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Charges against Fantino dropped; No Conviction Possible

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The Crown has ended the unusual criminal prosecution of Ontario Provincial Police Commissioner Julian Fantino on allegations of attempting to influence a municipal official during the native occupation in Caledonia, but the activist who lodged the complaint vows to someday have the case heard in court.

Milan Rusic, chief counsel of the Justice Prosecutions Unit, said yesterday during a hearing in a Cayuga courtroom that there was no reasonable prospect of conviction and was therefore terminating the privately initiated charge.

"If that test is not met, the Crown is duty bound to withdraw the charge," Mr. Rusic said.

The allegation relates to a 2007 email Comm. Fantino sent to the Mayor of Caledonia following complaints about so-called two-tiered policing during the standoff with native occupiers. Many residents complained that police allowed native protesters to flout the law while cracking down only on non-aboriginal townsmen.

In the email, Comm. Fantino warned councillors of consequences if they supported the rallies organized by Gary McHale, a private citizen who has been an outspoken critic of the OPP's handling of native protests in Caledonia.

The commissioner wrote that he would recommend the OPP policing contract with Halidimand County "not be renewed" and that in the event police officers were injured in the course of protests instigated by Mr. McHale, he would send a bill to the county for the extra costs of policing and support the officers in any lawsuit, the court heard.

Mr. Rusic admitted, "some members of the municipal council were angered or upset or felt threatened, so to speak, at receiving the email. But what constitutes a 'threat' for the purposes of the criminal law is not identical with the meaning of the word in the vernacular."

Mr. Rusic said he was satisfied Comm. Fantino's email "does not and cannot constitute an offence" under the Criminal Code.

"Whatever the reaction of the councillors to the email may have been does not affect the underlying fact that in Canada it is not criminal if you tell someone that you might send them a bill for services."

Comm. Fantino was pleased with the Crown's decision.

"I have the utmost respect for and confidence in the judicial system and am content that this vexatious allegation was dealt with in a just and appropriate manner," he said in a statement.

"I remain proud of the difficult work done by the OPP over the last several years in Caledonia. Our efforts have resulted in a relative calm and minimized potential violence. The results speak for themselves."

The Opposition criticized Dalton McGuinty, the Premier, for not assigning an independent lawyer to assess the prosecution, saying his handling of the complaint erodes public confidence and threatens fundamental principles of justice.

"Eyebrows are being raised as a result of the Crown's handling of this matter. The law must be applied equally to all and it must be applied in a fair and transparent manner,"

said Ted Chudleigh, Tory justice critic.

Mr. McHale said he will file a fresh judicial review with the courts seeking to have the issue reheard.

"Sooner or later the judges will overturn this decision," and that will "finally prove that the Ontario government is interfering with the justice system.

"The rule of law, democracy, free speech is all under attack ... Nobody is above the law, that includes Fantino, that includes [Stephen] Harper and it includes the bum on the street."

Mr. McHale said the Crown made conflicting arguments during different court proceedings and is waging a "public relations campaign for Fantino" in its four-page statement read in court and then distributed to the media.

Mr. McHale is embroiled in several other legal challenges stemming from the dispute in Caledonia, which started in 2006 when native protesters took control of a large construction site under development as a residential subdivision.

He has made protesting the handling of the native occupation a full-time pursuit, he said.

He is also representing himself in court against a charge laid by the OPP of "counselling mischief not committed."

As part of that battle, the OPP has disclosed internal emails about its monitoring of Mr. McHale that reveal the level of distaste some members of the force, particularly Comm. Fantino, had for him.

"At some point McHale has to go," Comm. Fantino wrote to Chris Lewis, his deputy commissioner, on Dec. 1, 2007.

"All in all, but for McHale and his few supporters Caledonia is a relatively peaceful place," he wrote to another underling. "Please assign a CIB inspector to oversee the investigation of today's events and ensure that whatever criminal charges or whatever else fits that they be laid forthwith."

In an email, Comm. Fantino criticized "timid" and "feeble" Crown lawyers "who seem to only get charged up when they have a sure prospect of conviction."

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