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## THE GLOBE AND MAIL

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### Activist outmatched in fight with top cop

By CHRISTIE BLATCHFORD  
 From Thursday's Globe and Mail

*The OPP commissioner has the resources of the state at his disposal; his opponent has only his big mouth*

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I don't doubt that the Ontario government is embarrassed by the private criminal charge against OPP Commissioner Julian Fantino, and just want it to go away.

It is, shall we say, a tad awkward when your top law-enforcement official is facing a charge himself.

Bets are, it is precisely to make the charge disappear that the Crown has moved up the date for the case, originally slated to be heard next month, to tomorrow, and why Ontario Premier Dalton McGuinty is of late pooh-poohing the allegation and pronouncing that there's no need for Mr. Fantino to step down pending its resolution.

The charge alleges the OPP boss influenced or attempted to influence the town council of Caledonia, Ont., site of a long-running and often lawless native occupation, where the OPP's policing, or lack of it, is a furiously hot issue.

In April, 2007, Mr. Fantino sent an e-mail to Mayor Marie Trainer and her councillors, berating one of them for having dared to speak out in support of activist and OPP critic Gary McHale, dissing Mr. McHale as a trouble-maker and threatening council with very specific fallout if any of its members made further "comments ... gravely detrimental to the morale and safety of my officers."

Mr. McHale laid the private charge, and persuaded an Ontario Superior Court judge to overturn the decision of a justice of the peace and push the charge along. That decision was released by Judge David Crane on Dec. 31.

The bullying tone of the e-mail was familiar to Ontarians who have been paying attention to their No. 1 cop.

The OPP boss has shown himself capable of enormous truculence when defied, as revealed by his conduct in this matter and in his attempts to see punished a Hamilton police officer, Detective-Constable David Hartless, a Caledonia resident who also had the temerity to criticize the OPP's handling of the native dispute (Mr. Fantino twice formally complained about him to the Hamilton chief).

Now, while the Crown has the right to stay any criminal charge - it is a discretionary power - the only legitimate grounds to do so is if there is "no reasonable prospect of conviction" or if it is in the "public interest."

The "reasonable prospect of conviction" test is considered higher than the standard that would have been used by either the JP or judge. At that stage, as indeed Judge Crane found, the question is whether there is *any* evidence on which a reasonable jury, properly instructed, could convict?

The Crown could certainly make the case that Mr. Fantino was not trying to influence Caledonia politicians, merely laying out what he saw as the predictable consequences of their support for Mr. McHale. Even if, as the JP who ruled in his favour said, the commissioner was "saber-rattling and it's ugly," he arguably wasn't asking council to do or not do anything.

On the other hand, at the "pre-enquete" hearing before the JP, Mr. McHale referred to evidence - transcripts in which Ms. Trainer testified under oath in other proceedings that she felt threatened by the commissioner's e-mail; a press release the town issued about two weeks after the e-mail that arguably referred to Mr. McHale, although not by name; Mr. McHale's claim that the councillor involved never again spoke publicly about him or the native occupation - which might also persuade a reasonable, properly instructed jury that Mr. Fantino was guilty.

The public interest part of the test is far more clear-cut.

Mr. McHale, as the owner of CaledoniaWakeUpCall.com, a website that has documented the OPP's two-tiered policing during the native occupation, and the president of CANACE (Canadian Advocates for Charter Equality, a group that opposes race-based policing), has been a monumental pain in the arse for Mr. McGuinty's government and the OPP.

Together, the government and the police brass decided that traditional policing would only further "provoke" the native occupiers and so did virtually none of it. Those who publicly called them on it, particularly Mr. McHale and Det.-Constable Hartless, were singled out and punished by the OPP commissioner.

Mr. McHale is the longest-standing critic. He has organized rallies and protests. Depending on your view, he has either riled up or galvanized local residents. He has turned himself into a very good citizen journalist and a pretty good self-taught lawyer. Mostly, he has refused to shut up.

He attracted the commissioner's attention early on. As e-mails produced at court proceedings show, by late 2007, the OPP boss was writing his underlings, blaming Mr. McHale for all the violence in Caledonia (a ridiculous claim), demanding the force explore "every avenue ... by which we can now bring McHale into court" and assigning an "arrest team ... to take him out."

After all that, the only charge the OPP could come up with is the one Mr. McHale now faces and which even Crowns have never heard of before - "counselling mischief not committed." The bail conditions on that minor charge, laid in December of 2007, were exceptionally punitive, and have effectively banned Mr. McHale from Caledonia ever since - except for the last election campaign, where he ran as an independent and was allowed, under restricted conditions, to campaign.

It has been all along a contest of unequals: The province's top cop, with the resources of the state at his disposal, versus a 47-year-old activist with a big mouth.

Mr. Fantino dutifully has carried the can for the government's handling of the Caledonia occupation, defending his force (even as some few brave front-line officers disagreed with him) and attacking those who dared to disagree. Now, it appears, the government is poised to ride to his rescue, with the same Attorney-General's office that dispatched two lawyers to Ontario Superior Court to argue unsuccessfully that Mr. McHale's private charge should be stopped in its tracks also in charge of what happens to the Fantino prosecution.

Why, the only way it could look worse is if the matter were being heard by one of the government's new justices of the peace, appointed by the AG last fall, His Worship Justice of the Peace Gregory John Fantino, the commissioner's son.

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