

Last remaining charge against reporter Justin Brake dismissed

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Published: 15 hours ago



Justin Brake (left) is shown with his lawyer Geoff Budden during a break in his appeal in St. John's in December 2017.
- Tara Bradbury



Reporter Justin Brake's last remaining charge before the courts related to his coverage of a protest at the Muskrat Falls site in 2016 has been dismissed.

Brake was scheduled to go to trial in two weeks on a criminal charge of mischief over \$5,000, laid by police after he entered the hydroelectric project site in October 2016 while covering an Indigenous-led occupation. Brake was reporting for online outlet The Independent at the time.

The matter was called unexpectedly by phone in Provincial Court in Happy Valley-Goose Bay Tuesday

morning, where prosecutor Paul Thistle said he would be calling no evidence and recommended the charge be dismissed. That's what Judge Rolf Pritchard did.

"Assessing the file, which was set for a lengthy trial against the backdrop of the very busy docket in Goose Bay, which includes a number of serious, violent crimes, I determined that it was not in the public interest to proceed," Thistle, who had only recently taken over Brake's file, later told The Telegram.

Brake's is one of a few court matters that have been dismissed in recent weeks in light of the COVID-19 pandemic, which closed Provincial Court to all but urgent matters for three months. Given the significant backlog of cases - more than 1,000 - prosecutors have been instructed to review outstanding court matters in terms of public interest and likelihood of conviction.

Brake's lawyer, Geoff Budden, argued last fall for the mischief charge to be stayed, saying it was a breach of his client's constitutional rights. Judge Phyllis Harris dismisses that application.

"Mr. Brake has not demonstrated that his Charter rights are being violated as a result of continued prosecution," she said.

Budden said he and co-counsel Allison Conway still felt they had a good case at trial, which had been expected to take a minimum of two weeks. Evidence given at the Muskrat Falls Inquiry last year supported their case, he said.

"I think the Crown was arguing that many millions of dollars of damages resulted from this alleged interference by Mr. Brake and many others and I think they would have had a very difficult job proving that the losses were a consequence of this as opposed to many other problems that were happening on site," Budden said.

Brake was arrested after he entered the Muskrat Falls site along with people who were protesting possible methylmercury contamination in the food chain once the land was flooded for a reservoir. The occupation lasted several days and work at the site was halted.

Brake was charged with criminal and civil contempt of a court injunction as well as criminal mischief over \$5,000 for allegedly causing a disruption that had resulted in financial loss.

Last year, Justice Derek Green of the province's Court of Appeal dismissed the civil charge, ruling Brake had been acting as a journalist and not a protester. The Crown dropped the criminal contempt charge after that but proceeded, until now, with the mischief charge.

Budden, who says Brake intends to release his own statement regarding the dismissal of the charge, believe the case will have a varied and important impact.

"Firstly, Mr. Brake will be able to go on with his life and his career without this hanging over his head," he said. "I think there is, mostly coming out of Justice Green's decision, better guidance for journalists, for the police and the courts to determine how to approach these difficult situations, particularly where there are issues around Indigenous-led protests and other social action protests."

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