

An open letter to the Indian Act Chief and Council of Millbrook First Nation concerning the need to abolish the Construction and Development Moratorium Bylaw 2021-01

We are writing this letter to object to the continued application of the “Construction and Development Moratorium Bylaw 2021-01” of Millbrook First Nation to us as Micmac Indians living on our own unceded lands in Millbrook and Cole Harbour. This bylaw, which was passed without consultation or support from the Micmac people, and which violates the terms of our Peace and Friendship treaties with the Crown, draws its legal basis from an antiquated 40 year old court case (Joe v. Findlay 122 D.L.R. (3d) 377) in which the Squamish Indian Band denied a band member access to reserve lands.

As former National Chief and Indian Act expert Del Riley noted in a letter sent to you on July 12th, 2022, “This court ruling was made in March of 1981, in the dark ages of Canada’s racist treatment of Indigenous peoples. The ruling in question came from the time before Canada gave protection to Aboriginal and Treaty Rights in Sections 25 and 35 of the Constitution and when the racist St. Catherines Milling Co. v. Regina interpretation of our rights held sway in the courts.”

Chief Riley also noted that “While the ‘Millbrook First Nation’ is an entity that can sue and be sued, it is not an “Indian.” It did not make any treaties with the Crown, and it does not have any Aboriginal or Treaty Rights. The sovereign rights holders on Mi’kmaq lands are the Mi’kmaq people like Mr. Durfee who live in accordance with the customs and conventions of their people – not the institutions of the Federal Government which exist to discharge the Crown’s fiduciary and treaty obligations to Indians.”

We, the signers of this letter, are sovereign Micmacs and the rights holders. You, as an Indian Act Chief and Council – a body of the Federal Government constituted by the Canadian Parliament – have the legally binding duty to uphold Canada’s fiduciary responsibility to us as Indians, and you have a constitutional obligation to “recognize and affirm” our Aboriginal and Treaty Rights. It is unconscionable that you would impose a bylaw which so blatantly abuses our inherent rights and treaties.

We are also concerned that the decisions to hinder the economic activities of band members, to deny them CPs, to ask them to provide “sworn affidavits” about their planned future projects, and to withhold treaty funds due members as a penalty for breaking bylaw 2021-01 seem to be being made by Executive Director Claire Marshall on her own initiative, and do not reflect any deliberation and decision made by Chief and Council. In a recent email to Derek Maloney for example, Ms. Marshall asks for the provision of a “sworn affidavit” that he will not

open a cannabis store, as to comply with a theoretical cannabis law that has not even been written or approved of by the people.

Last year Chief Riley asked Council for a meeting on behalf of Thomas Durfee to discuss these matters, but rather than having Chief and Council meet and consider Chief Riley's letter and offer to discuss the issue, Claire Marshall took unilateral action to respond to his letter and seize Mr. Durfee's property, thereby violating Section 89 of the Indian Act.

We remind you that bylaws passed by Chief and Council are not enforceable by Canadian police services, and that actions taken by Federal employees such as yourselves which violate our constitutionally protected Aboriginal and Treaty rights are actionable in a court of law.

Because of the racist nature of your bylaw, and the fact that Claire Marshall has been picking and choosing who to target with this bylaw, we are concerned that tensions are increasing in the community and reaching a breaking point.

We therefore request that at 1pm on the afternoon of your all day meeting on February 14th 2023, that you hear from a delegation representing the signers of this letter, and that you also hear the opinion of Former National Chief Del Riley who is a recognized expert in matters dealing with the Indian Act and Aboriginal and Treaty Rights and who will be present with our delegation in Millbrook on that day as an adviser.

We are requesting that at your February 14th meeting Chief and Council pass the following motion: "Be it resolved that the Construction and Development Moratorium Bylaw 2021-01 is hereby rescinded and no longer of any effect. Be it further resolved that all Treaty monies withheld for breaking this Bylaw be immediately released to the members from whom it has been withheld."

As Chief Riley has said, any rules or regulations concerning the exercise of Micmac sovereign rights "should be discussed in accordance with Indigenous customs and conventions and in settings involving the people as a whole – not through the racist Indian Act systems imposed by a colonizer who has committed – and continues to commit – cultural, physical, and economic genocide on our people."

We are committed to moving forward in a manner which respects our rights and we look forward to discussing these matters further with Chief and Council on February 14th.

Sincerely,

Millbrook First Nation Band members: Christina Durfee, Andrea Durfee, Nichole Durfee, Thomas Durfee, Abby Falkenham, Cheryl Fritz, Alexander Julien (Sandy Joe), Blayze Julien, Chantelle Julien, Rose Durfee, Tina Julien, Dallas Julien, Derek Maloney, Michael Maloney, Jessica Haji Mohamad, Corey Stevenson and Destiney Wysote.