

Respect us enough to hear our voices:

An open letter to the Canadian Justice system from the
Micmac Rights Association Executive Committee

October 24, 2026

To the Provincial Court Judges operating in Mi'kmaki, Attorney General of the Maritime Provinces and Canada, Minister of Indian Affairs, Governor General, Prime Minister of Canada,

Kwe, we greet you and hope you are doing well. We are writing you this letter on behalf of the Micmac Rights Association, an Indigenous governing body representing some 300 Mi'kmaw people from some two dozen different communities in unceded Mi'kmaw'ki. We are writing to bring to your attention some matters concerning the constitutionally protected Aboriginal and treaty rights of our members which may come before you.

One of the reasons that the Micmac Rights Association was formed in 2022 was because of the great difficulty that our people faced in finding lawyers that would actually advocate for the exercise of Mi'kmaw Aboriginal and treaty rights in our unceded homelands. While Canadian law now allows Indians to hire lawyers, and there are more Mi'kmaw today with the resources to hire lawyers, the problem is that most available lawyers have limited or no knowledge of about Aboriginal and treaty rights and don't practice in that area of law.

Most lawyers are thus unable and unwilling to raise a s.35 Aboriginal and treaty rights defence as it lies outside of their normal criminal law practice. Their typical strategy is to find a technicality or loophole to beat the charge, or they will seek to make a "good" plea deal for their client. This is not an acceptable option for Mi'kmaw people seeking to exercise their constitutionally protected Aboriginal and treaty rights.

Of those lawyers who do practice Aboriginal and treaty law, the overwhelming majority of them work for large law firms who exclusively work for the Band Councils or "First Nations" created by the Federal Parliament through the racist and colonial *Indian Act*. This racial legislation – which was designed to destroy Indigenous nationhood by sidelining traditional leadership and governance structures – provides for the election of representatives to administer programs and services as a part of the fiduciary responsibilities of the Federal Government, but gives them no power off-reserve, and very limited powers on reserve. The *Indian Act* and the *Canadian Human Rights Act* both prohibited Indians from litigating against

the Crown on significant matters until changes were made in these federal laws in the last seventy years.

The Indian Act and the big “Aboriginal Law” firms

The *Indian Act* corporate-like entities created by Canada’s Parliament are not “Indians,” they signed no treaties, and as per the understanding of Chief Del Riley, the National Chief who drafted and negotiated the inclusion of s. 25 and s. 35 in the *Constitution Act* of 1982, they do not have any Aboriginal and treaty rights. The clearly stated policy of the Federal government is to use these *Indian Act* bodies to make agreements in the name of the Indigenous nation, and to thereby municipalize Indigenous nationhood, and create so called “modern treaties” for the purpose of extinguishing Indigenous sovereignty.

That has not stopped law firms from allying themselves with these “First Nations,” making a substantial income from drafting regulatory laws which mirror federal and provincial law and import taxation on reserve. All while using the *Indian Act* system as a vehicle to build “economic development” monopolies, and to control access to legal and financial resources.

The individual Indians registered to *Indian Act* band councils do of course continue to have their rights, but most are unable to find legal representation, because the law firms specializing in those rights have a conflict of interest in representing the rights of individual band members, as they are already retained by the Band Council to supposedly represent the “collective.”

In October of 2026, several members of the MRA executive met with a lawyer with civil law expertise who had appeared before the Supreme Court of Canada. The purpose of the meeting was to discuss ways that the provincial government could be sued for unilaterally predetermining “by ministerial directive, executive policy, or coordinated enforcement action, the invalidity, inapplicability, or non-existence of asserted Mi’kmaw inherent Aboriginal and treaty rights.”

The lawyer essentially advised that there was nothing they could do. Their legal opinion was that raising a s. 35 Aboriginal and treaty rights case would require at minimum a million dollar retainer, and that it would be impossible to argue the case successfully without hiring a large aboriginal rights law firm capable of marshalling the legal argument and necessary expert witnesses. These law firms are already retained by Band Councils and regional government funded organizations, and they are thus in a conflict of interest in representing individual Mi’kmaw, even if they were to somehow come up with the required million dollar retainer.

Furthermore, many of these law firms have already identified the key experts that are proficient in both the Mi'kmaw traditional knowledge and who have the academic qualifications to be considered "expert witnesses." In multiple rights based cases where the MRA legal team has reached out and confirmed experts willing to testify, those experts were subsequently told by lawyers from these large firms that their pre-existing contracts with these firms prevented them from providing expert evidence in other cases.

Elders and expert witnesses

We have no shortage of Mi'kmaw elders who can testify to our rights and our treaties. However, despite the favourable September 1st, 2026 [decision of Judge Goguen](#) in the Labilloy case in Campbellton, New Brunswick, Nova Scotia judges have been summarily dismissing our rights. [Judge Michie in Amherst](#) in the Bowser-Knockwood case and Judge Murphy in Dartmouth in the Ward case in Nova Scotia recently made rulings where they "summarily dismissed" treaty rights cases "with no chance of success" (despite the Goguen ruling showing otherwise) and without regard to the oral evidence provided by Mi'kmaw elders because their testimony was not substantiated with "expert witness" reports.

One of the most egregious issues with the court system's understanding of "expert witnesses" is that they must be "impartial" and not have a stake in the matter. Consequently, as Judge Michie noted in her decision, Indigenous leaders like Chief Riley who have spent their lifetimes fighting for Aboriginal and treaty rights constitution, would not be considered suitable "experts" in the courts as they potentially lack the appearance of providing "independent and unbiased assistance to the Court" because "the evidence establishes that he [Chief Riley] has devoted much of his professional life to advocating for those rights" and might not be "independent of the interests at stake in this proceeding."

The same problem goes with the most knowledgeable Mi'kmaw experts who despite having published exhaustive tomes on Mi'kmaw history and culture, have told us that they cannot be considered expert witnesses in court because they advise the Mi'kmaq Grand Council and thus will not be considered by the courts to be capable of providing "independent, objective or unbiased assistance" in an Aboriginal and treaty rights matter.

Meanwhile all the officers of His Majesty's court in their completely "unbiased" way, and to their great financial advantage, assume the authority and jurisdiction of a British Crown over Mi'kmaw land which was never surrendered or sold, and over Mi'kmaw nationals who never gave up their sovereignty or rights to exist on this land.

The point is that while we are indeed all "Treaty People," there are two sides to a treaty, and the Mi'kmaw side has the right to interpret our treaties and argue them before his Majesty's

courts. By refusing to allow Mi'kmaw nationals to choose their own representation, by choosing the path of "summary dismissal" to avoid even considering our Aboriginal and treaty rights, and by refusing to hear or consider the evidence of our elders as to how they interpret the words of our own treaty agreements, you are violating our constitutionally protected rights and the honour of the Crown you represent.

In the over two dozen legal cases involving Micmac Rights Association members, we have seen a disturbing pattern whereby the Crown's main lawyer for s. 35 cases, has objected whenever an Mi'kmaw elder or Indigenous knowledgeholder has spoken to their understanding or analysis of the words of the treaty.

This Crown has resolutely objected to Mi'kmaw elders explaining their understanding of the words of the treaty because they are not court approved "experts" and thus cannot provide legal interpretation of a treaty as mere "lay witnesses." This approach is wrong and in our view deeply racist, as it denies our Mi'kmaw knowledge holders the ability to speak our truth in courts which are supposed to give us a space to speak and be heard.

These objections have been upheld by judges who have prevented our Elders from giving evidence about their understanding of our treaties in His Majesty's courts. We submit that excluding this evidence undermines the approach required by the Supreme Court of Canada. In *Simon v. The Queen*, [1985] 2 S.C.R. 387, the Court upheld the continuing validity of the Treaty of 1752 and affirmed that treaties must be interpreted liberally, with uncertainties resolved in favour of the Indigenous signatories – a principle reiterated in *R. v. Badger*, [1996] 1 S.C.R. 771. In *Delgamuukw v. British Columbia*, [1997] 3 S.C.R. 1010, the Court further held that evidentiary rules must accommodate Indigenous oral histories and place them on an equal footing with documentary historical evidence.

The Supreme Court has also recognized that treaty rights must accommodate changing circumstances and modern methods of exercising the protected activities. In *Simon*, the Court rejected confining Mi'kmaw hunting practices to those used in 1752. In *R. v. Marshall*; *R. v. Bernard*, 2005 SCC 43, the court expressly affirmed that treaty rights are not frozen in time and may evolve to permit traditional activities to be carried on through modern means in the modern economy, while remaining connected to the substance of the treaty promise.

We Mi'kmaw know that we have the right to interpret our treaties in His Majesty's courts in our own way and according to our own understandings and oral history. The fact that courts are upholding objections to hearing Mi'kmaw elders interpret the terms of our treaty texts is a refusal by Provincial Court judges to honour the Crown's treaty promises regarding the use of the courts to settle our disagreements. In doing so, you are erring in law, and failing to uphold the Canadian Constitution.

What the treaties say

From the earliest agreements, the treaty relationship contemplated that alleged wrongs between the members of our nations would not be answered through private retaliation or renewed hostilities, but would instead be brought into an agreed process of justice and redress.

The first treaty between our peoples, the 1725 Treaty of Boston that resulted in a cease fire between the Mi'kmaw and the British Crown provided that where controversies or injuries arose between Indigenous people and English subjects, "no private Revenge shall be taken," and that application was instead to be made to Crown authorities so that the matter could proceed through a "due Course of Justice."

The same provision referred to the Indigenous parties receiving the "Benefit" of His Majesty's laws. The significance of this language is that peaceful submission of disputes to Crown justice formed part of the bargain by which conflict was to be managed within the new treaty relationship between the British Crown and the Mi'kmaq.

The reciprocal character of that treaty promise became clearer in the 1726 arrangements at Annapolis Royal. There the Crown undertook that where Indigenous people suffered injury at the hands of Crown subjects, they would receive "Satisfaction and Reparation" according to His Majesty's laws and would have the benefit of those laws "Equall with his Majesty's other Subjects."

This was an affirmative promise that the legal system would provide a means of remedy when Mi'kmaq people were wronged. The Mi'kmaq commitment to refrain from private revenge was therefore paired with a Crown commitment to provide an alternative process through which complaints could be heard and redress obtained.

That same treaty dynamic continued in the later Peace and Friendship agreements. The 1749 renewal again directed disputes away from private retaliation and toward legal redress. Article 1 of the Treaty of 1752 renewed the earlier Peace and Friendship relationship, while Article 8 stated expressly that disputes between the Mi'kmaq and His Majesty's subjects were to be tried in Crown courts, where the Mi'kmaq were to enjoy the same "benefit, Advantages and Priviledges" as other subjects. Similar redress provisions appeared again in the 1760–61 agreements.

Viewed together, these instruments display a continuing treaty commitment to the peaceful resolution of disputes through law, access to Crown justice, the availability of remedy and reparation, and substantive benefit within the Crown's legal institutions.

Within a legal system that permitted Judge George Patterson to dismiss our treaty rights as raised by Mi'kmaq Grand Chief Gabriel Sylliboy in *R. v. Sylliboy* (1929), which through the *Indian Act* denied our people even the right to hire lawyers as late as 1951, and which provided such a lack of justice to Donald Marshall Jr., we ask you not to compound your past mistakes by refusing to hear the Mi'kmaw view in the cases that come before you.

The underlying treaty promise our peoples made was not simply that the Mi'kmaq would be subjected to British courts. It was that these courts and this legal system would be available to them as a meaningful source of justice and redress.

In a context where Mi'kmaw people can't afford the one million dollars needed by competent lawyers to make a "legitimate" s. 35 constitutional argument; in which most lawyers are not trained in Aboriginal and treaty rights law and thus not capable of providing a valid legal defence to our people; and in which "expert witnesses" and legal representation are denied to our members because of the competing interests attached to *Indian Act* Band Councils whose very existence is predicated on undermining our nation's sovereignty, we ask that you uphold the honour of the Crown when dealing with our members, and that you interpret treaty promises as solemn reciprocal commitments, rather than as unilateral assertions of colonial jurisdiction.

Respect us enough to hear our voices.

On behalf of the Micmac Rights Association,



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