



April 30th, 2024

TO: The NB Minister of Public Safety Hon. Kris Austin <Kris.Austin@gnb.ca>
CC: The NB Attorney General and Minister of Justice Hon. Hugh J.A. (Ted) Flemming K.C. <Hugh.Flemming@gnb.ca>, The NB Minister of Aboriginal Affairs Hon. Arlene Dunn <Arlene.Dunn@gnb.ca>, The Governor General of Canada Her Excellency the Right Honourable Mary Simon <info@gg.ca>, Minister of Crown–Indigenous Relations Gary Anandasangaree <gary.anand@parl.gc.ca>, AFN National Leader Cindy Woodhouse <Cwoodhouse@afn.ca>

Aniin. Greetings Minister Austin.

I hope this letter finds you well. As you may recall, we last corresponded in the summer of 2023, when you wrote me on July 19th, and I replied to you on August 29th. We were communicating regarding the operation of the L'nuk Lounge, a Mi'kmaq truck house and gathering place located in Moncton, and discussing the Aboriginal and rights at stake in its operation.

In your letter of July 19th, you stated that “I understand and acknowledge that you believe that there exists in Canada an Aboriginal and/or a treaty right to retail cannabis and/or to authorize its retail. The Government of New Brunswick fully respects Aboriginal and treaty rights, and takes care not to interfere with their lawful exercise. We are also fully committed to reconciliation with Indigenous peoples and organizations.” I appreciate your sentiment.

I can see from more recent comments you made at the time of the introduction of Bill 29, *An Act Respecting Cannabis Control*, that you have put some thought into the issue of cannabis on First Nations reserves and that you recognize that, “You can't seize property on First Nations reserves ... unless you're talking about a property that would be involved in violent crime” as quoted in an article published by Stratcann.com. The article also notes that you believe that there is “nothing the province can do to enforce its provincial cannabis rules on businesses operating on First Nations reserves,” and that “the issue is up to the federal government to enforce.”

You are perfectly correct in this line of thinking. The Province lacks the jurisdiction to enforce its laws on “lands reserved for Indians,” and the Federal government should be addressing these issues in a nation-to-nation framework with the Indigenous people of these lands. The real issue at the core of the contradiction regarding cannabis regulations between First Nations and Canadian authorities, is the fact that when Justin Trudeau undertook to legalize cannabis, he explicitly chose to avoid consulting with Indigenous people and nations on the cannabis issue. His advisors told him that the matter was complex, and that there was not



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enough time to consult and come up with an approach on cannabis that respected constitutionally protected Aboriginal and treaty rights if he were to legalize cannabis within his first term as he had promised the electorate.

As a result, Trudeau chose to leave Indigenous people out of the equation with the creation of the *Cannabis Act* and to leave the rest of us to clean up his mess after the fact. Because the *Indian Act* Band Councils were granted very few powers when they were legislated into existence by John A. Macdonald in 1876, they lack any jurisdiction or authority to regulate cannabis on or off reserve. That has left it to individual Indigenous people to assert their Aboriginal and treaty rights by opening up their own shops and to fight for their right to exist. To a very significant extent this has happened, with over 500 such sovereign shops opening up across Turtle Island in nearly every Indigenous nation.

While most of these shops are located on Indian reservations, which are clearly “lands reserved for Indians” as per the terms of the *1763 Royal Proclamation*, and thus the preserve of Federal government authority as per Section 91 (24) of the *British North America Act*, an increasing number of Indigenous trading posts are being opened off reserve. Perhaps it is because the Covid lockdowns greatly damaged the operation of the Indigenous economy on reserve, or maybe it is because Indigenous people are taking the Federal government at its word in passing the [United Nations Declaration on the Rights of Indigenous Peoples Act](#), but whatever the case, by my count there are now close to 100 such shops open, with most of them being located in Ontario, and with just under a dozen open in the Maritimes.

In the cases of Peace and Friendship treaties organized in accordance with the Covenant Chain relationship, the lands remain unceded, and so the Indigenous entrepreneurs operating off-reserve in the Maritime Provinces and Ontario are quite correct in stating that their stores are indeed still operating on unceded lands which remain “reserved for Indians” as per the terms of the *Royal Proclamation of 1763*. On these lands, the Provinces – because they are merely administrative bodies and not nation states – have no authority or jurisdiction to alter the treaty relationship or to enter into new treaty making relationships with Indigenous peoples. This is the role of the Federal Government acting through the office of the Governor General and the British Crown itself.

I will now get to the concrete matter at hand that has led me to write to you today – the Friday, April 26th raid by your Public Safety officers on the Gitpu Trading Post, a Mi'kmaq truck house located at 91 Russell Street in Saint John. The Gitpu Trading Post is owned and operated by status Mi'kmaq Indians in New Brunswick who I know well, and as an esteemed elder with a national and international profile, they have asked me to write to you on their behalf. They want me to explain to you why you should uphold the Honour of the Crown by meeting with them and the [Micmac Rights Association](#), the Indigenous Governing Body to which they belong, in accordance with the treaty agreements and treaty promises made by the Crown, rather than to



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continue to violate their constitutionally protected rights by criminalising their legitimate and lawful right to trade.

I will explain to you the constitutionally protected Aboriginal and treaty rights which are at play and which, as a servant of the Crown, you are required to uphold. The Gitpu Trading Post sells cannabis, a medicine and a product legal in Canada in accordance with the customs and conventions of the Mi'kmaq people, who are recognized by the Crown's *Royal Proclamation of 1763* as having the "free and open" right to trade with "all our Subjects whatever." According to Section 25 of Canada's *Constitution Act, 1982*, "any rights or freedoms that have been recognized by the *Royal Proclamation* of October 7, 1763" shall not be "abrogated or derogated from." These rights include the economic right of the owners of the Gitpu Trading Post to engage in "free and open" trade on Mi'kmaq traditional territory. As per the terms of the *Royal Proclamation*, it is clear that it is the Crown's subjects who are to be licensed in such trade – should the Crown feel it to be necessary – and not the Indians.

The Mi'kmaq nation, through what is known as the "Covenant Chain" of non-ceding Peace and Friendship Treaties entered into and renewed with the Crown, is one of "the several Nations or Tribes of Indians with whom We [the British Crown] are connected, and who live under our Protection" according to the Proclamation. These Indian nations which are connected to the Crown should "not be molested or disturbed in the Possession of such Parts of Our Dominions and Territories as, not having been ceded to or purchased by Us, are reserved to them, or any of them, as their Hunting Grounds." The connection stems from the Covenant Chain of Peace and Friendship treaties made by the British Crown with the Mi'kmaq nation between 1725 and 1779 across Mi'kma'ki which are "recognized and affirmed" by Section 35 of Canada's *Constitution Act, 1982*.

In considering the issue of Indian lands and surrenders, in [R. v. Isaac, 1975](#) Justice MacKeigan of the Nova Scotia Court of Appeal concluded after exhaustive research, that "No Nova Scotia treaty has been found whereby Indians ceded land to the Crown, whereby their rights on any land were specifically extinguished, or whereby they agreed to accept and retire to specified reserves." Justice MacKeigan also noted that "I have been unable to find any record of any treaty, agreement or arrangement after 1780 extinguishing, modifying or confirming the Indian right to hunt and fish, or any other record of any cession or release of rights or lands by the Indians." At the time of the 1763 Royal Proclamation, the lands which are now known as the Province of New Brunswick were considered by the Crown to be part of the Province of Nova Scotia.

In reference to the Royal Proclamation of 1763, Justice MacKeigan wrote that "The Proclamation was clearly not the exclusive source of Indian rights ... but rather was 'declaratory of the aboriginal rights.' I am of the opinion that the Proclamation in its broad declaration as to Indian rights applied to Nova Scotia including Cape Breton. Its recital acknowledged that in all colonies, including Nova Scotia, all land which had not been "ceded to or purchased by" the



Crown was reserved to the Indians as 'their Hunting Grounds.' Any trespass upon any lands thus reserved to the Indians was forbidden."

The lands on which the city of Saint John is built thus remain unceded Indian lands that the Crown, in the *Royal Proclamation of 1763* identified as "lands reserved for Indians." These lands have never been sold or surrendered to the Crown by the Maliseet or the Mi'kmaq. They are from the Maliseet and Mi'kmaq perspective no different in legal status than the rest of their country – unceded lands that are the birthright of all Maliseet and Mi'kmaq people to live upon, use and enjoy in accordance with their customs and conventions.

In 1867, in violation of its treaty agreements, the British Crown unilaterally handed over responsibility for "Indians and lands reserved for Indians" to its colonists who wished to be "federally united into One Dominion under the Crown" via Section 91(24) of the British North America Act, 1867. The Dominion of Canada then dishonoured the Crown by breaking the terms of the Covenant Chain agreement with the Mi'kmaq by passing the Indian Act in 1876, and inflicting a series of well documented horrors upon the Mi'kmaq and other Indigenous peoples which continue as a legacy of colonization today.

The *Indian Act* defined Indians as non-persons, forcibly "centralized" and confined Mi'kmaq people on reservations in order to facilitate the theft of their lands and resources, and committed "cultural genocide" on the Mi'kmaq people by stealing generations of children that were brainwashed and physically and sexually abused in residential schools. As a survivor of nine years of incarceration in residential school beginning at the age of 6, I have a direct personal understanding of these matters. The *Indian Act* was the inspiration for South Africa's racist *Apartheid* system, and the *Act* remains a racist piece of legislation that exists in contravention to the Section 25 and 35 constitutionally protected Aboriginal and treaty rights of the Mi'kmaq people.

Gitpu Trading Post's rights to operate a Truck House on unceded Indian lands and to trade legal products are outlined in the "Peace and Friendship treaties" the Crown made with the Mi'kmaq people. The [1752 Peace and Friendship Treaty](#) recognizes the rights of the Mi'kmaq people to establish "truckhouses" at locations of their choosing and states that they have "free liberty to bring for Sale to Halifax or any other Settlement within this Province, Skins, feathers, fowl, fish or any other thing they shall have to sell, where they shall have liberty to dispose thereof to the best Advantage."

The Canadian government, the Province of New Brunswick and the City of Saint John have all indicated their commitments to "truth and reconciliation" with Indigenous peoples and their intentions to overcome the "dark days" of Canadian colonialism. That is going to require the recognition of the right of Mi'kmaq people to use their unceded and unsurrendered lands for trade and economic development in accordance with the treaties and Canadian law which now includes the *United Nations Declaration on the Rights of Indigenous Peoples Act*.



This law provides “a framework for reconciliation, healing and peace, as well as harmonious and cooperative relations based on the principles of justice, democracy, respect for human rights, non-discrimination and good faith” and adopts the United Nations Declaration on the Rights of Indigenous Peoples which “is affirmed as a source for the interpretation of Canadian law.” According to its text, the “Act is to be construed as upholding the rights of Indigenous peoples recognized and affirmed by section 35 of the [Constitution Act, 1982](#).”

The Act further states that “The Government of Canada must, in consultation and cooperation with Indigenous peoples, take all measures necessary to ensure that the laws of Canada are consistent with the Declaration.” There are multiple aspects of the Declaration which pertain to Gitpu Trading Post’s Aboriginal and Treaty rights to provide medicine and to engage in trade and economic development. The following are a number of Articles of the Declaration which are now enshrined in Canadian law:

Article 3: Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

Article 5: Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

Article 20: Indigenous peoples have the right to maintain and develop their political, economic and social systems or institutions, to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities.

Article 23 Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, indigenous peoples have the right to be actively involved in developing and determining health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions.

Article 24: Indigenous peoples have the right to their traditional medicines and to maintain their health practices, including the conservation of their vital medicinal plants, animals and minerals.



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I thus sincerely ask you to cease and desist from directing your Public Safety officers – who like you, have a fiduciary responsibility to Indians exercising their constitutional rights – to raid Mi'kmaq truck houses such as the Gitpu Trading Post.

Instead, I invite you to meet with me, representatives from the Gitpu Trading Post, and leaders from the Micmac Rights Association – an Indigenous Governing Body as per the Government of Canada's definition in the [Indigenous Services Act](#) (“a council, government or other entity that is authorized to act on behalf of an Indigenous group, community or people that holds rights recognized and affirmed by Section 35 of the [Constitution Act, 1982](#)”) – in order to manifest your ‘full commitment to reconciliation with Indigenous peoples and organizations’ that you expressed to me in your letter of July 19th, 2023.

Such a meeting would be consistent with the original treaty agreements made between our peoples, and is a necessary step towards reconciliation.

I look forward to your response and can be reached via email.

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Chief Del Riley

Chief Del Riley, Crane Clan Chippewa Nation
Former President, National Indian Brotherhood