

Is the law catching up to BC's police chiefs?

ROB WIPOND

The Office of the Information and Privacy Commissioner and the Registrar of Lobbyists are hot on their association's trail. But a former BC police chief and solicitor general doubts they'll ever be caught.

There's one thing the police tell you never to do when they want to question you, right? Run. Running makes you look even more suspicious. So why do British Columbia's chiefs of police keep running from me? Fortunately, I've gained some high-profile help in this now year-long chase.

I first began looking last summer into the activities of the BC Association of Chiefs of Police (BCACP), which includes all chiefs in the province plus RCMP and provincial government representatives, and the smaller sub-organization, the BC Association of Municipal Chiefs of Police (BCAMCP). It's a complicated story but, basically, it seemed impossible to obtain virtually any information about these organizations, even though they play prominent roles in BC law enforcement (see "Are BC Police Chiefs Evading the Law?" October 2012 at www.focusonline.ca). They've publicly advocated and helped craft legislation around issues as diverse as drug laws, expanding police powers, and mass surveillance programs, but my attempts to better understand these associations' activities became like a game of mental whack-a-mole: wherever I reached, all document records disappeared into a conceptual vortex.

Victoria Police Chief Jamie Graham, president of the BCAMCP and senior executive with the BCACP, didn't speak with me. West Vancouver Police Chief Peter Lepine, then president of the BCACP, was friendly and professional, but not particularly forthcoming on key issues. The business of the associations was seemingly being performed by police staff on the public dime and time, but when I submitted FOI requests, both associations claimed they were not subject to BC's freedom of information legislation covering public bodies because the associations were actually just "private" groups.

When I submitted FOI requests directly to Victoria, Saanich, Central Saanich and West Vancouver municipal police departments, all four departments stated their BCACP and BCAMCP records were not theirs to release because the records were actually the legal property of the associations. Yet, when I went



Former West Vancouver police chief and BC solicitor general Kash Heed

looking for incorporation records, I discovered neither of these associations legally existed. And I also found no records of the associations' existence or activities in BC's Lobbyist Registry, even though our police chiefs were certainly doing more political lobbying than many other similar, appropriately-registered and tracked lobby groups like the professional associations of Massage Therapists, Aboriginal Friendship Centres, or Guide Outfitters.

On and on the chase went—I, of course, becoming ever more suspicious.

So I submitted complaints to both the Office of the Information and Privacy Commissioner (OIPC) and the Registrar of Lobbyists. (The Commissioner is also officially the Registrar, but the two offices operate separately.) As I awaited replies, I gathered more dark hints that much of the governance of policing and development of law enforcement legislation in BC might be running through these associations, with the deliberate intent of hiding it all from public transparency and accountability.

One knowledgeable person who was willing to talk on the record was former West Vancouver Police Chief and former BC Solicitor General Kash Heed. "I can imagine what you're going

through," said Heed, when I expressed my frustrations with trying to learn about the associations. "I can tell you right now, you'll never get the information that you need."

Heed, long a strong proponent for unified regional police forces in Metro Vancouver and the Capital Region, and for stronger transparency and accountability for the RCMP in BC, sat on both the BCACP and BCAMCP. Heed became convinced the associations were in large part tools to help protect police fiefdoms throughout BC from exactly those kinds of changes. "It's the old boys culture in its strongest sense. Not much more to say if you understand that this old boys culture is part of the reason why we have such a balkanized police system here in British Columbia." Heed added that, "There were times where I spoke out on various issues and [the BCACP] did not like that... They were very upset."

And having sat on the other side of the table as solicitor general, Heed said he has no doubt that the BCACP is primarily a political lobby group. "That's what it actually is. They lobby for specific changes." Yet Heed confirmed that both self-described "private" associations' meetings, activities, public relations, and lobbying are being performed by chiefs and police staff during regular working hours. "If it's a private entity, that entity is being created and funded by the public taxpayer," said Heed.

It sounded like damning evidence to me; how would the OIPC and Lobbyist Registrar see it?

The OIPC found no Association of Chiefs of Police listed in Schedule 3 of the *BC Freedom of Information and Protection of Privacy Act*, and so were not empowered even to consider my complaint about the associations' refusals to proffer records. This, even though Schedule 3 empowers us to submit FOIs to virtually every other professional association doing work of even tenuous public interest, from associations of Music Teachers and General Accountants to Land Surveyors. On the other hand, even if our elected representatives had wanted to include these police chief associations in Schedule 3, they couldn't have—because neither association legally exists.

THE BUSINESS OF THE ASSOCIATIONS was seemingly being performed by police staff on the public dime and time, but when I submitted FOI requests, both associations claimed they were not subject to BC's freedom of information legislation covering public bodies because the associations were actually just "private" groups.

The OIPC, however, did begin to investigate my requests for records from the four police departments. The police departments, though, maintained to the OIPC that all their BCACP and BCAMCP records were actually legally "in the custody" and control of these legally non-existent associations, and refused to turn any of the records over. As arguments went back and forth through the OIPC, the police departments eventually offered a compromise: they'd negotiate giving me some documents but they would never admit they were legally required to give them to me, so they could cut off the flow at any time. I didn't like the sound of where that was heading. With no solution emerging, a full-scale OIPC legal inquiry was the only remaining option. The associations and police departments would bring their platoon of publicly-funded legal experts, and on the other side would be... well, honestly, just me. It seemed hopeless.

But on October 30, Deputy Registrar of Lobbyists Mary Carlson sent me an email. "This is to acknowledge receipt of your complaint under the BC *Lobbyists Registration Act* (LRA) that the Association of Chiefs of Police may be engaging in activities that qualify as lobbying and have not registered as required by the LRA," wrote Carlson. "In response to your complaint, we have commenced an investigation..."

This was exciting. My intent when complaining to the two offices simultaneously was to try to corner the associations. I reasoned that, if they were finally going to claim definitively under official investigation that the police chief associations were "private" organizations, then they would have to become registered and have their activities tracked as political lobbyists. This would also be tantamount to confessing that they'd been breaking the lobbyist laws and improperly funnelling taxpayer money into private political lobbying for years. On the other hand, if they were going to claim that they were simply public servants properly doing their normal public service as our police chiefs, then that would essentially be admitting that the public had the right to access their records. Cornered, the mole was going to have to choose one of those two holes...and then...

Bang.

It worked. All of a sudden, on behalf of all four police departments, Victoria Police Department Information Manager Debra Taylor delivered a long list of all the records pertaining to the BCACP and BCAMCP that they had and promised to start processing them for me. I was elated.

Meanwhile, in November the BCACP applied to incorporate itself as an independent legal entity under the *Society Act*, like other above-board police chief associations across Canada. That didn't clear the BCACP of any past improper use of public funds or unregistered lobbying they might have done, but at least they were now coming clean and going straight. This was all good.

Equally encouragingly, some of our chiefs actually started being more careful about distinguishing their private lobbying from their roles as impartial public servants. For example, though West Vancouver Chief Lepine and the BCACP have previously lobbied for tough "war-on-drugs" laws, the *Vancouver Sun* quoted Lepine in September declining

"Good governance needs good opposition. It's what democracy looks like."

- Adam Olsen



- Safe workplaces, housing and healthcare for family members of all ages
- Full-time jobs by supporting local business and innovative technologies
- Better transportation options, to and from our region

www.Olsen4MLA.ca
778-351-0404

7173 W. Saanich Road
Brentwood Bay, BC V8M 1P7



Vote
ADAM OLSEN
Saanich North & the Islands
on May 14
green
PARTY OF BC

Authorized by
M. Johnston,
financial agent,
778-351-0404

mokume wedding bands handcrafted

THANK YOU
FOR SUPPORTING
LOCAL ARTISTS
+ DESIGNERS



mokume (mo-coo-may) An ancient Japanese swordsmiths' artform known as the wood grain metal. Each Mokume piece is custom made by Alex and Honor at Adore Jewellery. Beautiful and organic patterns are created by forging, twisting and rolling the bonded metals while red hot. *A marriage of metals joined as one. A symbol of love.*



539 Pandora Ave (Market Square)
250 383 7722

ADOREJEWELLERY.CA
FACEBOOK/ADOREJEWELLERY

even to comment on a BC citizens' petition to decriminalize marijuana. "At the end of the day, from a policing perspective, we're tasked with enforcing the laws as the laws are written," Lepine said—entirely appropriately.

How much more could I have asked for?

But something started to niggle at me. As I looked more closely at the list of documents the police departments were preparing to give me, I noticed there were almost no records from before 2008, yet these associations had existed for at least 30 years. Surely there were older records, an association library or archive, perhaps in hard copies in some file boxes? Neither association had an office, so those files presumably would have resided at the police station of some association official. For that very reason, I'd deliberately targeted my FOI requests to the police departments that were home to the associations' current top officials. So where were those records? Could it be that, during the months of wrangling after I'd submitted my requests in July, someone had secretly absconded with the bulk of BCACP and BCAMCP records archives and moved them from those police stations?

I asked VicPD's Taylor if that could have happened, and she wrote back that the four

police departments "did not locate a main 'archive' or 'library' of documents for the BCAMCP or the BCACP." Of course, that was merely a confirmation that the archive was at present gone; it did not answer my question about whether the older files had been there when I'd originally submitted my request.

I submitted the same question again directly to Chief Lepine and West Vancouver police information officer Corporal T. Nelson. Nelson wrote back that West Vancouver PD did not have "custody" or control of such an archive. But of course, back in the beginning of this whack-a-mole game, Nelson had also stated their police department did not officially have the custody or control of any BCACP or BCAMCP records at all. So were they simply once again creatively interpreting the meaning of these legal terms?

That dang mole. I felt like giving up. Nevertheless, I persisted.

For his part, I get the impression Kash Heed doesn't share the intensity of my worry about what these associations are up to—though Heed admits he avoided attending their meetings as much as possible. He does believe BCACP lobbying helps preserve a "chaotic" system of police governance and accountability in BC. Heed singles out the RCMP, whose voting reps seemingly dominate the BCACP according to its now-public constitution, for wanting to keep things that way. "I think that's intentional," says Heed. "I don't think [the RCMP] want the people out there really to know what they're all about and what they do and how they do it... They've been doing it for so many years and they've managed to get away with it, and they continue to do it."

It's certainly clear I'm not the only one asking questions and still coming up confused. There are *Hansard* records of our elected politicians expressing bafflement as to whom is being represented when a police department employee makes an official submission proposing changes to BC's freedom of information laws, apparently on behalf of the BCAMCP, yet on police department letterhead. Last fall, Geoffrey Cowper's report to the province on reforming BC's criminal justice system recommended the BCACP direct a provincial crime reduction strategy—while Cowper showed no recognition that the BCACP is just a private lobby group.

Looking back, how many of us are sure if we were hearing the opinions of our public servants or of private, professional political lobbyists when our police chiefs spoke out in

defence of roadside prohibition legislation, tasers, licence plate surveillance, and giving police the powers of crown prosecutors? Tellingly, even this April, Office of the Police Complaints Commissioner adjudicator Ben Casson criticized VicPD Chief Jamie Graham and his Deputy Chief John Ducker for making inflammatory public comments about a hearing concerning two VicPD officers. Casson then appealed to the BCACP: "BC Chiefs would think the same way, hopefully, [and] issue some guidance to their chiefs..." So even an ex-judge and policing expert like Casson apparently didn't realize he was in effect asking a murky, untransparent, unaccountable private group to rein in seemingly unaccountable police brass.

Heed suggests it's municipal police boards that should be more vigilant about such issues, especially with respect to their police chiefs and police staff spending on-duty, publicly-funded time working for these private associations. "Some of the problems are, Rob, that the police boards are not doing anything about it," says Heed. "Some of the members of the boards, I think, are confused about what their roles are and how much power they have over their chiefs of police."

Hopefully our police boards, along with the rest of us, will soon gain a slightly clearer picture of what these private associations have been doing—at least since 2008. And the Lobbyist Registrar will almost certainly issue a public report, if not penalties; their investigation has stretched into months. As for that fabled archive, West Vancouver PD's Nelson finally wrote back again: "I asked some specific questions and can advise there is a collection of records pertaining to the BC Association of Chiefs of Police which contain records made prior to 2008." That archive, it turns out, is sitting at the RCMP's Surrey headquarters—hence under federal jurisdiction and far out of reach of our province's much stricter enforcement of information access laws. Besides, contends RCMP Inspector and new BCACP President Brad Haugli to me in an email, "the BCACP archives itself is not within the custody or control of the RCMP."

Anyone got a bigger hammer?



Rob Wipond spent two years submitting information requests which ultimately helped prompt the Privacy Commissioner to investigate and declare much of BC polices' licence plate surveillance program illegal.

Dispute resolution support
for your parenting, your
family and your workplace.



**PATRICIA
LANE**
C. Med, LL.B
Lawyer*/Mediator
250.598.3992
*denotes Law Corporation

- MEDIATION
- DECISION
MAKING
SUPPORT
- PARENTING
CO-ORDINATION

Helping one person
at a time, Reverend
Al and donors like
you deliver proactive
services to the most
vulnerable members
of our community.

Please help today.

dandelionsociety.ca | 778.440.1471

