



January 29, 2020

**BY MAIL AND EMAIL**

Attn: Michelaine Lahaie  
Chairperson, Civilian Review and Complaints Commission for the RCMP  
P.O. Box 1722, Station B  
Ottawa, ON K1P 0B3  
Email: Michelaine.Lahaie@crcc-ccetp.gc.ca

cc: RCMP Commissioner Brenda Lucki  
RCMP Deputy Commissioner Jennifer Strachan

Dear Chairperson Michelaine Lahaie,

**Re: Policy Complaint Concerning RCMP Checkpoint on Morice West Forest Service Road**

We are writing on behalf of the British Columbia Civil Liberties Association (“BCCLA”), the Wet’suwet’en Hereditary Chiefs, and the Union of BC Indian Chiefs (“UBCIC”) to initiate a policy complaint and public interest investigation under the *Royal Canadian Mounted Police Act*. We submit this complaint regarding the improper and unlawful actions of the Royal Canadian Mounted Police (“RCMP”) in implementing and enforcing a checkpoint and exclusion zone on Morice West Forest Service Road (“Morice West FSR”) in Wet’suwet’en territory. This complaint and call for investigation is also supported by West Coast Environmental Law and Pivot Legal Society.

The RCMP checkpoint and exclusion zone has been in force since January 13, 2020 at the 27-kilometer mark on the Morice West FSR. We have serious concerns about the overbroad scope as well as inconsistent and arbitrary exercise of RCMP discretion in Wet’suwet’en territories. The RCMP implementation and enforcement of the exclusion zone criminalizes and impedes the movement of Wet’suwet’en people, invited guests of the Wet’suwet’en, media, legal counsel as well as food and medical supplies. RCMP interference with individual liberty is significant, arbitrary, and disproportionate to achieving the stated goal of public safety. Further, the RCMP

checkpoint and exclusion zone is in clear violation of constitutionally recognized Anuk'nu'at'en (Wet'suwet'en law) as well as the *Canadian Charter of Rights and Freedoms*.

What is happening in Wet'suwet'en territories and the over-policing of Indigenous land defenders is a matter of significant public interest. The Wet'suwet'en Nation has been in the national and international spotlight for almost two years. Additionally, in December 2019, the United Nations Committee on the Elimination of Racial Discrimination called upon Canada to “immediately halt the construction and suspend all permits and approvals for the construction of the Coastal GasLink pipeline in the traditional and unceded lands and territories of the Wet'suwet'en people, until they grant their free, prior, and informed consent.”<sup>1</sup>

## **Context**

The Wet'suwet'en assert continuous jurisdiction and unextinguished rights and land title. Aboriginal rights and title requires the Crown and industry to obtain consent to use Wet'suwet'en land, and to do otherwise would infringe on those inherent, constitutionally-protected rights. The Supreme Court of Canada has also recognized that constitutionally-protected Aboriginal title includes the right to use, enjoy, benefit from, occupy and pro-actively manage the land.<sup>2</sup> Hereditary Chiefs of all five Wet'suwet'en clans, in accordance with Wet'suwet'en law and under proper authority, have made clear that no access will be granted for Coastal GasLink Pipeline Ltd (“CGL”) to operate on their territories without free, prior, and informed consent.

In January 2019, RCMP officers enforced an interim injunction obtained by CGL. Investigative reporting has since revealed the RCMP discussed and planned an excessive level of force, including lethal force, for its raid of Gidimt'en checkpoint.<sup>3</sup> Notes from RCMP commanders' detail “lethal overwatch is req'd” and instruct officers to “use as much violence toward the gate as you want.” The planning and potential use of lethal force by RCMP was an absolutely unacceptable and abhorrent response, creating shockwaves nationally and internationally.

On December 31, 2019, the BC Supreme Court granted CGL an interlocutory injunction; an enforcement order was issued on January 7, 2020.<sup>4</sup> In its decision, the Court recognized that it was contending with how to properly reconcile Canadian law with Indigenous law. The BC Supreme Court acknowledged the existence of Wet'suwet'en law, noting the distinction between Indigenous and Canadian laws. The court continued to express that there are significant

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<sup>1</sup> U.N. CERD, Prevention of Racial Discrimination, Including Early Warning and Urgent Procedure, 100th Sess., 1, 25 November-13 December 2019.

<sup>2</sup> *Delgamuukw v. British Columbia*, [1997] 3 S.C.R. 1010; *Tsilhqot'in Nation v. British Columbia*, [2014] 2 S.C.R. 256.

<sup>3</sup> “Exclusive: Canada police prepared to shoot Indigenous activists, documents show,” Jaskiran Dhillon and Will Parrish, *The Guardian*, December 20, 2019.

<sup>4</sup> *Coastal GasLink Pipeline Ltd. v. Huson*, 2019 BCSC 2264.

constitutional questions at play that could not appropriately be addressed by the court on the injunction issue as they need to be dealt with in a trial. Higher courts have recognized Indigenous law is more than just evidence, and Indigenous legal orders exist prior to Canadian legal declaration or colonial recognition.<sup>5</sup>

### **RCMP Checkpoint and Exclusion Zone**

The RCMP checkpoint has been in force since January 13, 2020 at the 27-km mark on the Morice West FSR. A RCMP press release dated January 20, 2020 maintains the exclusion zone is an access control checkpoint and not an exclusion zone.<sup>6</sup>

We are submitting eight first-hand accounts of people denied access, or turned away from the area. Statements are included from Delee Alexis Nikal, Cody Thomas Merriman, Molly Wickham, Irina Ceric, Noah Ross, David Byron Christopher Wood, Carl Williams, and Amanda Follett Hosgood. These first-hand accounts demonstrate a consistent pattern of RCMP excluding people from the area, including Wet'suwet'en people, media, and legal counsel, and suggests the RCMP are exercising arbitrary and overbroad powers to check identification and deny people access to Morice West Forest Service Road. This, in effect, creates an exclusion zone and we stress that, irrespective of name, the RCMP have instituted and are enforcing an unnecessary exclusion zone. To this point, the RCMP informed David Byron Christopher Wood "this is an exclusion zone" when denying him access to the area.<sup>7</sup>

The RCMP are broadly citing "public safety" to justify restricted access at the checkpoint and shifting rationales have been provided, including:

1. Restricting access to a logging road and identifying individuals is required in case someone gets lost or stranded in a snowstorm;
2. "Safety concerns related to the hazardous items of fallen trees and tire piles with incendiary fluids;"<sup>8</sup>
3. To "prevent further contraventions to the BC Supreme Court ordered injunction."<sup>9</sup>

We stress to the Complaints Commission that neither the interlocutory injunction nor the enforcement order granted to CGL on December 31, 2019 makes any mention of travel to or residence at the various sites or camps on Wet'suwet'en territories. The RCMP checkpoint at the 27-km mark lies outside the scope of the discretionary enforcement power granted to the RCMP

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<sup>5</sup> *R v Marshall*, 2005 SCC 43; *Pastion v Dene Tha' First Nation*, 2018 FC 648, 2018 CarswellNat 3238; *Delgamuukw v. British Columbia*, [1997] 3 S.C.R. 1010 [*Delgamuukw*].

<sup>6</sup> "RCMP provides update on access control checkpoint on Morice West Forest Service Road," January 15, 2020. RCMP Superintendent John Brewer, Operations Commander, RCMP Community-Industry Response Group.

<sup>7</sup> Attached statement of David Byron Christopher Wood, p 23.

<sup>8</sup> "Update - Access Control Checkpoint set up along Morice West Forest Service Road," January 13, 2010, RCMP Community-Industry Response Group.

<sup>9</sup> *Ibid.*

by the injunction. Further, the RCMP stipulate in their latest public statement: “At this point, we are not enforcing the BC Supreme Court injunction to allow time for dialogue between the Wet’suwet’en Hereditary Chiefs, Elected Councils, Coastal GasLink and Government.”<sup>10</sup>

On the second rationale, we note there has been no ascertainable attempt on the ground by the RCMP to either investigate or remove the fallen trees or other hazardous materials, all of which are located past the 39-km mark of the road – no such items can be found near the 27-km mark.

RCMP officers at the checkpoint have cited a range of inconsistent and shifting policies and procedures to those who were turned away, all of which are arbitrary and most of which do not correlate to any of the three rationales cited above. These include:

- Only pre-approved hereditary chiefs are allowed access;
- Only accredited journalists are allowed access;
- Only lawyers licensed to practice in B.C are allowed access;
- Only vehicles with tire chains and two-way radios are allowed access.

The restriction of access to the roads and areas beyond the 27-km mark to certain categories of people is unrelated to the RCMP’s stated objective of public safety. Further, the requirement of vehicles to have two-way radios and chains has been applied inconsistently and arbitrarily. In some instances, police have stated that chains are required, despite the absence of any posted signs to that effect, good driving conditions (the Morice FSR is plowed and sanded), and the use of appropriate vehicles.<sup>11</sup> In other instances, sometimes on the same day, no such requirement was stated. We also emphasize to the Complaints Commission that Morice FSR is a radio-assisted road and mobile radios are not a legal requirement.<sup>12</sup>

### Exclusion of Wet’suwet’en

On January 13, 2020, Delee Alexis Nikal and Cody Thomas Merriman (Wedlidi) were bringing food and emergency supplies in their respective vehicles. Both were separately denied entry and access at the RCMP checkpoint. This was in contravention of the RCMP’s public statement stipulating “[p]ersons providing food, medicine or other supplies or services required for the well-being and safety of persons behind the blockades” would generally be permitted through.<sup>13</sup> Nikal and Merriman spent approximately three hours each in -37°C at the checkpoint, attempting to transport food and emergency supplies to people at the Gidimt’en camp.<sup>14</sup> While the RCMP

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<sup>10</sup> “RCMP provides update on access control checkpoint on Morice West Forest Service Road,” January 15, 2020, RCMP Community-Industry Response Group.

<sup>11</sup> Attached statements of Noah Ross and Irina Ceric.

<sup>12</sup> Government of British Columbia, “Resource Road Radio Communications.”

<sup>13</sup> “Update - Access Control Checkpoint set up along Morice West Forest Service Road,” January 13, 2010, RCMP Community-Industry Response Group.

<sup>14</sup> Attached statements of Delee Alexis Nikal and Cody Thomas Merriman, p 12-15.

maintain the RCMP checkpoint is in the interests of public safety, the highly-controlled access and prohibitions on people bringing food and emergency supplies for those residing at the camps behind the checkpoint puts many Wet'suwet'en people's health and safety at risk.

Nikal and Merriman were both informed that only Hereditary Chiefs whose names appear on a RCMP-generated list were going to be allowed access past the checkpoint. Merriman was initially told he would be allowed entry, but was then arbitrarily denied when he returned shortly later. According to Merriman, "During my first contact with the RCMP at that time, the RCMP officer told me I could go through the RCMP exclusion zone with my wife Sleydo', spokesperson of the Gidimt'en Clan of the Wet'suwet'en, and Hereditary Chief Rob Alfred. However, I needed to turn back to return the vehicle for a brief time. I returned at approximately 5 pm, and was subsequently told I could not go through the RCMP exclusion zone. I was denied entry."<sup>15</sup>

Restricting the movement of Wet'suwet'en people and their family members through their territories is a grave violation of Wet'suwet'en law and jurisdiction, and constitutionally-protected Wet'suwet'en rights and title. Nikal states, "I found the whole experience extremely frustrating, embarrassing, and dehumanizing. I could not believe we were being denied access to our territories as Wet'suwet'en. It was a violation of our rights as Wet'suwet'en to be on our land and a denial of our laws and system."<sup>16</sup>

### Identification Checks

The RCMP are asking all drivers and passengers for names and identification in order to both enter and exit through the checkpoint. All the first-hand accounts point to a RCMP requirement of an identification check as a mandatory condition to entering and exiting the area. Cody Thomas Merriman states, "I witnessed someone exiting the exclusion zone and being detained for a brief period of time. The person was asked for ID simply for leaving the exclusion zone."<sup>17</sup>

Molly Wickham, a passenger in a vehicle, describes "Dodgson said they need the ID of everyone attempting to enter the territory. I saw the other officer copy down information from all three pieces of identification onto a clipboard before returning them to us."<sup>18</sup> Wickham further describes a third passenger in the vehicle being denied entry through the checkpoint *despite* providing identification. No reason was provided by the RCMP officer for refusing this passenger access.

Police power to detain and search randomly or without specific individualized grounds must be demonstrably justified. The RCMP exclusion is not a carefully tailored roadblock responding to

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<sup>15</sup> Attached statement of Cody Thomas Merriman, p 14.

<sup>16</sup> Attached statement of Delee Alexis Nikaal, p 13.

<sup>17</sup> Attached statement of Cody Thomas Merriman, p 15.

<sup>18</sup> Attached statement of Molly Wickham, p 16.

serious threats to bodily harm<sup>19</sup> or impaired driving,<sup>20</sup> nor is it temporally and logistically responsive. There are no reasonable and probable grounds for RCMP officers to randomly stop vehicles passing through and require identification checks of all drivers and passengers. This establishes an investigative detention for everyone, for which there is no legal basis. The only recourse for someone, including a passenger in a vehicle, choosing to not comply with police requests for identification is to turn back from the exclusion zone. The checkpoint places an unfair, unnecessary, unjustifiable and discriminatory restriction on individual liberty, which is disproportionate to the stated overbroad goal of public safety.

The RCMP do not have the legal authority to establish random stops and check for identification, especially of passengers in vehicles, who are either entering or exiting the area. The RCMP operating in BC are subject to the *British Columbia Provincial Policing Standards*, in force since January 15, 2020. The Promotion of Unbiased Policing section mandates “the responsibility of police officers to ensure that their interactions with community members, while critical to fulfilling their duties, must be consistent with *the Canadian Charter of Rights and Freedoms* (sections 7, 9, 10 and 15) and the values they reflect, including the right to be free from arbitrary arrest and detention; to move freely in society subject only to reasonable restrictions imposed by law; and to equal protection and benefit of the law, without discrimination.”<sup>21</sup> Furthermore, the *Provincial Policing Standards* sets out that random or arbitrary police stops, which may include a request for or the collection or recording of a person’s identifying information, are not permitted. Officers are not permitted to request or demand, collect, or record a person’s identifying information without a justifiable reason that is consistent with existing legal authorities and narrowly, not broadly, defined limitations granted to officers.<sup>22</sup>

### Exclusion of the Media

On January 13, 2020, *Tyee* reporter Amanda Follett Hosgood was denied access through the RCMP checkpoint at approximately 6 pm.<sup>23</sup> On January 14, the Canadian Association of Journalists issued a statement urging the RCMP to “remain open and transparent, and allow media continued access to the exclusion zone in Wet’suwet’en Territory so the media can report fairly and accurately on events as they unfold.”<sup>24</sup> Hosgood was allowed entry the following day and wrote in her report of the situation, “[b]y late Monday afternoon, officers were limiting

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<sup>19</sup> *R. v. Clayton*, [2007] 2 S.C.R. 725.

<sup>20</sup> *R. v. Dedman*, [1985] 2 S.C.R. 2.; *R. v. Ladouceur*, [1990] 1 S.C.R. 1257.

<sup>21</sup> British Columbia Provincial Policing Standards, Subject 6.2.1 Police Stops

<sup>22</sup> *Ibid.*

<sup>23</sup> Attached statement of Amanda Follett Hosgood, p 26.

<sup>24</sup> CAJ Calls on RCMP for Transparency, Continued Unrestricted Media Access, January 14, 2020, The Canadian Association of Journalists.

media access and not allowing supporters, including some Wet'suwet'en band members, from going into the area to deliver supplies."<sup>25</sup>

Later in the week, on January 17, 2020, reporter Jerome Turner detailed:

“Other journalists had been turned away from this checkpoint earlier in the week, and we had taken every precaution to make sure we wouldn't share their fate... They [the RCMP] inspected our letters and ID, noted that we were carrying copies of the press release, and refused us entry. We pushed back, gently, providing them with the names of the RCMP media relations officers who had told our editors we wouldn't have any problems. They went off to make some phone calls, and for the next 30 minutes we sat and waited. Finally the officers returned and told us we could proceed.”<sup>26</sup>

Though enforcement of the interlocutory injunction is not the rationale being provided to limit media access, we emphasise that *even* in areas where injunctions are being enforced, the courts have upheld the constitutionally-protected freedom of the press. In 2019, the Newfoundland and Labrador Court of Appeal vacated an injunction and contempt court appearance it found improperly applied to a journalist charged with contempt while covering an Indigenous-led movement at the Muskrat Falls hydroelectric project site in Labrador in October 2016. The court found that subjecting journalist Justin Brake to a general ‘no trespass’ prohibition would “unduly and unnecessarily interfere with his function as a journalist when he was not a participant in the ongoing protests.”<sup>27</sup> Justice Green further notes, “Aboriginal communities have been historically under-represented in the Canadian media. That makes freedom of the press to cover stories involving Indigenous land issues even more vital.”<sup>28</sup>

### Exclusion of Legal Counsel and Legal Observers

Beginning on January 22, 2020 lawyers training independent teams of legal observers were denied entry into the area by RCMP officers. Legal observers serve as independent witnesses and monitor the actions of law enforcement agencies. They do not participate in protest or risk arrest, do not interfere with police activity, and remain neutral while observing.<sup>29</sup>

On January 20, 2020, Carl Williams, a US-based international lawyer and Executive Director of the Water Protectors Legal Collective, and BC-based lawyer Noah Ross were informed by RCMP that the checkpoint was for public safety and were allowed to pass through upon

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<sup>25</sup> “‘Each Moment Here Is a Victory’: Wet'suwet'en Supporters Aren't Backing Down,” Amanda Follett Hosgood, *The Tyee*, January 15, 2020

<sup>26</sup> “Crossing the RCMP checkpoint on Wet'suwet'en territory,” Jerome Turner, *Ricochet*, January 17, 2020

<sup>27</sup> *Re Brake; Anderson v. Nalcor Energy*, 2019 NLCA 17, 2019 CarswellNfld 130, at para 78.

<sup>28</sup> *Ibid*, at para 81.

<sup>29</sup> Wet'suwet'en Call for Legal Observers, January 18, 2020.

providing identification and their bar cards.<sup>30</sup> However, on January 22, 2020, Carl Williams was told there was a new guideline for access and he could not enter the exclusion zone unless he was a lawyer licensed to practice in B.C.<sup>31</sup> The RCMP officer informed Carl Williams, “The decision has been made through our lawyer that if you are not able to practice currently in the province of BC you are not going in.”<sup>32</sup> This policy decision is clearly disconnected from the stated rationale of “public safety” and targets the ability of Wet’suwet’en to secure access to legal counsel of their choice. Restricting access to legal counsel, potential legal remedies, and justice for Indigenous people flies in the face of the Calls to Action of the *Truth and Reconciliation Commission of Canada*.

On January 24, 2020, lawyers Irina Ceric and Noah Ross were turned away from the checkpoint. At first, Ceric and Ross were informed that they would be allowed access but the legal observer accompanying them would not be permitted to pass through because “only Hereditary Wet’suwet’en Chiefs, elected officials, people entitled to practice law in the province of BC, and medical practitioners would be permitted to cross the roadblock.”<sup>33</sup> A few minutes later, Ross and Ceric were informed they actually could not pass through because they lacked tire chains and a two-way radio. We stress Morice West FSR is a radio-assisted road and radios are not legally mandatory. In addition, the road was plowed, sanded and clear. Ceric and Ross had observed someone passing through the checkpoint forty minutes earlier without any requirement for chains or a radio.<sup>34</sup> Ceric and Ross returned the following day with tire chains and a two-way radio but were not asked for either by the RCMP officer stationed at the checkpoint at the time.

On January 28, 2020, two legal observers were repeatedly informed they would be arrested unless they stood at least two car lengths away from the RCMP officers at the checkpoint. The stated reason was not obstruction of police duties, but the officer’s comfort level and officer safety.<sup>35</sup> Legal observer David Byron Christopher Wood was also informed the checkpoint was an exclusion zone and that access was restricted.

### **Unreasonable and Unjustifiable Violations of Liberty Interests and Indigenous Rights**

Taken together, our significant concern is that the RCMP checkpoint constitutes an exclusion zone with a range of differing, overbroad policies that are being unevenly and arbitrarily applied, have no consistent rationale, and are disconnected from any stated objective. We have very serious concerns about the overbroad scope and discretionary power of the RCMP’s activities in

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<sup>30</sup> Attached statement of Carl Williams, p 24.

<sup>31</sup> Attached statement of Amanda Follett Hosgood, p 26.

<sup>32</sup> “RCMP denying lawyers access to visit Wet’suwet’en territory,” *Ricochet*, January 27, 2020, <https://ricochet.media/en/2890/video-rcmp-denying-lawyers-access-to-visit-wetsuweten-territory>.

<sup>33</sup> Attached statement of Irina Ceric, p 20.

<sup>34</sup> Attached statement of Irina Ceric, p 21.

<sup>35</sup> Attached statement of David Byron Christopher Wood, p 23.

Wet'suwet'en territories, with the impact of criminalizing and impeding the movement of Wet'suwet'en people, invited guests of the Wet'suwet'en, media, and legal counsel. The RCMP checkpoint and exclusion zone obstructs the lawful exercise of Wet'suwet'en jurisdiction and the ability of Wet'suwet'en people to freely live, govern, and access their lands. Article 26 of the *UN Declaration of the Rights of Indigenous Peoples* stipulates "Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired."<sup>36</sup>

Given the context of Crown-Wet'suwet'en relations, and specifically RCMP-Wet'suwet'en relations in light of the lethal use of force discussed by RCMP in 2019, the RCMP checkpoint and exclusion zone is understood by Wet'suwet'en Hereditary Chiefs as a targeted, punitive, and colonial exercise of power. RCMP officers have on occasion refused to provide their badge numbers.<sup>37</sup> The RCMP checkpoint and exclusion zone is being enforced concurrent to two other policing operations. First, the RCMP have admitted to deploying air assets after initially denying the use of air surveillance flyovers and drones.<sup>38</sup> Second, a series of RCMP letters to fly-in helicopter companies inaccurately suggests the whole area is under an injunction and enforcement zone.<sup>39</sup> As a result, helicopter companies are no longer transporting passengers or supplies, such as fuel, to the areas behind the RCMP checkpoint and exclusion zone. This points to a lack of transparency, clarity and accountability in the overall policing activities of RCMP in Wet'suwet'en, and works against the RCMP's regulations to "act with integrity, fairness and impartiality, and do not compromise or abuse their authority, power or position."<sup>40</sup>

We further argue that RCMP enforcement of this checkpoint and exclusion zone could not be justified under the ancillary powers doctrine.<sup>41</sup> Overbroad access restrictions have a significant impact on individual liberty and constitute a severe deprivation of liberty interests. Police action to enforce a wide exclusion zone is not reasonably necessary or justified for the performance of their duty and the stated goal of public safety. Police interference with individual liberty in the situations described herein are significant, and both unnecessary and arbitrary to achieving their stated goal. Further, the impact on liberty interests are disproportionate relative to the stated goal.

## **Violations of Constitutional and *Charter* Rights**

The RCMP are claiming "public safety" to institute and enforce a blanket policy with wide-reaching consequences for constitutional and *Charter*-protected rights. The BCCLA, the

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<sup>36</sup> United Nations, *United Nations Declaration on the Rights of Indigenous Peoples*, G.A. Res. 61st Sess., 295, (13 September 2007).

<sup>37</sup> Attached statement of David Byron Christopher Wood, p 23.

<sup>38</sup> Sarah Berman, RCMP Admits It's Monitoring Wet'suwet'en Camps by Air Now, *Vice*, January 22, 2020.

<sup>39</sup> Amanda Follett Hosgood, "More Confusion than Clarity around Helicopter Flights in Wet'suwet'en Camps," *The Tyee*, January 27, 2020.

<sup>40</sup> RCMP, SOR/2014-281.

<sup>41</sup> *Fleming v. Ontario*, 2019 SCC 45.

Wet'suwet'en Hereditary Chiefs, and UBCIC maintain the RCMP checkpoint is, in effect, an exclusion zone constituting a serious and unjustifiable breach of the Constitution and the *Charter*, including:

- s. 2 (b) Freedom of the press and other media of communication;
- s. 2 (c) Freedom of peaceful assembly;
- s. 2 (d) Freedom of association;
- s. 7 Right to liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice;
- s. 9 Right to be free from arbitrary detention;
- s. 35 Rights to existing Aboriginal rights.

The RCMP exclusion zone is, simply put, not *Charter* compliant. Further, the RCMP exclusion zone does not constitute a demonstrably justifiable infringement of the *Charter*. The RCMP's rationale of "general public safety" is not of pressing concern as there is no basis for claiming such an overbroad objective. Even if such an objective could be claimed, its means—of restricting classes of people—is not rationally connected to the objective, the impairment of Charter rights are significant, and there are minimal and unclear salutary effects.<sup>42</sup> The RCMP's own press release claims "some miscommunication" resulted in three individuals being turned away on the first day.<sup>43</sup> Miscommunication does not even come close to the strict test of demonstrably justifiable infringement for constitutionally-protected *Charter* rights.

## Conclusion

The RCMP's responsibility to ensure public safety includes the safety of Wet'suwet'en people and their invited guests. The Constitution is the ultimate law the RCMP are charged to uphold and, as agents of the Crown, the RCMP must respect the constitutionally-protected and inherent rights of Indigenous peoples as well as *Charter*-protected rights. However, the rationale of the RCMP exclusion zone is inconsistent with the *Charter* and its implementation is undeniably vague, irrational, unfair, arbitrary, and discretionary. In light of all the foregoing, the BCCLA, the Wet'suwet'en Hereditary Chiefs, and the UBCIC call upon the Commission to treat this letter as an official complaint and to launch a full investigation into the implementation of the RCMP exclusion zone at the 27-kilometer mark on the Morice West FSR and all RCMP members involved in its enforcement. We trust the Commission will appreciate the urgency of this issue and significant public interest in the matter. In the interim, we call upon the RCMP to dismantle the exclusion zone, which seriously and significantly violates Wet'suwet'en law as well as the *Canadian Charter of Rights and Freedoms*.

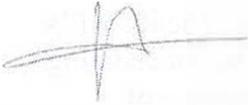
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<sup>42</sup> *R. v. Oakes*, [1986] 1 S.C.R. 103; *Dagenais v. C.B.C.*, [1994] 3 S.C.R. 835; *Thomson Newspapers v. Canada (A.G.)*, [1998] 1 S.C.R. 877.

<sup>43</sup> "RCMP provides update on access control checkpoint on Morice West Forest Service Road," January 20, 2020. RCMP Superintendent John Brewer, Operations Commander, RCMP Community-Industry Response Group.

Sincerely,

Submitted by:



Harsha Walia

Executive Director,

B.C Civil Liberties Association

On behalf of the B.C Civil Liberties Association



Sinogelgem, Sun House, LiKhts'amisyu Clan



Woos, Clax yikh (Gvizaly, House)

Meduck amosopy.

Alm (KLOUMKHON OWL HOUSE)

Johi Mox CHIEF NA' MOKS

Ron Caut Dzic'egot'

Ful Moy Gisdav'wa

Ron Caut Lay'oh

Warner Wallace

On behalf of Wet'suwet'en Hereditary Chiefs

Re: Policy Complaint Concerning RCMP Checkpoint on Morice West Forest Service Road



Grand Chief Stewart Phillip  
President



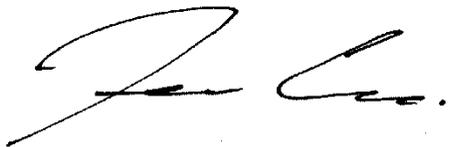
Chief Don Tom  
Vice-President



Kukpi7 Judy Wilson  
Secretary-Treasurer

On behalf of the Union of BC Indian Chiefs

**Supported by:**



Jessica Clogg  
Executive Director and Senior Counsel  
On behalf of West Coast Environmental Law



Lyndsay Watson  
Legal Director  
On behalf of Pivot Legal Society