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28 April 2025

Superintendent Jamie Dunlop
Serious and Organized Crime Directorate
P.O. Box 9634, Station T
Ottawa, Ontario
K1G 6H5

SENT BY EMAIL TO: DunlopJ@ottawapolice.ca AND BY REGISTERED MAIL

RE: Your Letters to Landlords of 1701 Treaty Trade Council Ottawa Which Violate Our Clients' Treaty & Aboriginal Rights and are Contrary to Canadian Law

Dear Supt. Dunlop,

We are legal counsel to certain members of the 1701 Treaty Trade Council Ottawa, the association of Algonquin and Mohawk cannabis traders operating within the City of Ottawa. Attached as Annex "A" is a copy of the Council's Certificate of Inherent Rights Recognition and Registration. Our clients have always wished to operate lawful enterprises within the City of Ottawa in the course of exercising their Treaty and Aboriginal rights pursuant to ss. 25 and 35 of the *Constitution Act, 1982*, in pursuit of their Indigenous rights to economic development, as fully adopted and recognized within Canada by the [United Nations Declaration on the Rights of Indigenous Peoples Act, S.C. 2021, c. 14](#) in order to support themselves, their families, and their peoples. The *UNDRIP* Act confirmed at s-s. 4(a) "the Declaration is a universal international human rights instrument with application in Canadian law," and noted in its Preamble: "the rights and principles affirmed in the Declaration constitute the minimum standards for the survival, dignity and well-being of Indigenous peoples of the world, and must be implemented in Canada ... Whereas there is an urgent need to respect and promote the rights of Indigenous peoples affirmed in treaties ..."

In particular, our clients are the beneficiaries of several solemn Treaties concluded between the Crown and the Algonquin and Mohawk peoples, including the *Covenant Chain*. These

Treaties entitle our clients to consultation and accommodation concerning their rights when there is a risk that the laws of Canada or Ontario may unreasonably infringe upon their rights. The Senate of Canada Standing Committee on Indigenous Peoples in its report [“On the Outside Looking In: The Implementation of the Cannabis Act and its Effects on Indigenous Peoples” \(June 2023\)](#) recounted evidence that “the federal government did not adequately engage in substantive consultations with First Nations communities before decriminalizing cannabis. The committee finds that the federal government has not meaningfully consulted First Nations governments since the Act came into force ... these consultations left out important topics like economic opportunities for First Nations ... First Nations seemed to be an afterthought” (at p. 10).

As you will know as a senior commissioned Ottawa Police Service officer, the City of Ottawa has officially recognized on the City of Ottawa website at <https://ottawa.ca/en/city-hall/creating-equal-inclusive-and-diverse-city/indigenous-relations#> under the heading “Honouring the Anishinabe Algonquin Nation, First Nations, Inuit and Métis peoples” that “Ottawa is built on un-ceded Anishinabe Algonquin territory.” Under “Official Statement of Reconciliation” the Ottawa City Council has committed to “taking action to ensure the needs and aspirations of Aboriginal people are fully acknowledged in policy” where the Council has committed “to a new equal partnership with Aboriginal peoples in Canada; one based on truth, dignity, and mutual respect.” It is our considered opinion that the actions of the Ottawa Police Service in these matters so violate the constitutionally protected rights of our clients that the actions are in direct contravention of City of Ottawa Policy, as well as the Treaty and Aboriginal rights of our clients as protected by the *Constitution Act, 1982*.

Rather than seeking to engage in an “equal partnership” which the City of Ottawa espouses, both the City and the Ottawa Police Service have failed to engage with our clients in working out reasonable consultation and accommodation of their Treaty and Aboriginal rights. The City and OPS appear to be evading a lawful testing of our clients’ rights in an independent, objective court of law through failing to directly charge Indigenous individuals who could invoke their Treaty, Aboriginal and other rights in their own defence. Rather, you have been indirectly undermining our clients exercise of their rights, through writing to the landlords of our clients threatening them with prosecution including fines and imprisonment if they continue to lease premises to our clients, while rather self-contradictorily in your landlord letters you note: “We recognize that ... this area, including the City of Ottawa, is part of unceded Algonquin territory. The OPS acknowledges the importance of respecting Indigenous rights and advancing reconciliation ... The OPS also bears the responsibility of ensuring compliance with relevant laws.”

We could not agree more with the foregoing statement of your responsibilities. However, you can't have it both ways, saying you support Indigenous peoples, but then saying you will only enforce laws that harm those peoples which unreasonably restrict their rights to engage in economic development on their own unceded territory like the *Cannabis Act* and *Cannabis Control Act* which do not accommodate Indigenous participation in the cannabis industry, rather than upholding the laws which protect them and promote their development, like the Treaties including the *Covenant Chain*. The ongoing binding nature of those Treaties have been explicitly recognized in the ground-breaking decision of [*R. v. Montour*, 2023 QCCS 4125](#) which found in imposing stays of proceedings on all charges against the accused in that case: "The Court concludes that the Crown has infringed its obligation under the Covenant Chain. The evidence demonstrates that the Crown did not discuss ... to any relevant degree, much less with an open mind, and even less with the intention of coming to one mind in accordance with the Covenant Chain's precepts." The Federal Court in [*Kebaowek First Nation v. Canadian Nuclear Laboratories*, 2025 FC 319](#) has now found that *R. v. Montour* is applicable within Ontario's geography. For a more detailed discussion of one of our clients' sets of rights in the Mohawk context related to cannabis sales (who operates My Legacy Cannabis), we attach as Annex "B" the Notice of Constitutional Question in *R. v. Fisher* now pending before the Ontario Superior Court of Justice.

We also understand that the OPS asserts that the landlords of the Treaty Council members can consent to police searches of the members' business premises, without any consent being obtained from the tenant members themselves. This is an indefensible legal position to take, being contrary to the s. 8 *Canadian Charter of Rights and Freedoms* jurisprudence concerning the requirement for prior judicial authorization for search and seizure in locations where there is a reasonable expectation of privacy. The Treaty Council members have the right of quiet enjoyment of their business premises under Ontario law. The OPS requires judicial prior authorization to conduct searches and seizures of these premises, and risks a variety of judicial remedies being imposed against the OPS for violating s. 8 *Charter* rights.

We also are of the opinion that the actions of the OPS and the City of Ottawa concerning urging the landlords to evict our clients from their lawful pursuit of their right to economic development contravenes the Ontario *Human Rights Code*, R.S.O. 1990, c. H.19. In particular, s. 1 which guarantees that "Every person has a right to equal treatment with respect to services, goods and facilities, without discrimination because of race, ancestry, place of origin, colour, ethnic origin" as well as s. 3 "Every person having legal capacity to contract has a right to contract on equal terms without discrimination." In order to avoid a claim being submitted to the Ontario Human Rights Commission by our clients for Ontario

Human Rights Code breaches by the OPS, the City of Ottawa, and by the landlords should they take action against our clients after your letters to them, we urge everyone involved in these matters to collaborate on resolving the issues raised in this letter in the spirit of reconciliation with Indigenous peoples which you yourself claim to support, rather than taking a conflictual entirely adversarial approach.

We propose that we meet with you and other City of Ottawa officials to discuss how our clients may be properly consulted and accommodated concerning their Indigenous rights prior to you taking any additional enforcement action, and that you immediately pause your efforts to place pressure on the landlords to evict our clients. You cannot concede in your letters to the landlords that at least some of our clients have Indigenous rights on their unceded land, while at the same time acting as if our clients have no rights whatsoever. We urge you personally, the OPS and the City of Ottawa to have the courage of your professed convictions by engaging with us and our clients to resolve the issue of Indigenous cannabis sales through an equal partnership based on truth, dignity and mutual respect.

We will make ourselves available to meet with you and other City of Ottawa officials at your convenience, either in person or by remote means. We look forward to hearing from and working with you.

Yours truly,



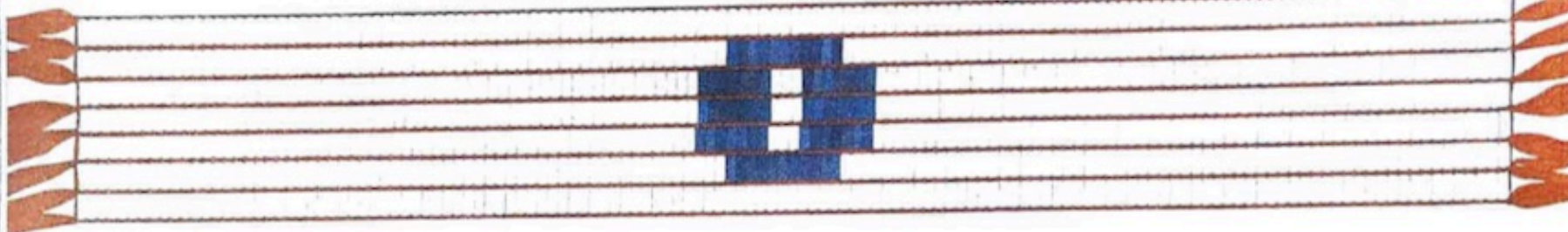
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ANNEX "A"

1701 TREATY TRADE COUNCIL - OTTAWA



CERTIFICATE OF INHERENT RIGHTS RECOGNITION AND REGISTRATION

In accordance with the terms of the Two Row Wampum, the Dish with One Spoon, the Great Peace of 1701, the Covenant Chain treaty relationship with the British Crown (protected by Section 25 & 35 of Canada's *Constitution Act*, 1982) and the *United Nations Declaration on the Rights of Indigenous People*, as per decision at a duly convened meeting the 1701 Treaty Trade Council of Ottawa hereby recognizes and affirms the right of **BRYAN BRANT** to operate the Indigenous trading post **INDIGENOUS CANNA AND WELLNESS** at **1307 WELLINGTON ST WEST, OTTAWA**.

TERMS & CONDITIONS

The holder of this registration is a member in good standing of the **1701 Treaty Trade Council - (Ottawa)** a lawful body responsible for advocating for, defending, and asserting Indigenous rights to

unceded traditional territory in Ottawa. The Council follows traditional Anishinaabe and Onkwehon:we decision-making protocol in keeping with the Two Row Wampum and the Dish with One Spoon agreement. The members of the council hold rights recognized and affirmed by s. 25 & 35 of Canada's

Constitution Act, 1982. All members of the Council agree to uphold the Council's Health and Safety standards regarding the sale of cannabis. Questions about this registration may be directed to admin@ottawa1701treatycouncil.com.

Registration Number: TTCO2511

Date of Issue: 2025-04-02



I Bryan Brant, agree to abide by the decisions of the 1701 Treaty Trade Council and to operate my business in accordance with the *Kayenarekowa*, or Great Law of Peace.

Hereditary Chippewa Crane Clan Chief Delbert Riley, Former National Chief, Constitutional Negotiator and Author of Section 25 and 35 of Canada's *Constitution Act*.

ANNEX "B"

**ONTARIO SUPERIOR COURT OF JUSTICE
(KINGSTON)**

**ROBERT FISHER TEHONIKONRATHE, CASEY GEARIN & MAKAYA
ARMSTRONG**

Applicants

- and -

HIS MAJESTY THE KING

Respondent

NOTICE OF MOTION TO ENFORCE INDIGENOUS RIGHTS

The Applicants will make a motion to the Court on a date and time to be set by the Court.

THE PROPOSED METHOD OF HEARING:

The motion is to be heard in person at the following location: Superior Court of Justice, 5 Court Street, Kingston, Ontario, K7L 2N4.

THE MOTION IS FOR:

TO DECLARE pursuant to s. 52 of the *Constitution Act, 1982* that the *Cannabis Act*, S.C. 2018, c. 16 (and *Cannabis Control Act, 2017*, S.O. 2017, c. 26, Sched 1, *Criminal Code*, R.S.C. 1985, c. C-46. and *Controlled Drugs and Substances Act*, S.C. 1996, c. 19 to the degree that they aid in the enforcement or operation of the *Cannabis Act*) is constitutionally inapplicable to the Applicants until such time as the Crown meaningfully consults with and accommodates the Aboriginal and Treaty rights of the Applicants and the Mohawk Nation;

TO IMPOSE a stay of proceedings for all charges currently pending against the Applicants before the Court due to their constitutional inapplicability and inoperability;

TO QUASH through *certiorari* the search warrants related to this matter;

TO REQUIRE through *mandamus* the Crown to return the things seized from the Applicants or to provide fair compensation for their value should those things have been destroyed or damaged;

TO PROHIBIT through prohibition the Crown from repeating its constitutionally unlawful actions against the Indigenous Cannabis Trade Business of the Applicants.

TO MAKE SUCH OTHER ORDERS AS COUNSEL MAY REQUEST AND THIS HONOURABLE COURT MAY DEEM JUST.

THE GROUNDS FOR THE MOTION ARE:

A. OVERVIEW

i. Applicants Are Beneficiaries of Aboriginal and Treaty Rights

1. The Applicant Robert Fisher Tehonikonrathe Rotiskarawake (Tehonikonrathe) is a Status Indian pursuant to the *Indian Act*, R.S.C. 1985, c. I-5, a Band Member of the Mohawks of the Bay of Quinte, a member of the Tehanakarineh Bear Clan, a citizen of the Kanyen'keha:ka or Mohawk Nation descended from the Fort Hunter Mohawks, who now resides in Tyendinaga Mohawk Territory at the Bay of Quinte (the Mohawks). The Mohawk Nation belongs to the Wisk Niyohonstsyake (Confederacy of the Five Lands), also known as the Haudenosaunee Confederacy (People of the Longhouse).

2. Tehonikonrathe is a holder of Aboriginal and Treaty rights pursuant to s. 25 and s-s. 35(1) of the *Constitution Act, 1982* (the Indigenous Rights). Tehonikonrathe conducts Indigenous Cannabis Trade businesses in Kingston, Oshawa, Ottawa, and Toronto, Ontario pursuant to his constitutionally protected Treaty and Aboriginal rights, including his collective rights exercisable by him individually to economic development of the Mohawk people as confirmed in *R. v. Montour*, 2023 QCCS 4154 and *R. v. Kane et al.*, Quebec Superior Court No. 505-01-183000-237, District of Longueuil, 18 December 2024 per Royer J. (the Indigenous Cannabis Trade Business/ICTB).

3. The Co-Applicants Casey Gearin and Makaya Armstrong are Tehonikonrathe's employees, and claim sheltering under Tehonikonrathe's rights. A viable ICTB requires many individuals to operate it. Canadian law has never absolutely barred non-Indigenous people from assisting Indigenous peoples in the legitimate exercise of their Treaty and Aboriginal rights. It would be a violation of principles of fundamental justice and the Rule of Law if the *Cannabis Act*, S.C. 2018 c. 16 and *Cannabis Control Act, 2017*, S.O. 2017, c. 26, Sched. 1 were found to be constitutionally inapplicable to Tehonikonrathe in operating his ICTB, but applicable to his employees who neither own nor control the ICTB, but rather are low-level retail clerks who

believed at all times they were acting in lawful ways in assisting Tehonikonrathe in the exercise of his Indigenous rights.

4. The Cannabis Trade is an important component of the Mohawk economy. There are over 75 cannabis dispensaries currently operating on the Mohawk territory of the Bay of Quinte. This trade supports the economic livelihoods of a significant number of Mohawk families. The Mohawk people have faced indisputable historic racial discrimination and economic marginalization due to the legal and practical actions of the Crown for centuries. Restricting Mohawk Nation economic development solely to the territory of *Indian Act* Reserves is a further perpetuation of the Crown's historic racial discrimination against and economic oppression of the Mohawk Nation, and contrary to the Crown's Treaty and Aboriginal rights obligations under s. 25 and s-s. 35(1) of the *Constitution Act, 1982*, including the duty to consult and accommodate where Crown regulation may impact Treaty and Aboriginal rights.

5. The Mohawk Nation has the closest relationship with the British Crown of any Indigenous nation in North America. This relationship spans four dynasties of the British Crown, beginning with the House of Stuart and the visit of four Mohawk Chiefs to Queen Anne in 1710. As a result of this visit, the Crown established Royal Chapels in Mohawk territory and provided weapons, trade goods, regular presents, and military garrisons. Queen Anne gave the church a set of communion plates, each piece bearing the inscription "The Gift of Her Majesty Anne, by the Grace of God, of Great Britain, France and Ireland, and of her plantations in North America, Queen to the Indian Chappel of the Mohawks, 1712." The Mohawk relationship with the Crown was carried over to the House of Hanover, which appointed and made baronet Major General Sir William Johnson, Superintendent of Indian Affairs. Sir William moved to the Mohawk Valley, married Molly Brant Konwatsi'tsiaienni, a prominent Mohawk clan mother and sister of Joseph Brant, and in close collaboration with the Mohawks greatly shaped the course of British-Indian politics in North America. Brant himself enjoyed a close relationship with British authorities, visiting the Court of King George III and being a key military and political ally of the British during the American Rebellion. At the behest of Brant and other Mohawk diplomats, the Crown pledged lands and presents through Royal Proclamations to the "Mohawks and such others of the Six Nations" in compensation for their losses in the American Rebellion. Up until the 1840s, the Upper Canada Indian Department was led by descendants of Sir William Johnson and Molly Brant.

6. The close Mohawk relationship with the Crown continued with the reign of the House of Saxe-Coburg and Gotha as Prince Arthur, Duke of Connaught, son of Queen Victoria, was formally adopted into the Mohawk Nation in a ceremony on Grand River Territory in 1869. Prince Arthur, Duke of Connaught, would later serve King George V as Governor-General in Canada from 1911 to 1916 and was petitioned to in 1891 by the Six Nations Mohawk Chiefs on the topic of the *Covenant Chain*. The Mohawk *Covenant Chain* relationship with the Crown has been repeatedly recognized by the House of Windsor, as Queen Elizabeth II visited the Mohawk

Chapels at Six Nations and Tyendinaga in all her official visits to Ontario (in 1951, 1967, 1984, 2002, and 2010). To mark the 300th anniversary in 2010 of the visit of the four Mohawk Kings to Queen Anne's court, she gave a set of eight silver hand bells to the Mohawk Chapel in Brantford, Ontario engraved with the inscription "The Silver Chain of Friendship 1710-2010."

7. Despite this close relationship, the Crown (His Majesty the King in Right of Canada and His Majesty the King in Right of Ontario) as represented by the Governments of Canada and Ontario never consulted any element of the Mohawk Nation in any meaningful way when developing the federal *Cannabis Act*, S.C. 2018, c. 16 and its regulations, or the provincial *Cannabis Control Act*, 2017, S.O. 2017, c. 26, Sched. 1. The Interim Report of the Standing Senate Committee on Indigenous Peoples "On the Outside Looking In: The Implementation of the Cannabis Act and its effect on Indigenous Peoples" (June 2023) (attached as Annex "A") confirmed this lack of consultation, calling for "a meeting with First Nations, federal, provincial and territorial governments in the spirit of cooperation and collaboration to solve jurisdictional challenges to enable First Nations to exercise their rightful place in the cannabis marketplace" (Recommendation 3).

8. Crown legislation and regulations do not accommodate Mohawk Treaty and Aboriginal rights concerning the Cannabis Trade. This lack of consultation and accommodation was particularly stark concerning the Cannabis Trade within the parts of the province of Ontario not constituting Reserves under the *Indian Act*, such as Kingston, Oshawa, Ottawa and Toronto, notwithstanding the fact that the Cannabis Trade already constituted an important part of the Mohawk economy at the time the Crown was developing its laws and regulations concerning Cannabis sales. The Mohawk Nation's Cannabis Trade within what is now known as southern Ontario is a continuation of the exercise of their trading and economic development from the time of first contact with the Europeans, which were recognized and affirmed through the conclusion of multiple solemn Treaties with the Crown particularly the *Covenant Chain*, up until the present day, as confirmed in *United Nations Declaration on the Rights of Indigenous Peoples*, A/RES/61/295 (UNDRIP).

9. Mohawk traders from the Bay of Quinte, including the Applicant Tehonikonrathe, are pursuing their Aboriginal and Treaty rights to economic development, including their pursuit of the retail Cannabis Trade beyond *Indian Act*, R.S.C. 1985, c. I-5 Reserves. It has been a historic form of rights violations for the Crown to restrict the Indigenous peoples of Canada to *Indian Act* Reserves, greatly hampering their economic development, in addition to the many other forms of indisputable discrimination that Indigenous peoples have faced within Canada over the centuries since the time of first contact with Europeans.

10. In order for the Mohawk Nation in general and for the Applicant Tehonikonrathe, in particular, to develop an economically viable and sustainable Cannabis Trade in fulfilment of constitutionally protected Treaty and Aboriginal rights, Cannabis retail sales outlets beyond

Indian Act Reserves located far from major cities are required. Tehonikonrathe therefore opened Cannabis Trade outlets in Kingston, Oshawa, Ottawa and Toronto, as have other Indigenous peoples. The Kingston Police Service, Durham Regional Police Service, Ottawa Police Service and Toronto Police Service or Toronto Bylaw Officers have elected to selectively purport to enforce the *Cannabis Act* (in Kingston and Ottawa), *Cannabis Act* plus *Cannabis Control Act, 2017* (in Oshawa) and *Cannabis Control Act, 2017* (in Toronto) against the Applicant Tehonikonrathe.

11. Tehonikonrathe's rights to conduct Indigenous Cannabis Trade retail storefront sales in Ontario beyond the boundaries of the Tyendinaga Mohawk Territory *Indian Act* Reserve are not immune from all reasonable Crown regulation of the Cannabis Trade, but such Crown regulation must consult with and accommodate Tehonikonrathe's and the Mohawk Nation's constitutionally protected rights to economic development, including engaging in the Cannabis Trade which has become such an important part of the Mohawk economy. The Mohawk relationship with the Crown began in 1664 when the Crown assumed the Treaty relationship the Dutch held with the Mohawks upon conquering New Amsterdam (now the state of New York), followed in 1710 by the "four Mohawk kings" visited the court of Queen Anne and built the Covenant Chain Treaty relationship that saw the Crown establish a Royal Chapel in Fort Hunter in 1712 and build and maintain a Royal Chapel which remains operational to the present day in the Bay of Quinte. The Mohawk Nation stood steadfast in its alliance with the British Crown during the American Revolutionary War, while the other nations of the Confederacy remained neutral, or in the case of the Oneida fought alongside the Americans. Without the knowledge of the Mohawks, the Crown ceded the Mohawk homelands to American rebel forces in the 1783 *Treaty of Paris*, but the Crown made solemn promises to the Mohawk Nation for compensation and resettlement within what is now Ontario. These promises and proclamations include the *Haldimand Pledge* (1779), the *Haldimand Proclamation* (1783) and the *Simcoe Deed / Treaty 3 ½* (1793).

ii. Respondent's Unlawful Enforcement Activity Against Applicants

12. The Kingston Police Service on both 13 November 2024 and 19 November 2024 raided Tehonikonrathe's Indigenous Cannabis Trade Business premises located at 185 Division Street, Kingston, Ontario known as My Legacy Cannabis Dispensary (the Premises) pursuant to search warrants dated 13 and 18 November 2024 purportedly issued pursuant to section 87 of the *Cannabis Act* (the Warrants). The My Legacy Cannabis Dispensary brand typically employs signage saying: "Indigenous Trading Post & Cannabis Dispensary" as well as "This is a sovereign land, we are a sovereign people ... We have an inherent and constitutional right to be here. Access to affordable medicine is a right." While the Applicants are still awaiting disclosure of the informations to obtain the search warrants (ITOs), they doubt that the ICTB is mentioned anywhere in the ITOs as an Indigenous business operating under Indigenous rights. The police seized a variety of Cannabis, Cannabis products and other products.

iii. *Cannabis Act* Constitutionally Inapplicable to Applicants Pursuant to s. 52 *Constitution Act, 1982*, *Certiorari* Should be Granted to Quash Search Warrant & Charges With Stays of Proceedings, Prohibition Should Issue to Prevent Future Enforcement Activities Until Crown has Consulted & Accommodated Rights in Accordance with the *Covenant Chain* & Sections 25 and 35(1) of the *Constitution Act, 1982*

13. The Applicants maintain that their constitutional rights were violated by the search, seizure, and shutting down of the ICTB, as well as by the charges they are facing. As a result, the Applicants seek:

- a. a declaration pursuant to s. 52 of the *Constitution Act, 1982* that the *Cannabis Act* (and the *Cannabis Control Act, 2017* as well as the *Criminal Code* and *Controlled Drugs and Substances Act* to the degree that they aid in the enforcement or operation of the *Cannabis Act*) is constitutionally inapplicable and inoperable as against the Applicant Tehonikonrathe and his ICTB and the Mohawks of the Bay of Quinte as well as against their employees and agents (such as the co-Applicants), until such time as the Crown engages in meaningful consultation with the Mohawk Nation, and accommodates their Aboriginal and Treaty rights to the degree those rights are currently violated by the *Cannabis Act* (and *Cannabis Control Act, 2017*), as in its current form it is contrary to Tehonikonrathe's Treaty and Aboriginal rights;
- b. all goods seized from the Applicants pursuant to the warrants should be returned to them pursuant to this application for *certiorari* and *mandamus*, or fair compensation for the seized goods be provided should any have been destroyed or damaged;
- c. the Crown pursuant to this application for prohibition should be prevented from using the *Cannabis Act*, *Cannabis Control Act, 2017* and other federal and provincial legislation to interfere with the Mohawk trade in Cannabis anywhere that the Mohawk Nation has trading rights in Cannabis, with this prohibition extending to interfering with their employees and agents of the Applicant and Mohawk Nation regardless of their ethnicity, from conducting future similar searches and seizures, and from laying similar charges against the Applicants or other members of the Mohawk Nation until the Crown has sufficiently consulted with and accommodated the Treaty and Aboriginal rights of the Applicant Tehonikonrathe in particular and the Mohawk Nation in general, given the *Cannabis Act* (and *Cannabis Act, 2017*) are constitutionally inapplicable and inoperable in relation to the Applicants pursuant to s. 52 of the *Constitution Act, 1982*;
- d. such further and other relief as counsel may advise and this Honorable Court may find just and permit.

B. CONSTITUTIONAL, INHERENT AND INTERNATIONAL RIGHTS INVOKED BY APPLICANTS

14. The Applicant Tehonikonrathe is a member and citizen of the Mohawk Nation, a member of the Tehanakarineh Bear Clan, a citizen of the Kanyen'keha:ka or Mohawk Nation descended from the Fort Hunter Mohawks, who now resides in Tyendinaga Mohawk Territory at the Bay of Quinte (the Mohawks). The Mohawk Nation is the founding nation of the Wisk Niyohonstsyake also known as the Haudenosaunee Confederacy. Tehonikonrathe is authorized and entitled to invoke his inherent Mohawk, Treaty, Aboriginal and international rights that enure to his benefit as a member and as a citizen of the Mohawk Nation. The indivisible Crown is represented by the Respondents His Majesty the King ("Canada") and should he choose to participate His Majesty the King in Right of Ontario ("Ontario"), who are the Treaty partners of the Mohawk Nation.

15. The Crown has rights and obligations under the Mohawk's *Covenant Chain* Treaty relationship with the Crown. The Crown is subject to all of the obligations, duties and liabilities owed to the Mohawk Nation by the Imperial Crown or before Confederation by the Province of Canada and the Province of Upper Canada.

C. THE RIGHTS OF THE MOHAWK NATION

16. The Mohawks currently living on the Bay of Quinte constitute a distinct community of Mohawks. Most of these Mohawks were displaced from their home community of Fort Hunter in the Mohawk Valley in 1777. During the American rebellion, the Fort Hunter Mohawks relocated to Lachine, Quebec, where they stayed for seven years. On May 22nd, 1784 the Fort Hunter Mohawks arrived at the Bay of Quinte and have lived there since. The Mohawk Nation is a distinct people and the Mohawks have, since prior to the arrival of Europeans in North America, continuously occupied, possessed or used a territory which includes a significant part of what is now known as Ontario, Quebec and the United States, and which encompass the lands and waters of Tyendinaga Mohawk Territory.

17. At the time of first European contact, the traditional Mohawk Territory included at least an area bounded by the Delaware River to the south, the Richelieu River, Lake Champlain and the Hudson River to the east, the watershed of Lake Ontario and the Oswegatchie and Unadilla Rivers to the west, and the Saint-Lawrence River to the north, with settlements in the Mohawk Valley in present-day upstate New York and in the Saint-Lawrence valley. Since prior to contact, the Mohawk Nation has belonged to a confederal system of other Iroquois nations—Oneida, Onondaga, Cayuga, Seneca and, since the eighteenth century, the Tuscarora – known as the Wisk Niyohontsyake (Confederacy of the Five Lands), also referred to as the Haudenosaunee or Iroquois Confederacy.

18. The Mohawk Nation was the first to accept the Kayenere:kowa or Great Law of Peace, and act as the "older brothers" and guardians of the Eastern door of the Confederacy. No

business can be added to the agenda of Confederacy meetings without the express support of the older brothers, and no official decision can be made without their consent. The Mohawks have had their own system of government since prior to contact with Europeans, as well as their own laws, institutions, customs, practices and traditions. The Mohawk Nation has throughout and to this date functioned as an independent nation with its own government

19. Since prior to contact with Europeans, and at all relevant times, the Mohawks have exercised their traditions, values, customs, spiritual practices and economic activities, have carried on their particular way of life and used and benefited from the lands and resources and earned their livelihood in and from the traditional Mohawk Territory which includes the watersheds of Lake Ontario and Lake Erie and the St. Lawrence River. The Mohawk community on the Bay of Quinte is part of the Mohawk Nation and Haudenosaunee communities. These groups are connected by a common culture, a common language, common ancestry, common history, family relations. As a member of the Teganakarineh Bear Clan and the Mohawk Nation the Applicant Fisher is a beneficiary of and entitled to exercise the collective rights and responsibilities of the Mohawk Nation.

20. Historically, the French and British Crowns recognized the Mohawk Nation as an independent nation capable of free trade and maintaining relations of peace and war. Both the French and British Crowns made Treaties with the Mohawk Nation, the obligations of which they acknowledged, and which remain valid, operative and binding on the Crown. Thus, the Mohawk Nation became party to several Treaties with the European powers and such Treaties recognized the right of the Mohawks as a nation to govern themselves and to carry out trade and other economic activities within the traditional Mohawk territory and beyond it, without restriction, regulation or obligation imposed by the European powers, including the British Crown. Since prior to contact with the Europeans, the Mohawk Nation has also entered into agreements and Treaties with other Aboriginal Nations.

D. TRADE AND AGRICULTURE AS INTEGRAL PARTS OF THE MOHAWK AND HAUDENOSAUNEE CUSTOMS, TRADITIONS AND PRACTICES

21. Since prior to contact with the Europeans, trade in goods, including agricultural goods, and transport thereof over large distances, have been an integral part of Mohawk and Haudenosaunee customs, traditions, and practices. This trade and agriculture are integral to the distinctive society of the Mohawks and a central and significant part of that society's distinctive culture. They are a defining feature of Mohawk and Haudenosaunee society.

22. As horticulturalists and tradesmen and tradeswomen, the Mohawks had a firm grasp of self-interested economic pursuits and effectively understood the notion of agricultural trade on a "for-profit" or "commercial" scale. Since time immemorial, the Mohawk people have traded, exchanged, and sold various commodities, services, and technologies with each other and with outsiders. Mohawks have used universal trade currencies (such as tobacco, seeds, wampum

beads, foreign currencies, and rare items such as precious metals, stones, and even fossils) to hold and exchange value, but these market relations are always embedded in Mohawk culture and customs. Mohawk trading relationships are based on principles of mutually beneficial trade and exchange between friends.

23. For the Mohawks, trade represented one practice through which forms of status could be achieved by persons perceived to bring about a public benefit through their individual initiative. Influence could be gained within Mohawk clans through the redistribution of goods acquired in trade through gift-giving and even the internment of valuable “exotic” goods in burials of community members. Thus, individuals had a perceived self-interest in accumulating wealth through the commercial trading of goods.

24. The strategic position of the traditional Mohawk territory, combined with the military power of the Confederacy, enabled the Mohawks and the members of other Haudenosaunee nations, to circulate free of hindrance and acquire, exchange, distribute, and transport goods, and in particular agricultural goods, and thus thrive as traders throughout a vast territory, prior to and subsequent to contact with the Europeans. Members of the Mohawk Nation have engaged in the production, use and trade of agricultural products and fibrous plants on a continuous basis and on a commercial scale since prior to contact with the Europeans.

25. Prior to contact with Europeans, agricultural goods and fibrous plants became a fixture of the agricultural system of Iroquoian-speaking peoples. This agricultural system also included the growth of corn, beans and squash, the latter known as “the Three Sisters.” The cultivation and trade of agricultural products by the Mohawks were to a significant degree commercial. Individuals and their clans pursued their economic self-interest by producing surplus amounts of agricultural goods (in addition to the quantities needed for personal consumption) and, in turn, exchanged such surpluses or traded agricultural goods otherwise acquired for other trade items with a view to making a profit, which often served to heighten their status within their community. The Mohawk people actively participated in the trade of agricultural products for profit.

E. COMPACTS AND TREATY-MAKING AS INTEGRAL TO MOHAWK CUSTOMS AND TRADITIONS

26. Since time immemorial and at least since prior to contact with Europeans, negotiation, conclusion, and maintenance of compacts, Treaties, alliances, and other arrangements and wampum relations with other Indigenous Nations is and always has been a tradition and custom that is integral to the distinctive society of the Mohawk Nation. Compacts, Treaty-making and the creation and maintenance of alliances and other agreements is a defining feature of Mohawk society. The centrality of Treaty-making to the Mohawks is related to the strategic location of their respective traditional territories and homelands within the Northeast and the Saint Lawrence River Valley, in particular their proximity to other Indigenous Nations and major trade routes.

27. The strategic location of the Mohawk Valley meant that the Mohawk relationship with the British Crown became foundational to the Crown's relationship with all other Indigenous nations in "Upper Canada." Without their alliance with the Mohawks, the British would have had no connection to the lands which became Canada (other than through Hudson's Bay in the far north) because the French controlled the key trade routes with military outposts throughout what are now Canada's Atlantic provinces and the St. Lawrence valley with the support and assistance of their own network of allied Indigenous nations. Because the Appalachian mountains were only passable through the Mohawk Valley, the British Crown privileged its relationship with the Mohawk nation in order to expand trade westward.

F. COVENANT CHAIN: THE FOUNDATION OF THE MOHAWK NATION'S RELATIONSHIP WITH THE CROWN

28. The *Covenant Chain* is a peace and friendship Treaty based on mutual benefit in the form of gift-giving and trade which must be periodically renewed or "polished." It is a relationship between equals with no political subordination or interference in each other's internal matters. The political, economic and military alliance that led to the development of the *Covenant Chain* relationship between the Dutch and then the British and the Mohawk was deeply shaped by the Great Law of Peace or the Kayenere:kowa which the Mohawks of the Six Nations were the first to adopt and popularize. This system contains its own philosophy and constitutional decision-making structure which not only influenced the form of government that the United States of America adopted, but shaped the governing structures and decision-making processes of many other Indigenous nations and confederacies from the Great Lakes to the Atlantic.

29. The formation of the Confederacy involved the introduction of a number of practices which became integral to the *Covenant Chain* relationship itself. These include the use of wampum as a sacred, mnemonic device to memorialize and store binding agreements. The Friendship Belt which was extended to many other Indigenous nations uses similar concepts to the *Covenant Chain* relationship. A path is kept clear for communication and trade between the parties, the symbolic rope between the parties can be "tugged on" to summon help, and the parties remain distinct and separate. The Two Row Wampum – symbolizing a non-interference agreement of mutual benefit between different parties based on the principles of Peace, Friendship and Respect – is paramount as a very old and all-encompassing concept of non-interference, freedom, and mutually beneficial interaction. The wampum of the Dish with One Spoon/Beaver Bowl symbolizes a common sharing of resources and territory where everyone eats, but nobody takes more than they need. Everyone takes a turn eating and uses the one spoon - no sharp knives are permitted that could hurt one another.

30. The *Covenant Chain* represents a consensus-making decision process through meeting and counciling in order to come up with an end result that all parties can accept. This discussion and consultation process is not a zero-sum game, but the result of seeking mutual benefit and a compromise that all parties can live with as they continue a permanent and unbroken relationship

in which they link their arms together, like links in a chain.

31. The success of the British – Mohawk *Covenant Chain* relationship led to the British Crown using the same framework to make their Nation-to-Nation treaties with other Indigenous nations. The British adopted the cultural and political concepts of the Mohawk, spoke the Mohawk language, utilized the same communication and monetary system of wampum beads, adopted the same method of counciling and “polishing of the *Covenant Chain*” with great success with other Indigenous nations. The British Crown’s “Indian Superintendent,” Sir William Johnson or “Warraghiyagey” (He Who Does Much Business) is the embodiment of this relationship. He spoke Mohawk, was adopted into the Mohawk Nation, married Joseph Brant’s sister and clan mother Molly Brant, had eight children with her, and negotiated numerous Treaties with dozens of Indigenous nations with the active support and involvement of the Mohawks in his diplomacy. The reference in the *Royal Proclamation of 1763* to the Indigenous nations “with who We are connected” is a reference to the *Covenant Chain* relationship that the British Crown first forged with the Schoharie Mohawks of the Five Nations or Haudenosaunee Confederacy, and which was subsequently extended to the Mi’kmaq Nation in 1752, the “praying Indians” of the Seven Nations of Canada in 1760, and the Anishinaabe Nations at the 1764 *Treaty of Niagara*.

32. As a further example of the ongoing relationship, the *Covenant Chain* relationship almost came to an end in June of 1753, when the Mohawk leader Hendrick accused the Crown’s Albany Commissioners of Indian Affairs of failing to uphold their military protection against French incursions and refusing to stop land speculators and rum peddlers from entering his peoples’ villages. The relationship was however “polished” and made right at a Treaty gathering 15 months later. In 1769, the “Nine Patentees” gifted the “Silver Covenant Chain peace pipe” to the Mohawks of the Schoharie Valley. The text engraved on the silver pipe reads: “To the Mohock Indians, from the Nine Patentees, of the tract near Schoharie granted in 1769 ... As A Testimony of the Sincere Esteem.” Also engraved on the pipe are the figures of a white man and an Indian each holding the end of the chain, with the sun shining down on them. According to Mohawk oral history, this pipe and its chain symbolize the *Covenant Chain*, and it is to be smoked while polishing the chain with the Crown. The pipe is still in the possession of the Mohawk Nation.

G. ESTABLISHED INDIGENOUS TRADE RIGHTS POST-CONTACT

33. Mohawk trading relationships were beyond the regulatory and administrative ambit of European powers. Such trade instead was self-regulated and administered by the Mohawk people. It was governed in accordance with Mohawk custom and convention, free from interference by or obligations to foreign governments.

34. A fundamental aspect of the independence of Mohawk trade was the absence of any obligation to pay duties, tributes, and other fiscal payments, and the absence of any tax collection obligation toward, or fiscal regulation by, European powers including the British Crown. As

independent entities carrying on open and free trade, the Mohawk Nation and their members neither paid, nor collected, nor remitted any taxes to the British Crown or other European powers. The Indian Trade, which included in particular the trade of the Mohawks, emerged as a distinct category of trade that was to be protected and regulated by Treaties concluded with the Crown or European powers. In the context of the *Covenant Chain* relationship of the Mohawks with the British Crown, their protections with respect to trade was expressed using metaphorical legal language and was referred to as the “Open Road.”

35. The independence of the trade of Indigenous peoples from the trade of non-Indigenous peoples in the post-contact era is also apparent from the *Dongan Charter* of 1686, which incorporated the City of Albany in the modern State of New York and provided that the Albany Commissioners would be the sole Crown agents empowered to regulate the trade with the “Indians.” Albany was therefore the central fire of the Indigenous trade, was the location where the Treaty Councils of the Mohawks were held with the British Crown, and was where the *Covenant Chain* was renewed.

36. While questions relating to land would prove to be the most important long-term issues between Indians and colonists, matters of commerce, especially the management of the “Indian trade,” played an important role in the immediate post-Seven Years’ War period in the parts of North America that would later become Canada. The 1760-61 Crown-Indigenous *Treaties of Peace and Friendship* (as upheld by the Supreme Court of Canada in *R. v. Marshall* [1999], 3 S.C.R. 456), while omitting all references to Indigenous lands, made a special point of outlining future relationships between Indians and the Crown in matters of trade. Indigenous peoples who were parties to those Treaties were to trade exclusively with the British at truckhouses, in exchange for which the British Crown would guarantee their right to trade, set fair prices of trading exchange and generally ensure reasonable conduct by the Crown’s subjects toward Indigenous peoples engaged in trade. Even with the discontinuance of Crown truckhouses, the Supreme Court of Canada found that the Treaties guaranteed a continued right to commercially trade for a moderate livelihood.

37. The system of separate regulation of trade for European subjects provided for in Treaties was also entrenched in the wording of the *Royal Proclamation of 1763*, which provided that “the Trade with the said Indians shall be free and open to all our Subjects whatever, provided that every Person who may incline to Trade with the said Indians do take out a Licence for carrying on such Trade from the Governor or Commander in Chief or any of our Colonies respectively where such Person shall reside, and also give Security to observe such Regulations as We shall at any Time think fit” No such requirement was imposed upon the Mohawks.

H. TREATY RIGHTS INCLUDING *COVENANT CHAIN* PROTECT MOHAWK CANNABIS TRADE

38. The Mohawks, including the Applicants, are the beneficiaries of the obligations under

Crown-Indigenous Treaties, including the *Covenant Chain*, as well as under other Imperial instruments. These obligations were never extinguished nor replaced and are still valid and binding on the Crown. The Mohawks, including the Applicants, therefore possess:

- i. a Treaty right to resolve matters of trade and commerce through the *Covenant Chain* council fire or dispute resolution process on a nation-to-nation basis;
- ii. a Treaty right to free trade, which includes the right to trade cannabis and cannabis products on a commercial scale; and
- iii. a Treaty right to trade safely with other peoples and nations in their traditional Mohawk territory and in other territories contemplated by the Treaties, without any regulation, imposition or duty or tax or collection obligation to the European powers and their successors.

39. From the time of contact, European powers and Indigenous Nations coordinated their separate systems of trade by virtue of Treaties in a colonial context of economic interdependence and political and military alliances between these distinct nations. The Treaties described in the present Application all meet the criteria established in Canadian jurisprudence for the existence of Treaties and have been recognized as binding Treaties in *R v. Montour*, 2023 QCCS 4154 and *R. v. Kane et al.*, Quebec Superior Court No. 505-01-183000-237, District of Longueuil, 18 December 2024 per Royer J.

40. From the early seventeenth century onward, the Mohawk Nation concluded numerous Treaties with the colonial powers, namely the Dutch, the French and, following the cession of the Dutch possessions in the New World, the British. These Treaties were essentially diplomatic and commercial in nature, trade being at the forefront of the preoccupations of the Mohawks in their dealings with the colonial powers. These Treaties were a continuation of pre-contact practices.

41. The Treaties between newly arrived European polities and the Mohawk Nation were negotiated and concluded on a nation-to-nation basis, with parties to the written and oral agreements being equals. Such treaties were reaffirmed in diplomatic and trade meetings, known as Treaty Councils or Council Fires, involving the native and newcomer Treaty partners.

42. From the beginning of the colonial encounter, trade and diplomatic Treaties between Europeans and the Mohawk Nation and its members were considered indispensable to the European powers and settlers to secure economic and other relations with Indigenous trading partners and thus access to new resources, markets and trade items. Most of these Treaties were concluded according to the protocols and customs of the Mohawks, adapted as necessary to the unique diplomatic setting involving them and the Dutch, French and later British powers. These protocols and customs were rooted in Mohawk Law, including the Great Law of Peace, and included such ceremonies as the Condolence Ceremony.

43. These Treaties were memorialized by the exchange of wampum belts which conveyed different meanings, such as trade or peace or war. Knowledge of these Treaties has been passed down from generation to generation in the oral tradition of the Mohawk Nation. Several Treaties and their terms were also recorded in written form by colonial officials or are known through the minutes of Treaty Councils. Other Treaties are known through the writings of these colonial officials. The Iroquois and Mohawks had their own system of recording Treaties. While some Treaties were concluded with the Dutch and the French, the Mohawks and the other nations which formed the Iroquois Confederacy negotiated the bulk of these Treaties with the British Crown, forming what is today known as the *Covenant Chain*, which to this day symbolizes the trade and peace alliance between the Mohawk Nation and the Crown.

I. GRAND SETTLEMENT OF 1701 SUPPORTS APPLICANTS' CANNABIS TRADE RIGHTS

44. The signing of the “Grande Paix de Montréal” in 1701 (known in English as the “Great Peace of Montreal” or “Grand Settlement of 1701”) was a peace and trade Treaty concluded between France and numerous First Nations of North America, including the Mohawk Nation. The Treaty was concluded after four years of intense multilateral negotiations and more than a century of warfare. It brought together some 1,300 ambassadors representing 40 Indigenous Nations inhabiting an immense territory from Acadia to the edge of the Prairies, and from the James Bay basin to the Missouri River.

45. The Treaty ended more or less continuous warfare over land, resources, trading partners and trade between the Haudenosaunee and the Indigenous Nations allied to the French. Peace was concluded between the great Huron-Outaouais alliance network of nations from the St. Lawrence Valley, the Great Lakes and the Mississippi, and the French, on the one hand, and the Haudenosaunee. The Grande Paix de Montréal was concluded in accordance with the above-mentioned protocols and customs affirming, through the oral and written terms, the renewal of peace between the parties to the settlement and the recognition of longstanding Indigenous trade practices and routes.

J. THE *COVENANT CHAIN* SUPPORTS APPLICANTS' CANNABIS TRADE RIGHTS

i. Treaty of Trade and Mutual Aid, 1664

46. On September 24, 1664, representatives of the British Crown, having recently taken control of Dutch possessions in North America, concluded a Treaty at Albany with the Haudenosaunee represented by the Mohawks and Seneca. The very first article of the Treaty referred to the British continuing to trade the same wares and commodities as the Dutch previously had. More significantly, the Iroquois and the Mohawks actually proposed and insisted upon including an article to secure the right to free trade that they had enjoyed with the Dutch. This provision, which was accepted by the British, stated: “That they may have free trade, as

formerly.”

ii. *Treaty of 1677*

47. After the British took definitive control of New York from the Dutch in 1674, the governor of New York, on behalf of several of the British colonies, renewed and expanded the Treaty relationship with the Haudenosaunee at Treaty conferences held in Albany in 1677. The term *Covenant Chain* appears in the memorials of two Treaties concluded at this time, including that which confirmed the British-Iroquoian alliance in the north-east. Nearly a century after its conclusion, Sir William Johnson described the Treaty as one “for the common safety of you & us [...] for our mutual advantage, of which trade is a considerable part.”

iii. *Treaty of Utrecht, 1713*

48. The *Treaty of Utrecht* contained the following provision pertaining to the trade rights of the Haudenosaunee or Five Nations: “The inhabitants of Canada and other subjects of France shall hereafter give no molestation to the Five Nations or cantons of Indians subject to the dominion of Great Britain [i.e. the Iroquois nations], or to the other nations of America who are friends of the British Crown. In like manner, the subjects of Great Britain shall behave peaceably towards native Americans who are subjects or friends of France: and both groups shall enjoy full liberty of going and coming on account of trade.” The legal effect of this language was similar to the later *Treaty of Ghent* (1814) ending the War of 1812, where Article 9 confirmed “to restore to such Tribes or Nations respectively all the possessions, rights, and privileges, which they may have enjoyed or been entitled to in one thousand eight hundred and eleven previous to such hostilities.”

iv. *Treaty of Peace Trade & Amity, 1735*

49. The “Treaty of Peace, Trade & Amity” of 1735 was concluded at Albany on August 2nd, 1735, among the Commissioners of Indian Affairs of New York, the Chiefs of the Mohawks of Kahnawake, and other nations. The Mohawk Chiefs travelled to Albany with the intention of renewing the “Ancient Peace Friendship and Intercourse” between the Iroquois and the British. According to the written record of the Treaty, the Commissioners undertook: “we should then forever live in good unity together and have free Recourse to & from your habitations at all times as well on acct. of trade as otherwise” A copy of the Treaty was sent to the Governor of the colony of New York on August 14th, 1735 and a wampum belt sent to Onondaga for preservation and ratification by the Six Nations “as a memorial to posterity of this solemn treaty.”

v. *Onondaga Conference of 1748*

50. The earlier Treaties of the *Covenant Chain* between the Crown and the Haudenosaunee

were affirmed once again at the Onondaga Conference of 1748. The conference was attended by Sir William Johnson, the Commissioner of Indian Affairs, and representatives of the Haudenosaunee Confederacy. An extract from the speech of Johnson given at the conference invokes their longstanding Treaty relationship: “But I tell you I found out some of the old Writings of our Forefathers which was thought to have been lost and in this old valuable Record I find, that our first Friendship Commenced at the Arrival of the first great Canoe or Vessel at Albany”

vi. *Treaty of 1754*

51. The Treaty of 1754 is another Treaty forming the *Covenant Chain* between the British Crown and the Mohawks. The Treaty was concluded after the British representatives invited the Mohawks to Albany to renew the terms of peace and trade of earlier Treaties. The Treaty was concluded with the Mohawks stating: “Brethren we now again, renew the old Covenant Chain with you and all your allies, which has been made by our forefathers ... We of our side, will keep the said Covenant Chain bright, clear & free from rust and filth, and the Road between us and you clear from all filth and dirt, and the fire burning. ... Gave a large belt of wampum.”

vii. *The Treaties of Kahnawake and Oswegatchy, 1760*

52. The *Covenant Chain* and the free trade Treaty rights of the Mohawks were again renewed at the Treaty Councils held in Kahnawake and Oswegatchy in 1760. The Treaty of Oswegatchy of August 1760 was a Treaty often described as a Treaty of peace and friendship, but it also contemplated the renewal of the *Covenant Chain*. It was concluded between representatives of nine Indigenous Nations and Sir William Johnson as the British advanced toward Montreal. The terms of the Treaty of Oswegatchy were confirmed at the Treaty conference held at Kahnawake on the 15th and 16th of September 1760, days after the capitulation of Montreal. The Treaty of Kahnawake was ratified by Sir William Johnson on behalf of the British Crown, and by the representatives of the Mohawks of Kahnawake, witnessed by the Wisk Niyohontsyake whose representatives took part in the negotiations.

53. It was the intention of the parties to the Treaties of 1760 to explicitly reconfirm the *Covenant Chain* binding the British Crown and its colonies, the Haudenosaunee, including the Mohawk Nation, and the Seven Nations of Canada communities in New France, to formally extend the *Covenant Chain* to all of the Indigenous Nations represented by the Mohawks of Kahnawake at the Treaty conference. Although no formal document was signed, the terms of the Treaty are known from the response given by the Mohawks of Kahnawake on September 16th to the speeches of the British and Iroquois representatives delivered on September 15th. Certain significant terms of these oral Treaties were summarized in the papers of Sir William Johnson in articles 3, 4 and 13, for which wampum belts were given. Article 3 provides for the “renewing and strengthening of the old Covenant Chain.” Article 4 provides for the “opening of the Road

from this to [Albany] your country we on our parts assure you to keep it clear of any obstacle and use it in a friendly.” Article 13 of the Treaty provides that the English Crown: “[...] will regulate Trade so that we may not be imposed upon by yr [sic] people.”

K. ROYAL PROCLAMATION OF 1763 SUPPORTS APPLICANTS’ CANNABIS TRADE RIGHTS

54. The pre-contact trade system of the Mohawk and Iroquois which was recognized in the free trade provisions of Treaties with European Powers was once again formally and unilaterally recognized by the British Crown through the *Royal Proclamation* issued by King George III in 1763 in the wake of the Seven Years War. The Royal Proclamation not only provided for the recognition of Aboriginal Title, but also acknowledged, at least implicitly, by the regulation of non-Indigenous persons only, the open and free trade rights of the Indians, including the Mohawk Nation and the Haudenosaunee.

55. To this day, the Treaties of the *Covenant Chain* have never been extinguished or replaced and subsist as binding bilateral instruments, the rights of which are now constitutionalized. The continuing validity of the peace, friendship, and trade Treaties concluded between the Mohawk Nation and European powers has been invoked regularly by the Mohawk Nation and its members from the time of their conclusion, regardless of the subsequent unilateral and arbitrary lack of respect and lack of implementation by the Crown of the Treaties and of the *Royal Proclamation of 1763*.

56. The *Covenant Chain* and the Two Row Wampum represent fundamental principles of the relationship between the pre-existing sovereignty of the Indigenous peoples of Canada and the assertions of sovereignty of colonial powers in North America. As such, they express unwritten constitutional principles which have the force of law independently of s. 25 and s. 35 of the *Constitution Act, 1982*.

57. The Crown is deemed to have knowledge of its Treaty obligations to the Mohawks of Tyendinaga as a component of the Mohawk Nation and the Haudenosaunee, yet the Governments of Canada and Ontario have continuously violated the Treaties by the imposition of borders, by the enactment of legislation such as the *Cannabis Act* (and *Cannabis Control Act, 2017*) without consultation with and accommodation of the Mohawk Nation, and by the administrative and prosecutorial measures undertaken pursuant to that legislation, none of which alter the binding and superior force of the constitutionalized Treaties of which the Applicants are beneficiaries.

L. OTHER TREATIES AND POST-TREATY CONDUCT SUPPORT APPLICANTS’ CANNABIS TRADE RIGHTS

58. In the time following the conclusion of the aforementioned Treaties, the Mohawks and

the Crown continued to adhere to their Treaty relationship. They did so by concluding other Treaties which also renewed previous commitments, including the *Covenant Chain*. The post-Treaty conduct of the Treaty partners confirmed their understanding of having established a permanent and binding relationship based on trade and their respective political and legal autonomy.

59. The post-Treaty conduct is apparent from not only the Treaties themselves, which were solemn renewals of earlier Treaties and the *Covenant Chain* alliance, but also from written records and communications of Crown officials, additional Treaties concluded after 1760, the continuous exercise by Mohawks of the Treaty trade rights and their invocation of the unique Treaty relationship, including Mohawk participation as allies in the War of 1812, the suppression of the Rebellion of 1837, WWI and WWII, and the continued upholding of Treaties and Treaty principles over centuries in Haudenosaunee and Mohawk communities, including in contemporary times.

i. Narrative Reports of Treaties from Crown Officials

60. After 1760, communications between military and executive representatives of the British Crown confirmed the existence and trade terms of specific Treaties. In 1761, in a letter addressed to Jeffrey Amherst, then the Commander-in-Chief of the Forces of the British Army in North America, Sir William Johnson observed that the Treaties of 1760 provided the Treaty signatories, including the Haudenosaunee and Mohawk Nation, a “free and open trade.” The reply of Amherst confirmed that the Haudenosaunee and Mohawks would have a “full Liberty for a free and open trade.” In another post-Treaty report to General Thomas Gage regarding the scope of the trade clause of the Treaty of Kahnawake, Sir William Johnson specified that the treaty right of free trade was not limited to trade at Albany but also in places beyond there and beyond the settlements of the Mohawks.

61. The *Covenant Chain* alliance was also mentioned or renewed in several subsequent Treaties, such as the *Treaty of Detroit* of 1761, the *Treaty of Niagara* of 1764, and the first *Treaty of Fort Stanwix* of 1768.

ii. Treaty of Detroit, 1761

62. In the fall of 1760, not long after the capitulation of Montreal, the British attempted to send troops to occupy the principal French forts in the continental interior. British soldiers replaced the French garrison at Detroit in early September 1760.

63. In 1761, with authorization from Jeffery Amherst, British Commander-in-Chief, Johnson decided to organize a council at Detroit. The goal was to formalize the integration of the Great Lakes Indigenous nations into the British-Indigenous alliance and to lay the groundwork for peace. Johnson explained the goals of his trip to members of the Six Nations who met with him

at Niagara during his stop on the way to Detroit.

64. Johnson arrived at Detroit early in September 1761. He held several preliminary meetings with the Indigenous representatives gathered there. The Conference that would end in a Treaty began on September 9 of 1761. Sachems and warriors from the “Wiandots, Saguenays [Saguina], Ottawas, Chipeweighs, Powtewatamis, Kickapous, Twightwees, Delawares, Shawanese, Mohicons, Mohocks, Oneidas & Senecas attended.”

65. Fifteen wampum belts were presented by Johnson during the first formal day of the Treaty Council, with each belt representing a different Treaty provision. The first five wampum belts were presented as part of the customary condolence ceremony. The sixth and seventh belts provided for the creation of a new Council Fire at Detroit for future deliberations between the Crown and the members of the Treaty Alliance. The eighth and ninth belts represented the renewal of the ancient *Covenant Chain*.

66. The ninth wampum belt also represented part of the new terms of the trade relationship of the Crown with the Western Confederacy following the successful victory over the French. Among other things, Johnson explained that trade with Indigenous peoples would be conducted on advantageous terms for them. He stated that the Crown would promote “an extensive plentiful commerce on the most Equitable terms between his Subjects & all Indians who are willing to entitle themselves thereto, & to partake of his Royal Clemency by entering into an offensive and Defensive Alliance with the British Crown.”

iii. Treaty of Niagara, 1764

67. The *Covenant Chain* was also renewed at the Congress or *Treaty of Niagara* of 1764. Along with the Great Peace of Montreal of 1701, the Congress at Niagara was one of the largest assemblies of Indigenous peoples to negotiate a Treaty during the early period of contact with European powers. The Congress was attended by upwards of 2,000 individuals from 24 Indigenous nations, including the Western or Lakes Confederacy and the Haudenosaunee.

68. The Congress at Niagara served several purposes. The main purpose was to ensure peace between the Crown and the Western Confederacy and reopen trade. In the words of the *Covenant Chain*, the Congress ensures that a “free open Road,” meaning the re-establishment of trade on the preferential terms for the Indigenous peoples. The treaty also provided for the return of prisoners and prohibited the presence of French persons in villages.

69. At the same time, the Congress at Niagara was a renewal of the *Covenant Chain* with the Haudenosaunee and the Western Confederacy. It was a reaffirmation of the tripartite *Covenant Chain* alliance forged at Detroit in 1761. In both the preliminaries of the Congress and the general Treaty, there are references to the maintenance and new commitments to the *Covenant Chain* by the signatories.

M. THE COVENANT CHAIN IN MODERN TIMES

70. The *Treaty of Aix la Chapelle* of 1748 was part of a general renewal of the 1713 provisions. The relationship between the Mohawk Nation and the British was governed by the *Covenant Chain* diplomacy well into the 19th century. The *Covenant Chain* eventually became part of British diplomacy with other Indigenous nations, such as the Algonquins and the Mi'kmaq, Maliseet, and Passamaquoddy nations on the Atlantic coast.

71. By the mid-19th century, however, the Crown adopted a new policy towards the Indigenous peoples of Canada based on the concept of “civilization.” With mass migration from Europe changing the demographic balance, as well as the passage of time, the Crown eventually began to neglect or forget the Treaty relationship with the Mohawks, among other Indigenous Nations. The Crown did not, however, extinguish these Treaties. And Canadian jurisprudence has confirmed these Treaties continue to have modern application, including being invocable by the Applicants. Notwithstanding the declining importance awarded to the *Covenant Chain* by the Crown during the 19th and 20th centuries, the terms and meanings of the Treaties and the Treaty relationship were passed on intergenerationally amongst Mohawk peoples and maintained in their oral history and traditions.

72. In 2010, Her Majesty Queen Elizabeth II gave the Royal Chapel in Tyendinaga Mohawk Territory a set of eight inscribed silver bells during her Royal Tour, further renewing and cementing the unique alliance between the Mohawks and the Crown. The bells were inscribed “Silver Chain of Friendship 1710-2010” to commemorate the 300-year Silver Covenant Chain Treaty alliance between the Crown and the Mohawk Nation.

73. Recent court decisions such as *R. v. Montour*, 2023 QCCS 4154 have upheld the continued existence and validity of the *Covenant Chain* as an “overarching meta-treaty” in upholding mutual obligations of peace, friendship, and respect between the Mohawks and the Crown. In *Ontario (Attorney General) v. Restoule*, 2024 SCC 27 the Supreme Court of Canada explicitly referenced the *Covenant Chain* as a foundational concept in Treaty relations between Indigenous peoples and the Crown – one which underpins the Honour of the Crown and its obligations to uphold Treaty rights today.

N. MOHAWK ABORIGINAL RIGHTS SUPPORT APPLICANTS’ CANNABIS TRADE

74. In addition to his Treaty rights, the Applicant Tehonikonrathe as a member of the Tehanakarineh Bear Clan of the Mohawk Nation, which as a distinct Indigenous society also has and invokes an Aboriginal right of economic development and free trade *simpliciter*. In the alternative, the Applicant invokes an Aboriginal right of economic development in a range of agricultural goods and products which were cultivated, acquired, used and traded since prior to or after contact with Europeans.

75. For the purpose of the present proceedings, the Applicants assert that Tehonikonrathe's Aboriginal right of free trade, which is constitutionally protected pursuant to sections 25 and 35 of the *Constitution Act, 1982*, includes the right to economic development. Such right includes the right to engage in the commercial sale of Cannabis and Cannabis products with Indigenous and non-Indigenous persons without the obligation to collect or remit taxes on behalf of the Crown, absent adequate consultation and accommodation by the Crown in accordance with the mechanism of the *Covenant Chain*.

76. In the alternative, the Applicant asserts that his Aboriginal right to economic development including the right to cultivate, acquire, use and trade agricultural products, including Cannabis and Cannabis products, with other Mohawks, Indigenous people and with non-Indigenous persons, without any restrictions imposed by the Crown absent Crown consultation and accommodation through the mechanism of the *Covenant Chain*.

77. Since prior to contact between Europeans and the Mohawk Nation, the cultivation, acquisition, use, and trade of agricultural goods has always been a defining and integral feature of Mohawk culture, traditions and practice, and is an integral part of the distinctive culture of their Indigenous society. The trade of Cannabis and hemp products by the Applicants constitutes the modern expression and natural evolution of an Aboriginal right and longstanding commercial practice of the Mohawk Nation which was already firmly established as a horticultural society, prior to contact between the Mohawks and colonial powers.

78. To the extent that there is any involvement by the Applicant Tehonikonrathe in the Cannabis trade, the Applicant acted and conducted himself pursuant to his Aboriginal rights and the Treaty and other rights invoked herein, and the Co-Applicants were merely acting as his agents. All of the impugned activities of the Applicants occurred within the territorial ambit of the Applicant Tehonikonrathe's Aboriginal rights to economic development and free trade in agricultural goods, including Cannabis and Cannabis products, or within the territory contemplated by the inter-nation compacts of the Mohawks with other Indigenous Nations.

79. The Aboriginal right of economic development and free trade in agricultural products of the Mohawk Nation was never extinguished and has never been abandoned by the Mohawks. The Mohawks, including the Applicant Tehonikonrathe, have never lost or ceded their Aboriginal rights, whether through extinguishment, surrender, abdication or in any other manner.

O. MOHAWK INHERENT RIGHTS SUPPORT APPLICANTS' CANNABIS TRADE

80. The Mohawk Nation has continually asserted its sovereign status having its own people, territory, government and foreign relations with authority and rights in and over a significant part of what is now known as Ontario, Quebec and the United States. The Mohawk Nation has functioned continuously as a distinct nation and society with inherent rights and its own government, laws and institutions.

81. The application of the laws of Canada and Ontario to the Mohawk Nation and its members must be reconciled with the sovereignty, authority, and jurisdiction of the Mohawk Nation and its members in accordance with the principles of the Constitution and the common law. The Mohawk Nation has exercised continuously and continues to exercise its authority, jurisdiction and control over its own members and territory with its own society, values, customs, traditions, spirituality, resources, economy, government, laws and institutions. These pre-existing rights, laws, customs and sovereignty became incorporated by Imperial Law and the Common Law. They have remained in force insofar as they have not been extinguished or deemed inconsistent with assumed Crown sovereignty.

82. Canadian courts have recognized that the European powers treated the Indigenous nations, including the Mohawk Nation, as independent nations capable of entering into Treaty relationships and as independent nations. The Treaties described herein represent an acknowledgment by the Crown of such a nation-to-nation relationship. The right of self-determination is inherent and not dependent on specific recognition by Canada or Ontario. The self-determination of Indigenous peoples, often referred to as an inherent right, has constitutional status independently of s. 25 and s. 35 of the *Constitution Act, 1982*.

83. The Mohawk Nation has no duty to carry out the administration of any statute of Canada or Ontario unless it has given its prior consent to carrying out such administration and, in particular, no obligations under constitutionally inapplicable and inoperative statutes. In this respect, s. 87 of the *Indian Act* is a partial recognition of the right of the members of a distinct nation, the Mohawk Nation, to be exempt from all forms of taxation and related tax collection mechanisms. Indians were not considered to be Canadian citizens until the middle part of the twentieth century and did not even have the unconditional right to vote in federal elections until 1960.

P. INTERNATIONAL LAW & SELF-DETERMINATION SUPPORT APPLICANTS' CANNABIS TRADE

84. The Mohawk Nation, of which the Applicant Tehonikonrathe is a citizen, constitutes an Indigenous People within the meaning of the *United Nations Declaration on the Rights of Indigenous Peoples Act*, S.C. 2021, c. 14 (“UNDRIP Act”), adopted by Parliament in 2021, and the *United Nations Declaration on the Rights of Indigenous Peoples*, which was adopted by the General Assembly of the United Nations on September 13, 2007 (hereinafter “UNDRIP”). While UNDRIP is a non-binding international instrument, Canada adopted the entirety of UNDRIP without qualification into federal law effective immediately pursuant to the *UNDRIP Act*.

85. The *UNDRIP Act* provides a framework for the implementation of UNDRIP and requires the Government of Canada to take all measures necessary to ensure that the laws of Canada are consistent with UNDRIP, including the *Criminal Code* and the *Cannabis Act*. The *UNDRIP Act* affirms UNDRIP as a universal international rights instrument with immediate application in

Canadian law. The *UNDRIP Act* further recognizes that Aboriginal and Treaty rights “are not frozen and are capable of evolution and growth” and provides that the Government of Canada is committed to taking effective measures, “in consultation and cooperation with Indigenous peoples,” to achieve the objectives of the UNDRIP.

86. As a citizen of the Mohawk Nation, the Applicant Tehonikonrathe holds and asserts all of the rights of the Mohawk Nation affirmed in UNDRIP, notably in articles 3, 4, 5, 11, 18, 19, 20, and 37 of UNDRIP, which include:

- i. the right to autonomy and self-government in relation to their internal affairs;
- ii. the right to freely determine their economic, social and cultural development, and to be secure in their enjoyment of their means of subsistence and development;
- iii. the right to determine the strategies and priorities for exercising their overall right to development, including economic and social development;
- iv. the right to engage freely in their traditional activities and to maintain, strengthen and revitalize their distinct customs, traditions and institutions;
- v. the right to participate in decision-making in matters that affect their treaty, aboriginal, inherent and other rights.

87. Article 37 of *UNDRIP* confirms the right of the Applicant Tehonikonrathe, as a citizen of the Mohawk Nation to the recognition, observance and enforcement of all Treaties, agreements and other constructive arrangements concluded with States, which clearly includes Treaties entered into by the French and British Crown. The Governments of Canada and Ontario have an international obligation to honour and respect the Treaties of the *Covenant Chain* as well as the Treaties concluded by the Mohawk Nation with the French Crown, including the Grande Paix of 1701.

88. Article 21 of *UNDRIP* confirms the right of the Applicant, as a citizen of the Mohawk Nation, to the improvement of the economic and social conditions and that States, including Canada, shall take effective measures to ensure the continuing improvement of their economic and social conditions. Article 23 of the *UNDRIP* provides that Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. This right includes the right to be actively involved in determining the economic programs affecting them and to administer such programs through their own institutions, including Mohawk institutions.

89. Articles 20, 21 and 23 of *UNDRIP* confirm that the exercise of Indigenous peoples’ rights to self-determination through autonomous systems of self-governance, including the right of the

Mohawk Nation. Together, Articles 20 to 23 of the UNDRIP emphasize Indigenous-driven improvement of social and economic conditions and control over the processes of their development. The right to economic development is a necessary basis for the capacity of Indigenous peoples to enjoy the benefits of their rights to subsistence and to engage in their traditional and other economic activities.

90. Indigenous peoples' right to economic development is also essential to the continuity of Indigenous societies, to their survival and dignity, and to the exercise of other rights. As was recognized in the *Report of the Royal Commission on Aboriginal Peoples* of 1996, there is a fundamental connection between Indigenous self-determination and the existence of a significant economic base. The right of self-determination and overall right to development, including economic development, is also consistent with the modern understanding of the principle of reconciliation between Canada and Indigenous peoples as nations.

91. The rights to self-determination and to economic development are also consistent with the Treaties concluded between the Crown and the Mohawk Nation which, in addition to providing for the right of free trade, constituted self-government Treaties which recognized that trade was central to the independence and self-governance of both Treaty partners. The right to free determination of one's economic development is particularly important in Canada due to the high incidence of poverty, significantly lower life expectancies, lower educational attainment and higher rates of criminalization among Indigenous peoples of Canada, including the Mohawk Nation.

92. Indigenous peoples of Canada, including the Mohawk Nation, face other serious obstacles to development where insufficient attention has been given by the Governments of Canada and Ontario to ensure the implementation, promotion and protection of the right to economic development. The Governments of Canada and Ontario have an international obligation as adopted and implemented in domestic Canadian law to obtain the free, prior and informed consent of the Mohawk Nation prior to the enactment and implementation of legislative and administrative measures that affect their Treaty, Aboriginal, inherent and international law rights, such as the *Cannabis Act* and *Cannabis Control Act, 2017*.

93. The Governments of Canada and Ontario have further breached their primary responsibility for the creation of conditions favourable to the realization of the right to economic development of Indigenous peoples and breached their duty to promote and protect an appropriate political, social and economic order for the development of Indigenous peoples, including the Mohawk Nation.

94. The Governments of Canada and Ontario have also breached their duty to formulate appropriate national development policies aiming at the constant improvement of the social and economic well-being of the Mohawk Nation, including to ensure their free and meaningful participation in the cannabis industry and the fair distribution of the benefits resulting therefrom.

The Interim Report of the Standing Senate Committee on Indigenous Peoples “On the Outside Looking In: The Implementation of the Cannabis Act and its effect on Indigenous Peoples” (June 2023) (attached as Annex “A”) confirms this breach.

95. The international law rights of the Applicant Tehonikonrathe as adopted and implemented in Canadian law, as a citizen of the Mohawk Nation pursuant to articles 3, 4, 5, 11, 18, 19, 20, 21 22, 23 and 37 of the *UNDRIP* are not subject to the judicial tests for infringement and justification that apply to existing Aboriginal and Treaty rights affirmed by s. 25 and s. 35 of the *Constitution Act, 1982*. The Crown has violated all these rights of the Mohawk Nation set out in *UNDRIP*.

96. The search warrant and charges pertaining to the Applicants in the present proceedings and the contested provisions of the *Criminal Code*, the *Cannabis Act* and *Cannabis Control Act*, 2017 are a violation of international law and the rights of Applicants under international law, as adopted and implemented in Canadian law. The *Constitution Act, 1982* is interpreted in a manner that is consistent with the obligations of Canada established by customary and conventional international law.

97. With the adoption of the *UNDRIP* and its unconditional acceptance by Canada, section 35 of the *Constitution Act, 1982* must be interpreted in light of the rights of Indigenous Peoples under *UNDRIP*. The unduly narrow interpretation of s. 35 set out in the decision of the Supreme Court of Canada in *R. v. Van der Peet*, [1996] 2 S.C.R. 507 which was reformulated by the Court in *R v. Montour*, 2023 QCCS 4154 must now be reconsidered in the light of *UNDRIP* and the *UNDRIP Act*. In accordance with the presumption of conformity, the rights protected by s-s. 35(1) of the *Constitution Act, 1982* must provide a protection at least as great as those afforded by similar provisions of international instruments which Canada has ratified, which includes *UNDRIP* since its adoption and implementation into the federal normative order with the *UNDRIP Act*.

98. The adoption of *UNDRIP* by the General Assembly of the United Nations demonstrates that these rights exist as a body of rules which member states of the international community accept amongst themselves as holding the status of customary international law and *jus cogens*. At a minimum, the *UNDRIP* confirms that there is a consensus among the international community that Indigenous peoples have the right to freely pursue their economic development, and that such a right is central to the broader right of self-determination.

Q. ACTIONS OF CROWN INFRINGE APPLICANTS’ RIGHTS

99. The provisions of the *Cannabis Act* that formed the basis of the charges and search and seizure warrants against the Applicants constitute unjustifiable infringements of the Treaty, Aboriginal, inherent and international law rights of the Applicant Tehonikonrathe as a member of the Mohawk Nation, as well as the Co-Applicants acting as his agents. The *Cannabis Act*

infringes on the Treaty and Aboriginal rights of the Applicant Tehonikonrathe in several respects as it:

- i. prohibits commercial Cannabis-related activities in the absence of a licence, permit, or ministerial authorization;
- ii. creates a broad permitting and registration scheme for the import, manufacturing, sale, and export of Cannabis and Cannabis products;
- iii. indiscriminately applies to all species of Cannabis irrespective of the ultimate purpose of their use;
- iv. creates criminal offences for the cultivation, possession, use, distribution, sale, import and export of Cannabis and cannabis products in the absence of a licence, permit or ministerial authorization;
- v. provides for the creation and maintenance of a national tracking system to prevent entry of unlicensed Cannabis and Cannabis products into the regulated market;
- vi. grants the Minister and his agents vast powers of inspection and seizure;
- vii. unreasonably interferes with the collective exercise of activities by the citizens of the Mohawk Nation;
- viii. disrupts the economic self-determination of the Mohawk Nation;
- ix. provides no mechanism for the reconciliation of the regulation of the Cannabis trade by the Mohawks with the requirements of the *Cannabis Act*.

R. NO JUSTIFICATION BY CROWN FOR INFRINGEMENT OF APPLICANTS' RIGHTS

100. The limitations imposed by the legislative scheme interfere with the constitutional rights of the Applicants in a way that is not justifiable. There is no compelling legislative objective. The Crown has taken no steps to ensure that the contested provisions of the *Cannabis Act* and its regulations (as well as the *Cannabis Control Act, 2017*) infringe these constitutional rights as little as possible. Instead, the Crown has denied, ignored and breached these rights. Furthermore, the Crown at no time sought to consult or accommodate the constitutional rights of the Applicant Tehonikonrathe as a member of the Mohawk Nation.

101. The infringement of the constitutional rights of the Applicants cannot be justified by the Crown under the criteria established by the jurisprudence, because there is no compelling and

substantive legislative objective which can trump the rights of the Mohawk Nation and the constitutional, inherent and international rights, exemptions and immunities of its members.

102. The application of fiscal and penal legislation to the trading activities of the Applicant Tehonikonrathe and other members of the Mohawk Nation deprives the Applicant Tehonikonrathe of substantially the whole value of his Treaty and Aboriginal rights to trade in Cannabis and Cannabis products. The operability and applicability of the contested provisions constitute an incompatible interference with the fundamental nature and extent of the constitutionalized rights of the Applicant, are an unreasonable limitation thereof, particularly in the historical circumstances and solemn treaty commitments and Honour of the Crown, impose undue hardship and denies the Applicant the preferred means of exercising his rights, and cumulatively violate the essence of those rights.

S. CROWN'S BREACH OF *COVENANT CHAIN* TREATY PRINCIPLES AND BREACH OF OBLIGATION OF ENFORCEMENT CONSULTATION

103. The actions and measures taken by the Crown in respect to the Applicant Tehonikonrathe's Cannabis trade were carried out without adhering to the dispute resolution mechanism provided for by the *Covenant Chain* Treaty alliance and the obligation of the Crown to consult with the Mohawk Nation prior to enforcing penal and criminal measures against them. As such, the seizures, charges and enforcement measures against the Applicant's Cannabis trade (as well as against the Co-Applicants) constitute breaches of the Treaty procedures since at no time did the Crown seek to raise the matter with the Applicant Tehonikonrathe or with the Mohawk Nation he belongs to.

104. The Crown is presumed to have knowledge of the constitutionalized Treaty and Aboriginal rights of the Mohawks, even where those rights have not been recognized by a competent court. Furthermore, where the Crown has presumptive knowledge of such rights, it cannot act unilaterally or in a manner that would adversely affect those existing but unproven rights. In the circumstances of the search, seizure and charges against the Applicant Tehonikonrathe and his employees, the Crown breached its duty of consultation by failing to consult with or give any notice to any Mohawk collectivity prior to enforcing the Crown legislation against the Applicant.

T. REQUIREMENTS FOR RECONCILIATION AND HONOUR OF THE CROWN

105. The Crown must act honourably in its implementation of Treaties concluded with Indigenous peoples and the resolution of their claims made thereunder, since Treaties are the primary means by which assumed Crown sovereignty is reconciled with the pre-existing sovereignty of Indigenous peoples. The *Covenant Chain* relationship, the Honour of the Crown and other unwritten constitutional principles impose a legal duty on the Crown to negotiate in good faith to resolve Indigenous claims in order to achieve just settlements. This includes

Mohawk claims to the trade in Cannabis.

106. In modern times, the continuing force of the *Royal Proclamation of 1763* also establishes the duty to Treaty or negotiate as a fundamental principle governing Crown-Indigenous relations pertaining to trade. The Honour of the Crown further requires the observance of the protocols and processes of the *Covenant Chain* relationship. The Crown must actively consult its Treaty partners regarding the application of its laws to the citizens of the Mohawk Nation, including administrative, criminal, enforcement and prosecutorial measures under those laws. The failure of the Crown to consult or negotiate with the Mohawk Nation with a view to accommodating the Mohawk Cannabis trade constitutes a breach of obligations flowing from the *Covenant Chain* and provides a distinct basis for the exercise by the Court of its power to quash the search warrant and charging information, and/or to impose a stay of proceedings in respect of all charges pending against the Applicants.

U. CONCLUSIONS REGARDING INAPPLICABILITY & INOPERABILITY OF CANNABIS ACT AND REMEDIES

107. The *Cannabis Act* (together with the *Cannabis Control Act, 2017*, the *Criminal Code*, R.S.C. 1985, c. C-46 and *Controlled Drugs and Substances Act*, S.C. 1996, c. 19 to the degree that other legislation is employed in the enforcement or operation of the *Cannabis Act*), in the context of the present proceedings and in respect to the Applicants and their conduct, violate and are incompatible with the Mohawk Nation Treaty and Aboriginal rights, and as a result are constitutionally inapplicable to them pursuant to s. 52 of the *Constitution Act, 1982*. The Applicants are entitled to an order quashing the search warrants utilized in this case as well as the charging informations (or a stay of proceedings in respect of the charges) if this Court should determine that the application of the contested provisions of the *Cannabis Act* pertaining to the Applicants' Cannabis trading activities is an unjustified infringement of a right protected by ss. 25 and 35 of the *Constitution Act, 1982*. They are also entitled to an order of *mandamus* requiring the return of the things seized pursuant to warrant, as well as an order of prohibition preventing any similar future Cannabis trade enforcement activity against the Mohawk Nation until the Crown has discharged its consultation and accommodation obligations. Alternatively, if this Court should determine that the Crown has breached obligations arising from the unique Treaty relationship between the Crown and the Mohawk Nation, then it is also appropriate and just to find the charging legislation constitutionally inapplicable to the Applicants, quash the search warrants and issue orders of *mandamus* and prohibition as well as a stay of proceedings in order to vindicate the collective rights of the Mohawk Nation.

108. The Crown in right of Canada and the Crown in right of Ontario are the successors to the Imperial Crown that bound itself to respect the protocols and substantive rights and obligations of the *Covenant Chain* in its dealings with the Mohawk Nation, and to respect the right of the Mohawks to govern themselves and their trade in accordance with Mohawk law and sovereignty.

If the Crown disputes the collective right of the Mohawk Nation to trade Cannabis and Cannabis products, the protocols of the *Covenant Chain* require the Crown to consult and cooperate with the Mohawks to reach a negotiated resolution of this dispute.

109. The Crown has ignored its obligation to resolve trade disputes, including disputes over the Cannabis trade of the Mohawk Nation, in accordance with its constitutional obligations despite the efforts of the Mohawk Nation to engage the governments of Ontario and Canada on the issue and to achieve a satisfactory compromise. The Crown has instead chosen to rely on law enforcement measures to restrict and discourage the Cannabis trading activities on which many citizens of the Mohawk Nation depend for their collective autonomy and survival, without consultation and without any accommodation of their constitutionally protected Treaty and Aboriginal rights to trade and economic development.

110. In these circumstances, the Crown has acted in a manner contrary to the collective rights of the Mohawk Nation, contrary to the Honour of the Crown, and in a manner inconsistent with the legal and political objectives of the reconciliation of pre-existing Mohawk sovereignty with the assumed sovereignty of the Crown, thus tarnishing the Honour of the Crown and the integrity of the justice system. Crown conduct that is inconsistent with the Honour of the Crown and which undermines the collective rights and interests of an Indigenous people warrants an order finding that the *Cannabis Act* and *Cannabis Control Act, 2017* (as well as the *Criminal Code* and *Controlled Drugs and Substances Act* to the degree that they aid in the enforcement or operation of the Cannabis statutes) are constitutionally inapplicable to the Applicants on the facts of this case, quashing the search warrants and charging informations (or imposing a stay of proceedings), providing *mandamus* for the return of seized goods, and prohibition from future similar enforcement actions until the Mohawk Nation has been sufficiently consulted with and accommodated in respect of their rights.

THE FOLLOWING EVIDENCE will be used at the hearing of the motion:

1. the *viva voce* evidence of lay and expert witnesses to be called by the Applicants;
2. the documentary evidence to be referred to and introduced through those lay and expert witnesses, including the expert reports of the expert witnesses;
3. such further evidence as may be advanced by counsel for the Applicants at the hearing of the motion.

**THE WHOLE OF WHICH IS RESPECTFULLY SUBMITTED THIS 2nd DAY OF
APRIL 2025.**

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Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE
(KINGSTON)**

**ROBERT FISHER TEHONIKONRATHE,
CASEY GEARIN & MAKAYA
ARMSTRONG**

- and -

HIS MAJESTY THE KING

**NOTICE OF MOTION TO ENFORCE
INDIGENOUS RIGHTS**

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