



Nfld. & Labrador

Lawyer for Justin Brake asks judge to dismiss criminal charge against reporter



Crown dropped criminal contempt charge but wants to proceed with mischief charge

[Jacob Barker](#) · CBC News · Posted: Nov 07, 2019 10:02 PM NT | Last Updated: November 7



Justin Brake had his charge of disobeying a court order vacated by the Crown but it is still pursuing the mischief charge. (Jacob Barker/CBC)

A provincial court judge has to decide if a criminal trial will proceed against reporter Justin Brake, who entered the Muskrat Falls site to cover a protest in the fall of 2016.

Brake's lawyer, Geoff Budden, was in Happy Valley-Goose Bay on Thursday afternoon to argue an application before Judge Phyllis Harris for a stay of proceedings under the Charter of Rights

and Freedoms.

Brake faced proceedings in both civil and criminal courts after spending several days inside the Muskrat Falls site covering a protest that shut work down at the project. The civil charges were dismissed earlier this year by Supreme Court Justice Derek Green.



Geoff Budden submitted his oral arguments regarding the Brake matter in Happy Valley-Goose Bay provincial court on Thursday. (Jacob Barker/CBC)

"Our position here today [is] given the findings of Justice Green on the appeal of the contempt matter, where he made very clear findings that Mr. Brake was not doing anything on the site other than covering a story, in those circumstances to run a mischief trial would be to ... unfairly subject, not just Mr. Brake but the entire administration of justice to this lengthy, unnecessary matter that couldn't reasonable result in a conviction." Brake's lawyer Geoff Budden said after the hearing.

While the Crown decided to drop one criminal charge against Brake of unlawfully disobeying an order of the court, it is pursuing a charge of mischief over \$5,000.

'Mere presence'

Crown prosecutor Stephen Anstey argued he did not have to prove that Brake wilfully obstructed work, only that what he did had the effect of obstructing work on the site.

"Mere presence on the property, depending on the character or location, may or may not constitute an obstruction, interruption or interference," Anstey told the judge.

Anstey also argued that the Supreme Court ruling absolving Brake of civil liability did not address the same matters that would be before the criminal court if it were to go to trial.



Brake entered the site along with a large group in October 2016. (Jacob Barker/CBC)

He pointed out that the evidence put before the Supreme Court was based on evidence put forward by Nalcor, whereas the evidence the Crown was basing its assertion on is that of an

RCMP investigation.

"The evidence is different," Anstey said. "Whether or not the finding of fact will be the same will be for the court to decide."

- [Reporter Justin Brake mounting charter challenge against Muskrat Falls charges](#)

Budden disagreed, telling the judge that from what he's read in the evidence, the facts were not different.

Harris said she needed time to make her decision on the matter and set Dec. 16 as the date to do so.

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