

Appendix 5

SAVE THE BEACHES INC.

c/o 531 King Street
Midland, Ontario
L4R 3N6

June 18, 2001

Mr. Paul Torrie
GLOBAL RESOLUTIONS INC.
45 Nicholas Street
TORONTO, Ontario
M4Y 1W6

Dear Mr. Torrie:

Re: Tiny Township Beach Access Mediation

I'm writing to you in my capacity as negotiator for Save The Beaches Inc.. As you know, I am a part time graduate student at Osgoode Hall taking and L.L.M. in Alternative Dispute Resolution. My approved Pro Bono Practicum is to act as Counsel and Negotiator for Save the Beaches Inc..

This letter has been dictated following an executive meeting of the Save the Beaches interim executive held on June 14, 2001 and hopefully will serve as an adequate response for the June 23, 2001 joint mediation session.

One caveat is that the Inaugural General Meeting of Save the Beaches Inc. has not yet been held. That meeting is now scheduled for July 21, 2001. This is a meeting to which the public have and will be invited. The agenda will include the inaugural formalities of the new non-profit corporation for which application to the province has been made; and every indication has been received that the application is in order. These inaugural formalities include the election of officers, passing of the general by-laws, adopting the mission statement, appointing an auditor and receiving a report from the interim treasurer.

The Inaugural General Meeting is also going to include an educational program and in that regard an invitation is hereby extended to you to participate by way of a status report on the Mediation you are conducting. I have also been instructed to invite Garfield Dunlop M.P.P., the Township of Tiny Council, and a special speaker will be Dan Murphy who will address a gathering with respect to the applicable law.

It is my respectful submission that the confusion as to the status of the law is one of the major obstacles to the success of the Mediation. It is therefore felt very helpful to the whole process that public education respecting these legal concepts be available. We hope you agree. We have invited the cable T.V. channel to tape this session and both electronic and print media have been invited.

Finally, at the Inaugural General Meeting there will be an open session and a vote of the members of Save the Beaches Inc. as to the negotiation position that the new corporation should be taking. Because the negotiation position of Save the Beaches Inc. has not been formally adopted, the responses to questions in your recent letters are subject to ratification by the corporation following the inaugural general meeting of July 21, 2001. Understanding that caveat, the following are those responses to your letters questions:

- 1) The mission statement of Save the Beaches Inc. is:
 - (1) to preserve the historical use by the public of the beaches of Tiny Township;
 - (2) to advise and assist any citizen who is denied use of or access to traditional beach areas; and
 - (3) to support and participate in the negotiation towards a peaceful resolution of such outstanding issues.

The Corporation sees its role as marshalling, support for and advocating the position of those who want the traditional use of the Tiny Beaches preserved. The membership of the Save The Beaches Inc. will be a source of personnel for the beach management committees which are soon to be evolving. Save the Beaches also accepts a role in the dissemination of information on the Mediation process and the beach management process once it has been established.

- 2) Naturally all parties to the Mediation need to know who other negotiators are actually representing. Save the Beaches has no problem in divulging to persons of good will its membership list. Unfortunately, in the past, persons of bad will have used the membership list to harass individual members. The problem than is how to disclose the information to persons of good will without it getting into the hands of persons with bad will. It is proposed that the membership list be produced to you the Mediator, but on a confidential basis. You will be invited to conduct such inquiries or audits to satisfy yourself so that you can satisfy the other parties. I've pointed out to you that the Inaugural General Meeting of July 21, 2001 is open to the public!

Unfortunately, the membership list is not organized on a concession by concession basis and in most cases the addresses given by the members are their permanent residences and not their seasonal residences. As quickly as we can, we are organizing the membership information so that we can identify users of the various concession beaches. Save the Beaches is mindful of and approves the concession by concession approach that the Mediation will be taking.

- 3) The nature of a binding agreement will be subject to the open session and adoption of a negotiating position at the Inaugural General Meeting. I have no doubt that the concept of a binding agreement will be thoroughly canvassed. Speaking for the current executive, I can assure you that no one opposes the concept of a binding agreement.
- 4) As I have pointed out above, the membership of Save the Beaches will provide fount of personnel for the conceptualized beach management committees. This concept we also hasten to point will no doubt be a subject of the open session at the Inaugural General Meeting. People in the "hot spots" would no doubt be the most anxious of all to participate in such beach management committees.
- 5) Everyone participating in the beach access conflict recognizes that Canada is a democratic country and that the activities of our citizens are governed by the Rule of Law. The Rule of Law does protect "property rights". But, as anyone who has studied first year land law knows, "property rights", come in numerous capsules. "Property rights" are qualified, modified, made subject to a myriad of conditions, sometimes written in legislation, but as often as not, spring from custom and tradition. The Tiny Beaches conflict is a conflict between what one person might consider his or her "property right" standing at odds with what another person considers his or her "property right". Some light has been shed on this conflict by two important decisions of our courts – one, a trial level decision dealing with the issue of property boundaries at, coincidentally, Rowntree Beach here in Tiny Township. The other, a decision of the Court of Appeal dealt with the rights of the area citizens to continue a customary user of the magnificent beach in Grand Bend which had been used by those local citizens in that "traditional" way for almost 200 years. I am sure you are aware that the Mediation which you are conducting was instituted by the Attorney General as a preliminary response to the demands that were made of him to commence action for a declaration that similar traditional rights existed for Tiny residents.
- 6) See the answer to question number 5) above.
- 7) See the answer to question number 5) above.
- 8) Save the Beaches Inc. has invited prominent lawyer and counsel on the Grand Bend case, Daniel Murphy, Q.C. to address the Inaugural General Meeting. From our review of the Grand Bend case, decision and through conversations with Mr. Murphy it is the writer's understanding that the fact situation is near

identical. One would presume that the traditional use referred to in the Grand Bend case would be similar to what would be found here in Tiny Township.

- 9) Save the Beaches recognizes the difficulty in delimiting the concept of traditional use. Perhaps, if neighboring community's citizens expect to have access, persons who could be recognized as having the right to speak for those neighboring communities should be brought to the Mediation and become parties to any agreement that is worked out. As the beach management committees are going to involve costs (and the more effective they can be, the more they will cost.) It might be something all parties to the Mediation would welcome to have another source of funding and agreement from representatives of those neighboring communities as to the definition of "traditional use", which would be a major aspiration of the Mediation.
- 10) The interim executive of Save the Beaches Inc. sees the Township of Tiny Council's memorandum as an extremely valuable contribution to the dialog and no doubt will serve as the framework for the negotiating position which will be adopted at the Inaugural General Meeting.
- 11) Included above is the Mission statement
- 12) The response to this question from those that I represent is that there is no relation. One of the executive responded pithily: "chalk and cheese!"
- 13) Some of the gravest concerns of the Save The Beaches Inc. are to protect the beaches from litter, glass, animal feces, septic tank malfunctioning, lawn chemicals, sewage discharge and gray water from boats, discharge of boat fuels and lubricants, fire, noise, and the need for public washrooms and garbage disposal.
- 14) The worst alternatives to a negotiated settlement include the concept of expropriation with its price in money terms as well as personal angst. Another worst alternative is the continued ghettoization at the end of concession beaches. There is the incredible cost both in money and anxiety in terms of litigation. There is always the threat of irresponsible people taking the law into their own hands, renegade behaviour, and possibly anarchy. There will always be some who will never accept a mandated solution.

The best result of a mediated settlement agreement is to preserve the traditional peace and harmony of the Township, to continue the mutual respect shown to and from both seasonal and permanent residents, and a return to the neighborliness and sharing which has been the pattern of traditional use over the past 200 years.

Yours respectfully,

Roderic G. Ferguson
Pro Bono Counsel

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