



Attn:

The Hon. Mike Farnworth, Minister of Public Safety and Solicitor General
RCMP Commissioner, Brenda Lucki
RCMP Deputy Commissioner, Jennifer Strachan, Commanding Officer for BC RCMP

VIA EMAIL ONLY

May 20, 2021

Open Letter from the BCCLA re: RCMP Exclusion Zone at Fairy Creek

I am writing on behalf of the BC Civil Liberties Association (BCCLA) regarding the RCMP Exclusion Zone near the Rainforest Flying Squad camp at the Caycuse Creek old-growth logging blockade on unceded Ditidaht territory.

The BCCLA is disturbed to learn that the RCMP have established two check points along the McClure Main and Caycuse Main roads near the Caycuse blockade. According to the RCMP, the exclusion zone was established in order to enforce an injunction obtained by the Teal-Jones forestry company from the B.C. Supreme Court on April 1, 2021. However, there is no geographical restriction within the injunction; the injunction does not prevent people entering into a geographical area.¹ Further, the injunction explicitly allows for peaceful protest in the area as long as the terms of the order are not violated.

In our view, the RCMP's actions are overbroad in scope and constitute an inconsistent, arbitrary, and illegal exercise of discretion to block members of the public, including legal observers and the media, from accessing the area and to monitor police activity. This situation is alarmingly reminiscent of what occurred in Wet'suwet'en territories last year. In that situation, we filed a complaint to the Civilian Review and Complaints Commission (CRCC) with the Wet'suwet'en Hereditary Chiefs and the Union of BC Indian Chiefs. The CRCC responded, saying that "buffer zones' may only be established

¹ Rainforest Flying Squad, News Release, "RCMP Set Up Exclusion Zone at Caycuse" (17 May 2021), online: [<laststandforforests.com/news-media/rcmp-set-up-exclusion-zone-at-caycuse/>](https://laststandforforests.com/news-media/rcmp-set-up-exclusion-zone-at-caycuse/).

in accordance with the parameters detailed by the courts...anything outside of these bounds is impermissible in a free and democratic society.”²

We are deeply troubled to learn from Legal Observers Victoria that this exclusion zone blocks off an emergency access route of the Ditidaht First Nation, which has a reserve near Nitinat Lake. We understand that on May 19, a Ditidaht woman who lives on the Nitinat reserve, along with her mother and her two children, were denied entrance at the RCMP blockade - despite her notifying the RCMP that it was an important traveling route for her and that she was going to observe peacefully.

We are also concerned that legal observers are generally being confined to specific locations far away from active arrests. This dramatically undermines their ability to observe and document the police. We also understand that RCMP officers are using tarps and other coverings to prevent media and legal observers from visually observing and documenting police activity.

Since August 2020, old-growth forest defenders have been maintaining camps around the area of the Caycuse River and Fairy Creek near Carmanah Walbran Provincial Park in southwest Vancouver Island in peaceful protest of logging activity in the Fairy Creek watershed. The defenders refer to this activity as “colonial upheld ecocide” because the area is of significant ecological importance and is home to some of the last remaining ancient old-growth forest in the province.

Among the defenders are people indigenous to the Ditidaht and Pacheedaht territories, including xʷ is xʷ čaa (Kati George Jim)³ and Elder Bill Jones. Both belong to the Rainforest Flying Squad, a group of Indigenous and non-Indigenous people from all walks of life, who are protecting the old-growth for the benefit of future generations.

² Letter from the Civilian Review and Complaints Commission for the RCMP to the BCCLA (13 February 2020), online (pdf): *BC Civil Liberties Association* < bccla.org/wp-content/uploads/2020/02/Correspondence-CRCC-Chairperson-2020-02-13-Highlighted.pdf >.

³ Simon Frankson, “xʷ is xʷ čaa from Caycuse blockade” (18 May 2021) online (video): *YouTube* < www.youtube.com/watch?app=desktop&v=mtwQJt20oMM&feature=youtu.be >.

Since launching its raid on the Caycuse blockade, the RCMP has arrested 12 individuals, nine for breaching the injunction and three for obstruction.⁴ Among those arrested was x^w is x^w čaa (who we are told was violently tackled by two RCMP and had her hair pulled) a legal observer, and a journalist.

On May 19, 2021, Ricochet Media reported that during the enforcement of the injunction, the RCMP made a concerted effort to block the view of legal observers and media. Footage shows the journalist being arrested for refusing to be corralled by police, after being barred entry into the exclusion zone.

In response, the Canadian Association of Journalists (CAJ) released a statement calling on courts to limit the powers of the RCMP and other police agencies, when issuing injunctions, because the police consistently violate the *Charter of Rights and Freedoms*.⁵

We echo the concerns of the CAJ and remind you that freedom of the press is enshrined in the constitution and protected by section 2(b) of the *Canadian Charter of Rights and Freedoms* (“Charter”). Police-enforced media exclusion zones violate the Charter by seriously impeding freedom of expression. The Supreme Court of Canada has held, “[s]trong constitutional safeguards against state intrusion are a necessary precondition for the press to perform its essential democratic role effectively.”⁶

We emphasize that *even* in areas where injunctions are being enforced, the courts have upheld the 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-

⁴ Darren Handschuh, “Logging protestors arrested”, *Castanet* (19 May 2021), online: <www.castanet.net/news/BC/334480/Protesters-continue-to-try-and-stop-logging-of-old-growth-area-in-Fairy-Creek-Watershed>.

⁵ Canadian Association of Journalists, News Release, “CAJ calls on courts to limit RCMP powers when granting injunctions”(18 May 2021), online: <www.newswire.ca/news-releases/caj-calls-on-courts-to-limit-rcmp-powers-when-granting-injunctions-825147370.html>.

⁶ *R v Vice Media Canada Inc.*, 2018 SCC 53 (CanLII) at para 112.

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 underrepresented in the Canadian media. That makes freedom of the press to cover stories involving Indigenous land issues even more vital.” In 2020, the Crown dismissed the criminal mischief charge against Justin Brake and concluded that it was not in the public interest to proceed with a trial.⁷

The BCCLA also stands with the Rainforest Flying Squad⁸ in demanding that the RCMP uphold and respect individuals’ right to engage in peaceful protest and not target or criminalize Indigenous people who are exercising their constitutionally-protected inherent rights.

Additionally, we demand that the Province of BC and the RCMP abide by the *Declaration on the Right of Indigenous Peoples Act*, which is an Act respecting the United Nations Declarations on the Rights of Indigenous Peoples (UNDRIP). According to UNDRIP:

Article 26: Indigenous peoples have the right to the lands, territories and resources, which they have traditionally owned, occupied or otherwise used or acquired;

Article 29: Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources.

The BCCLA recognizes that Indigenous peoples possess collective and individual rights. According to Elder Bill Jones, “[c]urrently and historically there hasn’t been any respect

⁷ “Legal battle ends for journalist charged after covering Muskrat Falls protest”, The Canadian Press (30 June 2020), online: globalnews.ca/news/7126686/legal-battle-justin-brake-end/.

⁸ Letter from the Rainforest Flying Squad to the RCMP (2021), online: [The Last Stand for Forests <laststandforforests.com/news-media/open-letter-to-the-rcmp-from-rainforest-flying-squad/>](https://laststandforforests.com/news-media/open-letter-to-the-rcmp-from-rainforest-flying-squad/).

for our land, for the Pacheedaht and for all Indigenous lands and forests.”⁹ The voices of the people on the ground must not be trampled on or ignored.

The BCCLA stands in solidarity with the old growth forest defenders, the Rainforest Flying Squad and Legal Observers Victoria. We appreciate those who articulate a connection between human rights and protection of the environment, and we support those exercising their inherent Indigenous rights and Charter-protected rights to freedom of assembly. We will monitor RCMP activity at Fairy Creek and we remind the RCMP that the Constitution is the ultimate law that they are charged to uphold.

Sincerely,



Veronica Martisius
Staff Counsel (Policy)

CC:

The Hon. John Horgan, Premier of British Columbia
The Hon. Katrine Conroy, Minister of Forests, Lands, Natural Resource Operations and Rural Development
Rainforest Flying Squad
Legal Observers Victoria

⁹ Rainforest Flying Squad, “Elder Bill Jones Corrects Claims Being Made As Hereditary Decision Makers”, online: *The Last Stand for Forests*, online: <laststandforforests.com/news-media/elder-bill-jones-corrects-claims-being-made-as-hereditary-decision-makers/>