



# Improving police transparency in Canada

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## ABSTRACT

The path to improved police transparency in Canada includes the use of advanced technology with capabilities such as artificial intelligence, machine learning, “cloud” enabled services, and an ever-increasing number of data collection and management tools. However, these innovations need to be closely linked with a national—not federal—stakeholder review of current legal, legislative, and privacy frameworks. This article provides readers with a high-level overview of the issue of police transparency in Canada. It then outlines a number of key challenges and opportunities for improving this transparency. It concludes with a call to action for key Canadian stakeholders to work collaboratively to improve police transparency in Canada.

**Key Words** Accountability; privacy; stakeholder engagement; information management; strategic planning.

## INTRODUCTION

The path to improved police transparency in Canada includes the use of advanced technology with capabilities such as artificial intelligence, machine learning, “cloud” enabled services, and an ever-increasing number of data collection and management tools. However, these innovations need to be closely linked with a national—not federal—stakeholder review of current legal, legislative, and privacy frameworks. It is critical that these tools support concepts such as “privacy by design” while, at the same time, leading to enhancing Canadian law enforcement’s ability to legally and ethically capture, manage and share critical information with the communities it serves in a timely fashion.

At an ever-increasing pace, police services in Canada are turning to leading-edge technologies to support their missions. Rarely does a day go by that there’s not another announcement in the media about some exciting new technology being deployed by a law enforcement agency somewhere in the country. Some of the key adjectives used in these press releases include effective, efficient, and transformational. Recently, we have also seen police leaders espousing how their newest purchase will help improve trust, accountability, and transparency. Detractors will often respond negatively, saying that technology may not, at least on its own, provide the results often being touted.

While one of the hottest topics today is the use of body-worn cameras (BWC), there are numerous other “sensors” or surveillance tools that have been in use for years, even decades. These include in-car video, closed-circuit television

(CCTV) cameras and, more recently, remotely piloted aircraft systems, otherwise known as drones.

There are numerous research papers on the topic of how these tools may, or may not, improve trust and accountability. However, very few, especially on the subject of BWC, come from a Canadian perspective. How surveillance tools, when appropriately governed through thoughtful policy, might support police transparency, is still nascent, at least in the Canadian context. A number of Canadian researchers, including Dr. Alana Saulnier and Dr. Greg Brown, are leading the way in exploring these topics.

## THE CASE FOR LEVERAGING ADVANCED TECHNOLOGY

As an example of a Canadian agency using advanced technology, Calgary Police Service (CPS) provides a strong case that body cameras can improve trust and accountability. For example, a CTV Calgary news article states: “CPS confirms, through the officer’s body camera, that an unfortunate comment was made by the officer towards the driver during a traffic stop at a parking lot” (Le, 2020). Here, a community member complained about the actions of a CPS member’s behaviour during a traffic stop on August 25, 2020. Three days later (possibly earlier directly with the complainant), Calgary Police released a statement confirming that the officer’s comment was “unfortunate” based on a review of BWC video.

Prior to Calgary’s commencement of a BWC program in 2018, this type of situation was often very difficult to resolve

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as there are typically no independent witnesses to corroborate either side's story. The CPS had in-car video prior to 2019, so they may in fact well have been able to hear the recording and resolve the case (Calgary Police Service, 2021). However, what happens less frequently is the actual release of video (or audio) recordings demanded by the public due to various policy and privacy rules. A copy of the CPS's recently released study titled "2020 Body Worn Camera Evaluation Report" was released in March 2021 and is available online (Budd, 2021).

### Counterpoint: Privacy and Legal Landscape

In Saulnier (forthcoming), the authors note the following:

While it is important that BWC footage remain secure, it is also important that police be able to demonstrate transparency through footage disclosure—this is a fundamental desire underlying public calls for police use of BWCs. Disclosure of video to persons featured in that video (while protecting the identities of other persons featured in that video) is a requirement linked to Section 12 (*access to personal information*) of the *Privacy Act*. This section legislates individual rights to access information collected from them by government institutions (though the *Act* also contains exemptions when disclosure would interfere with a law enforcement investigation). In the interest of supporting this right, it is important for a BWC policy to clearly articulate the disclosure request process as well as any exemptions that may be allowable. However, this is a complex issue, a central concern being that disclosing video to one person featured in a video can compromise the privacy of other persons... Police disclosing BWC video to media presents a further challenge whereby police either disclose video and fail to protect individual privacy and/or fail to secure evidence associated with an investigation or do not disclose video and fail to demonstrate transparency with the general public. Many international guidelines advocate for public and media access to BWC footage (through appropriately channeled requests) (e.g., ACLU 2020; College of Policing 2014; LCCHR 2017), and it may be in the best interest of police-community relations for Canadian police to establish procedures for releasing BWC video to media disclosure requests.

The public release of police videos, whether from BWC, in-car cameras, drones, or any other police information management systems is strictly limited by various legal precedents and/or privacy regulations in Canada. There are good reasons for these restrictions, which are based on well-established Canadian legal and cultural values.

Unlike our American counterparts, where in some jurisdictions the police are mandated to release almost all police videos to the public, Canadian police leaders are often prohibited from doing so. This inability, not to be confused with unwillingness, becomes exacerbated in cases where external investigative bodies are called in to investigate police services in serious cases. For example, in Ontario, when the Special Investigations Unit (SIU) "invokes" their mandate, the law requires that the police service cease speaking about the incident in question and prohibits any release of information, including BWC videos that might have pertinent information.

However, recent changes in Ontario now permit the SIU director, under very specific circumstances, to release some information. The *Special Investigations Unit Act* (2019) states the following:

The SIU Director may issue public statements respecting an ongoing investigation or preliminary inquiries under this Act, if,

- a) the statement is aimed at preserving public confidence; and
- b) the benefit of preserving public confidence clearly outweighs any detriment to the integrity of the investigation or inquiries.

The Complaints Director may issue public statements respecting an ongoing investigation under this Part, if,

- a) the statement is aimed at preserving public confidence; and
- b) the benefit of preserving public confidence clearly outweighs any detriment to the integrity of the investigation.

Most provinces have similar external investigative bodies and regulations, without the updated release of information section in Ontario. A number of provinces and territories that do not currently have these in place are in the process of either creating them or looking to neighbouring jurisdictions to provide these oversight services.

Furthermore, police services, including the Royal Canadian Mounted Police, have additional, and very important, privacy frameworks that severely limit their ability to release information to anyone other than the person or persons directly involved in the case—and even then, there are restrictions in place.

For example, the Privacy Act of Canada (R.S.C., 1985) states:

Personal information under the control of a government institution cannot be disclosed without your consent except in specific circumstances, such as:

- for the original purpose for which the information was collected or a use consistent with that purpose
- where the disclosure is authorized in federal legislation
- to comply with subpoenas, warrants or orders of a court or another body with authority to compel information
- where disclosure would clearly benefit the individual
- where the public interest in disclosure outweighs any invasion of privacy

Finally, we have the critically important, and constitutionally protected, right to a fair trial. The *Canadian Charter of Rights and Freedoms* states:

11. Any person charged with an offence has the right
  - (a) to be informed without unreasonable delay of the specific offence;

- (b) to be tried within a reasonable time;
- (c) not to be compelled to be a witness in proceedings against that person in respect of the offence;
- (d) to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal

Therefore, in cases where an accused is, or may be, before the courts, the police have a duty to ensure that no information is released that might in any way negatively impact their ability to have a fair trial.

This is, at least in part, why Crown Prosecutors, as agents of the Attorney General and officers of the court, are typically responsible for releasing information both to the accused's legal representative and, in rare cases, to the public during trials—normally via the media. It should be noted that in some sensitive trials, such as sexual assaults, disclosure of specific evidence is prohibited.

In a recently published BWC book (Brown, 2020), Dr. Greg Brown, from Osgoode Hall Law School (York University), states that:

accountability and visibility/transparency, as they relate to front-line police work throughout Western societies (including the United States and Canada), have intersected, and effectively comingled, to such a degree that they are now, for all intents and purposes, conflated in their everyday understandings and operationalization across both policing and the public sphere. In other words, today it is widely understood that the visibility of police actions in the field constitutes, and is now relied on as, the principal mechanism to ensure police accountability.

### Moving Forward—The Path to Improved Police Transparency

Over the past few years, and increasingly since the tragic death of George Floyd in Minneapolis, there have been more calls for Canadian police to wear body cameras. Prime Minister Justin Trudeau has added his voice, and government support, for body cameras being worn by Canadian police officers.

A Reuters news article (Ljunggren, 2020) quotes the Prime Minister as saying:

One of the things we (the Prime Minister and RCMP Commissioner Lucki) discussed was the adoption of body cameras. I'm committing to raising this with the provinces this week so we can move forward as quickly as possible," Trudeau told a daily briefing. "Body cameras (are) a significant step towards transparency.

There is little doubt that current and future technologies provide an unprecedented ability for agencies to share digital evidence with their partners including groups like Crown Prosecutors, external investigative bodies (such as the SIU in Ontario), and the communities they serve. As outlined above, however, there are a number of legal, privacy, and policy barriers that are currently in place in most provinces that limit a police agency's ability to be fully transparent. These barriers are, for the most part, outside a Police Chief's ability to change on their own.

However, in the same way that most community safety leaders are committed to finding better ways to respond to mental health calls (again in part via the use of advanced technology such as livestreaming), there has never been a better, or more important, time for thoughtful and visionary leaders to join forces and blaze a trail to increased police transparency in Canada.

### Call to Action

As a life member of the Canadian Association of Chiefs of Police and long-time information management advocate in Canada and around the world, I believe it is time for key stakeholders to work collaboratively to improve police transparency in Canada. These stakeholders include, but are not limited to, various Chiefs of Police Associations, Police Governing Bodies, Police Associations, governments at all levels, Privacy Commissioners, Crown Prosecutors, the Defence Bar, external investigative agencies (like SIU), academic researchers, and, most critically, community leaders, to join forces and work together on this issue.

At a high level, this would require a detailed analysis of current barriers to transparency and then working jointly on updating relevant policies, privacy legislation and provincial/federal acts to reduce these barriers and produce truly enhanced transparency in the Canadian policing and justice landscape (Figure 1). There are many forms that such a process could take as well as many planning models to follow. One such successful model used by Public Safety Canada and the Canadian Association of Chiefs of Police outlines the following steps with key stakeholders:

1. Conduct a thorough current state analysis
2. Develop a vision of the ideal future state—with no restrictions based on potential barriers like cost
3. Outline the case for change including high-level goals and metrics to measure success
4. Identify all potential barriers to achieving these goals including a detailed risk analysis and, finally,

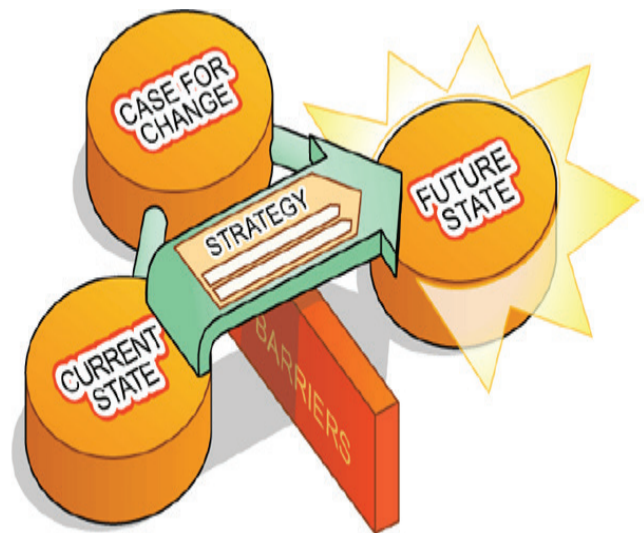


FIGURE 1 Strategic planning model previously leveraged in Canada.

5. Leverage all the information gathered and reach a mutual understanding/agreement of the goals, including developing a strategy and action plan with clear timelines and accountability statements designed to achieve the strategy's vision.

## CONCLUSION

Between COVID-19 and the extraordinary calls for change in Canadian policing, there has never been a more critical time in our history to truly work together with a common vision. Improving police transparency in Canada requires more than just press releases. It requires both vision and leadership on behalf of a wide range of stakeholders. I stand ready to work with any interested stakeholders to do my part to continue my decades-long mission of improving community safety practitioners' ability to get the right information to the right people (including the public) at the right time.

### CONFLICT OF INTEREST DISCLOSURES

The author has no conflicts of interest to declare.

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