



Attn:

RCMP Commander Eric Stubbs, "E" Division Core Policing
RCMP Commissioner Brenda Lucki
RCMP Deputy Commissioner Jennifer Strachan

February 6, 2020

Open Letter from BCCLA re: Police Actions on Wet'suwet'en Territories

The BCCLA is highly concerned about the developing situation in Wet'suwet'en territories. We are alarmed by the institution of an overbroad RCMP exclusion zone prohibiting Wet'suwet'en people, journalists, and the public from entering and monitoring police activity. The BCCLA strongly urges the RCMP to refrain from instituting exclusion zones that prohibit the public, invited guests of the Wet'suwet'en, and media from accessing the area.

Restricting the movement of Wet'suwet'en people through their own territories is a grave violation of Wet'suwet'en law and jurisdiction, and constitutionally-protected Wet'suwet'en rights and title.

We have also received disturbing information about reporters being detained, threatened with arrest, and given instructions from RCMP about what they can photograph, including instructions not to photograph tactical gear. Freedom of the press is enshrined in the *Canadian Charter of Rights and Freedoms*. Police-enforced media exclusion zones violate the Charter by seriously impeding freedom of expression. As the Supreme Court of Canada has held, "Strong constitutional safeguards against state intrusion are a necessary precondition for the press to perform its essential democratic role effectively."

We emphasize 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 of court appearance notice 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." Justice Green noted, "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."



The BCCLA has, along with the Wet'suwet'en Hereditary Chiefs and Union of BC Indian Chiefs, already filed a policy complaint and public interest investigation regarding the improper and unlawful actions of the RCMP in implementing and enforcing a checkpoint and exclusion zone on Morice West Forest Service Road in Wet'suwet'en territory.

We remain concerned about the overbroad scope and discretionary power of the RCMP's activities in 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, and media. The expansion of the RCMP checkpoint into an 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 other-wise used or acquired." 36

The Wet'suwet'en assert continuous jurisdiction and unextinguished rights and land title. Aboriginal rights and title require 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.

The BCCLA stands with the Wet'suwet'en at this time and continue to vigilantly monitor RCMP activity. We remind the RCMP that the *Constitution* is the ultimate law that they are charged to uphold.

Sincerely,

A handwritten signature in black ink, appearing to be 'Harsha Walia', written over a light blue horizontal line.

Harsha Walia
Executive Director