

Josh Paterson

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VIA EMAIL

Deputy Commissioner Callens
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"E" Division
14200 Green Timbers Way,
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Page 1/5

A/Comm Norm Lipinski
RCMP
"E" Division
14200 Green Timbers Way,
Surrey, B.C. V3T 6P3

Chief Superintendent Bain
RCMP North District 4020 5th Avenue,
Prince George B.C. V2M 7E7

R. Kyle Friesen
Counsel, Legal Advisory Section (RCMP Pacific Region), Dept. of
Justice Canada, British Columbia Regional Office

Dear Deputy Commissioner Callens, A/Comm Norm Lipinski, Chief
Supt. Bain, and Mr. Friesen,

We have learned from people in Wet'suwet'en territory that they are urgently concerned about the possibility of an impending, and possibly large-scale, RCMP action in relation to the Unist'ot'en camp. We understand that the RCMP may have already taken a decision, or be about to take a decision, that the RCMP will move in and remove people from the Unist'ot'en camp by force if necessary. If we are mistaken in this, we hope that the RCMP will clarify this with the public immediately. We are deeply concerned that such an approach would be disastrous and would not respect the constitutionally-protected Title and Rights of the Unist'ot'en, as well as their rights under the Canadian Charter of Rights and Freedoms.

No treaty has been concluded between the Crown and the Wet'suwet'en in relation to the latter's traditional territories, and the Wet'suwet'en's land rights therefore continue unextinguished (*Calder v. British Columbia*, [1973] S.C.R. 313). As has been recognized in a chain of Supreme Court of Canada cases, including the case of *Gisday'wa and Delgamuukw v. British Columbia*, [1997] 3 SCR 1010 brought by the Wet'suwet'en and Gitx'san peoples, and the recent decision in *Tsilhqot'in Nation v. British Columbia*, [2014] 2 SCR 256 (and as we have recently pointed out to the RCMP in our letter of July 17, 2015), Aboriginal Title includes the right to use, manage, possess land, and to decide how the land will be used. Aboriginal Title also means that Crown governments and others must obtain consent to use the land and that First Nations can exclude people from their land, and that to do otherwise would infringe on that constitutionally-protected right. In their activities, the police, as agents of the Crown, must be respectful of the constitutional rights of First Nations in relation to their traditional territories. We understand that the Unist'ot'en have recently adopted, according to Wet'suwet'en law, the Unist'ot'en Declaration that is direct evidence of the continuous governance and control of the territory by Wet'suwet'en people.

In addition, Canada has endorsed the United Nations Declaration on the Rights of Indigenous Peoples. Article 32 of the UN Declaration states that governments "shall consult and cooperate in good faith with the indigenous people concerned through their own representative institutions to obtain their free and informed consent prior to the approval of any project affecting their lands or territories or resources" (GA Res. 61/295, UN GAOR, 61st sess., Supp. No. 49, UN Doc. A/RES/61/295 (2007)). Besides the UN Declaration, Canada is also bound, as a member of the Organization of American States, by the international law of the Inter-American system. This requires Canada to respect the right of Indigenous peoples to control and to own their territories and resources (*Mary and Carrie Dann v. United States*, Inter-Am. C.H.R. Report No. 75/02 (2002), and *Maya Indigenous Communities v. Belize*, Inter-Am. C.H.R. Report No. 96/03 (2003); *Hul'qumi'num Treaty Group v. Canada*, Inter-Am. C.H.R. Report No. 105/09 (2009) at para 27; See also Prof. S. James Anaya, Indigenous

Peoples in International Law (2nd ed.) (Toronto: Oxford University Press, 2004) at p. 148).

A move by the Crown to remove the Unist'ot'en camp would be at odds with these legal principles and with respect for their Title and Rights.

Page 3/5

We are extremely concerned with the suggestion that the RCMP may proceed without a court order, and without the Unist'ot'en having any opportunity to defend themselves in court. In the recent case of *Canadian Forest Products Ltd. v. Sam*, 2011 BCSC 676, the BC Supreme Court refused an injunction to a company that sought to remove another Wet'suwet'en clan from their own lands, in order to proceed with forestry work. In that case, the Wet'suwet'en House of Ginehklaiyex succeeded in arguing that the company's application for an injunction was not justified, and they were in fact granted an injunction against the company to prevent the company's logging in the lands at issue. The House of Ginehklaiyex established that the lands in question were integral to their identity and to their place within Wet'suwet'en society and government [para 128]. Two years after that decision, the BC Court of Appeal unanimously upheld the refusal to grant the company's request for an injunction (*Canadian Forest Products Ltd. v. Sam*, 2013 BCCA 58). It is, in our opinion, irresponsible and disrespectful of the constitutional rights of the Unist'ot'en for the Crown to proceed on its own initiative to remove peaceful occupants of their own traditional territories and to deny the Unist'ot'en the opportunity to argue that they have the constitutionally-protected right to remain at their camp, or that a private party seeking their removal cannot justify the request under the law. This course of action, if taken by the RCMP, appears to deliberately short-circuit the rights of Indigenous peoples.

We are aware that the RCMP have visited the Unist'ot'en camp and that their camp has been targeted for surveillance in the past. We are further aware that in recent days, RCMP officers have approached Chief Knebeas (Warner William) on a number of occasions either at his home or on the road to question him.

We have also received the letter from A/Comm Norm Lipinski, dated July 30, 2015, in which the RCMP cites its general law enforcement

responsibilities as a reason for an enhanced presence in the vicinity of the Unist'ot'en camp. As we stated in our letter of July 17, we have no objection to the RCMP carrying out its duties in relation to traffic safety. The RCMP, in its letter, points to its jurisdiction all over lands in British Columbia, "regardless of the status of those lands", and points out that there are "no safe havens from law enforcement in Canada." We point out to the RCMP that the Constitution is the ultimate law that the force is charged to uphold, and that the Constitution protects the Title and Rights of First Nations peoples, including continuing Indigenous law and authority. Section 35 of the Constitution protects Indigenous peoples' rights to occupy and control their territories, where the existing and unextinguished Title is recognized by the courts, and protects their rights in the interim before such existing and unextinguished Title is recognized by the courts. The RCMP has a duty to uphold these rights and this law, as part of its general duty of policing. As the courts have demonstrated, other Canadian laws and private legal claims (for injunctive relief) are subject to this higher law. It is, with respect, not for the RCMP or the Government of Canada to decide, unilaterally, which law it chooses to respect in a circumstance such as this. While always having a responsibility for public safety, once that safety is reasonably secured we submit that the police must proceed with the utmost caution in a situation such as this, so as not to interfere with the constitutional rights of the Indigenous people concerned.

In light of all of the above, if the RCMP is, as reported, planning to move in on the camp and remove its members against their will, we urge that this plan be reconsidered.

Sincerely,

A handwritten signature in black ink, appearing to read 'Josh Paterson', with a long horizontal line extending to the right.

Josh Paterson
Executive Director / Barrister & Solicitor

CC: Office of the Wet'suwet'en Hereditary Chiefs
Peter Grant, Peter Grant & Associates
Chief Knedebeas