

**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

**FACTUM OF THE RESPONDENTS
(Returnable August 19, 2026)**

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FACTUM OF THE RESPONDENTS

INTRODUCTION

1. The Applicants bring this proceeding for the purpose of challenging a municipal by-law provision that is no longer in force and a trespass notice that has expired. Both issues are moot, and the court ought not to exercise its discretion to determine them.

2. The Applicants allege infringement of s. 2(b) of the *Canadian Charter of Rights and Freedoms* (“the *Charter*”). The first part of the test requires examination of the activity in question, which is captured on video. Despite this, the Applicants have not described nor even put into evidence the recordings, instead relying on general descriptions of hypothetical activity they want to do, and which is now permitted, but have never actually carried out.¹ The Applicants argue that the impugned by-law provision infringed s. 2(b) because it prevented journalistic activity but that is not the activity they were engaged in. Similarly, the Applicants allege the notice of trespass infringed s. 2(b) because it restricted their right to attend Council meetings and participate, which is factually incorrect. The

¹ Applicants’ factum at para 38.

trespass notice did not prevent the Applicants from attending or participating in Council meetings virtually and while a municipality is required to hold open meetings, there is no corresponding right of the public to attend *in person* or even to participate. Likewise, members of the public *may* participate during a Council meeting if they register as a delegate pursuant to the procedure by-law. The Applicants' ability to register as a delegate was never restricted.

3. The actual expressive activity at issue is the Applicants' ability to attend a Council meeting and, in advance of the meeting, record themselves asking questions and demanding answers in an aggressive, belligerent, and insulting manner. This is the activity captured on several videos and it is the conduct the notice of trespass was intended to address. Furthermore, this conduct occurred in the greater context of an online campaign of misinformation about and humiliation of Township officials and activities. In response to the Applicants' conduct, the Township took measured and escalating steps to try and prevent the disruptions at Council meetings, which were not effective and thus culminated in the subject trespass notice.

4. The Township argues that the expression at issue is not *Charter* protected or, by virtue of the location, is outside the scope of *Charter* protection, thus there is no violation of s. 2(b). If, however, this Court finds that s. 2(b) has been infringed, the Township argues that both the by-law and the notice of trespass are demonstrably justified in a free and democratic society.

SUMMARY OF FACTS

5. The Township serves a rural community within Huron County and is responsible

for the efficient and effective administration of Township business.²

6. Pursuant to the *Municipal Act*, 2001, S.O. 2001, c. 25 (“the *Act*”) the Township is obliged to hold regular Council meetings that are open to the public and which may be conducted in person or virtually.³ The Township is also obliged to pass a by-law that provides for the conduct of such meetings (“the procedure by-law”).⁴ The *Act* does not provide a right for the public to participate in Council meetings but the Township procedure by-law sets out the delegation process by which the public may register in advance to put issues on the Council agenda and make presentations.⁵ Prior to March 3, 2026, the procedure by-law contained a provision which prohibited recordings of Council meetings other than the official Township recording (“the old provision”).⁶ At the Township meeting on March 3, 2026, this provision was amended to permit recording of meetings so long as it was not disruptive, did not create a physical hazard, obstruct the view of others, impede the Township’s ability to livestream the meetings, or harassed or intimidated participants (“the new provision”).⁷

7. The Township’s practice is to hold regular Council meetings on the first and third Monday of each month. Meetings are typically in person but may also be attended or held virtually.⁸ The procedure by-law contains provisions regarding the required decorum and orderly conduct during Council meetings.⁹

² Affidavit of Nelson Santos affirmed May 21, 2026 at para 6 [Santos Affidavit].

³ The *Act*, s. 238 (1), 239 (1), and 238 (3.1).

⁴ Township of North Huron By-law No. 52-2025 [*By-law 52-2025*]; Transcript from the Cross-Examination of Stephen Hill [Hill Transcript] q 343 page 69.

⁵ *By-Law 52-2025*, s. 30.1-30.16; Township of North Huron By-law No. 14-2026 [*By-Law 14-2026*], s. 30.1-30.16

⁶ *By-Law 52-2025*, s. 20.2.

⁷ Santos Affidavit at para 8; *By-Law 14-2026*, s. 20.2.

⁸ Transcript from the Cross-Examination of Nelson Santos [Santos Transcript] qs 3, 63 pages 1, 10.

⁹ *By-law 52-2025*, s. 34.1-34.14.

8. The Applicants are residents of the Township who wilfully and persistently ignore the prescribed process to address concerns before Council.¹⁰ They knew and understood their actions were outside the procedure by-law.¹¹ The Applicants' first confrontation with the Township in Council Chambers during the period at issue was on December 1, 2025 where, prior to the start of the meeting, Mr. Hill aggressively asked questions about a Canadian flag and snow clearing.¹² The Applicants left before the meeting started and did not record it as "there were no other members of the public there, there was no police to record, there was nothing there we felt wouldn't be covered by the YouTube channel, broadcast by the Township."¹³ Following the meeting, Township staff expressed feelings of fear of being verbally attacked and of being featured in a deepfake video as a result of the interaction.¹⁴ Thereafter, three articles containing false information were posted about Reeve Heffer on one of the Applicants' webpages.¹⁵ Mr. Hill also raised the same concerns raised at the meeting to Mr. Santos by email, to which he responded.¹⁶

9. The Applicants attended the next meeting on December 15, 2025. Despite the email exchange, Mr. Hill physically approached Council members before the meeting to raise the same issues as previously and argued with Reeve Heffer. Of note, Mr. Hill specifically said, "Do I have to keep coming back here, yelling at you before every fricken Council meeting before you start caring about the pedestrians?"¹⁷ The Applicants were asked by plain clothed OPP officers who were in attendance at the request of the

¹⁰ Santos Affidavit at para 11.

¹¹ Hill Transcript qs 90, 101, 115 pages 17, 20, 23.

¹² Santos Affidavit at paras 10-11.

¹³ Hill Transcript q 47 page 9.

¹⁴ Santos Affidavit at paras 13, 15.

¹⁵ Santos Affidavit at paras 15-17.

¹⁶ Santos Affidavit at para 14; Hill Transcript qs 49-68 pages 10-13.

¹⁷ Hill Transcript q 108 page 21.

Township to refrain from being disruptive and to properly present their concerns via appropriate channels.¹⁸ During the exchange, Fire Chief Chad Kregar offered to meet with Mr. Hill the following morning to discuss his concerns, which occurred.¹⁹ The Applicants recorded the exchange at the Council meeting, which was not known at the time (“Video #1”).²⁰ After the meeting, Mr. Hill posted false and misleading information via articles and deepfake videos.²¹ In particular, despite the clear effort to be helpful and responsive to the Applicants’ concerns, Mr. Hill posted humiliating deepfake videos of Chief Kregar and OPP Officer Paul Richardson.²²

10. The Applicants attended the next public meeting on January 12, 2026 and again aggressively raised the same issues before the meeting began.²³ Mr. Carther recorded the interaction although the video has not been produced.²⁴ Once the meeting began, in accordance with the by-law provision in effect at the time, Reeve Heffer asked the Applicants to put away their recording devices, which was ignored. He warned they would be asked to leave if there were further disruptions. Mr. Carther asked whether if he farted, he would be kicked out.²⁵ The Applicants were asked to leave and refused. OPP officers were called to respond to disruptive behaviour and the Applicants were given a 60-day verbal trespass notice applicable to Council Chambers.²⁶ Mr. Hill again subsequently posted false and misleading information about the Township via additional articles and deepfake images, including a photo depicting Township Council as the Schutzstaffel of

¹⁸ Hill Affidavit at para 11 at timestamp 4:35.

¹⁹ Santos Affidavit at paras 22-23; Hill Transcript q 119 pages 23-24.

²⁰ Hill Affidavit at para 11.

²¹ Santos Affidavit at paras 18-30.

²² *Ibid.*

²³ Santos Affidavit at para 31.

²⁴ Transcript from the Cross-Examination of Bradley Carther [Carther Transcript] q 24 page 3.

²⁵ Hill Transcript q 221 page 44.

²⁶ Santos Affidavit at para 32.

Nazi Germany.²⁷

11. Mr. Hill sought clarification regarding the trespass notice via email. Mr. Santos responded, outlining the Applicants' unacceptable conduct, its implications on Township staff, and its disruption of municipal operations.²⁸ Standard behaviour expectations were set out.²⁹ Mr. Hill and Mr. Santos engaged in further email correspondence in which Mr. Santos clarified the trespass notice was issued due to disruptive behaviour.³⁰ Importantly, Mr. Santos did not cite contravention of the old provision as grounds for the trespass notice. Nonetheless, the Applicants notified the Township of their concerns regarding the recording prohibition for the first time via letter hours before the next Council meeting on February 2, 2026.³¹

12. On February 2, 2026, the Applicants intentionally defied the trespass notice and attended the meeting, accompanied by individuals with cameras and David Menzies from Rebel News.³² Mr. Hill accosted a security guard hired by the Township for approximately six minutes and followed Council members with a camera through the hallway as they arrived.³³ Mr. Hill intentionally cornered a female Council member, who declined to answer his questions, and berated her while filming.³⁴ The Applicants entered Council Chambers and Mr. Hill left the public gallery to approach Council members and deliver "cease and desist to end the harassment" letters.³⁵ The Applicants were asked to leave which they refused. When OPP officers attended, they argued, insulted and belittled the

²⁷ Santos Affidavit at paras 36, 38-39, 41.

²⁸ Exhibit W to the Santos Affidavit.

²⁹ Santos Affidavit at para 42.

³⁰ Santos Affidavit at para 44.

³¹ Hill Transcript qs 325-329 page 65.

³² Hill Transcript q 243 page 49; Carther Transcript qs 101-103 page 14.

³³ Santos Affidavit at paras 45-46.

³⁴ Santos Affidavit at para 51.

³⁵ Santos Affidavit at para 47.

officers until they were placed under arrest and escorted out.³⁶ They also refused to accept the updated trespass notice that Council directed Mr. Santos to deliver (“the six-month notice”). The Applicants’ conduct outside and inside Council Chambers was recorded (“Video #2”).³⁷ The notices were subsequently sent by email and registered mail on February 3, 2026.³⁸

13. At both issuances of the trespass notices, the Applicants were advised of behaviour expectations, consequences if those expectations were not met, and that the Township would still consider the Applicants’ concerns if presented appropriately.³⁹ Specifically, the six-month notice indicated the Applicants were welcome to access Council meetings online or by hybrid options and that legitimate Township business that could not be conducted remotely would be considered. The Applicants were also advised they could submit a written request for reconsideration or modification of the notice after 60 days.⁴⁰ The Applicants did not avail themselves of any of these options.⁴¹ Neither Applicant has communicated any written request to discuss Township business, nor a written request for reconsideration or modification of the trespass notice.⁴²

14. The Applicants attempted to attend the next Council meeting on February 17, 2026 but were arrested by police.⁴³ The meeting proceeded and the first item of business was suspension of the recording prohibition. An amendment to the old provision that would permanently remove the prohibition was recommended for adoption at the next public

³⁶ Santos Affidavit at paras 47-48.

³⁷ Exhibit Y to the Santos Affidavit.

³⁸ Santos Affidavit at para 52.

³⁹ Santos Affidavit at paras 42-43, 52.

⁴⁰ Santos Affidavit at para 52.

⁴¹ Hill Transcript q 377 page 79; Carther Transcript q 110 page 15.

⁴² Santos Affidavit at para 53.

⁴³ Santos Affidavit at para 64.

meeting on March 3, 2026, on which date the recommendation was passed.⁴⁴

15. Following the February 17, 2026 meeting, Council members attempting to leave the meeting were accosted by the Applicants and other members of the public who had gathered in the parking lot.⁴⁵ Mr. Hill produced and posted publicly a video in which he is seen following Deputy Reeve Falconer as he walked to his car.⁴⁶ Mr. Hill accosted the Deputy Reeve insulting and baiting him until he stopped and turned to confront him, at which point Mr. Hill cried that he was about to be assaulted. This prompted another individual to intervene. It is alleged that Deputy Reeve Falconer grabbed the other individual but there is no clear evidence of this in the video. Instead, the video plainly shows Deputy Reeve Falconer grabbed by the lapel of his jacket, placed in a head lock, and thrown to the ground by the intervening individual. There is also third hand account that he was subsequently kicked in the head with steel toed boots.⁴⁷ Deputy Reeve Falconer suffered a concussion and was prevented from carrying out his duties on Council for a period several months.⁴⁸

16. After the assault, the Township announced that future Council meetings would be conducted virtually until June 1, 2026.⁴⁹ The Applicants, specifically Mr. Hill, continued to post false and misleading information via articles and deepfake videos through to the date of the Santos Affidavit and his cross-examination.⁵⁰

⁴⁴ Santos Affidavit at paras 8, 64.

⁴⁵ Santos Affidavit at para 67.

⁴⁶ Exhibit LL to the Santos Affidavit.

⁴⁷ Santos Affidavit at para 74.

⁴⁸ Santos Affidavit at paras 68, 98.

⁴⁹ Santos Affidavit at para 72; Hill Transcript q 367 page 75.

⁵⁰ Santos Affidavit at paras 70-96; Hill Transcript qs 285, 294, 296, 399-413 pages 57, 59, 86-88.

ISSUES

17. The issues in this Application are:

- (a) Whether the Application is moot, in whole or in part;
- (b) If not moot, was the prohibition against public recording of Township meetings an infringement of s. 2(b) and, if so, was it be saved by s. 1;
- (c) If not moot, did the trespass notice infringe s. 2(b) and, if so, was it be saved by s. 1; and
- (d) Whether Mr. Santos had authority to issue the trespass notice.

LAW AND ARGUMENT

A. The Application is Moot

18. The Application is moot as the old provision has been amended and, by the time this Application is heard, the trespass notice will have expired.

19. The principle of mootness applies when the court's decision will not have the effect of resolving some controversy which affects or may affect the rights of the parties. If there will be no practical effect, the court will decline to decide the case, even those involving Constitutional questions.⁵¹ Determining mootness is a two-step analysis. First, it is determined whether the required concrete dispute has disappeared and the issues have become academic. Second, if yes, the court must decide whether it will exercise its discretion to hear the case.⁵²

20. In this case, the challenged old provision was first suspended within just two weeks

⁵¹ *Borowski v Canada (Attorney General)*, [1989 CanLII 123 \(SCC\)](#) [*Borowski*] at page [353](#).

⁵² *Ibid.*

of the issue having first been brought to the Township's attention. It was removed just two weeks after that. As such, there is no live controversy, and the Applicants have no actual interest that a decision on the issue could affect. Repealed laws, including legislation and by-laws, have previously given rise to findings that the matter is moot.⁵³ Similarly, since the six-month notice will have expired, there is no live controversy that will be affected by a decision of this Court.

21. With no live controversy, this Court must determine whether it ought to exercise its discretion to hear the case in any event. The determination includes consideration of whether there continues to exist an adversarial relationship.⁵⁴ In this case, it is clear the focus of the Applicants is on their ability to record Council meetings. With the amendment, that is no longer an issue between the parties. According to the Applicants, they have no intention of disrupting proceedings.⁵⁵ As such, there is no basis for an ongoing adversarial relationship. Furthermore, although the Applicants refer to an ongoing trespass prosecution, there is no evidence before this Court on this issue.⁵⁶

22. The Court will also consider judicial economy when deciding whether to exercise its discretion. In this case, there are no special circumstances that make it worthwhile to apply scarce judicial resources, and none have been identified by the Applicants.

23. Expenditure of judicial resources may be considered warranted in cases that are of a brief but recurring nature.⁵⁷ Although the six-month notice was of a relatively brief duration, there is no reason that it should be considered recurrent in nature. According to

⁵³ *Borowski* at page [354](#).

⁵⁴ *Borowski* at pages [358-359](#).

⁵⁵ Respondents' Factum at para 73; Hill Transcript qs 273, 280 pages 55, 56; Carther Transcript q 80 page 11.

⁵⁶ Applicants' Factum at para 26.

⁵⁷ *Borowski* at page [360](#).

the Applicants, the underlying conflict as between the parties was their inability to record Council meetings. This has long been resolved. While from the Township's point of view the underlying issue was the Applicants' disruptive conduct, the Applicants disagree and give no indication that such conduct will continue now that they are able to attend and record the public meetings.

24. This is not a case in which it is worthwhile to expend scarce judicial resources. There is also no social cost in leaving the Application undecided.⁵⁸ The old provision has been amended and it is not consistent with the court's proper law-making function to pronounce on laws that are no longer in effect and in the absence of a dispute affecting the rights of the parties. Importantly, with respect to the six-month notice, the facts and circumstances giving rise to the notice are so specific that there can be no precedential value in a determination on that issue.⁵⁹

25. While it is possible that the Applicants' disruptive behaviour continues and a further trespass notice is issued, the mere fact that a case raising the same point is likely to recur, even frequently, should not by itself be a reason for hearing a matter which is moot.⁶⁰ The preference is to wait and determine the point in a genuine adversarial context unless the circumstances suggest the dispute will always have disappeared before it is resolved.

B. The Old Provision is not Unconstitutional

26. A determination of whether s. 2(b) of the *Charter* has been infringed depends on the following three-part test: (1) does the activity have expressive content protected by s.

⁵⁸ *Borowski* at pages [361-362](#).

⁵⁹ *International Association of Machinists v Air Canada*, [2008 FCA 93](#) at para [1](#); see also *R v TCHC*, [2020 ONSC 251](#) at paras [38](#), [44](#), [59-60](#).

⁶⁰ *Borowski* at page [361-362](#).

2(b); (2) if so, does the method or location of the expression remove that protection; and (3) does the government action infringe that protection either in purpose or effect.⁶¹

1. Protected Expressive Content

27. The analysis under s. 2(b) requires consideration of the expressive activity at issue and a determination of whether it is protected.⁶² The expressive content at issue in this case are the recordings Video #1 and Video #2, which show the Applicants yelling at, berating and insulting Council members and Township staff before the meeting started.

28. The cases relied upon by the Applicants primarily recognize protected expressive activity in the context of journalism and media organizations, of which the Applicants are neither. The media's ability to report on Council meetings for the benefit of the public is not at issue in this Application. The expressive content at issue is not recordings of Council conducting business during its meetings, posted online for public consumption with or without commentary. Instead, the Applicants attended meetings for the intended purpose of yelling at Council and demanding answers to questions *prior to* the commencement of the meetings,⁶³ outside of the prescribed process for public participation.⁶⁴ The recordings at issue are of the Applicants' own disruptive behaviour.

29. The Applicants claim journalistic motivations. However, this claim is undermined by the fact that Mr. Hill was also engaged in spreading misinformation online about the activities and members of Council. Further, while the Applicants express concern for ensuring the public can see what happens at meetings when the recording is turned off,

⁶¹ *Montreal (City) v 2952-1366 Quebec Inc.*, [2005 SCC 62](#) [*Montreal City*] at para [56](#).

⁶² *Montreal City* at para [58](#).

⁶³ Hill Transcript q 108 page 21.

⁶⁴ Hill Transcript qs 342-348 pages 68-70.

the only evidence of recordings being shut off is during meeting recesses.⁶⁵ There is no evidence that the official recordings produced and posted for the public by the Township are incomplete insofar as the actual meetings are concerned.

2. Location Removes Protection

30. Expressive activity may fall outside the scope of s. 2(b) because of method or location.⁶⁶ The onus of satisfying this part of the test rests on the Applicants.⁶⁷ Expression that is excluded from *Charter* protection due to “method” is that which is violent.⁶⁸ The expression at issue in this case is not violent. Nonetheless, the location of the expression, regardless of content, may be beyond the scope of s. 2(b).⁶⁹

31. The fact that expression occurs on government-owned property is not, by itself, sufficient to engage s. 2(b).⁷⁰ As set out by the Supreme Court of Canada in *Montreal (City)*, the basic question with respect to expression on government-owned property is whether the place is a public place where one would expect constitutional protection for free expression on the basis that expression in that place does not conflict with the purposes s. 2(b) is intended to serve, namely (1) democratic discourse, (2) truth finding and (3) self-fulfillment.⁷¹ A court must decide if s. 2(b) should be found applicable to the activity in question at the location where it has occurred.⁷²

32. To answer this question, consideration must be given to the historical or actual function of Council Chambers and whether other aspects of the location suggest the

⁶⁵ Hill Transcript q 389 page 83.

⁶⁶ *Montreal City* at para [60](#).

⁶⁷ *Montreal City* at para [73](#).

⁶⁸ *Bracken v. Fort Erie (Town)*, 2017 ONCA 668 [*Fort Erie*] at [para 28](#).

⁶⁹ *Katerberg v. Ontario (Ministry of Transportation)*, 2026 ONSC 3991 [*Katerberg*] at [para 26](#).

⁷⁰ *Ibid.*

⁷¹ *Montreal City* at para [74](#).

⁷² *R. v Breeden*, [2009 BCCA 463](#) [*Breeden*] at para [17](#).

expression at issue would undermine the values of free expression.⁷³ Examples of government-owned places that are beyond the scope of s. 2(b) protection include courthouses and municipal halls.⁷⁴

33. The historical or actual function of Council Chambers is to be a forum for municipal business to be conducted efficiently. It is quite literally a place for democratic discourse. The *Act* specifically defines a “meeting” as any regular, special, or other meeting of Council where a quorum of members is present and members discuss or otherwise deal with any matter in a way that materially advances the business or decision-making of the Council.⁷⁵ While meetings must be open to the public,⁷⁶ this means that the public must be able to *observe* municipal government in process and it does not confer any right to public participation.⁷⁷ There is no automatic or statutory right to speak or participate in a public meeting. As noted by Ombudsman Ontario:

There is a distinction between a person’s right to participate and their right to *observe* municipal government in progress. The open meeting requirements set out in s. 239 of the Municipal Act, 2001 permit the public to observe the political process. Each municipality is required to have a procedure by-law, which *may* set out a process for members of the public to address council.⁷⁸

34. To the extent the Applicants’ recording of their own conduct disrupts Council business, or impedes the ability of others to observe municipal government in progress, it undermines the values underlying free expression.⁷⁹ Courts have found that the choice to engage in polemic and argumentative demonstration may be subject to location-based

⁷³ *Montreal City* at paras [73](#).

⁷⁴ *Breeden* at paras [23](#), [32](#); *Katerberg* at para [27](#).

⁷⁵ *The Act*, [s. 238\(1\)](#), emphasis added.

⁷⁶ *The Act*, [s. 239\(1\)](#).

⁷⁷ *London (City) v RSJ Holdings Inc.*, [2007 SCC 29](#) [London] at para [32](#).

⁷⁸ Municipal Act [s. 238\(1\)](#); see also Ontario Ombudsman, [Open Meetings: Guide for Municipalities](#), 6th ed (Toronto: Ombudsman of Ontario, 2024) [Ombudsman Guide] at page 11, emphasis added.

⁷⁹ *Canadian Broadcasting Corp v Canada (Attorney General)*, [2011 SCC 2](#) [CBC] at paras [20](#), [67](#), [73](#), [76](#)

limits on the scope of s. 2(b) protection which, “far from harming the integrity of the *Charter*, has been mandated by the Supreme Court of Canada and serves to ensure that s.2(b) protection is not trivialized by requiring the government to justify every limit on expression incompatible with the public function of a place.”⁸⁰

35. Expressive activity within Council Chambers is distinct from the town square or “the area in front of a town hall”, which has been found to be a place traditionally used to express public dissent and is not at issue in this case.⁸¹ Rather than a location for free and open public discussion and debate, Council Chambers is a structured and specialized forum to allow Council to perform its statutorily defined function of carrying out the business of the municipality. Any discussion engaging the public is expressly constrained by a municipality’s procedure by-law and the statutory authority to expel any person for improper conduct.⁸²

36. The Applicants’ activities are not akin to the presence of journalists in courthouses assisting the public’s ability to understand the justice system, the absence of which would erode democratic discourse, self-fulfilment, and truth finding.⁸³ The Applicants’ actions are in fact erosive of the values underlying s. 2(b). The practice of recording themselves addressing Council before the meeting has begun, instead of participating during the meeting in the manner prescribed by the By-law, erodes s. 2(b) values as the practice disrupts the proper functioning of Council and impedes members of the public from observing municipal matters of public importance.

⁸⁰ *Breeden* at paras [32](#), [34](#).

⁸¹ *Fort Erie* at para [54](#).

⁸² *The Act*, [s. 241\(2\)](#).

⁸³ *CBC* at para [45](#).

37. Unlike the Court's concerns in *CBC* regarding public access to courthouse proceedings because they cannot attend,⁸⁴ the public can attend Township meetings, either in person or virtually, the meetings are recorded, and they are made available to the public should they so choose to watch.⁸⁵ The Applicants' recordings are no more accessible to the public than the Township's official recordings.

38. Finally, comparison to the courts is apt as they have also been found to be excluded from s. 2(b) protection,⁸⁶ illustrating that, even where proceedings are open to the public, there is a strong public interest in the subject matter, and it is important to the functioning of the system that it be observed by the public, the location may nonetheless be outside the scope of s. 2(b) when it comes to certain expressive activity. Rather, in the case of the courts, public recording and distribution of the proceeding is an offence and explicitly prohibited without prior authorization.⁸⁷

3. Purpose or Effect

39. The question under the third branch is whether the purpose or effect of the impugned old provision is to restrict expression. Where the effect of a provision is to limit expression, a breach of s. 2(b) will be made out, provided the claimant shows that the expression at issue promotes one of the values underlying freedom of expression.⁸⁸

40. The purpose of the procedure by-law as a whole is to meet the requirement of the *Act* for every municipality to "pass a procedure by-law for governing the calling, place and proceedings of meetings."⁸⁹ In part, the procedure by-law also facilitates the public's

⁸⁴ *CBC* at para [45](#).

⁸⁵ Santos Transcript q 63 page 10.

⁸⁶ *Breeden* at para 22; *Katerberg* at para [27](#).

⁸⁷ *Courts of Justice Act*, R.S.O. 1990, c. C.43, [s. 136](#).

⁸⁸ *Montreal City* at para [83](#).

⁸⁹ *The Act*, s. 238(2).

observation of the business of Council⁹⁰ and participation in an orderly and non-disruptive fashion.⁹¹ The impugned provision furthered that goal, insofar as permitting unfettered recording by the public would reasonably be considered to potentially disrupt the proceeding.

41. Contrary to the Applicants' assertions, the purpose of section 20.2 of the old provision was not to limit expression but to maintain the proper functioning of Council and facilitate the conduct of Township business, as is required under the *Act*. There was nothing in the provision that prevented any member of the public from exercising their right to observe the meeting, either in person or virtually, in real time or after the fact via the Township's post. Maintaining orderly proceedings furthers the values of s. 2(b).

42. The onus is therefore on the Applicants to show that the effect of the old provision was to restrict their *Charter*-protected expression. They must show that the expression at issue, as seen in Video #1 and Video #2, promotes one of the values underlying s. 2(b). For the reasons stated above, the Township's position is the Applicants' recordings of themselves, attending Council meetings to berate staff and Council members before the meeting begins, in fact undermines the values of freedom of expression.

C. If Unconstitutional, the Old Provision is Justified as a Reasonable Limit under Section 1

43. If determined that the impugned provision infringed freedom of expression, the Court must determine whether the infringement was justified under s. 1 as a reasonable limit pursuant to the four-part *Oakes* test.⁹²

⁹⁰ *The Act*, s. 238(2.1).

⁹¹ Ombudsman Guide at page 11.

⁹² *R v Oakes*, [1986 CanLII 46 \(SCC\)](#); *CBC* at para [64](#).

1. Pressing and Substantial Objective

44. The Ontario Court of Appeal noted that a valid public purpose to satisfy this part of the test would include preventing the obstruction of the operation of government.⁹³ In any event, the Applicants concede there is a pressing and substantial objective of the procedure by-law to ensure the orderly conduct of municipal proceedings.⁹⁴

2. Rationally Connected

45. At this stage, the Township must show that it is reasonable to suppose that the limit may further the goal, not that it will do so.⁹⁵ Further, the connection between the infringement and the benefit sought in adopting the means may be shown on the basis of evidence, reason, or logic.⁹⁶ The question at this stage of the test is whether prohibiting recording generally is a logical way to address a real risk of disruption.

46. The real risk of disruption from recording may be of several types, including physical or logistical, decorum and security, and administrative. Most important, however, is the potential chilling effect on participation. Members of the public who delegate or speak to Council — often on contentious matters like rezoning, bylaw enforcement, or neighbour disputes — may become guarded, adversarial, or unwilling to speak candidly if they know they are being filmed by unidentified individuals for uncontrolled purposes (clipped, posted online, used out of context).⁹⁷ Full and candid participation is itself part of what "orderly conduct of the meeting" means, so a measure aimed at protecting that candour is rationally connected to the purpose even though it also restricts expression.

⁹³ *Fort Erie* at para [75](#).

⁹⁴ Applicants' Factum at para 51.

⁹⁵ *Alberta v Hutterian Brethren of Wilson Colony*, [2009 SCC 37](#) [*Hutterian Brethren*] at para [48](#).

⁹⁶ *CBC* at para [70](#).

⁹⁷ *CBC* at paras [20](#), [67](#), [73](#), [76](#).

47. Recording by the public may also interfere with the Township's official recording, which is not only an official record of the meeting as required by the Act, but also the means by which members of the public who are not in attendance may view the live stream or access a recording after the fact.

3. Minimally Impairing

48. The requirement for minimal impairment does not require the least restrictive means available, only that the measure falls within a "range of reasonable alternatives".⁹⁸ A municipal council managing its own proceedings with limited resources and enforcement tools is reasonably afforded a degree of deference on this issue.

49. It is also important that the provision was minimally impairing at the material time. The test for minimal impairment is not a standard of perfection, nor does it operate with the benefit of hindsight.⁹⁹ Law makers ought to be entitled to learn and adjust laws and rules over time. A municipality drafting *prospectively*, without operational experience, would reasonably default to a categorical rule rather than trying to anticipate and enumerate every mechanism by which recording could interfere with a meeting. In this case, the fact that it took five categories to capture "disruptive" in an administrable way is evidence that this was not a self-evident distinction available "off the shelf" at the time the old provision was passed.¹⁰⁰ The change was the product of experience and refinement.

50. In addition, the old provision specifically provided that all meetings may be recorded or broadcast publicly by the Township. In practice, all Council meetings were

⁹⁸ *Hutterian Brethren* at para [37](#).

⁹⁹ *Canada (AG) v JTI-Macdonald*, [2007 SCC 30](#) at para [43](#); *Taylor v Newfoundland and Labrador*, [2026 SCC 5](#), at paras [235](#), [245](#).

¹⁰⁰ *By-Law 14-2026*, s. 20.2.

live streamed via YouTube and subsequently available to be watched on the same platform.¹⁰¹ As such, any purpose for which an individual may wish to have a recording of the meeting was met. The old provision was thus minimally impairing insofar as individuals, while not permitted to record in Council Chambers, were not prevented from accessing, viewing and utilizing an official recording for whatever purpose they may have.

4. Salutory Effects Outweigh Deleterious Effects

51. As set out above, the salutory effects of the old provision, when it was in effect, were the protection of participants, the integrity of the official record, physical safety and order, and efficient use of public and Council time. These effects outweigh any deleterious effect because the prohibition against recording imposed no practical limit on an individual's ability to access and utilize a recording of the meeting nor did it otherwise prevent or impair attendance, note-taking, live-texting or tweeting, or subsequent reporting or commentary, including with reliance on the official Township recording. The deleterious effect is only on the *ability to create one's own independent copy*, not on access to information about the meeting itself. Further, nothing in the old provision restricted what anyone could say about the meeting, criticize, or report — only the mechanical act of recording.

D. The Six-Month Notice is not Unconstitutional

52. A finding that the old provision was unconstitutional is not sufficient for a finding that the six-month notice was also unconstitutional. As explained to the Applicants at the time, both trespass notices were issued for ongoing disrespectful and harassing behaviour, disrupting Township proceedings, and contravening standards of decorum

¹⁰¹ Hill Affidavit at para 5.

and respectful engagement.¹⁰²

1. Protected Expressive Content

53. As above, the s. 2(b) analysis requires identifying and reviewing the specific expressive content at issue. With respect to the six-month notice, the expression is the Applicants' ability to attend in person for the purpose of asking questions directly of Council prior to the start of the meeting in an abusive and belligerent manner, which is in contravention to the procedure by-law regarding decorum and conduct as well as the delegation process, neither of which are at issue in this Application.¹⁰³

2. Location Removes Protection

54. As noted above, the location of expressive activity may remove it from the scope of s. 2(b) protection.¹⁰⁴ On this issue, the Township relies on the analysis at paras 34 to 40 above with respect to the historical and actual function of Council Chambers with respect to the orderly and efficient conduct of Township business.

3. Purpose or Effect

55. The purpose of the trespass notice was to prevent the Applicants from attending Council meetings in person in a manner that was disruptive and not in compliance with the procedure by-law, which is the expression at issue. However, the Applicants cannot show that this expression promotes one of the values underlying s. 2(b).¹⁰⁵ For the reasons set out above, the Applicants' conduct had the effect of *undermining* those values.

¹⁰² Santos Affidavit at para 52, Exhibit Z.

¹⁰³ By-Law 52-2025, s. 30.1-30.16; By-Law 14-2026, s. 30.1-30.16

¹⁰⁴ *Montreal City* at para [60](#).

¹⁰⁵ *Montreal City* at para [83](#).

56. The Township does not agree that the purpose of the six-month notice was to stop the Applicants' activities online nor has this been an effect. It is abundantly clear such activities have and will continue regardless of whether the Applicants are physically present at Council meetings.¹⁰⁶

E. If Unconstitutional, the Six-Month Notice is Justified as a Reasonable Limit under Section 1

57. The Ontario Court of Appeal and the Applicants agree that limits on *Charter* rights imposed by a trespass notice are prescribed by law.¹⁰⁷

58. The *Dore/Loyola* framework applies to the Township's administrative decision, rather than the strict application of the *Oakes* test. Under this framework, the preliminary question is whether the decision engages the *Charter* by limiting *Charter* protections. If so, the question becomes whether, in assessing the impact of the relevant *Charter* protection and given the nature of the decision and the statutory and factual contexts, the decision reflects a proportionate balancing of the *Charter* protections at play.¹⁰⁸ The proportionality analysis is robust and makes use of the final stages of the *Oakes* test to assess the reasonableness of a limit on a *Charter* right.¹⁰⁹

Statutory and Factual Contexts

59. The *Act* states that municipalities are created to be responsible and accountable governments with respect to their jurisdiction and each is given powers and duties for the purpose of providing good government with respect to those matters.¹¹⁰ Thus, the

¹⁰⁶ Santos Affidavit at paras 70-96; Hill Transcript qs 285, 294, 296, 399-413 pages 57, 59, 86-88.

¹⁰⁷ *Fort Erie* at para 73; Applicants' Factum at para 93.

¹⁰⁸ *Dore v Barreau du Quebec*, [2012 SCC 12](#) at para 57; *Loyola High School v Quebec (Attorney General)*, [2015 SCC 12](#) [*Loyola*] at para 39.

¹⁰⁹ *Loyola* at para 40.

¹¹⁰ *The Act*, [s. 2](#).

Township has a legitimate interest in ensuring that its public meetings are conducted efficiently and effectively to materially advance its business or decision-making. The question in the present case is how to balance freedom of expression with the Township's statutory imperative to conduct its business in an effective and efficient manner.

60. The Applicants place emphasis on the power of Council to expel any person for improper conduct at a meeting pursuant to s. 241(2) of the *Act*, suggesting this narrows the scope of the Township's powers. However, the Township submits that the proper emphasis should be placed on improper conduct, which is not defined in the *Act* and accords the Township broad expulsion powers regarding any person at a meeting.

61. Similarly, the Applicants wrongly state that violence or threat of violence and the Applicants' online activities were grounds for the six-month notice. The grounds, as stated, were the Applicants' disruptive conduct at the meetings. However, the factual circumstances beyond just the meetings are important when assessing whether the six-month notice was within the range of appropriate outcomes. The Applicants' relentless and ongoing misinformation campaign against the Township and repeated disruption of Council meetings is laid out in detail in the Santos Affidavit and summarized above.

62. Despite being aware, the Applicants never attempted to participate at Council meetings via the prescribed process.¹¹¹ The Applicants refused to heed the advice of the OPP officers at the December 15, 2025 meeting.¹¹² They did not abide by Reeve Heffer's request for them to leave the January 12, 2026 meeting, which was pursuant to the

¹¹¹ Santos Affidavit at paras 11, 15, 18, 21, 31, 42-48, 52-53; Hill Transcript qs 342-348 pages 68-70; Carther Transcript q 43 page 6.

¹¹² Video #1, Hill Affidavit at para 11.

procedure by-law and the expulsion powers in the *Act*.¹¹³ The Applicants continued to disrupt the meeting, after which police were called and the 60-day verbal trespass notice was given.¹¹⁴ This was followed by Mr. Santos' January 22, 2026 letter setting out behavioural expectations for dealings with the Township, clarity regarding the trespass notice, and notice that the Applicants would be asked to leave or removed for future disruptions. The letter also outlined alternatives for participation in meetings.¹¹⁵ It was only after all these actions failed and the Applicants attended and disrupted the next meeting,¹¹⁶ that the Township issued the six-month trespass notice.

63. The Township's concerns for the implications of the Applicants' behaviour were not unfounded. The Applicants' in person and online actions had real and serious implications on the Township, including receipt of phone calls from the public;¹¹⁷ the accosting and public humiliation of a hired security guard;¹¹⁸ the accosting of Council members trying to arrive for a meeting and cornering of Councillor Van Hittersum;¹¹⁹ the receipt of threatening emails and voicemails from the public;¹²⁰ and the assault of Deputy Reeve Falconer immediately after a Council meeting by a member of the public responding to Mr. Hill's calls to action, as the result of which the Deputy Reeve suffered a concussion that prevented him from fulfilling his duties on Council.¹²¹

64. As noted, Mr. Hill's online activities are not the subject of the six-month notice nor this Application. Rather, it is the Applicants' conduct at Council meetings that occurred

¹¹³ *By-law 52-2025*, s. 34.13(e), 34.14; *The Act*, [s. 241\(2\)](#).

¹¹⁴ Hill Transcript q 221 pages 43-44.

¹¹⁵ Santos Affidavit at para 43.

¹¹⁶ Exhibit Y to the Santos Affidavit.

¹¹⁷ Santos Affidavit at para 27.

¹¹⁸ Santos Affidavit at para 45.

¹¹⁹ Santos Affidavit at paras 45-46, 51.

¹²⁰ Santos Affidavit at paras 57, 77-78.

¹²¹ Santos Affidavit at paras 73-74, 98.

within a factual context which includes the online activity. The online activity was intended to influence Council¹²² and, at times, was in direct response to interactions at the meetings.¹²³ Given the aggressive conduct at meetings, the Township was reasonably concerned about its ability to conduct business and the safety of Council members and Township staff. This concern proved warranted on February 17, 2026 when the Applicants' conduct at meetings combined with the online activity culminated in the assault of Deputy Reeve Falconer.

Minimal Impairment

65. The present case is not analogous to *Fort Erie* in which a trespass notice was issued that applied to all town property for one year with reliance on s. 229 of the *Act* and the *Occupational Health and Safety Act*. As noted, the Applicants in this case were prevented access to Council Chambers based on their failure to comply with an expulsion permitted by s. 241(2) of the *Act*. The Township had no choice but to issue the trespass notice as a method to enforce s. 241(2) of the *Act*. Nonetheless, *Fort Erie* does assist insofar as the Ontario Court of Appeal specifically noted, "what constitutes a valid public purpose...would include...preventing the obstruction of the operation of government and the provision of government services."¹²⁴

66. Further, unlike the trespass notice in *Fort Erie* which was lengthy and applied to all town property, the six-month notice was for a shorter period and applied only to the Township office.¹²⁵ As noted, this was preceded by the 60-day notice, which was

¹²² Hill Transcript q 24 page 4.

¹²³ See para 9, above.

¹²⁴ *Fort Erie* at para [75](#).

¹²⁵ Santos Affidavit at para 52.

intentionally breached¹²⁶ and before that a warning from law enforcement that the Applicants ought to participate via the delegation process.¹²⁷ The six-month notice also provided for reconsideration after 60 days if the Applicants demonstrated, “[their] commitment to complying with the Procedural By-law and the respectful conduct expectations set out in the [January 22, 2026] letter.”¹²⁸

67. The Applicants also rely on *Niagara*.¹²⁹ In that case, in determining that a trespass notice was not minimally impairing, the Court suggested options that would be less intrusive. These included restriction on ability to ask questions and make presentations at Council meetings in accordance with by-laws, restriction on communication with Council to email or written correspondence, caution of revocation of the right to attend future meetings due to improper conduct, reconsideration of disruptive behaviour at a certain period, and a requirement to communicate with municipal staff through the CAO.¹³⁰ The Township attempted these options in various forms, including in direct communication with the Applicants, communication through police, and the January 22, 2026 and February 2, 2026 letters.

68. The Township is not required to choose the option that limits *Charter* protection the least, rather the question is always whether the decision falls within a range of possible outcomes.¹³¹ The Township attempted alternatives that failed due to the Applicants’ non-compliance. The trespass notice was minimally impairing and a reasonable limit on the Applicants’ expression given the circumstances.

¹²⁶ Hill Transcript q 272 page 55.

¹²⁷ Video #1 at timestamp 4:35, Hill Affidavit at para 11.

¹²⁸ Exhibit Z to the Santos Affidavit.

¹²⁹ *Bracken v Regional Municipality of Niagara Corporation*, [2015 ONSC 6934](#) [*Niagara*].

¹³⁰ *Niagara* at paras [67-71](#).

¹³¹ *Law Society of British Columbia v Trinity Western University*, [2018 SCC 32](#) at para [81](#).

Salutary Effects Outweigh Deleterious Effects

69. The decision in *Saugeen Shores*¹³² highlights the importance of balance between the *Charter* rights of residents and the need for a town to conduct its business efficiently and effectively.¹³³ In that case, the town had a delegation process, similar to the Township. The Court noted that the need to establish a procedure for conducting government business and public participation is the “clearest of cases” for limitations.¹³⁴ Otherwise, Council meetings could turn into a “free for all” and impair Council moving forward with business if limits were not in place.¹³⁵

70. In this case, Mr. Hill repeatedly attempted to address the same issues before Council at subsequent meetings without utilizing the delegation process, of which he was aware. To the extent that there were deleterious effects of the six-month notice, they are a product of the Applicants’ intentional non-compliance with the procedure by-law and failure to attempt to either vary the notice or submit concerns through proper channels.

71. Importantly, the Applicants’ ability to observe the business of Council was not limited by the six-month notice as they could still attend virtually or watch the official recording.¹³⁶ Similarly, they could request to appear as delegates, and the Township offered to consider business that could not be conducted remotely and/or reconsider the notice in its entirety after 60 days.¹³⁷

72. Further, all Council meetings from February 19, 2026 to June 1, 2026 proceeded

¹³² *Mann v Saugeen Shores* [2023 ONSC 1025](#) [*Saugeen Shores*].

¹³³ *Saugeen Shores* at para [114](#).

¹³⁴ *Saugeen Shores* at para [91](#), [99](#).

¹³⁵ *Saugeen Shores* at paras [117-118](#).

¹³⁶ Carther Transcript q 96-97 page 13; Hill Transcript q 482 page 104.

¹³⁷ Santos Affidavit at para 52.

virtually with no option for in person attendance.¹³⁸ In this respect, the Applicants were in no different a position than any other member of the public.

73. The Applicants suggest that the six-month notice was intended to cease online posts. This is clearly false and obviously not an actual deleterious effect as Mr. Hill's online posts have continued since the transition to virtual Council meetings in February 2026. Such posts include portrayals of Deputy Reeve Falconer as a part of a "Scrotum Inspection Unit", an intended reference to his assault;¹³⁹ fabrication of a state of emergency which sparked response from the Ontario Provincial Police;¹⁴⁰ depiction of CAO Mr. Santos as a "baby Hitler" alleging that he was "demanding papers"; and numerous posts to the Applicants' websites with fabricated allegations about the Township.¹⁴¹

74. There is also no deleterious effect on either Applicant arising from the location to which the six-month notice applies. Neither Mr. Carther nor Mr. Hill sought permission to conduct legitimate Township business, and they have provided no evidence at all that they required an attendance at the Township office building and were prevented from doing so.¹⁴²

75. In contrast, the salutary effects of the trespass notice have been substantial in that Township meetings have been able to proceed efficiently and effectively without disruption from the Applicants or from required enforcement efforts arising from the disruptions. Again, all that is required is that the decision falls within a range of possible

¹³⁸ Santos Affidavit at para 72; Hill Transcript q 367 page 75.

¹³⁹ Santos Affidavit at paras 80-81.

¹⁴⁰ Santos Affidavit at paras 90-93.

¹⁴¹ Santos Affidavit at paras 75-96; Hill Transcript, qs 285, 294, 296, 399-413 pages 57, 59, 86-88.

¹⁴² Carther transcript q 108 page 15 and Hill Transcript qs 376-377 page 79.

acceptable outcomes and strikes a proportionate balance between *Charter* protections and statutory objectives. In this case, the minimal impact on the Applicants of the trespass notice is outweighed by the benefits of Council being able to conduct municipal business efficiently and effectively.

F. Trespass Notice was Issued with Authority

76. The Applicants and the court agree that municipalities are occupiers of municipal property and can exclude persons from public property.¹⁴³

77. The *Trespass to Property Act* states that the offence of trespassing is committed when a person does not leave the premises immediately after he or she is directed to do so by the occupier of the premises or a person authorized by the occupier.¹⁴⁴ Occupier is defined to include a person in physical possession of a premises or a person who has responsibility for and control over the condition of a premises or the activities there carried on, or control over persons allowed to enter the premises.¹⁴⁵ The Township has this possession and control as it has the capacity, rights, powers, and privileges of a natural person for the purpose of exercising its authority under the *Act*.¹⁴⁶ This is a complete answer to this issue as there is no evidence whatsoever to indicate the notices were issued by someone who was not duly authorized by the Township.

78. The Applicants rely on *Niagara* even though the court's comments on the issue were explicitly obiter.¹⁴⁷ Nonetheless the facts of *Niagara* are distinguishable because the decision to issue a trespass notice was made by the CAO himself. However, In the

¹⁴³ Respondents' Factum at para 95; *Fort Erie* at paras [70-73](#).

¹⁴⁴ *Trespass to Property Act*, RSO 1990, c. T.21 [TPA], [s. 2\(1\)\(b\)](#).

¹⁴⁵ TPA [s. 1\(1\)\(a\) and \(b\)](#).

¹⁴⁶ *The Act*, [s. 9](#).

¹⁴⁷ *Niagara* at paras [87-88](#).

present case, there is no evidence that Mr. Santos was acting on his own or without proper authority. Indeed, Mr. Santos was authorized to issue the notices in two ways. First, Reeve Heffer can be heard on the Applicant's video indicating that trespass notices would be presented to the Applicants during the February 2, 2026 meeting.¹⁴⁸ The decision was clearly made by Reeve Heffer and communicated by Mr. Santos. Second, the provisions of the *Act* set out the authority of the CAO, which includes responsibility for general control and management of the affairs of the municipality and performing any such other duties as are assigned by the municipality.¹⁴⁹ This includes issuing a trespass notice as a person authorized by Reeve Heffer on behalf of Council.

ORDER SOUGHT

79. The Township requests an Order dismissing this Application in its entirety with costs payable to the Township.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 10th day of August, 2026.

LERNERS LLP

Jennifer L. Hunter

Kevin Hale

Lawyers for the Respondents

¹⁴⁸ Santos Affidavit at para 49.

¹⁴⁹ *The Act*, [s. 229](#).

TO: **CHARTER ADVOCATES CANADA**

[REDACTED]

Darren Leung

[REDACTED]

Hatim Kheir

[REDACTED]

Lawyers 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 -

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

Respondents

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

CERTIFICATE OF AUTHENTICITY

I, JENNIFER L. HUNTER, lawyer for the Respondents, certify that I am satisfied
as to the authenticity of every authority cited in the factum. The Respondents estimate
that they require one and a half (1.5) hours for oral argument.

August 10, 2026



Jennifer L. Hunter

SCHEDULE "A"

LIST OF AUTHORITIES

1. *Alberta v Hutterian Brethren of Wilson Colony*, [2009 SCC 37](#) at paras [37](#), [48](#)
2. *Borowski v Canada (Attorney General)*, [1989 CanLII 123 \(SCC\)](#) at pages [353](#), [354](#), [358-359](#), [360](#), [361-362](#)
3. *Bracken v Regional Municipality of Niagara Corporation*, [2015 ONSC 6934](#), at paras [67-71](#) and [87-88](#)
4. *Bracken v. Fort Erie (Town)*, [2017 ONCA 668](#) at paras [28](#), [54](#), [73](#), [75](#)
5. *Canada (A.G.) v. JTI-Macdonald*, [2007 SCC 30](#) at para. [43](#)
6. *Canadian Broadcasting Corp v Canada (Attorney General)*, [2011 SCC 2](#) at paras, [20](#), [45](#), [64](#), [67](#), [70](#), [73](#), [76](#)
7. *Doré v. Barreau du Québec*, [2012 SCC 12](#) (CanLII), [2012] 1 SCR 395 at para [57](#)
8. *International Association of Machinists v Air Canada*, [2008 FCA 93](#) at para [1](#)
9. *Katerberg v. Ontario (Ministry of Transportation)*, [2026 ONSC 3991](#) at paras [26](#), [27](#),
10. *Law Society of British Columbia v Trinity Western University*, [2018 SCC 32](#) at para [81](#)
11. *London (City) v RSJ Holdings Inc*, [2007 SCC 29](#) at para [32](#)
12. *Loyola High School v. Quebec (Attorney General)*, [2015 SCC 12](#) (CanLII), [2015] 1 SCR 613 at para [40](#)
13. *Mann v Saugeen Shores* [2023 ONSC 1025](#) at paras [91](#), [99](#), [114](#), [117-118](#)
14. *Montreal (City) v 2952-1366 Quebec Inc*, [2005 SCC 62](#) at paras [56](#), [58](#), [60](#), [73](#), [74](#), [83](#),
15. *R. v Breeden*, [2009 BCCA 463](#) at paras [17](#), [22](#), [23](#), [32](#), [34](#)
16. *R v Oakes*, [1986 CanLII 46 \(SCC\)](#)
17. *R v TCHC*, [2020 ONSC 251](#) at paras [38](#), [44](#), [59-60](#)
18. *Taylor v. Newfoundland and Labrador*, [2026 SCC 5](#), at para. [235](#) and [245](#)

SCHEDULE “B”

RELEVANT STATUTES

SCHEDULE B

Courts of Justice Act, RSO 1990, c C.43

Prohibition against photography, etc., at court hearing

136 (1) Subject to subsections (2) and (3), no person shall,

(a) take or attempt to take a photograph, motion picture, audio recording or other record capable of producing visual or aural representations by electronic means or otherwise,

(i) at a court hearing,

(ii) of any person entering or leaving the room in which a court hearing is to be or has been convened, or

(iii) of any person in the building in which a court hearing is to be or has been convened where there is reasonable ground for believing that the person is there for the purpose of attending or leaving the hearing;

(b) publish, broadcast, reproduce or otherwise disseminate a photograph, motion picture, audio recording or record taken in contravention of clause (a); or

(c) broadcast or reproduce an audio recording made as described in clause

(2) (b). R.S.O. 1990, c. C.43, s. 136 (1).

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

Purposes

2 Municipalities are created by the Province of Ontario to be responsible and accountable governments with respect to matters within their jurisdiction and each municipality is given powers and duties under this Act and many other Acts for the purpose of providing good government with respect to those matters. [2006, c. 32](#), Sched. A, s. 2.

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-law

Definitions

238 (1) In this section and in [sections 239](#) to [239.2](#),

“committee” means any advisory or other committee, subcommittee or similar entity of which at least 50 per cent of the members are also members of one or more councils or local boards; (“comité”)

“local board” does not include police service boards or public library boards; (“conseil local”)

“meeting” means any regular, special or other meeting of a council, of a local board or of a committee of either of them, where,

- (a) a quorum of members is present, and
- (b) members discuss or otherwise deal with any matter in a way that materially advances the business or decision-making of the council, local board or committee. (“réunion”) 2001, c. 25, s. 238 (1); [2006, c. 32](#), Sched. A, s. 102 (1, 2); [2017, c. 10](#), Sched. 1, s. 25 (1); [2019, c. 1](#), Sched. 4, [s. 33 \(8\)](#).

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).

Notice

(2.1) The procedure by-law shall provide for public notice of meetings. [2006, c. 32](#), Sched. A, s. 102 (3).

Electronic participation

(3.1) The applicable procedure by-law may provide that a member of council, of a local board or of a committee of either of them, can participate electronically in a meeting to the extent and in the manner set out in the by-law. [2020, c. 18](#), Sched. 12, s. 1 (1).

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).

Power to expel

241(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).

Ontario Ombudsman, Open Meetings: Guide for Municipalities (6th ed., 2024)

VOTING AND RECORDS

Can votes be taken during a closed meeting?

Generally, meetings cannot be closed to the public during the taking of a vote. Voting in a closed meeting is only permitted if the closed meeting is otherwise authorized and the vote is for a procedural matter or for giving directions or instructions to officers, employees, agents of the municipality, or persons under contract. All votes should be taken formally, in accordance with the procedure by-law, and recorded in the closed meeting minutes. Decisions should not be made by straw poll, show of hands or general consensus.

Are members of the public entitled to participate in a meeting?

There is no automatic right to speak or participate in a meeting. There is a distinction between a person’s right to participate and their right to observe municipal government in progress. The open meeting requirements set out in s. 239 of the Municipal Act, 2001 permit the public to observe the political process.

Each municipality is required to have a procedure by-law, which may set out a process for members of the public to address council. Questions about the process should be referred to the municipal clerk.

Must a record be kept of the closed meeting?

All resolutions, decisions and other proceedings that take place must be recorded, whether the meeting is open or closed. The Act does not require municipalities to create verbatim transcripts of meetings, but minutes should be more detailed than just a list of resolutions. The record of a closed meeting should include reference to the location, format (e.g., in person, hybrid, or electronic), time of commencing and adjourning the meeting, and the names of attendees. There should also be a detailed description of the substantive and procedural matters discussed, including reference to any specific documents considered, motions (including names of the movers and seconders), and all votes taken or direction given. The Ombudsman recommends that all municipalities also make audio or video recordings of all meetings – open and closed – to ensure the most thorough record possible. After meeting behind closed doors, the Ombudsman recommends reporting back in the open session on what transpired in the closed session, providing as much detail as the subject matter permits.

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.

30. Public Presentations - Delegations and Petitions

30.1. Any person or group requesting to attend a Council or a Committee Meeting to appear as a Delegation or to present a Petition shall register with the Clerk or Recording Secretary by submitting a completed “Delegation Request Form” forming a part of this By-law as Schedule “A” by 4:30pm on the Monday of the week prior to the Meeting. The “Delegation Request Form” may also be submitted electronically through the Township of North Huron website.

30.2. A copy of the presentation, documentation, and/or Petition to be presented to the Council or a Committee must be submitted as part of the Delegation Request Form in order for the request to be deemed complete and for scheduling of the delegation presentation to occur.

30.3. The presentation, documentation, and/or Petition as referred to in Subsection 30.2 must include the full name and contact information of the sender and be received by the Clerk or Recording Secretary no later than 4:30 p.m. on the Monday of the week prior to the meeting.

30.4. All presentations, documentation and/or Petitions submitted as part of the Delegation Request Form shall be published as part of the Meeting Agenda and are subject to full disclosure under the Municipal Freedom of Information and Protection of Privacy Act, 1990.

30.5. At the discretion of the Clerk or Recording Secretary, the Delegates will be scheduled to present at a Regular Meeting.

30.6. The Head of Council, Chair, or Clerk at their discretion, may refuse a delegation request or presentation if:

- The requestor refuses to provide presentation materials in accordance with Section 30.2 of this By-law.
- The materials submitted are not legible.

- The materials submitted contain obscene or defamatory language.
- The matter is deemed to be routine or administrative in nature and can be referred to staff for a quick resolution.
- The matter is not within the jurisdiction or normal realm of the Council or Committee's business.
- The request is repetitive, vexatious or frivolous in nature.
- The matter is relating to litigation or potential litigation, including those matters which are before and under the jurisdiction of any court or administrative tribunal, unless the matter is referred to Council by the said court or tribunal.
- Any other reason deemed appropriate under the circumstance.

30.7. The Clerk or Recording Secretary, at their discretion, may defer a Delegation to a subsequent Agenda if the timing is deemed to be more appropriate.

30.8. The Clerk or Recording Secretary may provide a copy, upon receipt of the Delegation Request Form and/or Petition, to a Department Head without the prior consideration of Council or Committee.

30.9. After a delegation has been heard at a Council or a Committee meeting and it is felt that a further meeting on the same topic is warranted, the Council or Committee may so recommend and shall determine the time and date of such further delegation.

30.10. Any Delegation attending a Meeting shall:

- Be allotted a maximum of ten (10) minutes, which includes time for questions from Council or the Committee;
- Not be permitted to go beyond the allotted ten (10) minutes at the discretion of the Head of Council or Chair, unless further time is granted by Council or the Committee;
- Be allotted a maximum of two (2) spokespersons/speakers;
- Give the name of each spokesperson/speaker for the record;
- Address the entire Council or Committee as a body, not any individual Member thereof.

30.11. No person other than Members of the Council or a Committee and the person having the floor, shall be permitted to enter into any discussion, either directly or through Members of Council or a Committee.

30.12. No questions shall be asked to the Delegation or Members except through the Head of Council or Chair.

30.13. The Head of Council or Chair may end a Delegation and/or presentation for contravention of this By-law.

30.14. At any time, interested parties or authorized representatives may address Council or a Committee by written correspondence in regard to any matter concerning the Township's business or over which Council or a Committee have control by addressing correspondence in care of the Clerk or Recording Secretary. Such written communication will be distributed to the Members as part of the published Agenda.

30.15. From time to time the public may submit a formal written request, supported by a number of residents, to the Council of the Township of North Huron or a Committee, in the form of a Petition.

30.16. Any Petition submitted to Council or a Committee shall be done in accordance with the process established in the Township of North Huron Petition Policy adopted by Council.

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

34.1. The Head of Council or the Chair shall call the Meeting to Order as soon after the hour fixed for holding of the Meeting and Quorum is present.

34.2. The Head of Council or the Chair shall announce the business before Council or the Committee in the order in which it is to be acted upon.

34.3. The Head of Council or the Chair shall receive and submit, in the proper manner, all Motions presented by the Members.

34.4. Unless otherwise authorized by the Head of Council or Chair, all Members, Staff and guests shall address Council or the Committee through the Head of Council or Chair and only when recognized to do so.

34.5. The Head of Council or the Chair shall preserve order and decorum and decide questions of order subject to an appeal to Council or the Committee and this decision may be overruled by a Majority vote thereof.

34.6. The Head of Council or the Chair shall put to vote all questions which are regularly moved and seconded or necessarily arise in the course of proceedings, and announce the result.

34.7. The Head of Council or the Chair shall authenticate by signature when necessary all By-laws, Minutes and documents authorized by Council or a Committee.

34.8. The Head of Council or the Chair shall represent and support the Council or Committee, declaring its will and obeying its decisions in all things.

34.9. The Head of Council or the Chair shall ensure that the decisions of Council or the Committee are in conformity with the laws and By-laws governing the activities of the Township.

34.10. The Head of Council or the Chair shall adjourn a Meeting when the business is concluded.

34.11. When a Member is speaking, no Member shall interrupt the Member or the Chair, except to raise a Point of Order.

34.12. The Head of Council or the Chair shall adjourn a Meeting without question in the case of grave disorder arising during the Meeting.

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

20.2. 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.

30. Public Presentations - Delegations and Petitions

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- The materials submitted are not legible.
- The materials submitted contain obscene or defamatory language.
- The matter is deemed to be routine or administrative in nature and can be referred to staff for a quick resolution.
- The matter is not within the jurisdiction or normal realm of the Council or Committee's business.
- The request is repetitive, vexatious or frivolous in nature.
- The matter is relating to litigation or potential litigation, including those matters which are before and under the jurisdiction of any court or administrative tribunal, unless the matter is referred to Council by the said court or tribunal.
- Any other reason deemed appropriate under the circumstance.

30.7. The Clerk or Recording Secretary, at their discretion, may defer a Delegation to a

subsequent Agenda if the timing is deemed to be more appropriate.

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30.15. From time to time the public may submit a formal written request, supported by a number of residents, to the Council of the Township of North Huron or a Committee, in the form of a Petition.

30.16. Any Petition submitted to Council or a Committee shall be done in accordance with the process established in the Township of North Huron Petition Policy adopted by Council.

Trespass to Property Act, R.S.O. 1990, c. T.21

Definitions

1 (1) In this Act,

“occupier” includes,

- (a) a person who is in physical possession of premises, or
- (b) a person who has responsibility for and control over the condition of premises or the activities there carried on, or control over persons allowed to enter the premises,

Trespass an offence

2 (1) Every person who is not acting under a right or authority conferred by law and who,

(a) without the express permission of the occupier, the proof of which rests on the defendant,

(i) enters on premises when entry is prohibited under this Act, or

(ii) engages in an activity on premises when the activity is prohibited under this Act; or

(b) does not leave the premises immediately after he or she is directed to do so by the occupier of the premises or a person authorized by the occupier,

is guilty of an offence and on conviction is liable to a fine of not more than \$10,000. R.S.O. 1990, c. T.21, s. 2 (1); 2016, c. 8, Sched. 6, s. 1.

STEPHEN HILL et al.
Applicants

-and- THE TOWNSHIP OF NORTH HURON et al.
Respondents

Court File No. CV-26-00000011-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
GODERICH

FACTUM OF THE RESPONDENTS

LERNERS LLP
[Redacted]

Jennifer L. Hunter [Redacted]
[Redacted]

Kevin Hale [Redacted]
[Redacted]

Lawyers for the Respondents