

Coup de police

ROB WIPOND

Secret police chief association records provoke serious questions about lack of police oversight in this province.

As I read through hundreds of pages of records from two BC associations of chiefs of police, I discovered that a letter I had sent to the West Vancouver Police Department Chief Constable had been turned over to all of Canada's major banks, Canada Border Services, CSIS, and the US Secret Service. This certainly made a mockery of my privacy rights. Yet I realized that much more than privacy was at stake. These previously secret records—a drop from a much vaster pool—painted a worrying picture of unchecked police powers.

A catch up: Last year, I set out to learn more about the BC Association of Chiefs of Police (BCACP) and BC Association of Municipal Chiefs of Police (BCAMCP), because these groups have had tremendous influence on public opinion and provincial justice policies for decades, and yet there's virtually no publicly available information about them. My quest became a saga (see *Focus* October 2012, May 2013, July/August 2013).

The chiefs weren't talkative, and claimed they weren't subject to the *Freedom of Information and Protection of Privacy Act (FIPPA)* covering public bodies (including governing bodies of most professional associations), because their associations were actually "private" groups of "volunteer" participants. I knew that both associations did a lot of lobbying of government officials, so if they were private groups, then I reasoned that at least some of their activities should be tracked in the BC Lobbyist Registry. However, the chiefs also claimed that they weren't subject to the *BC Lobbyists Registration Act* because their work in the associations was actually being done in their official capacities as public employees.

Pardon?

BC Civil Liberties Association policy director Micheal Vonn not-so-sardonically summarized the chiefs' shifting, self-contradicting descriptions of their associations succinctly: "We're going to use a characterization that may or may not match reality as a shield against, well, whatever we decide we need to be shielded against."

Were they hiding something?

During mediation with the Office of the Information and Privacy Commissioner (OIPC), I finally obtained some basic records from Victoria, Saanich, Central Saanich and West Vancouver police departments. It was a scattershot collection based mostly on whatever each respective chief had kept on file from the associations at their departments, but together, I got meeting minutes from 2008 to early 2013. (I also got records from the BC Ministry of Justice, but 30 years of these



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—Micheal Vonn, policy director of BC Civil Liberties Association

associations' archives are still missing-in-action.) Reviewing the documents, I suddenly understood why our police leadership didn't want association records publicly released.

The associations are actually fully hybrid public-private entities—and that's dubious under all applicable laws.

Public work done in private

BCAMCP members meet monthly and include chiefs and deputy chiefs of BC's municipal police departments. The BCACP membership meets three times a year for two days, and has many ongoing subcommittees. It includes all BCAMCP members plus every BC RCMP detachment commander. There are also non-voting "associate members," including seven senior directors from BC's Ministry of Justice, and representatives from Canada Border Services, the Civil Forfeiture Office, the US Secret Service, CSIS, and security divisions of about 40 other public agencies. Security representatives from six of Canada's major banks and the Canadian Bankers Association are also associate members.

Association agendas are packed. The (heavily censored) minutes indicate discussions take place about mass surveillance and undercover programs, online videos of police brutality, medical marijuana (rarely mentioned without organized crime being mentioned)

and Occupy events. Discussions also occur about salvaged vehicles, metal theft, motorcycle noise, and the legal definition of winter tires—basically, issues so mundane that the agenda alone suggests no police officer in his right mind is attending as a "volunteer."

They're doing a lot of official police work; often, the associations function as de facto governing bodies for policing in the province.

Clayton Pecknold, assistant deputy minister of Justice and director of Police Services, provides comprehensive updates from government at nearly every meeting. The provincial government seems to use the associations as its main conduits for communicating and consulting with police forces, and regularly asks the associations to appoint representatives to important governing boards for the Combined Forces Special Enforcement Unit, Criminal Intelligence Service Canada, or the Police Records Information Management Environment. The BCAMCP led the hiring process for a provincial witness protection coordinator.

Both associations have represented British Columbia's police agencies as signatories to important Memorandums of Understanding or protocol agreements with the chief coroner, chief electoral officer, police complaint commissioner, and BC Assembly of First Nations.

The associations also conceive and coordinate many collaborative policing-related initiatives. For example, the BCACP coordinated 2012's safe driving campaigns involving the Province, all BC police agencies, and ICBC.

So in summary, the records show the exact kind of policing governance activities we'd expect our police leadership to be doing on the public's behalf.

There's just one problem: This is a private club, remember? These associations don't report to any public body. They aren't subject to our freedom of information laws—you're learning about these major police undertakings only because some chiefs left association records on police department computers, assuming that they wouldn't be subject to *FIPPA* (a record-keeping habit they could soon stop). We're lucky our elected representatives and senior public servants are even allowed to participate: The associations have their own bylaws for making decisions, and the police officer members dictate who can attend meetings through strict criteria and votes.

"This sounds like high-level management meetings," commented BC Civil Liberties Association's Vonn. "If this is a private association, we have to ask ourselves how we feel about members of our government and our policing forces having ostensibly private meetings with the US Secret Service...A meeting that is in fact off the record."

We must also ask ourselves how we feel about our police leaders' double-duty as highly politicized lobby groups.

Private lobbying at public expense

The associations lobby for tougher drug laws and broader surveillance and, most significantly, have direct access to ministers and senior bureaucrats without anyone tracking it.

This secret lobbying seems very effective. In April 2009, Victoria Police Chief Jamie Graham brought a proposal to both associations for banning cell phones while driving; by October, it was law in BC. In November 2011, Abbotsford Police Chief Bob Rich distributed his "Proposal for a BC Crime Reduction Initiative." Eight months later, Geoffrey Cowper's justice system review for the government recommended that the BCACP lead crime reduction planning. Through 2011-12 meetings, West Vancouver Chief Lepine, Graham, and Pecknold featured prominently during discussions about trying to improve public opinion of the BC Liberals' roadside prohibition laws, which were being challenged in courts. Amidst many redactions, the minutes include



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—*Vincent Gogolek, director of BC Freedom of Information and Protection of Privacy Association*

remarks like: “The media put their own spin on it...Lepine advised that he hopes it is not being interpreted that police are locking horns with the Minister...Graham is still a little nervous about all the civil actions going on and asked the committee to tell your members that the more we get the better the statute looks; stats are impressive.”

Was Graham encouraging his fellow officers to “get” more statistics, or to get more roadside prohibition-related arrests to generate those statistics? In any case, it's sometimes chilling to read how, under cover of these secret associations, our police leaders slide between their public responsibilities as powerful, impartial enforcers of the law, and their private roles as biased political activists, until it's difficult to distinguish between the two.

It looks even more concerning when we delve into the associations' finances and administration. Their funding comes mainly from their members' public employers, but the Canadian Bankers Association (CBA) has also donated regularly to the BCACP. Last year, the CBA donated \$10,000, one-fifth of the BCACP's budget. The BCACP's February 2012 minutes thank the CBA and also report that, “The financial institutions are forming good partnerships with the robbery investigators.”

“The juxtaposition really highlights how muddy and compromised the scenario is,” said Vonn.

Indeed, while it's easy to imagine reasonable scenarios where police, in the course

of their public duties, would meet with bank representatives to discuss common concerns such as robberies, should the same police officers be taking \$10,000 private gifts from those banking representatives at the very same meetings? It's difficult to imagine a situation that could more blatantly give off the appearance of conflict of interest—or that's more rife with potential conflicts if such police fundraising practices increase out of sight of the public.

Of course, if these associations are private groups, they're allowed to accept secret, private donations. On the other hand, if they're private groups, how come police agency staff do their work?

“A special thanks to Insp. Steve Ing from Victoria PD for his assistance,” read the June 2012 BCACP minutes. Ing, a VicPD lawyer, had helped with the BCACP's incorporation process. In December 2012, RCMP lawyer Kyle Friesen came to a BCAMCP meeting to discuss my FOI requests for the associations' minutes. And for years, executive assistants from the RCMP, Port Moody and Victoria police departments have been taking association minutes.

“It would be one thing to say, we really did have counsel who normally work for the police department appear *pro bono* at our private association. That’s not too far a stretch to suggest that it’s possible,” said Vonn. “That our secretary appears *pro bono* to take the minutes, is just beyond [believable].”

After I described some of the associations’ other public governance activities, private lobbying, and moving of confidential policing information between them, Vonn observed, “It’s not impossible that there are places of blurry overlap; clearly, the private sector meets with the public sector. But it would seem that this particular construct, this overlap, is not *visited upon* [the associations]. They *live there*... And it would appear that anywhere you slice across these vectors you find a mixing that is impermissible or at least problematic.”

All exemptions available, no disclosures required

Vincent Gogolek, director of the BC Freedom of Information and Privacy Association, examined some of the associations’ minutes through the lens of information access laws, and seemed as perturbed as Vonn.

Many sections of the minutes were heavily censored using *FIPPA*’s law enforcement exemptions. Occasionally, the minutes also include mentions of going “in camera,” away from the associate members. All of which would seem reasonable if these were official police working records, pointed out Gogolek—but these are allegedly the records of private groups of volunteers.

“That’s where it gets a little confusing for me,” said Gogolek. “What are they doing? Who are they actually representing?... They’re doing a lot of things basically related to their functions as senior public servants. If they’re going to say they’re a totally private body, well then, can we look forward to the Association of Deputy Ministers getting together to talk about senior government policy? The Association of City Clerks? Where does it stop? Suddenly these are all being created and they’re all getting together having a grand old time outside the scope of [*FIPPA*]?”

The associations actually also intervene in processes that are supposed to be handled confidentially within police departments. For example, through 2008-2010, an ongoing *Vancouver Sun* FOI request for information about police salaries was discussed by the BCAMCP. At first, different police departments were releasing data as their information managers deemed appropriate. But the BCAMCP began coordinating the departments, hired an outside expert to go to legal battle and, according to their minutes, “did all they could to refuse to provide this information.” They also decided, against the protests of some chiefs, to make the municipal police departments pay for the BCAMCP’s lawyer.

“[The BCAMCP] seem to be putting themselves in the position of the heads of a public body,” said Gogolek. “The ambiguity is what’s concerning. Who are they? Who are they working for? Because a public body, whoever the head [or information manager] of the public body is, is supposed to determine what gets out. Not some group meeting offsite.”

My own FOI request got dragged across similar legal boundaries. My



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letter to Chief Peter Lepine (BCACP president at the time) at the West Vancouver Police Department was passed out in a BCACP meeting agenda—so now CSIS and the US Secret Service have it. Yet Gogolek pointed out that both public and private bodies have laws regulating how people’s personal information can be shared. “You can’t go from being, ‘Oh, I’m the public body,’ and then suddenly you walk into another room and say, ‘Oh, now I’m part of a private association and we’re not the public body anymore, but by the way I have this information that I got from my role as a public servant and let’s all take a look at it.’”

Bypassing police boards

Victoria Mayor Dean Fortin is Chair of the Victoria Police Board, responsible for overseeing the chief. I asked him how often the board discusses the BCACP and BCAMCP.

Not much, said Fortin. “[Chief Graham] highlights the various conferences, committees he goes to, community meetings, those sorts of things; they are part of his monthly update report.”

Fortin said he’d read my writings on the police chief associations. So I asked if the Victoria Police Board is aware of the many

ways in which the BCACP and BCAMCP are acting as public-private hybrid bodies, and of how these associations are usurping VicPD staff time.

“Do we have a general awareness of what they’re doing? Yes,” answered Fortin. “Am I aware of any specifics of that? No. Am I concerned? Again, no. These are efforts by our police chief, as part of the association of other police chiefs, to accomplish the strategic goals of the City of Victoria.”

It’s not clear that’s what’s going on, though. At association meetings, after decisions by majority vote, the chiefs sometimes describe “encouraging” all police departments to follow BCAMCP or BCACP directives, and at times use stronger language like “ensure compliance.” And they seem aware they’re sometimes walking dubious legal lines. In October of 2008, the BCAMCP was discussing certain possible changes to police practices, and then the minutes note that Abbotsford Chief Rich “used this as an example where changes in policies need to be approved by the Board that it affects.” Meanwhile, countless lobby letters have been sent to Ministers by both associations pushing political positions that were never explicitly approved by the chiefs’ respective police boards.

I described the conflict of interest surrounding the CBA donation. Fortin didn’t realize the BCACP had a wide variety of associate members, but then commented that police should be liaising with banks about common security concerns one way or another. “Those are important conversations to have,” he said. “You’re asking me, is this the best way? My quick answer is, I don’t know. I do hear your concern.” He pointed to VicPD’s donation policy, which requires avoiding any appearance of possible conflict. “There should be some general rules around donations and there should be policy around that,” Fortin said.

The associations have no such policies.

I suggested to Vonn that municipal police boards may not feel bothered by what the associations are doing.

"It's our experience that police boards are very ill-equipped to understand their obligations as board members," said Vonn. "We do not do the kind of education and training of police board members that is required for them to do their job. This has been a constant concern about a part of the police oversight mechanism that is broken." And regardless of how board members might "feel," Vonn added, "We have rules that must be complied with." She described the laws distinguishing public and private bodies and their respective responsibilities, and the applicable regulations governing police transparency. "They're black-letter law. We have statutes; there are requirements."

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All of this wouldn't seem nearly as nefarious if our police leadership were openly acknowledging and discussing these issues. But they've been refusing to answer questions. They've been making every legal and quasi-legal effort to keep their activities hidden from the public, and to maintain these unaccountable powers.

After issuing generic statements, the BC Ministry of Justice also refused to answer questions. I discovered that ADM Pecknold, the top person in the Ministry who'd be able to speak knowledgeably, was previously deputy chief of Central Saanich Police and in 2010 BCACP president. At that point, I felt like British Columbia's public policing system had undergone a *coup d'état*, covertly orchestrated by a private group of senior police officers. Our ever-rotating justice ministers probably had little understanding. Who could wrest back public control?

The BC Civil Liberties Association wrote to OIPC Commissioner and Lobbyist Registrar Elizabeth Denham, seeking resolution to the "public or private" question. "There has to be an honest adjudication of the contradictory decisions that have been rendered on the issue of privacy and access legislation on the one hand, and the lobbying registration on the other," said Vonn. "We currently have a situation that is entirely untenable, where [the associations are] described as two different things under two different decisions."

Corrective action seems simple. While it's understandable that BC police forces and other security representatives would sometimes meet and collaborate as part of their public duties, and it's legal for police chiefs to form private groups to advocate and lobby, the coalescing of these two functions in one entity creates a myriad of problems surrounding governance, accountability, lobbying, conflicts of interest, use of public resources, and transparency of public policing. So it seems critical that the BC Ministry of Justice structure and run an interagency collaboration and governing body for BC's balkanized police forces that's publicly transparent and accountable.

Meanwhile, the police chief associations must become truly independent, private entities, register as lobby groups, and be made subject to FIPPA like most other BC professional associations. The provincial government has to take informed leadership. But Andrew Wilkinson, the Minister in charge of FIPPA, has also been avoiding my questions. And if the Ministry of Justice proves definitively to be under the control of the police chief associations, rather than vice versa, what then?



Rob Wipond has won a Jack Webster Award as well as a Western Canada Magazine Award for his writing in *Focus*. He will be posting the records he obtained for the above article at www.robwipond.com.



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