



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

July 4, 2008

File No.: PC-2005-0658

CHAIR'S FINAL REPORT AFTER COMMISSIONER'S NOTICE

The Complaint

In May 2004, RCMP members from "E" Division were involved in an exchange program in which Texas State Troopers accompanied them during their policing duties. In one instance a motorist was pulled over by a Trooper while the supervising RCMP member finished dealing with another driver. The contact resulted in the member asking the motorist if he would consent to a search of his vehicle. The motorist declined and departed the scene.

Both the member and Trooper were suspicious of the motorist and the Trooper took it upon himself to alert a fellow Trooper, who was working under the supervision of another member, that he felt the motorist may have been involved in illegal activity. This was conveyed to the second member who pursued the motorist and pulled him over a second time a short distance down the highway. This member also found the motorist's behaviour to be suspicious and commenced an impaired driving investigation which resulted in his determination that the motorist was showing signs consistent with the recent use of marijuana. At this time the motorist agreed to a search of his vehicle. The search did not result in the location of any contraband and the driver was permitted to leave the scene.

On March 23, 2005, Mr. Russell, as President of and on behalf of the British Columbia Civil Liberties Association, filed a complaint with the Commission. He alleged that unknown RCMP members permitted direct policing by Texas State Troopers, illegally detained the motorist and searched his vehicle and that a Drug Recognition Expert conducted an impaired driving investigation without grounds.

The RCMP Final Report

After examining the complaint, the RCMP provided Mr. Russell with a notice of direction dated April 25, 2005, which explained that, pursuant to paragraph 45.36(5)(c) of the *RCMP Act*, the RCMP had terminated its investigation as, "any further investigation is not necessary."

Mr. Gratl, then President of the British Columbia Civil Liberties Association, was not satisfied with the RCMP's decision to terminate the investigation into the complaint. On June 23, 2005, he requested a review by the Commission.

By letter dated August 16, 2005, the RCMP acknowledged having terminated the investigation but stated, "[a] file review and further research into your allegations has been conducted and I am now in a position to comment on your concerns." The correspondence was in the form of a letter of disposition which found each of the allegations to be unsupported.

The Commission's Review and Interim Report

The Commission received the original relevant material package on September 8, 2005. On April 10, 2006, the Commission requested additional information, which the RCMP did not consider relevant to the investigation. Eventually in August 2006 the RCMP provided the documentation.

On December 29, 2006, I provided a copy of my Interim Report (**Schedule 1**) to the Commissioner and the Minister. I found that the RCMP should not have terminated the investigation into the complaint and that the evidence supported the allegations raised in the complaint:

1. In contravention of Force policy, the RCMP permitted direct policing by Texas State Troopers; and
2. That a member purporting to be a Drug Recognition Expert conducted an impaired driving investigation without grounds, unlawfully detained the motorist and unlawfully searched his vehicle.

I made five recommendations to redress the problems identified in the report, with the focus being to ensure institutional compliance with Canadian law whenever the RCMP works with out-of-jurisdiction peace officers and to educate future participants in such programs as to their rights and obligations.

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 Interim Report.

On July 3, 2008, I received the Commissioner's Notice (**Schedule 2**). The Commissioner agreed with my findings and recommendations except for a portion of my second recommendation (see below) where I had called for a copy of this report to be disseminated to each of the members and observers involved in future exchanges between the RCMP and other police agencies that do not have policing authority in Canada. He stated that it would not be practical to provide a copy of the report to all members and observers engaged in such future exchanges.

After reviewing my recommendations as a whole and the Commissioner's rationale for not implementing this one specific part, I am satisfied that even with this departure from the recommendations contained in the Interim Report they will be sufficient to ensure institutional compliance with Canadian law whenever the RCMP works with out-of-jurisdiction peace officers. In addition, my recommendations will serve to educate future participants in such programs as to their rights and obligations. I also note that the Commissioner has undertaken to direct the implementation of the balance of my recommendations. Accordingly, I have reframed the recommendations below by deleting reference to the dissemination of this report.

The Commission's Recommendations

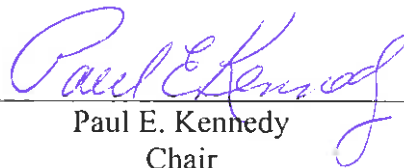
1. I recommend that a program review of Operation Pipeline be initiated to assess whether policing techniques shared and learned during these exchanges are fully compliant with Canadian law and the *Charter of Rights and Freedoms*.
2. I recommend that in future operations, in which exchanges occur between the RCMP and police agencies that do not have policing authority in Canada, the participants should be educated as to their respective rights and duties.
3. I recommend that the RCMP consider modifying its practice such that foreign police officers are formally provided policing status where they will be exercising policing powers in Canada.
4. I recommend that the author of the letter of disposition be given operational guidance with respect to the appropriate use of subsection 45.36(5) of the *RCMP Act*.
5. I recommend that the members involved in this incident and the author of the letter of disposition be provided with a copy of this report.

Comment

I believe that I must make comment as to the delay in receiving the Commissioner's Notice. The delay was in excess of eighteen months for a file in which the Commissioner was in almost complete agreement. Furthermore, the Commissioner's Notice provided no explanation as to this delay.

Delays of this nature negatively impact both the effectiveness of any remedial measures and the perception of the complainant(s), member(s) and the public. The Commission has raised this issue in a number of recent files, although none with a delay of this length. I now understand that the RCMP has dedicated new resources to its Professional Standards Unit which should assist in improving this situation. The Commission will continue to monitor RCMP performance in this area.

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.


Paul E. Kennedy
Chair

Commission for Public Complaints Against the RCMP
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SCHEDULE 1

COMMISSION FOR PUBLIC COMPLAINTS AGAINST THE RCMP

CHAIR'S INTERIM REPORT

RCMP Act
Paragraph 45.42(3)(a)

Complainant:

Mr. John Russell
c/o the British Columbia Civil Liberties
Association

December 29, 2006

File No.: PC-2005-0658

Canada

CHAIR'S INTERIM REPORT

OVERVIEW

In May 2004, the RCMP members from "E" Division were involved in an exchange program in which Texas State Troopers accompanied them during their policing duties. In one instance a motorist was pulled over by a Trooper while the supervising RCMP member finished dealing with another driver. The contact resulted in the member asking the motorist if he would consent to a search of his vehicle. The motorist declined and departed the scene.

Both the member and Trooper were suspicious of the motorist and the Trooper took it upon himself to alert a fellow Trooper, who was working under the supervision of another member, that he felt the motorist may have been involved in illegal activity. This was conveyed to the second member who pursued the motorist and pulled him over a second time a short distance down the highway. This member also found the motorist's behaviour to be suspicious and commenced an impaired driving investigation which resulted in his determination that the motorist was showing signs consistent with the recent use of marijuana. At this time the motorist agreed to a search of his vehicle. The search did not result in the location of any contraband and the driver was permitted to leave the scene.

On March 23, 2005, Mr. Russell, as President of and on behalf of the British Columbia Civil Liberties Association, filed a complaint with the Commission (**Appendix A**). He alleged that unknown RCMP members permitted direct policing by Texas State Troopers, illegally detained the motorist and searched his vehicle and that a Drug Recognition Expert conducted an impaired driving investigation without grounds.

As required by the *RCMP Act*, the complaint was forwarded to the RCMP for investigation. After examining the complaint, the RCMP provided Mr. Russell with a notice of direction dated April 25, 2005 (**Appendix B**), which explained that, pursuant to paragraph 45.36(5)(c) of the *RCMP Act*, the RCMP had terminated its investigation as, "any further investigation is not necessary."

Mr. Gratl, then President of the British Columbia Civil Liberties Association, was not satisfied with the RCMP's decision to terminate the investigation into the complaint. On June 23, 2005, he requested a review by the Commission.

By letter dated August 16, 2005 (**Appendix C**), the RCMP acknowledged having terminated the investigation but stated, "[a] file review and further research into your allegations has been conducted and I am now in a position to comment on your concerns." The correspondence was in the form of a letter of disposition which found each of the allegations to be unsupported.

For the reasons outlined below, the evidence leads me to conclude that the RCMP's decision to terminate its investigation was not reasonable. The relevant material was, however, sufficient to permit a review of the RCMP's second disposition of the allegations¹ and I conclude that RCMP

¹ Communications with Mr. Gratl, current President of the British Columbia Civil Liberties Association, confirmed that a review was requested with respect to both RCMP dispositions.

members improperly permitted Texas State Troopers to engage in direct policing activities; that an RCMP member conducted an unlawful detention and search of a motorist; and that a member purporting to be a Drug Recognition Expert conducted an impaired driving investigation without grounds.

RCMP'S DECISION TO TERMINATE OR NOT COMMENCE A PUBLIC COMPLAINT INVESTIGATION

It is important to note that, in cases where the RCMP has terminated or not commenced a public complaint investigation, it is, first and foremost, incumbent upon the Commission to assess the reasonableness of that decision. If the Commission finds that the direction was reasonable, there will be no finding with respect to any allegation made in the complaint.

The RCMP terminated its investigation into this matter under paragraph 45.36(5)(c) of the *RCMP Act*. This section states that the Commissioner may direct that no investigation into a public complaint need be commenced or that a preliminary investigation may be terminated if, "having regard to all the circumstances, investigation or further investigation is not necessary or reasonably practicable." The RCMP indicated that no further investigation was necessary because the motorist involved in the incident had already complained and was satisfied with the resolution.

I disagree with this approach for two reasons. First, Mr. Russell's third allegation dealing with the Drug Recognition Expert was not addressed in the RCMP's disposition of the first complaint. It amounted to a separate issue to which the RCMP's rationale for terminating the investigation did not apply and, accordingly, a disposition of that issue should have been made.

Second, the power exercised by the RCMP was to terminate an investigation. Respectfully, I find that this was an erroneous use of section 45.36 since all of the investigative work needed to dispose of Mr. Russell's complaint had been completed during the public complaint investigation into the motorist's complaint. Indeed, that investigative material was provided as part of the relevant material in this, Mr. Russell's, file and was sufficient to allow for a review of his complaint. In effect, the RCMP's utilization of paragraph 45.36(5)(c) did not terminate the investigation into Mr. Russell's complaint, which was already complete, as much as it terminated the complaint itself. No such power exists in the *RCMP Act* and, in so directing, the RCMP exceeded its authority.²

FINDING: I find that it was not reasonable for the RCMP to terminate the public complaint investigation pursuant to paragraph 45.36(5)(c) of the <i>RCMP Act</i>.
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COMMISSION'S REVIEW OF THE COMPLAINT

My finding is based on a careful examination of the following materials: Mr. Russell's complaint; the RCMP's notice of direction and subsequent letter of disposition; the witness

² The Commissioner has clearly indicated that, where a public investigation is complete or little else needs to be done to conclude the investigation, it is not reasonable to terminate that investigation. See Commissioner's Notice PC-2004-2188.

statements of the motorist, RCMP members and Texas State Troopers; the public complaint investigation into the motorist's original complaint and the associated letters of disposition; applicable legislation, case law and RCMP policy; as well as other relevant material.

It is important to note that the Commission for Public Complaints Against the RCMP is an agency of the federal government, distinct and independent from the RCMP. When investigating and reviewing a complaint, the Commission does not act as an advocate either for the complainant or for RCMP members. Rather, its role is to inquire into complaints independently and to reach conclusions after an objective examination of the available information.

PRELIMINARY FACTS

In May 2004, RCMP members were involved in Operation Pipeline/Convoy/Jetway, an exchange program involving Texas State Troopers in which "police officers shared 'Best Practises' in the areas of training, detection and apprehension methods of criminals who use highways to move illegal contraband and drugs."³ On May 11, 2004, members were conducting roadside spot checks of vehicles near Hope, British Columbia, as part of the operation.

On this date a motorist approached the check zone and was pulled over by an individual in plain clothes and wearing a bulletproof vest and a high visibility jacket (Trooper 1). The motorist was asked to wait until a member, the "E" Division Operation Pipeline Coordinator (Member 1), could attend. After a brief period, Member 1 approached and requested the motorist's licence and vehicle registration. Member 1 questioned the motorist as to his residence and determined that the residence was inaccurately reflected on the paperwork. The motorist disputed this as the documents recorded the address of his summer residence. Member 1 issued a notice and order to change the address, which he provided to the motorist.

He prepared the document in his police cruiser at which time he conferred with Trooper 1, who also believed the motorist to be acting suspiciously. Member 1 stated that he found the motorist to be argumentative and under some stress and to have shaky hands and make minimal eye contact. Thus he decided to ask further questions. Upon questioning, he felt that the motorist's story that he was going to look at property in an area he did not know and from a real estate agent whose name he could not remember was highly suspect. He also noted that the motorist showed him a hand drawn map. This map was included in the relevant material and contained a name that the motorist purported to be that of the real estate agent. Member 1 stated that the hand-drawn map was similar to those in the possession of many couriers.⁴

The result of Member 1's suspicions was that he advised the motorist that there had been difficulties with people transporting contraband on provincial highways. He advised the motorist that he was free to go but asked if he would consent to a search of his vehicle. The motorist declined to submit to a search, was advised that he was free to go and departed.

³ Media Availability: Texas Troopers visit BC RCMP for cross border training exchange, *RCMP Media Relations Website*, May 14, 2004.

⁴ Presumably, this means drug couriers.

Trooper 1 then approached Trooper 2, who was working with Member 2, an Operation Pipeline Instructor, and advised him of his concerns that the last vehicle through may have been involved in criminal activity. This information was then relayed to Member 2 and both Member 2 and Trooper 2 pursued the motorist and pulled him over a second time.

After a brief discussion, Member 2 commenced an impaired driving investigation and found that the motorist showed symptoms “consistent with someone under the influence of cannabis [...]” Following this, Member 2 requested a “consent search” of the vehicle and the motorist agreed. The motorist was monitored by Trooper 2 at the front of the vehicle while the search was conducted. The search was completed and yielded nothing. The motorist was then advised that he was free to depart and he left the scene.

FIRST ALLEGATION: RCMP members permitted direct policing by Texas State Troopers.

The RCMP’s response to this allegation was succinct and is reproduced below.

The RCMP did not permit Direct Policing by Texas State Troopers. The Troopers were **acting in a civilian ride-along capacity, taking instruction from the RCMP**, and were asked to work in a traffic control function. The Troopers have more than the requisite training and experience for this function. The exchange of personnel between domestic and foreign forces is commonplace and is not an irregularity in RCMP procedure. [emphasis added]

Troopers were involved in both stops of the motorist in question. In the first instance, Trooper 1 signalled the motorist to pull over and directed him to remain until Member 1 arrived. According to the motorist, the Trooper requested his licence and registration, which the motorist refused to provide as he took issue with providing the documentation to an American citizen who acknowledged that he was not a police officer but was working with the RCMP. Trooper 1 stated that his contact with the motorist was limited to pulling him over at the request of Member 1 and asking the motorist to remain in his seat until Member 1 arrived.⁵ Member 1 stated that Trooper 1 was under his supervision at all times and confirmed that he had requested Trooper 1 to pull over the vehicle in question.

Based upon the facts not in dispute, it is clear that Trooper 1 engaged in policing activities by arbitrarily detaining the motorist. I disagree with the letter of disposition’s characterization of the Trooper’s actions. This was not a situation such as approaching a construction site where a labourer might signal traffic to stop. The drivers would be free to turn their vehicles around and depart in that situation. In this case, based on the Trooper’s indicating that he was working with the RCMP, his actions in pulling the vehicle over and his request that the driver remain in his seat, a reasonable person would perceive that he was detained. In fact, I have no doubt that if he had not heeded the Trooper’s request and tried to proceed or turn around, he would have been pursued and pulled over.

⁵ Trooper 1’s statement was equivocal regarding whether or not he requested the motorist’s paperwork and no clarification was sought from him or any of the other witnesses to the road checks that day. Thus there is insufficient information to make a determination on this issue.

During the second stop the motorist consented to a search of his vehicle. Trooper 2 positioned himself at the front of the vehicle with the motorist. The motorist stated in his complaint about the incident,

I was directed by the Texas State Trooper to stand off the roadway and physically escorted to the front of my vehicle by him while RCMP #2 began what was an extensive vehicle search. On several occasions I asked if I could watch RCMP #2 search my trunk, to which the Texas State Trooper stated I could not “for reasons of officer safety”.

[...]

I asked if I could remove my son from the vehicle and was advised I could not. I observed as my son was crying as he/his child seat and immediate area was searched by RCMP #2. However, I was prevented from moving closer than the front of the vehicle [...].

Trooper 2’s statement was silent in this regard and merely advised that he spoke with the motorist at the front of the vehicle. Member 2 acknowledged that Trooper 2 stood at the front of the vehicle with the motorist and indicated that, if the motorist had any concerns, they were not conveyed to him.

I am satisfied from the evidence that Trooper 2 detained the motorist by restricting his movements during the search of his vehicle.

I next turn my attention to the appropriateness of these actions in terms of RCMP policy. On the date of the incident, RCMP policy dealing with the Police Familiarization Program provided that “[p]articipants will not carry firearms, operate police vehicles, conduct investigations, initiate enforcement actions, or be used to supplement police personnel.”⁶ More recent versions of the policy have clarified this section by outlining procedures for the Ride-Along Program, “[a] participant in the Ride-Along Program **will not take part in operational policing, e.g. traffic enforcement, service of legal documents or investigations.**”⁷ [emphasis added]

The relevant material also included what appears to be an undated divisional policy which reads,

1.6.1. Pipeline, Convoy and Jetway member exchanges are permitted for training purposes only. Enforcement personnel from one agency, jurisdiction, province, or country may travel to another agency jurisdiction, province, or country, **to observe** other Pipeline, Convoy and Jetway trained law enforcement personnel.

[...]

6.3. Personnel involved in these exchanges who are from outside their own jurisdiction **have observer status only. They cannot be involved in any enforcement activities.** [emphasis added]

I therefore find that Texas State Troopers were engaged in direct policing contrary to RCMP policy. I note that in both instances the Troopers were carrying out their policing function under the supervision and/or direction of the members and that the members were experienced participants of Operation Pipeline, one being the Operation Pipeline Divisional Coordinator and the other an Operation Pipeline Instructor.

⁶ RCMP Operational Manual 1.1.1.b.

⁷ RCMP Operational Manual Rewrite 38.5.2.1.3.

The fact that the letter of disposition found no problem with the conduct may point to a broader lack of appreciation as to the fact that stopping a motor vehicle amounts to a detention and loss of a person's liberty. The case law provided by the RCMP in the relevant material to justify these arbitrary detentions also speaks to the quality of these acts in relation to the *Charter of Rights and Freedoms*. Discounting this event as a routine "traffic control function" shows a lack of appreciation for the powers being exercised and the comments in the letter of disposition create the perception that this mindset may have been in play both at the scene and upon subsequent review.

Given the rapid increase of integrated policing, it seems likely that exchanges of this type will become more commonplace in the future. If the RCMP seeks to permit policing activities by non-jurisdictional exchange participants, then it should formalize their status, such as by seeking Supernumerary Special Constable status.

FINDING: I find that, in contravention of Force policy, the RCMP permitted direct policing by Texas State Troopers.

SECOND ALLEGATION: RCMP members illegally detained a motorist and searched his vehicle.

The first stop fell within protocol established for roadside checks of motorists and endorsed by the Supreme Court of Canada,⁸ as Member 1 stated that the spot checks were to check for "impaired drivers, equipment problems and driver's licences." The fact that there was a secondary purpose insofar as members were focused upon identifying unlawful activity, specifically the transport of contraband, did not negate the lawfulness of the stop.

On this occasion, Member 1 sought the consent of the motorist to conduct a search of his vehicle. The motorist refused and Member 1 completed a Consent to Search Form, which specified that the member was looking for marijuana, cocaine, heroin, stolen property and/or drugs. On the bottom he recorded the lack of consent by writing "refused."

I find this portion of the intervention to be in accordance with the law and RCMP policy.

However, the second stop was not in accordance with the principles enunciated in *Hufsky* and *Ladouceur*. Member 2 acknowledged that he targeted the vehicle based on suspicions provided to him second hand. He indicated that he was unaware that the vehicle had been previously stopped, although he acknowledged that he was advised of this immediately upon stopping the motorist. Given that he was informed that Member 1 had stopped the vehicle for some twenty minutes and provided an order to change the motorist's address, it is difficult to explain how the member, even if he had laboured under the mistaken belief that he had requisite grounds to stop the vehicle, did not recognise that he was on shaky ground to continue the detention. I note that in response to the motorist's complaint the RCMP found that the search was not authorized by law and provided Member 2 with operational guidance in this regard.

⁸ See *R. v. Hufsky*, [1988] 1 S.C.R. 621 and *R. v. Ladouceur*, [1990] 1 S.C.R. 1257.

Trooper 2 indicated that he heard Member 2 request permission to search the vehicle and state that the search could be terminated at any time. The motorist indicated that he gave consent and may have been told that the search could be terminated. I note that unlike the other witnesses he was challenged repeatedly on all critical parts of his statement. This resulted in clarification of certain points and some contradiction; however, the root cause of his concern was not addressed in the letter of disposition. This was the issue of the voluntariness of the consent.

According to the motorist, he originally said he thought that the second stop was to return the identification or documents inadvertently kept by Member 1. However, in short order he realized that the second stop was also an enforcement stop. He indicated that almost immediately he was being asked to exit the vehicle because Member 2, who identified himself as a Drug Recognition Expert,⁹ had concerns about his sobriety. Member 2 recalled the motorist denying the consumption of any alcohol. It should be noted that Member 2 did not indicate that the signs of nervousness he perceived were indicators of impairment and he provided no observations to support his belief that the motorist might have been under the influence of drugs or alcohol.¹⁰ Thus, I find that there were no grounds to initiate such an investigation.

When asked to perform sobriety tests, the motorist complied and according to Member 2 failed one of the two tests, as he observed “significant fluttering of [the motorist’s] eyelids.” Member 2 recalled, “[...] at the conclusion of those tests, I advised him, I did not insinuate, but I, I indicated to him that based on my observations, that ah, his symptoms were consistent with someone under the influence of cannabis [...].”

It was at this time that the motorist advised Member 2 that he was a police officer. Both he and Member 2 agreed that the motorist became extremely upset. The motorist indicated that he could not believe that all of this was happening with his two-and-a-half-year-old son in the backseat of the car and he advised Member 2 that he could search the vehicle. Member 2 stated,

Based on my observations, ah, I felt that I may ask for consent to search his vehicle [...] and I went through ah, Informed Consent, the full Informed Consent. I did not use the Consent To Search form, the R.C.M.P. form, but I went through the full Informed Consent ah, words to the effect that ah, you’re under no obligation to consent to a search of your vehicle, you can tell us to stop at any time, and the third part of that if you consent to a search of your vehicle, if we find anything it can be used as evidence against you.

These facts call into question the voluntariness of the consent. An undated briefing note by the public complaint investigator read,

It will be very difficult to show voluntary consent was given in the second search since the driver had already said no in the first stop. The fact [Member 2] also proceeded to investigate [the motorist] on his level of sobriety without any real indicators would also be taken into consideration. The sobriety test and subsequent failure of one of the test [*sic*] may be looked

⁹ The investigation did not seek to confirm this; however, the member alluded to taking courses in that field.

¹⁰ For example, there were no observations of driving abnormalities or the smell of alcohol or narcotics nor did the member refer to any physical indices that might normally be associated with impairment.

upon as a form of intimidation to provide the consent search especially when [Member 1] saw no signs of impairment on the first stop.

I agree with this analysis, in that a reasonable person might feel compelled to consent to a search under these circumstances. In this case, the relevant material contained commentary indicating that as the motorist was a police officer he should have understood the nature of his consent. I agree that his expertise played a factor in that he was able to ascertain from the outset that Member 2 was engaged in an unlawful stop and commenced an impaired driving investigation without any grounds. The motorist repeatedly referred to concerns about his son having to go through the ordeal of this detention. He stated his belief that a search was going to take place in any event given what was transpiring and he just gave up.

The motorist provided his subjective appreciation of events,

[...] I'm, search the car, go ahead, I'm, I'm done, you know, I'm, it's clear, I've given, he's got consent, you got, you win, you know pull me, on the car, give me the test, and that, tell me I failed, and I'm operation of a vehicle, he did win on that front...I will consent, I will admit fully that I gave 100% consent. Now that's an interesting method of gaining consent [...]
[...] illegal search absolutely and 100% and you can't gain back authority to search a vehicle once you've violated rights and gone past the consent [...] you can't keep pulling them over, you can't build up trump charges.

There are other indicators that call into question the voluntariness of the search. First, although Trooper 2 indicated that he was aware that the search was voluntary and could be stopped at any time, when the motorist expressed concerns about viewing the search of the trunk or removing his son from the car, the Trooper prevented him from so doing. While there is no indication that Member 2 was aware of this state of affairs, he was responsible for the actions of the Trooper.

Second and more importantly was the failure of Member 2 to properly record the incident in his notes or utilize the Consent to Search Form used by Member 1 at the first stop. His notebook entry was limited to a dozen words ending with a reference to "full informed consent." I find this rudimentary note to fall far short of RCMP policy requirements.¹¹ It was incumbent upon the member to record sufficient detail to properly assess the interactions. With respect to the issue of voluntariness, this could have been achieved by completing the consent form.

In explaining why this was not done, Member 2 stated, "I do use the form and ah, on this occasion, although I had forms with me, I, I chose not to use it [...] I just felt that if I brought out a piece of paper in front of this individual given his combative state, that perhaps, or his deceptive state, **perhaps he would not ah, consent to ah, a search of his vehicle.** [emphasis added]

This comment is illustrative of the member's pre-eminent desire to engage in a search. In so doing, he again failed to adhere to RCMP policy:

¹¹ RCMP Operational Manual II.1.G.

- J.2.c While not required by law, a consent [...] obtained in writing and signed by the consenting person **may provide clear evidence of an informed and voluntary consent.**
- J.2.d. If a person consents to a search under conditions outlined in this subsection with or without a consent in writing, **be sure to record all the details of obtaining the consent and your subsequent actions.** [emphasis added]¹²

This lack of record keeping amounted to a critical failing on the member's part and deprived him of the corroborating narrative. Policy adherence is designed to enhance the clarity and detail of a member's recollection and, if contemporaneous, to support a member's credibility.

Lastly, after the search was completed the issue of the motorist's impairment was never raised. Even if the member was using his discretion not to lay criminal charges or issue a provincial suspension, it would seem only reasonable that the member would address the issue. His silence in this regard and the absence of a recorded rationale leads to the perception that the issue was an artifice designed to facilitate a search of the vehicle.

Under all of the circumstances, I find the member's actions to be unauthorized and likely to cause a reasonable person to be compelled to cooperate with the improper use of police powers.

FINDING: I find that Member 2 unlawfully detained the motorist and unlawfully searched his vehicle.

THIRD ALLEGATION: A Drug Recognition Expert conducted an impaired driving investigation without grounds.

In the previous allegation I found that Member 2 conducted an impaired driving investigation without grounds to do so. The RCMP had also identified the member's failing in this regard, but the public complaint investigator did not raise questions that would assist in determining the member's rationale. This investigative failure leaves a void in the record as to what motivated the member to commence the investigation. The very nature of the sobriety testing makes it difficult if not impossible for persons subjected thereto to comment on the test results and I accept Member 2's uncontroverted assertion that the motorist exhibited the symptomology described in the member's statement.

As regards the complainant's concern as to the use of Drug Recognition Experts, I am satisfied that the expert status has been recognized by the courts and thus is a valid investigative technique. Issues as to the definitiveness of findings may be dealt with by the court assessing the weight of the evidence adduced through such investigations.

FINDING: I find that a member purporting to be a Drug Recognition Expert conducted an impaired driving investigation without grounds.

The complainant suggests that the exchange program itself is the cause of the conduct issues raised in this report. Given the findings contained herein and the status of the members involved

¹² RCMP Operational Manual II.12.J.2.c and d.

in this case, one being the Operation Pipeline Divisional Coordinator and the other an Operation Pipeline Instructor and apparently a Drug recognition Expert, the RCMP may wish to conduct a review of the program to ensure compliance with Canadian legal strictures.

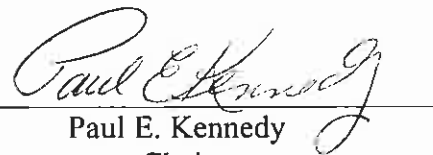
In this case, the impetus for the second stop came from the Texas State Troopers who were clearly not applying Canadian law. The motorist indicated that while Trooper 2 detained him at the front of his vehicle the Trooper advised him, "I was lucky as back in Texas I would have been searched top to bottom (strip searched?) at the first check and that 'you got a lot of liberties up here'." Trooper 2 acknowledged, "I explained to the driver the difference between his rights as a Canadian, and the more restrictive rights of a US citizen, when dealing with law enforcement." This exchange raises concerns about the appropriateness of the interchange techniques being learned during operations such as this.

RECOMMENDATIONS:

- 1. I recommend that a program review of Operation Pipeline be initiated to assess whether policing techniques shared and learned during these exchanges are fully compliant with Canadian law and the *Charter of Rights and Freedoms*.**
- 2. I recommend that in future operations, in which exchanges occur between the RCMP and police agencies that do not have policing authority in Canada, the participants should be educated as to their respective rights and duties and a copy of this report should be disseminated to each of the members and observers.**
- 3. I recommend that the RCMP consider modifying its practice such that foreign police officers are formally provided policing status where they will be exercising policing powers in Canada.**
- 4. I recommend that the author of the letter of disposition be given operational guidance with respect to the appropriate use of subsection 45.36(5) of the *RCMP Act*.**
- 5. I recommend that the members involved in this incident and the author of the letter of disposition be provided with a copy of this report.**

Having considered the complaint, I hereby submit my Interim Report in accordance with paragraph 45.42(3)(a) of the *RCMP Act*.

29 DEC 2006


Paul E. Kennedy
Chair

PROTECTED

COMPLAINT

File No. PC-2005-0658

SUBJECT: Mr. John Russell
c/o B.C. Civil Liberties Association
Suite 550 – 1188 West Georgia Street
Vancouver BC V6E 4A2

Telephone No: (604) 687-2929

On April 5, 2005, the Commission received the attached documentation from Mr. John Russell of the B.C. Civil Liberties Association, complaining that:

While Mr. Russell wishes to bring a complaint against the policies of the RCMP in relation to the employing of "Operation Pipeline Convoy" in the area of Hope, B.C., he is unable to do this due to the limitations of the *RCMP Act*. As a result, Mr. Russell wishes to complain about RCMP members attached to "Operation Pipeline Convoy." He says that this is an "operation meant to detect and interdict vehicular traffic transporting prohibited substances (drugs) focusing particularly on marijuana." He advises that he is further concerned that the operation utilizes the services of Texas State Troopers assisting the RCMP.

In the specific, Mr. Russell relates an incident involving a Mr. David Laing who was pulled over and questioned by a Texas State Trooper assisting the RCMP.

Mr. Russell complains that, "the RCMP officers in question had no legal authority to search Mr. Laing's vehicle, utilized inappropriate techniques to gain access to his vehicle and to test for impairment and inappropriately deployed the services of foreign law enforcement personnel."

Mr. Russell further believes that "Operation Pipeline Convoy" must be disbanded.

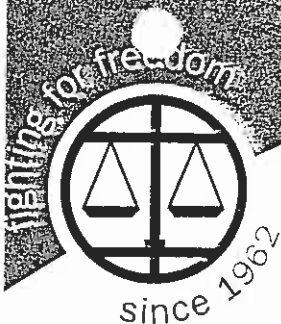
Mr. Russell's concerns are detailed in the six pages of documentation he has submitted.

The complainant wishes to lodge a complaint concerning the conduct in the performance of duties against unknown members of the Hope, B.C. RCMP Detachment for: 1) Oppressive conduct in that they used unnecessary and unjustified powers in dealing with Mr. Laing; 2) Improper vehicle search in that they made an improper search of Mr. Laing's vehicle and searched the vehicle without authorization and/or invitation; and 3) Policy in that they allowed members of the Texas State Troopers to become involved in law enforcement in Canada.

This complaint was received by Larry Smith, an Enquiries and Complaints Analyst for the Commission for Public Complaints Against the RCMP. The information contained in this complaint was provided to and received by the Commission pursuant to paragraph 45.35(1)(a) of the *RCMP Act*. This complaint is forwarded to the RCMP as the notification required to be given to the Commissioner pursuant to subsection 45.35(3) of the Act.

ATTACHED: 6 PAGES

bc civil liberties association



March 10, 2005

Shirley Heafey, Chair
Commission for Public Complaints Against the RCMP
PO Box 3423, Station D
Ottawa, Ontario
K1P 6L4

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Stephen Owen P.C., Q.C., M.P.
Svend Robinson
David Suzuki
Milton Wong

Dear Ms. Heafey:

RE: Complaint Regarding Operation Pipeline Convoy

I am writing to register a complaint regarding "Operation Pipeline Convoy". We understand that this operation is meant to detect and interdict vehicular traffic transporting prohibited substances (drugs) focusing particularly on marijuana. We understand that it operates in the Hope, B.C. area and is utilizing the services of Texas state troopers to assist in training RCMP officers and who have direct contact with drivers. Our knowledge of this operation came as a result of media enquiries and reports in relation to an incident involving David Laing who was pulled over and questioned by a Texas state trooper assisting the RCMP. A media report of the incident can be located at <http://www.cbc.ca/story/canada/national/2005/01/28/texas-bc050128.html>

In order to comply with the provisions of the *RCMP Act* in registering our complaint and to give your office jurisdiction with respect to our complaint, our complaint is formally against the two RCMP officers (specific identities unknown) who interacted with Mr. Laing. However, our concerns are broader and relate to various aspects of Operation Pipeline Convoy and any RCMP officers involved in the operation. We note that the *RCMP Act* is deficient with respect to being able to make policy complaints. While we can not be certain of the facts, we would suspect that there are likely other RCMP officers involved in Operation Pipeline Convoy who conduct themselves in much the same way. Thus fault, if there are findings that the conduct was inappropriate, is not so much a matter of misconduct in an isolated incident but is rather that the Operational requirements mandate misconduct by the officers. In these situations, the BCCLA prefers to bring policy complaints rather than seeking to ascribe misconduct to individual officers who are simply following superiors' directions. We are able to bring policy complaints

.../2

To: Shirley Heafey
From: John Russell
Date: March 10, 2005
Page: 2

under the *Police Act* in British Columbia. Regrettably, as noted, the *RCMP Act* does not permit this and thus we must complain specifically against the conduct of the two officers noted in the media story.

The substance of our concerns against the officers, and Operation Pipeline Convoy in general, are as follows.

1. Permitting Direct Policing by Texas State Troopers

It is inappropriate to permit foreign law enforcement officers to enforce Canadian domestic federal and provincial law. First, we query whether the Texas officers were designated as "peace officers" under the *Criminal Code* or given status to enforce the *Motor Vehicle Act*. Without such designation, we do not believe that they would have the legal authority to stop vehicles and question drivers and occupants. Second, even if there was some official status conveyed on the Texas officers, we believe that is simply inappropriate for such officers to be enforcing the law in Canada when they do not have the training and knowledge (thus competency) nor the accountability (via the *RCMP Act*) that regular RCMP officers have. Indeed, according to the media report, the Texas officer refused to identify himself, misconduct in and of itself. From the public's perspective, it creates difficulties with respect to reasonable expectations as to whether one is legally obliged to comply with directions from a law enforcement officer who is clearly from a foreign jurisdiction. Such confusion is inappropriate.

Thus, the two officers in question, and the operation generally, acted inappropriately in permitting the Texas state troopers to perform direct policing duties. Again, we would not be opposed to training and inobtrusive observation by foreign law enforcement officers but direct policing is not appropriate.

2. Illegality of Stops and Searches

Canadians are generally free to go about their business unhindered by the state. There are exceptions to this general freedom including the authority to stop motor vehicles for compliance with the laws governing motor vehicles (*R. v. Hufsky CITE*) and random check stops to assess for impairment pursuant to the *Criminal Code*.

It is illegal to stop vehicles if the underlying or dual purpose is to identify and interdict motor vehicles transporting illegal drugs without reasonable and probable grounds: *R. v. Ladouceur* (2002), 165 C.C.C. (3d) 321 (Sask. C.A.).

To: Shirley Heafey
From: John Russell
Date: March 10, 2005
Page: 3

Operation Pipeline Convoy's primary purpose is to interdict the transport of illegal drugs. Thus, it would be improper to seek to characterize and thus justify the RCMP officers' actions using the cover of the legality of motor vehicle regulation and impairment check stops. We attach a document entitled "Teleclip Tracking Report" which is a media report of RCMP officers working with Texas officers in Texas in 2004 to identify techniques used to search for "contraband" including drugs and money. We submit that the primary purpose for the stops in Operation Pipeline Convoy is to interdict vehicles transporting illegal drugs not for motor vehicle regulation or impairment, at best dual or secondary purposes.

3. Use of "Drug Recognition Experts" and Profiling to Assess for Impairment

The media reports of the incident involving Mr. Laing indicate that he was stopped twice by Texas/RCMP officers. In the first incident, Mr. Laing refused to provide consent to search his vehicle despite efforts to encourage him to do so. He was given a ticket for having not updated his address on his license and sent on his way. Almost immediately, Mr. Laing was again pulled over by a Texas/RCMP officers and accused of driving while impaired. Administering tests under a so-called "drug recognition expert" program, the officers concluded he was driving while impaired because his eyelashes were fluttering and his eyes flashing. Mr. Laing ultimately relented to a search, identified himself as a Vancouver Police Department officer and was let go after a search of the car, himself and his two year old son revealed no drugs. Mr. Laing apparently sued the RCMP and settled out of court.

The BCCLA has various concerns regarding the conduct of the officers here. First, the drug recognition program is subject to serious errors and flaws. We believe that there is a significant rate of error such that many individuals subject to such testing will be wrongly accused of impairment. Second, in this scenario, given that Mr. Laing was twice let go after accusations of impairment, the real reason for the detention of Mr. Laing and his car was to search the vehicle for the presence of illegal drugs, not because he was impaired. If the officers really believed he was impaired, they have the authority under the B.C. *Motor Vehicle Act* to suspend a driver's license for 24 hours. The fact they did not do so indicates that these allegations were simply a ruse to gain access to search Mr. Laing's car. Third, though we are not aware of all the facts in this case, it appears that the officers also relied on other dubious profiling information for narcotic traffickers (e.g. the use of sketched maps — in this case a drawing by Mr. Laing's son) to gain access to the car. Finally, the officers allegedly searched Mr. Laing's young son causing him considerable distress without the legal grounds to do so.

To: Shirley Heafey
From: John Russell
Date: March 10, 2005
Page: 4

In sum, the RCMP officers in question had no legal authority to search Mr. Laing's vehicle, utilized inappropriate techniques to gain access to his vehicle and to test for impairment and inappropriately deployed the services of foreign law enforcement personnel. To the extent that their conduct was inappropriate/unlawful, Operation Pipeline Convoy must also be disbanded.

Please contact me if you wish to discuss our complaint further.

Yours sincerely,

A handwritten signature in black ink, appearing to read "J. Russell", written in a cursive style.

John Russell,
President

cc: Bev Busson, Deputy Commissioner, 'E' Division
P. Darbyshire, Inspector, Officer in Charge, Internal Affairs, 'E' Division



Teleclip Tracking Report

PAGE 1

Teleclip, Inc.
3601 S. Congress Ave. Bldg B - #100
Austin, TX 78704
(512) 851-8800; Fax (512) 851-8507
www.teleclip.com

Wednesday, January 26, 2005

A Summary of Television News Headlines for Austin, TX

Prepared for: Paisley Woodward

Subject: RCMP Officers train with Texas DPS

Page 1

Date Range: 02/17/2004

DATE	STATION:	PROGRAM	STORY NO.	STORY TYPE	AVAILABLE	LENGTH
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Market: Austin

DATE	STATION:	PROGRAM	STORY NO.	STORY TYPE	CTR #	AVAILABLE	LENGTH
2/17/04	5:00 PM	KTBC 7 5PM - NEWS	2	L/LIVE/PKG	170052		01:23

MEMBERS OF THE ROYAL CANADIAN MOUNTIES ARE IN CENTRAL TEXAS TO TRAIN WITH DPS TROOPERS.

INTERVIEWED: CAPT. CHRIS MASHBURN, DPS
GERARD SOAOLOWSKI, RCMP

2/17/04	9:00 PM	KTBC 7 9PM - LATE NEWS	6	L/PKG	210608		02:04
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THE TEXAS DEPARTMENT OF PUBLIC SAFETY HOLDS AN IMPRESSIVE RECORD FOR CATCHING CRIMINALS WITH DRUGS ON STATE HIGHWAYS. NOW OUR NEIGHBORS NORTH OF THE BORDER ARE TRYING TO LEARN FROM THEM. FOX 7'S QUINNCY MCNEAL JOINS US. QUINNCY CANADA'S MOUNTED POLICE ARE IN CENTRAL TEXAS. FOR THE FIRST TIME EVER ON A TRAINING OPERATION THEY'RE HERE FOR THE NEXT FIVE DAYS - FOLLOWING STATE TROOPERS AROUND, OBSERVING HOW THEY HANDLE ROUTINE TRAFFIC STOPS AND LEARNING WHAT MAKES TROOPERS HERE SO GOOD AT WHAT THEY DO. <horses> THEY ARE CANADA'S FINEST THE NATION'S POLICE DEPARTMENT RESPONSIBLE FOR CONTROLLING CRIME ACROSS A COUNTRY MUCH BIGGER THAN OUR OWN BUT THIS WEEK THE SCARLET TUNIC - THE INTERNATIONAL SYMBOL OF THE ROYAL CANADIAN MOUNTED POLICE IS IN TEXAS. It's different law enforcement agencies getting together, sharing techniques learning from one another. MEMBERS OF THE CANADIAN POLICE ARE SPENDING A WEEK TRAVELING ALONGSIDE D-P-S TROOPERS FOR TWO REASONS ten 38! ONE THEY'RE STUDYING SOME OF THE TECHNIQUES THAT MAKE D-P-S ONE OF THE COUNTRY'S BEST AT HIGHWAY PATROL ACCORDING TO DPS STATS - THEY'VE SEIZED THE MOST MONEY AND DRUGS OF ANY STATE PATROL IN THE COUNTRY. It is very impressive, and we were really happy to come to Texas. We know the record that they have and it's very impressive. ALL WEEK LONG MOUNTED POLICE OFFICERS WILL BE EXAMINING D-P-S TRAFFIC STOPS - WATCHING HOW TROOPERS QUESTIONS DRIVERS AND OBSERVING PROTOCOL FOR SEARCHING FOR CONTRABAND. BECAUSE THE SAME TYPE OF CRIME WE SEE HERE IN TEXAS - THEY SEE IN CANADA. We hope we enjoy a great reputation in that respect and I think that we do. THE SECOND REASON THEY'RE HERE HAS MORE TO DO WITH THE WORLD WE LIVE IN AFTER 9/11 AND THE NEED FOR AGENCIES TO SHARE INFORMATION ON TECHNIQUES THEY USE TO CATCH CRIMINALS. A traveling criminal is going to display the same characteristics and is going to be facing the same challenges in Canada as in the U.S. That's what you should care about is a truly working relationship between two agencies and two countries that will make a huge amount of difference. AFTER THIS WEEK THIS RELATIONSHIP WILL CONTINUE DPS TROOPERS PLAN TO TRAVEL TO CANADA IN MAY AND THEY SAY THEY'RE LOOKING FORWARD TO SEEING THEIR CANADIAN COUNTERPARTS IN ACTION. CARRIE

INTERVIEWED: CAPT. CHRIS MASHBURN, DPS
GERARD SOAOLOWSKI, RCMP
SGT. RUITERS, RCMP

2/17/04	10:00 PM	KVUE 24 10PM - KVUE LATE NEWS	7	L/LIVE/PKG	221415		02:29
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THEY PROBABLY HAVE THE MOST RECOGNIZABLE UNIFORMS OF ANY LAW ENFORCEMENT AGENCY IN THE WORLD. WE'RE TALKING ABOUT THE ROYAL CANADIAN MOUNTED POLICE. AND THEY'RE HERE IN AUSTIN THIS WEEK GETTING TRAINING FROM THE DEPARTMENT OF PUBLIC SAFETY. KVUE'S SHELTON GREEN IS LIVE ON INTERSTATE-35, A PLACE WHERE THE MOUNTIES ARE GETTING LOTS OF TRAINING. SHELTON? AS YOU WELL KNOW I-35 CONNECTS CANADA AND TEXAS AND THE MOUNTIES WHO ARE HERE FOR TRAINING SAY THEY ALSO SEE A LOT OF THE SAME PROBLEMS WITH CRIME THAT WE DO HERE. Mile marker 268 The posted speed limit is sixty and I've tracked this tractor right here at 67, 68, all the way up to 69-miles an hour. IT'S CALLED AGGRESSIVE ENFORCEMENT. PULLING OVER A CAR OR TRUCK FOR THE SMALLEST INFRACTION. Reason we stopped your trailer is because we placed you on radar at 69, need to see your driver's license THE DPS LEADS THE NATION IN DRUG SEIZURES DURING TRAFFIC STOPS. THAT'S EXACTLY WHY LARRY OF THE ROYAL CANADIAN MOUNTED PATROL IS TAGGING ALONG WITH TROOPER ALAN WHATLEY. Even though there's a border between Canada and United States we have teh same problems that you have down here. LARRY PARSONS IS ONE OF A DOZEN ROYAL CANADIAN MOUNTIES IN AUSTIN GETTING SIMILAR TRAINING. THANKS TO HOLLYWOOD THIS IS HOW MOST AMERICANS PICTURE THE ROYAL CANADIAN MOUNTIES. IN REALITY AGENTS WEAR TIES AND SUITS AND RUN AROUND IN PATROL CARS RATHER THAN HORSES. THEY'RE ALSO FACING MODERN DAY CHALLENGES. One thing we do know is that a criminal displays the same characteristics of criminality that they do in Texas, British

Date Range: 02/17/2004

Columbia. They do in Quebec, California and Florida. The officers are working together mainly to see the techniques that we use here in the State or Texas but once again it is much like that they utilize there in Canada. OUT IN THE FIELD CANADIAN MOUNTIE LARRY PARSONS COMBS OVER A STOPPED TRACTOR TRAILER FOR ANY SIGNS OF ILLEGAL DRUGS. IT'S THIS SORT OF TRAINING THAT KEEPS HIGHWAYS SAFE BORDER TO BORDER. We know that criminals use motor vehicles to transport contraband whether it be illegal aliens, drugs, guns and it's associated to terrorism as well so we have a common interest to stop those type of people. THE ROYAL CANADIAN MOUNTIES ARE IN AUSTIN ALL WEEK. AND A SELECT GROUP OF DPS-TROOPERS WILL GET THEIR TURN TO GO TO CANADA TO SEE HOW THEY DO THINGS THERE THIS COMING MAY. ON I-35, SHELTON GREEN, KVUE NEWS.

Austin INTERVIEWED:	LARRY PARSONS, RCMP SGT. ROB RUITERS, RCMP CAPT. MASHBURN, DPS	STORIES: 3	RUNNING TIME: 0:05:56
TOTAL STORIES:		3	TOTAL RUNNING TIME FOR ALL STORIES: 0:05:56



Royal Canadian
Mounted Police

Gendarmerie royale
du Canada

APPENDIX B
ANNEXE

Security Classification/Designation
Classification/désignation sécuritaire

"E" Division Traffic Services
12992 - 76th Avenue
Surrey, BC V3W 2V6

Mr. John RUSSELL
C/O BC Civil Liberties Association
Suite #550 - 1188 West Georgia Street
Vancouver, BC V6E 4A2

Your File - Votre

Our File - Notre
190

Date

2005 April 25

Dear Mr. RUSSELL:

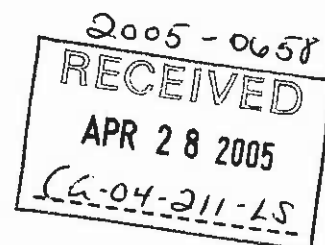
I have reviewed the information that you provided to the Commission for Public Complaints Against the RCMP regarding the incident involving Mr. David LAING and I see no new information that would warrant this incident to be investigated again.

The incident concerning Mr. LAING was investigated thoroughly and a determination has been made. The findings were accepted by Mr. LAING and signed off as being resolved to his satisfaction. Therefore pursuant to Section 45.36(5)(C) of the RCMP Act, I am directing that no further action or investigation be taken in relation to this allegation, as any further investigation is not necessary.

In accordance with Section 45.4 of the RCMP Act, please be advised that the action taken in response to your complaint has now been concluded. If you are not satisfied with the disposition of your complaint by the RCMP, you may request a review by the Commissioner of Public Complaints Against the RCMP at the following address:

Commission of Public Complaints Against the RCMP-GRC
Suite #102-7337 137th Street
Surrey, British Columbia
V3W 1A4
Phone 604-501-4080
Toll free 1-800-665-6878
Fax 604-501-4095

Canada



Yours truly,



Norm GAUMONT, Inspector
OIC "E" Division Traffic Services

/jj

cc: - Bev BUSSON, Deputy Commissioner - RCMP "E" Division
- Paul DARBYSHIRE, Insp. - RCMP "E" Division Internal Affairs Unit
- Brent HENDERSON, S/Sgt. - RCMP "E" Division Civil Litigation
- Mike SHAVER, Sgt. - RCMP Ottawa HQ - Public Complaints Unit
- Larry SMITH, Enquiries & Complaints Analyst - Public Complaints Commission



Royal Canadian
Mounted Police

Gendarmerie royale
du Canada

APPENDIX
ANNEXE

Security Classification/Designation
Classification/désignation sécuritaire

"E" Division Traffic Services
12992 - 76th Avenue
Surrey, BC
V3W 2V6

COPY

Your File - Votre référence

Our File - Notre référence

2005-190

Date

August 16, 2005

Mr. John RUSSELL
c/o BC Civil Liberties Association
Suite #550 - 1188 West Georgia Street
Vancouver, BC
V6E-4A2

Dear Mr. Russell:

Please disregard letter dated August 5th 2005 signed by S/SGT Jim Dallin as this letter was sent out prior to my review by error.

This letter is in reference to your correspondence to the Commission for Public Complaints against the RCMP (CPC) on June 21, 2005. This correspondence is in response to my letter to you following your complaint made to the CPC on March 10, 2005, concerning "Operation Pipeline Convoy".

A thorough review has been conducted into your allegations. An investigation into your concerns and allegations regarding "Operation Pipeline Convoy" was terminated on April 25, 2005, as the specifics were addressed with a previous complaint and further investigation was not necessary. A file review and further research into your allegations has been conducted and I am now in a position to comment on your concerns.

Background Information:

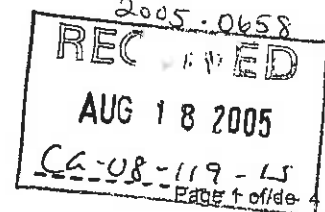
On March 10, 2005, you lodged a public complaint with the CPC alleging that the RCMP displayed Oppressive conduct in that they used unnecessary and unjustified powers in dealing with a member of the public: that an Improper vehicle search was made of a member of the public's vehicle without authorization and/or invitation: that the RCMP contravened Policy in that they allowed members of an out of country Police Force to become involved in Law Enforcement in Canada. This file was forwarded to the Officer in Charge of "E" Division Traffic Services for investigation. The subsequent letter of April 25, 2005 was not satisfactory and you wrote to the CPC a second letter outlining your concerns with the termination of the investigation.

Summary of Complaint:

On March 10, 2005 you complained to the Commission for Public Complaints against the RCMP and other unknown members of the Hope, British Columbia RCMP Detachment did permit Direct Policing by Texas State Troopers, Illegally stopping and searching vehicles, using "Drug Recognition Experts" and Profiling to Assess for Impairment.

Canada

RCMP GRC 2823 (2002-11) WPT



Findings:

First Allegation: Permitting Direct Policing by Texas State Troopers

The RCMP did not permit Direct Policing by Texas State Troopers. The Troopers were acting in a civilian ride-along capacity, taking instruction from the RCMP, and were asked to work in a traffic control function. The Troopers have more than the requisite training and experience for this function. The exchange of personnel between domestic and foreign police forces is commonplace and is not an irregularity in RCMP procedure.

I cannot support this allegation.

Second Allegation: Illegality of Stops and Searches

The authority to stop vehicles at the roadside for traffic safety issues is documented within Supreme Court of Canada case law, for example, HUFISKY (SCC 1988) and LADOUER (SCC 1990). The Supreme Court of Canada has held that random vehicle stops are reasonable to check for drivers licence, vehicle registration, insurance coverage, vehicle mechanics and driver sobriety.

Operation Pipeline Convoy involves training officers to detect people who are lying or trying to hide things from the police. The British Columbia Motor Vehicle Act Section 33(1) requires the production of license and liability card for inspection on demand of a peace officer. The police officers involved in this incident conducted a random traffic stop for vehicle registration and driver's license. In the course of the traffic stop the police officers had articulable cause to ask further questions of the driver of the vehicle. The driver consented to further questions and the police officer was satisfied with the responses. The driver was at liberty to depart and did so.

The concern for the RCMP in this incident was the subsequent stop and search made by a second police officer shortly after. A breakdown of communication between the RCMP officer's at scene led to the subsequent vehicle stop. While the RCMP has the authority to conduct roadside checks on drivers for road safety issues, there is no authority to target and stop/search a vehicle without the requisite grounds. The RCMP acknowledged that the second vehicle stop in the incident which you refer to, was not founded on the required grounds as set out by authorities. The police officer involved was provided operational guidance by an Officer in Charge, on the proper procedures and authorities that must be followed when identifying vehicles for road checks.

I cannot support your allegation.

Third Allegation: Use of "Drug Recognition Experts" and Profiling to Assess for Impairment

As you have addressed several sub issues within this allegation, they will be dealt with separately. The media reports of the incident you refer to are correct in that the vehicle was stopped twice. The reason for this has been addressed in allegation two, a breakdown in communication between the RCMP officers at the scene.

You submit that the drug recognition program is subject to serious errors and flaws, that there is a significant rate of error such that many individuals subject to such testing will be wrongly accused of impairment. Also that in this incident the vehicle driver was twice let go after accusations of impairment. The decision to question and administer road side sobriety tests, after a valid traffic stop, is a matter of judgement and discretion. When it is reasonable to do so, the police can begin an investigation based on the information presented at the time in question. It is the nature of judgement and discretion that different people acting reasonably will not act the same in similar circumstances. Peace officers have wide discretion and this should be utilized, as long as it is exercised reasonably and in good faith. Maintaining public safety, including road safety demands this.

The RCMP uses approved methods for training its members in "Drug Recognition" and Assessing for Impairment. The tests used in the incident you refer to included recognized tests for Eye tremors and the Rhomburg test. You also indicate that the police officers have the authority under the B.C. Motor Vehicle Act to suspend a driver's license for 24 hours and that after twice being questioned for impairment they let the driver carry on. The police officers used discretion based on the information available at the time.

Finally, you indicated that the officers allegedly searched a small child, causing the child considerable stress without the grounds to do so. As a result of the investigation into this public complaint, there is no evidence that the child was searched. The driver cooperated with this search and there is no evidence that the driver or the child were subjected to any undue hardship other than the search of the vehicle.

I cannot support your allegation.

Conclusion:

Please be advised that, pursuant to Section 45.4 of the RCMP Act, I am notifying you that the investigation into your complaint has now been concluded. If you are not satisfied with the manner in which your complaint has been addressed by the RCMP., you may request a review by the Commission for Public Complaints Against the RCMP by corresponding with them at the following address:

Commission for Public Complaints Against the RCMP
Western Region
Suite 102, 7337 - 137 Street
Surrey, B.C. V3W 1A4
Telephone: (604-501-4080 or Toll free 1-800-665-6878)

Yours truly,



Norm Gaumont, Inspector
Officer in Charge
OIC "E" Division Traffic Services

cc: Commission for Public Complaints Against the RCMP, File 3 PC-2004-2310

SCHEDULE 2

Royal Canadian Mounted Police
Commissioner



Gendarmerie royale du Canada
Commissaire

Guided by Integrity Honesty Professionalism Compassion Respect and Accountability

Les valeurs de la GRC reposent sur l'intégrité, l'honnêteté,
le professionnalisme, la compassion, le respect et la responsabilisation

JUN 12 2008

Protected "A"

Mr. Paul Kennedy
Chair
Commission for Public Complaints
Against the RCMP
P.O. Box 3423
Station "D"
Ottawa, Ontario
K1P 6L4

Dear Mr. Kennedy:

I acknowledge receipt of your interim report dated December 29, 2006, and materials relevant to the complaint of Mr. John Russell on behalf of the British Columbia Civil Liberties Association, file reference PC-2005-0658.

I have completed my review of the relevant material, as well as your findings and recommendations in this matter. This notice is provided pursuant to subsection 45.46(2) of the *Royal Canadian Mounted Police Act*.

I agree with all of your findings and all but one of your recommendations in this matter. Accordingly, I will direct that the author of the letter of disposition be given operational guidance with respect to the appropriate use of subsection 45.36(5) of the Act, and that all members involved in this incident, including the author of the letter of disposition, be provided with a copy of your report.

.../2

I will also direct that a review of Operation Pipeline Convoy be undertaken to consider the following:

To assess whether policing techniques shared and learned during these exchanges are fully compliant with Canadian law and the *Charter of Rights and Freedoms*;

That participants in all future operations, in which exchanges occur between the RCMP and other police agencies, are informed of their respective rights and duties; and,

That foreign police officers are formally provided policing status if they are to be exercising policing powers in Canada.

I do not believe it is practical to implement your recommendation that a copy of your report be disseminated to each of the members and observers of future operations. The lessons learned from this incident will be incorporated into the information provided to participants of future operations of this kind, as per your third recommendation.

I look forward to receiving your final report.

Yours sincerely,



William J.S. Elliott

5610

DOSSIER	20050658
TO A	S. Smith
INDEX	117858
FILE CHARGES TO DOSSIER CONSIGNÉ À	