

Court File No.: CV-26-00000011-0000

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

APPLICANTS' FACTUM

July 13, 2026

**CHARTER ADVOCATES
CANADA**

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PART I-OVERVIEW

1. The Applicants were removed from open meetings of the Respondent, the Township of North Huron (“**Township**”) for allegedly recording these meetings with their phones, contrary to a procedural bylaw. They were then issued trespass notices prohibiting their attendance at these meetings for six-months. The Township claims that the trespass notices were issued for three reasons: i) breach of the bylaw, ii) alleged threatening behaviour by the Applicants, and iii) certain online posts made by the Applicants. The Applicants respond that: i) the prohibition on recording meetings – which has since been rescinded – was unconstitutional, ii) the Applicants have never engaged in threats or violence against Township councillors or staff, and iii) the Applicants’ online activity is both irrelevant and constitutionally protected. Despite the repeal of the recording prohibition, the trespass notices remained.

2. Recording and broadcasting is protected expressive activity, and an important component of newsgathering activities. The prohibition on recording open meetings was an unconstitutional limit on the Applicants’ 2(b) *Charter* rights. The Respondents cannot rely on an unconstitutional bylaw to uphold a trespass notice. The trespass notices themselves infringe the Applicants 2(b) *Charter* right to attend municipal council meetings, and the Respondents cannot justify them by referring to posts made by the Applicants online, given the fact the posts are not threatening in any sense. Nor did the Applicants behave in any way that was threatening or violent that would justify the trespass notices. The Applicants also did not disrupt meetings. Even if they did, the proportionate response would have been to remove them from the meeting, not issue six-month trespass notices.

3. Finally, the trespass notices were issued by Chief Administrative Officer (“**CAO**”) Nelson Santos, and there is no resolution or bylaw passed by the Township’s Council authorizing

him to do so. Without a duly passed bylaw or resolution, CAO Santos' trespass notices to the Applicants were thus issued without proper authority and are of no force or effect.

PART II-FACTUAL SUMMARY

The Applicants

4. The Applicants are residents of the Township. They have regularly attended public council meetings for the past 10 years. They are interested in municipal policies and are engaged with the governance of the Township.¹ The Applicants frequently comment online about Township meetings and believe that transparency is an important aspect of municipal government. To achieve this goal, they seek to create independent recordings of open council meetings.

The Respondents

5. The Respondent the Township of North Huron is a lower-tier municipal government created pursuant to the *Municipal Act, 2001*, S.O. 2001, c. 25 ("**Act**") and serves the rural community within Huron County.² The Township Council ("**Council**") consists of a Reeve, Deputy Reeve, and five councillors.

6. The Respondent Nelson Santos is the current CAO appointed pursuant to section 229 of the Act.

7. The Council holds meetings generally every two weeks at 271 Francis Street in Wingham, Ontario.³ The meetings are generally scheduled to commence at 6 PM.⁴

Recording of Public Meetings

¹ Affidavit of Stephen Hill, affirmed March 30th, 2026 at para 3 ("**Hill Affidavit**"), Affidavit of Bradley Carther, affirmed March 30, 2026 at para 3 ("**Carther Affidavit**").

² Affidavit of Nelson Santos, affirmed May 21, 2026 at para 6 ("**Santos Affidavit**").

³ Cross Examination Transcript of Nelson Santos, June 15, 2026 ("**Santos Transcript**") at q. 3, p. 1.

⁴ *Ibid* at q. 5, p 2.

8. The Township is required to pass a procedure bylaw pursuant to section 238(2) of the Act. Amongst its provisions, the previous procedure by-law 52-2025 (the “**Old Bylaw**”) at section 20.2 provides:

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.

9. This provision of the Old Bylaw thus prohibits anyone from recording a public session of Township council meetings, except for devices operated by the Township. The Township does broadcast public council meetings, which remains available for viewing on its official Youtube channel.

10. The Applicants desire to create their own recordings of public Township council meetings to ensure there is an accurate record of what occurs at these meetings, as there are instances where the Township’s recording cuts out.⁵

11. On February 17, 2026, Council passed Motion 24/26, in which it resolved to suspend section 20.2’s prohibition on recording and resolved to pass a new procedure bylaw at the next meeting repealing the prohibition on recording.⁶

12. On March 2, 2026, Council passed by-law rules of procedure 14-2026 (“**New By-law**”), which amended 20.2 to permit recording by the public, so long as it does not done in a manner that creates a physical hazard, obstructs the view of others, impedes the Township’s ability to

⁵ Hill Affidavit at para 23; Carther Affidavit at para 12.

⁶ Hill Affidavit at para 6, Santos Transcript at Exhibit 5.

livestream the meeting, or harasses or intimidates participants.⁷

The Trespass Notices

13. The Applicants attended the December 1, 2025 Council meeting. Approximately 15 minutes prior to the start of the meeting, Mr. Hill approached the podium and asked the Council a question regarding the tattered flag at the cenotaph and the status of snow clearance in the community.⁸

14. The Applicants attended the December 15, 2025 meeting. Mr. Hill approached the podium prior to the start of the meeting. He asked the Council whether they would look into replacing the flag at the cenotaph, as the issue was not resolved yet. Reeve Heffer replied that the flag would be replaced the following day.⁹ Mr. Hill returned to his seat in the public gallery after this exchange.

15. The meeting had not commenced yet, and Mr. Hill asked whether the Council would clear the snow at the cenotaph. At this point, two men in the gallery approached Mr. Hill. They identified themselves as Ontario Provincial Police (“OPP”) officers but were not in uniform at this meeting. The OPP officers told Mr. Hill that he was disturbing the meeting. Mr. Hill replied that he was merely voicing his concern on the state of the cenotaph and the snow clearance, and that the meeting had not started yet. The Applicants remained silent for two minutes prior to the start of this meeting at 6 PM.¹⁰ The Applicants did not interrupt the meeting after it commenced,

⁷Township of North Huron, [By-law No. 14-2026](#), *Being a By-law to govern the calling, place, and proceedings of the meetings of the Council of the Township of North Huron and its Committees and to provide public notice of meetings* (2 March 2026) at s. 20.2.

⁸ Hill Affidavit at para 9.

⁹ *Ibid* at para 10.

¹⁰ *Ibid* at para 11.

and Council was able to conduct its matters without any issues.¹¹

16. The Applicants attended the January 12, 2026 meeting. The meeting commenced at 6 PM. As this meeting commenced, the Applicants were holding up their phones pointed at Council. Reeve Heffer opened the meeting in the usual manner by reciting the land acknowledgement and moving to confirm the agenda.¹² After these opening matters, Reeve Heffer noticed the Applicants holding up their phones and asked them to put them away as it was contrary to section 20.2 of the Old Bylaw. The Applicants refused to comply, and Reeve Heffer recessed the meeting and called the OPP to remove the Applicants.¹³ The OPP officers verbally told the Applicants that they were prohibited from physically attending Council chambers for 60 days.¹⁴

17. The Applicants attended the February 2, 2026 meeting. The Applicants sat down in the public gallery and the meeting commenced on time at 6 PM.¹⁵ At 6:03 PM, after Reeve Heffer had opened the meeting in the normal manner, he noticed the Applicants holding up their phones and asked them to put them away. When the Applicants refused to comply, Reeve Heffer directed CAO Santos to issue the Applicants with trespass notices.¹⁶ The Applicants did not accept the trespass notices, but Mr. Hill later received an email later that day with the notice attached that stated he was banned from attending 274 Josephine Street (i.e. the Township hall) for six months.¹⁷

18. OPP officers soon arrived in Council chambers and escorted the Applicants out of the

¹¹ Santos Transcript at q. 45 at pp. 7-8.

¹² *Ibid* at q. 53-54 at p 9.

¹³ Hill Affidavit at paras 13-14.

¹⁴ *Ibid* at para 14.

¹⁵ Santos Transcript at q. 83-85.

¹⁶ *Ibid* at q. 87-90.

¹⁷ Hill Affidavit at Exhibit "D".

room. They were told by Sgt. Foxton, one of the officers, that they were banned from Council Chambers for 24 hours. The OPP officers then issued each Applicant with a \$65 ticket under part I of the *Provincial Offences Act*.¹⁸

19. The Applicants attempted to attend the February 17, 2026 Council meeting. The Applicants invited people to attend this meeting and peacefully protest Council's behaviour. They handed out a "code of conduct" to all invitees and stressed the importance of being non-disruptive and peaceful.¹⁹ A small group of invitees attended the Council meeting with the Applicants. The Applicants were arrested by the OPP before the start of the meeting for violating the trespass notice and were issued a summons under part III of the *Provincial Offences Act*.²⁰ They were taken outside of the Council building into the parking lot.

20. After the meeting concluded, the Applicants were still in the parking lot when Deputy Reeve Falconer left the building. There was a brief exchange between Mr. Hill and Mr. Falconer. Mr. Hill asked Mr. Falconer a question, and then Mr. Falconer turned towards Mr. Hill. One of the invitees, Mr. Brent Mills, stepped between Mr. Hill and Mr. Falconer. An altercation ensued between Mr. Mills and Mr. Falconer and Mr. Mills knocked Mr. Falconer to the ground.²¹ Neither Applicant encouraged nor instructed Mr. Mills to do anything at this meeting, except to remain peaceful and non-disruptive at the meeting.

PART III- STATEMENT OF ISSUES AND ARGUMENT

ISSUES

21. These are the following issues for the Court's determination in this Application:

¹⁸ *Ibid* at paras 18-19.

¹⁹ Affidavit of Stephen Hill, affirmed June 8, 2026 ("Hill Reply Affidavit") at para 3 and Exhibit "A".

²⁰ Hill Affidavit at para 20.

²¹ *Ibid* at para 21. See also Santos Affidavit at Exhibit "LL".

- a. whether the Application is moot, and if it is, whether this Court should exercise discretion to hear it;
- b. whether the recording prohibition under section 20.2 of the Old Bylaw was unconstitutional and therefore rendered the trespass notices invalid;
- c. whether the issuance of six-month trespass notices was unconstitutional; and
- d. whether CAO Santos had authority to issue the trespass notices without a duly passed bylaw or resolution of Council.

A. Preliminary issue: mootness

22. The latest trespass notices were issued to the Applicants on February 2, 2026 and banned them from Township property for a period of six months, ending on August 2, 2026, before the hearing of this application. As they will be expired, the trespass notices will no longer affect the Applicants ability to attend Council chambers by the time this Court hears the Application and thus mootness is an issue that ought to be addressed, according to the Supreme Court of Canada's ("SCC") framework set out in *Borowski v Canada*.²²

23. Where an applicant seeks vindication for alleged breaches of the law, courts have held that a matter is not moot and declarations have practical utility. In *Corbiere v. Hewson*²³, a former band chief contested a declaration that he had been absent from three consecutive band council meetings without authorization and thus removed from office pursuant to section 78(2) of the *Indian Act*. The former band chief lost the following election but discovered afterwards documents that purportedly showed the three meetings he missed were not actually council meetings under the *Indian Act*. He applied for judicial review. Despite the fact he had lost the

²² *Borowski v. Canada (Attorney General)*, [1989] 1 S.C.R. 342, ["*Borowski*"]

²³ *Corbiere v. Hewson*, (1999) 182 D.L.R. (4th) 662, [1999 CanLII 9256 \(FCA\)](#).

election, the Court held the matter was not moot, as the appellant still sought vindication and to clear his reputation.²⁴

24. Similarly, the case at bar is not moot. Despite the fact the trespass notices will expire by the time the case at bar is heard, there is a live controversy on whether the Township legally issued the trespass notices against the Applicants. A declaration that the trespass notices were unconstitutional will vindicate the Applicants and clear their names of any wrongdoing and will have practical utility.

25. Alternatively, if this Court finds the Application moot, it should exercise its discretion pursuant to the three factors set out in *Borowski*, that being i) the existence of a truly adversarial context, ii) circumstances that warrant expenditure of judicial resources (judicial economy), and iii) ensuring that the courts respect their proper adjudicative role.²⁵

26. The case at bar satisfies the three criteria set out in *Borowski*. Sopinka J. in *Borowski* noted that collateral consequences may create the necessary adversarial context.²⁶ In *Bracken v. Niagara (Regional Municipality)*²⁷, the Court held the applicant's collateral claim for damages against the respondent created an adversarial context.²⁸ Similarly, the Applicants have an interest in having the trespass notices declared illegal, while the Township has an interest in upholding them. The Applicants also have outstanding prosecutions under the *Provincial Offences Act*, and determining the validity of the trespass notices will have a collateral effect on these prosecutions.

27. Secondly, there is judicial economy in hearing this Application. In *Bracken v. Fort Erie (Town)*²⁹, the Court confirmed the application judge's holding that there was judicial economy in

²⁴ *Ibid* at para 21.

²⁵ *R. v. Smith* [2004 SCC 14](#) at para 39.

²⁶ *Borowski* at p. 359.

²⁷ *Bracken v Regional Municipality of Niagara Corporation*, [2015 ONSC 6934](#), ["Niagara"]

²⁸ *Ibid* at para 6.

²⁹ *Bracken v. Fort Erie (Town)*, [2017 ONCA 668](#), ["Fort Erie"]

making a determination, given the likelihood of reoccurrence in light of the parties' relationship.³⁰ The Applicants are likely to continue attending Council meetings, and clarification on the rights of each parties will help govern their behaviour going forward.

28. Finally, there is no risk of this Court overstepping its adjudicative role. While declarations of defunct legislation usually results in refusal of a court to exercise discretion, in the case at bar the validity of the Old Bylaw section 20.2 determines whether or not the trespass notices were valid. Declaring the constitutional validity of legislation is the accepted role of this Court and it would not be akin to passing legislation. The other declarations do not rely on determinations of legislation, and thus give even less concern to the Court overstepping its adjudicative role.

B. Section 20.2 of the Old Bylaw is an unconstitutional infringement of 2(b) of the Charter

29. The Township is a government entity bound by the *Charter*.³¹ For this Court to find that the Respondents infringed the Applicants's 2(b) *Charter* right they must demonstrate that their activity 1) contains expressive content, 2) that the location or method does not remove protection and 3) that the law or government action infringes on section 2(b) protection either in purpose or in effect.³²

30. Section 20.2 of the Old Bylaw is an unjustified infringement of section 2(b) of the *Charter*, as it imposes an absolute prohibition on recording. Recording and broadcasting have been found to be expressive activity.³³

31. There is no evidence that the Applicants disrupted the ability of Council to commence its meetings and conduct its matters. Meetings were only recessed when Reeve Heffer demanded

³⁰ *Ibid* at para 23.

³¹ *Godbout v. Longueuil (City)*, [1997] 2 S.C.R. 844 at paras 50-51. ["*Godbout*"]

³² *Montréal (City) v. 2952-1366 Québec Inc.*, 2005 SCC 62 at para 56 ["*Montreal (City)*"]

³³ *Canadian Broadcasting Corp. v. Canada (Attorney General)*, 2011 SCC 2 at paras 40-46 ["*CBC*"]

the Applicants to put their devices away. The Applicants were removed on grounds that they had breached section 20.2 of the Old Bylaw. If this Court finds that section 20.2 of the Old Bylaw is constitutionally invalid, it follows that the trespass notices are also invalid and must be quashed.

i) *Recording is a Charter protected activity*

32. In *CBC*, the SCC held that recording and broadcasting are expressive activities protected by section 2(b) of the *Charter*.³⁴ The Court held that:

The content of the message the media organizations wish to convey consists of testimony, examinations, submissions, judgments and other sounds captured by courthouse equipment during hearings. This content can be conveyed in many different ways, whether by broadcasting the official audio recordings of hearings, by publishing written reports, by transcribing what is said at hearings or by broadcasting oral reports by journalists. But it must be conceded that the message conveyed by broadcasting the official audio recording of hearings is not the same as one conveyed using another method of expression.³⁵

33. Furthermore, in *Alberta (Information and Privacy Commissioner) v. United Food and Commercial Workers, Local 401*, the SCC held that recording a picket-line in the context of a strike engaged 2(b) of the *Charter*.³⁶ The Court held that recording people at the picket-line for the purpose of persuading people to support the union or to dissuade people from crossing the picket-line was expressive activity protected by 2(b) of the *Charter*.³⁷

34. In *New Brunswick Broadcasting Co. v. Nova Scotia (Speaker of the House)*, the Nova Scotia Court of Appeal (“NSCA”) held that an absolute ban on media bringing non-intrusive recording equipment to record sessions of the legislature was an unjustified violation of section 2(b) of the *Charter*.³⁸ While the decision was overturned at the SCC on grounds of legislative

³⁴ *Ibid.*

³⁵ *Ibid* at para 52.

³⁶ *Alberta (Information and Privacy Commissioner) v. United Food and Commercial Workers, Local 401*, [2013 SCC 62](#) at para 11. [“UFCW”]

³⁷ *Ibid* at para 11.

³⁸ *New Brunswick Broadcasting Co. v. Nova Scotia (Speaker of the House)*, [1991 CarswellNS 543](#), [1991 CanLII 2529 \(NSCA\)](#) at para 52. [“*New Brunswick Broadcasting, NSCA*”]

privilege, the Court did not address the *Charter* issues.³⁹

35. Notwithstanding the issue of parliamentary privilege, the NSCA in *New Brunswick Broadcasting*, NSCA provides persuasive reasons on why recording of public proceedings should be protected, as newsgathering is an essential part of the freedom of the press. The NSCA discussed the importance of the mode of communication, where it held that:

...the ban on television prohibits a mode or means of expression. In my view to limit a mode of expression is to limit freedom of expression as guaranteed by s. 2(b). With respect it is the same as limiting free expression by the print media or the radio which the provincial government cannot do under the *Charter*...While the press may have no greater right of access than the public it is inherent...that they [the press] have a distinct role to play in the democratic process.⁴⁰

36. While the public has a right to attend public proceedings, the reality is that the vast majority of the public does not have the time to attend them. The SCC noted this issue in *CBC* in the judicial proceeding context, noting that most people cannot attend court proceedings and rely on media to gather this information. Without the dissemination of information about court proceedings, the values of section 2(b) of democratic discourse, self-fulfilment, and truth finding, would be diminished.⁴¹

37. Furthermore, the SCC recognized in *Edmonton Journal v. Alberta (Attorney General)* that “...freedom of expression “protects listeners as well as speakers.” That is to say, as listeners and readers, members of the public have a right to information pertaining to public institutions...”⁴²

38. While the Township does provide a recording, the Applicants want to create their own independent recording, which is taken from a different perspective than the Township’s equipment and to ensure there is a recording if the Township shuts off the recording.⁴³ The

³⁹ *New Brunswick Broadcasting Co. v. Nova Scotia (Speaker of the House)*, [1993] 1 SCR 391 at p. 366.

⁴⁰ *New Brunswick Broadcasting*, NSCA at para 52.

⁴¹ *CBC*, at para 45.

⁴² *Edmonton Journal v. Alberta (Attorney General)*, [1989] 2 S.C.R. 1326, at pp. 1339-1340. [“*Edmonton Journal*”]

⁴³ Hill Affidavit at para 23, Carther Affidavit at para 12.

Applicants' motivations thus satisfy the SCC's holding in *CBC*. The content of the meeting can be conveyed in many ways, but what the Applicants want to do is to convey the content through their own recordings, which section 20.2 of the Old Bylaw prohibits. The content does contain expressive activity.

ii) *Council chambers is a place traditionally reserved for recording and broadcasting*

39. The next step for a finding of a section 2(b) violation is to consider whether the method or location of the expression would remove section 2(b) protection. Many public places are required to support expressive activity. The question to ask is whether free expression in a public space would conflict with the purposes of section 2(b), namely (1) democratic discourse, (2) truth finding, and (3) self-fulfilment. To answer this question, the SCC held that 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.⁴⁴

40. The SCC went on to state that “[t]he historical function of a place for public discourse is an indicator that expression in that place is consistent with the purposes of 2(b). In places where free expression has traditionally occurred, it is unlikely that protecting expression undermines the values underlying the freedom.”⁴⁵

41. Town halls have traditionally been places for the community to express their concerns to elected officials. In *Fort Erie*, the Ontario Court of Appeal (“ONCA”) held that the area in front of a town hall is not only a place where free expression traditionally occurred, but also where it is expected to occur in a free and democratic society. The Court held that “[t]he literal town square

⁴⁴ *Montreal (City)*, at para 74.

⁴⁵ *Ibid*, at para 75.

is paradigmatically the place for expression of public dissent.”⁴⁶

42. While the Township needs to ensure orderly proceedings at meetings, they are of a public nature. Subsection 239(1) of the Act requires all meetings of Council to be conducted in public, subject to certain exceptions under subsection 239(2). In *R.S.J. Holdings Inc. v. London (City)*, the SCC stressed the importance of open meetings as required by the enabling statute, reflecting the democratic character of municipal decisions.⁴⁷ The SCC held that “[w]hen a municipal government improperly acts with secrecy, this undermines the democratic legitimacy of its decisions...”⁴⁸

43. In *CBC*, the Court held that expressive activity of journalists in the courtroom was a historical practice. The use of equipment to film, take photographs and record audio had been authorized for use in designated areas of a courthouse for a long time.⁴⁹ Therefore, the method of expression did not exclude it from section 2(b) protection.

44. The Court went on to examine whether the location excluded protection of section 2(b). It held that while the primary purpose of a courthouse was to conduct trials and other judicial proceedings, the presence of journalists in public areas of the courthouse was historically authorized. The Court stressed that the presence of journalists there was essential, because when they conduct themselves appropriately, their presence generally enhances the values of section 2(b), and that without journalists reporting court cases, “...the public’s ability to understand our justice system would depend on the tiny minority of the population who attend hearings, and the inevitable result would be to erode democratic discourse, self-fulfilment and truth finding.”⁵⁰

45. Similarly, in *Edmonton Journal*, the SCC summarized the reasons for the open court

⁴⁶ *Fort Erie* para 54.

⁴⁷ *R.S.J. Holdings Inc. v. London (City)*, 2007 SCC 29 at para 38. [“*R.S.J. Holdings*”]

⁴⁸ *Ibid* at para 38.

⁴⁹ *CBC*, at para 44.

⁵⁰ *CBC* at para 45.

principle:

- 1) to maintain an effective evidentiary process;
- 2) to ensure a judiciary and juries that behave fairly and that are sensitive to the values espoused by the society;
- 3) to promote a shared sense that our courts operate with integrity and dispense justice; and,
- 4) to provide an ongoing opportunity for the community to learn how the justice system operates and how the law being applied daily in the courts affects them.⁵¹

46. While the principles espoused relate to the open court principle, many of their concerns are equally applicable to municipal proceedings. Indeed, the NSCA in *New Brunswick Broadcasting*, NSCA cited *Edmonton Journal* for the proposition that the press has a distinct role in the democratic process.⁵² The need to ensure integrity and accountability are essential to a functioning democracy. The public need to be able to learn what is occurring at meetings, just as it is beneficial for them to learn about court proceedings and how it may affect their lives.

47. With respect to the location of the expression, historically the media are often present at municipal proceedings. The purpose of the media attending municipal proceedings, just like in court, is to report on them for those who cannot attend, which is a majority of the public. Further, given the fact Council has an officially sanctioned recording posted on its website, the method of expression is not incompatible with the location, but rather demonstrates that Council chambers' actual use includes recording and broadcasting of meetings. On cross-examination, CAO Santos confirmed that recording equipment can be set up in a non-disruptive manner that ensures Council business can be conducted in an orderly manner.⁵³

48. Finally, the purpose of section 20.2 of the Old Bylaw is to limit expression. Where

⁵¹ *Edmonton Journal*, at p. 1361.

⁵² *New Brunswick Broadcasting*, NSCA at paras 52-53.

⁵³ Santos Transcript at q. 64-68, pp. 10-11.

government seeks "...to restrict a form of expression in order to control access by others to the meaning conveyed or to control the ability of the one conveying the meaning to do so, it also limits the guarantee [of 2(b)]."⁵⁴ The Applicants' activities of recording and publishing contain expressive content and section 20.2 of the Old Bylaw prohibits them from engaging in this form of expression. Thus legislation infringes on section 2(b) protected activity in purpose.

iii) *Section 20.2 of the Old Bylaw is not justified under section 1 of the Charter*

49. In *R. v. Oakes*, the SCC provided the following test for justifying *Charter* infringing legislation:

- 1) the objective of the measure must be important to warrant overriding a *Charter* right;
- 2) there must be a rational connection between the limit on the right and the legislative objective;
- 3) the limit should impair the *Charter* right as little as possible;
- 4) there should be an overall balance or proportionality between the benefits of the limit and its deleterious effects.⁵⁵

50. The Applicants submit that section 20.2 of the Old Bylaw is not minimally impairing as it was a complete ban on recording, and that the deleterious effects outweigh its salutary benefits (if any).

51. The purpose of the Old Bylaw and its enabling legislation under section 238(2) of the Act is to ensure the orderly conduct of municipal proceedings. This purpose is clearly an important objective.

52. Further, section 34.14 of the Old Bylaw and subsection 241(2) of the Act allows the head of council to expel any person for improper conduct or disruptive behaviour. There is recourse already for a person recording in a manner that proves to be disruptive.

⁵⁴ *Irwin Toy v. Quebec (Attorney General)*, [1989] 1 S.C.R. 927 at p. 974. ["*Irwin Toy*"]

⁵⁵ *R. v. Oakes*, [1986] 1 S.C.R. 103, at paras 62-71. ["*Oakes*"]

53. At the minimal impairment stage, the By-law also fails. It is a categorical prohibition for the public to record. The expressive activity of recording in council chambers has been completely extinguished. Violations which are total denials of a right are often struck down on the basis that it is not minimally impairing. In *Hillier v. Ontario*, the ONCA examined whether an absolute prohibition on political protests during Covid-19 lockdown rules was minimally impairing. The Court concluded it was not, as “[a] total ban on the exercise of a fundamental freedom cannot readily meet the second step of the proportionality assessment under s. 1 of the *Charter*...”⁵⁶

54. While may be rational connection between restricting recording in council chambers and ensuring orderly conduct, not all forms of recording constitute disruptive behaviour. As the evidence demonstrates, recording can be done in an entirely non-disruptive manner.

55. Where a measure is overbroad and captures activity that is not part of the objective, this will weigh against it in the minimal impairment analysis as a limit should be tailored to its objective. As the SCC held in *R. v. Appulonappa*⁵⁷, “...where a law goes too far, it is a challenge to satisfy minimal impairment.”⁵⁸ While the objective of ensuring orderly meetings is substantial and valid, an absolute prohibition as contained in section 20.2 of the Old Bylaw is overbroad, as it captures activities that are non-disruptive.

56. Finally at the balancing stage, a court must examine whether the overall effects of the law on the claimants are disproportionate to the government’s objective.⁵⁹ This analysis “takes full account of the ‘severity of the deleterious effects of a measure on individuals or groups’”⁶⁰ and considers the “...broader assessment of whether the benefits of the impugned law are worth the

⁵⁶ *Hillier v. Ontario*, [2025 ONCA 259](#) at para [56](#).

⁵⁷ *R. v. Appulonappa*, [2015 SCC 59](#).

⁵⁸ *Ibid* at para [81](#).

⁵⁹ *Alberta v. Hutterian Brethren of Wilson Colony*, [2009 SCC 37](#) at para [73](#). [“*Hutterian Brethren*”]

⁶⁰ *Ibid* at para [76](#).

cost of the rights limitation.”⁶¹ Put another way, the question is whether “...the deleterious effects are out of proportion to the public good achieved by the infringing measures.”⁶²

57. In *UFCW*, the SCC held that restricting a union from recording any activity on a picket-line was disproportionate to the benefit of allowing people to control their personal information. The impugned act in *UFCW* prohibited the collection of any personal information, without regard to the nature of the information, the purpose it was collected, used or disclosed, and the situational context for the information.⁶³ While the Court acknowledged the importance of privacy, it held that the nature of the information in *UFCW* was readily and publicly available, and people crossing the picket-line should reasonably expect that their image could be captured and disseminated. Further, the only information disseminated were images of people and contained no intimate biographical details about the people photographed.⁶⁴ The Court held that the deleterious effect of a ban on publication of this information outweighed the benefit of allowing people control over their personal information, taking into account the importance of expression in labour disputes.⁶⁵

58. In the case at bar, the infringement is wholly disproportionate to the alleged benefit. While orderly municipal proceedings are a public good, it can be achieved without completely banning recording. Certain conditions can be placed to ensure orderly conduct of proceedings, while ensuring the important activity of newsgathering in the manner the Applicants engage in is protected. Furthermore, there is no evidence that the Applicants’ expressive activity was disruptive.⁶⁶ Therefore, the salutary benefits are minimal at best, as disruptive behaviour is already prohibited and regulated, while the deleterious effect is substantial, as the Applicants are prevented

⁶¹*Ibid* at paras [77-78](#).

⁶²*Ibid*.

⁶³*UFCW*, at para [25](#).

⁶⁴*Ibid* at para [26](#).

⁶⁵*Ibid* at para [29](#).

⁶⁶ Santos Transcript at qq. 26-28, 33, 34, 35, 48, 49, 80, 95, 105, 134, 139-40, pp. 4-5, 6, 8, 13, 15, 17, 22, 23-4.

from producing a recording that is not subject to the Township's recording equipment, which can be shut off at anytime at Council's direction.

59. Finally, the nature of the information being collected in this case must be considered. Similar to *UFCW*, members of Council should reasonably expect to be in the public eye when convening a meeting as they are statutorily required to be open to the public, notwithstanding a few exceptions. The information that the Applicants seek to gather is of great importance in democratic discourse, as it allows local residents who cannot attend the meeting to see a recording of it and inform themselves about proceedings and how it may affect their lives.

60. For the reasons set out above, the Applicants submit that section 20.2 of the Old By-law is unconstitutional, as it is an absolute ban on their right to produce and receive recordings of public proceedings of the Council. The Respondents already have legislative tools at its disposal to deal with disruptive behaviour. A complete prohibition cannot be saved under section 1 of the *Charter*.

C. The six-month trespass notices are constitutionally invalid and cannot be saved under section 1 of the Charter

61. In the alternative, the Applicants submit that the six-month trespass notices infringe on the Applicants' 2(b) *Charter* rights and cannot be saved under section 1 of the *Charter*. Attending Council meetings is protected activity under section 2(b) of the *Charter*, and the six-month trespass notices are not proportional to the statutory objectives of Council. Furthermore, whether the Applicants' posts contain inaccurate information has no bearing on or relevance to the constitutionality of the trespass notices. Finally, there is no evidence on the record that the Applicants acted in a violent or threatening manner to anyone to justify the trespass notices.

i) *Attending Council meetings is an activity that has expressive content*

62. The activity has expressive content. In *Gammie v. South Bruce Peninsula*⁶⁷, the Ontario Superior Court (“ONSC”) found that entering the Council Chambers of the respondent municipality “constituted expression” since the Chambers were “a centre of political life for the residents of the [respondent township],” and the applicant’s protests “related to public issues about which there can be different views.”⁶⁸ Similarly, the ONSC in *Niagara* found that municipal council chambers constitutes “public property” which the applicant was “entitled to use in exercise of his right to freedom of expression unless that right seriously interferes with the use of the public property by the city or other individuals.”⁶⁹ Accordingly, the Applicants’ ability to attend Council meetings of the Township constitutes expressive content. Thus, the first step of the section 2(b) infringement test is satisfied.

ii) Section 2(b) Charter protection is not removed by method or location

63. The method or location of expression does not remove its protection. With respect for recording, as argued above, Council chambers is traditionally a location for this type of expressive activity, and is actually used for recording currently by the Township. With respect to the Applicants’ posts on social media, the entire purpose of that platform is expressive activity.

64. With respect to whether the method of expression removes 2(b) *Charter* protection, the SCC held that this stage of the analysis concerned whether there is violence in the method, as that is not a protected form of expression.⁷⁰ The voluminous number of exhibits provided by the Respondents detailing the Applicants’ online activities do not come close to being a threat of violence.⁷¹ They are simply posts created by the Applicants which the Respondents find offensive.

⁶⁷*Gammie v. South Bruce Peninsula*, [2014 ONSC 6209](#), [“*Gammie*”]

⁶⁸*Gammie* at para [80](#).

⁶⁹*Niagara* at para [39](#).

⁷⁰*Montreal* at para [60](#).

⁷¹*Santos Affidavit* at Exhibits E-M, Q-U, II-JJ, RR, VV-YY, AAA-GGG, III-JJJ.

As CAO Santos admitted on cross-examination, when he refers to “threats” in his affidavit, these were not threats of violence, but rather nicknames, monikers and insults.⁷² Similarly, there is no evidence of violence from the Applicants approaching Council prior to the start of meetings to address their concerns. Therefore, the method of expression is not excluded from 2(b) *Charter* protection.

iii) *The trespass notices violate section 2(b) of the Charter in purpose and effect*

65. The issuance of the trespass notices clearly infringes the Applicants’ section 2(b) freedom of expression in both purpose and effect. The purpose of the trespass notices is to exclude the Applicants from Township property and Council meetings and to have them cease posting about Council’s activities online, effectively chilling the Applicants’ ability to exercise their section 2(b) *Charter* rights.

iv) *The section 1 analysis to be applied to the trespass notices is guided by Oakes and Doré*

66. In *Fort Erie*, the ONCA addressed a similar issue as here, where a municipality had issued a trespass notice to the appellant.⁷³ The Court held that “...the appropriate analysis for determining whether the rights limitation was reasonable and satisfies the requirements of s. 1 is guided by *Oakes* and *Doré*, [and] it must be adapted to this specific context.”⁷⁴

67. In *Niagara*, the Court engaged in the *Oakes* analysis in determining that the issuance of a trespass notice against the applicant was not saved under section 1 of the *Charter*.⁷⁵

68. Given the factual similarity between these two cases and the case at bar, the appropriate analytical framework should be guided by *Oakes* and *Doré*, in a flexible manner that reflects the context of a municipality exercising its common law powers as occupier. The ONCA, in restating

⁷² Santos Transcript at q. 105, p.17.

⁷³ *Fort Erie* at para 3.

⁷⁴ *Ibid* at para 64.

⁷⁵ *Niagara* at paras 61-73.

Doré, held that a robust proportionality analysis must work the “same justificatory muscles” as *Oakes*, and that it is not a “watered down version.”⁷⁶ The Court went on to hold that a robust proportionality analysis “...must advert to the proportionality analysis developed by the Supreme Court in *Oakes* for cases in which a government actor is seeking to limit a Charter right...These principles apply with necessary modifications to tribunal decisions...”⁷⁷

v) *The Respondents’ reasons for issuing the trespass notices are not valid*

69. The Respondents have provided three reasons for issuing the trespass notices:

- a. the Applicants breached section 20.2 of the Old Bylaw;
- b. the Applicants behaved in a threatening manner towards members of Council and Township staff; and
- c. certain online posts made by the Applicants disrupted Council business.

70. None of the reasons provided are grounded in any evidence based on the record before this Court.

71. As stated above, section 20.2 of the Old Bylaw is unconstitutional, and the Respondents cannot rely on it to justify a six-month trespass notice. Even if it were constitutional, the proportional response would have been remove the Applicants for those meetings which they were recording.

72. With respect to alleged threatening behaviour, nothing the Applicants did amounts to violence or threats of violence.⁷⁸ Several times during cross-examination, CAO Santos confirmed that the Applicants did not behave in a threatening manner nor threatened anyone with violence.⁷⁹

⁷⁶ *Lauzon v. Ontario (Justices of the Peace Review Council)*, [2023 ONCA 425](#) at para [145](#).

⁷⁷ *Ibid* at para [148](#).

⁷⁸ *Irwin Toy* at p. 978.

⁷⁹ Santos Transcript at qq. 33, 34, 35, 48, 49, 80, 95, 105, 141, pp. 6, 8, 13, 15, 17, 24.

His description in his affidavit of the Applicants' behaviour as "threatening" did not mean "a threat of violence" but rather "harassing behaviour [...] versus violence."⁸⁰

73. CAO Santos further confirmed that in the video displaying the Applicants' confrontation with Councillor van Hittersum, the Applicants did not threaten violence, nor did they bar her physically from any of the doorways or access points.⁸¹ He then stated that the Applicants did not threaten any member of Council or himself with violence when he delivered the trespass notices to the Applicants.⁸² Again, CAO Santos confirmed that the Applicants did not threaten violence at the February 17th meeting,⁸³ nor was he aware that Mr. Hill had counselled anyone to act in a violent manner or threaten anyone.⁸⁴ Mr. Hill has consistently advised anyone he invited to Council meetings to remain peaceful and to not disrupt the meetings.⁸⁵

74. Finally, the Respondents cannot rely on the fact the Applicants created posts online which may contain untrue or misleading information to justify this 2(b) *Charter* infringement. The Applicants' online posts themselves are 2(b) protected *Charter* activity, and the Respondents cannot use trespass notices to silence expression. The truth of the posts is irrelevant to the purpose of the Old Bylaw (and current procedures bylaw) to ensure decorum and orderly proceedings. Council does not have discretion to issue trespass notices for behaviour that has nothing to do with decorum or orderly proceedings.⁸⁶

75. Yet, CAO Santos indicated that Mr. Hill's online posts were, in part, what motivated the Township to issue the trespass notices.⁸⁷ However, the Supreme Court has repeatedly found that

⁸⁰ *Ibid* at q. 105, p. 17.

⁸¹ *Ibid* at qq 110, 111, pp. 18, 19.

⁸² *Ibid* at qq 124, 125, pp. 21.

⁸³ *Ibid* at qq 141, 142, pp. 24.

⁸⁴ *Ibid* at qq 159-162, pp. 27.

⁸⁵ Hill Reply Affidavit at para 3 and Exhibit "A".

⁸⁶ *Roncarelli v. Duplessis*, [1959] S.C.R. 121 at p. 140.

⁸⁷ Santos Affidavit at Exhibit "V"; Affidavit of [REDACTED] affirmed May 26, 2026 at Exhibit "B" ("[REDACTED] Affidavit").

section 2(b) *Charter* protection applies to the expression of truths and falsehoods alike.⁸⁸ In *R. v. Lucas*⁸⁹, the Court affirmed that “all expression is protected, regardless of its content, unless the form in which the expression is manifested is such that it excludes protection (as, for example, a violent act).”⁹⁰ Similarly, in *Canada (Attorney General) v. JTI-Macdonald Corp.*⁹¹, the Court stated that “[t]he *Charter* is content-neutral and protects the expression of both truths and falsehoods.”⁹² Thus, even if the Applicants created posts containing falsehoods, this does not justify the Respondents’ attempts to remove their section 2(b) *Charter* protection, especially given the fact these posts were not violent.

76. The Applicants’ posts—true or not—cannot provide justification for the Township’s issuance of the trespass notices prohibiting the Applicants from Council meetings. Section 241(2) of the Act provides that “[t]he head of council or other presiding officer may expel any person for improper conduct at a meeting” [emphasis added].⁹³ This provision narrowly limits the scope of the Township’s expulsion powers. Similarly, as the Court stated in *Fort Erie*, “where a government issues a trespass notice relying on the common law power to expel persons from property, it is exercising a power that is subject to implied limits.”⁹⁴ This means the government must have “a valid public purpose” in issuing the notice, such as safety, prohibiting obstruction, or preventing unlawful activities.⁹⁵ Accordingly, the Township is only permitted to use its occupier powers to ensure orderly meetings, not to silence online expression that is not meaningfully related to said

⁸⁸ *R. v. Zundel*, [1992] 2 SCR 731, 1992 at pp. 753-4 [“Zundel”]; [“Lucas”]; [“JTI-Macdonald Corp.”].

⁸⁹ *R. v. Lucas*, [1998] 1 SCR 439.

⁹⁰ *Ibid* at para 25.

⁹¹ *Canada (Attorney General) v. JTI-Macdonald Corp.*, 2007 SCC 30.

⁹² *Ibid* at para 60.

⁹³ *Municipal Act*, 2001, S.O. 2001, c 25, at s 241(2).

⁹⁴ *Fort Erie* at para 75.

⁹⁵ *Ibid*.

municipal proceedings. Thus, the Applicants' online posts cannot justify and are irrelevant to the Township's issuance of the trespass notices.

vi) *The trespass notices are not minimally impairing*

77. The Respondent's actions are not a proportionate response to the Applicants alleged acts. Caselaw amply supports this. In *Fort Erie*, the respondent municipality issued a trespass notice banning the appellant from all town property for a year following his use of a megaphone to protest outside the town hall during a meeting regarding a proposed bylaw, as well as his calling the councillors "crooks" in notes he passed to them before the meeting.⁹⁶

78. The ONCA held in *Fort Erie* that the trespass notices were not justified in the given circumstances, noting the following:

The trespass notice took on a punitive nature, banning Mr. Bracken from all Town property for a full year, terms which were far in excess of whatever immediate threat, real or imagined, the notice was intended to ameliorate. In a free and democratic society, it is no small matter to exclude a person from public property. To do so for a full year is extraordinary and must be amply justified. Here it was not. Even if the facts had been as alleged by the Town, it would not have justified the leap to a one-year exclusion [emphasis added].⁹⁷

79. Similarly, in *Niagara*, the respondent municipality issued the applicant a one-year no trespass notice following his attendance at a town council meeting where he videotaped council members and was somewhat confrontational, though clearly not violent.⁹⁸

80. The ONSC held that the no trespass notice failed to be minimally impairing and noted the following:

The notice could have restricted the Applicant's ability to ask questions and make presentations during future Council meetings regarding Council business only in accordance with the Region's rules and procedural bylaws. It could have restricted his communication in a non-disruptive manner with Council members to the confines of Council chambers before Council meetings or alternatively restricted his communication

⁹⁶ *Fort Erie* at paras 8-17.

⁹⁷ *Ibid* at para 80.

⁹⁸ *Niagara*, at paras 10-27.

with them by email or written correspondence.⁹⁹

The Court also noted that “[t]he notice could have made it clear that his right to attend future meetings would be in jeopardy and potentially taken away because of any improper conduct that would warrant his expulsion from the meeting by the Chair of Region Council under the *Municipal Act*.”¹⁰⁰ As in *Fort Erie*, the Court in *Niagara* also held that a one-year no trespass notice “could have been for a much shorter period of time,” at which point “the Region could then determine if his alleged disruptive behaviour was no longer an issue” [emphasis added].¹⁰¹

81. Likewise, in *Gammie*, the respondent passed several resolutions banning the applicant from town property and town council meetings following a series of incidents, including court applications the applicant had filed against the respondent, an earlier incident where the applicant had purposely left a recording device at a closed council meeting, and several non-violent but tense confrontations between the applicant and council members.¹⁰²

82. The ONSC found that the respondent’s actions were not the least restrictive possible and thus failed under section 1 of the *Charter*. The respondent “could, and should, have passed a resolution that restricted Mr. Gammie’s right to enter the Council Chambers in a more limited manner.”¹⁰³ For example, “a resolution could have prohibited only his attendance at Council meetings with recording devices” rather than imposing an all-out ban.¹⁰⁴

83. Applying the reasoning from *Fort Erie*, *Niagara*, and *Gammie*, the trespass notices clearly fail to be minimally impairing since the notices were not “carefully designed to impair the right or freedom in question as little as possible.”¹⁰⁵ Most significantly, the six-month trespass notices are

⁹⁹ *Ibid* at para [67](#).

¹⁰⁰ *Ibid* at para [68](#).

¹⁰¹ *Ibid* at para [69](#).

¹⁰² *Gammie*, at paras [6-37](#).

¹⁰³ *Ibid* at para [103](#).

¹⁰⁴ *Ibid*.

¹⁰⁵ *Ibid* at para [102](#).

overbroad and thus fail at the proportionality stage of the analysis for not being minimally impairing. The Applicants were not engaging in violent or threatening behaviour, nor were they disrupting the Council meeting.

84. The Respondents have not demonstrated that they acted in a minimally impairing manner. Even if there were evidence that the Applicants disrupted Council meetings (which there is none), the Township could have simply expelled the Applicants pursuant to section 241(2) of the Act. A six-month trespass far exceeds what is necessary to maintain order at the meetings and is not a limited restriction on the Applicants' *Charter* rights. The fact the meetings were broadcast online does not negate the fact the Applicants were prohibited from attending in person, which in itself is a form of protected expression.

85. Moreover, the Respondents could have responded by limiting the Applicants' ability to ask questions during Council meetings or by allowing attendance but restricting their communication with Council members to occur only before Council meetings or by email or written correspondence.¹⁰⁶ There is no evidence that any of these measures were attempted or even considered by the Respondents.

86. Accordingly, as in *Niagara*, the Respondents cannot justify their failure to select a significantly less intrusive but effective measure in limiting the Applicants' section 2(b) *Charter* freedoms. It cannot establish that the six-month no trespass notices fall within a range of reasonable alternatives tailored objectively to the infringement so as to constitute minimal impairment of the Applicants' section 2(b) freedoms.¹⁰⁷ Thus, the trespass notices fail the section 1 analysis on this basis.

vii) *The salutary benefits of the trespass notices do not outweigh their deleterious effects*

¹⁰⁶ *Niagara*, at para 67.

¹⁰⁷ *Ibid* at para 71.

87. The issuance of the trespass notices also fails at the final stage of the proportionality analysis. The benefits here are minimal given that Council was neither disrupted nor threatened by the Applicants' behaviour, as CAO Santos admitted in cross-examination.¹⁰⁸ The only remaining purported benefit to issuing the notices was that Council did not have to interact with or answer to citizens whom they did not like.

88. Comparatively, the deleterious effects for the Applicants are serious. The Applicants' ability to attend Council meetings and post on social media are central to their section 2(b) *Charter* rights. As the Supreme Court has noted on several occasions, "[t]he connection between freedom of expression and the political process is perhaps the linchpin of the [section] 2(b) guarantee, and the nature of this connection is largely derived from the Canadian commitment to democracy."¹⁰⁹ Here, limits to the Applicants' ability to participate in democratic processes, such as Council meetings, constitute serious limitations that clearly outweigh any salutary benefits of the trespass notices. The trespass notices also served as a punitive measure against their online expression that did not disrupt Council meetings. Thus, the trespass notices fail at this stage of the *Oakes* proportionality analysis, and the infringement is not justified.

D. The CAO lacked authority to issue the trespass notices

89. The CAO lacked the authority to issue 60-day and six-month trespass notices to the Applicants. The Act does not grant authority to the CAO to issue trespass notices and the Township has not passed any bylaw to that effect.

i) Governing Principles

¹⁰⁸ Santos Transcript at qq. 26-28, 33, 34, 35, 48, 49, 80, 95, 105, 134, 139-40, pp. 4-5, 6, 8, 13, 15, 17, 22, 23-4.

¹⁰⁹ *Thomson Newspapers Co. v. Canada (Attorney General)*, [1998] 1 SCR 877, 1998 at para 92; *Keegstra* at pp. 763-64; *Harper v. Canada (Attorney General)*, 2004 SCC 33 at para 84.

90. In *Niagara*, this Court raised concerns about the source of a CAO's authority to issue a trespass notice that prohibited the applicant from attending future council meetings. Ultimately, the Court held that it could not decide the issue because it had not been raised by the parties.¹¹⁰ However, the Applicants are raising the issue in this matter and ask that this Court find that the CAO lacked authority to issue the trespass notices against the applicants.

91. In *Niagara*, this Court noted the follow issues:

- a. Section 239 of the Act establishes that all meetings are open to the public;¹¹¹ and
- b. Section 241 of the Act grants authority to the head of council or other presiding officer (which in this matter would be Reeve Heffer) to expel any person from a meeting for improper conduct but does not grant authority to prohibit attendance at future meetings.¹¹²

92. The issue was discussed by the ONCA in *Fort Erie*. As before, the issue of the CAO's authority had not been raised by the parties, but the Court stated that the applicant could have challenged the legal authority for a trespass notice which "may have obviated the need for a *Charter* analysis."¹¹³

93. Nevertheless, the ONCA was required to determine if the trespass notices issued by the respondent was "prescribed by law" for the purpose of a section 1 analysis. The Court rejected the respondent's arguments that s. 229 of the Act, which makes the CAO responsible for "exercising general control and management of the affairs of the municipality" as the basis for a CAO's authority to issue trespass notices.¹¹⁴ The ONCA ultimately concluded that the common law

¹¹⁰ *Niagara* at para. 87.

¹¹¹ *Ibid* at para. 82; *Municipal Act, 2001*, SO 2001, c 25, s. 239 [*Municipal Act*].

¹¹² *Niagara* at para. 83; *Municipal Act* at s. 241.

¹¹³ *Ibid* at para. 24.

¹¹⁴ *Ibid* at paras. 68-69, cit'g *Municipal Act* at s. 229.

principles governing property supplied municipalities the right to revoke a person's license to be present on town-owned premises.¹¹⁵ However, the Court of Appeal did not address the issue of whether the CAO was authorized to exercise Fort Erie's common law property rights.

94. With respect a municipality's common law rights and powers, section 9 of the Act provides that a "municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under this or any Act."¹¹⁶ However, the Act also provides that the "powers of a municipality shall be exercised by its council" and, specifically, that a "municipal power, including...under s. 9 shall be exercised by by-law unless the municipality is specifically authorized to do otherwise."¹¹⁷

ii) Principles Applied

95. The common law recognizes that municipalities are occupiers of municipal property and have the authority to exclude people and issue trespass notices. This is confirmed by section 9 of the Act, which grants the rights and powers of a natural person to municipalities. However, those powers are subject to section 5, which requires that they be exercised by the council through bylaws. Beyond the common law property rights, section 241 of the Act provides the head of council the power to exclude people from particular meetings for improper conduct.

96. The Township has no bylaw granting authority to the CAO to issue trespass notices or otherwise exercise the Township's power of issuing trespass notices. On the contrary, the Township's *Procedure By-law* confirms that under section 241 of the Act, the "Head of Council or the Chair" could have excluded the applicants from particular meetings, but the CAO does not

¹¹⁵ *Fort Erie* at para. 71.

¹¹⁶ *Municipal Act* at s. 9.

¹¹⁷ *Ibid*, s. 5(1), (3).

have the same authority.¹¹⁸ Further, neither the “Head of Council” nor the CAO have the authority to issue prospective trespass notices prohibiting the applicants from attending future meetings.¹¹⁹ Accordingly, CAO Santos acted without authority when issuing the trespass notices, and thus the trespass notices are invalid.

PART IV- RELIEF SOUGHT

97. The Applicants seek an order:

- a. declaring section 20.2 of the Old Bylaw to be an unjustifiable infringement of section 2(b) of the *Charter*;
- b. declaring that the trespass notices issued by CAO Santos to be an unjustifiable infringement of the Applicants’ 2(b) *Charter* rights; and
- c. declaring that CAO Santos did not have authority to issue the trespass notices issued on January 12, 2026 and February 2, 2026.

98. Given the public interest of this application, the Applicants submit that an award of costs would not be appropriate and request that no order of costs be issue regardless of the outcome.

¹¹⁸ Township of North Huron, [By-law No. 14-2026](#), *Being a By-law to govern the calling, place, and proceedings of the meetings of the Council of the Township of North Huron and its Committees and to provide public notice of meetings* (2 March 2026) at s. [34.13-14](#).

¹¹⁹ *Niagara* at para 83.

July 13, 2026



CHARTER ADVOCATES CANADA

[REDACTED]

Darren Leung

[REDACTED]

Hatim Kheir

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Counsel for the Applicants

Court File No.: CV-26-00000011-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

STEPHEN HILL and BRADLEY CARTHER

Applicants

and

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

Respondents

CERTIFICATE OF AUTHENTICITY

I, Darren Leung, counsel for the Applicants Stephen Hill and Bradley Carther, certify that I am satisfied as to the authenticity of every authority cited in the factum. The Applicants estimate that they require one and a half (1.5) hours for oral argument, not including reply.

July 13, 2026



CHARTER ADVOCATES CANADA

[REDACTED]

Darren Leung [REDACTED]

[REDACTED]

Hatim Kheir [REDACTED]

[REDACTED]

SCHEDULE A

Alberta (Information and Privacy Commissioner) v. United Food and Commercial Workers, Local 401,
[2013 SCC 62](#)

Alberta v. Hutterian Brethren of Wilson Colony, [2009 SCC 37](#)

Borowski v. Canada (Attorney General), [\[1989\] 1 SCR 342](#)

Bracken v. Fort Erie (Town), [2017 ONCA 668](#)

Bracken v Regional Municipality of Niagara Corporation, [2015 ONSC 6934](#)

Canada (Attorney General) v. JTI-Macdonald Corp., [2007 SCC 30](#)

Canadian Broadcasting Corp. v. Canada (Attorney General), [2011 SCC 2](#)

Corbiere v. Hewson, [\[1999\] 182 DLR \(4th\) 662](#), [1999 CanLII 9256 \(FCA\)](#)

Doré v. Barreau du Québec, [2012 SCC 12](#)

Edmonton Journal v. Alberta (Attorney General), [\[1989\] 2 SCR 1326](#)

Gammie v. South Bruce Peninsula, [2014 ONSC 6209](#)

Godbout v. Longueil (City), [\[1997\] 2 SCR 844](#), [1997 CanLII 335 \(SCC\)](#)

Harper v. Canada (Attorney General), [2004 SCC 33](#)

Hillier v. Ontario, [2025 ONCA 259](#)

Irwin Toy Ltd. v. Quebec (Attorney General), [\[1989\] 1 SCR 927](#), [1989 CanLII 87 \(SCC\)](#)

Lauzon v. Ontario (Justices of the Peace Review Council), [2023 ONCA 425](#)

London (City) v. RSJ Holdings Inc., [2007 SCC 29](#)

Montréal (City) v. 2952-1366 Québec Inc., [2005 SCC 62](#)

New Brunswick Broadcasting Co. v. Nova Scotia (Speaker of the House), [1991 CarswellNS 543](#), [1991 CanLII 2529 \(NSCA\)](#)

New Brunswick Broadcasting Co. v. Nova Scotia (Speaker of the House), [\[1993\] 1 SCR 391](#)

R. v. Appulonappa, [2015 SCC 59](#)

R. v. Keegstra, [\[1990\] 3 SCR. 697](#), [1990 CanLII 24 \(SCC\)](#)

R. v. Lucas, [\[1998\] 1 SCR 439](#), [1998 CanLII 815 \(SCC\)](#)

R. v. Oakes, [\[1986\] 1 SCR 103, 1986 CanLII 46 \(SCC\)](#)

R. v. Smith, [2004 SCC 14](#)

R. v. Zundel, [\[1992\] 2 SCR 731, 1992 CanLII 75 \(SCC\)](#)

Roncarelli v. Duplessis, [\[1959\] SCR 121, 1959 CanLII 50 \(SCC\)](#)

Thomson Newspapers v. Canada (Attorney General), [\[1998\] 1 SCR 877, 1998 CanLII 829 \(SCC\)](#)

SCHEDULE B

Township of North Huron, By-law No. 52-2025, *By-law Rules of Procedure* (2025)

20.2. 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.

34. Conduct of Proceedings for Council, Committees and Local Boards

34.13. The Head of Council or the Chair shall ensure that any person attending a Meeting:

- a. Maintains order and quiet during a Meeting;
- b. Addresses Council or the Committee only with the permission of the Head of Council or the Chair;
- c. Does not interrupt any speech or action during a Meeting;
- d. Does not display any sign, placard or poster during a Meeting;
- e. Ceases and desists any behaviour which disrupts the order and decorum of the Meeting and/or vacates the Meeting where such behaviour persists;
- f. Turns off or sets to silent mode, all Electronic Devices.

34.14. 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.

Township of North Huron, By-law No. 14-2026, *By-law Rules of Procedure* (2 March 2026)

20. Recording of Meetings, Live Streaming of Meetings and Communication Devices

20.1. All Meetings may be audio and/or visually recorded, broadcast and/or Live Streamed publicly by the Township.

20.2. 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.

20.3. At a Meeting of Council or a Committee, the use of cellular phones, audible pagers or any other similar communication devices creating a disruption, or nuisance will not be permitted.

20.4. An exception shall be granted to allow Members of Council and staff the opportunity to use electronic devices to support the proceedings of the Meeting only

34. Conduct of Proceedings for Council, Committees and Local Boards

34.13. The Head of Council or the Chair shall ensure that any person attending a Meeting:

- g. Maintains order and quiet during a Meeting;
- h. Addresses Council or the Committee only with the permission of the Head of Council or the Chair;
- i. Does not interrupt any speech or action during a Meeting;
- j. Does not display any sign, placard or poster during a Meeting;
- k. Ceases and desists any behaviour which disrupts the order and decorum of the Meeting and/or vacates the Meeting where such behaviour persists;
- l. Turns off or sets to silent mode, all Electronic Devices.

34.14. 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.

Municipal Act, 2001, S.O. 2001, c 25

Powers exercised by council

5 (1) The powers of a municipality shall be exercised by its council. 2001, c. 25, s. 5 (1).

Council a continuing body

(2) Anything begun by one council may be continued and completed by a succeeding council. 2001, c. 25, s. 5 (2).

Powers exercised by by-law

(3) A municipal power, including a municipality's capacity, rights, powers and privileges under [section 9](#), shall be exercised by by-law unless the municipality is specifically authorized to do otherwise. 2001, c. 25, s. 5 (3); [2006, c. 32](#), Sched. A, s. 5.

Scope

(4) Subsections (1) to (3) apply to all municipal powers, whether conferred by this Act or otherwise. 2001, c. 25, s. 5 (4).

Powers of a natural person

9 A municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under this or any other Act. [2006, c. 32](#), Sched. A, s. 8.

Chief administrative officer

229 A municipality may appoint a chief administrative officer who shall be responsible for,

- (a) exercising general control and management of the affairs of the municipality for the purpose of ensuring the efficient and effective operation of the municipality; and
- (b) performing such other duties as are assigned by the municipality. 2001, c. 25, s. 229.

Procedure by-laws respecting meetings

238(2) Every municipality and local board shall pass a procedure by-law for governing the calling, place and proceedings of meetings. 2001, c. 25, s. 238 (2).

Meetings open to public

239 (1) Except as provided in this section, all meetings shall be open to the public. 2001, c. 25, s. 239 (1).

Exceptions

(2) A meeting or part of a meeting may be closed to the public if the subject matter being considered is,

- (a) the security of the property of the municipality or local board;
- (b) personal matters about an identifiable individual, including municipal or local board employees;
- (c) a proposed or pending acquisition or disposition of land by the municipality or local board;
- (d) labour relations or employee negotiations;
- (e) litigation or potential litigation, including matters before administrative tribunals, affecting the municipality or local board;
- (f) advice that is subject to solicitor-client privilege, including communications necessary for that purpose;
- (g) a matter in respect of which a council, board, committee or other body may hold a closed meeting under another Act;
- (h) information explicitly supplied in confidence to the municipality or local board by Canada, a

province or territory or a Crown agency of any of them;

(i) a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence to the municipality or local board, which, if disclosed, could reasonably be expected to prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization;

(j) a trade secret or scientific, technical, commercial or financial information that belongs to the municipality or local board and has monetary value or potential monetary value; or

(k) a position, plan, procedure, criteria or instruction to be applied to any negotiations carried on or to be carried on by or on behalf of the municipality or local board. 2001, c. 25, s. 239 (2); [2017, c. 10](#), Sched. 1, s. 26.

Other criteria

(3) A meeting or part of a meeting shall be closed to the public if the subject matter being considered is,

(a) a request under the [Municipal Freedom of Information and Protection of Privacy Act](#), if the council, board, commission or other body is the head of an institution for the purposes of that Act; or

(b) an ongoing investigation respecting the municipality, a local board or a municipally-controlled corporation by the Ombudsman appointed under the [Ombudsman Act](#), an Ombudsman referred to in [subsection 223.13 \(1\)](#) of this Act, or the investigator referred to in [subsection 239.2 \(1\)](#). [2014, c. 13](#), Sched. 9, s. 22.

Educational or training sessions

(3.1) A meeting of a council or local board or of a committee of either of them may be closed to the public if the following conditions are both satisfied:

1. The meeting is held for the purpose of educating or training the members.

2. At the meeting, no member discusses or otherwise deals with any matter in a way that materially advances the business or decision-making of the council, local board or committee. [2006, c. 32](#), Sched. A, s. 103 (1).

Resolution

(4) Before holding a meeting or part of a meeting that is to be closed to the public, a municipality or local board or committee of either of them shall state by resolution,

(a) the fact of the holding of the closed meeting and the general nature of the matter to be considered at the closed meeting; or

(b) in the case of a meeting under subsection (3.1), the fact of the holding of the closed meeting, the general nature of its subject-matter and that it is to be closed under that subsection. 2001, c. 25, s. 239 (4); [2006, c. 32](#), Sched. A, s. 103 (2).

Open meeting

(5) Subject to subsection (6), a meeting shall not be closed to the public during the taking of a vote. 2001, c. 25, s. 239 (5).

Exception

(6) Despite [section 244](#), a meeting may be closed to the public during a vote if,

(a) subsection (2) or (3) permits or requires the meeting to be closed to the public; and

(b) the vote is for a procedural matter or for giving directions or instructions to officers, employees

or agents of the municipality, local board or committee of either of them or persons retained by or under a contract with the municipality or local board. 2001, c. 25, s. 239 (6).

Record of meeting

(7) A municipality or local board or a committee of either of them shall record without note or comment all resolutions, decisions and other proceedings at a meeting of the body, whether it is closed to the public or not. [2006, c. 32](#), Sched. A, s. 103 (3).

Same

(8) The record required by subsection (7) shall be made by,

(a) the clerk, in the case of a meeting of council; or

(b) the appropriate officer, in the case of a meeting of a local board or committee. [2006, c. 32](#), Sched. A, s. 103 (3).

Record may be disclosed

(9) [Clause 6 \(1\)](#) (b) of the *[Municipal Freedom of Information and Protection of Privacy Act](#)* does not apply to a record of a meeting closed under subsection (3.1). [2006, c. 32](#), Sched. A, s. 103 (3).

Head of council

241 (1) The head of council, except where otherwise provided, shall preside at all meetings of the council. 2001, c. 25, s. 241 (1).

Power to expel

(2) The head of council or other presiding officer may expel any person for improper conduct at a meeting. 2001, c. 25, s. 241 (2).

STEPHEN HILL and BRADLEY CARTHER **-and-**
APPLICANTS

TOWNSHIP OF NORTH HURON and NELSON SANTOS
RESPONDENTS

Court File No.: CV-26-00000011-0000

ONTARIO
SUPERIOR COURT OF JUSTICE
Proceeding Commenced at GODERICH

APPLICANTS' FACTUM

CHARTER ADVOCATES CANADA

[REDACTED]

Darren Leung ([REDACTED])

[REDACTED]

Hatim Kheir ([REDACTED])

[REDACTED]

Counsel for the Applicants