

**TO:** Claire Marshall <[executivedirector@millbrookband.com](mailto:executivedirector@millbrookband.com)>  
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**SUBJECT: Response to Claire Marshall’s letter of August 14th Re: Development of Cannabis Law – Construction and Development Moratorium Bylaw 2021- 01**

March 21, 2023

Dear Claire Marshall and the Indian Act Chief and Council of Millbrook First Nation,

We thank you for your [letter of February 14th, 2023](#). Your letter raises a number of points that we wish to respond to, and that we would like to ask you to clarify.

Firstly, you state in your letter that Chief and Council reviewed [our letter of February 13th](#), presumably at the all day February 14th, 2023 Chief and Council meeting, as your letter is dated February 14th. We are curious to know how this could be when we have spoken to a number of councillors who were present at the meeting and they say that the topic was not discussed at the meeting and that they did not view your letter.

While Council certainly received our letter of February 13th, did Chief and Council review and endorse your letter of February 14th, or did you send it out on their behalf without them reading it? Since your letter is dated is February 14th, and was presumably sent after the all day meeting, how could Chief and Council possibly viewed or endorsed your letter before you sent it?

As to the substantive issues raised in our letter of February 13th, your response completely avoids engaging with our argument and our request to meet with Chief and Council. We hold that the “Millbrook First Nation” for which you are the executive director, does not equal the Mi’kmaq Nation, or a portion of it.

That is because “Millbrook First Nation” is actually “Company #3111991” active under the jurisdiction of the Province of Nova Scotia and the *Indian Act* of the Federal Government of Canada. Millbrook First Nation is not an “Indian” but rather a corporate entity that can sue and be sued. Created by the Canadian Parliament through the Indian Act, it does not have or hold any Aboriginal and Treaty Rights. It belongs to the colonizer.

The Government of Canada has deliberately refused to legally define the term "First Nation." It is thus a term in the English language that can be interpreted in many different ways, none of which hold any legal weight.

The only reason that the "Millbrook First Nation" of which you are the executive director exists, is because after the genocidal *Indian Act* was created in 1876 in violation of international law and Micmac Aboriginal and Treaty Rights, our ancestors were taken off their lands and concentrated on reserves – open air prison camps – that they were not allowed to leave without a pass from the Indian Agent. They were given numbers like the Jews in Nazi concentration camps, and that is how the "Band list" that constitutes "Millbrook Indian reserve #27" or "Millbrook First Nation" as you call it, came to be.

Our ancestor's children were ripped from the arms of their parents, forced into Indian residential schools where they were tortured, brainwashed, and even killed. The plan was for complete genocide; the Indians would inevitably die out or be enfranchised and assimilated to white society to escape their "wardship." The *Indian Act* was specifically created as "An Act to confer certain privileges on the more advanced Bands of the Indians of Canada, with the view of training them for the exercise of municipal powers" (as reads the subtitle from the 1884 version of the Act). The *Indian Act* is a heinous law on par with the Apartheid laws of South Africa which were inspired from it, but it does not determine or regulate Micmac identity, treaty rights or our laws and customs.

You, Claire Marshall, are an administrator for a state bureaucracy designed to destroy the Micmac people and our nationhood. You are the new Indian Agent. You are attempting to implement the Trudeau Government's "self-government" agenda, which in reality means the termination of our Aboriginal and treaty rights and the municipalization of our national status. You do not get to claim our treaty and Aboriginal rights while oppressing us. You work for the Crown as an employee of Indian Affairs, for an *Indian Act* Band Council, and you are violating our constitutionally guaranteed Aboriginal and treaty rights.

Though an election for the councillors of "Millbrook First Nation" is held every two years, the Chief and Council are not actually responsible to their "electorate." Instead they are responsible to Minister of Indigenous Services and the racist, genocidal laws of the *Indian Act*. The members of the Chief and Council serve at the pleasure of the Minister of Indigenous Services, may be removed by the Minister, and cannot make any by-laws inconsistent with the *Indian Act* or which go against any regulation made by the Minister. These are facts, not opinions.

You claim that "Millbrook First Nation" has an "inherent right of self-government" because your right "is not derived from the Canadian Constitution or Canadian law, but from the existence of MFN as an independent cultural, social, and political entity with its own laws and systems of government which existed prior to European contact." This is completely untrue. "Millbrook Indian reserve #27" or "Millbrook First Nation" as you call it, was created by the *Indian Act*, operates solely within it, and is no different than a colonizer imposed government on the people of an occupied nation. "Millbrook First Nation" does not belong to the actual Micmac

Nation, and it is not a creation of the heirs and ancestors of those who signed the treaties of 1752 and who now live in the area known as Truro.

However, Canada did not completely get away with its genocidal plan to destroy the Micmac Nation. We are still here. We know our inherent Aboriginal and treaty rights and we are exercising them. We have the support of our elders and knowledge holders like Chief Del Riley and Putus Hector Pictou. They fought for our rights in the 1970s and 1980s (and have been doing so ever since!) and they gained the entrenchment of our Aboriginal and treaty rights in the Canadian Constitution.

We are using those rights, which thanks to the efforts of our elders, have been “recognized and affirmed” by the Canadian Constitution – the highest law in Canada and which hold you accountable for your consistent violation of our rights.

You claim that “Millbrook First Nation” by which you really mean the Indian Act Band Council of Millbrook Indian Reserve #27 enjoys Section 35 rights under the Constitution Act, 1982. This is not correct. It is the Micmac people and the Micmac nation that enjoys these rights and protections, not Company #3111991 of whom you are the executive director.

Former National Chief Delbert Riley who negotiated the inclusion of Section 25 and 35 of the Constitution, has made it crystal clear on numerous occasions that *Indian Act* Band Councils do not enjoy Section 25 or 35 rights, only the individual Indians within the Band Council have those rights, as Indians. Furthermore, traditional councils and family/clan structures have those rights as a “collective.” Those rights, individual or collective, do not apply to the *Indian Act* Band Councils or “First Nations”/municipal corporations in Chief Riley’s estimation.

The “Construction and Development Moratorium Bylaw 2021-01” that was passed by Chief and Council without consultation or approval by the Micmac people living on the unceded lands known as “Millbrook Indian Reserve #27” violates our constitutionally protected Section 35 Aboriginal and treaty rights.

This point was made to you in a letter dated July 12, 2022 by Chief Del Riley [writing on behalf of Thomas Durfee](#). In his letter Chief Riley wrote:

“It is my expert opinion that your “Construction and Development Moratorium Bylaw 2021-01” is unconstitutional. Your bylaw draws its legal claim from *Joe v. Findlay* 122 D.L.R. (3d) 377 in which the Squamish Indian Band denied a band member access to reserve lands where he put his house trailer and other property. 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. Catherine's Milling Co. v. Regina* interpretation of our rights held sway in the courts.”

You have failed to reply to any of the substantive issues addressed by Chief Riley in his letter of July 12th, 2023, issues which we raised again in our letter of February 13th, 2023.

Specifically, as we stated in our letter of February 13th, we request “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 further requested that the following motion be passed 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.”**

Your letter has elided these requests completely, and as a result, Chief and Council have been denied the opportunity to hear from the Indigenous experts in Aboriginal and treaty rights about how you are violating their rights in the Canadian constitution.

Concerning your references to the Millbrook cannabis committee and your position that the Millbrook Band Council is “exercising its own jurisdiction over Cannabis,” we refer you to the [June 27th Position Paper](#) of the [Mi’kmaq Cannabis Association](#) which was written in response to the *Community Consultation on Cannabis* that you co-ordinated. Among other key points, the document notes that:

“In studying the report, it is clear that there are some major take aways from the consultation process which the Mi’kmaq Cannabis Association is in full agreement with. For starters, we agree and share in the widespread distrust of Band Council involvement in the cannabis industry. There was a clear community consensus reflected in the report that the Band Council has not handled the cannabis file well so far, and an aversion to the Band Council advancing further with this issue. The report notes that, “A common theme amongst most, if not all, participants was a general malaise or mistrust of Chief and Council’s ability to regulate cannabis in the community. For example, many participants indicated they had previously attempted to address cannabis at Council meetings and engage in dialogue but were either ignored or stifled in their submission. In addition, participants expressed concern that Council members may be in a conflict of interest because some Council members were actively engaged in the cannabis economy and were therefore making decisions for their own personal benefit.

Instead of building an analysis based upon the constitutionally protected rights of the people of the Mi’kmaq nation, the *Community Consultation on Cannabis* unconsciously adopts a perspective firmly based in the colonial and racist *Indian Act* system. The fundamental problem with this approach is that it misunderstands the nature and the jurisdiction of the Millbrook First Nation as it is constituted by the *Indian Act*.

Baked into the very fabric of its being is the reality that the Band Council of Millbrook First Nation can only operate according to the *Indian Act* and Canadian laws. If it does not do so, it will be breaking laws and those responsible for breaking the law could be punished by it and could also lose funding and program money from the Government. The Band Council is advised by lawyers who themselves swear an oath to the Crown and who must act in accordance with Canadian laws. There is not and can be no room for Mi'kmaq sovereignty under the *Indian Act* system.

When we understand this basic fact, the question of “Millbrook First Nation’s” jurisdiction over cannabis is moot. Nothing in the Indian Act gives the Band Council any power of the regulation of cannabis, people’s medicines, or their economy. This is because Canada has never been willing to allow Indigenous people to take real control of their affairs through the Indian Act.”

In your letter, you mention that the “Millbrook First Nation Construction and Development Moratorium By law 2021 – 01” was declared in order to stop “the use of Millbrook land by cannabis dispensaries until such time as the community adopts its own cannabis regulations.”

While your intention in creating the illegal and unconstitutional Moratorium may have been to curtail the opening of sovereign cannabis shops, the word cannabis actually appears nowhere in the bylaw.

Secondly, “the community” has already “adopted its own cannabis regulations.” This can be seen in the “Community Standards for the sale of Cannabis as Micmac dispensaries” document endorsed by the [Micmac Rights Association as part of its constitution](#) and which is upheld by the cannabis shops in the community.

We also note that there is widespread community acceptance of cannabis as a medicine, as a means of harm reduction, and as an Aboriginal and treaty right, as is the case in virtually all Indigenous communities across Turtle Island.

You state that “Since the passage of the moratorium, the Millbrook Band Administration, with the support of the Chief and Council, have been active in the deterrence of new shops.” This is a very serious admission that you have been violating the constitutionally protected Aboriginal and treaty rights of Micmac people to cannabis, and that you have been doing so of your own volition and without any direction from the people through a referendum or any formal policy from Chief and Council.

We would like to know how you decide who to “deter” and who not to? Do you meet with the RCMP – like James Stevens said he did when [drafting the anti-Mohawk tobacco BCR in July of 2022](#) in order to guide your choices? We heard at the trials of Matt Cope and Darren Marshall that there is some kind of secret committee operating within the Health Centre that has been meeting with the RCMP to discuss the enforcement of bylaws and Provincial laws on reserve. Have you been part of these meetings?

To conclude, your actions of: repeatedly denying our people the right to address Chief and Council when Chief and Council is violating their rights; carrying out a campaign of “deterrence” that has caused great financial and emotional harm against Micmac people establishing businesses in accordance with their constitutionally protected Aboriginal and treaty rights; privileging your own personal opinions and desires over the informed decision making of Chief and Council constitute a violation of your fiduciary responsibilities towards Indians as an employee of the Minister of Indigenous Services Canada.

We request that our correspondence be brought to Chief and Council, and that a meeting is scheduled where we can bring forwards our concerns with your actions.

Sincerely,

A handwritten signature in black ink, appearing to read 'T Durfee' with a stylized flourish at the end.

Thomas Durfee *et al.*