

Commission for Public Complaints Against the  
Royal Canadian Mounted Police



Commission des plaintes du public contre la  
Gendarmerie royale du Canada

Office of the Chair

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Ottawa, Ontario  
Canada K1P 0B3

Cabinet du Président

Service de sac 1722, succursale B  
Ottawa (Ontario)  
Canada K1P 0B3

MAR 27 2009

PROTECTED

File No.: PC-2008-1800

Mr. Rob Holmes  
President, BC Civil Liberties Association  
Suite 550 - 1188 West Georgia Street  
Vancouver, BC V6E 4A2

Dear Mr. Holmes:

Having considered the Commissioner's notice pursuant to subsection 45.46(2) of the *RCMP Act*, I hereby forward, in accordance with the provisions of subsection 45.46(3), the final report containing my findings and recommendations.

Yours truly,

  
Paul E. Kennedy

Encl.

Canada



**COMMISSION FOR PUBLIC COMPLAINTS AGAINST THE RCMP**

**CHAIR'S FINAL REPORT AFTER COMMISSIONER'S NOTICE**

*RCMP Act*  
**Subsection 45.46(3)**

Complainant:

British Columbia Civil Liberties Association

**MAR 27 2009**

File No.: PC-2008-1800

## CHAIR'S FINAL REPORT AFTER COMMISSIONER'S NOTICE

### The Complaint

In preparation for the Canada Day celebrations of 2008, the West Shore RCMP Detachment in British Columbia, working with the Victoria Police Department (VPD), other police agencies and B.C. Transit, developed an operational plan to respond to what had occurred on Canada Day in recent years. The objectives of the plan were to respond in a proactive way to what had become a civic event mired in excessive liquor consumption and vandalism on the part of some attendees. Ms. Zelda Sun complained that she had been searched by West Shore RCMP members on July 1, 2008 without the requisite grounds to do so.

On July 8, 2008, the British Columbia Civil Liberties Association (BCCLA) lodged a complaint with both the Commission and with the Office of the Police Complaint Commissioner of British Columbia (OPCC) regarding the legality of the searches and seizures conducted by the RCMP members. In its complaint the BCCLA indicated that "police forces in Canada do not have the legal authority to initiate random or mandatory searches such as those that occurred in Victoria," and that "police forces in Canada cannot seize property without legal authority. While alcohol cannot be consumed in a public place, there is no law prohibiting people from carrying closed containers of alcohol."

### The Commission's Public Interest Investigation Report

Upon examining the complaint, I considered that due to the public policy issues involved it was advisable in the public interest to have the Commission conduct a "public interest investigation" into the matter pursuant to subsection 45.43(1) of the *RCMP Act*. This meant that the Commission would investigate the complaint in the first instance instead of having the RCMP conduct an investigation on its behalf.

Following exchanges with the OPCC and the Victoria Police Board (Board), it was decided that given the need for consistency in the reviews of the RCMP and the VPD and any recommendations resulting therefrom, a harmonized approach (i.e. between the Commission, the OPCC and the Board), rather than a disjointed one, would be most beneficial.

It was also agreed that the harmonized approach, which recognized the Commission as a "public body" pursuant to section 63.1 of the *B.C. Police Act*, would allow me to provide the summary of the facts and an opinion regarding the legality of the actions of the VPD to the Board for its consideration and any further action that it may deem appropriate.

On July 31, 2008 the Board accepted the Commission's offer to conduct an investigation into the policy or service complaint investigation lodged by the BCCLA pursuant to section 63.1 of the *B.C. Police Act*. A separate investigation report was provided to the Board.

- 2 -

On January 23, 2009, I provided a copy of my Public Interest Investigation Report (Schedule 1) to the Commissioner and the Minister, in which I found the following:

1. The lack of note taking by members of the West Shore RCMP Detachment is inconsistent with RCMP policy.
2. Ms. Sun did not consent to having her bag searched by RCMP members.
3. There is a strong possibility that those whose bags were searched by RCMP members did not give genuine consent to having their bags searched.
4. The RCMP members did not have grounds, under the *Liquor Control and Licensing Act*, to search Ms. Sun's bag.
5. The *British Columbia Transit Act* and *Transit Conduct and Safety Regulation* do not authorize the searches of passengers' bags conducted at the bus stops, such as the search of Ms. Sun, either at the outset or at the established checkpoints where transit drivers stopped because they felt they needed assistance.
6. The RCMP Operational Plan and the VPD Operations Plan, while designed to achieve the objective of a safe civic celebration, appear to have been considerably broader in scope than Charter or common law considerations permit, and did not minimally impair the constitutional right to be secure against unreasonable search or seizure.

With respect to my first finding, I recommended that, consistent with policy, RCMP members take contemporaneous notes and document their actions thoroughly. In light of my other findings, I recommended that until such time as the required legislative bases are put in place, the RCMP's participation in preventative and early interdiction liquor strategies be limited to police presence, and searches only be conducted when the RCMP members have the requisite grounds under the applicable legal authority.

#### **The Commissioner's Notice**

Pursuant to subsection 45.46(2) of the *RCMP Act*, the Commissioner is required to provide written notification of any further action that has been or will be taken in light of the findings and recommendations contained in my Public Interest Investigation Report.

On March 27, 2009, the Commission received the Commissioner's Notice (Schedule 2). I am pleased to report that the Commissioner agreed with my findings and recommendations.

### The Commission's Findings and Recommendations

#### FINDINGS

1. The lack of note taking by members of the West Shore RCMP Detachment is inconsistent with RCMP policy.
2. Ms. Sun did not consent to having her bag searched by RCMP members.
3. There is a strong possibility that those whose bags were searched by RCMP members did not give genuine consent to having their bags searched.
4. The RCMP members did not have grounds, under the *Liquor Control and Licensing Act*, to search Ms. Sun's bag.
5. The *British Columbia Transit Act* and *Transit Conduct and Safety Regulation* do not authorize the searches of passengers' bags conducted at the bus stops, such as the search of Ms. Sun, either at the outset or at the established checkpoints where transit drivers stopped because they felt they needed assistance.
6. The RCMP Operational Plan and the VPD Operations Plan, while designed to achieve the objective of a safe civic celebration, appear to have been considerably broader in scope than Charter or common law considerations permit, and did not minimally impair the constitutional right to be secure against unreasonable search or seizure.

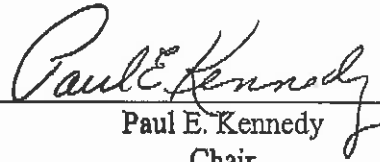
#### RECOMMENDATIONS

1. I recommend that in the future RCMP members properly document each case when liquor is seized and destroyed.
2. I recommend that until such time that the required legislative bases are put in place, the RCMP's participation in preventative and early interdiction liquor strategies in B.C. be limited to police presence and that searches only be conducted when the RCMP members have the requisite grounds under the applicable legal authority. Furthermore, I reiterate my recommendation that RCMP members take thorough and contemporaneous notes to document their actions.

- 4 -

Pursuant to subsection 45.46(3) of the *RCMP Act*, I respectfully submit my Final Report and, accordingly, the Commission's mandate in this matter is ended.

MAR 27 2009



Paul E. Kennedy  
Chair

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