

Open letter to Premier McGuinty and MP Finley

Sept. 21, 2007

Dear Premier and Minister:

I am dictating this letter after yet another episode of native occupation and violence in Caledonia, this time at the Stirling Street Development. As a lifelong resident of this area and having practiced law here for the past 37 years, I find it difficult to sit by and not raise my voice in protest against this lawless activity which is bringing the whole process of development in the Grand River Watershed to a standstill, ruining many businesses and disturbing the normal life of many of our citizens.

The Natives feel aggrieved.

However, you should remind them that their forefathers surrendered, at various times, all the lands along the Grand River in Haldimand County, (except for the present Reserve), the final surrender being in 1841. This was affirmed by the Six Nations Petition to the government in 1843, and reaffirmed at a Six Nations council meeting in 1844. Therefore, the Six Nations do not own any lands in Haldimand outside the present boundaries of the Reserve. Nevertheless, despite these surrenders, the Natives do have a grievance. The Six Nations are entitled to an accounting of the proceeds of the sale of all the lands the government was to sell outside the present boundaries of the Reserve. Most of these lands were sold in the 1840's and 50's, such as the Douglas Creek and Stirling Street Lands in Caledonia and the Northview School Lands in Hagersville, as well as most of the Townships of Oneida and Seneca and the town plot of Caledonia.

I call upon Minister Finley to publish an accounting of the proceeds of the sale of these lands and how those monies have been expended. This is what the lawsuit, which the Six Nations started in 1995, is all about. It is about an accounting of what happened to the money from the proceeds of the sale of these lands. It is not about a land reclamation. Indeed, any thoughtful person objectively looking at the history of the situation would recognize that the Native title to the lands outside the present Reserve was long ago relinquished. However, such a person would also recognize that a real question remains as to whether or not the proceeds from the sale of those lands has been properly accounted for. Therefore, Minister Finley, it is incumbent upon your government to once and for all tell us the true story about this accounting and to ante up the necessary funds to the Six Nations for any deficiency there may be in these accounts. This is a responsibility which your government, and all Federal governments before, have woefully failed to discharge.

As an aside, Minister, it would also be instructive to publish an accounting of how much money the Federal government, since 1867, has transferred to the Six Nations to support their various activities owing to the fact that the usual taxes that the rest of us pay are not paid by residents of the Reserve unless they pay income tax from working off the Reserve.

Mr. Premier, although it may be the responsibility of the Federal Government to deal with the accounting issue mentioned above, it is nevertheless the responsibility of your government to enforce the law. This has not been done. When we witnessed the spectacle of what happened at Douglas Creek a year ago, what happened in Hagersville this past spring, and what is now happening at the Stirling Street Development, we have to stop and ask ourselves why we are allowing any one group in society to engage in civil and sometimes violent disobedience in an attempt to impose their political beliefs. This is not the tradition in which most of us have been raised. I have written on earlier occasions about the law breaking activities of these protesters

who violate not only the Provincial Trespass to Property Act, but also the Mischief and the Intimidation sections of the Criminal Code. I find it repugnant how our police stand by and let these crimes occur in their face.

Premier, without recounting the whole sorry situation at Douglas Creek, I was appalled to see the OPP stand on the sidewalk in Hagersville this spring, and let the protesters stop the construction activities on the former Northview School property. The same thing is happening again at the Stirling Street Development as I write these words. These activities were and are clear violations of the Trespass to Property Act, and the Mischief and Intimidation sections of the Criminal Code. It is high time that you and your relevant Minister instructed Commissioner Fantino that the OPP is to enforce the law regardless of whether it is Natives or any of the rest of us that break it. The OPP is not meant to be simply a bunch of traffic cops. I am sure that the rank and file OPP members would feel duty bound to enforce the Criminal Code against these illegal activities of which I complain if they were only instructed to do so. It is high time the OPP hierarchy was told to instruct their officers to enforce the law, the whole law, not just the part that deals with keeping the peace but also the part that deals with preventing crimes. If the OPP feels it cannot rein in the illegal activities of Native protesters, then there are provisions available in the Emergencies Act to call in the army. The more these people are allowed to get away with, the more emboldened they become. This may well be an explanation for what happened last Thursday at the Stirling Street Development.

Premier, the Hamilton Spectator last Wednesday, September 12th, reported that an official of your Aboriginal Affairs Ministry, (Lars Eddy), stated that developers have to find their own solutions if Natives occupy or stop their projects. What kind of an abdication of responsibility is that? He is further reported as stating that the province stands behind its land title system that allows development along the Grand River. Surely the most fundamental incident of a person's land title, is the right of the person to peaceful occupation and enjoyment of that land. This is what statutes like the Trespass To Property Act and the Mischief and Intimidation sections of the Criminal code are designed to protect. The enforcement of these provisions rests in this area with the OPP. Section 42 (1) (a) of the Police Services Act says it is the duty of police officers to preserve the peace. Section 21 (1) (b) says it is the duty of police officers to prevent crimes and other offenses.

These are two independent duties. The OPP is not entitled to pick one (keep the peace) and ignore the other (prevent crimes). The OPP thus has a duty to put an end to these occupations the minute they arise. Therefore, the OPP should be instructed to forthwith enforce the law at Stirling Street and bring this occupation to a speedy conclusion and, to do likewise as soon as any similar activity arises.

Premier, your government bought Douglas Creek. You have allowed the protesters to remain on site in spite of the fact that they have been and are violating the Ontario Building Code Act by building buildings without permits, by occupying buildings without occupancy permits and by destructing and reconstructing existing buildings without permits. Furthermore, the roads of the Douglas Creek Subdivision are public roads, belonging to Haldimand County, on which all citizens have a right to walk or drive. Despite this, the police have allowed these roads to be blockaded so no one can gain access to the site other than the native protesters. I need not mention the intimidation that has been inflicted upon the neighbours who live around the Douglas Creek Subdivision. It is high time that you bring this occupation to an end. An ultimatum should be given to the occupiers under the Trespass To Property Act, revoking any permission they have been given to remain in occupation. If the ultimatum is not honoured, then the OPP should be instructed to enforce the law.

Lastly, Premier, we are in the midst of a provincial election. You have a strong and determined candidate here in Haldimand-Norfolk. While I have not spoken to her on this issue, I nevertheless think that it would be a great disservice to her, if you fail to take some strong and immediate steps in this campaign with a view to bringing these matters to a speedy resolution. So far, I only hear your principal opponent talking about such steps. I realize that the Federal Government has a huge responsibility in this matter also, as I have mentioned above. You, therefore, need to speak out publicly to Minister Finley about the need for her government to do something along the lines mentioned above and you, on behalf of your government, need to discharge your duty as above set forth.

As most of us in this riding see it, the negotiations that are apparently going on are a waste of time. Nothing of any consequence appears to be forthcoming from them. I would suggest that the reason no progress is being made, is because assumptions are being made that the Six Nations are entitled to the land, rather than an accounting of the proceeds of the sale of the lands which at one time belonged to their forefathers.

Therefore, Mr. Premier and Minister Finley, I urge you to take these matters seriously as I suspect that most people in Haldimand County are as fed up with this situation as I am. For once let us see some cooperation between from the Federal and Provincial government on this issue.

Sincerely yours,
Ed McCarthy
Hagersville