

Are BC police chiefs evading the law?

ROB WIPOND

At the same time as their associations channel public resources into private political lobbying, they claim immunity from BC's laws governing public access to their records.

They're the two most prominent and influential policing organizations in British Columbia, appearing frequently in public promoting their strong positions on criminal justice reform, use of tasers, drug laws, or expanding police powers. But little else is widely known about the BC Association of Chiefs of Police (BCACP) and its smaller sister, the BC Association of Municipal Chiefs of Police (BCAMCP).

I became more aware of these associations in July, after the BC Office of the Information and Privacy Commissioner launched an investigation into the Victoria Police Department's use of automatic licence plate recognition in the wake of *Focus*' investigations (see "Hidden Surveillance" Feb 2012). Extensive media coverage ensued, and the BC Ministry of Justice issued a statement in which they assured the public that they "recently wrote a letter to the BC Association of Chiefs of Police" to re-emphasize the program's proper "terms of use." I'd been investigating the RCMP and VicPD's licence plate tracking system for 18 months, and had never come across this group—and now suddenly I learn that they are the ones actually in charge of it?

Naturally, I wanted to find out more about them. What are their mandates? Who funds them? What do they do? Both associations have been meeting up to 10 times a year for at least 30 years, but they aren't incorporated non-profit organizations, they don't have websites, and little information about them is available anywhere. The BCAMCP is using the Victoria Police Department as its contact address, while the BCACP has a post office box.

Ironically—or perhaps appropriately—another person asking similar questions is a local police constable, David Bratzer. Off-duty, Bratzer volunteers for Law Enforcement Against Prohibition (LEAP), a group of law enforcement professionals advocating for harm-reduction approaches to illicit drugs, and it's in this capacity that Bratzer first started noticing the BCACP and BCAMCP, which support more prohibitionist "drug war" approaches.

In his own political activities, Bratzer follows strict ethical guidelines. "As a serving police officer, I've always been very careful with how I participate in that public debate," says Bratzer. "I always make it clear that I'm speaking off-duty and my views do not represent those of my employer. Any media interviews I give on the subject are always done outside of my working hours." And over the years, Bratzer and his police department have gradually reached a working agreement that these guidelines strike an appropriate balance between a police officer's on-duty responsibilities to impartially apply the law, and off-duty rights to freely express and advocate.

However, Bratzer has in recent years noticed that sometimes BCACP and BCAMCP press releases are issued through police departments'



Not talking: BCAMCP President (and VicPD chief) Jamie Graham

media relations units. LEAP isn't allowed that kind of access, he points out, so why are these associations? Bratzer began trying to learn about the ethical guidelines BC police chief associations operate under when they do political advocacy and, he says, "My concern began to grow. Because what I'm seeing is that the police leadership in British Columbia seems to be following a different set of rules."

Indeed, as I begin to investigate myself, it soon becomes evident BC chiefs are not only blurring the ethical lines between their public roles and private politicking, they also seem to be deliberately evading transparency and oversight mechanisms.

Just a "private group"

Victoria Police Chief Jamie Graham is president of the BCAMCP, which includes senior officers from BC's municipal police departments. VicPD Public Affairs tells me Graham isn't available for an interview about the BCAMCP.

The current president of the BCACP is Chief Peter Lepine of the West Vancouver Police Department. In a telephone conversation, Lepine is amiable—but not forthcoming on some key issues.

"At this point in time, we're a private group," says Lepine. He acknowledges the BCACP lags behind the "credibility" of other police chief groups in Canada that have legally incorporated as non-profit societies. He says BCACP incorporation is in the works, but for reasons Lepine won't elaborate much on, the process has taken a year and will require another year.

So what does the BCACP do? "We get together a few times a year [for two days] just to discuss issues around public safety and other things such as pending legislation and how we can contribute to those kinds of discussions," says Lepine, making it clear that meeting with government, helping craft legislation, and other activities which could be regarded by some as political lobbying are also major BCACP undertakings. For example, after a Charter challenge forced the BC government to revise its legislation empowering police to suspend a driver's licence for a failed breathalyzer test which then could not be challenged in court, Lepine says, "We were there working with the Superintendent of Motor Vehicles to help them..."

And who's involved in this "private" group? BCACP members, says Lepine, include the BCAMCP municipal police chiefs plus senior representatives from the RCMP, BC Coroners Service, and provincial Ministry of Justice. (All apparently participate as part of their public service jobs.)

Anyone else? "I don't think we could provide a list of sorts without risking ourselves violating their privacy," replies Lepine.

So who does the BCACP's administrative work?

For many tasks, says Lepine, the BCACP "will lean internally where we can." Lepine explains that police department staff draft

MY EXPECTATION WOULD BE that they would be bending over backwards to demonstrate all the good work that they're doing...Unless, in fact, they're engaging in secretive lobbying activity that's opposed to the public interest." —David Ebey, BC Civil Liberties Association

BCACP press releases and do other communications work; police department lawyers provide legal advice and assistance to the BCACP; and other police department experts "provide us with information and expertise that allow us to assist government in creating their legislation."

Perplexed, I ask if the BCACP has constituting documents, mandate, mission, policies, or anything else showing how they operate as a "private group" independent of police and government. Lepine replies, "We don't have a mandate." And for the rest, he adds, the BCACP has "just a general framework."

Can I see anything at all that's put into writing?

"I've talked to the executive around it and the lawyers in the group around release and that, and it was suggested to me here that that's really not for public release," answers Lepine.

What if I submitted a request under the BC Freedom of Information and Protection of Privacy Act (FIPPA)?

Lepine says the BCACP as a "private group" isn't subject to FIPPA.

I tell Lepine that the BCACP doesn't seem like a "private group"; they look like a "public body" as defined by FIPPA, consisting of public servants performing their public duties on the public dime and time.

Lepine acknowledges my "frustration," and assures me I can obtain some information by submitting an FOI request to his police department for documents relating to his own BCACP-related activities. "It's not like we're trying to hide anything," says Lepine. "There's really nothing to hide."

Nothing to hide, except everything

Actually, BCACP leaders tell different stories depending on who they're talking to—sometimes portraying themselves as just chiefs hanging out doing normal police work, and other times as long-standing, official, independent organizations. For example, although Lepine told me the BCACP has no distinct mandate, in a 2010 lobbying letter to members of parliament, a previous BCACP president outlined what he characterized as the BCACP's "mandate." Meanwhile, in recent government-commissioned reports on justice issues, the BCAMCP and BCACP let themselves be described to the public as mere "advisory bodies" having "no authorized mandate, charter or constitution." But when the BCAMCP sought intervener status in a 2006 court case, they submitted their seven-page constitution. And while Lepine told me the BCACP is a tiny group, in the House of Commons in 2010, Conservative MP John Weston read out a supportive letter from Lepine describing the BCACP as "the voice of British Columbia's 5,000+ sworn police officers."

This last example particularly rankles Bratzer, because Lepine was praising drug legislation that Bratzer, a police officer, opposes. "When BCACP membership is only open to police chiefs and senior police managers in BC, how could it possibly represent rank and file police officers?" he says.

In pursuit of harder facts, I submit FOI requests to the BCACP and BCAMCP, and to West Vancouver, Saanich, Victoria, and Central Saanich Police.

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Lepine and VicPD Chief Graham each write back providing no documents and claiming the BCACP and BCAMCP respectively are not subject to FIPPA because neither is a “public body.”

It seems bizarre. But according to Vincent Gogolek, executive director of the BC Freedom of Information and Privacy Association, there’s a trend amongst public agencies to create pseudo “private” entities in order to hide from accountability. For example, Gogolek says public universities have been creating private corporations to manage their affairs, and recently battled (and won) in court to avoid being subject to FIPPA.

Gogolek is surprised to learn the BCACP and BCAMCP have no independent legal status, but then says it’s understandable they aren’t subject to FIPPA: “It would be pretty hard to include them, because legally they don’t exist.”

However, when I tell him how individual police departments—which are subject to FIPPA—responded, Gogolek is nonplussed.

My invisible friend has the documents

All four police departments acknowledge having records pertaining to the BCACP and BCAMCP, but refuse to provide any, except records showing association membership dues they’ve been paying.

Central Saanich Chief (and BCACP Treasurer) Paul Hames provides no explanation for refusing, but three police departments give the exact same odd excuses: They didn’t “create” the records, and it’s the associations that have “custody” of them.

“Those records were not created by the Victoria Police Department,” writes VicPD Information and Privacy Manager Debra Taylor, “nor are they in the custody or control of the Department.”

“This is a lot more disturbing,” comments Gogolek, “because [police departments] are public bodies.” And their claims, Gogolek says, are vacuous.

First, if the BCACP and BCAMCP don’t legally exist, then they can’t be the ones legally “in control” of those records. “You can’t have it both ways,” says Gogolek. It’s as if the police departments are pointing to an “invisible friend” to avoid disclosing the records, explains Gogolek. “‘Oh, I don’t have [the records], my invisible friend over there does.’ Really? I don’t think so.”

Gogolek describes their argument about who “created” the records as “novel” and spurious. Under FIPPA, public bodies must

disclose all manner of documents originating from third parties. Portions might be withheld for privacy or law enforcement concerns of a third party, says Gogolek, but certainly not all withheld in their entirety.

It’s perhaps telling, then, that BC police chiefs have a record of priors when it comes to trying to avoid FIPPA. During a 2004 legislative review of FIPPA, BC Information and Privacy Commissioner David Loukidelis publicly released his rebuttal to a confidential BCAMCP submission. So detailed is his letter, it gives the impression Loukidelis was trying to alert the public about the BCAMCP’s attitudes. Loukidelis vehemently criticized the BCAMCP for making numerous factual errors and “unsubstantiated allegations” in their (ultimately unsuccessful) efforts to persuade legislators to exclude all municipal police forces from freedom of information laws. Loukidelis noted the BCAMCP had five years earlier made the same proposal, and he warned of the dangers of putting police forces beyond “public scrutiny” and “accountability.”

Normal relations or secret lobbying?

“What’s the big secret? These are public servants, chiefs of police, engaged in a public duty of working with other chiefs of police in terms of providing better policing services,” suggests BC Civil Liberties Association director David Eby. “My expectation would be that they would be bending over backwards to demonstrate all the good work that they’re doing...Unless, in fact, they’re engaging in secretive lobbying activity that’s opposed to the public interest.”

And here lies the crux of the issue that raises the most questions of ethics and legality. Is everything the BCACP and BCAMCP do a normal part of impartial police work in the public interest, or are BC police chiefs sometimes misusing their powers by channelling public staff and resources into private lobbying, to manipulate citizens, pressure politicians and bureaucrats, and influence political processes and legislation behind closed doors?

There are provocative examples. This June, VicPD sent out a BCACP press release in which Chief Graham, with gushing phrases and questionable statistics, applauded the provincial government for its slightly amended, but still enormously controversial “roadside prohibition” legislation which bypasses courts by empowering police and the Superintendent of Motor Vehicles to give out lengthy driver’s licence suspensions.

With an election approaching, is this appropriate behaviour for an impartial police chief, using public resources? And for all we can find out, the BCACP may be getting funding from Liberal Party supporters. It’s not so far-fetched: The Canadian Association of Chiefs of Police’s support for tasers and the firearms registry took hits amidst revelations they were taking money from Taser International and a corporate firearms registry contractor.

Eby sympathizes with police officers who want to talk openly and lobby around important issues—his organization has supported Bratzer over the years. But the key word is openly. “When it comes to the level of the chiefs,” asks Eby, comparing their situation to Bratzer’s, “what are the corresponding transparency and accountability mechanisms that should be in place when they speak from these incredibly important public roles?”

Bratzer would like BC chief associations to at least develop guidelines for separating on-duty public service and off-duty lobbying, and publicly release their funding sources, proceedings and resolutions.

They should probably also register as lobbyists. Under BC’s *Lobbyists Registration Act*, any group collectively doing 100 hours of paid work annually reaching out to public officials for the purposes of influencing legislation must register. The Ontario Association and Canadian Association of Chiefs of Police are in their respective lobbyist registries. Neither the BCACP nor BCAMCP are registered as lobby groups. Yet if BC chiefs believe they don’t have to register because all their activities are normal police work, Bratzer pointedly asks, “Why have they also created a private group hiding in a grey area behind a PO Box?”

At this time, the only answer seems to be that BC police chiefs have created these “private groups” precisely to put their activities outside the reach of FIPPA. Meanwhile, they’re apparently reluctant to legally formalize these private groups, because then they couldn’t so easily run them on paid time, freely utilize police staff, and fund their activities from the public trough. Formalizing their organizations as private groups could also require them to register as lobbyists and see their activities tracked, rather than slipping under the radar as quasi-public bodies.

And any notion that our police chiefs have simply absently neglected rather than deliberately avoided becoming legal entities is dispelled by the BCAMCP Constitution itself, the second line of which declares, “The Association is not intended to be a registered society.”

A lobby group leading us?

All this becomes particularly alarming in light of the fact that BC chiefs have recently been pushing for unprecedented legislation sanctioning mass surveillance, warrantless internet wiretapping, and police assuming powers of crown prosecutors, even as they've been playing legal Twister to avoid revealing anything about their discussions of these issues amongst themselves.

More worrying, government is vesting this enigmatic non-legal entity with increasing powers. For example, at BCACP's behest, in his recent, final report to the provincial government, BC Justice Reform Initiative Chair Geoffrey Cowper recommended: "A province-wide crime reduction plan should be developed under the direction of the BC Association of Chiefs of Police..."

"This recommendation is a big deal because it would put a private lobby group in charge of planning the future of policing in British Columbia," says Bratzer. "I hope it goes out the window."

BC Civil Liberties' Eby is similarly concerned, predicting the BCACP would follow the militarized, police-driven US model and "fill up prisons and jack up police budgets." When it comes to planning crime-prevention, "There are lots of parties that would have lots to say," says Eby, "including our organization, psychologists, social workers, youth workers and First Nations."

According to Cowper, his recommendation is already being executed. Bratzer says transparency is therefore all the more urgently needed. "I would like to see clarification in terms of what are the legal structure and responsibilities of this organization. My perspective is that it's time for the BC Association of Chiefs of Police to stop hiding in the shadows, and this organization needs to come clear with citizens regarding its true purpose, its finances and its legal obligations."

In hopes it might shed some light, I recently submitted complaints about all these issues to the Office of the Information and Privacy Commissioner and Registrar of Lobbyists.



Rob Wipond has been nominated this year for a National Magazine Award, two Western Magazine Awards, and three Jack Webster journalism awards for his writing in *Focus*.



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