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The Right Honourable Justin Trudeau, P.C., M.P.
Prime Minister of Canada
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The Honourable Bernadette Jordan, P.C., M.P.
Minister of Fisheries and Oceans
House of Commons
Ottawa, ON K1A 0A6 Bernadette.Jordan@parl.gc.ca

The Honourable Marc Miller, P.C., M.P.
Minister of Indigenous Services
House of Commons
Ottawa, ON K1A 0A6 Marc.Miller@parl.gc.ca

October 19, 2020

Dear Prime Minister, Minister Jordan, and Minister Miller,

Re: Action by the Government of Canada to Prevent Further Violence Against Mi'kmaq

As you are aware, since Sipekne'katik First Nation, a Mi'kmaw community in Nova Scotia, launched a self-regulated lobster fishery on September 17, 2020, responses by settler groups opposed to the fishery have included acts of intimidation, vandalism, and violence. Deplorable actions that have been reported widely over the past month have been marked by racist hostility and aggression, and they have intensified as talks between Sipekne'katik First Nation and the Department of Fisheries and Oceans (the "DFO") have continued. Last week, the violent actions of a mob that trapped two Mi'kmaw fishers inside a lobster pound, set on fire a van owned by one of the fishers, destroyed other property, and spitefully killed numerous lobsters horrified Nova Scotians and Canadians across the country. [Two lobster facilities were raided that evening](#), and, [this weekend, one of those facilities was destroyed by fire](#).

These outrageous acts of violence have been widely condemned, and [public statements by Ministers Jordan and Miller have expressed disgust and horror](#). We similarly feel abhorrence and dismay. There is a place for statements by members of Cabinet calling for calm and imploring cessation of violence, and we agree that Canadian leadership should speak out against these acts; however, we believe that mere statements to that effect will not stem the rising tide of racist backlash against Mi'kmaq that we have witnessed in recent weeks.

In [comments that were publicized last week in a CBC video clip](#), Minister Miller remarked that the DFO's discussions with settler commercial fishers must aim to "educate" and "sensitize". We take Minister

Miller’s comments as an affirmation that the Government of Canada has a responsibility to educate settler fishers and other settler Canadians about Mi’kmaq treaty rights and the significance of Canada’s treaty relationship with the Mi’kmaq, and we call on the Government of Canada to fulfill that responsibility immediately in an effort to prevent further violence against Mi’kmaq.

We wish to emphasize, however, that settler treaty education by the Government of Canada cannot succeed unless the government works earnestly and in good faith to uphold Aboriginal and treaty rights protected by the *Constitution Act, 1982* and to enhance Canada’s constitutional common law by fulfilling domestic and international commitments that the government has made to Indigenous peoples.

Long before Donald Marshall Jr. was charged with violating the *Maritime Provinces Fishery Regulations* and thus the *Fisheries Act*, Mi’kmaq communities in Nova Scotia and beyond were not only asserting rights to engage in commercial fisheries but were also asserting rights to manage Mi’kmaq fisheries in accordance with Mi’kmaq laws and legal orders. The latter assertions were grounded in an inherent right to self-government—a right that the Government of Canada now purports to recognize but still fails regularly to honour.

Since the Supreme Court of Canada (the “SCC”) issued its first decision in *R v Marshall* on September 17, 1999, the DFO has not only failed to come to terms with Mi’kmaq in defining “moderate livelihood” equitably but has also persisted in denying the inherent Mi’kmaq right to self-government within the fisheries context. The successive licensing regimes that the DFO has presented to Mi’kmaq communities since the early days of the Marshall Response Initiative have failed to implement the Mi’kmaq right to earn a moderate livelihood by fishing, and they have offered program devolution through limited delegations of federal power instead of recognizing and accommodating inherent Mi’kmaq rights to govern and regulate Mi’kmaq fisheries.

Although the SCC’s two *Marshall* decisions accept that the DFO has authority to regulate Mi’kmaq moderate livelihood fisheries, the law is clear that any DFO regulation or regulatory regime that infringes the Mi’kmaq right to earn a moderate livelihood through fishing—including by preventing the meaningful recognition, accommodation, and implementation of that right—must be justified through the strict justification analysis that the SCC established in *R v Sparrow*. To date, the DFO has not demonstrated that its failure to implement an equitable moderate livelihood fishery and its refusal to recognize and accommodate moderate livelihood fisheries established by Mi’kmaq are justifiable. Conservation concerns being advanced as rationales have not been substantiated, and we know of no just reason why Mi’kmaq have been denied equitable opportunities to fish commercially.

Further, Canada’s constitution is a “living tree”, and Canadian constitutional law can and should be cultivated so that a more just and equitable legal order can flourish. To the extent that the *Marshall* decisions failed to support inherent Mi’kmaq rights to govern and regulate Mi’kmaq fisheries, the Government of Canada can enhance the constitutional protections accorded to Mi’kmaq by recognizing that Canadian law and governance have evolved since 1999.

The Government of Canada has endorsed without reservation the *United Nations Declaration on the Rights of Indigenous Peoples* and has established a number of admirable [Principles Respecting the Government of Canada’s Relationship with Indigenous Peoples](#). Among other things, those principles assert that the Government of Canada “recognizes that all relations with Indigenous peoples need to be based on the recognition and implementation of their right to self-determination, including the inherent right of self-government” and “recognizes that Indigenous self-government is part of Canada’s evolving

system of cooperative federalism and distinct orders of government”. Such statements mean little if the Government of Canada does not work earnestly and in good faith to refashion its current legal orders to make them compatible with those of Indigenous governments across the land.

When Sipekne’katik First Nation launched its self-regulated lobster fishery on the twenty-first anniversary of the first *Marshall* decision—grounding that launch in the treaty right affirmed by the SCC, in an inherent right to self-government, and in the DFO’s failure to establish a Canadian licencing regime that does not infringe constitutionally protected Mi’kmaw rights—settler fishers and others responded with aggression. Although Minister Jordan in her early comments to news media rightly condemned the hostility and violence being demonstrated by settler groups and individuals, [she also reiterated that unauthorized fishing in a closed season established by the DFO is illegal](#). Not only did proclaiming the illegality of Sipekne’katik First Nation’s lobster fishery not placate the settler fishers who were calling for active enforcement, but it also failed to acknowledge the reality that Mi’kmaq are actively contesting the legality of the DFO regime. Confusion and frustration amongst settler Canadians who are unfamiliar with the law were predictable results.

To foster genuine nation-to-nation relations with Indigenous peoples, the Government of Canada must take responsibility for the actions of settler groups and individuals who lash out with racist hostility and violence when Indigenous communities exercise rights that Canadians, through their governments, have suppressed in their own interests for far too long. Genuine reconciliation cannot proceed otherwise.

In calling on you to take immediate action to educate settler Canadians about Mi’kmaw treaty rights and the significance of Canada’s treaty relationship with the Mi’kmaq, we urge you to do so earnestly and in good faith, to address directly the reality that Canada’s legal authority in this sphere is limited, and to work with diligence to foster public respect for the Mi’kmaw nation.

Sincerely,



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