



June 29, 2010

Chair Fortin and Board Members  
Victoria Police Board  
Victoria, BC

VIA FAX: (250) 384-1362

Dear Chair Fortin and Board:

**RE: Victoria Police Canada Day search policy**

I write to you as President of the B.C. Civil Liberties Association (“BCCLA”), Canada’s oldest and most active civil liberties organization. Our organization is deeply concerned with the continuing illegal search policy of the Victoria Police Department around major public events like Canada Day.

We understand through documents obtained by our office pursuant to a Freedom of Information request that the Victoria Police Department will be conducting randomized mass searches of transit patrons during this year’s Canada Day festivities. These documents suggest that Victoria police officers will demand that selected transit passengers must give consent to be searched before they are allowed to take transit on Canada Day. Officers are advised by VicPD policy to use broad and entirely subjective factors when determining when to make a search demand, including such meaningless subjective factors as “the past experience of the individual officer. . . with similar subjects in similar situations.” Any passenger that refuses to be searched will be denied access to transit and ejected from transit property.

While we respect and understand the concern of the police department that alcohol can create difficulties when policing, the Victoria Police Department is limited in what it may legitimately do while policing by search restrictions put in place by the *Charter of Rights and Freedoms*. Translink, like the Police Department, has been found to be subject to the *Charter* and these same, if not more onerous, search restrictions.

The currently proposed policy of the Victoria Police Department not only violates the *Charter*, but also violates the unambiguous report of the Commission for Public Complaints Against the RCMP (“CPC”), authored in partnership with the provincial Office of the Police Complaint Commissioner (“OPCC”), that holds that mass and random alcohol searches around events like Canada Day are unconstitutional. This report, endorsed by both bodies, states clearly that “The *British Columbia Transit Act* and *Transit Conduct and Safety Regulation* do not authorize the searches of passengers’ bags.”<sup>1</sup>

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<sup>1</sup> Available online at: <http://www.cpc-cpp.gc.ca/prr/rep/pii/victoriaIntR-eng.aspx>

The Chief of Police of Victoria has received a copy of this report, yet his department insists on finding ways to attempt to circumvent its clear findings that these searches are not permitted. Either the Chief Constable does not have sufficient managerial control over the officers directing and creating these policies, or he personally is flaunting the findings of the OPCC and CPC. Either way, the Victoria Police Board has a duty to act and ensure that the reputation of the Victoria Police Department is maintained as a law-abiding department that respects the oversight of the civilian OPCC.

The BCCLA insists that the Victoria Police Board act immediately to prevent these illegal searches from proceeding. Failure to act could expose the City of Victoria to class action litigation by all citizens subjected to these searches, or individual litigation by people affected by the searches. Further, constitutional litigation to test a failure of the Police Board and the Police Chief to act to prevent this illegal activity from taking place is not out of the question. Unfortunately, this issue is quickly escalating to become a very serious question about the willingness of the Victoria Police Department to accept the civilian oversight of the OPCC, as well as the rule of law, in governing its behaviour. Both of these issues are very serious and troubling to our Association. We look forward to hearing from you on this matter, and we hope you understand the urgency and seriousness of our request and the implications of this issue.

Yours truly,

A handwritten signature in black ink, appearing to read 'R. Holmes', with a long, sweeping flourish extending to the right.

Robert Holmes  
*President*

cc. Mayor and Council, City of Victoria; Office of the Police Complaint Commissioner; Chief of the Victoria Police Department; Solicitor General, Province of British Columbia; Leader of the Official Opposition, Province of British Columbia