

# Judge holds off on granting injunction against Mohawk Workers

By Donna Duric  
Writer

A development company seeking to build a subdivision on unceded Six Nations lands in Brant County failed to obtain an injunction against protesters last week, at least temporarily.

Walton Group International, which wants to build a subdivision in the Tutela Heights neighbourhood, is seeking an injunction against members of the Mohawk Workers and Six Nations land rights activists Floyd and Ruby Montour.

The group shut down archeological work at the site in late September and Walton is now seeking an injunction to stop protesters from going back to the property.

Neal Smitheman, a lawyer for Walton, said his clients want to get archeological work done before the ground freezes in the coming weeks.

"We're asking the defendants to obey the law," said Smitheman at Superior Court in Brantford last Friday. "Stop blockading the site, stop trying to occupy the site, stop putting up 'no trespassing' signs. What we're dealing with is an attempted reclamation of the site."

The defendants, who attended the hearing of the motion last Friday with Toronto union supporters, asked that they be given

time to find legal representation before a decision on granting an injunction is made.

Brantford Judge Harrison Arrell adjourned the case to this Friday so defendants could find a lawyer and gather information it wants to submit to the court, claiming the land is a native burial ground and that archeologists are there illegally.

Jason Bowman, special assistant to Mohawk Worker Bill Squire, claimed the land had been designated as a cemetery by Ontario's chief coroner but he had no evidence to back up that claim. He said under the Cemeteries Act, no digging is allowed on known grave sites.

"This is a known burial site," he said. "The chief coroner of Ontario says it's a cemetery your honour. In order to dig in a cemetery you need to have permission from the chief coroner."

Justice Arrell said the purpose of the archeological work in the first place was to determine if there is, in fact, a burial ground on the property.

"We have to establish in law it is a burial site," said Arrell.

Smitheman said if any evidence of a burial was found, that archeologists would deal with it legally.

"If there are sacred sites, it's all dealt with properly according to law," said

Smitheman.

Bowman also told the court that Smitheman, with the Toronto law firm Fasken Martineau, did not give defendants the mandatory seven-day time period required between receiving a notice of action and actually having to appear in court.

Bowman called it a "perversion" of justice. "These people are not following the rules," he said.

Bowman said he personally received the notice of action the previous Friday afternoon and said last Friday morning's hearing did not amount to a full seven days.

Justice Arrell granted a one-week adjournment, which Smitheman said would cause his clients "irreparable harm."

Arrell said he would make a decision on the injunction this Friday. "This matter is going to be dealt with," he said.

Walton proposes a 295-unit subdivision on the Tutela Heights land called Riverbend Estates.

Lonny Bomberry, director of Six Nations Lands and Resources, says they've been meeting with Walton Group executives for the past four months.

"We've just had preliminary discussions with them," he said. "We haven't come to any resolutions." Bomberry said a Six Nations archaeological monitor is

overseeing the archaeological assessment on the property. He said band council put Walton in touch with the monitor through its archaeological monitoring program.

He said consultations will centre around compensa-

tion for the perpetual care and maintenance of Six Nations, which could include monetary compensation or direct employment opportunities.

Bomberry said lands and resources is not averse to the development of Six Na-

tions lands if the projects are archaeologically and environmentally sound.

Haudenosaunee Development Institute spokesman Aaron Detlor said Walton has not entered into discussions with the Confederacy.