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VIA ELECTRONIC MAIL

January 12, 2026

Darren Leung

Direct Line: [REDACTED]

Email: [REDACTED]

Her Worship Elizabeth Roy, Mayor
and Members of the Town of Whitby Council
575 Rossland Road East
Whitby, ON L1N 2M8

Dear Mayor Roy and Members of Council:

RE: Town of Whiby Council public meeting recording policy

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 on behalf of Jeanette Miller, a resident of Durham Region and a member of Canadians for Sensible Climate Policy ("CSCP") to warn you and the Town of Whitby Council (the "**Council**") that the Council's new practice of prohibiting members of the public from taking pictures and audio and video recordings at Council meetings is unconstitutional and must be rescinded immediately. Failure on the Council's part to do so could result in legal action begin taken against it.

BACKGROUND

On June 4, 2025, I understand that Ms. Miller was granted a delegation to address the Council's Sustainability Committee (the "**Committee**"). Ms. Miller brought a friend to the meeting seeking to record the delegation, which CSCP wished to post on their website as an example for members in other towns and cities to emulate. At the appropriate time, Ms. Miller began her delegation, and her friend proceeded to record it.

I further understand that approximately two minutes into Ms. Miller's presentation, a Committee member paused the delegation to inform Ms. Miller and her friend that Council has a policy against recorded meetings. Ms. Miller, who was aware that the Committee meeting was nonetheless being recorded by Council, then asked if she could have a copy of this recording. The Committee denied this request, explaining that Committee meetings were only recorded for the purpose of preparing minutes, and that those recordings were deleted afterward. Ms.

Miller then asked if her friend could resume recording if she captured only Ms. Miller's image and voice, and this request was also denied.

Section 5.12.1 of the Town of Whitby's *Rules of Procedure Bylaw* #8081-24 (the "**By-Law**") provides:

No member of the public shall display signs, banners, emblems, or flags, or make use of cameras, audio or video recording devices in the Council Chambers or other Meeting location, except by permission of the Chair.

COUNCIL HAS A DUTY TO RESPECT THE *CHARTER*

To the extent that the By-Law prevents residents from recording council proceedings, it is unconstitutional. Recording and broadcasting has been held by the Supreme Court to be expressive activity protected by section 2(b) of the *Canadian Charter of Rights and Freedoms*.¹

Government-owned property is often required to allow free expression on its premises, so long as the expression at issue serves to enhance: (1) democratic discourse; (2) truth finding; and/or (3) self-fulfillment.² Recording a meeting of Council, or one of its Committees, clearly fulfills all three of these purposes, while a ban on recording diminishes them.

Council and Committee meetings are public by their very nature. The Town of Whitby is itself a public institution. When it holds a public meeting, the free engagement of residents with their elected representatives is a fundamental component of democracy, where any limitations on freedom of expression must be minimal and also must be carefully crafted to invite public engagement rather than to constrain or stifle it. This is especially true when the institution in question - the Sustainability Committee - neither publishes nor keeps an audio/visual record of its own meetings. Even if such records were available, that would not form a reasonable basis to prevent the public from recording meetings, except where such activity is coupled with disruptive or improper conduct already prohibited.

There is quite simply no reason why members of the public, including those granted a delegation, should not be allowed to record a Council or Committee meeting directly, in the absence of disruptive or improper behaviour.

CONCLUSION

The *Charter* applies to the Town of Whitby, and the By-Law provision relied on by the Committee to prevent Ms. Miller from recording her delegation violates her freedom of expression under section 2(b). The provision is, furthermore, not a reasonable limitation of that freedom justifiable in a free and democratic society. Thus, it is unconstitutional.

We invite Council to conduct meetings in a manner that respects *Charter* rights. We request that the prohibition on video and audio recording in section 5.12.1 of the By-law be repealed. We further request that council cease denying recording permission to Ms. Miller and other residents who attend an open meeting in person, and who otherwise behave in a non-disruptive

¹ *Canadian Broadcasting Corp v Canada (Attorney General)*, 2011 SCC 2 at paras 40-41.

² *City of Montreal v 2952-1366 Quebec Inc*, 2005 SCC 62 at para 74.

manner.

Failure to repeal the By-Law's offending provision, and failure to cease denying permission to record, both as described above, may result in legal action.

Yours truly,

CHARTER ADVOCATES CANADA

Per:

A handwritten signature in black ink, appearing to read "Darren Leung", written over a horizontal line.

DARREN LEUNG

Staff Lawyer

CC: Her Worship Elizabeth Roy, Mayor [REDACTED]
Rhonda Mulcahy, Regional Councillor [REDACTED]
Chris Leahy, Regional Councillor [REDACTED]
Steve Yamada, Regional Councillor [REDACTED]
Maleeha Shahid, Regional Councillor [REDACTED]
Steve Lee, Town Councillor- North Ward 1 [REDACTED]
Matt Cardwell, Town Councillor- West Ward 2 [REDACTED]
Niki Lundquist, Town Councillor - Centre Ward 3 [REDACTED]
Victoria Bozinovski, Town Councillor- East Ward 4 [REDACTED]