

In our world of ever-evolving technology, where an infinite amount of information can be collected about any individual, our privacy is under constant threat. The danger of our societies' plunging into Orwellian totalitarianism is ever present. In light of recent cases of police brutality, a number of Canadian law enforcement authorities, such as the Toronto Police Service¹, have implemented body-worn cameras (BWCs) into their operational activities. Such decisions raise a number of legitimate questions. Is such an encroachment on our privacy rights reasonable, or is it a slippery slope to the world of telescreens described by the great dystopian author? In my opinion, though BWCs do present a serious intrusion into our private life, they are a legitimate measure that can be "demonstrably justified in a free and democratic society."²

The principal argument advanced by those who oppose BWCs is that these devices are inefficient in fighting police brutality. Halifax city councillor Lindell Smith argues that "cameras just capture it. That doesn't deal with the issues."³ If BWCs are not an effective means of solving the problem, then such limits on our privacy are unreasonable, affirm the technology's detractors.

Though the Canadian Charter of Rights and Freedoms is silent on privacy rights, the Supreme Court has ruled that Canadian privacy legislation, including the *Privacy Act*, enjoys a "quasi-constitutional status."⁴ Taking this into consideration, the test for assessing the reasonableness of Charter rights limitations set in *R. v. Oakes* can be of use in determining whether BWCs are a legitimate restriction on privacy.

¹ Lord, Ross. "Toronto Police Service to Issue Thousands of Body-Worn Cameras to Officers by October." *Global News*, 8 Feb. 2021, globalnews.ca/news/7605612/toronto-police-service-body-cameras-reaction/amp.

² Constitution Act, 1982. Art. 1. Accessed 27 May 2021 from <https://caid.ca/ConstAct010208.pdf>.

³ Lord, Ross. "Toronto Police Service to Issue Thousands of Body-Worn Cameras to Officers by October." *Global News*, 8 Feb. 2021, globalnews.ca/news/7605612/toronto-police-service-body-cameras-reaction/amp.

⁴ "A Guide for Individuals : Protecting Your Privacy." *Office of the Privacy Commissioner of Canada*, www.priv.gc.ca/en/about-the-opc/publications/guide_ind. Accessed 27 May 2021.

The first condition of the *Oakes* test to be met is that the law or government action must serve an objective important and pressing enough in a “free and democratic society” to merit the restriction of a fundamental right⁵. The measure in question has a twofold objective: to ensure that citizens are treated with dignity and respect by law enforcement officers and to tackle police brutality. These are indeed pressing issues in a “free and democratic society.” For example, Toronto’s black residents have 20 times more chances of being killed by a police officer⁶. Paradoxically, the limits in question allow the enjoyment of fundamental rights guaranteed by the Charter, *inter alia*, the right to life and security of the person⁷ and equality before the law⁸.

To satisfy the second part of the *Oakes* test, the government action must be an efficient means of attaining the objective⁹. According to an experiment conducted in the Rialto Police Department in California, police officers wearing BWCs are two times less likely to resort to force¹⁰. Moreover, the study also indicates a significant decrease in complaints filed against officers when BWCs are used¹¹. Thus, the argument that BWCs are ineffective in tackling police brutality is unsubstantiated. It is evident that, when police officers are conscious of being surveilled in their interactions with citizens, they are less likely to resort to unreasonable force. Even if they do, the recordings will serve as irrefutable proof of their criminal act.

⁵ R. v. Oakes. 1 S.C.R. 103. Supreme Court of Canada. 1986. *Supreme Court of Canada*. Web. 28 May 2021.

⁶ “Toronto Police Chief Acknowledges Racial Profiling Challenges in Wake of Human Rights Report.” *CBC News*, www.cbc.ca/news/canada/toronto/saunders-ohrc-response-1.4940677. Accessed 27 May 2021.

⁷ Constitution Act, 1982. Art. 7. Accessed 27 May 2021 from <https://caid.ca/ConstAct010208.pdf>.

⁸ Constitution Act, 1982. Art. 15.1. Accessed 27 May 2021 from <https://caid.ca/ConstAct010208.pdf>.

⁹ R. v. Oakes. 1 S.C.R. 103. Supreme Court of Canada. 1986. *Supreme Court of Canada*. Web. 28 May 2021.

¹⁰ Farrar, Tony. “Self-Awareness to Being Watched and Socially-Desirable Behavior: A Field Experiment on the Effect of Body-Worn Cameras on Police Use-of-Force.” *National Police Foundation*, Mar. 2013, www.policefoundation.org/publication/self-awareness-to-being-watched-and-socially-desirable-behavior-a-field-experiment-on-the-effect-of-body-worn-cameras-on-police-use-of-force.

¹¹ *Ibid*.

The third condition under the test is that the restriction of the right or freedom must be minimal¹². I am strongly convinced that, if the following rules are implemented, the employment of the technology will satisfy this third requirement. First, BWCs should be used without the individual's permission only in serious interventions where force may be applied, such as arrests, whilst in all other cases the individual must consent to their being recorded. Second, the recordings should be deleted after four months or earlier at the request of the person involved, unless they constitute an important piece of evidence in a judicial case or complaint. Third, police officers should always inform individuals of the use of BWCs and of their rights regarding the information collected thereby. Finally, if any bystanders who constitute identifiable individuals under privacy legislation are present in the recordings, they must be informed of it. If these four conditions are satisfied, the last requirement of the test – that the positive effects of the limit outweigh the negative ones¹³ – will also be met.

Not only do these measures protect the privacy of ordinary citizens, but they also safeguard the rights of police officers themselves, since they ensure that the latter are only recorded in a given set of situations. If BWCs were on all the time, that would constitute a violation of the rights of law enforcement officers.

Special attention should be given to recordings made inside private residences. Even though the Charter does not specifically mention the inviolability of the home as a constitutionally protected right, it proscribes unreasonable search and seizure¹⁴. The following example illustrates this particularly sensitive issue: a police officer comes to a private home in response to the residents'

¹² R. v. Oakes. 1 S.C.R. 103. Supreme Court of Canada. 1986. *Supreme Court of Canada*. Web. 28 May 2021.

¹³ Ibid.

¹⁴ Constitution Act, 1982. Art. 8. Accessed 27 May 2021 from <https://caid.ca/ConstAct010208.pdf>.

call concerning a burglary and records the interactions without asking for the residents' consent. Does this constitute a reasonable limit on their privacy rights? While the use of the camera does help to ensure that the residents are treated with respect and dignity, police brutality is highly implausible in this situation. The objective attained by the use of BWCs does not merit the recording of the residents inside their home without their consent, especially given the inviolability of one's residence. Thus, the officer's actions clearly do not satisfy the *Oakes* test and constitute an infringement of the residents' privacy rights.

In conclusion, I believe that the use of body-worn cameras is a reasonable limit on individuals' privacy rights. Subject to a number of conditions, this measure meets the standards set by the *Oakes* test. While modern technology is a tool that can serve malevolent intentions in the hands of the State, it can also be a means for the advancement of the democratic values of freedom, justice, and equality. As a free and democratic society, we must put together our forces so that the technological innovations of mankind serve the latter purpose. Big Brother may be allowed to watch us, provided that, in doing so, he is keeping an eye on his petty officials as well.

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