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Introduction

A body-worn camera in public policing is a miniature audio and video recording device that allows recording of officers' duties and citizen interactions. Used for recording combat in the military for years (Grenoble 2012), these devices are also increasingly used by individuals in sports and social activism (see Mann et. al. 2003; Chalfen 2014). Body-worn cameras are therefore certainly not a new technology. Yet, their widespread adoption by North American public police is relatively recent and their use is generating unique risks with social and legal implications that remain ill-considered and inadequately researched.

Conceptualizing Body-Worn Cameras

Body-worn cameras are being proposed to enhance police transparency and accountability. The mass media has been portraying increasing levels of police brutality over the past decade (see Wines and Cohen 2015). In Ferguson, Missouri, the shooting of Michael Brown in August 2014 created public uproar and riots (Lieb and Zagier 2014). Subsequently, President Obama proposed nationwide funding to equip police agencies across the United States with body-worn cameras (Feeney 2014). In Canada, the shooting of Sammy Yatim in July 2013 by a Toronto police officer similarly led to discussions about equipping police officers with body-worn cameras (Rogan 2014). Besides increasing police transparency and accountability, these devices are also claimed to reduce police officer exposure to litigation and unwarranted citizen complaints. In principle, equipping police patrol officers with body-worn cameras may save a particular police service significant resources that would otherwise be spent on civil lawsuits (Ramirez 2014).

Within conceptualizations of risk, the frequency and severity of harmful occurrences become crucial (Ericson 2007). Based on this framework, the frequency and severity of complaints against police become risk indicators. The frequency and severity of high profile police brutality incidents have been seemingly increasing and pose a risk to the legitimacy of the police institution. In the aftermath of the above mentioned brutality incidents, public opinion of the police significantly decreased (see Kochel 2015). In Ericson and Haggerty's (1997) notion of 'risk society,' police officers are knowledge workers who gather information for their own management purposes. This knowledge also becomes useful for the selection of acceptable risk thresholds. However, Ericson and Haggerty (1997) do not address the management of police generated risks, such as incidence of police misconduct and brutality and the risks these pose to the overall police institution. As such, body-worn cameras are proposed to help with incidents of police misconduct, which pose a risk to police legitimacy, by enhancing police accountability and transparency.

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In Canada, police services are currently involved in numerous pilot projects that are specifically designed to test the effectiveness of these cameras on monitoring police officer conduct (see Gillis 2014; Kotsis 2014; Van Rassel 2013). The current Canadian police services involved in these evaluations include Victoria, Edmonton, Calgary, Amherstburg, and Toronto. The first three have concluded their pilot project and reveal mixed results about the usefulness and effectiveness of body-worn cameras. The other two projects are still being evaluated.

As a surveillance device, body-worn cameras are unique in terms of their mobility and flexibility. Unlike CCTV cameras, which tend to be static and mounted on walls or ceilings, body-worn cameras are unique in the sense that they are extremely mobile, interactive and flexible. The watchful gaze of a CCTV camera can be easily evaded by stepping out of its field of view. However, by clipping a body-worn camera onto an officer, the camera becomes more mobile and versatile in its capacity to record the surrounding area. The flexible mobility of body-worn cameras combined with biometric technology can lead to unprecedented levels of citizen surveillance. These cameras have the potential to become a new police surveillance device aimed at gathering personal information and intelligence.

A Threat to Privacy Rights

There is presently no legislation in Canada that directly addresses the regulation and governance of police body-worn cameras. Legislation is clearly lagging far behind the rapid pace at which surveillance technology, like body-worn cameras, are developing. The absence of appropriate legislation creates the danger that the privacy of individuals may become jeopardized as a result of the adoption of new surveillance technology (Mehta 2015). The *Privacy Act*, *Freedom of Information and Privacy Protection Act*, and the *Police Services Act* are a few pieces of legislation that try to indirectly ameliorate similar privacy concerns associated with the use of body-worn cameras. However, these few pieces of legislation do not specifically address the use of body-worn cameras. In fact, the footage obtained through body-worn cameras can be interpreted as being justified for law enforcement purposes according to the *Freedom of Information and Privacy Protection Act* Section 39(1). Consequentially, the notion 'law enforcement purposes' remains broad and open to interpretation.

Some existing CCTV cameras already contain biometric software such as iris scanning or facial recognition technologies that scan the features of an individual and then proceed to categorization and, in some cases, social sorting. The Calgary Police Service, for example, has recently integrated facial recognition technology with their body-worn camera technology. Although a justifiable reason has not yet been given, the adoption of facial recognition software with body-worn cameras clearly extends their practical use beyond their stated purpose as devices to monitor police conduct (Doll and Sosiak 2014). The legality of the use of facial recognition software in body-worn cameras has not been challenged yet in Canadian courts given that police services in Canada have very broad authority under the *Freedom of Information and Privacy Act* to collect, use and disclose personal information for law enforcement purposes. The combination of flexible mobility, biometric technology and broad legal interpretation is essentially what makes the surveillance capacities of body-worn cameras very unique and ultimately concerning.

The adoption of police body-worn cameras pose significant risks to existing privacy rights. The mobility of the camera makes the acquisition of consent from citizens very challenging. In the case of CCTV, consent is usually given by a person to be recorded by reading the signage associated with the camera and then walking into the device's field of view. The main point of the CCTV signage is to notify the citizen about the camera's presence before entering its field of view. However, in many cases the signage is obscured, thus making it difficult for citizens to consent (Lippert 2009). Consent in these typical terms does not exist with regards to body-worn cameras. In Canada, police officers equipped with body-worn

cameras are required to inform the citizen that their interaction is being recorded. However, the citizen does not have the option to refuse or withdraw their consent to be recorded (Office of the Privacy Commissioner of Canada 2015). Ideally, the officer would have to request the consent of the citizen before turning on the body-worn camera. Similarly, to CCTV signage, the citizen should be able to read the signage before entering the device's field of view. However, this does not occur in either of the two cases and thus it diminishes the privacy rights of citizens.

Aside from consent, there are other privacy rights that demand consideration when using body-worn cameras. Officers equipped with body-worn cameras have the capability to record the inside of people's homes (Ramirez 2014). The possibility of engaging in such recording jeopardizes an individual's right to be secure against unreasonable search and seize under section 8 of the Charter of Rights and Freedoms. Although there has not been an official ruling by the Canadian Supreme Court on the issue of whether or not the use of body-worn cameras recording the inside of a home would be considered a violation of section 8, police service guidelines on the use of body-worn cameras advise officers to turn off their cameras when interacting with subjects inside their homes. However, exceptional circumstances do exist if such a recording is pursuant to an investigation or incident (Edmonton Police Service 2015).

The recording from a body-worn camera may be categorized as having evidentiary value. Such a categorization can occur if the recording contains images of a criminal incident, a report from a suspect or a victim, or of other incidents that may be considered valuable for law enforcement purposes according to officer discretion (Edmonton Police Service 2015). What is to be considered as having evidentiary value remains in contention and police services that have drafted body-worn camera policies tended to allow for a high level of flexibility in ascribing such a categorization (Edmonton Police Service 2015). Generally, body-worn camera recordings are governed by the *Privacy Act* and the *Freedom of Information and Protection of Privacy Act*. However, when recordings become categorized as evidence, their retention period increases to an indefinite amount of time and the use of these recordings becomes governed and regulated by different legislation, one of which is the *Canada Evidence Act* (Huang 2014). The indefinite retention period of body-worn camera recordings that may contain a significant amount of personal information pose great risks to privacy rights. As retention periods become restricted, intelligence gathering becomes more difficult because intelligence analysis takes considerable amounts of time. If there is no limit placed on the retention period, body-worn cameras have the potential to be used to surreptitiously gather and analyze intelligence information about the population (Ramirez 2014).

Currently the only policy-related document that directly addresses the legal implications of the use of body-worn cameras by Canadian police is the *Guidance for the use of body-worn cameras by law enforcement authorities* issued by the Office of the Privacy Commissioner of Canada (2015). This document is simply intended to provide guidance; it is not binding. It aims to identify and address some privacy considerations law enforcement authorities should take into account when deciding whether to equip officers with body-worn cameras. Because it has a pan-Canadian focus, it plainly suggests that policy should not be left up to local police services to develop willy-nilly, as seems to be the case in the United States. Overall, however, this document aims to support (rather than halt) Canadian law enforcement authorities in developing procedures for widespread body-worn camera use.

Budgetary Costs

Aside from privacy concerns, the high cost to the public of equipping officers with body-worn cameras is rarely addressed. Toronto Police Service is the most recent law enforcement authority in Canada to initiate a pilot project to test these devices. The year-long pilot project was initiated in May 2015 and it will last until June 2016. One hundred officers from various divisions and units are equipped with these cameras. The project currently has a budget of \$500,000 that is intended to cover the annual costs (Mehta 2015). However, such a budget only covers the costs for 100 cameras for one year. Toronto Police Service is the

largest municipal police force in Canada with 5,200 sworn officers and equipping the majority of their patrol officers would require significant resources. This would be very difficult considering the rising pressure to decrease budgets (see Pagliaro 2015). It would also mean significant costs after the initial roll out for maintenance and data storage. These cameras, therefore, constitute a financial risk to government budgets going forward.

The Need for Appropriate Governing Legislation

For body-worn cameras to be used appropriately and to minimize potential negative consequences and risks to privacy, appropriate legislation needs to be drafted that directly addresses the use of these devices. Body-worn cameras are already being rolled out at a rapid pace in Canada, as noted above, and other police services are currently considering adoption as well (see Woodford 2016; Huang 2014). The legislation should aim at striking an appropriate balance between privacy concerns and the recording of citizen interactions for legitimate law enforcement purposes. There is a potential for body-worn cameras to be a useful tool for achieving better accountability; however, this is only possible if the appropriate privacy protocols become mandated by law (Mehta 2015). Without such legislation, police body-worn cameras run the danger of becoming yet another tool for police surveillance and social sorting. This has already started occurring at the Calgary Police Service, as a consequence of their integration of body-worn cameras and facial recognition software (Doll and Sosiak 2014). In this context, police body-worn cameras paired with facial recognition technology become similar to police automated license plate readers (which are also not adequately addressed in law), constantly scanning faces, sorting, identifying and matching it with national databases (Harvard Law Review 2015; Warren et al. 2013). Integrating facial recognition technology with body-worn cameras poses significant risks to the privacy rights of citizens. Although police services in Canada have broad authority under freedom of information laws to collect and use personal information for law enforcement purposes, the Calgary Police Service has not identified how it will ensure individual privacy rights with the adoption of facial recognition technology.

In addition to the need for appropriate legislation that addresses the myriad of privacy concerns with the adoption of body-worn cameras, enforceable legislation is needed to ensure that camera images remain objective and untampered evidence in misconduct investigations. In many cases, police supervisors are in charge of reviewing these recordings once a case of misconduct has been filed. However, placing the locus of control with police officers themselves results in the strange situation where the organization that is meant to be held accountable will have the power to prevent particular recordings from being created in the first place or shared in the aftermath (Harvard Law Review 2015: 1806). For example, two days after the death of Michael Brown in Ferguson, a New Orleans police officer shot an unarmed black man while trying to take him into custody. In this case, the officer was wearing a body-worn camera, but she shut it off prior to the encounter. This particular example illustrates that body-worn cameras are not an infallible technology. There is a significant level of risk that recordings may be deleted or tampered with by officers or supervisors.

Conclusion

It is very difficult to strike a balance between the privacy concerns that accompany police body-worn cameras and their alleged capacity to increase police accountability and transparency. In the aftermath of the Sammy Yatim and Michael Brown cases and the uncertainties involved with future cases of misconduct, increasing number of police agencies are imitating body-worn camera pilot programs. It remains very questionable and uncertain whether the numerous risks to privacy rights are worth the alleged increase in police accountability.

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