



June 21, 2023

District of North Saanich
1620 Mills Rd
North Saanich, BC, V8L 5S9

To Mayor Peter Jones and the Honorable Council of the District of North Saanich:

Re: Rehabilitation of Shellfish Habitat on the Saanich Peninsula

As you are undoubtedly aware, in 1997 the federal Department of Fisheries and Oceans imposed a closure on shellfish harvesting at Coles Bay beaches, citing sanitary contamination. As of today, a quarter-century later, that closure remains in effect.

Testing has revealed a principal source of the contamination to be malfunctioning septic tanks from residences located along or near the waterfront above Coles Bay – a matter that lies within the jurisdiction of the District of North Saanich.

Throughout the period of the closure, the Pauquachin First Nation has attempted to engage with various levels of government in an effort to address the matter, thus far without effect. The attached position paper, entitled *Cleaning up Coles Bay: A Partnership for Justice and Shellfish Restoration*, represents our latest attempt to stimulate discussion and remedial action. The paper outlines the nature and source of the problem and suggests a number of legal and practical measures which may be undertaken to resolve it.

Pauquachin stands ready and willing to tackle the matter in an amicable and cooperative way. Coastal contamination is our common problem, and we believe that working together is by far the best path to a solution.

That said, there is an extra dimension to the issue that involves the Pauquachin and our fellow WSÁNEĆ Nations alone: we are signatories to the North Saanich Treaty of February, 1852, arranged with James Douglas of the Hudson's Bay Company, acting on behalf of the Imperial Crown.

A salient feature of our Treaty dealt with the right to fish:

The conditions of or understanding of this sale is this, that our village sites and enclosed fields are to be kept for our own use, for the use of our children, and for those who may follow after us.... it is also understood that we are at liberty to hunt over the unoccupied lands, and to carry on our fisheries as formerly [emphasis added].



Pauquachin First Nation

As the attached paper makes clear, a significant component of our traditional fishery was the harvest of shellfish. Consequently, the closures of the shellfish beaches of our territory and the prohibition of the harvest represent an infringement of the Treaty. This is no small failing.

The status and enforceability of treaties between First Nations and Canada have been eloquently expressed on numerous occasions by the Supreme Court of Canada:

41 First, it must be remembered that a treaty represents an exchange of solemn promises between the Crown and the various Indian nations. It is an agreement whose nature is sacred. ... Second, the honour of the Crown is always at stake in its dealing with Indian people. Interpretations of treaties and statutory provisions which have an impact upon treaty or aboriginal rights must be approached in a manner which maintains the integrity of the Crown. It is always assumed that the Crown intends to fulfil its promises.¹

Further:

76 Treaties are analogous to contracts, albeit of a very solemn and special, public nature. They create enforceable obligations based on the mutual consent of the parties.¹

And:

[The parties] entered into this agreement with the intention to create mutually binding obligations that would be solemnly respected.²

Accordingly, Pauquachin maintains that the restoration of our traditional fishery represents an enforceable obligation that by its very nature must be solemnly respected.

To give all parties the benefit of the doubt, Pauquachin, like the Supreme Court, believes that “It is always assumed that the Crown intends to fulfil its promises”. Such being the case, it remains to come together to devise a common strategy whereby the Crown’s promise to the Pauquachin First Nation, made 170 years ago, may be fulfilled. The attached submission is Pauquachin’s latest contribution to that process.

The benefits to such cooperation are clear: decontamination of the shoreline of the Saanich Peninsula is a significant good in its own right; further, we are confident that measures devised to

¹ *R v Badger*, [1996] 1 SCR 771.

² *R v Sioui*, [1990] 1 SCR 1025 at p 1026.



Pauquachin First Nation

address the problem locally will ultimately find broader application; and finally, resolution will finally bring all Agencies of the Crown into compliance with the law.

We look forward to hearing from you.

Respectfully,

Rebecca David

Chief of Pauquachin First Nation

