



East Coast Prison Justice Society
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British Columbia Civil Liberties Association
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December 2, 2020

Natalie Borden, Chair
Halifax Board of Police Commissioners
1841 Argyle Street
PO Box 1749
Halifax, NS B3J 3A5

Dear Chair Borden,

RE: Concerns regarding illegal use of web monitoring tool by Nova Scotia RCMP

We are writing to you to express our grave concerns regarding recent reports about the Nova Scotia RCMP H Division's purchase and use of the Web Identity Search Tool ("WIST") from Toronto-based company LTAS Technologies.¹ Using WIST, police could select a Facebook user who had chosen to privatize their friends list - setting it to be seen by "only me" - and watch as the tool scoured the internet for leads from other accounts and filled in the missing list of friends. In promotional materials, the application was advertised as being capable of "unlock[ing] hidden friend lists," connecting any Facebook user to others with up to three "degrees of separation."

The Nova Scotia RCMP H Division listed WIST in a 2017 summary of its web monitoring tools along with other applications it used on a "covert laptop" when investigating members of organized crime groups. It is unclear when the contract for the use of WIST began or ended, but recent reports indicate that the product has been discontinued following a cease and desist letter sent to LTAS Technologies by Facebook.

It is deeply troubling to us that the RCMP used WIST for *any* period of time given that the RCMP failed to seek judicial authorization for its deployment. The use of this kind of

¹ The Tyee, "RCMP Confirms It Bought a Tool that 'Unlocks' Hidden Facebook Friends" (23 November 2020) <<https://thetyee.ca/News/2020/11/23/RCMP-Confirms-Tool-Unlocks-Hidden-Facebook-Friends/>> .

technology by law enforcement engages several of the *Charter*'s fundamental rights and freedoms. Section 8 of the *Charter* generally protects individuals from privacy invasions by the state, unless there are reasonable grounds to believe that the information sought will reveal evidence of a crime. This constitutional protection is harmonized with Canadian privacy legislation, which restricts the collection of personal information, including Facebook friends, "whether the personal information is available publicly or not."² The use of WIST by the RCMP also significantly impacts section 2 *Charter* rights to freedom of expression, peaceful assembly and association. Section 15 of the *Charter*, which protects equality rights, is also likely engaged if the use of WIST has further subjected marginalized communities to disproportionate surveillance by the police. This potential monitoring of equality-seeking groups and social movements by the RCMP is especially troubling to us.

Given the overall effects that these kinds of policing practices have upon human rights that involve the privacy, expression, association and equality of all people, we are alarmed that the RCMP sought to circumvent the *Charter* by purchasing data from a commercial entity like LTAS Technologies. There is a massive public interest in the use of such technology, given its invasive nature and potential lack of accuracy and. Earlier this year, Federal and Provincial Privacy Commissioners initiated a joint investigation into the use of facial recognition technology by law enforcement agencies after media revelations.³ These unchecked practices by police leave people across Canada with attenuated rights and nurtures distrust amongst the public, as we never know when and to what extent the state is monitoring our private activities.

In addition to serving as the civilian governance and oversight body for the Halifax Regional Police, the Halifax Board of Police Commissioners (the "Board") acts in an advisory capacity vis-à-vis the Halifax District RCMP.⁴ In this capacity, the Board is required to provide advice to the council in relation to the enforcement of law, the maintenance of law and order and the prevention of crime in the municipality.⁵ In service of this function, the Board may take steps to "ensure that police services are delivered in a manner consistent with community values, needs and expectations" and may also "recommend policies, administrative and organizational

² Office of the Privacy Commissioner of Canada, "Aboriginal Affairs and Northern Development Canada wrongly collects information from First Nations activist's personal Facebook page" (29 October 2013) https://www.priv.gc.ca/en/opc-actions-and-decisions/investigations/investigations-into-federal-institutions/2012-13/pa_201213_01

³ Office of the Privacy Commissioner of Canada "Commissioners launch joint investigation into Clearview AI amid growing concerns over use of facial recognition technology" (21 February 2020) https://www.priv.gc.ca/en/opc-news/news-and-announcements/2020/an_200221/

⁴ *Police Act*, SNS 2004, c 31, s 57(1).

⁵ *Ibid*, s 68(1).

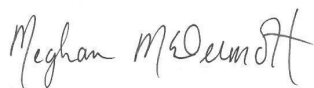
direction for the effective management of the police department.”⁶ The Board may give advice or direction to the chief officer for these purposes.⁷

The citizens of Halifax expect the police to be accountable to the law and to the community it serves. Unless the RCMP operate in a manner consistent with fundamental community values, needs, and expectations - including respecting the rule of law - relationships between communities and the police will not improve.

The revelations about the RCMP using WIST without prior judicial authorization emphasize the need for independent and meaningful oversight of police agencies in Nova Scotia. We are reminded of the practise of street checks - another policing practise found to be illegal and discriminatory. In that case, the Board rightly intervened and acted in service of its mandate by writing to the province and requesting a full ban on their use.

In this case, we request that you take the appropriate action now to hold the RCMP accountable to the public, and to protect everyone’s fundamental rights and freedoms. At a minimum, we ask that you write to the provincial Minister of Justice with three requests. First, that the Minister issue a directive without delay to suspend the use of any internet surveillance tool such as WIST by police in Nova Scotia. Second, that the Minister, working with federal counterparts to the extent necessary, initiate an independent review of any past or ongoing usage of WIST and any other web monitoring tools that police in the province have used, and make the resulting report available to the public. Third and finally, that the Minister set provincial policing standards once the review is completed. These standards must reflect the state of the law and either outright ban or tightly circumscribe the use of internet monitoring tools by police.

Sincerely,



Meghan McDermott
Interim Policy Director, BCCLA



Harry Critchley
Co-Chair, East Coast Prison Justice Society

cc: The Honourable Mark Furey, Minister of Justice

⁶ *Ibid*, ss 68(3)(d), 68(3)(f).

⁷ *Ibid*, s 66.