



January 11th, 2023

TO: Police Chief Robert Walsh of the Cape Breton Regional Police Service and Sergeant Barry Gordon of the Cape Breton Regional Police Service in Membertou First Nation; Cape Breton Regional Police Service Board of Police Commissioners.

CC: The Honourable David Lametti, Minister of Justice and Attorney General of Canada; The Honourable Marc Miller, Minister of Crown-Indigenous Relations; Her Excellency the Right Honourable Mary Simon, Governor General of Canada; William Paul, Membertou First Nation; Paul MacDonald, Membertou First Nation; Elected Chief Terrance Paul and the Band Council of Membertou First Nation.

Dear Police Chief Robert Walsh, Sergeant Barry Gordon, and the members of the Cape Breton Regional Police Service Board of Police Commissioners,

My name is Chief Delbert Riley. I am a Hereditary Crane Clan Chief of the Chippewa Nation, a former elected Chief of the Chippewas of the Thames First Nation, a former Land Claims Director and later President of the Union of Ontario Indians, and the last President of the National Indian Brotherhood (the forerunner to the Assembly of First Nations, which I helped to found). Among my many achievements as President of the National Indian Brotherhood was the creation and negotiation of Sections 25 and 35 of the Canadian Constitution which enshrine the protection of Aboriginal and Treaty Rights in Canadian law.

Over the course of over 50 years of experience in Indigenous politics at a local, regional, national, and international level, I have become a recognized expert in Aboriginal and Treaty Rights, the interpretation of the Canadian Constitution, and the issue of trade as it applies to the *Indian Act* and “lands reserved for Indians” as defined by the Royal Proclamation of 1763.

On December 13th, 2022, officers belonging to the Cape Breton Regional Police Service raided the premises of Sully's Trading Post and Belly Busters Pizza & Donair on the unceded lands of the Mi'kmaq Nation – lands known as Membertou #28B Indian Reserve to the Canadian Government. These officers unlawfully seized Indigenous tobacco products belonging to Mr. William Paul and Mr. Paul MacDonald – the respective owners of Sully's Trading Post and Belly Busters Pizza & Donair. They did so in contravention to the *Indian Act*, the Mi'kmaq Peace and Friendship treaties with the Crown, and Sections 25 and 35 of the Canadian *Constitution Act, 1982*.

Mr. Paul and Mr. MacDonald have retained me as their representative and have asked me to reach out to you to discuss the violation of their constitutional rights and to explain your fiduciary responsibility to uphold the honour of the Crown and their Aboriginal and Treaty Rights. It is their hope that this letter will serve to open a dialogue with your police service about the



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return of their property and to serve as a means of developing communications protocol that will deter any future unlawful actions by your police service in Membertou First Nation.

Mr. Paul and Mr. MacDonald have been charged by your police force under Section 39 of the Provincial *Revenue Act, SNS 1995-96, c 17* for possessing tobacco “on which tax has not been paid” or which did not bear “a prescribed mark” or which was not purchased with a “valid retail vendor’s permit.”

Mr. Paul and Mr. MacDonald have a Constitutionally protected Aboriginal and Treaty right to trade in tobacco. Tobacco was domesticated and grown by Indigenous people on Turtle Island as a trade good and trade currency since time immemorial. Long before your ancestors arrived in our lands, the Mi’kmaq people and their Mohawk cousins carried out a nation to nation trade relationship in tobacco products.

In seizing Mr. Paul and Mr. MacDonald’s tobacco products, your municipal police service violated Sections 87, 88, and 89 of the *Indian Act* – a Federal law created in accordance with Section 91(24) of the *British North America Act*. Section 87 of the *Indian Act* protects the interest of Indians on reserve lands and the personal property of Indians situated on reserve. Section 87(2) of the *Indian Act* states that “No Indian or band is subject to taxation in respect of the ownership, occupation, possession or use of any property mentioned in paragraph (1)(a) or (b) or is otherwise subject to taxation in respect of any such property.” The tobacco that the Cape Breton Regional Police Service seized from Mr. Paul and Mr. MacDonald was their personal property and it was situated on unceded lands reserved for Indians. It is thus not subject to taxation or to seizure from your police force.

Section 88 of the *Indian Act* states that Provincial Laws of general application apply to Indians “except to the extent that those laws are inconsistent with this [Indian] Act” or “the terms of any treaty and any other Act of Parliament.” The actions of the Cape Breton Regional Police Service in seizing the tobacco of Mr. Paul and Mr. MacDonald violate both the terms of Mi’kmaq treaties with the Crown and the *Indian Act* and are thus unlawful and a violation of your fiduciary responsibility to uphold the honour of the Crown.

The Mi’kmaq people never surrendered their lands or their rights, but they did make a series of Peace and Friendship Treaties with the British Crown in the 18th century. As recognized by the Supreme Court of Canada, these treaties continue to apply today. These treaties not only confirm the Aboriginal and Treaty right of Mi’kmaq people to hunt and fish on their traditional Mi’kmaq territory, but they spell out the rights of Mi’kmaq people to trade and engage in economic activity.

The [1752 Peace and Friendship Treaty](#) recognizes the rights of 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



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or any other thing they shall have to sell, where they shall have liberty to dispose thereof to the best Advantage.”

These and other relevant Peace and Friendship treaties which recognize and describe the Aboriginal rights of the Mi'kmaq have been given constitutional protection by Section 35 of the Constitution which “recognizes and affirms” the “existing aboriginal and treaty rights of the aboriginal peoples of Canada.” As officers of the Crown, you have a fiduciary responsibility to uphold these treaties and the honour of the Crown that made them.

Of note, none of the Peace and Friendship treaties ever surrendered any Mi'kmaq lands to the Crown, and nor were any Mi'kmaq lands ever surrendered to the French. According to the Nova Scotia Supreme Court, Appeal Division in [R. v. Isaac, 1975 CanLII 2416 \(NS CA\)](#) the Royal Proclamation of 1763 “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.” Mr. Paul and Mr. MacDonald’s stores are situated upon these unceded “lands reserved for Indians.”

After an examination of all treaties made between the Crown and the Mi'kmaq people, the R. v. Isaac decision stated 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.” In the decision, Justice MacKeigan stated 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.”

Indeed, the Mi'kmaq have no record of having received any payment for the sale of their lands from Canada or the French or British Crowns, and have no record of ever surrendering any lands in accordance with the protocols described in the Royal Proclamation of 1763.

Section 89 of the *Indian Act* states that “the real and personal property of an Indian or a band situated on a reserve is not subject to charge, pledge, mortgage, attachment, levy, seizure, distress or execution in favour or at the instance of any person other than an Indian or a band.” In seizing Mr. Paul and Mr. MacDonald’s personal property your police service violated this section of the *Indian Act* as well.

It is a grave injustice that a municipal police force would seek to enforce Provincial law on lands reserved for Indians which neither the Province or the Municipality have any jurisdiction over. It makes me question what training and education your officers have been given in understanding Sections 25 and 35 of the Constitution and Canada’s “recognition and affirmation” of Aboriginal and Treaty rights.



Mr. Paul and Mr. MacDonald's inherent Aboriginal and Treaty right to trade in tobacco on their unceded lands is further outlined in Canada's "[United Nations Declaration on the Rights of Indigenous Peoples Act](#)" which received Royal assent on June of 21st, 2021. 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 Mr. Paul and Mr. MacDonald's Aboriginal and Treaty rights 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 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.

I hope that this letter has been helpful in getting you to understand your fiduciary responsibility to uphold Mr. Paul and Mr. MacDonald's constitutionally protected Aboriginal and Treaty rights. If the charges under the Provincial Revenue act are not dropped and if their unlawfully seized property is not returned, Mr. Paul and Mr. MacDonald will be filing a Notice of



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Constitutional Question in their defence, and may also seek legal redress against you for violating their rights.

As the national Indigenous leader who personally negotiated the inclusion of Sections 25 and 35 in Canada's Constitution Act, I am willing to meet with you to discuss this matter further and to help educate your officers about the Aboriginal and Treaty rights of Mr. Paul and Mr. MacDonald. I have cc'd this letter to the Honourable David Lametti, Minister of Justice and Attorney General of Canada as well as to the Honourable Marc Miller, Minister of Crown-Indigenous Relations, in the hopes that they may be able to provide you with the proper legal instruction that you appear to be lacking.

In the spirit of truth and reconciliation,

Chief Del Riley

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