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Mischief charge against reporter who covered Muskrat Falls protest will proceed

BY STAFF - THE CANADIAN PRESS

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— The construction site of the hydroelectric facility at Muskrat Falls, Newfoundland and Labrador is seen on , July 14, 2015. **THE CANADIAN PRESS/Andrew Vaughan**

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A judge says a criminal mischief charge against a journalist who was covering a protest at the Muskrat Falls work site in Labrador can proceed.

Provincial court Judge Phyllis Harris dismissed an application to stay the charge against Justin Brake in Happy Valley-Goose Bay on Tuesday.

Brake's lawyer, Geoff Budden, had argued the charge should be stayed because it violated his client's charter rights, but Harris found that argument had not been proven.

"What we were asking the court to do was fairly novel, and the court obviously found that we hadn't quite made the case," Budden said by phone.

"We remain committed to defending Mr. Brake and believe we have an excellent case on the facts when this matter does eventually go to trial."

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Brake was arrested after he entered the Muskrat Falls hydroelectric project site in October 2016 to report on an Indigenous-led occupation.

People entered the site to protest the possible contamination of fish and other wild foods once the land was flooded for a reservoir, and Brake

followed to continue his reporting for online news outlet The Independent.

He was later charged with civil and criminal contempt of a court-ordered injunction, and with criminal mischief for allegedly causing financial losses over disruption to the project.

Justice Derek Green of the provincial Court of Appeal dismissed the civil charge against Brake last spring, finding Brake's actions did not fall within the scope of the injunction.

In his written decision, Green said Brake had established himself as a journalist and was not actively participating in the protest. Green also addressed the "vital" importance of press freedom when covering Indigenous land issues.

The Crown dropped the criminal contempt charge against Brake after Green's decision but continued with a criminal mischief charge, for which a trial date is to be set on Jan. 15.

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Budden said his client has no intention of changing his not-guilty plea and said it's disappointing to see the Crown push ahead with allegations that were addressed in the civil matter.

"The Crown, to my disappointment, continues to proceed with the charges when I believe that they are most appropriately dropped, as was the criminal contempt charge," Budden said.

Budden expects the trial will not begin until later in 2020.

This report by The Canadian Press was first published Dec. 18, 2019.