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February 24, 2025

Waterloo Region District School Board
c/o Chair Robert Sikora, Director Tyrone Dowling
Unit A, 35 Weber St. W.
Kitchener, ON N2H 3Z1

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VIA EMAIL: bob.sikora@wcdsb.ca and director.office@wcdsb.ca

Dear Chair Sikora and Director Dowling:

RE: Prohibition on Audio and Video Recording at Public School Board Meetings

We are a registered charity and civil society organization with the purpose of upholding Canada's constitutional freedoms, civil rights and human rights. We litigate across Canada to defend the constitutional rights of Canadians.

We are writing to warn you that the Waterloo Catholic District School Board's new practice of prohibiting members of the public from taking pictures and audio and video recordings at public school board meetings is unconstitutional.

Background

Jack Fonseca, a Catholic ratepayer and voter from Kitchener, attended a meeting of the Waterloo Catholic District School Board (the "**Board**") on Monday, January 27, 2025. Prior to the start of the meeting, Mr. Fonseca took out his phone to take a photo when security personnel told him that, while he would be permitted to take one photo, no others would be allowed, and that Mr. Fonseca was not allowed to record in the board room. Later, when Mr. Fonseca pulled out his phone, he was warned that he would be removed if he started recording.

Mr. Fonseca has attended Board meetings for years. He has personally taken photos and made recordings at these meetings and has seen others, including members of the press, doing so.

Mr. Fonseca has pursued the matter and Chair Sikora has confirmed to him that the Board has not passed any policy prohibiting photography or audio or video recording. Rather, the security personnel were directed to prohibit photography and recording by Director Dowling acting on his own initiative.

The Board has since added the following passage to its "Meeting Information" page on its website:

Sign-In Protocol

Please note, as part of the sign-in protocols:

- All visitors will be required to show Photo ID and sign-in before being permitted entry to the Board meeting room.
- Any type of bag being brought into board meetings will be subject to search.
- Visitors may not take pictures, audio recordings, or video recordings while on school board property during meetings.
- To ensure everyone's safety, security personnel may use audio and video recording devices.¹

The Board's Duty to Respect *Charter* Rights and Freedoms

The Board is a government entity. It is a creature of statute which exercises powers conferred on it by the provincial legislature.² It engages in public education which is an inherently governmental function.³ Accordingly, the Board is bound by the *Canadian Charter of Rights and Freedoms* and is obligated to take the values underlying the *Charter* into account when making the decisions.⁴

Section 2(b) of the *Charter* protects the right to the freedom of "expression, including freedom of the press and other media of communication."⁵ Photography and audio and video recording are expressive activity protected by s. 2(b).⁶

While the location of an expressive activity may remove it from the ambit of s. 2(b) protection, this is not the case with school board meetings open to the public. The ability of attendees to record increases the public's ability to understand Board decisions beyond "the tiny minority of the population who attend" meetings.⁷ The prohibition on recording erodes "democratic discourse, self-fulfilment and truth finding."⁸

Indeed, the *Education Act* explicitly states that board meetings and committee meetings "shall be open to the public" subject only a list of specific subject matter which permits

¹ Waterloo Catholic District School Board website, "Board Meeting Information, Agendas & Minutes", <<https://www.wcdsb.ca/about-us/meeting-information/>> accessed on February 21, 2025.

² *York Region District School Board v. Elementary Teachers' Federation of Ontario*, [2024 SCC 22](#) at para. [79](#).

³ *Ibid* at para. [81](#).

⁴ *Canadian Charter of Rights and Freedoms*, Part I of *The Constitution Act, 1982*, Schedule B to the *Canada Act 1982 (UK)*, [1982, c 11](#) [*Charter*]; *Commission scolaire francophone des Territoires du Nord-Ouest v. Northwest Territories (Education, Culture and Employment)*, [2023 SCC 31](#) at paras. [60-65](#).

⁵ *Charter*, *supra* note 4, [s. 2\(b\)](#).

⁶ *Canadian Broadcasting Corp. v. Canada (Attorney General)*, [2011 SCC 2](#) at paras. [40-41](#).

⁷ *Ibid* at para. [45](#).

⁸ *Ibid*.

meeting *in camera* or the exclusion of individuals for improper conduct.⁹

Audio and video recording itself is not “improper conduct” justifying the exclusion of individuals from meetings. School boards are democratically elected and public board meetings foster local democratic decision-making and civic engagement. The taking and sharing of photos and videos permits a wider range of the public to learn about Board’s decision-making process, provide input to their elected trustees concern Board decisions and ultimately to make better informed decisions when it comes to electing Board trustees.

Any concern about misbehaviour by attendees, including those taking recordings, is already addressed under s. 207(3) of the *Education Act*, which grants the Board authority to exclude anyone engaged in improper conduct.¹⁰

The Board Must Act to Protect Freedom of Expression

We write this letter to warn the Board that by allowing the prohibition of recording at its meetings, it has infringed the freedom of expression of those attending its meetings and those who would want to see the recordings.

Should the Board fail to rectify this violation of Canadians’ constitutional freedoms, it may face legal action.

The Board should remove the prohibition on recordings immediately.

The Board should rather explicitly permit photography and recording at Board meetings, recognizing that doing so advances the freedom of expression, including the right to hear, of Waterloo Region residents and enhances democratic engagement in its constituents.

Yours sincerely,

CHARTER ADVOCATES CANADA

Per:



Hatim Kheir
Staff Lawyer

⁹ *Education Act*, [RSO 1990, c E.2, s. 207](#).

¹⁰ *Education Act*, [RSO 1990, c E.2, s. 207](#).