

Airdrie, Alberta
June 9, 2015

The Honourable Kathleen Ganley
Alberta Minister of Justice and Solicitor General
3rd floor, Bowker Building
9833 - 109 Street
Edmonton, Alberta,
T5K 2E8

Dear Minister Ganley:

Re: HIGH RIVER - RCMP FORCED ENTRIES, ILLEGAL SEARCHES AND SEIZURES

Congratulations on your recent election and your appointment as Minister of Justice and Solicitor General. I am writing to you because your predecessor, [the Honourable Jonathan Denis failed to respond to my last letter to him](#). The questions I raised in my letters to Minister Denis still need to be addressed by the new NDP Government of Alberta. I have updated and summarized my questions below for the easy reference of you and your staff. Please see the copy of my letter to Minister Denis attached for background information and additional details or have your staff call me directly. I am also sending you an electronic copy of this letter so you and your staff can access all the hyperlinks.

QUESTION #1: What did Minister Denis know of the High River forced entries, unwarranted searches and seizures, when did he know it, and why didn't he stop it?

QUESTION 2: Given that RCMP documents prove that they were seizing private property from High River homes right up to July 13, 2013, who authorized all the forced entries and warrantless entries and seizures by the RCMP both before and after June 27, 2013 when a Provincial State of Emergency was declared and was this authorization properly delegated in accordance with the Act?

QUESTION 3: If Minister Denis' office didn't have serious doubts about the legitimacy of the RCMP's forced entries in High River, why did he ask his Deputy Minister and have [Asst. Deputy Minister Bill Sweeney e-mail RCMP Asst. Commissioner Marianne Ryan on June 25, 2013](#) (see hard copy enclosed) for the "legal authority" she was using to justify the RCMP "to forcibly enter private property" in High River?

QUESTION 4: Did RCMP Asst. Commissioner Ryan provide your office with a copy of the "Crown counsel" paper she refers to in her June 25, 2013 e-mail (PDF page 18) to Assistant Deputy Minister Sweeney? If yes, will you now release a copy of this important document to the public? [Please note that the RCMP have responded to my Access to Information Act request for a copy of this Crown Counsel paper by exempting all records in their entirety.](#)

QUESTION 5: [A poll taken in High River in August of last year](#) indicates that at least half of the residents of High River no longer trust the RCMP to care for their homes in an emergency and would refuse an evacuation order. What is the Alberta Government doing to rebuild this broken trust?

QUESTION 6: Many people are wondering why section 18 of the Alberta Bill of Rights didn't protect the residents of High River from the RCMP's kicking in the doors to many hundreds of their homes, the unwarranted entries and searches of thousands of their homes, and the unwarranted seizure of private property from more than a hundred homes including a number of arrests and charges being laid ([the knowledge of which have still not been made public](#)).

QUESTION #7: When is the Alberta Government going to amend section 19 of the Alberta Emergency Management Act as recommended by the [Alberta Property Rights Advocate](#) on June 2, 2014.

QUESTION #8: Why did the Alberta P.C. Government defend the actions of the RCMP so vigorously when their actions were [so at odds with the feelings of the residents of High River](#) and does the new NDP government still defend the RCMP's actions today?

As a result of new information I have received since I wrote Minister Denis, I have some additional questions and concerns that need to be addressed by you and your government.

1. [A third telephone poll taken by the National Firearms Association on May 6, 2015](#), shows that half the residents of High River want a judicial inquiry to get to the bottom of the High River mess.
2. [More than a thousand supporters have signed my High River petition](#) calling on Premier Notley to hold a judicial inquiry into the High River forced entries, illegal entries and unwarranted searches and seizures.
3. Almost two years have passed since the High River Forced Entries, Unwarranted Searches and Seizures, now the newly appointed NCO in charge of High River Detachment, RCMP S/Sgt. Robin Alexander says, ["A big part of what we need to do is rebuild trust with the people of High River."](#) If the previous P.C. Government and the RCMP had responded to the High River mess properly, trust would already have been rebuilt. Now it is up to you and your colleagues to do the job the P.C Government refused to undertake.
4. I was so concerned that I might never get real answers to my questions from the Alberta Government, [I recently wrote Federal Justice Minister, Peter MacKay](#) asking him: **How is it possible that the legal authority under the *Alberta Emergency Management Act* took precedence over the *Charter of Rights and Freedoms* and the *Alberta Bill of Rights*?**

Minister MacKay's response should be particularly interesting given that he was the Minister of National Defence at the time of the High River flood. [Contrary to reports from witnesses in High River, National Defence has so far refused to provide documentation responding to claims that soldiers kicked in doors, entered High River homes and/or helped seize and transport firearms.](#)

In response to one of my FOIP requests, [Alberta Municipal Affairs provided me with a copy of an e-mail \(PDF page 27 - FOIP Page 50 enclosed\)](#) from the Chief Financial Officer of the Town of High River supporting the views of these High River witnesses: ***"During the initial stages of the flood in High river, the RCMP and Canadian Armed Forces entered homes to search for missing or distressed residents. In order to enter the homes, the RCMP and Armed Forces personnel often had to kick or knock through the front door."***

Initial reports of RCMP officers "high-fiving" each other after kicking in a door are now in question as witnesses now report that they saw soldiers doing the "high-fiving". This is just one

more reason we need a judicial inquiry to reveal all that happened in High River and who did what.

5. Reference is being made to the [155-pages received in response to RCMP File A-2014-01213](#) that I received on May 30, 2015 and to the following transcribed quotes taken from the handwritten notes talking about arrests the RCMP made in High River:

- PDF page 85 - "STO c/o EOC - Cpl Racette advising members to arrest all found ins."
- PDF PAGE 96 - "Q) What doing about found-ins that sneak in? Are they being arrested? Yes"
- PDF PAGE 122 - "Task #24 - Clarify message out to membership about arresting found-ins"

The actual number of High River residents arrested in this manner was not addressed in the report completed by the RCMP Public Complaints Commission. Therefore, I have filed another *Access to Information Act* request with the RCMP to find out: (a) the total number of arrests made in High River, Alberta including the legal authorities for these arrests; (b) the total number of persons taken into custody as a result of these arrests; and (c) the number and types of charges laid as a result of these arrests including the disposition of these charges.

I am not hopeful about getting a response given that they have excluded all records in their entirety to my last three requests and [they previously refused to provide me with the number and types of charges laid in High River as a result of their illegal entries and searches of High River homes](#). Possibly, your enquiries would be faster and produce more results.

6. [A recent response to a FOIP request from Alberta Municipal Affairs](#) confirms how even Alberta Emergency Management officials were confused about the "legal authorities" necessary to allow unwarranted entries into homes and buildings under the Emergency Management Act. On June 23, 2013, Jim Cornish, Director, Field and Recovery Operations for Alberta Emergency Management wrote in an e-mail (PDF page 17 - hard copy enclosed): *"We have run into a snag. We have inspectors on the ground and ready to join inspection teams, however all RCMP resources are tied up with the search and recover mission, and will be for two more days. The requirement to have the RCMP officer is mostly for optics - so we can show residents that the entries to houses were supervised by a peace officers. The RCMP Superintendant here indicated that this function could not be performed by sheriffs, but I am not convinced that this is the case. **Under the SOLE [State of Local Emergency], if the mayor is willing to allow searches under supervision of a sheriff or sworn peace officer, then is should be okay."***

However, the [Alberta Property Rights Advocate's 2013 report on the High River Forced Entries tabled in the Legislature on June 2, 2014](#) made the following Recommendation 2013.05 - *"that the Legislature amend the Emergency Management Act to clarify and affirm the consistent respect for and deference to private property rights, even in the face of an emergency situation. Specifically, it is recommended that section 19 of the Act be amended to confirm that a natural disaster does not create licence to disregard the property rights of individual Albertans, **nor does it absolve the authorities from a responsibility to follow the due process of law (including the need to obtain Ministerial authorization) if any encroachments do become necessary as an emergency response."***

[As reported in Parliament in response to Order Paper questions posed by MP Scott Reid](#), the RCMP thought High River Bylaw Officer, Ross Shapka had the authority to authorize the unwarranted entry and searches of 4,666 High River homes (RCMP Response Q-540(b)) and that the RCMP Incident Commander had authority to order the kicking in of hundreds of High

River doors (RCMP Response Q-540(c)) and entering thousands more homes without warrant or permission using locksmiths and continued these unnecessary actions even after it was obvious that no persons were actually being rescued inside these homes. The Director of Field and Recovery Operations for Alberta Emergency Management thought the Mayor of High River had the authority to order inspectors to enter homes without warrants. On June 25, 2013, the Assistant Deputy Minister/Director of Law Enforcement in Jonathan Denis' ministry still didn't know who had legal authority to order the forced entry to "more than 754" High River homes. The Alberta Property Rights Advocate report states that unwarranted entry of 4,666 High River homes required "Ministerial authorization".

The documentation made available to me seems to indicate everyone in a position of authority in the government was (and probably still are) confused about their "legal authorities" for forced entries and unwarranted entries under the *Emergency Management Act* and here we are two years later and the state of confusion still hasn't been resolved.

Before another State of Local Emergency is declared in one more Alberta community, it is very important for these legal authorities be sorted out by your office and effectively communicated to every mayor, councillor and law enforcement officer in Alberta.

7. Despite the confusion noted above about who had the legal authority under the *Alberta Emergency Management Act*, the fact is that the unwarranted entries into 4,666 homes were not properly authorized in accordance with Act.

The most important oversight in the High River report by the Civilian Review and Complaints Commission for the RCMP is stated in:

- **FINDING NO. 3:** Pursuant to the *Emergency Management Act*, the *Emergency Operations Centre* authorized and instructed the RCMP's entry without warrant and search of every High River building as part of the *Emergency Operations Centre's* emergency plans.
- **FINDING NO. 18:** Pursuant to the *Emergency Management Act*, the *Emergency Operations Centre* authorized and instructed the RCMP's entry of High River buildings without warrant to escort home inspection teams as part of the emergency plan.

The High River Emergency Operations Centre (EOC) did not do the authorizing and instructing - people did! Documents tabled in [Parliament on September 15, 2014](#) by the RCMP in response to Q-540(c) states:

- *The Director of the Town of High River Emergency Operation Centre directed search teams to conduct a door to door search in High River.*
- *The RCMP High River incident commander approved the use of force as required to enter property. If forced entry was required, search teams were directed to cause the least amount of damage possible.*

The RCMP Complaints Commission's High River report either clarifies or contradicts Parliamentary documents by stating only one person, the Director of the High River Emergency Operation Centre made all the decisions and directed the RCMP to repeatedly enter 4,666 High River homes using whatever force is necessary. The report identifies the following individuals as responsible for directing the RCMP's actions in High River:

- Between June 20, 2013 and June 24, 2013 the one man in charge was Ross Shapka, Manager of Protective Services (the bylaw officer) and in his absence, Len Zebedee, the Fire Chief.
- Between June 25, 2013 and July 13, 2013 the one man in charge was James Cornish, EOC Operations Chief, Director of Field and Recovery Operations, Alberta Emergency Management Authority.

The fact is that this one-man theory defies common sense and the law. No government, including the Town of High River Town Council, would ever approve a plan delegating their exclusive authority by making one man fully responsible and accountable for making such momentous decisions that violated the Charter rights of thousands of people.

In fact, the *Alberta Emergency Management Act* logically takes this account by making the "local authority" responsible for making these high stake decisions during times of stress in an emergency. Only the "local authority" has the power under the Act to declare a State of Local Emergency and only the "local authority" has the power to direct the unwarranted entry into buildings in accordance with their bylaws and established emergency plan. **The "local authority" in High River is the Town Council and the 1996 emergency plan they were actually operating under (in accordance with the AEM Act) did not include the unprecedented, unwarranted entries, using whatever force is necessary, into each and every High River home regardless if homes were flooded or not over an extended three or four week period.**

[Lawyer Rick Hemmingson's legal analysis stated:](#) *"Since Mr. Shapka does not appear to be the person who made the original declaration of a state of local emergency in High River then, by law, his direction had to be given "in the operation of the Municipal Emergency Management Plan and related plans or programs". As we have seen, that condition was spelled out in Section 12 of Bylaw 3843/96. The only written 'plan or program' we have been able to uncover is the MEMP [Municipal Emergency Management Plan] referenced above. **Here's where the RCMP's purported authority begins to collapse on more than one front.**"*

According to the RCMP Complaints Commission's report, the Director of the High River Emergency Operation Centre was making up plans on the fly rather than following the High River Town Council's bylaws and their existing, approved written plan. The High River Town Council would have had to convene and resolve to amend their existing Emergency Plan by incorporating the revised Shapka/Cornish plans that resulted in an unprecedented violation fundamental rights and the [Canadian Charter of Rights and Freedoms](#). The confusion and chaos during first day or two of the emergency might excuse these decisions but not for the forced entries, unwarranted searches and seizures that went on for the next three or four weeks.

After reviewing the 480-page FOIP response including all the 362 pages of Scribe Notes taken in the High River Emergency Operation Centre from June 20, 2013 to June 25, 2013, there is no indication that the Town Council was ever convened to make the decision to approve the Shapka/Cornish revised emergency plans, that included having the RCMP conduct unwarranted entry into each and every home and business in High River (including those homes that weren't even flooded) and authorizing the use of force to enter those homes and businesses over such an extended period of time.

Neither Shapka nor Cornish had a trace of legal authority to create their own "Emergency Plans" and the RCMP Complaints Commission turned a blind eye to that fundamental requirement in the Act. And - why didn't the senior officers in the RCMP and the Ministers of Justice and Municipal Affairs know this at the time? After all they were both in High River as were senior officials from both their ministries.

The most important piece of evidence missing from the RCMP Complaints Commission report is the fact that they never interviewed Ross Shapka, the very guy they say made all these decisions initially and directed the RCMP to search homes and kick in doors if necessary. For more details of the issues that the Commission should have addressed as part of their analysis of "legal authorities" please read lawyer Rick Hemmingson's detailed analysis of the *Alberta Emergency Management Act* in his Canada Free Press column entitled: [Who authorized RCMP to make warrantless entries into High River homes during the 2013 flood?](#)

8. Finally, there is some urgency to your review of the High River mess. [The RCMP draft emergency evacuation policy for Alberta](#) basically entrenches the actions taken in High River into their policies and procedures for any future State of Local Emergency declared in any Alberta community. Given that the Civilian Review and Complaints Commission for the RCMP report on the High River gun grab defended and justified almost all the RCMP's actions, I doubt if any significant changes have been made to this draft since it was sent to me one year ago.

Analysis of the RCMP's draft emergency/evacuation policy by lawyers in the Parliamentary Research Branch concluded: ***"However, the RCMP Policy appears to possibly go beyond the power afforded by section 19 (i.e., the making of arrangements for the adequate care and protection of personal property), as it describes the securing of property for safekeeping where it is in the public interest to do so (para. 4.6.1.6). Moreover, the manner in which such powers are applied could be subject to Charter scrutiny, raising issues as to whether these powers were applied arbitrarily or for no justifiable public safety reason, and whether such searches were conducted in a reasonable manner."***

If I can be of any help to you or your staff in completing your review, please do not hesitate to call.

Yours sincerely,

[Original signed by]

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cc The Honourable Rachel Notley Premier of Alberta
The Honourable Deron Bilous, Minister of Municipal Affairs

Enclosures

1. Open Letter to Justice Minister Jonathan Denis - March 24, 2015
2. E-mail exchange between ADM Bill Sweeney and RCMP Asst. Comm. Marianne Ryan

3. E-Mail from the Chief Financial Officer of the Town of High River dated Sept 10, 2013
4. E-Mail from Jim Cornish, Director, Field and Recovery Operations for Alberta Emergency Management dated June 23, 2013.
5. The RCMP draft emergency/evacuation policy for Alberta