



Feb. 26, 2009

CPC File Number: PC-2008-1800

British Columbia Civil Liberties Association
Suite 550 – 1188 West Georgia Street
Vancouver, BC V6E 4A2

**VICTORIA POLICE
DEPARTMENT**
850 Caledonia Ave
Victoria, British Columbia
Canada V8T 5J8

Dear Sir,

Re: British Columbia Civil Liberties Association (BCCLA) Complaint

On behalf of the Victoria Police Board, I am writing to you in response to your complaint dated July 8th, 2008, directed to the RCMP and the Victoria Police Department. As you know, because this Service or Policy Complaint concerned the actions of at least two police services, the decision was made to have a single investigation directed by Mr. Paul Kennedy, Chair of the Commission for Public Complaints Against the RCMP. This was done with the consent of the Office of the Police Complaint Commissioner. At the conclusion of the investigation, we were provided with a report dated January 22nd, 2009.

Mayor Dean Fortin, Chair
Victoria Police Board

At a meeting of the Victoria Police Board on Feb. 10, 2009, the Board was briefed on the recommendations of the report.

Mayor Barbara Desjardins,
Vice Chair,
Victoria Police Board

The Police Board would first like to acknowledge the obvious effort that went into the examination of the issues raised by the BCCLA, in particular, the legal opinion that was obtained with respect to the issue of consent searches. The Victoria Police Department takes the obligation to respect the civil rights of individuals very seriously, along with the unwavering commitment to public safety.

The management of large public events, such as Canada Day, poses obvious challenges, particularly for smaller agencies that are only able to call on a hundred officers to police a crowd that can range from forty to fifty thousand individuals. Many other communities in British Columbia have been forced to abandon community celebrations because alcohol-fuelled violence overwhelmed their scarce police resources.

The Police Board was pleased to see the report acknowledge that "*the Canada Day celebrations in Victoria have developed a history of excessive liquor consumption leading to assaults, injuries, vandalism, and damage.*" The Board recognizes that it would be difficult to overstate the difficulties faced by officers who are trying to maintain order in densely packed crowds where the noise level makes any communication almost impossible.

Liquor interdiction has been the most effective strategy police have been able to employ in reducing the potential for violence and property damage. The Victoria Police Department has confirmed that the 2008 Canada Day celebration was notable

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for lower than normal levels of violence and fewer problems associated to crowd dispersal. Nevertheless, we have been told that officers still found themselves confronting large groups of intoxicated young persons and disposing of large quantities of liquor.

Liquor seizures by police during the Canada Day event have attracted some media attention during recent years. The Victoria Police Department's Operational Plan for 2008 recognized the controversy that had been generated as a result of these seizures, and the Plan explicitly restated the powers of search permitted by the Liquor Control and Licensing Act. The Plan specifically included a direction that adults with unopened liquor were to be allowed to proceed without seizure of the alcohol. The grounds for search were extensively canvassed in the pre-event briefing of members, with an emphasis on the proper exercise of discretion. The Operational Plan did not contemplate or advocate unreasonable searches or mandatory screening searches. The Plan did incorporate the concept of providing officers with multiple opportunities to observe persons who were making their way into the event venue, and thus develop grounds for search, where such grounds existed.

Although the Report concludes that *"it seems likely that there were no reasonable and probable grounds to believe the person was in possession of liquor in very many of the Victoria searches"*, it should be noted that this was a generalization drawn from the observations of only two complainants. While accepting that there may have been inappropriate searches conducted, it is important to contextualize the complaints received as involving two individuals in a crowd of more than thirty thousand people. It is also important to note that the Victoria Police Department did not receive a single claim for liquor that may have been seized or destroyed during the event.

Although the 2008 Operational Plan did not provide explicit direction on the issue of documenting liquor seizures, the practice was for police to tag and inventory all seizures that occurred in circumstances where such documentation could occur. During the height of the celebration, when crowd density in the Inner Harbour is at its peak, it is frequently impracticable for officers to remove persons and exhibits from the crowd to conduct such documentation. Officers who observe people openly drinking in the crowd are directed to seize the bottle or can and empty it out on the spot, and to deal with other liquor in the individual's possession in the same way. This is the only method that allows police to remain *in situ* and continue to provide the necessary presence to deter violence.

From the Interim Chief Constable's observations in the centre of the crowd that gathered on the Victoria Causeway, the vast majority of searches he observed were generated not by consent of the individuals involved, but rather were the result of officers' observations providing clear grounds for search. He explained to the Board that the Transit searches, which also attracted criticism, occurred only when a bus driver was experiencing liquor-related issues on their bus that required police intervention to protect the safety of the driver and the passengers. He acknowledged that if individuals who were not displaying inappropriate behaviours or showing evidence of intoxication were told that a search was a necessary precondition to them being allowed to re-board their bus, that this action was clearly inappropriate and

unlawful. He confirmed to the Board that future operational plans and briefings would explicitly address this issue.

Having considered the circumstances of the complaint, the Police Board feels that it is appropriate to recommend the following to the Victoria Police Department:

1. To incorporate the principles identified in the legal opinion relating to consensual search in the report dated January 22, 2009 in the 2009 Operational Plan for the Canada Celebration in Victoria
2. Revise the 2009 Operational Plan and the accompanying verbal briefing as necessary to ensure officers exercise their powers of search in a lawful and justified manner.

Sincerely,



Mayor Dean Fortin, Chair
Victoria Police Board

c. Kevin Brosseau, Senior Director, Operations, Commission for Public Complaints
Against the Royal Canadian Mounted Police

Mr. Bruce Brown, British Columbia Deputy Police Complaint Commissioner

Chief Jamie Graham, Victoria Police Department

Victoria Police Board