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**CC:** The Governor General of Canada Her Excellency the Right Honourable Mary Simon <[info@gg.ca](mailto:info@gg.ca)>, Minister of Crown–Indigenous Relations Gary Anandasangaree <[gary.anand@parl.gc.ca](mailto:gary.anand@parl.gc.ca)>, MP for Oshawa Colin Carrie <[colin.carrie@parl.gc.ca](mailto:colin.carrie@parl.gc.ca)>, MPP for Oshawa Jennifer K. French <[JFrench-CO@ndp.on.ca](mailto:JFrench-CO@ndp.on.ca)>, AFN National Leader Cindy Woodhouse <[Cwoodhouse@afn.ca](mailto:Cwoodhouse@afn.ca)>, Ontario Regional Chief Glen Hare <[Orc.hare@coo.org](mailto:Orc.hare@coo.org)>

April 10, 2024

To the leadership team of the Durham Regional Police – Chief Peter Moreira, Deputy Chief Dean Bertrim, Deputy Chief Chris Kirkpatrick, Deputy Chief Kim Yeandle – and John Henry, Regional Chair of Durham Region and Oshawa Mayor Dan Carter and Oshawa Regional Councillors,

Aniin. My name is Chief Del 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 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 development and negotiation into law of Sections 25 and 35 of the Canadian *Constitution Act*, which enshrine the protection of Aboriginal and Treaty Rights in Canada.

I am writing to you on behalf of Robert Fisher, a status Indian and traditional Mohawk of the Tehakarineh Bear Clan in Tyendingaga Mohawk Territory who owns and operates the myLegacy Cannabis Dispensary trading post at 29 King St. East in Oshawa. I am writing because of my concerns that the Durham Regional Police has been violating the constitutionally protected Section 25 and 35 Aboriginal and treaty rights of Mr. Fisher in raiding his dispensary on February 2nd, 2024 and stealing his trade goods. The raid occurred despite Mr. Fisher's attempt in good faith to meet with representatives of the Durham Region at the Oshawa City Hall on January 18th, 2024 and his provision of information about the exercise of his rights. Mr. Fisher has attempted to communicate with the officers in question with no success.



Mr. Fisher's trading post operates in accordance with his inherent Aboriginal and treaty rights which are protected by Section 25 and 35 of Canada's *Constitution Act*, the *Teyohate Kaswenta* or Two Row Wampum, the [United Nations Declaration on the Rights of Indigenous People Act](#), and by the longstanding Covenant Chain peace and friendship agreement between the Mohawk Nation and the British Crown.

Mr. Fisher sells cannabis, a medicine and a product legal in Canada, in accordance with the protocols of the Mohawk people, who are recognized by the 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 Mr. Fisher's economic right to engage in "free and open" trade on his 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 – not Mr. Fisher.

As you should be aware, the Mohawk Nation was the first Indigenous nation in this hemisphere that the British Crown built a longstanding treaty relationship with some 314 years ago. It is thanks to this relationship with the Mohawks, who are the foremost of what the [Royal Proclamation of 1763](#) referred to as the "the several Nations or Tribes of Indians with whom We are connected, and who live under our Protection" that the British Crown retained a foothold in North America after the American rebellion. The Indigenous political and military alliance that made up this Covenant Chain relationship was not only in evidence during the Crown's military conflicts with the French, with the American rebels in their revolution and the War of 1812, the 1837 rebellion in Upper and Lower Canada, but also in WWI and WWII, and it remains alive today. As recently as 2010, Queen Elizabeth II, on a visit to Canada, presented the Chapel Royal of the Mohawks her ancestors built for Mr. Fisher's ancestors with a gift of silver bells engraved with the words "The Silver Chain of Friendship 1710-2010" in honour of the permanent and continuing nature of this relationship.

Oshawa sits upon the traditional territory of the Mohawk (and the Six Nations' Confederacy). From 1609 until 1701, these lands were subject to nearly a century of fierce warfare between the English allied Iroquois and the French allied Anishinaabe and Huron until peace was made between 1300 delegates from 37 different Indigenous nations at the Great Peace of Montreal in 1701. As a result of this international peace agreement – which remains in place today – Anishinaabe and Onkwehon:we nations agreed to share the land and resources of the region in accordance with what in Mohawk is termed the *Sewatohkwat* or "Dish with one Spoon" and the *Teyohate Kaswenta* or Two Row Wampum.

After the British Crown was pushed out of the Thirteen Colonies by the American rebels and the Mohawks escaped the genocidal actions of General Sullivan who under George Washington's orders destroyed every Mohawk settlement in the Mohawk valley, United Empire Loyalists and Mohawks relocated their homes and villages to what became Upper Canada



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beginning in 1783 with the conclusion of the Treaty of Paris. In that treaty, the British Crown acted contrary to its Covenant Chain agreement with the Mohawks, and gave away a huge swath of Mohawk and Six Nations lands to the American rebels, with the Mohawks only finding out after the fact. The Crown's representatives in what became Upper Canada then orchestrated a series of fraudulent "land surrenders" with small groups of what they termed the "Messissagues" [Mississaugas] in a fashion that ran counter to King George III's *Royal Proclamation of 1763* and which completely undermined and discounted the Mohawk interest in their traditional territory.

In its official "[Map of Ontario treaties and reserves](#)" the Province of Ontario claims that the lands around what is now the Durham Region were surrendered by "certain Anishinaabe peoples" through the "Johnson-Butler Purchases," which is sometimes called the "Gunshot Treaty." This so called treaty agreement was fraudulent because it did not follow the protocols outlined in the *Royal Proclamation of 1763*, which states that:

And whereas great Frauds and Abuses have been committed in purchasing Lands of the Indians, to the great Prejudice of our Interests, and to the great Dissatisfaction of the said Indians; In order, therefore, to prevent such Irregularities for the future, and to the end that the Indians may be convinced of our Justice and determined Resolution to remove all reasonable Cause of Discontent, We do, with the Advice of our Privy Council strictly enjoin and require, that no private Person do presume to make any purchase from the said Indians of any Lands reserved to the said Indians, within those parts of our Colonies where, We have thought proper to allow Settlement; but that, if at any Time any of the Said Indians should be inclined to dispose of the said Lands, the same shall be Purchased only for Us, in our Name, at some public Meeting or Assembly of the said Indians, to be held for that Purpose by the Governor or Commander in Chief of our Colony respectively within which they shall lie.

While the Crown did – through Governor General Lord Dorchester, Sir John Johnson and Lieutenant Colonel John Butler – seek to purchase the lands north of Lake Ontario in 1787-88, none of these treaty meetings included the Mohawk people, and the conveyance of the lands in question did not follow any kind of fair or honourable procedure as outlined in the *Royal Proclamation of 1763*. [An award winning article](#) by Gwen Reimer entitled "[British-Canada's Land Purchases, 1783-1788: A Strategic Perspective](#)" published in the journal of the [Ontario Historical Society](#) in the spring of 2019 conclusively demonstrates the failures of the Crown to follow its own procedures in the Butler-Johnson Purchase.

Among the points revealed by Reimer's meticulous analysis of the historical record are the following quotes taken verbatim from her article:

- The only conveyance document resulting from Johnson's 1787 treaty council is a "manuscript, true copy" of a deed titled, "This Indenture made at the Carrying Place head of the Bay of Quinty the twenty third day of September in the year of our Lord one thousand and seven hundred and eighty seven."



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- The deed states that the agreement is between Sir John Johnson and unspecified “Principal Chiefs and War Chiefs.”
- The 1787 deed is characterized as “blank” because critical information is missing, including the identity of the Indigenous nations, the terms of compensation, and the metes and bounds of the surrendered tract.
- The only specific information on the text of this deed is the location of the treaty council at the head of Bay of Quinté (near Trenton) and the date, 23 September 1787. All other details, for example the boundaries of the purchase, appear as blank spaces.
- Although the deed specifically identifies Johnson as the Crown representative, his signature is not present on the manuscript copy held in the archives.
- Correspondence from Lord Dorchester in 1794 indicates that the original blank deed was accompanied by “the Names or devices of three Chiefs of the Mississauga Nation on separate pieces of Paper annexed thereto.”
- Three Indigenous signatories (and their totems) are recorded: Wabukanyne, Neace, and Pakquan, Chiefs and Principal Men of the Mississaugas of the River Credit.
- There is no record of a deed or map of the Lake Ontario tract purchased by the Crown in 1788.
- The absence of a formal and complete deed or map was discovered in 1793-94 during the tenure of Lieutenant Governor of Upper Canada John Graves Simcoe who, with surveyor Alexander Aitken, sought records related to Crown lands in Upper Canada and particularly to the Yonge Street route from Toronto to Lake Huron via Lake Simcoe. On 9 September 1794, Lt-Gov. Simcoe alerted Governor General Lord Dorchester about serious problems arising from the “dissatisfaction of the Indians in this Government in the locating of lands as the King’s Services require & which have been purchased of those nations.” Simcoe requested that the Indian Department transmit the “authentic and original Documents” in order that he could show and explain these to the chiefs concerned. In November 1794, Joseph Chew (Secretary, Indian Affairs) notified Major Littlehales, secretary to Lt-Gov. Simcoe, that he could “find no record or Document in the Superintendent General’s Office of any Purchase made from the Indians in the vicinity of York or Bordering on Lake Ontario.”
- Lord Dorchester explained [to Lieutenant Governor of Upper Canada John Graves Simcoe] that the “Blank Deed present in the Office of the Surveyor General appears to be the only testimonial of this Purchase,” the form of which was so “informal and irregular” that it will “invalidate and set aside the whole transaction.”
- When Lt-Gov. Simcoe left for England in July 1796 and Executive Council President Peter Russell took over the administration of Upper Canada, neither the Gunshot nor Toronto purchases were confirmed.
- Russell urged Governor General Prescott of the expediency of proper and accurate copies of deeds of the 1787 purchases because of “vexatious Disputes” developing



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between settlers and Indians in the townships on the north side of Lake Ontario. In reply, Prescott sent documentation to Russell explaining that Simcoe's attempt to complete the blank deed of 1787 was apparently unsuccessful, leaving the transaction "totally invalid, none of the Blanks being filled up, whereby the Boundaries should be ascertained."

- Russell and the Executive Council were "exceedingly alarmed" that common knowledge of the unconfirmed status of the purchases would "shake the Tranquility of many respectable Persons, who have risked nearly their whole Property within its Limits." Russell considered, however, that since the lands were surveyed and de facto in the possession of the Crown, and since the several testimonials by Mr. Lines and others had ascertained the limits of the purchases "extending from Kingston to the Eastern Limits of that Purchase, and as far back as Lake la Clie and the Rice Lake," that it was not necessary to execute new deeds. Indeed, Russell opined that such "recourse at this late hour to the Messissague Nation... would most probably awaken their suspicions and lead to most expensive consequences."

The solution arrived at by Sir John Johnson to this problem was to recommend the holding of a meeting of "all the Chiefs interested in those Tracts" in order to have them confirm the purchases. Executive Council President Russell was then instructed by Governor Prescott to organize such a meeting and was authorized to give "their Chiefs a moderate Present for their trouble in attending the meeting."

When President Russell received Governor Prescott's despatch, he was in the process of meeting with representatives of the Chippewas of Lakes Huron and Simcoe led by Chief Yellowhead at York [Toronto] for the purposes of completing the Penetanguishene Purchase in May of 1798. In that agreement the Chippewas gave up 50,000 acres of land so the British could gain a strategic port on Lake Huron in exchange for merchandise worth 101 pounds in Quebec currency. Russell used this meeting as opportunity to discuss the 1787-88 land purchases instead of holding a meeting of "all the Chiefs interested in those Tracts" as directed by Governor Prescott.

Chief Yellowhead, who belonged to the "Chippeway tribe or Nation of Indians," and not to the "Messissagues" who allegedly made the agreement with the Crown, gave President Russell the answer that he wanted to hear, stating according to the British stenographers employed by President Russell that "If you white people forget your transactions with us, we do not—The Land you have just now shewn to us belongs to you; We have nothing to do with it; We have sold it to our Great Father the King, and was well paid for it."

President Russell wrote Governor Prescott on the 23rd of May, 1798 – the very next day – to inform him of Chief Yellowhead's statement at the council, concluding that "The Principal object of the Purchases being thus done away it would be improper to put Govt. to an unnecessary expence [sic] by making them, or even by obtaining the new Deed proposed by Sir John Johnson, and we beg leave in consequence to withdraw our Requisition."





As Reimer notes, “no new deed to describe or confirm the Gunshot Treaty lands was executed at the time.” Furthermore, “At the time of Russell’s council with the Chippewas at York in 1798, it does not appear that any similar meetings were held with the Rice Lake or other Mississaugas to confirm the Gunshot lands along the north shore of Lake Ontario.”

On this basis, the fraudulent land surrender was allowed to stand, although an effort to cover up the fraud occurred with the signing of the Williams treaty in 1923 which includes the lands comprising the Durham Region. According to the [Canadian Encyclopedia’s article on the Williams Treaty](#):

No negotiations preceded the signing of the Williams Treaties in 1923. Instead, government officials dictated the terms that Canada and Ontario had decided earlier that year to the First Nations signatories. The reason for the governments’ haste may have had to do with the fact that Ontario was already using most of the territory in question, and therefore, officials were highly motivated to extinguish all remaining title to it. Historian Peggy J. Blair adds that First Nations peoples may have been ready to take their grievances to the League of Nations and to British officials in London, England in that same year, perhaps prompting the federal government to move quickly with the treaties.

Without going into further detail of the problematic nature of the Williams Treaty, I note that recent litigation resulted in Canada and Ontario making a \$1 billion plus cash payout to seven Anishinaabe First Nations, recognizing their hunting and fishing rights in the treaty area, and adding 4452 hectares of new lands to each of the Nations’ reserves in 2018. Keep in mind that this settlement and the Williams Treaty itself completely ignored the Mohawk interest in their traditional territory which was shared under the *Sewatohkwat* or Dish with One Spoon and *Teyohate Kaswentia* or Two Row Wampum agreements with the Anishinaabe.

The Indigenous right to operate businesses on traditional territory off-reserve are further outlined in Canada’s [United Nations Declaration on the Rights of Indigenous Peoples Act](#) which came into force after receiving Royal assent on June 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 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. Fisher’s Aboriginal and Treaty rights to provide medicine and to engage in trade and



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economic development. The following are but a few of the Articles of the Declaration which are now enshrined in Canadian law and which pertain to Mr. Fisher:

**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.

I would also like to point out that unlike the Provincially regulated cannabis dispensaries in Ontario, Mr. Fisher's dispensary is medicinal in nature and falls outside of the scope of Provincial regulation. I understand from Mr. Fisher that the products he sells undergo strict quality control measures and are sourced from trusted Indigenous producers using longstanding nation-to-nation trading relationships.

I note with interest that the [Durham Region website](#) appears to be recognizing the significant steps that the Canadian government has taken in recognizing and affirming Indigenous rights since I negotiated the entrenchment of Aboriginal and treaty rights in Canada's *Constitution Act* 43 years ago.

The website states that "Durham Region recognizes the painful legacy and continued impact of colonization, residential schools and discriminatory laws on Indigenous communities. The Region is committed to advancing truth and reconciliation, and working towards building renewed relationships to address past harms." As a survivor of nine years of incarceration in residential school beginning at the age of 6, I appreciate that Durham Region has made a commitment to reconciliation and I look forward to building a "renewed relationship" with the



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Durham Regional Police to ensure that the “painful legacy” of colonization doesn’t continue to harm Indigenous people in the present.

I also note that the Durham Region website states in its [Land Acknowledgements](#) section that “As guests on this land, it is important that we acknowledge the distinct impact of colonialism that prevents the people, animals and plants, who are Indigenous to this territory, from being here. It is imperative for us to take the time to learn and understand the stories of the true knowledge keepers of the land that we currently call home.”

I am heartened by this statement, and very much hope that my letter will provide an opportunity for the leadership team of the Durham Regional Police to “take the time to learn and understand the stories of the true knowledge keepers of the land” where they live as guests and subjects of the Crown. The Covenant Chain agreement that the Crown made with our nations ensures peace and friendship between our peoples, but it must be regularly “polished.”

I am thus requesting that Durham Region and its police force take the necessary steps to put the calls to action of the Truth and Reconciliation Commission into action, and to “polish” the Covenant Chain relationship with the Mohawk Nation which has clearly become tarnished as a result of your actions and inactions.

In [R. v. Montour](#), a groundbreaking ruling by Justice Bourque of the Superior Court of Quebec given on Nov. 1st, 2023, the court ruled the Covenant Chain was “an overarching oral meta-treaty” and that it remains “unextinct” and applicable today. As a result, Justice Bourque ruled that “[Section 42\(1\)](#) of the Excise Act, 2001, unjustifiably infringes the Aboriginal right and the treaty right of the Applicants as guaranteed by [sec. 35\(1\)](#) of the [Constitution Act, 1982](#). It is of no force and no effect against them” and the judge dismissed the charges against Derek White and Hunter Montour, the two Mohawk men charged in this case.

I would thus urge you to read Justice Bourque’s decision because it would appear that we have a similar issue at stake in regards to your actions against Mr. Fisher’s Indigenous trading post. There are now over 500 such Indigenous businesses operating across Canada, many of them on reserves, but with an increasing number opening in towns and cities across Ontario. Indigenous people such as Mr. Fisher have every right to operate such stores on their traditional lands, especially because in the Mohawk case, these lands remain unceded by them.

In closing, I would like to leave you with these words from Justice Bourque’s decision in relation to the Crown’s relationship to Indigenous people. I remind you that you are office holders of the Crown, and that you have the constitutionally mandated responsibility of upholding the Crown’s fiduciary responsibility towards Indians such as Mr. Fisher. As Justice Bourque stated:





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The Crown is presumed to act, and to have acted, honorably in all its dealings with the Indigenous Nations, *urbi et orbi, heri et hodie*: here and everywhere, yesterday and today. The principle of the Honour of the Crown applies to its dealings with Indigenous peoples and obliges the Crown to act with integrity, good faith, and fairness in its dealings with them. Dishonorable conduct and sharp dealing would go against this principle and would not align with the Crown's legal duty toward its Indigenous partners.

Dishonorable conduct in the past cannot be used to escape obligations in the present. One cannot legitimize the past in this manner. Applying the law to the proven facts means holding the Crown accountable for its actions, irrespective of the time period, and ensuring that legal obligations are met in the current context.

I thank you for taking the time to read this letter. In the spirit of achieving a real “truth and reconciliation” between our peoples I am willing to provide you with further understanding of Aboriginal and treaty rights relating to this matter and to serve as an intermediary between your organization and Mr. Fisher should you have any questions or issues concerning his business.

Miigwetch,

*Chief Del Riley*

Chief Del Riley, Hereditary Chief, Crane Clan Chippewa Nation