

Police chiefs: public or private?

ROB WIPOND

BC's Information Commissioner launches an inquiry into police chief associations.

Information and Privacy Commissioner Elizabeth Denham has launched an inquiry into British Columbia's two police chief associations. Denham is considering recommending to government that the BC Association of Chiefs of Police (BCACP) and the BC Association of Municipal Chiefs of Police (BCAMCP) should be declared governmental "public bodies" and be made subject to the *Freedom of Information and Protection of Privacy Act (FIPPA)*. According to her December 6 "letter to stakeholders," the Commissioner is also inviting public input about this possible recommendation until February 14, 2014.

The Office of the Information and Privacy Commissioner (OIPC) evidently has some of the same concerns about the associations that *Focus* has been reporting on for two years, as it's become clear that these secretive associations have been doing everything from crafting the government's policing legislation to ordering police media spokespersons around the province to promote the virtues of mass surveillance.

"In my reflections on this issue to date," Denham's two-page letter states, "it appears that the policy argument in favour of such a recommendation is based on two related considerations." Denham describes "the important public role that the Chief Constables and the Associations play in our society," while "government and others treat the Associations as the focal point for contact with the Chief Constables on matters of public policy." However, she points out, "the appropriate level of transparency of Association records can be achieved for *FIPPA* purposes only if a member of the public can request current and historical records from the Association itself, rather than relying on what might be piecemeal and incomplete records held by individual Chief Constables at any given time."

What prompted this action? "We had inquiries, we had letters, we had calls, and we examined the implications of [freedom of information] and its application to these associations in some mediation files," said Denham in an interview with *Focus*. "So we've had interest in the question. We've had evidence presented to us in relation to this question."

The OIPC mediations included *Focus*'s own freedom of information requests for association records being held by four municipal police departments, which all four departments initially refused to release. And the "evidence" Denham was referring to included a nine-page letter and approximately 70 pages of documents submitted to the OIPC in late October, overviews of the research and writing about the associations that *Focus* has published. The documents show clearly that the BCACP and BCAMCP have been operating as *de facto* governing bodies for policing in the province and simultaneously functioning as influential private lobby groups, in secret and without public oversight, for decades.

So isn't this situation a matter of law, not of "stakeholders' opinions" about policies? "I think it's a bit of both, and that's why we need to clearly examine how these organizations operate, and we need to hear



Elizabeth Denham

views," answered Denham. "It's a fact-finding mission." Denham compared it to similar situations the OIPC has investigated, such as subsidiary corporations of public universities operating outside the reach of *FIPPA*, and the corporate entity that oversees the BC Police Records Information Management Environment which was recently made subject to *FIPPA* on the Commissioner's recommendation. "There's precedent for us to examine these issues," said Denham.

Vincent Gogolek, executive director of the BC Freedom of Information and Privacy Association (FIPA), is one of the "stakeholders" who received the Commissioner's letter. He sees the OIPC's move as a positive development.

Gogolek pointed to how the police chief associations have characterized themselves as public bodies to avoid regulation under the *Lobbyists Registration Act*, and as private bodies to avoid regulation under *FIPPA*. He said the Commissioner's possible recommendation of adding the associations to Schedule 2 of *FIPPA* would be a straightforward solution. "I think it might be cutting to the chase," said Gogolek. "Having the thing actually put into the legislation rather than having it adjudicated makes the thing 100 percent certain...It takes out any ambiguity." If police chiefs still want to get together privately, he added, they can do that apart from the government business of the associations.

However, Gogolek believes the underlying "criteria" guiding any decision are even more important, and FIPA intends to tell the Commissioner that. "We want to do a reasonably fulsome submission on this. I think we need to look at the broader question. Here we have one specific entity that should be covered [by *FIPPA*] for the reasons set out in the Commissioner's letter. It just makes sense. They're basically the heads of these various police departments assembled together, acting together, and what they do is governmental...They're not getting together to run a toy drive. It's not a social club...But if we're going to be designating things [as public bodies] or asking the government to be doing it, the government should be doing it on the basis of some sort of reasonably recognizable and transparent criteria."

BC Civil Liberties Association policy director Micheal Vonn emphasized that same point. "[I'm] very, very happy that the Commissioner is seized of this [issue]. That's good," commented Vonn. However, she added, a "test" for distinguishing the public and private spheres needs to be developed, because both carry values worth protecting.

"Freedom of association is a powerful good," said Vonn. "On the other hand, so is governmental accountability—the heart of democracy. So the question here is, how do we parse it?...What I'm hoping is that we get [from the OIPC] some kind of concerted, holistic analysis."

"What we would like to see, and what we may end up making the basis for our submission, is not the question of, 'Should the Commissioner recommend this?'" explained Vonn. "Recommendations aside...What are the indicia, the factors, the criteria that make you public versus

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private? Because, while this question is of keen importance in relation to police accountability matters, this is not going to be the only situation in which this arises.”

Vonn pointed to a recent international survey of information commissioners that ranked proliferating public-private hybrid bodies as a top legal concern. *Focus*'s struggles to obtain information about BC's police chief associations, said Vonn, don't exist in isolation. "It certainly highlights very starkly how an important component of citizens' rights are all based on this notion of what sign do you hang on the door: Are you public; are you private? Rights change on the basis of the sign. So the sign cannot be arbitrary," said Vonn. "We want to see this [police chief associations] matter remedied. But we also want a mechanism whereby we can recognize 'government' according to a test."

Vonn pointed to a court case in which BC Transit and Vancouver's TransLink tried to avoid certain responsibilities under our *Charter of Rights and Freedoms* because, they claimed, they were not public bodies. In 2009, Canada's Supreme Court ruled against them, while laying out specific criteria for what constitutes a public body. That made clear, said Vonn, that our governments don't have "unbridled discretion" to place public bodies outside public accountability. "If the Commissioner is in the position to apply the legal thinking of that office to shaping criteria and helping to set out a test, then we think that would be optimal," said Vonn.

And who else will submit comments to the Commissioner? Most people know little about these secretive associations, yet at the same time this would seem to be potentially the most important single policing governance issue facing BC in a generation. There are fundamental questions of public information access and government accountability involved.

However, in addition, for anyone who cares about high-profile cases of police abuse or in-custody deaths, surveillance, regional policing, roadside prohibition or other controversial policing legislation, undercover operations and monitoring of political organizations, white collar crime investigations, police digital records systems, or secret collaborations between police, CSIS and other security agencies in the US and Canada, it's now clear that BCACP and BCAMCP meetings are where all of these major BC policing issues are being discussed. And the public has not yet seen any of the minutes from a single one of some 25 BCACP subcommittees. The fact that so far *Focus* remains the only news outlet to cover this story in any substantive way in two years may be a testament to the moribund state of Canadian media. The associations have been operating for decades; do people understand how dramatically the Commissioner's upcoming decision could affect the transparency and accountability of our police forces for decades to come?



Rob Wipond is glad that some other people besides him are finally looking into the police chief associations. Go to www.robwipond.com or www.oipc.bc.ca for more information. Comments on the subject can be emailed to the Commissioner at info@oipc.bc.ca until February 14.

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