

Media law experts say decision to publish 911 calls not a matter for investigation

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[Nova Scotia](#)

RCMP comments present clear conflict, say lawyer and professor

[Michael Gorman](#) · CBC News ·

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The RCMP and Nova Scotia Justice Minister Randy Delorey have said they would look into whether the publishing and leaking of 911 calls from the mass shooting in 2020 violated any laws. (CBC)

Experts in media law say the recent uproar about the publication of 911 calls from the Nova Scotia mass shooting comes as no surprise, but police have no business musing about investigating the outlet that posted the recordings.

Last week, Frank Magazine published the recordings and transcripts of three 911 calls from the night the shootings started in Portapique. One of the calls was from a 12-year-old boy

whose parents were among the 22 victims.

[The reaction was swift and often critical of the magazine.](#)

Justice Minister Randy Delorey said he was looking into whether the leak and uploading of the calls violated privacy legislation or any other rules. A department spokesperson later said the government "is continuing to gather information and will consider all possible options."

The RCMP, whose actions — including when and how they alerted the public that the gunman was on the loose and disguised as an officer with a replica car — are the source of intense scrutiny.

They said they would be investigating the source of the recordings and "any related offences that may have occurred with respect to unauthorized release, possession and subsequent publishing."

A police spokesperson reiterated the statement when CBC requested clarification.

- [Documents show EMO office ready for hours to send alert](#)
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Iain MacKinnon, a Toronto-based lawyer and president of the Canadian Media Lawyers Association, said it is not the role of the RCMP to be looking into the leak, particularly given that it casts doubt on their own actions.

"It's somewhat outrageous for them to be pursuing this when really what should be under the microscope is the RCMP's accountability and whether they were negligent in the way they acted and if they acted appropriately and quickly enough based on the information that they had," he said in an interview.

"That should be the focus, not on who leaked it or whether it broke any laws."

Work on an inquiry into the mass killings is underway, with public proceedings scheduled to begin in late October.

An emergency alert was never issued about the gunman and when people questioned why the RCMP didn't send one, [officials initially said they were satisfied with communication via Twitter.](#) RCMP have stressed that they didn't have the full details about their suspect's uniform and replica car until about eight hours after 911 calls started coming in. It would be several hours after that that the force communicated the information via Twitter.

'Self-interested dealing'

In the recordings Frank Magazine published, callers identified the shooter as driving a police car and said he lived in the neighbourhood.

Lisa Taylor, an associate professor at Ryerson University's journalism program, said it may make sense for Delorey, as an elected official, to look into something if he's getting a large volume of requests from the public.

But if he finds nothing, Taylor said, Delorey should make that clear given his public statements.

The province's Emergency 911 Act refers to the requirement for calls to remain confidential, but it says nothing about a media outlet publishing them should they be leaked. 911 calls often become public in courtroom settings.

As for the RCMP, Taylor said the force's statement amounts to "self-interested dealing." She sees it as a police force that's on the hot seat trying to deflect attention to somewhere else, in this case the outlet that published the recordings.

"The conflict here is so huge that I would count on a sixth grader being able to identify it."

MacKinnon said it is often a tricky balance when media outlets weigh privacy considerations with the public's right to know. It's almost always a judgment call, he said. Important factors to consider include whether the information adds to public discussion and overall public interest in an issue.

Balancing privacy with publishing

In the case of the mass shooting, MacKinnon said there is a persuasive argument it does.

Taylor said the potential harm to victims and their families outweighs the benefit of publishing confidential information more often than not, but not in this case.

"It's a rare case where we have both multiple deaths and what appears to be a clear and repeated failing of a public institution in the moment it exists to step up," she said.

Andrew Douglas, the editor of Frank Magazine, said he chose to publish the recordings in part because he didn't think the transcripts alone would convey the full effect of what was happening in those moments.

He would not have published the call from the young person had he not been so calm and composed while speaking with the dispatcher, said Douglas.

Outrage misplaced

But Douglas also said he thought that without publishing the recordings some people would question whether the magazine actually had them.

"I think it just had to be presented the way it was, just as a bomb exploding on the story, and you saw the reaction it got."

While the outrage was anticipated, Douglas said what's been directed at his publication is misplaced, including calls from people to boycott it and drive it out of business.

Taylor said she, too, believes that at least some of the anger aimed at releasing the recordings has to do with the fact it was Frank Magazine, and not a more mainstream outlet that posted them.

"I can't even imagine the trauma on top of trauma that Portapique survivors are dealing with because of this. I'm not going to say for a minute that it's not harmful, but their pain and their trauma is being measured against the public good and the fact-finding that we're engaging in here.

"And understanding where the RCMP fell down, I need to believe, will make other rural communities throughout Nova Scotia safer and perhaps have police in rural areas better able to respond to a madman like Gabriel Wortman next time around."

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