

**THE KING'S BENCH**  
**WINNIPEG CENTRE**

**APPLICATION UNDER:**

*Municipal Act, C.C.S.M. c. M.225*

*Constitutional Questions Act, C.C.S.M. c. 180*

*Court of King's Bench Rules, M.R. 553/88*

**BETWEEN:**

**DANIEL ROBERT PAGE, KAREN LALONDE, JANET NYLEN AND  
GLORIA ROMANIUK,**

**APPLICANT,**

**-and-**

**THE RURAL MUNICIPALITY OF SPRINGFIELD,**

**RESPONDENT.**

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**MOTION BRIEF OF THE INTERVENER  
ATTORNEY GENERAL OF MANITOBA**

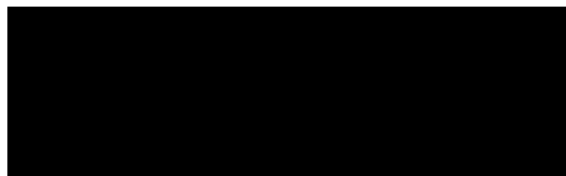
**Hearing date: April 30, 2026**

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**MANITOBA JUSTICE**



**Michael Bodner and Julie Winter**





## PART I: INTRODUCTION

1. This application concerns a municipal By-law regulating video recording at city council meetings. The Rural Municipality of Springfield's city council meetings are open to the public. Members of the public may attend, observe, take notes, obtain information and discuss, criticize and disseminate commentary about council decisions and debate. The city further enhances transparency by providing live video access and maintaining permanent audio recordings of all meetings and allows the media to apply to record Council meetings provided arrangements are made two days prior to the meeting or public hearing.

2. The By-law does not mention recording by the public, but permits recording through an advance application process to the "media". The Applicants' Notice of Constitutional Question characterize this as a categorical prohibition on recording public meetings and argue that it infringes s. 2(b) of the *Canadian Charter of Rights and Freedoms* (the "Charter").<sup>1</sup>

3. That characterization overstates the effect of the By-law. The By-law does not impose a blanket prohibition on all recording of council proceedings. Rather, the By-law creates a limited, government-controlled permission under which media may apply to record the Council meetings. On that footing, the Applicants are not simply seeking freedom from state interference with expressive activity they would otherwise be at liberty to undertake. They seek access to a regime created and administered by the Municipality and claim a right to create their own recording of Council meetings as members of the public. That is a positive rights claim under *Baier*.<sup>2</sup> The *Charter* does not oblige the state to extend access to a government-created expressive venue, absent satisfaction of the *Baier* criteria. In the present case, the criteria have not been satisfied.

4. If this Court concludes that the Applicant's claim is not properly characterized as a positive rights claim under *Baier*, then the alternative analysis is that set out in *Montreal (City), v. 2952-1366 Quebec Inc.* ("*City of Montreal*"). Under that approach, the question is first whether the

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<sup>1</sup> See Notice of Constitutional Question at para. 9 and Applicant's Brief at para. 25.

<sup>2</sup> *Baier v. Alberta*, 2007 SCC 31 [TAB 1 of the Attorney General of Manitoba's Case Book].

activity conveys or attempts to convey meaning and, if so, whether the expressive activity, in its location or method, clearly undermines the values underlying s. 2(b). If it does not, the analysis turns to whether the impugned measure has the purpose or effect of restricting protected expression.

5. At most, the By-law imposes a limited restriction on the ability to create a personal audio/video recording during the meeting itself, while leaving intact the Applicants' ability to access the proceedings, obtain information, and freely express, criticize and disseminate commentary about council activities.

6. This limit must be assessed in light of the location. Council meetings are held in a municipal administrative building, a government-controlled space whose primary function is the orderly conduct of public business, not an unrestricted facilitation of all forms of expressive activity. Although the meetings are open to the public, the openness of the proceedings does not transform the space to one in which every expressive method is constitutionally guaranteed. Accordingly, the By-law does not violate s. 2(b) of the *Charter*.

7. If the location of the expression does not preclude s. 2(b) protection, Manitoba submits that the purpose does not violate s. 2(b) because it is aimed at protecting the democratic process by enabling orderly Council meetings, in which members of the public are free to participate without fears relating to being recorded by members of the public. The effect of the By-law, however, would arguably impinge freedom of expression. That said, if a prima facie infringement were found, the limitation would be a reasonable one that is demonstrably justified under s. 1, given the minimal impact on expression and the Municipality's pressing and substantial objectives.

8. To the extent that the Applicants alternatively argue that they are "media" under the By-law, this would mean that the By-law does not restrict their freedom of expression since it does not prevent their application to record proceedings. The refusal to allow Dr. Page's application would simply be a decision that is subject to judicial review, on which the Attorney General of Manitoba ("Manitoba") takes no position.

## PART II: FACTS

9. The Attorney General of Manitoba takes no position on the factual allegations. Manitoba's submissions are directed solely to the constitutional framework and legal principles governing s. 2(b) of the *Charter*.

## PART III: ISSUE

A. Does Rule 15.10 and/or 16.0(c) of The Rural Municipality of Springfield By-law 24-10 violate section 2(b) of the *Charter*?

## PART IV: THE LAW AND ARGUMENT

10. Section 2(b) of the *Charter* provides that "everyone has . . . freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication".

11. The Supreme Court of Canada ("SCC") has held that s. 2 normally imposes a negative obligation on government rather than a positive obligation of protection or assistance.<sup>3</sup> However, where a claimant seeks access to a government-created statutory regime or platform for expression, the claim is properly analyzed as a positive rights claim.<sup>4</sup>

### *Baier Analysis*

12. Manitoba's primary position is that the Applicants advance a positive rights claim under *Baier v. Alberta*.<sup>5</sup> As the SCC has put it, s. 2(b) "prohibits gags, but does not compel the distribution of megaphones."<sup>6</sup>

13. In *Baier*, the claimants were school employees who had previously been eligible to run and serve as school trustees.<sup>7</sup> However, Alberta amended the legislation and removed that eligibility. The SCC treated their s. 2(b) argument as a positive rights claim. The appellants sought access to

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<sup>3</sup> *Baier v. Alberta*, *supra* at para 20.

<sup>4</sup> *Ibid.* at para. 22.

<sup>5</sup> *Baier v. Alberta*, *supra*.

<sup>6</sup> *Ibid.* at para. 21 citing *Haig v. R.*, [1993] 2 SCR 995.

<sup>7</sup> *Ibid.* at para. 4.

the statutory platform of school trustee candidacy and school trusteeship.<sup>8</sup> The Court found that the fact that the appellants had access to this statutory platform prior to the amendments could not convert their claim into a positive one.<sup>9</sup> To hold otherwise would mean that once a government had created a statutory platform, it could never amend or repeal it without engaging s. 2(b) and having to justify the change under s. 1.<sup>10</sup>

14. The SCC stated, “to determine whether a right claimed is a positive right, the question is whether the appellants claim the government must legislate or otherwise act to support or enable an expressive activity.”<sup>11</sup> Making the case for a negative right would require the appellants to seek freedom from government legislation or action suppressing an expressive activity in which people would otherwise be free to engage, without any need for any government support or enablement.<sup>12</sup>

15. The Court in *Baier* referenced *Siemens v. Manitoba (Attorney General)*, where the SCC considered legislation that made a prior municipal vote on video lottery terminals binding. Business owners who had not been permitted to vote argued that this denied them expression under s. 2(b). The Court rejected that claim. Relying on *Haig*, it held that s. 2(b) does not guarantee access to a particular statutory means of expression or require government to provide one. Because the plebiscite was a creature of statute, any right to participation had to come from the legislation itself, not the *Charter*.<sup>13</sup>

16. If the Court accepts this is a positive claim, the question is whether the Applicants can bring themselves within the limited exception to the general rule that s. 2(b) protects against government interference rather than requiring government action.<sup>14</sup> The Court in *Baier* noted that this involves a consideration of the three factors identified by Bastarache J. in *Dunmore*.<sup>15</sup>

i. Is the claim grounded in a fundamental freedom of expression rather than access to a particular statutory or governmental regime?

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<sup>8</sup> *Ibid.* at para. 35.

<sup>9</sup> *Ibid.* at para. 36.

<sup>10</sup> *Ibid.*

<sup>11</sup> *Ibid.* at paras. 30 & 35.

<sup>12</sup> *Ibid.*

<sup>13</sup> *Ibid.* at para. 24. citing *Siemens v. Manitoba (Attorney General)*, [2003] 1 S.C.R. 6; 2003 SCC 3 [Not provided].

<sup>14</sup> *Ibid.* at para. 30.

<sup>15</sup> *Ibid.* at para. 43.

ii. Is the purpose of the exclusion from the regime to infringe freedom of expression under s 2(b) or does the exclusion have the effect of a substantial interference with s 2(b) freedom of expression?

iii. Is the government responsible for the inability to exercise the fundamental freedom?

17. More recently the SCC distilled the *Dunmore* factors into “a single core question: is the claim grounded in the fundamental *Charter* freedom of expression, such that, by denying access to a statutory platform or by otherwise failing to act, the government has either substantially interfered with freedom of expression, or had the purpose of interfering with freedom of expression? This is, to be clear, a single question which emphasizes the elevated threshold in the second *Dunmore* factor while encompassing the considerations of the first and third factors.”<sup>16</sup>

18. This test comes from *Toronto (City) v. Ontario (Attorney General)*, where the Government of Ontario reduced Toronto City Council from 47 wards to 25 after the 2018 election had already begun. Toronto and two groups of private individuals challenged the legislation on an urgent basis, arguing that changing the ward structure mid-campaign disrupted the election process and infringed s. 2(b).<sup>17</sup> The Court held that the City’s claim could be understood in two ways, and on either view it was a positive claim.<sup>18</sup> First, if the claim was for restoration of the earlier 47-ward structure, it sought to require the province to recreate or reinstate a prior statutory platform for expression.<sup>19</sup> Second, if the claim was for maintenance of the existing electoral framework during the election period, it still sought state action to preserve access to a particularly statutory platform because of the timing of the legislative change.<sup>20</sup> In either form, the claim was not simply for freedom from government interference, but for continued access to a government-created regime.

19. Having found it was a positive claim, the Court held that the *Baier* framework requires more than diminished expressive effectiveness. The Applicants must establish a substantial interference with freedom of expression arising from exclusion from the government-created

<sup>16</sup> *Toronto (City) v. Ontario (Attorney General)*, 2021 SCC 34 at para. 25. [TAB 2 of the Attorney General of Manitoba’s Case Book].

<sup>17</sup> *Ibid.* at paras. 6-8.

<sup>18</sup> *Ibid.* at para. 29.

<sup>19</sup> *Ibid.* at para. 30.

<sup>20</sup> *Ibid.* at para. 31.

regime.<sup>21</sup> In *Baier*, the SCC noted that only extreme government action that extinguishes the effectiveness of expression will constitute substantial interference.<sup>22</sup>

20. In that context, substantial interference arises only where exclusion from a statutory platform “radically frustrat[es] expression to such an extent that meaningful expression is effectively precluded.”<sup>23</sup> The onus rests on the party alleging improper purpose to demonstrate that to be true.<sup>24</sup>

21. In *Greater Vancouver Transportation Authority v. Canadian Federation of Students* (“*Greater Vancouver*”), the SCC rejected the Canadian Federation of Students’ attempt to characterize political advertising restrictions on transit buses as a claim for underinclusive access to a government-created platform.<sup>25</sup> The Court held that the transit advertising service was not a platform created for a limited group or narrow purpose.<sup>26</sup> Rather, it was available to anyone who wanted to advertise and was willing to pay a fee.<sup>27</sup>

22. Likewise, the Court rejected the claim that requiring government support or enablement does not, by itself, make a claim a positive rights claim under *Baier*.<sup>28</sup> The Court found that if state support alone were enough to trigger *Baier*, then claims to express oneself in streets, parks and other public places would all be recast as positive rights claims; this would misconstrue *Baier*.<sup>29</sup> The key question was whether the claimant is seeking access to the expressive platform itself, or instead is already allowed to use that platform and challenges only restrictions on the content of the expression permitted there.<sup>30</sup> The Canadian Federation of Students were allowed to engage in the expressive activity (advertising on buses); they were only limited in terms of the type of content they could express and thus it was not a positive rights claim.

23. In this case, the By-law creates a limited, government-administered permission under

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<sup>21</sup> *Ibid.* at para. 39.

<sup>22</sup> *Baier, supra* at para. 27.

<sup>23</sup> *Ibid.* at para. 27.

<sup>24</sup> *Ibid.* at para. 53.

<sup>25</sup> *Greater Vancouver Transportation Authority v. Canadian Federation of Students*, 2009 SCC 31 at para. 32 [TAB 3 of the Attorney General of Manitoba’s Case Book].

<sup>26</sup> *Ibid.*

<sup>27</sup> *Ibid.* at para. 32.

<sup>28</sup> *Ibid.* at paras. 34-35.

<sup>29</sup> *Ibid.*

<sup>30</sup> *Ibid.* at para. 35.

which the media may apply to film Council meetings. The Applicants seek inclusion in that regime. They do not merely ask the Municipality to refrain from restricting expression they are otherwise free to undertake. Rather, they ask the Court to require the Municipality to extend them access to a statutory platform for recording. There is no free-standing right to record people at Council meetings, and the Respondent notes that historically Council meetings were not even public.<sup>31</sup> As in *Baier*, the Applicants are asking this Court in effect to constitutionalize the prior regime, which in this case is a prior version of the By-law that allowed either public or the media to apply to record a Council meeting.<sup>32</sup>

24. Unlike *Greater Vancouver*, the Applicants do not challenge a restriction on the content of expression within a platform they are already entitled to use. Rather, they seek access to the ability to apply to record. Properly characterized, this is a positive rights claim because they are seeking access to a particular statutory regime.

25. In *Baier*, there was no allegation that the purpose of the legislation was to limit freedom of expression. In that case, the purpose was found to be to protect the democratic process by avoiding conflicts of interest.<sup>33</sup> Similarly, in this case the purpose is to protect the democratic process by allowing media to apply to record, while at the same time minimizing disruption, protecting privacy and enabling orderly Council meetings. Characterized in this way, the purpose of the By-law is not to infringe freedom of expression.

26. The Applicants also cannot meet the threshold of substantial interference. Their claim is grounded in access to a municipally created recording regime. The By-law does not substantially interfere with their ability to express themselves on municipal affairs. They remain free to attend council meetings, observe the proceedings, take notes, obtain information and disseminate commentary afterwards. As indicated by the Applicant, Mr. Page, despite being unable to personally record, he is still able to attend meetings and express opposition, and he reproduces the Zoom Broadcast and posts updates on Facebook and YouTube.<sup>34</sup> As the SCC affirmed, "...diminished effectiveness in the conveyance of a message does not mean that s. 2(b) is

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<sup>31</sup> Respondent's Brief at para. 102.

<sup>32</sup> *Baier, supra* at para. 37-38.

<sup>33</sup> *Ibid.* at para. 53.

<sup>34</sup> *Affidavit of Daniel Page* at paras. 9, 26-29.

violated.”<sup>35</sup>

27. The Applicants have not shown that exclusion from this regime radically frustrates expression or effectively precludes meaningful participation in public debate about municipal affairs. This case falls well short of that standard. The occasional temporarily muted microphone or inaudible phase does not nearly approach the level of substantial interference.

28. In summary, like the claimants in *Baier*, the Applicants are excluded from one particular statutory regime but remain able to express their viewpoints on the subject matter at issue in Council meetings through other means. They may attend, observe, take notes, speak publicly, report on the proceedings, reproduce or comment on the Municipality’s own broadcast, and disseminate critical information through social media and other channels. The Applicants seek a megaphone, and the *Charter* does not require the Municipality to hand them one.

#### *City of Montreal Analysis*

29. If this Court does not accept Manitoba’s primary position that the Applicants advance a positive rights claim under *Baier*, the framework for a negative rights case is set out in *City of Montreal*.<sup>36</sup>

30. To establish a negative rights breach of s. 2(b), a claimant must demonstrate that:

- i. the activity in issue has expressive content;
- ii. the location or method of the expression are not of such a nature as to exclude it from s. 2(b) protection; and
- iii. the purpose or effect of the impugned government action is to restrict freedom of expression.<sup>37</sup>

31. The first stage sets a low threshold. Activity will qualify as expression where it conveys or attempts to convey meaning.<sup>38</sup>

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<sup>35</sup> *Baier*, *supra* at para. 48.

<sup>36</sup> *Montreal (City) v. 2952-1366 Quebec Inc.*, 2005 SCC 62. [Tab 11 of the Applicant’s Book of Authorities, Volume 1 of 2]. (“*City of Montreal*”)

<sup>37</sup> *Irwin Toy Ltd. v. Quebec (Attorney General)*, [1989] 1 S.C.R. 927 [Tab 10 of the Applicant’s Book of Authorities, Volume 1 of 2].

<sup>38</sup> *Irwin Toy* at para. 42.

32. Where the claim arises on government-controlled property, location becomes a distinct part of the analysis. The question is whether the expression in that place is compatible with the purposes underlying s. 2(b), namely self-fulfillment, democratic discourse and truth finding.<sup>39</sup>

33. If the activity and location fall within s. 2(b), the Court then considers whether the purpose or effect of the impugned measure is to restrict expression. A law's purpose infringes s. 2(b) where it is aimed at controlling or suppressing meaning, or at restricting access to a form of expression because of its expressive character.<sup>40</sup> A law infringes by effect where, although adopted for some other objective, it interferes with expressive activity protected by s. 2(b).<sup>41</sup>

### *Application*

#### *i. Expressive Content*

34. As established in *Irwin Toy*, freedom of expression is to be interpreted broadly and liberally. The expression protected by s. 2(b) has been defined as any activity or communication that conveys or attempts to convey meaning.<sup>42</sup>

35. Expression has been found to include all stages of communication. It includes the maker or originator through to those who facilitate dissemination and ultimately to the audience whether as listeners or viewers.<sup>43</sup>

36. In *Canadian Broadcasting Corp. v. Canada (Attorney General)*, the SCC agreed with the lower courts that filming, taking photographs and conducting interviews outside courtrooms are activities that have the necessary expressive content.<sup>44</sup>

37. The Court also made clear that s. 2(b) protection is not confined to "traditional media" but extends to everyone who chooses to communicate meaning of public interest.<sup>45</sup>

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<sup>39</sup> *Canadian Broadcasting Corp. v. Canada (Attorney General)*, 2011 SCC 2. [Tab 5 of the Applicant's Book of Authorities, Volume 1 of 2].

<sup>40</sup> *City of Montreal*, *supra* at para. 83.

<sup>41</sup> *Irwin Toy*, *supra*.

<sup>42</sup> *Ibid.*

<sup>43</sup> *Dagenais v. Canadian Broadcasting Corp.*, [1994] 3 S.C.R. 835; *Irwin Toy Ltd.*, *supra*; *Rocket v. Royal College of Dental Surgeons of Ontario*, [1990] 2 S.C.R. 232; *R. v. Videoflicks* (1984), 14 D.L.R. (4th) 10. [Not provided].

<sup>44</sup> *Ibid.* at para. 41.

<sup>45</sup> *R. v. National Post*, 2010 SCC 16 at para. 24. [Tab 18 of the Respondent's List of Authorities]

38. As a result, Manitoba agrees that the activity in question, recording city council meetings, constitutes expressive content and that it falls *prima facie* within the scope of s. 2(b).

39. However, s. 2(b) of the *Charter* is not without limits and governments will not be required to justify every restriction on expression under s. 1.<sup>46</sup> The real issues are whether the claimed method of expression, in this location, falls within s. 2(b), and whether the impugned provisions have the purpose or effect of restricting protected expression.

*ii. Location & Method of the Expression*

40. Despite having expressive content, the expression may be excluded from the scope of the constitutional protection because of the *method* of expression or because of the *location* where it would take place.

41. The method for engaging in the expressive activities, namely, the unrestricted recording of Council meetings does not, in itself, remove the activity from s. 2(b) protection.<sup>47</sup>

42. This case raises the question of whether the *location* of the expression at issue causes the expression to be excluded from the scope of s. 2(b).

43. City council meetings are generally held in Council Chambers located at 100 Springfield Centre Drive. If attendance is expected to be high, the meetings may occur in the community centre. For the location to be excluded from *Charter* protection, the court must find that it conflicts with the values protected by s. 2(b), namely self-fulfilment, democratic discourse and truth finding.<sup>48</sup> To answer this question, the following factors should be considered: (a) the historical or actual function of the place; and (b) whether other aspects of the place suggest that expression within it would undermine the values underlying free expression.<sup>49</sup>

44. Applying those considerations here, the historical and actual function of Council Chambers points in two directions. On one hand, the space exists to permit the orderly conduct of municipal business. On the other, those functions are carried out in public view, precisely because openness,

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<sup>46</sup> *Canadian Broadcast Corp. v. Canada (Attorney General)*, *supra* at para 32.

<sup>47</sup> *Ibid.* at para. 44.

<sup>48</sup> *Ibid.* at para. 37.

<sup>49</sup> *Ibid.*

accountability, and civic participation are central features of municipal government. The location is therefore not one in which expression is wholly foreign to its purpose. Rather, it is a government-controlled setting in which some forms of expression are compatible with the function of the place and others may be regulated to preserve order and decorum.<sup>50</sup>

45. The most pertinent question is whether the values underlying s. 2(b) require the Municipality to permit any member of the public to make their own video recording from within the meeting room while the proceedings are underway. As the SCC held in *City of Montreal*, the "ultimate question" is whether free expression in the place at issue would undermine the values the guarantee is designed to promote<sup>51</sup>

46. In *City of Montreal*, the Court emphasized the actual function of the space is critical to the analysis. Even where property is government-owned and accessible to the public, expression may still be regulated where the nature of the space and the activity conducted there are inconsistent with an unrestricted right to use the place for one's chosen expressive purpose:

Actual function is also important. Is the space in fact essentially private, despite being government-owned, or is it public? Is the function of the space — the activity going on there — compatible with open public expression? Or is the activity one that requires privacy and limited access? Would an open right to intrude and present one's message by word or action be consistent with what is done in the space? Or would it hamper the activity? Many government functions, from cabinet meetings to minor clerical functions, require privacy. To extend a right of free expression to such venues might well undermine democracy and efficient governance.<sup>52</sup>

47. Applying those principles here, Council Chambers are not a traditional open forum such as a street, park or public square, nor are they analogous to a courtroom for the purpose of s. 2(b). A courtroom is a constitutionally distinctive space governed by concerns relating to trial fairness, witness integrity, and the proper administration of justice. Council Chambers are a place where public observation and political scrutiny are expected, but where the Municipality retains authority

<sup>50</sup> See s. 16 of Procedural By-law No. 24-10 by-law regarding certain public decorum requirements. [Tab 37 of the Applicant's Book of Authorities, Volume 2 of 2].

<sup>51</sup> *Montreal (City) v. 2952-1366 Quebec Inc.*, *supra* at paras. 76-77.

<sup>52</sup> *Ibid.* at para. 76.

to regulate the manner in which the proceedings are recorded in order to preserve the orderly conduct of business. This authority helps protect the conditions in which democratic discourse can occur. Unregulated personal recording may create disruption, disturbance, or affect participation where attendees fear that selective clips or images may be manipulated or taken out of context.

48. Although *City of Montreal* was decided in 2005, the SCC expressly recognized that changes in society and technology may affect where expression should be protected.<sup>53</sup> In a modern setting, handheld phones and similar devices make personal recording immediate and difficult to supervise. In Council Chambers, that method of expression may affect decorum and make it harder for the Municipality to manage the meeting in an orderly manner, thus affecting democratic discourse.

49. The Applicant's cite *New Brunswick Broadcasting Co. v. Nova Scotia (Speaker of the House Assembly)*.<sup>54</sup> That case supports the uncontroversial proposition that recording proceedings may be expressive; however, *New Brunswick Broadcasting Co.* arose in a setting where originally there was no equivalent video access to the proceedings. Electronic video *Hansard* only became available after the judgment of the Court of Appeal. While that case ultimately turned on parliamentary privilege, it nevertheless recognized that in-room filming of live proceedings may engage legitimate institutional concerns relating to decorum, order and the proper functioning of the body.<sup>55</sup>

50. Accordingly, having regard to both the actual function of Council chambers and the modern method of expression, the location does not confer a constitutional entitlement of members of the public to personally record proceedings from within the meeting room.

51. If the claimed location removes s. 2(b) protection, that is the end of the constitutional inquiry in the *City of Montreal* test and the claim must be dismissed since the Applicants have not met their onus. Only if the activity remains protected does the analysis proceed to whether the impugned measure infringes freedom of expression by purpose or effect.

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<sup>53</sup> *Ibid.* at para. 77.

<sup>54</sup> *New Brunswick Broadcasting Co. v. Nova Scotia (Speaker of the House Assembly)*, [1993] 1 SCR 391 at para. 92. [Tab 14 of the Applicant's Book of Authorities, Volume 1 of 2].

<sup>55</sup> *Ibid.* at paras. 6 and 165.

*iii. Purpose or Effect*

52. If, contrary to Manitoba's primary position, the location does not remove s. 2(b) protection, the Court must then consider whether the impugned measure infringes freedom of expression by purpose or effect.

53. Government action infringes s. 2(b) in its purpose if its object is to "restrict the content of expression by singling out particular meanings that are not to be conveyed" or "if the government has aimed to control attempts to convey a meaning either by directly restricting the content of expression or by restricting a form of expression tied to content". Where, on the other hand, it aims only to control the physical consequences of particular conduct, its purpose does not touch upon the guarantee.<sup>56</sup>

54. Here, the by-law in question is aimed at the practical consequences of personal recording during live council proceedings, not at suppressing any message or viewpoints. Its purpose is to regulate the manner of recording during council proceedings in order to preserve decorum, protect the privacy interests of attendees and staff, avoid discouraging public attendance and participation and ensure the orderly and efficient conduct of municipal business. That purpose also includes managing the practical difficulties that arise where an indeterminate number of attendees may wish to record the meeting using different forms of technology during a live meeting.

55. The purpose is reinforced by the fact that the municipality already provides live video feeds and permanent audio recordings of the proceedings. This is conduct consistent with transparency and public access and not suppression.

56. That said, if the location of the expression does not remove s. 2(b) protection, then the By-law arguably infringes in effect in that it limits members of the public from capturing the Council meeting through personally created audiovisual recordings. A negative rights claim need not show that the effects of the infringement on freedom of expression are substantial. This Court would therefore have to proceed to a s. 1 analysis if the location of the expression does not remove s. 1(b) protection.

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<sup>56</sup> *Irwin Toy Ltd.*, *supra* at para. 52.

*Reasonable and justifiable limit under section 1 of the Charter*

57. Manitoba maintains that s. 2(b) is not infringed and a s. 1 analysis is unnecessary. The Applicant's advance a positive rights claim and they cannot meet the threshold required to establish such a claim. In the alternative, if the claim is analyzed under *City of Montreal*, the proposed activity falls outside of s. 2(b) protection having regard to the nature of the location. However, if the By-law does violate s. 2(b), any such violation is justified and saved by s. 1 of the *Charter*.

58. Section 1 balances the rights of individuals and the interests of society by permitting limits to be placed on fundamental freedoms. Any limits must be "prescribed by law." If that threshold is met, then the municipality must demonstrate that two criteria are satisfied:

a) The objective of the measure must be pressing and substantial. This requirement is analyzed without assessing the scope of the infringement, the means employed or the effects of the government measure.

b) The means by which the objective is furthered must be proportionate. The proportionality inquiry consists of three components: (i) rational connection to the objective, (ii) minimal impairment of the right, and (iii) proportionality between the effects of the measure (including a balancing of its salutary and deleterious effects) and the stated government objective. The inquiry is both normative and contextual.<sup>57</sup>

*(a) Pressing & Substantial*

59. The By-law serves a pressing and substantial objective. Its purpose is to reduce disruption to Council meetings, protect the privacy of members of the public, minors and staff, limit potential suppression of views of the public who are uncomfortable with being record by the public, reduce delays caused by the set-up and removal of recording equipment, and avoid the practical difficulties created by an indeterminate number of attendees recording on multiple devices, technical interruptions, including lighting and inadvertent audio playback.<sup>58</sup> These are all pressing and substantial objectives.

<sup>57</sup> *R. v. Oakes* [1986] 1 S.C.R. 103 [Tab 19 of the Applicant's Book of Authorities, Volume 1 of 2].

<sup>58</sup> *Brief of the Respondent* at paras. 23-26 and 76.

(b) *Proportionality*

(i) *Rationally Connected*

60. At this stage, the court asks whether the measures are rationally connected to the By-law's objective. Deference to the government's choice is also owed at the rational connection stage.<sup>59</sup>

61. The SCC has described the rational connection test as “not particularly onerous”.<sup>60</sup> The government need only show that it is “reasonable to suppose” that the limit or prohibition “may further the goal, not that it will do so”.<sup>61</sup>

62. The rational connection requirement is met here. Restricting personal recording during live Council proceedings is rationally connected to the Municipality’s objective of preserving order, avoiding delay and managing a setting attended by staff, councilors and members of the public including children, and avoiding the disruption or suppression of discourse due to concerns regarding public manipulation of video recordings to create false information or misinformation.

(ii) *Minimal Impairment*

63. On the second question of whether the By-law minimally impairs the right in question, Manitoba submits that members of the public retain meaningful expressive access. They may attend, observe, rely on official recordings and freely report on or comment about council proceedings using any medium of their choosing. There is no right or requirement to capture every expressive nuance of public officials through personally created audiovisual recordings.

64. The Municipality itself provides video and audio access to Council proceedings, and the By-law further permits media to apply for permission to record.

65. Some deference is warranted to the Municipality’s choice of how best to manage that

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<sup>59</sup> *Lavoie v. Canada*, 2002 SCC 23, [2002] 1 S.C.R. 769 (S.C.C.), at para. 59. [TAB 4 of the Attorney General of Manitoba’s Case Book].

<sup>60</sup> *Health Services and Support – Facilities Subsector Bargaining Assn. v. British Columbia*, [2007] 2 S.C.R. 391 at para. 148; *Little Sisters Book and Art Emporium v. Canada (Minister of Justice)*, [2000] 2 S.C.R. 1120 para. 228; *Trociuk v. British Columbia (Attorney General)*, [2003] 1 S.C.R. 835, at para. 34. [Not provided].

<sup>61</sup> *Alberta v. Hutterian Brethren of Wilson Colony*, 2009 SCC 37 at para. 48. [Tab 1 of the Applicant’s Book of Authorities, Volume 1 of 2].

setting and balance transparency, participation, privacy and decorum.<sup>62</sup>

66. The SCC has made it clear that minimal impairment does not require the government to adopt the least impairing measure imaginable. The question is whether the measure impairs the right no more than reasonably necessary to achieve the objective.<sup>63</sup> On that standard, the By-law falls within a reasonable range of options.

(iii) *Proportionality*

67. The final question asks whether the infringing effects of the By-law outweigh the importance of the objective sought. The By-law promotes orderly and predictable proceedings, protects privacy interests, and reduces disruption and supports public participation in a setting where some attendees may otherwise feel deterred from attending or speaking. Any deleterious effect on expression is modest. Members of the public remain free to attend meetings, observe the proceedings, obtain information, and express, criticize and disseminate information about municipal affairs.

68. The Application should therefore be dismissed. This is a positive rights claim and the Applicant's have not established an obligation on the government to facilitate expression. In the alternative, if the claim is analyzed under *City of Montreal*, the proposed activity falls outside s. 2(b) protection having regard to the nature of the location. If a prima facie infringement were found, the By-law constitutes a reasonable limit demonstrably justified under s. 1 of the *Charter*.

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<sup>62</sup> *Harper v. Canada (Attorney General)*, 2004 SCC 33 at para. 111. [TAB 5 of the Attorney General of Manitoba's Case Book].

<sup>63</sup> *Ibid.* at para. 32.

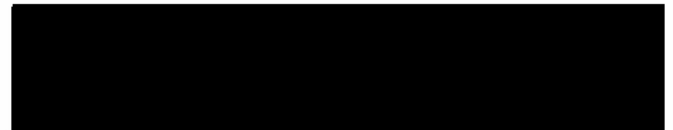
**PART V: CONCLUSION**

69. The Applicant's claim is a positive rights claim. The By-law does not impose a blanket prohibition on expression about council proceedings; rather, it creates a limited, municipally administered regime governing who may create a video recording during council meetings. The Applicants therefore seek not merely freedom from state interference but access to a statutory platform for recording. The lack of access does not substantially interfere with expression.

70. If this is not a positive rights claim, then having regard to the nature of that location, the By-law does not violate s. 2(b) of the *Charter*. The location of the expression removes it from s. 2(b) protection in this case. Members of the public remain free to attend, observe, rely on official recordings, obtain information, and report on or comment about council proceedings using any medium of their choosing. Accordingly, the By-law does not infringe s. 2(b) of the Charter.

71. Alternatively, if a prima facie infringement is found, the By-law constitutes a reasonable limit demonstrably justified under s. 1. As a result, the application should be dismissed.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.



Michael Bodner, Crown Counsel for  
The Attorney General of Manitoba



Julie Winter, Crown Counsel for  
The Attorney General of Manitoba

Dated this 2<sup>nd</sup> day of April, 2026.

**PART VI: LIST OF AUTHORITIES**

<u>Cases:</u>	<u>Tab No.</u>
<i>Baier v. Alberta</i> , 2007 SCC 31 .....	1
<i>Toronto (City) v. Ontario (Attorney General)</i> , 2021 SCC 34.....	2
<i>Greater Vancouver Transportation Authority v. Canadian Federation of Students</i> , 2009 SCC 3 .....	3
<i>Lavoie v. Canada</i> , 2002 SCC 23.....	4
<i>Harper v. Canada (Attorney General)</i> , 2004 SCC 33 .....	5