

August 29, 2024

Superintendent Lisa Fletcher  
Nanaimo RCMP Detachment  
303 Prideaux St  
Nanaimo, BC V9R 2N3

Deputy Commissioner Dwayne McDonald  
RCMP E Division Headquarters  
14200 Green Timbers Way  
Surrey, BC V3T 6P3

**VIA EMAIL**

Dear Superintendent Fletcher and Deputy Commissioner McDonald,

**Re: Confiscations by Nanaimo RCMP Officers**

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I write on behalf of the BC Civil Liberties Association (“BCCLA”), regarding recent RCMP confiscations of money and belongings from Nanaimo residents. BCCLA is Canada’s oldest and most active civil liberties and human rights group, involved in legal interventions, law reform advocacy, and community support across the country.

BCCLA has heard reports from low-income and vulnerable community members that RCMP officers in Nanaimo have been seizing people’s money and belongings, without charging them with an offence or providing any information about how to retrieve their belongings. We are concerned that people are left in highly precarious situations, unable to pay for rent or food, and with no realistic means of recourse.

We are also concerned that the RCMP officers in question provided no explanations, not even to confirm that these confiscations were civil forfeitures, nor to identify any laws the person allegedly broke. As a result, people have been left with no understanding of the situation, and thus no avenue for exercising their statutory rights under the *Civil Forfeiture Act*.

**Discretionary Powers Must Not be Abused**

In some of the cases reported to BCCLA, the RCMP officers seized belongings from people who were using or carrying drugs. This suggests that the officers justified their actions under the authority of the *Controlled Drugs and Substances Act*, which allows police officers to use their

discretion not to arrest people for certain drug-related offences, and instead to issue a warning. This power was added to allow greater leeway for people who use drugs, and to encourage compassionate responses rather than punitive ones.<sup>1</sup> As stated at the time by MP Gary Anandasangaree, the Parliamentary Secretary to the Minister of Justice and Attorney General:

We want to focus on getting individuals the help they need, whether that be treatment programs, housing or mental health support, instead of criminalizing them.<sup>2</sup>

Discretionary police powers that are meant to assist people who use drugs should not be weaponized to *de facto* circumvent the criminal trial process and punish these people without giving them the opportunity to make full answer and defence. It also seems wholly inconsistent with Parliament's aims for police to instead use these discretionary powers to take away important survival tools, such as money or cell phones, from people who use drugs.

In other cases reported to BCCLA, the RCMP officers justified their actions by stating that the person was using an unmarked cigarette. This suggests that these officers acted under the authority of the *Excise Act* and *Criminal Code* provisions on unlawful possession and sale of tobacco products.<sup>3</sup> However, statutory exceptions allow for limited amounts of unmarked tobacco products for personal use, including up to 5 units of 200 cigarettes each.<sup>4</sup> It is thus unclear why officers deemed the use of a single unmarked cigarette as grounds for search and seizure.

In both of the above cases, Nanaimo RCMP officers seem to have used civil forfeiture without informing the affected person of the situation. Civil forfeiture is itself a discretionary power. RCMP officers are not required to use it against people who use drugs, or are unhoused, or are experiencing extreme poverty. BCCLA has previously raised concerns with the use of civil forfeiture as a means of evading people's constitutional rights to a fair trial in a criminal proceeding.<sup>5</sup> We now stress once more that civil forfeiture should be an extreme and exceptional remedy, with strict guardrails to protect against abuses of power.

We cannot speculate about the motives of RCMP officers in Nanaimo, especially as these officers have not identified their reasons for confiscating people's money and belongings. However, we urge restraint and transparency among police officers who use discretionary powers in a manner that causes harmful consequences for members of the community.

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<sup>1</sup> Canada, Department of Justice, *Bill C-5: Promoting Health Responses to Simple Drug Possession*, (Ottawa: Department of Justice, 7 December 2021), online: <<https://www.canada.ca/en/departement-justice/news/2021/12/promoting-health-responses-to-simple-drug-possession.html>>.

<sup>2</sup> House of Commons Debates, 44-1, No 16 (13 December 2021) at 1110 (Hon Gary Anandasangaree), online: <<https://www.ourcommons.ca/DocumentViewer/en/44-1/house/sitting-16/hansard>>.

<sup>3</sup> *Criminal Code*, RSC 1985, c C-46 at s. 121.1; *Excise Act*, RSC c 22 at s. 32(1).

<sup>4</sup> *Stamping and Marking of Tobacco Products Regulations*, SOR/2003-288 at s. 5. See also, for example: *Newby v. Canada (National Revenue)*, 2010 NLTD 120.

<sup>5</sup> Stephen Chin & Jessica Magonet, *A Deep Dive Into Cullen's Final Report*, BC Civil Liberties Association (4 August 2022), online: <<https://bccla.org/2022/08/a-deep-dive-into-cullens-final-report/>>.

## Lack of Notice or Information is Unacceptable

In our email communications with the Civil Forfeiture Office for British Columbia (“CFO”), the CFO confirmed that where a properly reported and approved civil forfeiture occurs, there should be notice provided to the affected individual. For judicial forfeitures, this notice is often the Notice of Civil Claim, whereas for administrative forfeitures, notice is mailed or emailed to the individual, and published in the BC Gazette. We have also determined that at least some Nanaimo RCMP officers did in fact confiscate people’s belongings under administrative forfeiture over the past few months, as has been reported in the BC Gazette.<sup>6</sup>

Unfortunately, several of the Nanaimo residents whose belongings were seized have not received any kind of notice or information about the seizures. In fact, RCMP officers have not clarified that they are in fact taking people’s belongings under the civil forfeiture process. As a result, there has been considerable confusion among community members about what is happening to them, exacerbated by the fact that RCMP officers often accompany Nanaimo’s bylaw officers when the latter seize belongings from unhoused residents. As a result, people are left unsure whether RCMP officers are taking away their belongings for civil forfeiture, bylaw enforcement, or personal gain.

We have also determined that several of the recent confiscations have yet to be reported in the BC Gazette, nor have the confiscated belongings been returned to their owners. While this may simply be an administrative delay on the part of the CFO, it creates another source of confusion for residents who do not understand why the police are taking away their belongings, when they are not being charged with an offence.

We understand that the RCMP does not control the CFO, and that the CFO may have difficulty contacting people who are unhoused or who have precarious housing. For this reason, it is even more important that RCMP officers take it upon themselves to make it clear at the time of seizure that they are acting under the authority of the *Civil Forfeiture Act*, so that people understand what is happening, and how they can exercise their rights.

Otherwise, without any kind of notice or explanation, the seizure of people’s belongings is unacceptable. As a matter of procedural fairness, and under the statutory requirements for notice under the *Civil Forfeiture Act*,<sup>7</sup> people have the right to understand that they face legal jeopardy, and to be able to challenge seizures of belongings. We urge the RCMP to take active steps to make sure that people receive the information they need, by verbal and written notice, for the better administration of justice.

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<sup>6</sup> See, for instance: CFO file Number: R-10890; AC-14034 (Ministry of Public Safety and Solicitor General), (2024) BC Gaz, [Vol. CLXIV, No. 18](#); CFO file Number: R-13337; AC-14242 (Ministry of Public Safety and Solicitor General), (2024) BC Gaz, [Vol. CLXIV, No. 27](#).

<sup>7</sup> *Civil Forfeiture Act*, SBC 2024, c 1, s. 4.

## **Survival Resources Should Not Be Seized**

It has not gone unnoticed that civil forfeitures in British Columbia predominantly seem to affect highly vulnerable communities, including people who are unhoused, people who use drugs, and people with limited financial resources.<sup>8</sup> It is important for people to understand what is happening in these instances, what resources are available to them, and to be able to recover their belongings when possible.

This is particularly the case where police officers seize money, or personal possessions like cars or cell phones, which are important for basic survival. Even supposing that police officers are acting in good faith to enforce the law, the collateral consequences are so harmful to vulnerable community members that it reflects badly on the administration of justice.

In more than one instance, community members reported that their entire month's welfare money was seized by an RCMP officer, leaving them effectively penniless. Welfare money is clearly not acquired through criminal activity, so it is not clear why the RCMP officer chose to take it in the first place. Nor is it clear how it is in the public interest to further strip away resources from someone who is already experiencing desperate circumstances, and may not have other means of supporting themselves.

At the very least, we would urge RCMP officers not to confiscate money from individuals living in extreme poverty. In this manner, RCMP officers should ensure that their actions will not result in highly vulnerable people being evicted because they are unable to pay their monthly rent.

This request should not unduly interfere with police investigations into criminal activity. Unless RCMP officers are investigating a crime like counterfeiting, which is unlikely to occur among people living in extreme poverty, there is usually no need to seize the physical money as evidence. An officer's in-court testimony, contemporaneous notes, official reports, video footage, or photos can provide sufficient evidence to establish that a person was carrying a given amount of money, at a given time and place.

## **New RCMP Policies Are Needed**

BCCLA is reaching out to you, as heads of the RCMP in Nanaimo and British Columbia respectively, and in your capacity to institute systemic changes. Nanaimo residents should not be afraid that their local police force is stealing their belongings, nor left without resources to pursue when their belongings are confiscated by the state.

We stress once again that, barring exceptional circumstances where the money itself is needed as physical evidence, there is no need to seize money from people living in extreme poverty to

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<sup>8</sup> Nathan Griffiths, "Can't justify a criminal charge? Take their stuff instead. Society's poorest and addicted hardest hit by B.C. forfeiture laws", *Vancouver Sun*, (10 June 2022), online: <<https://vancouversun.com/news/local-news/bc-forfeiture-law-hits-poor-addicted-hardest>>.

further a criminal investigation. An officer's testimony, contemporaneous notes, or photographs are all perfectly valid means of providing evidence about how much money someone was carrying, without further marginalizing and impoverishing members of the community.

In consideration of these matters, we ask you for the following:

1. **Confirmation** that confiscations over the past 9 months (from December 1, 2024) by Nanaimo RCMP officers are due to civil forfeiture, that all officers have duly turned in the confiscated belongings, and that the Civil Forfeiture Office has been duly notified of all confiscations;
2. **Investigation** into how Nanaimo RCMP officers' discretionary decisions about what to confiscate, and from whom, have affected vulnerable communities in Nanaimo;
3. **Investigation** into the standard practices of on-the-ground RCMP officers during civil forfeitures, such as what kind of information is provided to community members, and whether officers are acting in accordance with the law;
4. **Policy development** such that RCMP officers do not seize money from people living in extreme poverty; and
5. **Policy development** such that RCMP officers who confiscate people's money or belongings, for civil forfeiture or any other reason, clearly state the reasons for their actions at the time of the confiscation. This includes providing written notice, with information about how to challenge the decision or where to find assistance.

BCCLA is available to provide consultation on the above, whether to review existing policies, or to provide feedback on new draft policies or guidelines.

We thank you for your attention on these matters, and hope to hear from you soon.

Sincerely,



Safiyya Ahmad  
Staff Counsel

**CC: Mayor Leonard Krog and Nanaimo City Council**