Canada.”¹

The By-Law was subsequently amended in June 2022 to permit documentation for completion of a “training program from an accredited educational institution within or outside of Canada which establishes to the satisfaction of the Manager the appropriate requisite training.”²

The By-Law’s Impact on Asian Massage Workers

Despite the neutral language of the By-Law, we are concerned that it is disproportionately impacting Asian massage parlour workers’ ability to work and/or operate a business. Our understanding is that while four Personal Wellness Establishments have been granted licences, none of the existing Asian owned or operated businesses in Newmarket have been granted a licence. We are deeply concerned by accounts we have heard of Asian owned/operated businesses receiving notices threatening fines, followed by tickets with escalating fees.

As organizations that advocate for substantive gender equality, civil liberties, and human rights, LEAF and CCLA are concerned about how the By-Law exacerbates the disadvantage faced by Asian massage parlour workers. The certification requirement has a discriminatory impact on Asian massage parlour workers on the intersecting grounds of race, place of origin, and gender, contrary to section 15(1) of the *Charter*.³ We understand that most staff of these businesses are Asian migrant women, many of whom speak little English and do not have the required documentation from an accredited institution. In light of this, the By-Law disproportionately prevents their ability to work. Section 15(1) of the *Charter* protects members of groups from being discriminated against on the basis of an enumerated or analogous ground.⁴

We urge the Council for the Town of Newmarket to stop the discriminatory treatment of Asian massage parlour workers by immediately suspending, repealing, and ceasing enforcement of the By-Law.

¹ Corporation of the Town of Newmarket By-law 2020-31, Personal Wellness Establishments, s 8.6(3)(b).

² Corporation of the Town of Newmarket By-law 2022-39, June 6, 2022.

³ *Canadian Charter of Rights and Freedoms*, s 15, Part I of the *Constitution Act*, 1982, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11, (QL).

⁴ *Ibid.*



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We look forward to your response to this letter.

Sincerely,

Pam Hrick
Executive Director & General Counsel.
Women's Legal Education and Action Fund (LEAF)

Cara Faith Zwibel

Cara Faith Zwibel
Director, Fundamental Freedoms Program
Canadian Civil Liberties Association (CCLA)

CC: Town of Newmarket, Licensing Division