

Court challenges, votes, residency bylaw still in place

(Continued from page 4)
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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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.