

Frank J.C. Newbould  
1113 Lakeshore Blvd. North  
Sauble Beach

August 8, 2014

The Mayor and Members of Council  
Town of South Bruce Peninsula

Dear Mr. Close and councillors:

I write further to the meeting at the Sauble Beach Community Centre on August 6, 2014 and the proposal that I made at that meeting. As I stated at the meeting, while I am speaking as a cottage owner, my background is that I am a lawyer who practised in the courts for many years and for the last 8 years have been a judge of the Superior Court of Ontario.

I am an owner of our family cottage at 1113 Lakeshore Blvd. North, Sauble Beach. The property has been in my family since 1921 when my grandparents built a cottage on it, and 14 years ago we constructed a winterized cottage on the property. I have been cottaging at Sauble Beach since 1943 when first born.

I will re-iterate the proposal that I made at the meeting but first would like to provide some comments that time and the procedure followed at the meeting did not fully permit.

There are some serious concerns that I have with the terms of the proposed settlement. Some are as follows:

1. There is a serious risk in my view that management agreement/system will not provide sufficient protection to the town residents. I say that because of how it will operate and what could well happen.
2. It would not be surprising that the Saugeen Band will face pressures from its members to earn income from the beach, and not in the too distant future. It is not in their interest to fund caretaking for the beach if there is no financial reward coming in.
3. As well, we have heard today that the Band takes a different view on what uses can be made of the beach under the proposed settlement. There are bound to be very different views of the Band and the cottagers and/or Town representatives on the management board.

4. If there is no agreement by the management board, there will have to be mediation/arbitration, which will be a continuing expense. Settling this litigation on the basis of the proposal described today will in all likelihood not end the litigation expenses.
5. The Town at the time of any dispute might not have an appetite to spend money this way on continuing mediation/arbitration, particularly if the Saugeen Band will be in a position to outspend the Town with income coming from the Federal government and from their anticipated casino. Unfortunately, the town residents will not have any direct input into such a decision, and they will be the ones affected. There is no assurance that the town residents will be listened to by the Town council of the day.
6. There is no assurance at all that the Town or its representatives will not propose or agree to user fees for the town residents to use the beach, or to permit vehicles on the beach. There may be a political will of the Town in the future to do that. Again, the town residents would have no direct input into such a decision.
7. If the Saugeen Band is given title to the beach, they will have the upper hand in any negotiations in the future, and it could well affect any mediation/arbitration in the future over differences that may occur on the management board.
8. There is another action apparently in which the Saugeen Band claim the entire beach north to the Sauble River. Any settlement should include a release of that claim. The fact that the claim has been made in a different action should not affect the matter and I cannot understand why a release of that further claim was not demanded and included in a settlement.

The question arises then as to why the proposed offer should be accepted. It is a good question, but unfortunately the town residents have not been provided with the full picture. Not all the town residents were notified of the meeting, and those that attended were for some reason only provided with the arguments on behalf of the Saugeen Band made by the lawyer for the Federal government.

In these circumstances, to ask everyone to make their views known within a few weeks is not reasonable. People need to hear both sides of the debate and have time to think about this matter. There is no urgency at all to this. The litigation has been around since the 1980's and if there is no settlement will be around for many further years. As was explained at the meeting, there have been no examinations for discovery, which is part of the litigation process, and it is inconceivable that a trial would take place for two or more years.

Nor is it reasonable for the Town council to hastily vote on the proposal without informed input from the town residents, which could not happen by September of this year.

I explained at the meeting that I was a litigation lawyer for many years until 8 years ago when I had the honour to be appointed as a judge of the Ontario Superior Court. I know from my experience all about litigation risks and also that there are always two or more sides to a case. The idea that there is no defence, which one may have inferred from the meeting when the Town's lawyer offered no information about the defence, is a very unlikely thing in my experience. There is always a defence in a lawsuit. The issue is how valid the claim of the Saugeen Band is and how valid the defence of the Town and Provincial government is. Or more simply put, what is the likelihood of winning or losing. To listen to one side only is not the way to form any valid judgment.

While Mr. Binnie spoke of the mediation process, he has not been retained by the parties to provide his opinion on the likelihood of success of defending the action and he no doubt has not done so. The role of a mediator is to act as a go-between to see if a settlement can be agreed. It is not to look at all of the evidence and provide an opinion on the merits of the litigation.

So far as the cost of defending the claim is concerned, I saw a bulletin that said the cost could amount to \$5 to 7 million. That seems extremely far-fetched. Normally the bulk of the legal work on cases such as this is borne by the government, in this case the Provincial government. I could not conceive of the Town's lawyers charging that much.

I would like the opportunity to sit down with the lawyers for the Town, the Federal government and the Provincial government to review all of the evidence and be able to form some view of the strength or weaknesses of each side's case. Each of them today said that they would be glad to do that with me. I would then be able to provide my views to the Town council and whoever

else wished them, privately or otherwise. I would do this as a cottage owner and not in any official capacity as a judge. I of course would not charge anything for this.

It may be that there is good reason to settle and to accept the terms of the proposal first disclosed at the meeting. That is, it may be that the risk of losing is great enough to take these terms, as weak as they appear to be. It may also be that the risk of losing is not that great, and that the terms are not in the best interest of the town residents. But unfortunately without knowledge of the issues, it is not possible to do other than hazard an uninformed guess. To agree now with all of the risks that the proposed settlement will not working effectively should not happen.

I urge the Town council not to proceed hastily, for which there would be no reason, and to let a fuller and informed public participation take place before Council votes on the matter.

Yours very truly

Frank J.C. Newbould