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VIA MAIL

**To the Addressees below
Federal, Provincial, and Territorial Attorneys General and Ministers of Justice**

Honourable Sirs and Mesdames,

RE: State Duty to Investigate the Crime of Genocide

I request that you, your Ministry, and your government formally investigate and, where appropriate, prosecute persons guilty of:

- genocide;
- conspiracy to commit genocide;
- attempt to commit genocide; and
- complicity in genocide

against Indigenous peoples of Canada. I request this under the authority of the *Convention on the Prevention and Punishment of the Crime of Genocide* adopted by Resolution 260 (III) A of the United Nations General Assembly. Canada is a Contracting Party to that *Genocide Convention*.

The Crowns in right of Canada, and of its provinces and territories, all have mandatory duties under the international law to investigate and prosecute the crime of genocide. Article 4 of the *Genocide Convention* mandates these actions.

The UN International Law Commission reminds us that Canada, with the UN General Assembly, has committed itself to “ensuring that impunity is not tolerated for genocide... and that such violations are properly investigated and appropriately sanctioned, including by bringing the perpetrators of any crimes to justice, through national mechanisms... in accordance with international law.” These obligations to avoid impunity for genocidal crimes are fundamental to the law of nations.

We last reached the cusp of this investigation during the hearings and investigative work of the Truth and Reconciliation of Canada. The investigation was pulled back. Here is that critical moment:

Trent University Professor John Milloy, who served as research director and then a special adviser to the TRC, said the question of how to use the word genocide in relation to Canada's residential schools has long been a matter of debate.

Dr. Milloy said some have been reluctant to use the word out of concern that it would be seen as an attempt to equate Canada's history with the genocide of Jews by the Nazis during the Second World War.



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He said he believes the term "cultural genocide" is appropriate to the aboriginal experience in this country. **However, Dr. Milloy said he received legal opinions while working for the TRC that suggested it is an open question as to whether the UN definition fits with what happened in Canada because of the way the opening sentence is written.**

The commission didn't have the resources to fully research that question, he said. "It was, at the end of the day, kind of unsatisfactory." (*Globe & Mail*, June 2, 2015)

Those open questions must now be closed, because it is your core duty to humanity to do so.

The International Law Commission reminds us that the *Geneva Conventions* of 1949 contain provisions requiring Canada, like all high contracting parties, to search for any persons alleged to have committed, or to have ordered to be committed, grave breaches of the *Geneva Conventions*, and to bring such persons, regardless of their nationality, before its own courts.

In *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, the International Court of Justice held that Article VI of the *Genocide Convention* obligates Contracting Parties to institute and exercise territorial criminal jurisdiction for crimes of genocide. Canada has to this point declined to investigate, as have its subnational governments, despite existing jurisdiction to investigate such crimes having occurred on their territory. It has pulled back even when told, by experts, that further investigation is warranted.

It is, at this point, not legally clear whether genocide under the *Genocide Convention* has occurred in Canada against its Indigenous peoples, and if so who was responsible.

I remind you that there is widespread public knowledge of very strong evidence that Indigenous peoples of Canada were victims of genocide.

The question must be made clear, and it is your duty under the law of nations to make it clear, particularly as it is likely that one or more individuals responsible are abiding on your territory.

I urge you to use the powers of your office to make and encourage an investigation of genocide against the Indigenous peoples of Canada and, where necessary, work further to ensure that the results of such investigations are referred to the proper prosecutorial authorities, and resources provided to do so.

National governments of our Indigenous peoples, which might otherwise be able to investigate and prosecute these crimes against their peoples currently lack the temporal power to do so. In many cases this is because their powers have been usurped or forcibly removed by the action federal and provincial Crowns. I therefore request, even if your position is that the duties to investigate are properly the duty of the victim peoples, that Canada apply both territorial jurisdiction principles for



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these crimes and, if necessary, the *aut dedere aut judicare* principle to investigate and, where warranted, prosecute.

As a Canadian I cry out to you to see that we take a stand, no matter how uncomfortable, against these despicable crimes.

If you have any questions or concerns regarding this matter please contact me at the address above, by fax at (866) 605-3524, or by phone at (905) 870-0196. I am happy to communicate formally or informally to your ministry about this request and our mutual understanding of your state duty to investigate under international law.

With thanks and regards,
Happy Canada Day,

Craig Burley
Barrister and Solicitor

**TO: The Honourable Jody Wilson-Raybould
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