

Cleansing Six Nations could be costly for band council's budget

by Paul Barnsley

SIX NATIONS - Legal experts agree that the legal fight over the Six Nations residency by-law could go all the way to the Supreme Court of Canada. And it could get very expensive.

"This case is definitely a clash between Section 35 of the Constitution Act (1982) which deals with the Aboriginal rights of self-government and Section 15 of the Charter of Rights and Freedoms which is the equality provision," says Osgoode Hall Law Professor Patrick Macklen.

Professor Macklen was referred to the TEKA by pre-eminent Constitutional scholar and fellow Osgoode Hall professor Peter Hogg. Professor Hogg could not comment on the case because he has been retained as a consultant by the Toronto law

firm of Blake, Cassels and Graydon. That is the firm representing Band Council in this action.

The right of Band Council to evict non-Native Pamela Henderson from the home she shares with her husband who is a Six Nations member will be challenged in court this summer.

Macklen thinks it is possible the case will become a test-case and could end up in the highest court in the land if the parties don't settle.

"There aren't any easy answers. This is a tough one. It may well be that Six Nations has the right to enforce this by-law. A court will want to respect the Council's autonomy," said Macklen.

But, he said, Section 15 stands in the way.

Section 15 states that every citizen has the right of equal protection and equal benefit of the law without discrimination.

The big question, says Macklen, is: "Does the charter apply to the exercise of Aboriginal self-government?"

"The Native Women's Action Committee (NWAC) fought the Charlottetown accord because it did not subject Aboriginal governments to the equality provisions of the Charter," Macklen added. NWAC wanted their rights as equals within their own communities guaranteed in the accord.

Council has been advised by

their legal counsel that it may not be a sound move to proceed with this case. Macklen agrees.

"Why don't they settle?" he asked.

The recent decision in the Bear Island case where the Supreme Court "quite dismissively rejected the arguments" of Natives disputing a treaty may not bode well for Band Council, Macklen said.

"The composition of the (Supreme) court has changed dramatically since the early 80s when it made several decisions which were sympathetic to Native Concerns," he added.

Chief Williams and Council members will not comment on the case.