

Residency bylaw eviction notice spurs threatening charge

By Donna Duric and Lynda Powless, Writers

A non-native man and his family are living in a Brantford hotel after he was charged with threatening to burn a neighbour's house down after being served with a residency bylaw eviction notice last Thursday.

Police said a local woman who operates a private day care, claims he threatened to burn her house down after police served him with an eviction notice.

Police arrested Joshua Andrew McFarland, 27, at a Seneca Road home he shares with his common-law partner Misty Ladd-Hess Friday morning.

Six Nations Police Chief Glenn Lickers says he believes the residency notice and the threat to burn the house down were related.

Police served the residency notice (dated May 29) to Joshua Andrew McFarland, 27, on June 19 at the Seneca Road residence. The notice gave him 15 days to leave the territory (July 4) from the day the notice was served (Thursday June 19 2014).

Under the Six Nations residency by-law, non-band members are not permitted to reside on the reserve.

After receiving a complaint from band members, band council investigated and sent

an eviction notice to police to serve.

Lickers said police received the call of the alleged threat after the notice was served.

Lickers said the woman expressed concern for her safety and the safety of the children in her home daycare. Police arrested McFarland Friday morning (June 20) at 8:30 a.m. at the Seneca Road residence he shared with his family.

McFarland faces charges of criminal harassment and uttering threats and was held for a bail hearing.

Lickers said Six Nations Police would ask the courts that McFarland not be allowed to return to the territory as part of his conditions of release. Lickers said police routinely request the condition.

He said in McFarland's case, the request that he not be allowed to return to the territory is separate from the residency issue.

Police said they were going to follow up on the eviction within 15 days of issuing the notice to McFarland.

The notice, written on Six Nations letterhead and signed by Elected Chief Ava Hill, says band council passed a resolution telling McFarland to leave the territory.

It states, "That this council accept the recommendation

from lands/membership to adhere to the residency by-law and have the Six Nations Police deliver a letter under



Joshua Andrew McFarland, living with his common law wife Misty Ladd-Hess has been evicted from Six Nations under the community's residency bylaw. He was also charged when a neighbour reported threats. (Photos from Facebook)



Message on a shed at the Seneca Road house facing the McFarland neighbours.

the signature of Chief G. Ava Hill informing Joshua McFarland, who resides at...Seneca Road, Six Nations, Ohsweken, Ontario, that he has fifteen (15) days to move from the Six Nations of the Grand River Territory and that should he reside at Six

Nations of the Grand River Territory after this date, the Six Nations Police will initiate the process for his re-



moval from the territory. The above is for your information and action; please govern yourself accordingly."

The story has sparked accusations of racism on social media levelled at Six Nations.

And the eviction has again raised questions over the 28

year old residency by-law that was established in 1986.

On Dec. 18, 1986, Six Nations Band Council passed a residency by-law prohibiting non-band members from living at Six Nations, stating, "the Six Nations Indian Reserve No. 48 and No. 40B are for the sole use and benefit of the members of the Six Nations Indians of the Grand River."

The by-law also contains a prohibition from returning to the territory, "after having been convicted of an offence contrary to the laws of the Parliament of Canada that was committed on the Six Nations Indian Reserve."

The by-law also contains a clause stating that any person in contravention of the by-law may be fined up to \$1,000 and/or imprisoned for up to 30 days.

Band Council had formed a committee last year (that includes community members) to revisit the residency by-law issue but no reports or updates have been made public

But the committee, sources said is almost defunct. "No one wants to look at workable solutions; they just want to kick everybody off so the Committee doesn't get anywhere. In my opinion the problem is the people who do want to find work-

able solutions are afraid to speak up because they get attacked by the naysayers."

Former Six Nations band Councillor Glenda Porter, who chaired the membership committee in 2002 told council then, the bylaw protects Six Nations land base for its growing population."

She said, "Everyone knows, if you marry a non-band-member, and you move to the community, you risk being removed from the community."

Six Nations Band Council issued a press release outlining steps it takes before eviction occurs.

"When a Six Nations band member files a complaint about a non-member residing on the territory, Six Nations Elected Council (SNEC) proceeds by following the residency by-law which has been in place since 1986," reads the statement. "The by-law and any eviction letters are only issued when an official complaint is made about a non-band member residing in Six Nations."

"If we receive a complaint about an individual who is not a band member residing here, the complaint goes to (Six Nations) Lands and Membership (Department) for verification.

"If they verify the person being complained about is

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Court challenges, votes, residency bylaw still in place

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not a band member, SNEC discusses it and issues a letter to the individual advising them that they are in violation of the residency by-law and telling them they must leave," said Elected Chief Ava Hill.

Misty Hess says they have been living at the home for about 10 years saying it was her father's old house and they were fixing it up.

"It was a very slow process because it was done out of just mine and Josh's pocket," she said. "My daughters have grown up there and we have all put our blood sweat and tears into that house."

She said he was released about 12:30 p.m. Saturday after a video bail hearing in Brantford.

She said he is allowed to visit the residence on Seneca Road but was advised by Six Nations Police and his lawyer that, "for his safety, it's best to have Six Nations Police present when on the property so that no more accusations are made against him, leaving him in jail again."

She said the family is currently staying in a hotel saying "It's no longer safe for me to be at that house with my daughters alone," she said. "We're looking into some places to rent right now but it's just a lot on us with everything else that's also involved in this issue; like moving items out of the house, talking with lawyers, looking for help from public services. All this on top of all the emotional distress on the whole family is just a lot on my family."

She said her husband had to give up his wood working business - which he conducted on the Seneca Road property - and she's had to take time off work to deal with the situation. "It's just a lot for my little family to have to deal with."

Social media exploded with

talk of the issue over the weekend and a group called "Free Powda (Josh) McFarland" was created on Face-

flood an already financially strapped community when the federal government said it would

Socio-economic, historical and legal justification for 1996 court ruling

Justice James Kent, Ontario Court General Division cited;

-The Royal Proclamation of Oct 7, 1763 that ordered all people on lands reserved for Indians to remove themselves."

-The Haldimand Grant of October 25, 1784, "authorized and permitted Mohawk Indians and others of the Six Nations to take possession of and settle upon lands six miles deep on either side of the Grand River from Lake Erie to the head of the said river forever,

-The constitution Act of 1867 (British North America Act) Section 91 (24) specifically named aboriginal people

)The Indian Act recognized "Bands" of Indians as early as 1876 and allows band councils to make by-laws for the purpose of residence of band members and other persons on the reserve

-The Indian Act also stresses the important role of the Band and its Council in ensuring that "reserve lands will be maintained for the use and benefit of Indians."

book in defense of the man. The comments ranged from support for McFarland remaining on Six Nations to others insisting the residency by-law needs to be honoured.

Despite challenges the Six Nations Residency bylaw has remained in place.

The bylaw has been the subject of at least one referendum in 2004 with a resounding vote to turn down changes that would allow for a residency permit system.

It was also the subject of court action when a Six Nations man and his non-native wife were ordered out of the community.

David and Pamela Henderson attempted in 1996 to have the bylaw stricken down but provincial court Justice James Kent upheld the bylaw.

Six Nations created the by law fearing Bill C-31, which reinstated status to native women who married non-natives would

In 2002 Six Nations Band council looked at the bylaw after coming under fire again largely from non-natives when another non-native woman was evicted.

Then elected chief Roberta Jamieson told a packed band council meeting "I would remind those who lecture us, while I respect their right to free speech, they too have glass houses, particularly, when it comes to the treatment of our people. We have shared much. And a line will be drawn, but it is ours to draw."

Steve Williams, who was chief when the bylaw came into effect explained the band had in the past granted permission to non-band members to live in the community. But it was changed again due to "economics."

He said the band granted

permission for a minister to live in the community, with his family, including a severely handicapped child. The child was bussed to Brantford everyday to school and the band got a bill at the

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Elected Chief Roberta Jamieson told a packed band council meeting Feb., 2002**

end of the year for \$75,000. He said it was sent to INAC and they refused to pay it saying once Six Nations

granted permission, Six Nations was responsible to cover the costs.

Six Nations schools have been inundated with non-band members come each September.

But when schools file concerns with Aboriginal and Northern Affairs Canada that they have students who do not have status cards, they are told to allow the students in.

"But we don't get funding for them, only for students with band cards," said one educator.

In another instance a non-native man living at Six Nations with his Six Nations wife opened a smoke hut and said "I don't have to pay property taxes, income taxes, I don't have to declare this income. This is a great place to live."

not provide additional funding to cover services for over 10,000 band members who could return with their families

In his ruling Kent said while many may find the discrimination based on marriage "repugnant" the court was required to consider it, if it is a "reasonable limit" that can be "demonstrably justified in a free and democratic society."

He said the socio-economic background provided some justification for the bylaw.

Kent said the socio-economic justification combined with the historical and legal justification persuaded him that the bylaw is demonstrably justified.

The court upheld the bylaw.

In 1998 almost a dozen people were evicted and another band member and his non-native wife threatened legal action and filed a human rights complaint but left the community in 2002.