

## THE GLOBE AND MAIL

January 16, 2010

# A new court date, another blow for fairness in Fantino case

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From Saturday's Globe and Mail

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In a bizarre new version of "hurry up and wait," the Ontario Attorney-General's Department urgently rushed ahead of schedule the private criminal complaint of activist Gary McHale against OPP Commissioner Julian Fantino only to do absolutely nothing with it.

On Tuesday, the ministry issued a news advisory that "the Crown is taking steps" to bring the matter forward almost three weeks earlier than Feb. 3, the date it was slated to be back in Ontario Court.

But yesterday, the new date, Milan Rupic of the ministry's Crown law office offered no explanation for the move - and in fact, at one point, when Mr. McHale was asking for an extension, actually told Justice of the Peace Dan MacDonald that "the date fixed by the summons cannot be changed."

The absurd exercise lends credence to speculation that the AG was planning to stay the charge against the OPP boss yesterday, but was outfoxed by Mr. McHale, who complained in writing last Wednesday that the earlier date wouldn't allow him to prepare properly or present his evidence to the Crown.

To stay a charge in the face of such a reasonable request might have doomed the Crown on appeal and certainly would have made it look as though the fix was in.

Mr. McHale remains convinced that the fix *is* in - hard to argue with him - but that by agreeing to revert to the Feb. 3 date, the optics on the government's machinations may be slightly better.

Neither Mr. Fantino, who is on holiday, nor a lawyer representing him, appeared in court yesterday.

But then, as Mr. Rupic announced to JP MacDonald, the commissioner didn't have to be present because, although a summons has been issued against him, "it has not been served" upon him.

I asked ministry spokesman Brendan Crawley if perhaps the Crown was having difficulty locating Mr. Fantino. Mr. Crawley replied simply that York Regional Police, the force in the jurisdiction where the commissioner lives, has the responsibility for serving him.

Mr. McHale, 47, is an activist against two-tiered policing in Caledonia, the small Southwestern Ontario town just west of Cayuga that was made notorious after natives from the Six Nations reserve seized a housing development called Douglas Creek Estate in February, 2006.

The occupation, which continues to this day, turned violent on April 20 that year when the OPP raided the property but were driven off by as many as 1,000 protesters.

Only rarely have the OPP returned to the site, as various officers have testified in some of the myriad court actions that have sprung out of the occupation.

If Mr. McHale is hardly alone in criticizing the government and the OPP for its handling of the occupation - even during periods of egregious lawlessness, the official view was that immediate arrests of native suspects might spark further violence and other protests - he is probably the most irritating thorn in the commissioner's side.

The OPP boss is charged with the indictable offence of influencing or attempting to influence municipal officials, this via an April 7, 2007, e-mail to Caledonia Mayor Marie Trainer and her councillors.

In the e-mail, which the commissioner copied to Premier Dalton McGuinty's chief of staff and press secretary among others, Mr. Fantino threatened that any member of council who spoke supportively of Mr. McHale or his protests would pay the price - literally, because he would bill the county for any extra policing costs. He also threatened to recommend the OPP cancel its contract with the county.

A month after Mr. McHale laid his private information, there was a "pre-enquete" hearing before Justice of the Peace David Brown, who ruled that the charge shouldn't proceed.

The same Attorney-General's Ministry that now purports to offer Mr. McHale a fair review of his complaint sent two lawyers to the pre-enquete to argue that the complaint should be quashed, as indeed it was.

But Mr. McHale appealed, and again the ministry dispatched the two lawyers to oppose him.

And on Dec. 31, Ontario Superior Court Judge David Crane overruled the JP, and ordered the local JP to "issue process" - basically, to get on with it. On Jan. 8, the JP issued process, which meant that the commissioner was officially charged, although the York force apparently hasn't been able to locate him to serve him with a summons.

Furthermore, who should this week interject himself into the fray but Mr. McGuinty, who was asked whether Mr. Fantino would be stepping aside pending resolution of the charge against him, and said there was no reason for him to do so.

Given all of this, Mr. McHale has good reason for cynicism that his complaint will be reviewed neutrally and treated like any other. It sure hasn't been thus far.

And, speaking of Caledonia, the home of Dave Brown and Dana Chatwell, whose lawsuit against the government and the OPP provided weeks of evidence about the OPP's handling of the occupation before the case was quietly settled out of court, has been razed.


As part of the settlement, ownership of the house, which is bordered on two sides by the occupied site, was transferred to the province, which took possession of it on Thursday. For "safety and security reasons," according to a release from the Ministry of Energy and Infrastructure, it was immediately demolished.

Spokesman Sylvia Kovesfalvi said the razing "will avoid potential hazards associated with an unoccupied building."

I'm sure it had nothing to do with this week's Turtle Island News, an independent paper published on the Six Nations reserve. On Page 7, a story reports that at last week's Six Nations' elected council meeting, in a general discussion about council "taking" land as opposed to buying it, Councillor Melba Thomas said, "Shouldn't we do that, too, with the house that's been vacated? At DCE?"

Only in Ontario do you tear down a house to protect it.

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