Court File No. 114/2006-CP
Court File No.: 172/2006
Court File No.: 07-CV-328469PD1
Small Claims Court File No.: 39/2007

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

BETWEEN:

DAVID BROWN and DANA CHATWELL

Plaintiffs

- and -

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO and
THE ONTARIO PROVINCIAL POLICE SERVICE, A CROWN CORPORATION

Defendants

BETWEEN:

RAILINK CANADA LTD. carrying on business as
THE SOUTHERN ONTARIO RAILWAY

Plaintiff

- and -

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO

Defendant

BETWEEN:

FRANK PAUL FASANO

Plaintiff

- and -

THE PROVINCIAL GOVERNMENT OF ONTARIO

Defendant

NOTICE OF MOTION

TAKE NOTICE THAT the Defendants, Her Majesty the Queen in right of Ontario, and the Ontario Provincial Police Service (improperly named) (hereinafter collectively referred to as the "Crown"), will make a motion to a Judge on April 18, 2007 at 10:00am, or as soon after that time as the motion can be heard, at 45 Main Street East, Hamilton, Ontario.

PROPOSED METHOD OF HEARING: The motion is to be heard orally.

THE MOTION IS FOR:

1. An order that the following actions be case managed together by Mr. Justice Crane or his designate:

a) *KRP Enterprises Inc. et al.* v *Her Majesty The Queen In Right of Ontario et al.* bearing Court file number 114/2006/CP (the "Proposed Class Action");

b) *Chatwell et al* v *Her Majesty the Queen in Right of Ontario et al.*, commenced in Cayuga bearing Court File No. 172/2006 (the "Chatwell Action");

c) *RaiLink Canada Ltd. carrying on business as the Southern Ontario Railway* v *Her Majesty the Queen in Right of Ontario,* commenced in Toronto, bearing Court File No. 07-CV-328469PD1 (the "Railway Action"); and

d) *Fasano* v *The Provincial Government of Ontario* (improperly named) commenced in Cayuga Small Claims Court bearing court file no. 39/2007 (the "Fasano Action").

2. An order transferring the "Fasano Action" from the Small Claims Court in Cayuga to the Superior Court in Hamilton.

3. In the alternative to the relief requested in paragraph 1(d) and 2 hereof, an order staying the Fasano Action pending the final termination of the Proposed Class Action;

4. Costs of this motion; and

5. Such further and other relief as this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

1. The Proposed Class Action, the Chatwell Action, the Railway Action, and the Fasano Action (collectively hereinafter referred to as the "Caledonia Actions") arise out of what has become known as the "Caledonia land dispute", in which a group of protestors belonging to or associated with the Haudenosaunee/Six Nations Confederacy (the "occupiers") occupied Douglas Creek Estates, a residential subdivision formerly under development in Caledonia (the "DCE Lands"). In particular, commencing on February 28, 2006, the occupiers began occupying the DCE Lands and blockading its entrance, as an act of reclaiming the land for the benefit of the local aboriginal community. Within the following weeks, the occupiers also barricaded Argyle Street, Highway 6, and the local rail line, all of which are within the vicinity of or bordering the DCE Lands.

2. The statement of claim in the Caledonia Actions share the following elements:

(a) they are brought by individuals or businesses situated in Caledonia or surrounding areas;

(b) they name the Crown and/or the OPP as a defendants;

(c) they arise from circumstances surrounding the occupation of the DCE Lands;

(d) they raise claims grounded in negligence on the part of the Crown, the OPP and/or their respective ministers, officers, and/or employees; and

(e) they claim to have suffered harm as a result of the Crown's response to the occupation of the DCE Lands.

3. In order to determine the causes of action raised in each of the Caledonia Actions, the court will need to consider the following legal questions in each action:

a) In the circumstances giving rise to the Caledonia Actions, did any particular Crown employee owe a private law duty of care to the plaintiffs (or classes of plaintiffs);

b) If any particular Crown employee did, indeed, owe a private law duty of care, did his or her response to the occupation (and events incidental thereto) amount to a breach of his or her duty of care or to misfeasance in public office *vis a vis* the plaintiffs in the Caledonia Actions;

c) Was there anything in the conduct of any particular Crown employee that caused the plaintiffs to suffer compensable harm; and

d) Did the plaintiffs contribute, in anyway, to their own alleged harm or losses?

4. In responding to the claims raised in the Caledonia Actions, whether individually or collectively, the Crown and numerous individual Crown employees will be required to review,

and likely produce, as many as 300,000 documents and participate in weeks of examinations for discovery of its representatives.

5. The joint case management of the Caledonia Actions would promote fairness, efficiency and judicial economy by allowing for coordination of the oral and documentary discoveries in each of the Caledonia Actions. The court may also co-ordinate the timing and disposition of similar motions together with the trials in the Caledonia Actions themselves. In this way, the Court may avoid duplication of effort, inconsistent findings, and other avoidable inefficiencies or injustices.

6. In addition to the Caledonia Actions, the Crown has received notices of potential claims from 11 other individuals or businesses as a result of the occupation of the DCE Lands and events incidental thereto.

7. To deal fairly and fully with the issues raised in the Fasano Action, extensive viva voce and documentary discovery will be required. Small Claims Court procedures will not, without more, result in the fairest, most fulsome, and most just adjudication of the issues in the Fasano action. In the circumstances, and particularly given the need to adjudicate similar issues involving similar parties in the remaining Caledonia Actions, it is just and convenient to order that the Fasano Action be transferred to the Superior Court of Justice to be case managed with the remaining Caledonia Actions;

8. Rules 104(1), 104(2), 1.05, 37.15 and 77.11(1.1) of the *Rules of Civil Procedure,*

9. Sections 107 and 138 of the *Courts of Justice Act*;

10. Section 13 of the *Class Proceedings Act;* and

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

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

1. The pleadings herein;
2. The affidavit of Christine Perruzza sworn April 10, 2007; and
3. Such further and other material as counsel may advise and this Honourable Court may permit.

April10, 2007

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Plaintiff in person

KRP ENTERPRISES INC. et al v THE CORPORATION OF HALDIMAND COUNTY et al
DAVID BROWN et al v HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO et al
RAILINK CANADA LTD. v HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO
FASANO v THE PROVINCIAL GOVERNMENT OF ONTARIO

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