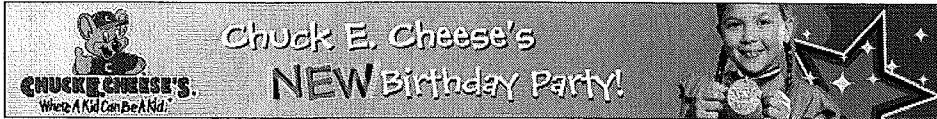


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Talking the best solution

INJUNCTION CASE: Neutral lawyer gives advice to judge

Posted By SUSAN GAMBLE, EXPOSITOR STAFF

Updated 5 hours ago

Make them sit down and talk it out.

That's the advice of the most neutral party in the court action where the city is pressing for a full injunction against native protesters who've stopped building.

The Amicus Curiae -- or friend of the court -- who's been appointed to advise the court from a detached position, told Justice Harrison Arrell Wednesday that the best recourse legally and sensibly is to mandate consultation between Brantford and the native protesters.

Through bylaws and this \$110- million court action, the city has sought to prevent protests and demonstrations at construction sites. Brantford was granted a temporary injunction in June but it failed to stop the protests.

The Amicus, lawyer William McDowell, suggested that the judge could rule to have the parties return to bargaining, reporting back to the judge.

"I was thinking about that," said Arrell, "but we'd get right back into another hearing with more affidavits and more complaints about not negotiating in good faith."

McDowell said the court could have a supervisory role in the mediation, providing the two sides with a road map of sorts and a strategy for discussion.

He also suggested that the judge shouldn't be troubled about having a court order in place to prevent protests since the temporary order hasn't had much effect.

But even McDowell noted that the court can't be a constant supervisor over the relationship between one of the largest reserves in Canada and its next-door-neighbour.

McDowell also made other suggestions for the judge to consider in his decision:

Courts shouldn't issue injunctions to prevent the commission of future crimes.

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Brantford has a legal duty to consult with the natives and it hasn't been fulfilling that duty.

Bylaws passed by the city are unconstitutional because they try to regulate natives, which is a federal responsibility.

City bylaws were passed covertly, without notice and without transparency.

And Brantford doesn't own the land it's seeking to protect, which negates the injunction idea.

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A 90-page brief presented to the court by McDowell outlines his summary of the issues involved in the complex case.

McDowell's research points to "sufficient grounds to quash the bylaws" as illegal. But, he adds, there's evidence that some conduct by the native protesters may mean Brantford could get a limited injunction on city-owned lands.

He also chided all of those involved with native issues for not talking about development.

"The evidence is that neither Brantford nor Ontario nor Canada engaged in meaningful consultation with members of Six Nations," said McDowell's report.

"Instead ... Brantford denied that it had any role to play and passed the bylaws quickly and with no public debate."

McDowell said the judge could opt to dismiss the motion, rule in favour of a limited injunction or a compensated injunction (involving the city paying some natives costs) or, set up a mandated consultation process.

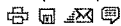
Summarizing, McDowell said the native's land claim issues are not frivolous and Ontario, Canada and Brantford have all failed to engage in consultation, so the city's injunction motion can be dismissed on that basis.

"There is evidence that harm may be suffered by Brantford if the injunction is not granted and, further, that harm may be suffered by the Six Nations if the injunction is granted."

The hearing continues today.

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