

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

**KRP ENTERPRISES INC., 1643078 ONTARIO INC.,
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, JAMES PAUL VANSICKLE,
J.P. WOOLLEY SURVEYING LTD. and MARGARET COOK**

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 WISH 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 by _____
Local Registrar

55 Munsee Street
Cayuga, Ontario N0A 1E0

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 and for the failure to provide adequate and effective police services;
 - 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 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, for the closure of Argyle Street and for failure to provide adequate and effective police services;
 - b. damages against the Defendants, Commissioner Boniface and Inspector Haggith for misfeasance in a public office and for negligence;
 - c. 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):

- a.1 damages against the Defendant, Haldimand County for failure to provide adequate and effective police services;
 - a. damages against the Defendants, Commissioner Boniface and Inspector Haggith for misfeasance in a public office;
 - b. damages against 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.
4. The Plaintiff, Margaret Cook, claims on her own behalf and on behalf of all members of the Highway 6 Class (as defined herein):
- a. damages against the Defendants, Commissioner Boniface and Inspector Haggith for misfeasance in a public office;
 - b. damages against the Province of Ontario for misfeasance in a public office of its servants and agents;
 - b1. damages against the Province of Ontario for nuisance arising from the closure of Highway 6;

- 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.

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.
- 6. 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.
- 8. 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 Acciaccferro and Jeffrey Acciaccferro, 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 Naim 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.
19. 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.
20. The Defendant, Commissioner Boniface, ~~is~~ was at all material times the Commissioner of the OPP and is a 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~~ was at all material times the Detachment Commander of the OPP for Haldimand County and is a 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 or materials to owners, developers, builders or contractors on the Douglas Creek Estates subdivision as of or 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

28. On or about February 28, 2006 a group of protestors 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 Council 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 (hereinafter 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:
 - a) 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:
 - a) 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*.