ONTARIO SUPERIOR COURT OF JUSTICE

BETWEEN:

KRP ENTERPRISES INC. and 1643078 ONTARIO INC.,

Plaintiffs

- and –

THE CORPORATION OF HALDIMAND COUNTY, ONTARIO PROVINCIAL POLICE COMMISSIONER GWEN M. BONIFACE, and ONTARIO PROVINCIAL POLICE INSPECTOR BRIAN HAGGITH

Defendants

Proceeding under the Class Proceedings Act, 1992

NOTICE OF MOTION

THE PLAINTIFFS will make a motion on a date to be determined by the Trial Co-Ordinator before The Honourable Justice David Crane at 45 Main Street East, Hamilton, Ontario L8N 2B7.

PROPOSED METHOD OF HEARING:

THE MOTION is to be heard orally.

THIS MOTION IS FOR:

1. An Order pursuant to Rule 26.01 of the Rules of Civil Procedure granting leave to the Plaintiffs to amend the Statement of Claim in accordance with the form attached as Schedule "A" to this Notice of Motion.

2. An Order for certification of this proceeding as a class proceeding under the *Class Proceedings Act*, 1992, R.S.O. 1992, c. 6 (the "CPA") against the Defendants, being The Corporation of Haldimand County ("Haldimand County"), Ontario Provincial Police Commissioner Gwen M. Boniface ("Commissioner Boniface"), Ontario Provincial Police Inspector Brian Haggith ("Inspector Haggith"), and Her Majesty The Queen in right of Ontario (the "Province of Ontario").

3. An Order pursuant to the CPA defining four classes as follows:

Caledonia Business Class

"All those persons, including sole proprietors, partnerships, corporations or organizations, whether for profit or non-profit, with places of business within the N3W Canada Post postal division whose businesses have been affected by the closure of Argyle Street from April 20, 2006 until May 24, 2006, the occupation by protestors of the Douglas Creek Estates or the interruption of hydro service from damage done to the Hydro One Caledonia transformer station on May 22, 2006, excluding members of the Contractors Class."

Property Owners Class

"All those persons, including individuals, trusts, corporations or organizations, who, on February 28, 2006, owned or occupied real property located within the N3W Canada Post postal division, and have been affected by the occupation by protestors of the Douglas Creek Estates, the closure of Argyle Street from April 20, 2006 until May 24, 2006, the closure of Highway 6 between Green Road and the junction of Argyle Street South from April 20, 2006 until June 13, 2006, and the interruption of hydro service from damage done to the Hydro One Caledonia transformer station on May 22, 2006, excluding members of the Caledonia Business Class."

Contractors Class

"All contractors or subcontractors of Henco Industries Limited or their agents, who were contracted to provide services and materials to owners, developers, builders or contractors on the Douglas Creek Estates subdivision on February 28, 2006."

Highway 6 Class

"All those persons, including sole proprietors, partnerships, corporations or organizations, resident in the Province of Ontario who carry on a business, whether for profit or non-profit whose businesses have been affected by the closure of Highway 6 between Green Road and the junction of Argyle Street South from April 20, 2006 until June 13, 2006 and the occupation of protestors on the Douglas Creek Estates, excluding members of the Caledonia Business Class."

- 4. An Order pursuant to the CPA appointing the following as the representative plaintiffs on behalf of the members of each of the classes:
 - a. KRP Enterprises Ltd. and 1643078 Ontario Inc. for the Caledonia Business Class;
 - b. Kevin Clark, Esta Clark, Christina Acciaccaferro, Jeffrey Acciaccaferro, Steve Tong, Lori Tong, Russell Kavanagh, Michelle Kavanagh, Paul Durcek, Stefany Durcek, Quintin Chausse, Donna Chausse, Anne Marie VanSickle and James Paul VanSickle for the Property Owners Class;
 - c. J.P. Woolley Surveying Ltd. for the Contractors Class; and
 - d. Margaret Cook for the Highway 6 Class.
- 5. An Order pursuant to the CPA for the determination of the following common issues:

- a. Is The Corporation for Haldimand County liable to members of the Caledonia Business Class for damages arising from the closure of Argyle Street from April 20, 2006 until May 24, 2006?
- b. Is either Commissioner Boniface or Inspector Haggith, or both of them, liable under s. 41 of the *Police Services Act* to members of the Caledonia Business Class for damages arising from the closure of Argyle Street from April 20, 2006 until May 24, 2006?
- c. Is Commissioner Boniface, Inspector Haggith, or the Province of Ontario, or any of them, liable to members of the Caledonia Business Class under s. 41 of the *Police Services Act* for damages arising from their failure to ensure that members of their police force prevented crimes and other offences and executed orders and warrants of the court?
- d. Is Commissioner Boniface or Inspector Haggith, or either of them, liable to members of the Caledonia Business Class in negligence for damages arising from the hydro interruption caused by damage to the Hydro One Caledonia transformer station on May 22, 2006?
- e. If the answer to any of a., b., c. or d. is yes, how should damages of the members of the Caledonia Business Class be assessed?
- f. Is The Corporation for Haldimand County liable to members of the Property Owners Class for damages arising from the closure of Argyle Street from April 20, 2006 until May 24, 2006?
- g. Is Commissioner Boniface, Inspector Haggith, or the Province of Ontario, or any of them, liable to members of the Property Owners Class under s. 41 of the *Police Services Act* for damages arising from their failure to ensure that members of their

police force prevented crimes and other offences and executed orders and warrants of the court?

- h. Is either Commissioner Boniface or Inspector Haggith, or either of them, liable under s. 41 of the *Police Services Act* to members of the Property Owners Class for damages arising from the closure of Highway 6 from April 20, 2006 until June 13, 2006?
- i. Is the Province of Ontario liable to the members of the Property Owners Class for damages arising from the closure of Highway 6 from April 20, 2006 to June 13, 2006?
- j. Is the Province of Ontario liable to members of the Property Owners Class for nuisance caused by the protestors occupying the Douglas Creek Estates after the Province of Ontario became titleholders to the property?
- k. Is Commissioner Boniface or Inspector Haggith, or either of them, liable to members of the Property Owners Class in negligence for damages arising from the hydro interruption caused by damage to the Hydro One Caledonia transformer station on May 22, 2006?
- 1. If the answer to any of f., g., h., i., j. or k. is yes, how should damages of the members of the Property Owners Class be assessed?
- m. Is Commissioner Boniface, Inspector Haggith, or either of them, liable to members of the Contractors Class for damages arising from their failure to ensure that members of their police force prevented crimes and other offences and executed orders and warrants of the court?
- n. Is the Province of Ontario liable to members of the Contractors Class for imposing a moratorium on development on the Douglas Creek Estates?

- o. If the answer to m. or n. is yes, how should the damages of the members of the Contractors Class be assessed?
- p. Is either Commissioner Boniface or Inspector Haggith, or both of them liable under s. 41 of the *Police Services Act* to members of the Highway 6 Class for the closure of Highway 6 from April 20, 2006 until June 13, 2006?
- q. Is the Province of Ontario liable to the members of the Highway 6 Class for the closure of Highway 6 from April 20, 2006 to June 13, 2006?
- r. If the answer to p. or q. is yes, how should damages of the members of the Highway 6 Class be assessed?
- 6. An Order that the notice advising the members of each Class of certification of the proceedings pursuant to s. 17 of the CPA in the form annexed hereto as Schedule "B" be provided by publication in *The Toronto Globe and Mail, The Hamilton Spectator*, and the *Grand River Sachem* and by posting the notice on the www.caledoniaclassaction.com website, on www.caledonia-ontario.com, the website of the Caledonia Regional Chamber of Commerce, on www.haldimandcounty.ca, the website of Haldimand County, on www.aboriginalaffairs.osaa.gov.on.ca, the website of the Ontario Secretariat of Aboriginal Affairs, and on www.opp.ca, the website of the Ontario Provincial Police, with the cost of such notification being borne by the defendants;
- 7. Their costs of this motion on a substantial indemnity scale; and
- 8. Such further and other relief as counsel may advise and this Honourable Court may permit.

THE GROUNDS FOR THE MOTION ARE:

- 1. Rules 26.01 and 26.02 of the Rules of Civil Procedure.
- 2. The provisions of ss. 5, 6, 8, 17 and 20 of the CPA.
- 3. The pleadings disclose a cause of action against each of the defendants.
- 4. There are identifiable classes of two or more persons that would each be represented by a representative plaintiff.
- 5. The claim raises common issues in each class.
- 6. A class proceeding would be the preferable procedure for the resolution of the common issues.
- 7. The representative plaintiffs:
 - a. would fairly and adequately represent the interests of their respective Classes;
 - b. have produced a plan for the proceeding that sets out a workable method of advancing the proceeding on behalf of the classes and of notifying the members of the classes of the proceeding; and
 - c. do not have an interest in conflict with the interests of the other members of the classes that they are proposing to represent.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

- 1. The Affidavit of Margaret L. McCarthy sworn on November 24, 2006;
- 2. The Affidavit of Richard Peart, President of KRP Enterprises Inc., sworn on November 15, 2006;

- 3. The Affidavit of Chris Leonard, President of 1643078 Ontario Inc. sworn on November 24, 2006;
- 4. The Affidavit of Kevin Clark sworn on November 22, 2006;
- 5. The Affidavit of Christina Acciaccaferro sworn on November 18, 2006;
- 6. The Affidavit of Steve Tong sworn on November 18, 2006;
- 7. The Affidavit of Michelle Kavanagh sworn on November 16, 2006;
- 8. The Affidavit of Paul Durcek sworn on November 14, 2006;
- 9. The Affidavit of Quintin Chausse sworn on November 15, 2006;
- 10. The Affidavit of Anne Marie VanSickle sworn on November 16, 2006;
- 11. The Affidavit of Patrick Woolley, President of J.P. Woolley Surveying Ltd. sworn on November 18, 2006;
- 12. The Affidavit of Margaret Cook sworn on November 17, 2006; and

Such further and other material as counsel may advise and this Honourable Court permit.

November 24, 2006

FINDLAY McCARTHY LLP

66 James Street North Hamilton, Ontario L8R 2K5

John W. Findlay

LSUC: 19502C Tel: (905) 526-8943 Fax: (905) 526-8696

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Counsel for the Plaintiffs

TO: STEIBER BERLACH LLP

900 – 130 Adelaide Street West Toronto, Ontario M5H 3P5

Steven Stieber

Tel: (416) 366-1400 Fax: (416) 366-1466

Solicitor for the Defendant,

The Corporation of the County of Haldimand

AND TO: ATTORNEY GENERAL OF ONTARIO

Crown Law Office – Civil 720 Bay Street, 8th Floor Toronto, Ontario M5G 2K1

Dennis W. Brown, Q.C.

LSUC No.: 10468O

Tel: (416) 326-4156 Fax: (416) 326-4181

Solicitors for the Defendants,

Ontario Provincial Police Commissioner Gwen Boniface, Ontario Provincial Police Inspector Brian Haggith, and

Her Majesty the Queen in right of Ontario

SCHEDULE "A"

Court File No. 114/2006/CP

ONTARIO SUPERIOR COURT OF JUSTICE

BETWEEN:

KRP ENTERPRISES INC. and 1643078 ONTARIO INC.

Plaintiffs

- and –

THE CORPORATION OF HALDIMAND COUNTY, ONTARIO PROVINCIAL POLICE COMMISSIONER GWEN M. BONIFACE, ONTARIO PROVINCIAL POLICE INSPECTOR BRIAN HAGGITH and HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO

Defendants

Proceeding under the Class Proceedings Act, 1992

AMENDED STATEMENT OF CLAIM

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WITH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside of Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

June 12, 2006	Issued byLocal Registrar
	55 Munsee Street

TO: THE CORPORATION OF HALDIMAND COUNTY

45 Munsee Street North

P.O. Box 400 Cayuga, Ontario N0A 1E0

AND TO: ONTARIO PROVINCIAL POLICE

COMMISSIONER GWEN M. BONIFACE

777 Memorial Avenue

Orillia, Ontario L3V 7V3

AND TO: **ONTARIO PROVINCIAL POLICE**

INSPECTOR BRIAN HAGGITH

72 Hwy 54 Cayuga, Ontario N0A 1E0

AND TO: **HER MAJESTY THE QUEEN**

IN RIGHT OF ONTARIO

Ministry of the Attorney General

7th Floor

720 Bay Street Toronto, Ontario

M5G 2K1

CLAIM

- 1. The Plaintiffs KRP Enterprises Inc. and 1643078 Ontario Inc. claim on their own behalf, and on behalf of all Class Members all members of the Caledonia Business Class (as defined herein):
 - a. damages against the Defendant, The Corporation of Haldimand County,
 ("Haldimand County") for nuisance and for the closure of Argyle Street;
 - b. damages against the Defendant, Ontario Provincial Police Commissioner Gwen M. Boniface ("Commissioner Boniface") and Ontario Provincial Police Inspector Brian Haggith ("Inspector Haggith") for misfeasance in a public office and for negligence;
 - b1. damages against Her Majesty The Queen in the right of Ontario (the "Province of Ontario") for misfeasance in a public office of its servants and agents;
 - c. prejudgment interest payable pursuant to s. 128 of the *Courts of Justice*Act, R.S.O. 1990, c. C.43;
 - d. postjudgment interest payable pursuant to s. 129 of the *Courts of Justice Act*;
 - e. their costs on a substantial indemnity scale; and
 - f. such further and other relief as this Honourable Court deems just.
- 2. The Plaintiffs, Kevin Clark, Esta Clark, Jeffrey Acciaccaferro, Christina Acciaccaferro, Steve Tong, Lori Tong, Russell Kavanagh, Michelle Kavanagh, Paul

Durcek, Stefany Durcek, Quintin Chausse, Donna Chausse, Anne Marie VanSickle, and James Paul VanSickle claim on their own behalf and on behalf of all members of the Property Owners Class (as defined herein):

- a. damages against the Defendant, Haldimand County, for nuisance and for the closure of Argyle Street;
- b. damages against the Defendants, Commissioner Boniface and Inspector

 Haggith for misfeasance in a public office and for negligence;
- damages against the Province of Ontario for misfeasance in a public office
 of its servants and agents;
- d. damages against the Province of Ontario for nuisance;
- e. prejudgment interest payable pursuant to s. 128 of the *Courts of Justice*Act, R.S.O. 1990, c. C.43;
- f. postjudgment interest payable pursuant to s. 129 of the *Courts of Justice*Act;
- g. their costs on a substantial indemnity scale; and
- h. such further and other relief as this Honourable Court deems just.
- 3. The Plaintiff, J.P. Woolley Surveying Ltd. claims on its own behalf and on behalf of all members of the Contractors Class (as defined herein):
 - damages against the Defendants, Commissioner Boniface and Inspector

 Haggith for misfeasance in a public office;

damages against the Province of Ontario for misfeasance in a public office of its servants and agents; prejudgment interest payable pursuant to s. 128 of the Courts of Justice *Act*, R.S.O. 1990, c. C.43; postjudgment interest payable pursuant to s. 129 of the Courts of Justice Act;their costs on a substantial indemnity scale; and such further and other relief as this Honourable Court deems just. 4. The Plaintiff, Margaret Cook, claims on her own behalf and on behalf of all members of the Highway 6 Class (as defined herein): damages against the Defendants, Commissioner Boniface and Inspector Haggith for misfeasance in a public office; damages against the Province of Ontario for misfeasance in a public office of its servants and agents; prejudgment interest payable pursuant to s. 128 of the Courts of Justice Act, R.S.O. 1990, c. C.43; postjudgment interest payable pursuant to s. 129 of the Courts of Justice Act; their costs on a substantial indemnity scale; and

f. such further and other relief as this Honourable Court deems just.

Parties

- 5. The Plaintiff, KRP Enterprise Inc., ("KRP Enterprises") is a corporation incorporated under the laws of the Province of Ontario and carries on business at 232 Argyle Street South, Caledonia, in Haldimand County.
- <u>6.</u> KRP Enterprises is a franchisee of Dairy Queen Canada and carries on a retail business selling fast food and frozen food products.
- 7. The Plaintiff, 1643078 Ontario Inc., ("1643078") is a corporation incorporated under the laws of the Province of Ontario and carries on business at 345 Argyle Street, Caledonia, in Haldimand County.
- <u>8.</u> 1643078 carries on the business of the St. George Arms, a casual dining restaurant.
- 9. The Plaintiffs, Kevin Clark and Esta Clark, are the registered legal owners in joint tenancy and the occupants of property known municipally as 86 Braemar Avenue, Caledonia, Ontario.
- 10. The Plaintiffs, Christina Acciaccaferro and Jeffrey Acciaccaferro, are the registered legal owners in joint tenancy and the occupants of property known municipally as 14 Thistlemoor Drive, Caledonia, Ontario.
- 11. The Plaintiffs, Steve Tong and Lori Tong, are the registered legal owners in joint tenancy and the occupants of property known municipally as 138 Braemar Avenue, Caledonia, Ontario.

- 12. The Plaintiffs, Russell Kavanagh and Michelle Kavanagh, are the registered legal owners in joint tenancy and the occupants of property known municipally as 223 Kinross Street, Caledonia, Ontario.
- 13. The Plaintiffs, Paul Durcek and Stefany Durcek, are the registered legal owners in joint tenancy and the occupants of property known municipally as 238 Kinross Street, Caledonia, Ontario.
- 14. The Plaintiffs, Quintin Chausse and Donna Chausse, are the registered legal owners in joint tenancy and the occupants of property known municipally as 226 Kinross Street, Caledonia, Ontario.
- 15. The Plaintiffs, Anne Marie VanSickle and James Paul VanSickle, are the registered legal owners in joint tenancy and the occupants of property known municipally as 160 Braemar Avenue, Caledonia, Ontario.
- 16. The Plaintiff, J.P. Woolley Surveying Ltd., is a corporation incorporated under the laws of the Province of Ontario and carries on the business of land surveying with its head office at 125 Nairn Street, Caledonia, Ontario.
- 17. The Plaintiff, Margaret Cook, is a sole proprietor who carries on business under the name of Verrips Greenhouses and retails plant products, horticultural products and garden supplies at 2990 Highway 6, Jarvis, Ontario.
- 18. The Defendant, Haldimand County, is a municipal corporation incorporated under the *Town of Haldimand Act*, 1999, S.O. 1999, c. 14, Schedule B, and is subject to the provisions of the *Municipal Act*, 2001, S.O. 2001, c.25.
- On or about October 1, 2003, in accordance with s. 10 of the *Police Services Act*,
 R.S.O. 1990, c. P.15, Haldimand County entered into an agreement with the Solicitor General of Ontario (the "Haldimand Police Services Agreement") under which it was

agreed that police services would be provided to Haldimand County by the Ontario Provincial Police (the "OPP") for a 5 year period.

- <u>20.</u> The Defendant, Commissioner Boniface, is the Commissioner of the OPP and is the chief of police of the police officers providing police services on Highway 6 and to Haldimand County under the Haldimand Police Services Agreement.
- 21. The Defendant, Inspector Haggith, is the Detachment Commander of the OPP for Haldimand County and is the chief of police of the police officers providing police services to Haldimand County in accordance with the Haldimand Police Services Agreement.
- 22. The Province of Ontario, is a party pursuant to s. 5(1) of the *Proceedings Against the*Crown Act, R.S.O. 1990, c. P.27, for torts committed by its servants, the Minister of

 Transportation, the Minister of Aboriginal Affairs, the Minister of Community Safety
 and Correctional Services and the Attorney General of Ontario, as set out below.

Classes and Class Members

- 23. A Class Member is a member of the Class as The respective Classes referred to in paragraphs 1 to 4 above are described herein.
- 11. The Class is comprised of all those persons, including individuals, corporations or organizations, resident in the Province of Ontario who:
 - a. carry on a business, whether for profit or non-profit; or
 - b. own property,
 - and who have suffered financially as a result of one or more of the following incidents:

- (i) the closure of Argyle Street from April 20, 2006 until it was reopened on May 24, 2006;
- (ii) the closure of Highway 6 between Green Road and the junction of Argyle Street South from April 20, 2006 until the date that it is reopened for traffic or is duly closed in accordance with the provisions of the *Public Transportation and Highway Improvement Act*, R.S.O. 1990, c. P.50;
- (iii) the failure to enforce the Order of the Honourable Justice B. Matheson dated March 3, 2006, and the Orders of the Honourable Justice T. Marshall dated March 9, March 17 and March 28, 2006 and remove the Respondents (as defined in the said Orders) from the Douglas Creek Estates; and
- (iv) the interruption of hydro services arising from damage done to the Hydro One Caledonia transformer station on May 22, 2006.
- 24. The Caledonia Business Class is comprised of all those persons, including sole proprietors, partnerships, corporations or organizations, whether for profit or non-profit, with places of business within the N3W Canada Post postal division whose businesses have been affected by the closure of Argyle Street from April 20, 2006 until May 24, 2006, the occupation by protestors of the Douglas Creek Estates or the interruption of hydro service from damage done to the Hydro One Caledonia transformer station on May 22, 2006, excluding members of the Contractors Class.
- 25. The Property Owners Class is comprised of all those persons, including individuals, trusts, corporations or organizations, who, on February 28, 2006, owned or occupied real property located within the N3W Canada Post postal division, and have been affected by the occupation by protestors of the Douglas Creek Estates, the closure of Argyle Street from April 20, 2006 until May 24, 2006, the closure of Highway 6 between Green Road and the junction of Argyle Street South from April 20, 2006

- until June 13, 2006, and the interruption of hydro service from damage done to the Hydro One Caledonia transformer station on May 22, 2006, excluding members of the Caledonia Business Class.
- 26. The Contractors Class is comprised of all contractors or subcontractors of Henco Industries Limited or their agents, who were contracted to provide services and materials to owners, developers, builders or contractors on the Douglas Creek Estates subdivision on February 28, 2006.
- 27. The Highway 6 Class is comprised of all those persons, including sole proprietors, partnerships, corporations or organizations, resident in the Province of Ontario who carry on a business, whether for profit or non-profit whose businesses have been affected by the closure of Highway 6 between Green Road and the junction of Argyle Street South from April 20, 2006 until June 13, 2006 and the occupation of protestors on the Douglas Creek Estates, excluding members of the Caledonia Business Class.

Course of Events

- On or about February 28, 2006 a group of protesters occupied a parcel of property in Caledonia that had been registered under the Ontario Land Titles Act R.S.O. 1990, c. L.5, as a Plan of Subdivision in the Land Registry Office for the Land Titles Division of Haldimand comprised, firstly, as Parts of Lot B and C, Range West of Plank Road, geographic township of Oneida, in Haldimand County and being Parts 2 and 3 on Reference Plan 18R-6217 and, secondly, as part of Lot 18, Broken Front Concession on the Grand River, geographic Township of Oneida, in Haldimand County and being Parts 2 and 3 on Reference Plan 18R-6217 (hereinafter referred to as the "Douglas Creek Estates").
- 29. The owner in fee simple with an absolute title to the Douglas Creek Estates is was on February 28, 2006 Henco Industries Limited, ("Henco") a corporation incorporated under the laws of the Province of Ontario.

- 30. The Douglas Creek Estates is comprised of approximately 72 lots in Phase I and several other blocks reserved for future development. It also comprises of 4 proposed highways to be dedicated to Haldimand County in accordance with the provisions of the *Planning Act*, R.S.O. 1990, c. P.13, specifically, the extension of Thistlemoor Drive, Surrey Street, Oban Crescent, and Cheshire Crescent.
- 31. On or about March 3, 2006 Henco brought an application to the Superior Court of Ontario at Cayuga against the Haudenosaunee Six Nations Confederacy Council, Janie Jamieson, Dawn Smith, any agent or person acting under their instructions, John Doe, Jane Doe and The Corporation of Haldimand County requesting, *inter alia*, the following relief:
 - a. an interim and permanent injunction restraining the Haudenosaunee Six Nations Confederacy Council (the "Confederacy") and the individual Respondents and their servants or agents, whose identities are unknown, from interfering with Henco or its employees or agents, or Henco's contractors or subcontractors, or their agents, use of roadways known municipally as Thistlemoor Drive and Surrey Street, formerly in the Town of Caledonia and the Township of Oneida, now known as The Corporation of Haldimand County, or from in any way obstructing these and other roadways in Douglas Creek Estates or preventing Henco or its employees or agents, or Henco's contractors or subcontractors, or their agents, from using these or other roadways for the purposes of entering Douglas Creek Estates;
 - b. an interim and permanent injunction restraining the Confederacy and the individual Respondents, their servants and agents, and any other person having notice of this injunction, from hindering, interfering with, intimidating, physically obstructing or otherwise impeding the operations of Henco or its employees or agents, or Henco's contractors or

subcontractors, or their agents, in the performance of work relating to the construction of the Douglas Creek Estates subdivision;

- c. a mandatory Order requiring the Respondents to remove any vehicles and to tear down and remove any barricades owned, placed or maintained by them, constructed across Thistlemoor Drive and Surrey Street, the public highway and/or roadway, or any other obstruction on the public highway and/or roadway, or any other obstruction on the public highway and/or roadway, owned and maintained by The Corporation of Haldimand County, preventing access to the Douglas Creek Estates;
- d. an Order requiring that any peace officer of the Ontario Provincial Police shall, at the request of the Sheriff, accompany the Sheriff and assist in execution of this Order, including the removal of any persons who refuse the request of the Sheriff to obey the provisions of the interlocutory injunction Order.
- 32. On March 3, 2006, Justice B Matheson issued an Order providing for the following:
 - "1. THIS COURT ORDERS an interim and interlocutory injunction restraining the Haudenosaunee Six Nations Confederacy Council ('Confederacy Council') and the individual Respondents and their servants or agents, whose identity is unknown, from interfering with the Applicant [Henco] or its employees or agents, or the Applicant's contractors or subcontractors, or their agents, use of roadways known municipally as Thistlemoor Drive and Surrey Street, formerly in the Town of Caledonia and the Township of Oneida, now known as The Corporation of Haldimand County, or from in any way obstructing these or other roadways in Douglas Creek Estates or preventing the Applicant or its employees or agents, or the Applicant's contractors or subcontractors, or their agents, from using these or other roadways for the purpose of

entering Douglas Creek Estates more particularly described in Schedule 'A' attached hereto;

- 2. THIS COURT FURTHER ORDERS an interim and interlocutory injunction restraining the Confederacy Council and the individual Respondents, their servants or agents, and any other person having notice of the injunction, from hindering, interfering with, intimidating, physically obstructing or otherwise impeding the operations of the Applicant or its employees or agents, or the Applicant's contractors or subcontractors, or their agents, in the performance of work relating to the construction of the Douglas Creek Estate subdivision ('the subdivision') within the area, set out at Schedule 'A', until the trial of this matter or until such time as this Honourable Court may direct;
- 3. THIS COURT FURTHER ORDERS that an interim mandatory Order requiring the Respondents to remove any vehicles and to tear down and remove any barricades owned, placed or maintained by them, constructed across Thistlemoor Drive and Surrey Street, the public highway and/or roadway, or any other obstruction on the public highway and/or roadway, owned and maintained by the Respondent, The Corporation of Haldimand County, preventing access to the Douglas Creek Estates;
- 4. THIS COURT FURTHER ORDERS that any peace officer of the Ontario Provincial Police shall, at the request of the Sheriff, accompany the Sheriff and assist in the execution of the Order, including the removal of any persons who refuse the request of the Sheriff to obey the provisions of the interlocutory Order.
- 5. THIS COURT FURTHER ORDERS that posting of the Notice of Application, Notice of Motion and any Court Orders at Thistlemoor Drive and Surrey Street in Douglas Creek Estates and at the municipal offices at

The Corporation of Haldimand County at 45 Munsee Street North, P.O. Box 400, Cayuga, Ontario, and by delivery of one copy, of the Notice of Application and Court Orders to any persons manning the barricades, shall be good and sufficient service of the Notice of Motion, Notice of Application and any Court Order on the Respondents, Haudenosaunee Six Nations Confederacy Council, Janie Jamieson, Dawn Smith, Tom Deer, or any agent or person acting under their instruction, John Doe, Jane Doe and other persons unknown;

- 6. THIS MOTION is returnable before this Court at 55 [sic] Munsee Street North, Cayuga, Ontario on March 9, 2006 at 10:00 a.m."
- 33. On the return of the motion, on March 9, 2006, Justice T. Marshall, after hearing the submissions of counsel for Henco and for The Corporation of Haldimand County, issued an Order making permanent the injunctions ordered by Justice B. Matheson on March 3, 2006.
- 34. On March 17, 2006, Justice T. Marshall, on a motion brought by Henco for contempt, made the following order:
 - "1. THIS COURT ADJUDGES that the Respondents, including unknown persons identified in the Application as John Doe and Jane Doe, with the exception of the Corporation of Haldimand County and Tom Deer, being persons present at the barricades and blocking access to Douglas Creek Estates, as described in Schedule 'A' attached to this Order (hereainafter referred to as 'the Respondents') are in contempt of the Order of Justice B. Matheson dated March 3, 2006;

- 2. THIS COURT ORDERS that the Sheriff shall:
 - Attend at Douglas Creek Estates forthwith and read aloud to any persons present the Order of Mr. Justice Matheson dated March 3, 2006 and this Order; and
 - a) Distribute copies of this Order to any persons present.
- 3. THIS COURT FURTHER ORDERS that the Respondents are hereby sentenced:
 - a) to 30 days imprisonment;
 - b) this sentence is suspended for a term of 6 months;
 - c) the suspension takes effect immediately after the Respondents have been fingerprinted and photographed as required by the *Identification of Criminals Act*, R.S.C. [sic] c. I-1, to be released immediately thereafter;
 - d) this suspended sentence is conditional for six months, upon the Respondents keeping the peace and being of good behaviour, including complying with the Orders of the Court and not returning to Douglas Creek Estates; and
 - e) there shall be no other terms for the release of the Respondents;
- 4. THIS COURT FURTHER ORDERS that Warrants of Committal shall be issued forthwith in accordance with paragraphs 1 and 3 of this Order. These Warrants are not to be executed until on or after Wednesday, March 22, 2006 at 2:00 pm.

- 5. THIS COURT FURTHER ORDERS that the Respondents be made aware of the consequences of failing to quit the blockade and leave Douglas Creek Estates and be asked to quit the blockade before the Warrants of Committal are executed.
- 6. THIS COURT FURTHER ORDERS that any persons present at Douglas Creek Estates as of and after Wednesday, March 22, 2006 at 2:00 pm in contravention of the Order of Mr. Justice Matheson dated March 3, 2006, are subject to arrest pursuant to the Warrants of Committal issued in accordance with paragraph 4 of this order;
- 7. THIS COURT ORDERS that the Respondents may leave their objects or things at the site for up to 48 hours starting March 22, 2006 at 2:00 pm, provided these objects or things are not blocking any roadway, before the Applicant is entitled to remove these objects or things. The Applicants may remove any object or thing still blocking the lawful flow of traffic on Thistlemoor Drive, Surrey Street or any other public roadway in Douglas Creek Estates; and may also remove any objects or things present on any lands owned by the Applicant after 48 hours after March 22, 2006 at 2:00 pm. The Applicant is not responsible for the welfare or safe keeping of the objects or things left by the Respondents;
- 8. THIS COURT ORDERS THAT this order imposes duties and obligations on non-parties to respect the terms of this Order, including complying with the order of Justice Matheson dated March 3, 2006 attached hereto as Schedule 'B'."
- 35. On March 28, 2006, Justice T. Marshall, on a motion brought by Henco for contempt, made the following order:

"1. THIS COURT ADJUDGES that the Respondents, including unknown persons identified in the Application as John Doe and Jane Doe, being persons present at the barricades and blocking access to Douglas Creek Estates, as described in Schedule 'A' attached to this Order (hereinafter referred to as 'the Respondents') are in civil and criminal contempt of the Order of Justice B. Matheson dated March 3, 2006;

2. THIS COURT ORDERS that the Sheriff shall:

- Attend at Douglas Creek Estates forthwith and read aloud to any persons present the Order of Mr. Justice Matheson dated March 3, 2006 and this Order; and
- b) Distribute copies of this Order to any persons present.
- 3. THIS COURT SUSPENDS the passing of sentence and directs that the Respondents be released on the conditions prescribed in a probation order for a term not exceeding six months, pursuant to s. 731(1) of the *Criminal Code*.
- 4. THIS COURT FURTHER ORDERS THAT CONDITIONS OF THE PROBATION ORDER shall include the compulsory conditions contained in s. 732.1(2) of the *Criminal Code*.
- 5. THIS COURT FURTHER ORDERS THAT THE CONDITIONS OF THE PROBATION ORDER shall include the compulsory conditions contained in s. 731.1 of the *Criminal Code*:
 - a) Accompany the police to be fingerprinted and photographed.

- b) Not attend within 100 feet of the Douglas Creek Estate site except for the purpose of normal travel on Argyle Street.
- 6. THIS COURT FURTHER ORDERS THAT Warrants of Arrest shall be issued forthwith in accordance with paragraphs 1 and 3 of this Order.
- 7. THIS COURT FURTHER ORDERS THAT the Respondents be made aware of the consequences of failing to quit the blockade and leave Douglas Creek Estates and be asked to quit the blockade before the Warrants of Arrest are executed.
- 8. THIS COURT FURTHER ORDERS THAT any persons present at Douglas Creek Estates as of and after Wednesday, March 22, 2006 at 2:00 pm in contravention of the Order of Mr. Justice Matheson dated March 3, 2006, are subject to arrest pursuant to the Warrants of Arrest issued in accordance with paragraph 6 of this order;
- 9. THIS COURT ORDERS THAT the Respondents may leave their objects or things at the site for up to 48 hours starting March 22, 2006 at 2:00 pm, provided these objects or things are not blocking any roadway, before the Applicant is entitled to remove these objects or things. The Applicants may remove any objects or things still blocking the lawful flow of traffic on Thistlemoor Drive, Surrey Street or any other public roadway in Douglas Creek Estates; and may also remove any objects or things present on any lands owned by the Applicant after 48 hours after March 22, 2006 at 2:00 pm. The Applicant is not responsible for the welfare or safe keeping of the objects or things left by the Respondents;
- 10. THIS COURT ORDERS THAT this order imposes duties and obligations on non-parties to respect the terms of this Order, including complying with

the order of Justice Matheson dated March 3, 2006, attached hereto as Schedule 'B'."

- 36. The Sheriff of the Superior Court of Justice at Cayuga attended at the Douglas Creek Estates and served each of the Orders in accordance with the directions set out in the Orders.
- 37. The Sheriff of the Superior Court of Justice at Cayuga has requested the assistance of the OPP to enforce each of the above Orders.
- 38. On or about April 20, 2006, peace officers attended at Douglas Creek Estates to enforce the Order dated March 28, 2006, and arrested 16 of the protestors. The protestors were fingerprinted and released. Within hours many of the protestors were back at the Douglas Creek Estates.
- 39. Aside from the attendance on April 20, 2006, the OPP has taken no further steps to remove the protestors from the Douglas Creek Estates.
- 40. As a result of the attendance on April 20, 2006, the protestors proceeded to do the following:
 - a. They barricaded Argyle Street and prevented any public passage or traffic from running north or south;
 - b. They piled tires on Argyle Street, poured gasoline on the tires, and set fire to them;
 - c. They set fire to and completely destroyed the wooden bridge on Sterling Street that passes over the CN rail line;
 - d. They started a brush fire on the southern shore of the Grand River;

- e. They prevented the fire officers from the Haldimand County Fire Department from attending to the fires referred to in subparagraphs c. and d. above;
- f. They placed barricades on Highway 6 between Argyle Street and Green Road preventing public passage or traffic from passing either north or south on Highway 6;
- g. They threw a vehicle over the barrier of the Highway 6 overpass which landed on Municipal Highway 54;
- h. They recklessly drove ATV vehicles in a dangerous manner throughout the Douglas Creek Estates and along adjoining property, which included a grade school; and
- i. They broke and entered into the model home owned by Henco, destroyed property belonging to Henco and carried away personal property that belonged to Henco.
- 41. On May 22, 2006, control systems at the hydro transformer station located on Argyle Street South, just south of the protestors' barricade, were purposefully destroyed and set on fire by participants in the protest causing over \$1 million in damages and power failure throughout Haldimand County and Norfolk County for periods of time ranging from 3 to 48 hours. The act was recorded on security equipment installed at the site and the perpetrators were known to the OPP.
- 42. Since May 22, 2006, the following criminal acts have occurred:
 - a. on or about May 28, 2006, Matt Walcoff, a business reporter for the Kitchener Record, was assaulted and had his digital camera stolen by

protestors on municipal property outside of the Douglas Creek Estates in plain view of OPP officers watching the incident;

- b. on or about June 4, 2006, after the OPP had refused Hydro One's request to provide policing of the Caledonia transformer station, a 20 year old student, William Cowan, who had been hired by a private security firm to guard the transformer station, was swarmed by a number of the protestors who smashed the security car while he was inside the vehicle, threatened him with death if he did not leave, then put gasoline on the car and entirely destroyed the vehicle;
- c. at approximately 10:00 pm on June 4, 2006, David Hartless, a police officer with the Hamilton Police Services, walked outside of his house, which is located on Braemar Avenue approximately 50 feet from Douglas Creek Estates, and observed about 40 to 50 protestors threatening and harassing 3 males who had been sitting at the end of the street passively smoking cigarettes. Mr. Hartless, asked one of the female protestors what was going on and was told: "You got no business here fucking leave or I will knock you dead right now." When the protestors began physically attacking one of the males, he intervened and found himself being punched in the back and thrown to the ground by other protestors shoved and pushed around by other protestors who also attempted to punch him. One of the protestors had a hand held taser and attempted to shock him with it. Only when other residents of the street came out of their houses and formed a line of defence which Mr. Hatless was able to get behind did the assault stop. The OPP were called, took a report and took no further steps against the protestors;
- d. on June 9, 2006, an elderly couple, Kathe Golke and Gunther Golke, of Simcoe, Ontario, stopped their car on Argyle Street near the protestors' barricade to look into Douglas Creek Estates. The couple were followed

into the nearby Canadian Tire parking lot by approximately 25 protestors who surrounded their car, would not let them leave, and taunted them with threats of death or physical harm. One protestor put his hand through the open window and others jumped on the vehicle. Mr. Golke suffered a heart attack that required treatment at West Haldimand Memorial Hospital. This incident took place in full view of nearby OPP officers;

- e. on June 9, 2006, two CH TV newsmen, Ken MacKay, a reporter and Nick Garbuttt, a cameraman, were assaulted by protestors when they attempted to film the incident referred to in subparagraph d. above. When they arrived at the scene, Garbutt set up his television camera approximately 50 feet away and was told by one of he OPP officers at the site not to get any closer. A group of the protestors left the Golke's car, walked past two OPP officers, and demanded that Mr. Garbutt hand over his camera and film. When one of the protestors reached for the camera Mr. Garbutt grabbed his arm. He was then spun around, thrown against the side of the CH TV van, held in a head lock and punched in the head. His camera was taken and the video tape inside was removed. Mr. Garbutt required treatment at West Haldimand General Hospital. Mr. MacKay reported that approximately 15 OPP officers witnessed the assault, but took no steps to prevent it; and
- f. on the evening of June 9, 2006, the residents of Thistlemoor Avenue, were requested by members of the OPP to vacate their premises for the evening.
- 43. As of the date of this Statement of Claim, no charges have been laid with respect to any of the offences set out in paragraphs 24 and paragraph 40.
- 44. No arrests were made at the scene by the attending OPP officers, nor have any subsequent arrests been made as of the date of this Statement of Claim, with respect to the any of the incidents referred to in paragraph 26 42.

- 45. On July 4, 2006 the Minister of Public Infrastructure and Renewal became the legal registered owner of the Douglas Creek Estates.
- 46. Since July 4, 2006, the Minister of Public Infrastructure and Renewal has allowed the protestors to continue to occupy the Douglas Creek Estates.
- 47. Since July 4, 2006, the protestors and the Province of Ontario, in disregard for the quiet enjoyment of the neighbouring property owners, have engaged in or allowed the following acts of nuisances;
 - a. on a continuing basis loud noises have emanated from the Douglas Creek

 Estates at all hours of the night, including gunfire, shouting and yelling, heavy

 machinery, unmuffled ATVs, music and drum beating;
 - b. smoke and smells blow into the property from open fires that have been allowed
 on the Douglas Creek Estates in violation of the municipal by-laws;
 - c. fires have taken place on the Douglas Creek Estates and the protestors have not allowed the municipal fire department, the OPP or the Ontario Fire Marshall to attend to investigate the fires;
 - d. the protestors verbally assault the residents making derogatory and racial comments and threatening them with physical harm;
 - e. the protestors have raced ATVs and other vehicles at high speeds both behind the properties and throughout the survey;
 - f. rocks and other objects have been thrown onto properties adjoining the Douglas
 Creek Estate causing damage to property;

- g. the protestors appear in camouflage attire, with bandanas covering their faces and carry bats or other large objects in a threatening manner;
- h. there is a high volume of vehicle traffic arising from OPP patrols, gawkers wishing to view the occupation site, media and government officials;
- i. checkpoints have been established by the OPP at which every vehicle is stopped and the occupants questioned before they can proceed into the survey; and
- bright security lights have been erected along the perimeter which are on at all times disrupting sleep;
- k. the local school is required to be under constant surveillance by OPP officers;
 and
- children who attend the local school have been required to undergo evacuating procedures and have had to engage in drills where they are removed to the local arena.

Closure of Argyle Street

- 48. Argyle Street is a highway that is within the jurisdiction of Haldimand County in accordance with Part III of the *Municipal Act*, 2001.
- 49. Haldimand County has taken no steps to close Argyle Street in accordance with the requirements of the *Municipal Act*, 2001.
- <u>50.</u> From March 20, 2006 to May 24, 2006 there has been no public passage or traffic allowed by the protestors upon Argyle Street from the Third Line to Celtic Drive.

- 51. Haldimand County took no steps, either through its own staff or through the OPP to ensure passage at common law along Argyle Street South for the period from March 20, 2006 to May 24, 2006.
- 52. The police officers of the OPP have taken no steps to ensure passage at common law through Argyle Street from March 20, 2006 to May 24, 2006.

Closure of Highway 6

- 53. From April 20, 2006 onward, and as of the date of this Statement of Claim, there has been no public passage or traffic allowed by the protestors along Highway 6.
- 54. Highway 6 has been closed for a period exceeding 72 hours in contravention of s. 29(3) of the *Public Transportation and Highway Improvement Act*.
- 55. Highway 6 has not been closed in accordance with the provisions of s. 29(2) of the *Public Transportation and Highway Improvement Act*.
- The OPP has jurisdiction over Highway 6 under the *Police Services Act* R.S.O.R.S.O. 1990, c. P.15.

Duties of Haldimand County

57. Haldimand County has a duty to the plaintiffs and Class Members KRP Enterprises Inc., 1643078 Ontario Inc. and the members of the Caledonia Business Class and to Kevin Clark, Esta Clark, Christina Acciaccaferro, Jeffrey Acciaccaferro, Steve Tong, Lori Tong, Russell Kavanagh, Michelle Kavanagh, Paul Durcek, Stefany Durcek, Quintin Chausse, Donna Chausse, Anne Marie VanSickle and James Paul VanSickle and the members of the Property Owners Class to provide for the common law right of passage over the highways that are within its jurisdiction.

- 58. Haldimand County can only close a highway in accordance with the provisions of Part III of the *Municipal Act*, 2001.
- 59. Haldimand County further has a duty to the plaintiffs and Class Members KRP Enterprises Inc., 1643078 Ontario Inc. and the members of the Caledonia Business Class and to Kevin Clark, Esta Clark, Christina Acciaccaferro, Jeffrey Acciaccaferro, Steve Tong, Lori Tong, Russell Kavanagh, Michelle Kavanagh, Paul Durcek, Stefany Durcek, Quintin Chausse, Donna Chausse, Anne Marie VanSickle and James Paul VanSickle and the members of the Property Owners Class to provide that the highways that are within its jurisdiction are free of nuisances and open for common passage.

Duties of Commissioner Boniface and Inspector Haggith

- 60. The police officers of the OPP have failed to provide police services in accordance with the Haldimand Police Services Agreement and in accordance with the responsibilities set out in s. 19(1) of the *Police Services Act*, specifically, maintaining a traffic patrol on Highway 6.
- 61. The police officers of the OPP have failed to carry on the duties of police officers, in contravention of s. 42 of *the Police Services Act*, specifically,
 - a. They have failed to preserve the peace;
 - b. They have failed to apprehend criminals and other offenders and others who may lawfully be taken into custody, specifically,
 - (i) they have failed to carry out the mandatory order of the Honourable Justice Matheson dated March 3, 2006 and the Honourable Justice Marshall dated March 9, 2006, requiring them

- to remove those who were requested by the Sheriff to comply with the said Order;
- (ii) they have failed to execute the Warrants of Committal issued by the Honourable Justice Marshall in his Order of March 17, 2006;
- (iii) they have failed to execute Warrants of Arrest in accordance with paragraph 8 of the Order of the Honourable Justice Marshall dated March 28, 2006;
- c. The have failed to prevent crimes and other offences, in particular;
 - (i) they have wilfully ignored the criminal contempt of the Orders of Justice T. Marshall dated March 17 and March 28, 2006 by the Respondents;
 - they have wilfully ignored violations of suspended sentences and probation orders by the Respondents who returned to the Douglas Creek Estates following their arrest under the Orders of Justice T. Marshall dated March 17 and March 28, 2006;
 - (iii) they have wilfully ignored acts of break and entry and damage to private property, specifically, the buildings and contents owned by Henco located on the Douglas Creek Estates;
 - (iv) they have wilfully ignored acts of theft, specifically, the conversion to their own use by the protestors of property belonging to Henco;
 - (v) they have wilfully ignored acts of public mischief that have taken place, specifically the act by protestors of throwing a vehicle over

the Highway 6 bypass damaging both the bridge and the municipal road below, and thereby further allowing the endangerment of vehicular and pedestrian traffic passing along the municipal highway below;

- (vi) they have wilfully ignored acts of theft and public mischief to take place by allowing the protestors to take property, specifically, hydro towers owned by Hydro One, and converting them to their own use;
- (vii) they have wilfully ignored acts of arson that have taken place, such as the burning of the Sterling St. bridge;
- (viii) they have failed to protect the Hydro One Caledonia transformer station when they knew that the transformer station would have been a likely target of attack;
- d. they have failed to provide passage at common law over Argyle Street, as they are required to do as constables under common law;
- e. they have failed to provide passage at common law over Highway 6, as they are required to do as constables under common law;
- 62. The willful destruction of the Hydro One Caledonia transfer station was a direct and foreseeable consequence of the willful failure on the part of the OPP police officers to carry out their duties as set out in paragraph 42 61 above.
- 63. Commissioner Boniface wilfully instructed officers of the OPP not to make any arrests of any protestors without the prior authorization of OPP headquarters.

- 64. Commissioner Boniface owes a duty to the plaintiffs and the Class Members members of each of the Classes, referred to in paragraph 24 to 27 above (hereinafter collectively referred to as the "Classes", to ensure that the police officers of the OPP carry out their duties in accordance with the *Police Services Act*.
- 65. Commissioner Boniface has breached her duty under s. 41 of the *Police Services Act*, as follows:
 - a. she has knowingly allowed police officers under her authority to violate their duties as set out in paragraph 42 61 above;
 - b. she has willfully frustrated the Orders of the Honourable Justice Matheson and the Honourable Justice Marshall in determining, and stating to the representative of the Premier of Ontario, that the protestors would not be forcibly removed from the Douglas Creek Estates in any circumstance;
 - c. she has acquiesced in a commitment by the Minister of Aboriginal Affairs for Ontario not to prosecute the protestors for any criminal offences,
 - d. she has instructed the Defendant, Inspector Haggith, to refrain from enforcing the Orders of the Honourable Justice Matheson and the Honourable Justice Marshall; and
 - e. she has carried out her duties in a manner that ignores the needs of the community of Haldimand County, specifically, she has restricted the police officers under her jurisdiction from carrying out their duties for fear the exercise of their duties in Haldimand County may, hypothetically, promote breaches of the peace in communities outside of Haldimand County.

- <u>66.</u> Inspector Haggith has breached his duty under s. 41 of the *Police Services Act* in the following manner:
 - a. by failing to oversee the Cayuga Detachment of the OPP in accordance with the needs of the community of Haldimand County;
 - b. by knowingly allowing police officers under his authority to violate their duties as set out in paragraph 42 43 above;
 - c. acquiescing in the frustration of the Orders of the Honourable Justice Matheson and the Honourable Justice Marshall by the Defendant, Commissioner Boniface, ensuring that the protestors would not be forcibly removed from the Douglas Creek Estates; and
 - d. acquiescing in a commitment by the Minister of Aboriginal Affairs for
 Ontario not to prosecute the protestors for any criminal offences
- 67. If the damage to the Hydro One Caledonia transformer station is determined not to be the direct and foreseeable consequence of a willful act on the part of the Defendants, Commissioner Boniface and Inspector Haggith, as set out above, in the alternative, the plaintiffs plead that Commissioner Boniface and Inspector Haggith were negligent in carrying out their duties under s. 41 of the *Police Services Act*, when they knew or ought to have known that the Hydro One transformer station was a likely target for vandalism by the protestors and that they failed to take any reasonable precautions to ensure that the transformer station was protected during the continued occupation of the Douglas Creek Estates by the protestors.
- 68. Commissioner Boniface and Inspector Haggith both would have known, or ought to have foreseen, that the failure on their part to carry out their duties would cause financial harm to business and property owners, specifically the plaintiffs and Class

Members and the members of the Caledonia Business Class and the Property Owners Class.

Misfeasance of Public Office by Ministers of the Province of Ontario

- 69. By virtue of s. 2 of the *Public Transportation and Highway Improvement Act*, Highway 6 is under the jurisdiction and control of the Ministry of Transportation for the Province of Ontario.
- <u>Minister of Transportation cannot authorize any use or construction of any building or structure in or on any space or area located, over, across or under a highway under his jurisdiction unless such use or construction can be carried out without unduly interfering with the public use of the highway.</u>
- 71. The Minister of Transportation has allowed Highway 6 from Argyle Street to Green Road to be occupied by the protestors from April 20, 2006 to June 13, 2006 and took no steps to remove the protestors from the highway, which prevented public use of the highway during the entire period contrary to s. 2(3) of the *Public Transportation and Highway Improvement Act*.
- The Minister for Aboriginal Affairs, David Ramsey, in an agreement with the Haudenosaunee Six Nations Confederacy Council, made on or about April 21, 2006, agreed not to proceed any further with any criminal charges arising from the intervention by the OPP on April 20, 2006.
- 73. This agreement by the Minister of Aboriginal Affairs is outside of his authority and improperly interferes with the lawful duties of police officers of the OPP, the duties of the Defendants, Commissioner Boniface and Inspector Haggith and the duties and obligations of the Attorney General of Ontario.

- 74. The Minister of Aboriginal Affairs, in an agreement with Haudenosaunee Six Nations
 Confederacy Council made on or about April 21, 2006, also agreed to a moratorium
 on development on the Douglas Creek Estates, which agreement was made without
 the consent or consultation with the legal owners of the property, and which
 moratorium applied immediately and contrary to the provisions of the *Planning Act*.
- 75. The plaintiffs plead that agreements made by the Minister of Aboriginal Affairs, as set out in paragraphs 72 and 74 above, were made with the knowledge and acquiescence of the Attorney General of Ontario and that such acquiescence constitutes a violation of s. 5(b) of the *Ministry of the Attorney General Act*, R.S.O. 1990, c. M.17, as an administration of public affairs that is contrary to law.
- <u>Minister of Community Safety and Correctional Services, has a duty to ensure that adequate and effective police services are provided at the municipal and provincial levels.</u>
- 77. On May 3, 2006, the Minister of Community Safety and Correctional Services, Monte Kwinter, provided a written undertaking to the Haudenosaunee Six Nations Confederacy Council that he would not ask the federal government to provide military support to a police force in Ontario in accordance with a protocol that was established between the Province of Ontario and the Government of Canada.
- 78. The undertaking given by the Minister of Community Safety and Correctional Services, as set out in paragraph 77, was in excess of his authority as Minister of Community Safety and Correctional Services and wrongful interference with the lawful duties of the Defendants, Commissioner Boniface and Inspector Haggith.
- 79. The Solicitor General has failed to ensure that the OPP has sufficient police services to carry out the following:

- a. the enforcement of the Orders of The Honourable Mr. Justice Matheson dated March 3, 2006 and the Orders of The Honourable Mr. Justice Marshall dated March 9, 17 and 28, 2006, and
- b. to ensure that Argyle Street and Highway 6 were free of nuisance and open for passage.
- 80. Each of the Minister of Transportation, the Minister of Aboriginal Affairs, the Minister of Community Safety and Correctional Services and the Attorney General owe a duty to the public, and to the plaintiffs and to all members of the Classes to ensure that they carry out their duties within the authority provided to them by their governing legislation.
- 81. Each of the breaches by the Minister of Transportation, the Minister of Aboriginal
 Affairs, the Minister of Community Safety and Correctional Services and the
 Attorney General of their statutory duties have contributed to the damages suffered by
 the Plaintiffs and the members of the Classes.

Damages

- 82. The occupation by the protestors of the Douglas Creek Estates has received wide local and national coverage since the beginning of the occupation on February 28, 2006.
- 83. On April 20, 2006, when the protestors closed Argyle Street and Highway 6, the various illegal acts of the protestors received wide notoriety from the local and the national press. Stories regarding the closure of Argyle Street and Highway 6 were printed in the *Hamilton Spectator*, the *Globe and Mail*, the *Toronto Star*, the *National Post* and the *Toronto Sun* and pictures of the barricades appeared on CHTV, Global, CBC and CTV.

- 84. Caledonia is a community situated on the Grand River, which has been designated by the Government of Canada as a Heritage River. Business in the community is greatly dependent upon tourism by those wishing to visit the Grand River or those en route to Port Dover on Lake Erie or Hamilton on Lake Ontario.
- 85. The prolonged occupation by the protestors, which has been allowed by the Defendants in contravention of their respective duties, has created an impression among prospective visitors to Caledonia or to prospective purchasers of property in Caledonia and the surrounding area that Caledonia is not a safe community.
- 86. As a result of the failure on the part of the Defendants to carry out their duties, the plaintiffs and members of the Caledonia Business Class and the Highway 6 Class have suffered damages in the form of diminished sales revenues and, as a direct result of the hydro service interruption, in the form of spoiled inventory or business interruption.
- 87. From April 1, 2006 to May 22, 2006, the sales revenues of KRP Enterprises were reduced by approximately \$19,557.00 from the comparable period in the previous fiscal year, resulting in a loss of profits equal to approximately \$22,000.00 for the period. This loss does not include the loss arising from inventory loss due to the power outage or the loss of profits continuing after May 22, 2006.
- 88. From April 1, 2006 to May 1, 2006, the sales revenues of 1643078 were reduced by approximately \$4,000.00 from the comparable period in the previous fiscal year, resulting in a loss of profits in excess of \$4,000.00 for the period. This loss does not include the loss arising from inventory loss due to the power outage or the loss of profits continuing after May 1, 2006.
- 89. As a result of the failure on the part of the Defendants, Commissioner Boniface,

 Inspector Haggith and the servants and agents of the Province of Ontario, to carry out
 their duties, the Plaintiffs, Kevin Clark, Esta Clark, Christina Acciaccaferro, Jeffrey

Acciaccaferro, Steve Tong, Lori Tong, Russell Kavanagh, Michelle Kavanagh, Paul Durcek, Stefany Durcek, Quintin Chausse, Donna Chausse, Anne Marie VanSickle and James Paul VanSickle and the members of the Property Owners Class have all suffered damages in the form of a devaluation of their property, a loss in the use and quiet enjoyment of their property and damages arising from the hydro interruption.

- 90. As a result of the failure on the part of the Defendants, Commissioner Boniface, Inspector Haggith and the servants and agents of the Province of Ontario, to carry out their duties, the Plaintiff, J.P. Woolley Surveying Ltd., and members of the Contractors Class were not able to carry out contracted work on the Douglas Creek Estates and lost substantial revenues as a result, which revenues could not be recovered.
- 91. The closure of Highway 6 from April 20, 2006 to June 13, 2006 resulted in greatly decreased traffic along Highway 6, which in turn resulted in greatly reduced revenue and lost profits for the business conducted by the Plaintiff, Margaret Cook, and by other members of the Highway 6 Class.
- 92. Prior to commencement of this action, the Province of Ontario provided Haldimand County with \$500,000.00 for immediate emergency financial assistance to local businesses which are at risk of closure due to the Douglas Creek Estates blockade. The program is called Local Business Emergency Relief Assistance Program (the "Assistance Program").
- 93. After commencement of this action, the Province of Ontario contributed a further \$500,000 to the Assistance Program.
- 94. The Assistance Program only applies to businesses. It does not fully cover losses of profits, nor does it cover losses due to the power outage arising from the destruction of the Caledonia transformer station. It only covers a small percentage of the

damages being claimed by the plaintiffs on their own behalf and on the behalf of members of the Class.

- 95. KRP Enterprises applied to Haldimand County under the Assistance Program and received \$4,426.00. 1643078 had also applied, but as of the date of this Statement of Claim the amount to be received by it, if any, is undetermined and received \$4,000.00.
- 96. In addition, those Class Members who are not business owners as a result of the breach of duty on the part of the Defendants, Commissioner Boniface, Inspector Haggith and the Province of Ontario, the Plaintiffs Kevin Clark, Esta Clark, Christina Acciaccaferro, Jeffrey Acciaccaferro, Steve Tong, Lori Tong, Russell Kavanagh, Michelle Kavanagh, Paul Durcek, Stefany Durcek, Quintin Chausse, Donna Chausse, Anne Marie VanSickle and James Paul VanSickle the members of the Property Owners Class have suffered damages by the devaluation of their property.
- <u>97.</u> Each of the breaches of duty as set out above, specifically, the breach by Haldimand County, the breach by Commissioner Boniface, and the breach by Inspector Haggith, has contributed to the damages suffered by the plaintiffs and the <u>Class Members</u> and the members of the <u>Classes</u>.
- 98. To the extent that the breaches of duty on the part of Commissioner Boniface and Inspector Haggith, with respect to damages arising from the interruption of hydro services, are considered to be grounded in negligence, the plaintiffs rely upon the provisions of the *Negligence Act* R.S.O. 1990, c. N.1, in determining the extent to which such negligent acts have contributed to the damages suffered by the plaintiffs and the Class Members the members of the Caledonia Business Class and the Property Owners Class.

99. The damages suffered by the plaintiffs and the Class Members members of the Classes are continuing and will continue and will not be capable of final determination until all of the following events occur:

 a. The protestors are removed from the Douglas Creek Estates in accordance with the Orders of The Honourable Mr. Justice Matheson and The Honourable Mr. Justice Marshall, and

b.. Highway 6 is reopened.

100. Full particulars of the damages suffered by the plaintiffs and the Class Members and the members of the Classes will be determined at trial.

November 20, 2006

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Solicitors for the Plaintiffs

KRP ENTERPRISES INC. et al.

v. THE CORPORATION OF HALDIMAND COUNTY et al.

Plaintiff
Defendants

ONTARIO SUPERIOR COURT OF JUSTICE Action Commenced at Cayuga

AMENDED STATEMENT OF CLAIM

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Solicitor for the Plaintiffs

SCHEDULE "B"

LEGAL NOTICE PURSUANT TO THE ONTARIO CLASS PROCEEDINGS ACT, 1992, S.O. 1992, c. 6

IMPORTANT NOTICE FOR BUSINESS AND PROPERTY OWNERS AFFECTED BY THE OCCUPATION OF THE DOUGLAS CREEK ESTATES IN CALEDONIA, ONTARIO

IF YOU FALL WITHIN ANY ONE OF THE FOLLOWING CATEGORIES:

- OWNED OR OPERATED A BUSINESS, WHETHER FOR PROFIT OR NOT-FOR-PROFIT OR OWNED PROPERTY IN CALEDONIA, ONTARIO, ON OR AFTER FEBRUARY 28, 2006; OR
- WAS CONTRACTED TO PROVIDE MATERIALS OR SERVICES TO OWNERS, DEVELOPERS OR BUILDERS OF THE DOUGLAS CREEK ESTATES SUBDIVISION IN CALEDONIA, ONTARIO, ON FEBRUARY 28, 2006; OR
- OWNED OR OPERATED A BUSINESS IN THE PROVINCE OF ONTARIO THAT WAS IMPACTED BY THE CLOSURE OF HIGHWAY 6, BETWEEN GREEN ROAD AND THE 6TH LINE, BETWEEN MAY 20, 2006 AND JUNE 13, 2006;

THEN THIS NOTICE APPLIES TO YOU. PLEASE READ THIS NOTICE CAREFULLY AS IT AFFECTS YOUR LEGAL RIGHTS.

By Statement of Claim dated June 12, 2006, a proposed class proceeding was commenced pursuant to the Ontario Class Proceedings Act, 1992 (the "CPA") in the Superior Court of Justice of Ontario in Cayuga as Court File No. 114/2006-CP (the "Class Action") on behalf all those persons, including individuals, corporations or organizations, resident in the Province of Ontario who carry on a business, whether for profit or non-profit; or own property, and who have suffered financially as a result of one or more of the following incidents:

- a. the closure of Argyle Street from April 20, 2006 until it was reopened on May 24, 2006;
- b. the closure of Highway 6 between Green Road and the junction of Argyle Street South from April 20, 2006 to June 13, 2006;

- c. the failure to enforce the Order of The Honourable Mr. Justice B. Matheson dated March 3, 2006, and the Orders of The Honourable Mr. Justice T. Marshall dated March 9, March 17 and March 28, 2006 and remove the Respondents (as defined in the said Orders) from the Douglas Creek Estates; and
- d. the interruption of hydro services arising from damage done to the Hydro One Caledonia transformer station on May 22, 2006.

The defendants in the Class Action are the Corporation of Haldimand County, Ontario Provincial Police Commissioner Gwen Boniface, Ontario Provincial Police Inspector Brian Haggith and Her Majesty the Queen in right of Ontario.

The defendants have denied the plaintiffs' allegations and have stated that they will defend the action and will deny any liability for damages.

On * the Superior Court of Justice of Ontario certified the Class Action as a class proceeding under the CPA, as against the defendants. The Court has certified five separate classes which have been defined as follows:

Caledonia Business Class

"All those persons, including sole proprietors, partnerships, corporations or organizations, whether for profit or non-profit, with places of business within the N3W Canada Post postal division whose businesses have been affected by the closure of Argyle Street from April 20, 2006 until May 24, 2006, the occupation by protestors of the Douglas Creek Estates or the interruption of hydro service from damage done to the Hydro One Caledonia transformer station on May 22, 2006, excluding members of the Contractors Class."

The representative plaintiffs that have been appointed by the Court to represent the Caledonia Business Class are KRP Enterprises Ltd. and 1643078 Ontario Inc.

Property Owners Class

"All those persons, including individuals, trusts, corporations or organizations, who, on February 28, 2006, owned or occupied real property located within the N3W Canada Post postal division, and have been affected by the occupation by protestors of the Douglas Creek Estates, the closure of Argyle Street from April 20, 2006 until May 24, 2006, the closure of Highway 6 between Green Road and the junction of Argyle Street South from April 20, 2006 until June 13, 2006, and the interruption of hydro service from damage done to the Hydro One Caledonia transformer station on May 22, 2006, excluding members of the Caledonia Business Class."

The representative plaintiffs who have been appointed by the Court to represent the Property Owners Class are Kevin Clark, Esta Clark, Christina Acciaccaferro, Jeffrey Acciaccaferro, Steve Tong, Lori Tong, Russell Kavanagh, Michelle Kavanagh, Paul

Durcek, Stefany Durcek, Quintin Chausse, Donna Chausse, Anne Marie VanSickle and James Paul VanSickle.

Contractors Class

"All contractors or subcontractors of Henco Industries Limited or their agents, who were contracted to provide services and materials to owners, developers, builders or contractors on the Douglas Creek Estates subdivision on February 28, 2006."

The representative plaintiff that has been appointed by the Court to represent the Contractors Class is J.P. Woolley Surveying Ltd.

Highway 6 Class

"All those persons, including sole proprietors, partnerships, corporations or organizations, resident in the Province of Ontario who carry on a business, whether for profit or non-profit whose businesses have been affected by the closure of Highway 6 between Green Road and the junction of Argyle Street South from April 20, 2006 until June 13, 2006 and the occupation of protestors on the Douglas Creek Estates, excluding members of the Caledonia Business Class."

The representative plaintiff who has been appointed by the Court to represent the Highway 6 Class is Margaret Cook.

The relief sought on behalf of the classes is as follows:

- a. damages against the Corporation of Haldimand County for the closure of Argyle Street;
- b. damages against Ontario Provincial Police Commissioner Gwen Boniface and Ontario Provincial Police Inspector Brian Haggith for misfeasance in a public office and negligence;
- c. damages against Her Majesty the Queen in Right of Ontario (the "Province of Ontario") for misfeasance in a public office and for nuisance.

The common issues that will be asserted on behalf of the classes are as follows:

- a. Is The Corporation for Haldimand County liable to members of the Caledonia Business Class for damages arising from the closure of Argyle Street from April 20, 2006 until May 24, 2006?
- b. Is either Commissioner Boniface or Inspector Haggith, or both of them, liable under s. 41 of the Police Services Act to members of the Caledonia Business

- Class for damages arising from the closure of Argyle Street from April 20, 2006 until May 24, 2006?
- c. Is Commissioner Boniface, Inspector Haggith, or the Province of Ontario, or any of them, liable to members of the Caledonia Business Class under s. 41 of the Police Services Act for damages arising from their failure to ensure that members of their police force prevented crimes and other offences and executed orders and warrants of the court?
- d. Is Commissioner Boniface or Inspector Haggith, or either of them, liable to members of the Caledonia Business Class in negligence for damages arising from the hydro interruption caused by damage to the Hydro One Caledonia transformer station on May 22, 2006?
- e. If the answer to any of a., b., c. or d. is yes, how should damages of the members of the Caledonia Business Class be assessed?
- f. Is The Corporation for Haldimand County liable to members of the members of the Property Owners Class for damages arising from the closure of Argyle Street from April 20, 2006 until May 24, 2006?
- g. Is Commissioner Boniface, Inspector Haggith, or the Province of Ontario, or any of them, liable to members of the Property Owners Class under s. 41 of the Police Services Act for damages arising from their failure to ensure that members of their police force prevented crimes and other offences and executed orders and warrants of the court?
- h. Is either Commissioner Boniface or Inspector Haggith, or either of them, liable under s. 41 of the Police Services Act to members of the Property Owners Class for damages arising from the closure of Highway 6 from April 20, 2006 until June 13, 2006?
- i. Is the Province of Ontario liable to the members of the Property Owners Class for damages arising from the closure of Highway 6 from April 20, 2006 to June 13, 2006?
- j. Is the Province of Ontario liable to members of the Property Owners Class for nuisance caused by the protestors occupying the Douglas Creek Estates after the Province of Ontario became titleholders to the property?
- k. Is Commissioner Boniface or Inspector Haggith, or either of them, liable to members of the Property Owners Class in negligence for damages arising from the hydro interruption caused by damage to the Hydro One Caledonia transformer station on May 22, 2006?

- 1. If the answer to any of f., g., h., i., j. or k. is yes, how should damages of the members of the Property Owners Class be assessed?
- m. Is Commissioner Boniface, Inspector Haggith, or either of them, liable to members of the Contractors Class for damages arising from their failure to ensure that members of their police force prevented crimes and other offences and executed orders and warrants of the court?
- n. Is the Province of Ontario liable to members of the Contractors Class for imposing a moratorium on development on the Douglas Creek Estates?
- o. If the answer to m. or n. is yes, how should the damages of the members of the Contractors Class be assessed?
- p. Is either Commissioner Boniface or Inspector Haggith, or both of them liable under s. 41 of the Police Services Act to members of the Highway 6 Class for the closure of Highway 6 from April 20, 2006 until June 13, 2006?
- q. Is the Province of Ontario liable to the members of the Highway 6 Class for the closure of Highway 6 from April 20, 2006 to June 13, 2006?
- r. If the answer to p. or q. is yes, how should damages of the members of the Highway 6 Class be assessed?

IF YOU ARE A PERSON FALLING WITHIN ANY ONE OR MORE OF THE CLASSES DESCRIBED ABOVE, THEN YOU WILL AUTOMATICALLY BE INCLUDED IN THE CLASS UNLESS YOU OPT OUT OF THE CLASS IN ACCORDANCE WITH THE PROVISIONS SET OUT BELOW. IF YOU WISH TO REMAIN A MEMBER OF THE CLASS, YOU DO NOT HAVE TO DO ANYTHING AT THIS TIME.

The class proceeding shall deal with the common issues as outlined above. No member of any of the classes, other than the representative plaintiffs, will be liable for costs with respect to the determination of these common issues. However, once the Court has determined the common issues, it may be necessary for individual members of one or more of the classes to participate in individual proceedings to determine issues that are not common to the members of the Class in order to determine their claim.

Each of the representative plaintiffs has entered into a class retainer agreement with counsel listed below that provides for a contingency fee payable to counsel in the event of success of the class action. Any fees charged by the solicitors for the representative plaintiffs must be approved by the Court.

If you wish to remain a member of a class, you do not have to do anything at this time. If you wish to obtain more information about your rights as a class member you may contact the counsel for the plaintiffs as set out below.

If you wish to exclude yourself from the class proceedings ("opt out") and pursue a claim against any of the defendants, you may do so by mailing or delivering a written notice to the counsel of the plaintiffs at the address set out below specifying your desire to opt out of the class proceeding. Notice of your decision to opt out must be received by counsel listed below within thirty (30) days of this notice.

ANY JUDGMENT OBTAINED ON THE COMMON ISSUES IN THIS ACTION, WHETHER FAVOURABLE OR NOT, WILL BIND ALL MEMBERS OF EACH CLASS WHO DO NOT OPT OUT OF THIS ACTION.

Counsel for the Representative Plaintiffs

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FURTHER INFORMATION CAN BE OBTAINED ON THE PLAINTIFFS' WEBSITE www.caledoniaclassaction.com. CLASS MEMBERS CAN ALSO CONTRIBUTE TO A FUND TO ASSIST THE PLAINTIFFS WITH THEIR FEES AND DISBURSEMENTS, WHICH CONTRIBUTIONS CAN BE MADE THROUGH THE WEBSITE.

PLEASE DO NOT CONTACT MR. JUSTICE CRANE OR THE REGISTRAR OF THE SUPERIOR COURT OF JUSTICE. THEY WILL NOT BE ABLE TO ANSWER YOUR QUESTIONS ABOUT THE LAWSUIT.

THIS NOTICE HAS BEEN DIRECTED BY THE SUPERIOR COURT OF JUSTICE.