Frontenac decision could change the course of Brantford's Injunctions

By Erin Tully
SIX NATIONS

The Supreme Court of Canada further reiterated the notion that injunctions against First Nations people should not be handed out indiscriminately.

On December 5th the Frontenac Venture Corporation was not granted their request for a 'leave to appeal' regarding the injunction case that pitted the corporation against the Ardoch Algonquin First Nation and the Kitchenuhmaykoosib Inninuwug First Nation.

Frontenac Venture Corporation was asking for the court's permission to appeal the Ontario Court of Appeals ruling that basically dissolved the injunction and contempt charges against named First Nations individuals.

The Injunction was issued on September 7th, 2007 and ultimately produced the charges against Robert Lovelace and other community members. The conditions of the injunction prohibited community members of the Ardoch Algonquin First Nation and the Kitchenuhmaykoosib Inninuwug First Nations from blocking Frontenac's plans of evasive exploratory drilling (for uranium) on land that is under claim.

When the named defendants didn't comply with the court ordered injunction they were sentenced to jail and fined up to $25,000.

On July 7th, 2008 the Ontario Court of Appeal released two decisions related to the sentencing for First Nations people for the contempt of breaching injunctions aimed at Aboriginal demonstrations.

During that decision the court referred to the Supreme Court of Canada's jurisprudence with regards to a duty to negotiate, and found that when a private party's (or otherwise) interests directly collide with the interest of First Nations, every effort should be made to resolve the issue through consultation, negotiation and accommodation.

The courts also expressed the opinion that when a private party is requesting an injunction that may negatively impact protected asserted Aboriginal or treaty rights that "such cases demanded careful and sensitive balancing of many important interests in accessing whether to grant the requested injunction and on what terms."

Blakes, a law firm that has handled related cases, commented on what the impact of the Frontenac case has on these issues as a whole.

"The Court of Appeal made a clear statement in Frontenac that it would no longer be acceptable for private parties to seek injunctions as a first response to prevent protest action by First Nations with legitimate Aboriginal rights or land claims and then institute contempt proceedings against protesters for failure to comply. The Court of Appeal applied the Supreme Court of Canada's established jurisprudence and held that there is a duty on the Crown, as well as private parties, to negotiate with indigenous communities in order to resolve conflicting interests."

The Frontenac case has many similarities to the current legal proceeding brought by the City of Brantford onto Six Nations individuals. *Brantford's lawyer, Neal* J. Smitheman, works for the same firm, Fasken Martineau, that worked on the Frontenac side of the legal proceedings.

Many similarities can be drawn between not only the legalities but the situations as a whole.

Ben Jetten, lawyer, said that he feels the implications of the Frontenac case should ripple through to Six Nations.

"The Ontario Court of Appeal, effectively the decision in Frontenac is the governing law. The principals in that case should be and likely would be involved by the courts dealing with the Brantford case against members of Six Nations."

Frotenac no longer has legal footing in regards to obtaining another injunction against First Nations people in this particular case.