

Councils? recording ban questioned

By Sarah Sobanski

Councils that ban recording devices from their meetings are hindering the public's right to information, a freedom of expression advocate says.

Bancroft, Wollaston and Highlands East councils follow procedures that give them the power to deny a third party from electronically keeping record of public meetings. Third parties are not allowed to record meetings at all unless permission is sought and then granted in a resolution of council.

According to Canadian Journalists for Free Expression, the Supreme Court of Canada holds municipalities accountable to the Canadian Charter of Rights and Freedoms. Under the charter's fundamental freedoms, the "freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication" is listed.

CJFE's executive director Tom Henheffer said there are ethical considerations to limiting the public's right to record council proceedings.

"They are violating a core tenet of our democracy. These are public meetings that are public for a reason and they need to be held accountable."

Henheffer added that restricting recording is common amongst municipal councils, which are pushing the boundaries of what they can get away with as the number of people holding them accountable dwindles.

"It's absolutely horrendous and this is something that we've seen happening in small towns around Canada. As a lot of newspapers and other media outlets close, there's no one minding the farm at council so they feel like they can get away with anything. They pass laws like this specifically because they can and there's not enough fighting back from citizens."

On March 28, Bancroft council defeated a resolution moved by Councillor Mary Kavanagh to have staff prepare an amendment to the town's procedural bylaw so media could electronically record its public meetings. This followed a 2015 resolution to have municipal staff report back on what it would take to have council record its own meetings.

"It's taking a lot longer than we had hoped," said Bancroft CAO Hazel Lambe on getting meetings recorded.

Discussion at council's March 28 meeting suggested it was better to wait to record meetings with council's upcoming move to the train station from Club 580 rather than spend money on recording equipment twice. Also, council wasn't comfortable with allowing anyone to record without having its own hard copy.

"There's a fear amongst council that if it is recorded by anybody outside the municipality and put on YouTube, we know that things can be tweaked or certain sections extracted that are meaningful to the conversation. So, messages could be misinterpreted if there was editing done. There is concern about accurate information and that's part of the concern about having anyone other than the municipality record the meeting," said Lambe.

Lambe agreed that it's beneficial for the media to record as well to remove the possibility of "honest error." Municipal staff are discussing and working with Hastings County on how best to proceed on recording their meetings. It looks like the equipment could cost \$3,000 to \$4,000 yearly.

Council installing recording equipment and council amending bylaws to allow the public to record, however, are two different things.

"Council will have to decide on a procedural bylaw if they're going to allow the public to record. That's something separate," said Lambe.

Wollaston council began recording its meetings in April, changing direction from the past council's collective belief that being recorded, or allowing others to record, wasn't a good idea. *Bancroft This Week's* freelance reporter Jim Eadie followed up on the installation of the council's recording equipment and found councillors suggested the meetings were more productive when they were recorded. Recorded meetings are posted online.

While Eadie and Wollaston CAO Jennifer Cohen said they didn't think council would deny a request by a member of the public to record, the procedural bylaw needing a request to record still exists.

Highlands East procedural bylaw states that the use of audio or video recording of public meetings of municipal council shall be prohibited, but the media may be granted permission by council. CAO Shannon Hunter also suggested the bylaw was a formality that wasn't necessarily followed.

"The media that attends our meetings record," said Hunter, though she was unsure if council had passed a resolution to allow them to. "I would have to go check the records to see if a specific resolution was passed but the [reporters] that are currently going, they don't ask every time and they've been recording our meetings."

But the public is still restricted from recording.

?By virtue of this bylaw, it's saying it's prohibited. It's media specifically that's granted permission by council,? said Hunter. ?I don't see why they would want to [record], because we are recording it, but the bylaw does say no member or guest shall use video cameras or recording devices without prior permission by motion of council.?

The fear that recordings could be tampered with works both ways.

?There's a very clear conflict of interest having [council keeping] their [own] recordings,? said Henheffer. ?It allows them the opportunity to pick and choose what's actually released to the public where if a member of the public does it then they don't have the opportunity.?

Procedures concerning recording meetings are not congruent across area municipalities.

Hastings Highlands council's procedural bylaw 21.1 states audio equipment may be used by staff, the public and the media to record all or any portions of a meeting that is open to the public, provided that it is visible and not disruptive to the conduct of the meeting. However, the procedures note that video recording is not allowed.

Madawaska Valley council is the only council within reach of the *Bancroft This Week* that audio records its own meetings and allows third parties to record.

?We can't stop them. We have no idea if someone has a recorder in their pocket or their phone is turned on. So yes, no there's no problem,? says Madawaska Valley council acting clerk Gwen Dombroski.

That's four out of five municipal councils in the area that somehow restrict people who want to electronically document public meetings.

Henheffer said there are times when recording is not appropriate and that council has legal avenues to ban recording of those meetings.

?Obviously there are times when they're talking about staff salaries and stuff like that, that need to be kept confidential and in camera but that hasn't changed in the last hundred years since recording equipment has been available,? said Henheffer. ?Municipal councils have always been able to tell people this is an in-camera session you can't record this, or close the doors and have people leave. There is a way to do that that's proper.?

Having recordings of meetings is beneficial to all parties, he said.

?A recording protects everyone. It holds reporters accountable, it holds city council accountable, it holds people who would be speaking at these meetings accountable. To disallow that is absolutely absurd. That's the kind of thing that happens in dictatorships, not in democracies like Canada.?

Bancroft's acting mayor Paul Jenkins was away for the March 28 meeting, but said that he and other councillors were in favour of recording meetings as well as allowing the public to record. He intends to bring forward a motion for both in the coming months. Faraday municipal staff weren't able to get *Bancroft This Week* the information on council's bylaws by press time.

Watch for a second article on the legality of banning recording devices in public meetings.