



Pauquachin First Nation

June 21, 2023

To Premier David Eby and the Honourable Ministers Responsible:

Minister of Indigenous Relations and Reconciliation, Murray Rankin; Minister of Health Adrian Dix; Minister of Environment and Climate Change, George Heyman; Minister of Land, Water and Resource Stewardship, Josie Osborne; Minister of Agriculture, Food, and Fisheries, Lana Popham; Minister of State for Lands and Natural Resource Operations, Nathan Cullen

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, citing sanitary contamination. As of today, a quarter-century later, that closure remains in effect. Similar closures are in effect throughout the Saanich Peninsula and along hundreds of kilometers of coastline of Vancouver Island and the mainland.

The contamination leading to these closures comes from pollution sources that the provincial government and other governments have created, encouraged, authorized and allowed along the coast. The contamination causing closures comes from government-authorized development such as septic systems, agricultural runoff, municipal storm water systems, recreational and commercial boat sewage, livestock, etc. At Coles Bay, the primary source of pollution appears to come from government-authorized septic systems.

Throughout the period of the Coles Bay 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: The Urgent Need to Restore Traditional Shellfish Harvesting Sites of the Pauquachin First Nation*, 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.



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

The conditions of our 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].

As the attached submission 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.

¹ *R v Badger*, [1996] 1 SCR 771.

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



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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 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 would like to meet with yourselves to discuss next steps in implementing the decontamination of Coles Bay as a pilot project for developing a systemic approach to decontaminating shellfish beaches in British Columbia.

Respectfully,

Rebecca David

A handwritten signature in black ink, appearing to read 'Rebecca David'. The signature is fluid and cursive, with a prominent initial 'R'.

Chief of Pauquachin First Nation

