

Privacy or Accountability?

The Use of Body-Worn Cameras in Law Enforcement

The use of body-worn cameras has been proposed as a solution to an increase in instances of police brutality. These cameras are intended to capture audio and visual surveillance footage of police officers' interactions with citizens in an attempt to enhance the transparency, accountability, and credibility of the police force. In Canada, the implementation of such technology faced a spike in popularity after the shooting of Sammy Yatim in July of 2013¹. However, what is less widely recognized is the potential of these technologies to infringe on the privacy rights of citizens. The use of body-worn cameras should not be implemented by police services in Canada without adequate research and legislation introduced beforehand due to the privacy concerns that stem from its unique technological advantage, potential for misuse, and the vague legislation that is currently surrounding such technology.

Body-worn camera (BWC) technology is incredibly unique for its mobile surveillance. However, this can have serious implications for the environment into which such technology is introduced. Compared to CCTV, where signage is used to alert citizens of their possible surveillance, it would be almost impossible for police officers to obtain all citizens' permission before audio and video surveillance footage is captured by their camera². Additionally, pre-existing technology such as facial recognition software has been integrated

¹ "Forcillo Trial Shows Need for Body-Worn Cameras, Former Investigator Says | CBC News." *CBCnews*, CBC/Radio Canada, 26 Jan. 2016, www.cbc.ca/news/canada/toronto/programs/metromorning/forcillo-trial-body-worn-cameras-1.3420699.

² Lippert, Randy K, and Bryce Clayton Newell. "Introduction: The Privacy and Surveillance Implications of Police Body Cameras." University of Windsor.

into body-worn cameras, as seen with the Calgary Police Service³. This kind of biometric technology is especially dangerous when used in mobile surveillance because of the breadth of identification that may be undertaken. Using this technology to identify protesters, for example, could imperil the individuals' rights to protest under Section 2(c) of the Canadian Charter of Rights and Freedoms without being scrutinized by law enforcement⁴. What would be most ideal is for the use of body-worn cameras to only be authorized for used in certain situations where the severity and frequency of instances of police brutality indicate a need for better accountability⁵. Bearing in mind, however, that this footage must only be used for its intended purpose: as untampered evidence of police officer misconduct.

With an immense increase in technological power, police services must be held accountable for preventing the potential misuse of body-worn cameras. Firstly, the ability of a police officer to film the inside of an individual's home when called to the scene of a household incident is a direct violation of an individual's right to be secure against unreasonable search and seizure under Section 8 of the Charter⁶. While the Privacy Commissioner of Canada has advised law enforcement officers to turn off BWCs before entering a citizen's home, this is a direct contradiction of the accountability metric intended for such technology⁷. If the police are granted the right to turn off the cameras at their own discretion, then there would be

³ Lippert, Randy K, and Bryce Clayton Newell. "Introduction: The Privacy and Surveillance Implications of Police Body Cameras." University of Windsor.

⁴ Government of Canada, Department of Justice. "Section 2(c) – Freedom of Peaceful Assembly." *Department of Justice*, Government of Canada, 17 June 2019, www.justice.gc.ca/eng/csj-sjc/rfc-dlc/ccrf-ccd1/check/art2c.html.

⁵ Robert Diab Associate Professor. "Canada Should Enshrine Police Body Cameras into Law." *The Conversation*, Academic Journalism Society, 28 May 2021, theconversation.com/canada-should-enshrine-police-body-cameras-into-law-140611#:~:text=Without%20rules%20being%20codified%20in,the%20use%20of%20excessive%20force.

⁶ Government of Canada, Department of Justice. "Section 8 – Search and Seizure." *Charterpedia - Section 8 – Search and Seizure*, 25 Jan. 2021, www.justice.gc.ca/eng/csj-sjc/rfc-dlc/ccrf-ccd1/check/art8.html.

⁷ Bud, Thomas K. "The Rise and Risks of Police Body-Worn Cameras in Canada." *University of Windsor*, Queen's University, 2016, pp. 1–5.

no mechanism to ensure that officers do not do the same to avoid scrutiny when facing an armed, racialized, or mentally disabled citizen. Secondly, the only existing literature around the use of body-worn cameras is the Guidance for the Use of Body-Worn Cameras by Law Enforcement Authorities, which is not even binding. This means that when the use of BWCs is examined under the law, its examination is based on broader legislation such as the Privacy Act, the Freedom of Information and Privacy Act, and the Police Services Act. This has the potential for a dangerous interpretation of such legislation to enable police officers to use incriminating surveillance footage for law enforcement officers, which is authorized under section 39(1) of the Freedom of Information and Privacy Act⁸. For these reasons, body-worn cameras should be turned off and on at the discretion of an independent third party who may expertly analyze the situation a police officer is entering into, require the police officer to request the consent of the citizen, and notify any possible bystanders before the cameras begin to film. While this process may seem unduly complicated and could cause issue in high speed circumstances, police officers are already required to notify citizens of their BWCs, so this would not be a new practice but instead a newly assisted one. This sort of regulation could guarantee that the accountability of police officers is not maintained at the expense of citizens' privacy.

While body-worn cameras do provide a technological solution to the lack of accountability for police brutality, there are a number of privacy considerations that must be taken into play before they are implemented. As a governmental technology expert by the name of Dawn Kawamoto points out, "privacy concerns do not seem to be slowing down the

⁸ Bud, Thomas K. "The Rise and Risks of Police Body-Worn Cameras in Canada." *University of Windsor*, Queen's University, 2016, pp. 1–5.

adoption of body-worn camera technology”⁹. Therefore, it is up to the Canadian government and police forces to determine appropriate legislation for the use of cameras in order to prevent the technological advantage, potential of misuse, and inadequate regulation of such technology from infringing upon citizens’ privacy.

⁹ Kawamoto, Dawn. “Cops Wearing Cameras: What Happens When Privacy and Accountability Collide?” *GovTech*, GovTech, 30 Apr. 2021, www.govtech.com/biz/cops-wearing-cameras-what-happens-when-privacy-and-accountability-collide.html.

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