

THE GLOBE AND MAIL

May 4 2011

MAY 04/11

Caledonia activist free to drop by Canadian Tire

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From Thursday's Globe and Mail

Gary McHale's travel restrictions are lifted, though the state still wishes he would shut up

In the Ontario government's continuing war on Gary McHale, the day will stand as another small notch in his belt.

The relentless activist is charged with assault in connection with a Feb. 27 rally held in nearby Caledonia, site of the notorious native occupation at a development called Douglas Creek Estates (DCE) and birthplace of two-tiered policing.

The alleged assault, by the arresting officer's own description, consisted of Mr. McHale "giving a good push" to a self-styled counter-protester, Tom Keefer of the Canadian Union of Public Employees Local 3903, the unit which represents contract faculty and teaching assistants at York University.

For several years, Mr. Keefer and his group have showed up in Caledonia to disrupt the rallies Mr. McHale organizes.

Last Feb. 27 was no different.

Two buses brought in the counter-protesters - students mostly, one load from Toronto, another from Waterloo and Guelph - who out-shouted the two dozen McHale supporters, forced them to switch locations, and then moved onto the private land adjoining DCE where Mr. McHale's group had permission to go.

When Mr. McHale asked Mr. Keefer et al. to get off the property, he refused, and it was then Mr. McHale allegedly pushed him.

Now, the Criminal Code allows someone who is in "peaceable possession" of property to use reasonable force to remove a trespasser so long as he doesn't inflict bodily harm. The code also provides for the trespasser who resists to be charged with assault.

However, the law in Haldimand County operates as the law in America's Deep South once worked, where there was one law for the white man, who could break it with impunity, and another for the black man.

In Haldimand County, since the occupation began, there has been one law for natives and another for non-natives.

Thus, the Ontario Provincial Police, who as usual on this day were busy videoing the proceedings but doing nothing to protect the right of Mr. McHale's group to peaceful protest, didn't charge Mr. Keefer.

But several weeks later, upon Mr. Keefer's complaint, after interviews with his supporters and review of video, the OPP instead charged Mr. McHale.

(I was there, as it happens, because the rally was to mark the fifth anniversary of the still-unresolved DCE standoff. I missed the confrontation between Messrs. McHale and Keefer, but certainly saw the OPP lolling about with their cameras.)

In any case, just as had happened once before - Mr. McHale was charged that time with "counseling mischief not committed," subjected to more than two years of travel restrictions until the government belatedly dropped the charge - Mr. McHale was slapped with strict bail conditions.

He couldn't go to the Caledonia Canadian Tire; he couldn't go to the Tim Hortons near DCE; he couldn't travel on all or parts of a half-dozen local streets.

Last month in the Ontario Court of Justice, Mr. McHale attempted to vary his travel restrictions, and in the course of a lengthy proceeding, questioned OPP Detective-Constable Wesley Barnes, the man who had arrested him and drawn up the coloured map laying out his own personal no-go zone.

Now, it may be that there is somewhere a police officer who has looked more ridiculous by his own testimony, but I can't think of one offhand.

Det.-Constable Barnes variously said he'd just used the old area the OPP had used before against Mr. McHale, then expanded it; that he hadn't read the trespass section of the code before charging Mr. McHale; that he'd included some roads in the ban because "You could meet the other people, you could be having a rally there, we could have a problem"; that Mr. McHale was banned from other areas "because there have been protests there before" but the officer had no details; that in some cases, the ban was imposed because there'd been an unspecified "confrontation" at that location, and that in one instance, he arbitrarily drew a line because he "needed a geographical boundary."

In the end, the prosecutor and justice of the peace agreed that Mr. McHale's bail would be varied so that he could serve legal documents, through the OPP, upon Mr. Keefer, but said the hearing about the travel restrictions would resume Wednesday.

So it did, with a new justice of the peace, Dan MacDonald, who immediately declared it was his opinion that "notwithstanding the deal that was made or the undertakings given" in April, the bail variation had been concluded that day, he had no jurisdiction to continue it, and Mr. McHale would have to take his case to Superior Court, unless the Crown consented to lift the travel ban.

Several hours later, prosecutor Alex Paparella told JP MacDonald she was prepared to lift Mr. McHale's travel restrictions.

So this round went to Mr. McHale, who is again a man free to go to Canadian Tire and drive the direct routes in his neighbourhood.

But it's also clear that the state remains interested in stopping or silencing him - not because of anything *he* does, but rather because his presence irritates natives and their supporters such that, God forbid, passions may be inflamed and people reminded of the shame which unfolded here.

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