

Recording ban likely violates Charter, lawyer says

By Sarah Sobanski

Procedural bylaws that disallow recordings of public council meetings wouldn't hold up in court, says a media lawyer listed by the Canadian Media Lawyers Association.

In August, *Bancroft This Week* looked into procedural bylaws that restrict the media and the public from recording public meetings of council. Bancroft, Wollaston, Highlands East, and Hastings Highlands municipalities each have procedures that prohibit or restrict audio and/or video recordings. In some cases, this is unless council moves to allow a member of the public to record. Media lawyer Richard Dearden, a partner of international law firm Gowling WLG whose primary office is in Ottawa, said there is a strong likelihood that prohibiting recordings of public municipal council meetings would infringe freedom of expression guaranteed by section 2(b) of the Charter. It states that everyone has the "freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication."

"The ban would not be saved as a reasonable limit on freedom expression by section 1 of the Charter," said Dearden. He specializes in freedom of the press and Access to Information Act reviews in the Federal Court of Canada, according to the association.

Section 1 of the Charter states, "The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society."

Dearden explained each bylaw has to be assessed to determine a council's reasons. This is why a council can sit in-camera; say, if the nature of the meeting is sensitive, as in the case of salary discussions, Canadian Journalists for Free Expression executive director Tom Henheffer told *This Week* in its last article. Section 1 of the Charter exempts councils from section 2(b) in these cases, however, public meetings may be a whole different scenario.

"If the meetings are public, council will have an extreme difficulty proving that the infringement is reasonable for audio recordings, especially since the audio will assist in ensuring the reporting is accurate," said Dearden.

In the case of Hastings Highlands restricting video recordings, but not audio recordings, Dearden suggested this would also be hard to explain in court.

"For video, the main issue will be whether the cameras are disruptive," he said, noting Hastings Highlands' bylaw 21.1, which allows recordings provided that recording devices are visible and not disruptive to the conduct of the meeting "video is not allowed." "This will be difficult to prove in light of the fact that many legislatures and other councils in the country allow video recordings," he said.

For Henheffer, the issue is black and white. He suggested prohibiting recordings of public meetings is illegal.

"They are operating inagrant disregard for Canadian law and the Canadian Charter. They need to know that and so do the citizens in their city because this type of thing absolutely breeds corruption," said Henheffer when told Bancroft area municipalities have these procedural bylaws in place. "This is not my opinion, this is Canadian law."

When asked how Canadian municipalities are able to pass procedural bylaws that prohibit recordings if they are acting against the Charter, he said it's because people aren't well enough informed. He encouraged local media and the public to record meetings and oppose the bylaws.

Dearden said at the end of the day, it's up to the courts to decide.

"Council can pass any bylaw it thinks is within its jurisdiction and in compliance with the Charter. Sometimes they are wrong sometimes they are correct. The courts decide who is correct."