

City of Brantford suing Six Nations for almost \$1 million

By Donna Duric
Writer

The City of Brantford is seeking almost \$900,000 in legal costs from Six Nations people in relation to protests held there from 2007 to 2009.

The city has begun proceedings at Ontario Superior Court in Brantford to try and recover the costs associated with filing an injunction against Six Nations people in 2008.

The city sought and was granted an injunction order barring Six Nations people from protesting ongoing land developments in Brantford.

It now says it is seeking more than \$875,000 in costs from defendants that include Floyd and Ruby Montour, the Haudenosaunee Development Institute (HDI), Six Nations lawyer Aaron Detlor, HDI interim director Hazel Hill, Jane and John Doe and other "unknown persons." The application filed in court reads, "Brantford was forced into a situation where it had to expend

scarce city resources simply to ensure that its residents could enjoy what the law-abiding inhabitants of any other city take for granted: the basic right to carry on business and to undertake legitimate activity free from arbitrary coercion imposed in the absence of the rule of law. In light of this court's findings on the injunction and on the applications, there is no reason why the ratepayers of the city should have to bear these costs, and every reason why such costs should be borne by those whose conduct necessitated them."

Floyd Montour, who attended the proceedings last Tuesday, says the attempt to recover costs is "null and void. I don't know where they're going to get that money. They can't come onto the reserve and seize anything. I don't have that much money, anyway." Neal Smitheman, a lawyer for the City of Brantford, called the legal costs a "huge expense to the citizens of this city". He applauded band council

for taking the lawful route in its actions against Brantford, citing a lawsuit it launched against the city in 2009, and suggested others should follow suit when addressing land claim grievances instead of conducting protests.

"The elected council has acted within the confines of the law," said Smitheman. "That's how one goes about public interest litigation." Band Council launched a lawsuit against the city in 2009 saying Brantford has a constitutional duty to consult with Six Nations on the development of any lands within the city's boundaries that also fall in the Haldimand Tract.

Smitheman said the HDI had no legal authority to ask that all potential developers in the city pay them a \$7,000 application fee or be shut down by Six Nations people. He said the HDI's actions in Brantford amounted to "extortion." The city obtained an interim injunction in June 2008. It was not obeyed, said Smitheman, and

protests escalated.

"All projects came to halt," he said, noting some developers left the city altogether. One of the developers, Kingspan, is suing the city because of the protests, said Smitheman.

"A number of these protests have led to violence, threats, and intimidation against workers. Public roads were obstructed. A number of respondents trespassed on private property."

He continued, "One does not declare war and say that there will be blood in the street and then ask for leniency with respect to costs. That is the wrong message to send to anyone in Ontario, let alone Brantford."

He said if the defendants "truly wanted access to justice, start with a little respect for the law."

Montour was the only defendant to attend Tuesday's hearing.

Hazel Hill would not comment on whether or not any of the defendants were prepared or able to pay the court costs, but said the issue has contributed to political division within Six Nations.

"The Canadian court system was successful in its strategy at dividing this community further by targeting the HDI, Hazel Hill, Aaron Detlor, and a few others and using the Six Nations band council to show the rest of the world how 'good Indians' are supposed to act." Brantford Mayor Chris Friel said he couldn't comment on whether or not he was confident Brantford would actually be able to recover the costs and said he was aware on-reserve assets could not be seized if the defendants refused to pay

the costs.

He did say, however, that it was his duty as mayor to represent the city's taxpayers and said the burden should not be on them to absorb the costs of the city's legal actions.

"There's an expectation we would proceed (to recover those costs)," said Friel. "We can't just say forget it."

Smitheman said if the judge orders the defendants to pay and they refuse, the city would have recourse in seizing assets from any of the defendants listed if those assets are off-reserve. "Any assets off the reserve are subject to seizures," he said. "Everyone is responsible for paying that full amount."

Smitheman said he is not sure when a judgment will come down and that a written notice will be sent to the defendants once a deci-