

## **Court dismisses First Nations' appeal**

REGINA -- The Ochapowace and Piapot First Nations lost their bid to obtain a court order compelling the RCMP to lay trespass charges against two government agencies.

In a recent decision, the Federal Court of Appeal unanimously upheld a lower court ruling dismissing the bands' application for a judicial review of the RCMP decision not to lay charges.

"We are reviewing the decision and currently awaiting instructions from our clients as to whether to appeal the ruling to the Supreme Court of Canada," said Mervin Phillips, the lawyer representing the two First Nations.

Concerns about the quality of water flowing through and flooding reserve lands prompted Ochapowace and the Piapot bands to pass trespass bylaws and pursue charges against the Prairie Farm Rehabilitation Administration (PFRA) and the Saskatchewan Watershed Authority (SWA).

The bands allege the PFRA and SWA's operation of water control structures on the Qu'Appelle River system, including floodgates at Crooked and Round lakes which were built in the 1940s, demonstrably harmed reserve land and water quality.

In his decision, Justice Denis Pelletier noted the federal government accepted the flooding was not authorized and that the affected First Nations are entitled to compensation.

Land claim settlement negotiations commenced but stalled, resulting in the bands seeking legal recourse through the courts. A civil trial is scheduled for later this month.

The bands also alleged the encroachment of the water constituted a breach of their trespass bylaws. The RCMP were asked to lay charges, but in April, 2006, after investigating the matter they decided no charges would be laid.

"The RCMP's decision was made honestly and transparently and for a legitimate reason, namely the evidence did not support the charges," Pelletier wrote.

"In light of all the material circumstances, including the state of the negotiations for compensation and the legal advice received, the RCMP's decision was objectively justifiable."

The bands have not established "flagrant impropriety" in the RCMP's exercise of discretion not to lay charges, he said, concluding the police discretion exists in a different legal context from the obligations of the Crown with respect to aboriginal peoples.

"The framework within which the police and the Attorney General exercise their discretion does not overlap the framework within which Canada seeks to achieve a just and equitable resolution of the claims of its aboriginal peoples. The concepts of consultation and accommodation, in the sense required by the doctrine of the honour of the Crown, cannot coexist with the independent exercise of police and prosecutorial discretion."

Source: By Anne Kyle, Leader-Post May 5, 2009