

Court File No.:

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

B E T W E E N:

**STEPHEN HILL and BRADLEY CARTHER**

Applicants

and

**THE TOWNSHIP OF NORTH HURON and NELSON SANTOS IN HIS CAPACITY AS  
CHIEF ADMINISTRATIVE OFFICER**

Respondents

APPLICATION UNDER rules 14.05(3)(g.1) and 38 of the *Rules of Civil Procedure*, R.R.O.  
1990, O.Reg 194

**NOTICE OF APPLICATION**

TO THE RESPONDENTS

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicants. The claim made by the applicants appears on the following page.

THIS APPLICATION will come on for a hearing (*choose one of the following*)

- In person
- By telephone conference
- By video conference

at the following location: 1 Courthouse Square, Goderich, Ontario, N7A 1M2, on a day to be set by the registrar.

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 .....

1 Courthouse Square  
Goderich, Ontario N7A 1M2

TO **TOWNSHIP OF NORTH HURON  
AND NELSON SANTOS IN HIS CAPACITY  
AS CHIEF ADMINISTRATIVE OFFICER**



**Respondents**

## APPLICATION

### **The Applicants make an application for:**

1. a declaration pursuant to section 52(1) of the *Constitution Act, 1982* that section 20.2 of by-law 25-2025 unjustifiably infringes on the Applicants' rights and freedoms guaranteed by section 2(b) of the *Canadian Charter of Rights and Freedoms* ("**Charter**") to the extent that it categorically prohibits the recording of open sessions of Town Council meetings and is therefore of no force or effect;
2. a declaration pursuant to section 24(1) of the *Charter* that the trespass notice issued on February 2, 2026 against the Applicants prohibiting their attendance in Council Chambers for 6 months to be an unjustified infringement of their rights under section 2(b) of the *Charter*, and that the trespass order is invalid and of no force and effect;
3. a declaration that Chief Administrative Officer Nelson Santos had no authority to issue the trespass notices against the Applicants;
4. that no costs be awarded for or against the Applicants in any event; and
5. such further and other relief as counsel may advise and this Court deems just and equitable.

### **The grounds for the application are:**

#### The Parties

1. the Applicants, Stephen Hill and Bradley Carther, are residents of Wingham, Ontario. The Applicants are regular attendees at Council meetings for the past ten years. They are interested in municipal policies and believe that non-disruptive recording is an essential part of ensuring transparency and accountability in municipal politics;

2. the Respondent, the Township of North Huron, is an incorporated municipality pursuant to the *Municipal Act, 2001*, S.O. 2001, c. 25 (“**Act**”);
3. the Respondent Nelson Santos is the current Chief Administrative Officer (“**CAO**”) of the Township of North Huron and appointed pursuant to section 229 of the Act;

### Background

1. the Township of North Huron (the “**Township**”) is located in southwestern Ontario and has a population of approximately 5000 people;
2. the Township’s Council (the “**Council**”) conducts its regular meetings in the Council Chambers, located at 271 Frances Street in Wingham, Ontario. On average, about 1-5 people regularly attend open Council meetings in-person. Approximately 30 people can sit in the gallery of Council Chambers;
3. open Council meetings are also live streamed on YouTube and posted on the Town’s official channel by Township staff;
4. section 20.2 (“**Recording Prohibition**”) of the by-law rules of procedure, by-law no. 52-2025 (“**Old By-law**”) provides that:

At a Meeting of Council or a Committee, the use of cameras, electric lighting equipment, flash bulbs, recording equipment, television cameras and any other device of a mechanical, electronic or similar nature used for transcribing or recording proceedings by auditory or visual means by the public, including accredited or other representatives of any news media whatsoever, will not be permitted. Only audio and/or video recording devices operated by the Township shall be allowed during a Meeting.

5. on February 17, 2026, Council passed motion 24/26 (the “**Motion**”), in which it resolved to repeal the Recording Prohibition by amending the Old By-law to permit the use of recording devices in open meetings of Council or Committees, and directed the Clerk’s department to

draft the amendment to the Old By-law. The Motion also directed Township staff to prepare a report providing a *Charter* analysis regarding the Recording Prohibition;

6. on March 2, 2026, Council passed the rules of procedure by-law 14-2026 (“**New By-law**”), which amended the Recording Prohibition to now state:

At a Meeting of Council or a Committee, the use of cameras, electric lighting equipment, flash bulbs, recording equipment, television cameras and any other device of a mechanical, electronic or similar nature used for transcribing or recording proceedings by auditory or visual means by the public, including accredited or other representatives of any news media whatsoever, **may be permitted**, provided they are not used in a manner that is disruptive, creates a physical hazard, obstructs the view of others, impedes the Township’s ability to livestream the meetings, or harasses or intimidates participants. [emphasis added]

#### The Trespass Notice

7. the Applicants are interested in municipal policies and are regular attendees at Town Council meetings;
8. on December 1, 2025, the Applicants attended an open meeting of Council to ask why a tattered flag at the Wingham Cenotaph was not replaced;
9. on December 15, 2025, the Applicants attended an open meeting of Council to ask the same question, as the flag had not been replaced yet. The Applicants asked this question prior to the start of the meeting. The Applicants stopped asking question and were completely silent for two minutes prior to the commencement of the meeting and did not speak at all throughout the meeting. The Applicants were not recording this meeting. An Ontario Provincial Police (“**OPP**”) officer nevertheless intervened and stated that the Applicants were disrupting the meeting;
10. on January 12, 2026, the Applicants attended an open meeting of Council. Mr. Carther held up his cell phone to record, while Mr. Hill merely held up his phone, but it was not recording.

Neither Applicant spoke or made any sounds during the meeting. Nevertheless, Reeve Heffer demanded that Mr. Carther cease recording, and when Mr. Carther did not comply Reeve Heffer adjourned the meeting and instructed staff to call 911;

11. OPP officers responded to the call, and the Reeve directed them to remove Messrs. Carther and Hill. The OPP officers gave Messrs. Carther and Hill verbal trespass notices, telling them they were not allowed to attend in Council Chambers for 60 days;
12. on January 17, 2026, Mr. Hill wrote an email to Chief Administrative Officer (“CAO”) Nelson Santos, asking for clarification on the trespass notice;
13. on January 22, 2026, CAO Santos sent a letter to Mr. Hill via email, setting out various expectations and conditions of the Town, including that all non-emergency communications be directed to the CAO, and that Mr. Hill cease and desist from creating AI-generated content critical of the Council. CAO Santos confirmed that the 60-day trespass notice commenced on January 12 and that he would be prohibited from attending in Council Chambers until March 13, 2026;
14. on February 2, 2026, Messrs. Carther and Hill attempted to attend the open meeting of Council. OPP officers arrived and removed Messrs. Carther and Hill and issued them each a ticket for trespass in the amount of \$65. Messrs. Carther and Hill were told by OPP Sgt. Foxton that the ban was only for 24 hours from council chambers;
15. CAO Santos sent Mr. Hill correspondence via email on February 2, 2026, to issue a formal notice (“**Trespass Notice**”) under the Trespass to Property Act. The correspondence alleged that Mr. Hill engaged in continued disrespectful and harassing behaviour and failed to adhere to the Old By-law on multiple occasions without providing any particulars, and that he would

be prohibited from attending in Council Chambers for six months starting on the date of the correspondence;

16. on February 17, 2026, Messrs. Carther and Hill attempted to attend an open meeting of Town Council, relying on Sgt. Foxton's statement. They were arrested for attempting to attend in Council Chambers and had their recording devices seized by the OPP and each issued with a summons under Part III of the *Provincial Offences Act* to respond to charges for trespass;
17. later in the evening of February 17, 2026, a small group of people were demonstrating outside of the Council Chambers building. The demonstrators were protesting the Recording Prohibition. Deputy Reeve Falconer went outside to accost these demonstrators and an altercation ensued between him and some of the demonstrators;

The Old By-law infringes section 2(b) of the *Charter*

18. section 2(b) of 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*;
19. because of the Recording Prohibition, the Applicants were unable to record and publish open meetings of Council;
20. the Applicants' desired activity contains expressive, journalistic content, as they wanted to record public Council meetings and publish them for public consumption;
21. Council Chambers is a public place where certain forms of expressive activity are expected. Journalists are a common feature in democratic institutions such as a town council, and recording and broadcasting is an essential part of journalism;

22. finally, the Recording Prohibition completely prohibits a section 2(b)-protected activity, as the Applicants were completely prohibited from creating and publishing their own recordings of Council meetings;
23. the goal of transparency and public participation in Council meetings are foundational to municipal governance, as demonstrated by subsection 239(1) of the Act, which requires all meetings to be open to the public, subject to subsection 239(2);
24. the Township has not demonstrated, pursuant to section 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. First, the Recording Prohibition is not rationally connected to the objective of maintaining orderly Council meetings. Secondly, the Recording Prohibition, like other laws which completely prohibit *Charter* protected activities, fails to minimally impair the Applicants' *Charter* rights as it is a blanket prohibition. Finally, the Recording Prohibition's blanket restriction on recording is disproportionate to any alleged benefit as it totally extinguishes the Applicants' ability to exercise their *Charter* protect right;
25. accordingly, the Recording Prohibition violates section 2(b) of the *Charter* and cannot be saved under section 1;

The Trespass Notice infringes on the Applicants' section 2(b) rights

26. the Applicants were issued the Trespass Notice for breaching the Recording Prohibition. As the Trespass Notice is based on an unconstitutional law, it too is invalid. The Applicants have not acted in a manner that would have disrupted orderly conduct of Council meetings. Therefore, but for the unconstitutional Recording Prohibition, they would not have been in breach of any rules set by the Township;

27. furthermore, the Township alleges that the Trespass Notice was issued in response to harassing and inappropriate communications with Town staff and elected officials. The Applicants deny all allegations that they have harassed or behaved inappropriately at Council meetings or otherwise disrupted the conduct of meetings. There are no particulars to any disruptive or harassing behaviours that the Applicants were alleged to have done;
28. further CAO Santos stated that Mr. Hill's AI-generated content criticizing elected official was another basis for issuing the Trespass Notice. Mr. Hill has a constitutionally protected right to create this kind of material, and neither the Township nor the CAO can base the Trespass Notice on this constitutionally protected activity;

The CAO does not have authority to issue the Trespass Notice

29. the CAO does not have authority to issue the Trespass Notice. Pursuant to section 241(2) of the Act, only the Head of Council may expel a member of the public for improper conduct. However, section 241(2) does not grant the Head of Council the power to prohibit members of the public from attending future meetings;
30. similarly, section 34.14 of both the New By-law and Old By-law provides that "in accordance with Section 241(2) of the Municipal Act, the Head of Council or Chair may expel any person for improper conduct at a Meeting.";
31. pursuant to subsection 5(3) of the Act, a municipality must exercise its powers through a by-law unless otherwise authorized;
32. the Old By-law contains no provision which authorizes the CAO to issue trespass notices on members of the public;

33. there is no resolution or by-law passed by Council to issue the trespass notices against the Applicants;
34. therefore, the CAO's letter of February 2, 2026 to Mr. Hill notifying him of a six-month prohibition from attending in Council Chambers was made without authority and invalid.

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

1. the Affidavit of Stephen Hill, to be sworn;
2. the Affidavit of Bradley Carther, to be sworn; and
3. such further and other materials as counsel may advise and this Honourable Court may allow.

Date:



**CHARTER ADVOCATES CANADA**

[REDACTED]

**Darren Leung**

T:

E:

**Hatim Kheir**

T:

E:

**Counsel for the Applicants**