



Subscribe to bold journalism that helps you take action. Try 1 month of the Star for just 99¢.

Subscribe Now
1st month for 99¢ + tax

Sign In

 The Star Edition
CHANGE LOCATION



LOCAL **CANADA** POLITICS WORLD OPINION LIFE SPORTS ENTERTAINMENT BUSINESS STAR INVESTIGATIONS

Ontario

British Columbia

Alberta

Quebec

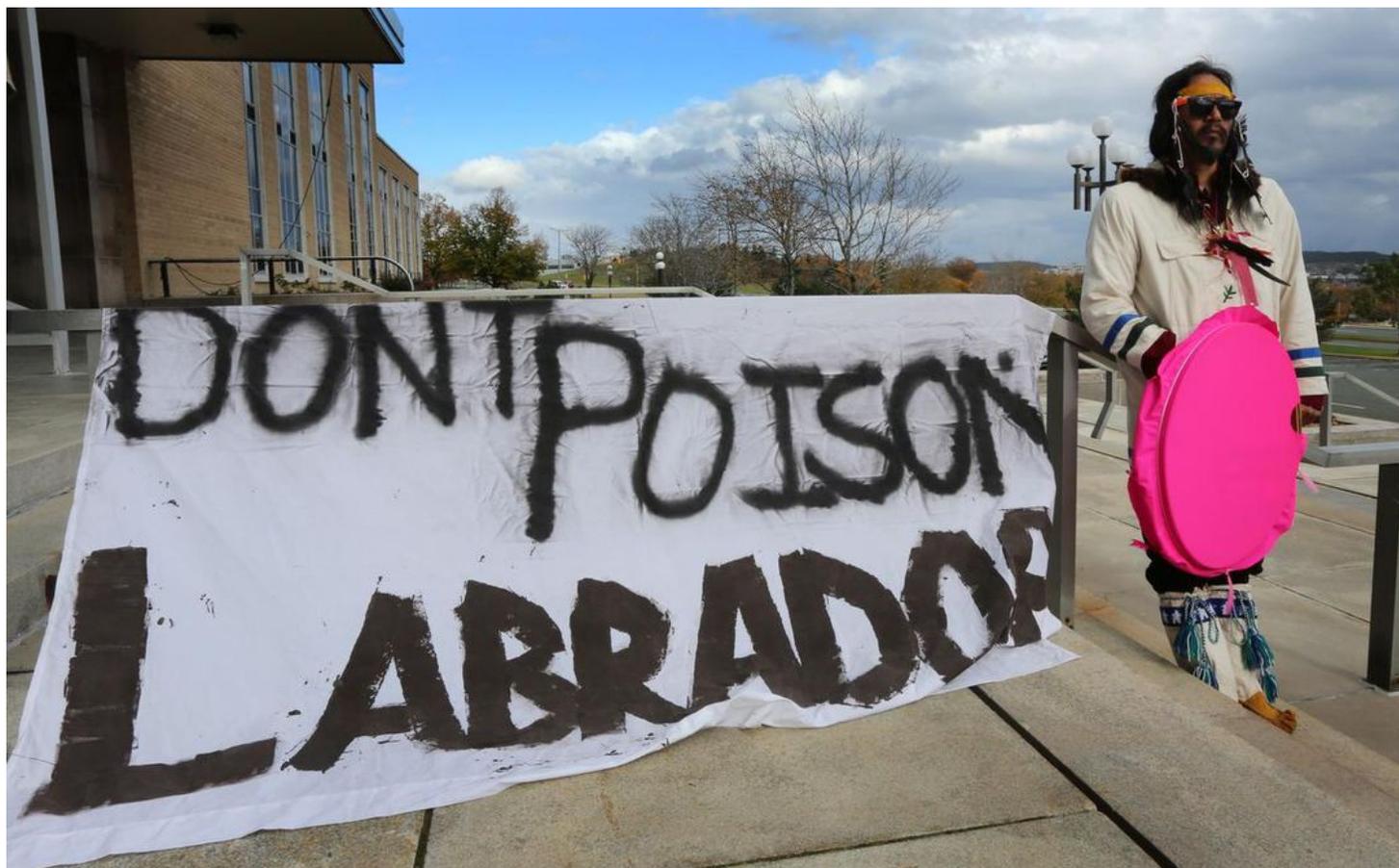
Nova Scotia

This copy is for your personal non-commercial use only. To order presentation-ready copies of Toronto Star content for distribution to colleagues, clients or customers, or inquire about permissions/licensing, please go to:

www.TorontoStarReprints.com

Landmark Newfoundland ruling defends press freedom and coverage of Indigenous issues

By **Holly McKenzie-Sutter** The Canadian Press
Fri., March 29, 2019



ST. JOHN'S, N.L.—Newfoundland and Labrador's top court has defended the importance of press freedom in a landmark decision in the high-profile case of a journalist charged with contempt of a court-ordered injunction.

Justice Derek Green vacated an injunction he found was improperly applied to journalist Justin Brake, overturning a provincial Supreme

Court finding that Brake's status as a working journalist was not material to the case.

Brake, formerly with online news outlet The Independent, had been covering an Indigenous-led occupation at the Muskrat Falls hydroelectric project site in Labrador in October 2016.

Brake was on the scene when people entered the development site as part of a demonstration against the possible contamination of fish and other wild foods once the land was flooded for a reservoir.

In a ruling Thursday, Green found that Brake's actions did not fall within the scope of the injunction.

He said Brake had established himself as a journalist who was reporting on events rather than actively participating, and dismissed the contempt charge against him.

Read more:

[N.L. reporter named in Muskrat Falls court order says it sets dangerous precedent](#)

[Opinion | Dark days for press freedom at home: Fahmy](#)

“To make Mr. Brake subject to a general ‘no trespass’ prohibition’ would unduly and unnecessarily interfere with his function as a journalist when he was not a participant in the ongoing protests,” the Newfoundland and Labrador Court of Appeal judge wrote.

“Mr. Brake’s trespassing was contingent on the continuation of the protest. If it dissipated, so would his trespassing have evaporated.”

Green's decision quoted an affidavit written by Karyn Pugliese, executive news director of the Aboriginal People's Network (APTN), an intervener in the case and Brake's current employer.

"In my experience ... it is in the public interest to have up-close, independent coverage of Aboriginal-led protests over Crown resources projects," Pugliese wrote.

"Mr. Brake was providing this kind of coverage. But this coverage is threatened if journalists are faced with possible criminal or contempt charges for accessing protest sites."

Green noted he agreed with Pugliese on the role of the media in advancing reconciliation and understanding of Aboriginal people and issues.

"The evidence from APTN, which I accept, is that Aboriginal communities have been historically under-represented in the Canadian media," Green wrote. "That makes freedom of the press to cover stories involving Indigenous land issues even more vital."

He also outlined a number of "nonexhaustive" considerations for courts and other parties when determining whether a journalist covering a protest should be included in an ex parte injunction order.

The considerations included considering whether the person is engaged in good faith journalistic coverage, is not actively assisting

the protesters, is not interfering with law enforcement and if the matters being reported on are of public interest.

Green noted that “particular consideration should be given to protests involving Aboriginal issues.”

Green decided the previous judge had erred by not considering Brake’s role as a journalist to be a material fact. He vacated the injunction and contempt notices and ruled Brake was entitled to his costs against the respondents.

Allison Conway, one of Brake’s lawyers, said the decision leaves the civil matter “all but concluded,” though Crown corporation Nalcor Energy could still take the case to the Supreme Court of Canada.

Brake is also facing criminal charges of mischief and disobeying a court order and will appear in court in April. Conway said she expects the civil ruling could impact the criminal procedure.

Conway called the judge’s decision “hugely significant” for journalists in Canada and for its legal recognition of the media’s role in advancing reconciliation.

“It enshrines again the importance of journalism and the role of journalists, but also it’s not just that he was covering news, it’s the news that he was covering, the fact that it was an Aboriginal land protest,” she said.

“Justin of course is pleased, as are we on his behalf, and I think this is a big decision for working journalists in Canada.”