



October 1, 2008

The Honourable Stockwell Day
Minister for Public Safety
House of Commons
Ottawa, Ontario K1A 0A6

BY FAX: 613-995-1154

Dear Mr. Day:

RE: BCCLA Boycott of the RCMP Public Complaint Process

I am writing to inform you of the decision of the British Columbia Civil Liberties Association (BCCLA) to boycott the RCMP public complaint process for public trust complaints where civil claims may be brought in the courts.

The existing complaints process is ineffective and broken. It must be reformed.

We are willing to participate in meaningful discussions towards reforming the legislation that deals with the RCMP public complaint process. Until then, we intend to continue making public our concerns with police conduct where warranted. We will also encourage affected individuals to take action in the civil courts to hold the police accountable, obtain recognition of wrongdoing done to them, and obtain appropriate redress through remedies provided in an independent and impartial forum.

We know that you appreciate the need for a proper police complaint process. The role of the police in dealing with law enforcement and the risks and dangers that they experience every day are well-known and widely appreciated. However, public confidence in the police and true RCMP accountability can only occur if there is an effective complaints process.

The RCMP recognizes this fact. "Accountability" is stated to be one of their "core values" on their website. They emphasize their commitment to "open and honest communication" with the communities they serve.

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As the Minister responsible for the RCMP, we encourage you to take the lead in bringing about substantial changes to the legislation governing the RCMP to address the concerns we identify here.

BCCLA's Experience with Police Complaints Processes

As you know, the BCCLA has years of experience with the RCMP public complaint process through assisting complainants, filing our own complaints, advocating for reform of the complaint system in legislation and occasionally litigating important matters. We believe that a fair, efficient and independent system for RCMP public complaints is critical to maintaining and enhancing police accountability and public confidence in the RCMP. Regrettably, given our experience, we have lost all confidence in the RCMP public complaint process for three reasons. First, the RCMP is unable to impartially and competently investigate public complaints. Second, Mr. Paul Kennedy, Chair, Commission for Public Complaints Against the RCMP (CPC) has not delivered fair, thorough and independent oversight and review of public complaints. Third, the public complaints provisions of Part VII of the *Royal Canadian Mounted Police Act (RCMP Act)* are terribly outdated and fundamentally flawed.

The Final Straw – Receipt of the RCMP Complaints Commissioner's Final Report on the Income Trust Scandal

I can assure you that we have not taken this position without considerable reflection and sound justification. Our decision follows our recent receipt of Mr. Kennedy's Final Reports into the BCCLA's two complaints against the RCMP involving former RCMP Commissioner Giuliano Zaccardelli's decision to send a letter to an NDP Member of Parliament confirming that the RCMP were undertaking a criminal investigation into a suspected leak regarding taxing of income trusts.

As you will recall, Mr. Zaccardelli's letter was delivered to the NDP and made public by them in the midst of the last federal election. As a result, the RCMP investigation attracted significant nation-wide media and public attention.

The release of the letter and the subsequent media coverage immediately preceded a drop in the polls for one of the political parties (in this case, the Liberal Party of Canada) in the election. Some commentators and political scientists have argued that there is a direct connection between the two events.

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The BCCLA's Complaint about the RCMP's Conduct in the Income Trust Scandal – Interference with the Political Process

The BCCLA's complaint on this matter was that the RCMP acted in a way that was likely to influence or would be perceived to influence partisan political affairs. Given the importance of the RCMP's responsibilities for upholding the rule of law in a fair, objective and non-partisan manner, political influence or even the perception of political influence would seriously erode the RCMP's independence and public confidence in the police and could have substantial consequences in the electoral process.

We note that this is not the only instance where the RCMP has acted in a manner that attracted widespread media attention concerning political parties. Similar concerns have appeared in other instances where the RCMP has been brought in to deal with political parties and their affairs.

Complaints Commissioner Misuses Power to File His Own Complaint – Loses Ability to Investigate Zaccardelli

Rather than deal with our complaints in the first instance, Mr. Kennedy supplanted our complaints by initiating his own complaint into this matter, a practice Mr. Kennedy has exercised in other high profile BCCLA complaints involving RCMP involved civilian deaths. Mr. Kennedy then relied on the RCMP to internally investigate his complaint and concluded that "there is no evidence that Commissioner Zaccardelli's decision was based on any improper considerations." Mr. Kennedy reached this conclusion despite the fact that Mr. Zaccardelli along with three other senior RCMP officials responsible for this matter refused to provide any information to the RCMP internal investigator Sergeant Lise Noiseux.

Complaints Commissioner Fails to Investigate – Senior RCMP Officers Failed to Provide Information

Mr. Kennedy's Final Report into his own complaint explicitly acknowledges that "no senior member of the RCMP policy center responsible for the conduct of the income trust investigation and intimately involved in the approval process for communications relating to that investigation provided any information regarding the RCMP's decisions to issue the letter to ..." the NDP.

Complaints Commissioner Fails to Hold Public Hearings

Given this lack of evidence to make appropriate findings, the BCCLA urged Mr. Kennedy to call a public hearing into the matter. At a public hearing under the *RCMP*

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Act, Mr. Zaccardelli and other senior RCMP members involved could be compelled to provide such evidence. A public hearing was unavailable under Mr. Kennedy's self-initiated complaint because Mr. Zaccardelli resigned before Mr. Kennedy filed his complaint. Notwithstanding these sound justifications for a public hearing and despite the public interest this controversy has generated, Mr. Kennedy declined to institute a public hearing.

17 Other BCCLA Complaints Fail to Receive Proper Attention

In addition to the income trust complaint, the BCCLA has made over 17 other RCMP complaints in recent years, most of which relate to RCMP-involved civilian deaths in custody situations.

In April of 2008, the BCCLA made a submission to Mr. Kennedy summarizing our complaint experience regarding deaths in custody where the RCMP was involved, a copy of which we sent to you.

In our submission, we outlined the serious flaws in the processing of our complaints:

- (a) First, the RCMP has systematically and inappropriately terminated our complaints without investigation, a practice that Mr. Kennedy has acceded to at the consistent detriment of complainants who have to file and re-file complaints in order to attempt to secure their rights in the process. In doing so, Mr. Kennedy has added layers of difficulty, rendered the complaints process cumbersome and inaccessible for members of the public.
- (b) Second, where the RCMP has not terminated our complaint, the RCMP has unreasonably and excessively delayed investigation of our complaint.
- (c) Third, there are excessive delays generally in the system including the CPC review process. For example, the BCCLA made a complaint into the "Operation Pipeline" matter on March 10, 2005. The CPC's Final Report into this matter is dated July 4, 2008. The delay is attributable to the CPC and especially to the RCMP as RCMP Commissioner Elliott responded to the CPC's Interim Report 18 months after the CPC submitted the report to him.
- (d) Fourth, as indicated previously, Mr. Kennedy has sidelined the BCCLA as a complainant by launching his own "self-initiated" complaints in high profile issues like the deaths of Kevin St. Arnaud, Ian Bush and Robert Dziekanski as well as the income trust matter. Mr. Kennedy's practice has effectively undermined the BCCLA's rights as a complainant under the *RCMP Act*.

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Judicial Review Proceedings Concerning RCMP Complaints Process

The BCCLA was so frustrated by Mr. Kennedy's conduct that we initiated judicial review proceedings in the Federal Court of Canada concerning his decisions in the Bush and income trust complaints. In a decision by Mr. Justice O'Keefe in the income trust matter, the Court said of the Complaint Commissioner's practice:

"If the initiation of a complaint by the Chair automatically justified the ending of an earlier public complaint, this would lead to the consequence that the Chair could quash or end a public complaint thereby denying the complainant the procedural entitlements set out in the Act. The Act does not rule out the possibility of parallel complaints."

Mr. Kennedy's practice of placing our complaints into abeyance while he deals with his own has had the effect of denying the BCCLA procedural entitlements – such as access to RCMP internal investigation reports – set out in the *RCMP Act*. If Mr. Kennedy has similar disregard for other members of the public who complain about the conduct of an RCMP member, then in our view you, as Minister responsible for RCMP accountability, should be seriously concerned about the credibility of the Commission for Public Complaints Against the RCMP.

For your ease of reference, the BCCLA's April 2008 submission can be viewed on our website at:

http://www.bccla.org/othercontent/08BCCLA_Deaths_Submission.pdf.

Parallel Problems Experienced by Other Complainants

The BCCLA's own experience as a complainant is reinforced by the experience of individuals who we assist in the complaint process. Invariably, their complaints are subject to undue delays and incompetent investigations leaving complainants extremely discouraged and losing all respect for the complaint system.

The History of Unaccountability – RCMP Failure to Answer Auditor General Criticisms

Indeed, there is good reason for all Canadians regardless of political stripe to be

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skeptical about the accountability of the RCMP. Despite Auditor General Sheila Fraser's report outlining nepotistic hiring practices and the misappropriation of millions of dollars from the organization's pension funds, the RCMP's internal investigation into the matter did not hold to account any of the officers who were responsible. The investigation, which was called "truly unacceptable" in a memo written by some of the members of the RCMP's staff relations representative committee, took such a lengthy amount of time that the limitation period under the *RCMP Act* expired.

Media Attention to RCMP Scandals and Complaints

The incidence of scandals and controversies plaguing the RCMP is so common that the media has repeatedly taken note. On March 29, 2007 the Globe and Mail published a list of sixteen "RCMP scandals and setback since 2006". Referring to the shooting deaths of four Alberta RCMP officers that occurred in Mayerthorpe on March 3, 2005, CBC News's Fifth Estate commented that the RCMP has still not been held to account for what happened leading up to the worst police massacre in modern Canadian history.

Accountability Means Thorough Civilian Oversight

What is more, in his investigation into the pension fund scandal, David Brown, Q.C. found that the current organizational structure of the RCMP precludes the possibility of the institution having the appropriate transparency and accountability. Notwithstanding recommendations by Mr. Justice Dennis O'Connor, Commissioner of the Arar Inquiry in 2006 and David Brown, Q.C. and his fellow members of the Task Force on Governance and Cultural Change in the RCMP in 2007, your government has yet to introduce any reforms to the accountability mechanisms under the *RCMP Act*.

We note that the government did pass the *Federal Accountability Act* providing for ethics rules and oversight of government office holders. The principle that informs that legislation should inform new police legislation.

We also note that the RCMP website states emphatically that they recognize the need to be accountable to the Canadian public in order to maintain the confidence

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necessary to properly perform their role. They acknowledge that their Senior Executive Committee's role is "to develop, promote and communicate strategic priorities, strategic objectives, management strategies and performance management for the purpose of direction and accountability."

Further, you may wish to look at the RCMP website, particularly the page at http://www.rcmp-grc.gc.ca/about/mission_e.htm, where the mission of the RCMP is stated there as follows: "Proud of our traditions and confident in meeting future challenges, we commit to preserve the peace, uphold the law and provide quality service in partnership with our communities." To that end, the RCMP confirms that their desire is to be held accountable for doing their job in a professional manner.

In order for those laudable objectives to be met, there must be a proper legislative framework for accountability and civilian oversight of the RCMP, particularly in relation to the complaints process.

Civilian Oversight and RCMP Accountability Are Not Partisan Issues

I stress this is not a partisan criticism either of your government or of the RCMP. Indeed, the BCCLA has been urging successive federal governments for years, without success, to undertake serious reform of the *RCMP Act's* public complaint provisions to bolster RCMP accountability and public confidence in the RCMP.

The BCCLA Boycott of the Complaints Process

I also note that our boycott is limited to complaints of a public trust nature and to those complaints that have a legitimate basis for litigation in a superior or provincial court. Given the serious problems with the current RCMP public complaint process, we believe that complainants stand a much better chance of having their concerns aired, holding the police accountable and receiving an appropriate remedy in court where there is an independent and impartial process.

It is with much reluctance that the BCCLA takes this step given our general position that it is important for there to be a fair, accessible, independent process for RCMP public complaints. Citizens should not have to go to court to obtain RCMP accountability. The RCMP's website itself says in several places that they are committed to accountability. Unfortunately, the complaints process thus far and the manner with which complaints are dealt leaves the public with the distinct impression that there is only lip-service being paid to the notion of accountability. Your government has made accountability a watchword in other areas. It is time that it focuses attention on accountability of the RCMP and reforms the existing laws so as to ensure that the principles of accountability, transparency and respect to individual rights are entrenched.

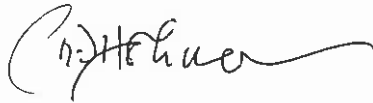
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The BCCLA will withdraw our boycott if the *RCMP Act* is amended to create a credible public complaint process that is truly independent, civilian-led, authorizes civilians (as opposed to police) to undertake investigations, and is properly resourced to achieve its mandate, as we have described in our April 2008 submission to Mr. Kennedy.

Conclusion

In closing, the BCCLA would welcome the opportunity to meet with you, as a Minister representing a riding in British Columbia and as Minister responsible for the RCMP, to discuss our support and any contribution we can make toward the urgent need for reform.

Yours sincerely,

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

Robert D. Holmes,
President

Cc: Paul Kennedy, Chair, Commission for Public Complaints Against the RCMP
William Elliott, Commissioner, RCMP
Stéphane Dion, Liberal Party of Canada
Jack Layton, New Democratic Party of Canada
Gilles Duceppe, Bloc Québécois
Elizabeth May, Green Party of Canada