

Joint Submission of the British Columbia Civil Liberties Association and the British Columbia Freedom of Information and Privacy Association to the Legislative Assembly on Bill 20 – 2010 Miscellaneous Statutes Amendment Act (No. 3), 2010: Video Surveillance in Schools



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1. We are writing on behalf of the British Columbia Civil Liberties Association (BCCLA) and the British Columbia Freedom of Information and Privacy Association (BC FIPA) to provide a submission on Part 4 – Education Amendments of Bill 20 – 2010 Miscellaneous Statutes Amendment Act (No. 3), 2010 (the “School Surveillance Amendments”).
2. The BCCLA and BC FIPA urges the Legislative Assembly not to pass the School Surveillance Amendments. We submit that the amendments are not needed, that they lower the standard for justification of video surveillance in schools and that the facilitation of increased video surveillance in schools undermines the democratic values that public schools should exemplify.

The School Surveillance Amendments

3. The School Surveillance Amendments add “school safety, including the installation and operation of video surveillance cameras” to the list of issues that require a school board to consult with a school planning council. The School Surveillance Amendments provide further that, with the prior approval of the school planning council, “a board may install and operate a video surveillance camera in a school facility or on school land for the purposes of protecting (a) the safety of individuals in a school facility or on school land, (b) an individual’s belongings in a school facility or on school land, or (c) school property. The School Surveillance Amendments also provide that a school planning council can make recommendations to a board to install and operate video surveillance in a school facility. And the School Surveillance Amendments provide that a board must conduct an annual review that assesses if the installation and operation of the video surveillance camera is accomplishing an enumerated purpose (safety or property protection). These provisions do not apply to video surveillance that is installed on a temporary basis for a specific investigative purpose.
4. Currently the installation of video surveillance in schools would be governed by section 26 c) of the *Freedom of Information and Protection of Privacy Act* (FOIPPA) which provides for the collection of personal information by a public body where “the information relates directly to and is necessary for an operating program or activity of the public body”. The School Surveillance Amendments effectively bypass the necessity test in

section 26 c) of FOIPPA by providing express authorization for the collection of the personal information under another Act, so that collection of information falls under section 26 a) and not 26 c). The BCCLA and BC FIPA are concerned that this steep downgrading of the need for justification for introducing video surveillance in schools (from a demonstration of necessity to the mere ostensible aim of providing safety or property protection) is:

- a) part of the creeping repeal of FOIPPA that is undermining citizens' privacy protections in a range of areas, and
- b) apt to facilitate an unwarranted and harmful increase in video surveillance in schools.

The Position of the BCCLA and BC FIPA on Video Surveillance in Public Schools

5. The BCCLA and BC FIPA are in broad agreement with the principles set out in OIPC Reference Document 00 – 01 “Public Surveillance System Privacy Guidelines”. In that document, the Office of the Information and Privacy Commissioner for British Columbia sets out a comprehensive guide to the use of surveillance by public bodies which stipulates that surveillance is a measure of last resort that is only justified on the basis of verifiable, specific reports of incidents of crime, public safety concerns or other compelling circumstances. The guidelines recommend the completion of a Privacy Impact Assessment (PIA) in order to “make the case” for a proposed surveillance system and the review of the PIA by the Executive Director of the OIPC for comment and direction.
6. We agree with the OIPC that there are scenarios in which surveillance is justifiable, but we note that there should be a high standard of justification in order to safeguard fundamental rights to privacy and autonomy. The imposition of such standards is increasingly needed because of trends which see surveillance technologies becoming sweeping panacea for social ills. Not only does the empirical evidence not support the purported “benefits” of much public sector surveillance, but the evidence is mounting that it has deleterious effects. And we believe the concern about harms is particularly acute in the setting of a public school.

7. The central mission of our public schools goes beyond providing basic skills and knowledge to students; public schools have a central role in teaching the values of our free and democratic society and preparing students to become fully engaged democratic citizens. Privacy is an important value in our society, as is the presumption of innocence (the vast majority of students will not engage in activities that give rise for a call for video surveillance). Public schools must not only teach these values to students but must strive to reflect all democratic values in their practices. Indeed public schools are arguably one of the only heterogeneous, liberal-democratic institutions left in society where young people can develop and debate concepts about personal identity, friendship and community. School boards and society at large must be on guard against taking away the open society of the academy and replacing it with the closed society of the reformatory. Video surveillance tends in the latter direction rather than the former.
8. We are not opposed to all video surveillance in public school, but rather insist on the demonstration of a compelling need. This is an area in which failure to provide specific justification sees rampant proliferation of surveillance, as noted by Andrew Hope in "CCTV, school surveillance and social control" (British Educational Research Journal, Vol. 35, No. 6, December 2009, pp. 891-907) which reported on CCTV (closed circuit television) use in UK schools.
9. Hope comments on the insidiousness of "function creep" in school surveillance:

Initial CCTV placement tended to focus on protecting the perimeters of schools against intruders, but cameras were soon installed in the corridors, computer rooms and libraries of many educational institutions. CCTV also crept into more controversial school spaces, such as student toilets and classrooms.
10. Hope notes that video surveillance tacitly embeds certain values in the school environment; that "[r]ather than enculturating citizens to be rule obeying and law abiding, this approach seeks to ensure that technological systems exist to thwart individuals' disorderly instincts." In other words,

surveillance technology is not value-neutral. The hyper-regulation of public school spaces has important moral implications.

11. Privacy and *Charter* rights more generally are always a matter of weighing and balancing. The need for a thoughtful and evidence-based approach to video surveillance is particularly acute because of persistent over-estimation of the efficacy of video surveillance by the public. Study after study has shown that video surveillance has extremely limited utility, that video surveillance has almost no deterrence effect, and that small effect most often attributable to displacement. In some instances, a targeted, problem-specific use of a camera, for example to monitor a computer laboratory in which there have been repeated thefts, may be an appropriate response. But general monitoring of student behaviour is an unacceptable intrusion into students' private lives and offers no quantifiable increase in students' safety. Careful, fact-based assessments are needed in this area and those are provided for under the current legislative scheme (s. 26 c) of FOIPPA. The effect of the School Surveillance Amendments is to eliminate any criteria or necessity for such an assessment.

Amendments Unnecessary and Harmful

12. It cannot be maintained that giving a voice to school planning councils is an effective means of hearing from stakeholders on the issue of video surveillance. As we understand, school planning councils are made up of the school principal, three parent volunteers, one teacher representative and one student representative. This is an extremely limited gathering of stakeholders with no designated resources for or access to research. While there is nothing inherently wrong with hearing from the school planning councils on any school related topic, the council's involvement has been noted as if it were a means of bringing greater accountability to the decision-making process by adding another set of stakeholders to the assessment. In fact what is proposed in the School Surveillance Amendments is precisely the opposite. Accountability is being lost. The decisions and recommendations of the boards and councils are to be unmoored from the criteria of necessity found in section 26 c) of FOIPPA and these important decisions relegated to no standards save for the

personal beliefs of the decision-makers as to what constitutes effective safety and security measures.

13. We submit that this is a formula for needless, costly and harmful expansion of video surveillance in public schools and we urge the legislative assembly to oppose these amendments in favour of the current legislative regime's effective balancing and appropriate recourse to the expertise of the Office of the Information and Privacy Commissioner.

Respectfully submitted,

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Micheal Vonn
Barrister and Solicitor,
Policy Director, BCCLA

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Richard Rosenberg
President,
BC FIPA