

Form 5.02A

(Rule 5.02)

File number: 20 26 01 G 1077**IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
GENERAL DIVISION****BETWEEN:****GRANT ABBOTT****APPLICANT****AND:****TOWN OF MUSGRAVE HARBOUR****RESPONDENT****Originating Application
(Inter Partes)****TO THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR OR ONE OF
THE JUDGES THEREOF:**

The application of Grant Abbott, the Applicant herein says,

The Parties

1. The Applicant, Grant Abbott ("**Abbott**"), is a Canadian citizen and a resident of Musgrave Harbour, Newfoundland and Labrador. Abbott is currently 47 years old.
2. Abbott is originally from Musgrave Harbour. He moved away from Newfoundland in 2000 for better job opportunities on the mainland. He returned to Musgrave Harbour in 2020.
3. Abbott was elected to the Musgrave Harbour Town Council ("**Town Council**") for the 2021-2025 term. He did not seek re-election in 2025.

4. The Respondent, the Town of Musgrave Harbour, is an incorporated township in Newfoundland and Labrador and is continued pursuant to section 13 of the *Towns and Local Service District Act*, S.N.L. 2023, c-T-6.2 (the “Act”). Musgrave Harbour’s authority to pass by-laws is governed by the Act.

Material Facts

5. Musgrave Harbour has a population of approximately 900 people. The Town Council meets at the Town Hall. Town Council chambers can hold a maximum of about 30 people in the viewing gallery. On average, about 1-5 people attend Town Council meetings.

6. Abbott is interested in municipal issues, but finds that it is currently very difficult to keep abreast of Town Council business and decisions. There is no way to witness Town Council meetings in real time other than by attending meetings in person. This is not very convenient; for example, it is not always possible physically to attend a meeting at Town Hall, particularly when a given meeting is held during business hours.

7. During Abbott’s tenure as a town councillor, there were occasions when open Town Council meetings were rescheduled for the middle of the business day, during Abbott’s working hours. To the best of Abbott’s knowledge, these practices continue; as a result, it is likely that some Town Council meetings are still being held during business hours, and that some people are unable to attend because of scheduling issues.

8. During the Covid-19 pandemic, Town Council meetings were convened on the Google Meet platform, and so members of the public were able to log on and listen to the meetings. The Google Meet platform did not have a video component, and thus participants could only hear each other but were unable to see members of council on screen. However, this option is no longer available because Town Council has returned to in-person meetings only and no longer

broadcasts meetings on Google Meet. There is no way for anyone to listen to a Town Council meeting online anymore.

9. Moreover, there is insufficient news coming to Abbott from other sources about what Town Council is doing. Town Council meetings are not covered by the local media in any meaningful way. Moreover, the Town Council does not provide audio or video recordings of its public proceedings, nor does it publish its meeting minutes or by-laws on its website.

10. This lack of transparency means that if someone misses a meeting, there is no reliable or timely way to understand what occurred. Town Councillors are not allowed to speak publicly about the substance of council meetings until the meeting minutes have been formally adopted, which in Abbott's experience can take up to a month. During that time, decisions made by Town Council are often already implemented, leaving no opportunity for public feedback or intervention. This breakdown of communication undermines public accountability.

11. Thus, the only way for residents to realistically understand what is going on during Town Council meetings if they cannot attend in-person is to request copies of the meeting minutes at the Town Hall. In Abbott's experience, this is not very useful because Town Hall responds to such requests very slowly (that is, its responses are usually measured in weeks and months, not hours and days). This situation is frustrating because by the time meeting minutes of a given Town Council meeting are usually disclosed, a lot of time has passed and the information contained in the minutes is stale or out of date and cannot otherwise be objected to or acted upon in an effective way.

12. Moreover, even when produced, Town Council meeting minutes do not sufficiently explain what actually occurs during Town Council meetings. They are usually just summaries of a given topic under discussion, along with how the Town Council voted on a given motion or

issue. The minutes usually do not provide any details on debates and specific views expressed by members of Town Council.

13. Abbott therefore wishes to make recordings of Town Council meetings and to share complete recordings of Town Council meetings with the community so that people who, for whatever reason, cannot attend meetings in person (for example, whether because meetings are held during business hours, or because they are located too far away from Town Hall, or because they are unable to physically attend meetings in person, or because of inclement weather, etc.) can view the proceedings for themselves at a later time. Abbott's goal in recording Town Council meetings is to enhance accountability and give members of the community an opportunity to make informed decisions based on what Town Council was doing.

14. Abbott also wants there to be a complete record of Town Council meetings to ensure accuracy. He believes that citizens have the right to know all of what happens at Town Council meetings, not just a fraction thereof, and that it is important to have complete recordings of Town Council meetings available, so that there can be no misrepresentations by anyone about what happened at a given meeting, whether in the official minutes or otherwise.

15. Based on Abbott's prior experience of Town Council meetings as a town councillor, a member of the public recording a Town Council meeting with a cellular phone or a similar recording device would not be disruptive to the conduct of the meeting.

16. Although Abbott would like to make recordings of Town Council meetings, he is currently not permitted to do so. Rules prohibiting the recording of Town Council meetings were passed on January 11, 2022.

17. Specifically, on January 11, 2022, the Town Council passed Motion 2022-18, which was one of a series of motions designed to establish rules of procedure to be followed at subsequent

Town Council meetings. Motion 2022-18, which was passed and duly enacted, proposed the following rule (now enacted as Rule 6(d) of the rules of procedure by-law):

d. The recording of Public Council Meetings is not permitted by Council Members or the General Public, unless agrees [*sic*] upon by council. This includes any form of audio or video/audio and video recording or otherwise.

Together, they established the by-law in its entirety (“**By-law**”).

18. Rule 6(d) of the By-law (“**Recording Prohibition**”) has thus restricted Abbott’s ability to gather news about Town Council meetings and broadcast it to other members of the public. Since he cannot record Town Council meetings, he is only able to take notes or recall from memory the debates that occurred during Town Council meetings.

Grounds of the Application

19. Section 2(b) of the *Canadian Charter of Rights and Freedoms* (the “**Charter**”) provides that everyone has the freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication. Recording and disseminating events that are of public interest, such as town council meetings, are constitutionally protected activities under section 2(b) of the *Charter* according to Supreme Court of Canada jurisprudence.

20. A law infringes section 2(b) of the *Charter* when 1) there is expressive content; 2) the method or location of expression does not remove its protection; and, 3) the law or governmental action infringes on section 2(b) protection, in either purpose or effect.

21. Abbott’s desired activity contains expressive, journalistic content, as he wants to create recordings of public Town Council meetings and publish them for public consumption. Abbott’s activities are not violent, and thus the method of expression does not remove 2(b) *Charter* protection. Furthermore, the location of the expression, Town Council chambers, does not remove 2(b) *Charter* protection, as it is a public place where certain forms of expressive activity should be expected. Journalists are a common feature in democratic institutions such as a town

council, and journalistic activities, such as recording and broadcasting, ought to be protected in these locations. Finally, the Recording Prohibition is a complete bar to 2(b) protected activity, as Abbott is completely barred from producing his own recordings of Town Council meetings.

22. The aims of transparency and public participation in Town Council meetings are foundational to municipal governance as demonstrated in section 40 of the Act, which requires all meetings and committees of a town council to be open to the public, notwithstanding section 41. The Recording Prohibition thus unjustifiably infringes on section 2(b) of the *Charter*.

23. Furthermore, Musgrave Harbour has not demonstrated, pursuant to s. 1 of the *Charter*, that the Recording Prohibition amounts to a reasonable limit prescribed by law that can be demonstrably justified in a free and democratic society, and cannot do so. First, the Recording Prohibition was not enacted to address a pressing and substantial objective. Second, the Recording Prohibition is also not rationally connected to the objective of maintaining orderly town council meetings. Third, the Recording Prohibition, like other laws that completely prohibit *Charter*-protected activities, fails to minimally impair Abbott's *Charter* rights. Finally, the Recording Prohibition's blanket prohibition on recording is disproportionate to any alleged benefit, because it completely extinguishes Abbott's ability to exercise his *Charter* protected right.

24. Accordingly, the Recording Prohibition violates section 2(b) of the *Charter* and cannot be saved under section 1.

25. As the Recording Prohibition unjustifiably infringes on section 2(b) of the *Charter*, the Recording Prohibition is also *ultra vires* the Act because the Act does not authorize the Respondent to pass unconstitutional by-laws.

26. Costs of this proceeding are not warranted against either party on account of the public interest issues raised in this proceeding.

The Applicant therefore applies for an order that:

- a) declares that rule 6(d) of the By-law unjustifiably infringes the Applicant's rights and freedoms guaranteed by section 2(b) of the *Charter*;
- b) declares that rule 6(d) of the By-law is of no force or effect pursuant to section 52(1) of the *Constitution Act, 1982*;
- c) declares that rule 6(d) of the By-law is *ultra vires* the Act and is of no force or effect;
- d) no costs of this proceeding be awarded to or against any party, regardless of the outcome; and
- e) such further and other relief that this Court considers appropriate.

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

- A. the Affidavit of Grant Abbott, affirmed on January 31, 2026;
- B. such further and other materials as counsel may advise and this Court may allow.

DATED at Toronto, Ontario, on the 12th day of February, 2026.

Darren Leung

Solicitor for the Applicant
Charter Advocates Canada

Darren Leung, [REDACTED]
James Manson, [REDACTED]

Whose address for service is:

[REDACTED]
Tel: [REDACTED]
Email: [REDACTED]

TO: Town of Musgrave Harbour

[REDACTED]

ISSUED at the City of St. John's in the Province of Newfoundland and Labrador this 13th
day of February, 2026.

[Signature]

Registrar/Registry clerk Court Officer/Officer de Cour

File number: 20 26 OL G 1077

IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
GENERAL DIVISION

BETWEEN:

GRANT ABBOTT

APPLICANT

AND:

TOWN OF MUSGRAVE
HARBOUR

RESPONDENT

Notice to the Respondent

You are hereby notified that you must attend before a judge presiding in chambers at the Courthouse at St. John's, Newfoundland and Labrador, on Tuesday the 31st day of March, 2026 at 10:00am to set a date for the hearing of the application in the above noted matter.

AND FURTHER TAKE NOTICE that the judge may make an order in favour of the applicant in your absence and without further notice unless you or your solicitor appear at the time and place noted above.

Solicitor for the Applicant
Charter Advocates Canada
Darren Leung, [REDACTED]
James Manson, [REDACTED]

Whose address for service is:

[REDACTED]
Tel: [REDACTED]
Email: [REDACTED]
[REDACTED]

TO: **Town of Musgrave Harbour**
[REDACTED]
[REDACTED]