

**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 -

**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

NOTICE OF MOTION

TAKE NOTICE THAT the Defendants, Her Majesty the Queen in right of Ontario, Ontario Provincial Police Commissioner Gwen M. Boniface and Ontario Provincial Police Inspector Brian Haggith (hereinafter collectively referred to as the "Crown Defendants"), will make a motion to a Judge on June 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 striking out the plaintiffs' statement of claim pursuant to rule 21 of the *Rules of Civil Procedure* without leave to amend;
2. Its costs of this motion; and
3. Such further and other relief as this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

1. The putative class action arises from civil unrest in and around the town of Caledonia, Ontario. This civil unrest was caused by a blockade and subsequent occupation by native protestors of a residential development site known as Douglas Creek Estates. As potential class representatives, the plaintiffs have pleaded causes of action in misfeasance, negligence and nuisance, which, on the face of the pleading, cannot be sustained. More specifically, the amended statement of claim does not disclose a reasonable cause of action in:

- a) Misfeasance in public office against Commissioner Boniface, Inspector Haggith or the Crown;
- b) Negligence against Boniface or Haggith; or
- c) Nuisance against the Crown;

2. The plaintiffs have failed to properly plead the tort of misfeasance in public office. In particular, material facts that would support an allegation of deliberate unlawful conduct, or the requisite knowledge to ground a claim for misfeasance in public office are not plead in relation to the Crown Defendants;

3. The statement of claim also fails to plead material facts that could support a cause of action in negligence. There are no material facts to support the imposition of a duty of care in this case:

- a) The statement of claim fails to identify a sufficiently close relationship between the parties or proximity to justify imposition of a duty. There is no pleading of a direct relationship as between the plaintiffs and either Haggith or Boniface, nor does the *Police Services Act*, which is cited by the plaintiffs as creating a duty on the part of the Crown Defendants, create a relationship of sufficient proximity between the plaintiffs and either Haggith or Boniface. To the extent that the Act sets out responsibilities for the police, it confers duties to the public at large, not to a particular individual or class of individuals;
 - b) There are significant policy considerations that would negate the imposition of a duty of care on Boniface and Haggith in favour of the plaintiffs. These policy considerations include, in particular:
 - i) if Boniface and Haggith owed a private law duty of care to the plaintiffs, that duty would conflict with the duties enumerated in sections 41 and 42 of the PSA; and
 - ii) the imposition of a duty of care on Boniface and/or Haggith, would interfere with the proper exercise of police discretion;
4. With respect to the claim in nuisance, the plaintiffs have plead facts which amount to a public nuisance, not a private nuisance. Only the Attorney General, or a person authorized to sue in the name of the Attorney General, can commence an action in public nuisance. The plaintiffs do not have a cause of action to redress public nuisance;
5. Rule 21 of the *Rules of Civil Procedure*; and
6. 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; and
2. Such further and other material as counsel may advise and this Honourable Court may permit.

June 7, 2007

ATTORNEY GENERAL FOR ONTARIO

Crown Law Office - Civil
720 Bay Street - 8th Floor
Toronto, Ontario M5G 2K1
Fax: 416.326.4181

Dennis W. Brown, Q.C.

LSUC #104680
Tel: (416) 326-4156

Orlando V. Da Silva

LSUC # 36673T
Tel: (416) 326-4093

Christopher P. Thompson

LSUC # 46117E
Tel: (416) 212-1161

Counsel for the Defendants, Her Majesty the Queen
in Right of Ontario, Gwen M. Boniface and Brian
Haggith

TO: FINDLAY McCARTHY LLP
Barristers and Solicitors
66 James Street North
Hamilton, Ontario L8R 2K5

John W. Findlay
Tel: 1-905-526-8943
Fax: 1-905-526-8696

Counsel for the Plaintiffs,
KRP Enterprises Inc. and 1643078 Ontario Inc.

AND TO: STEIBER BERLACH LLP
900-130 Adelaide Street West
Toronto, Ontario
M5H 3P5

Steven Steiber
Tel: 416-366-1400
Fax: 416-366-1466

**Counsel for the Defendants,
The Corporation of Haldimand County**

Plaintiffs

Defendants

ONTARIO
SUPERIOR COURT OF JUSTICE
Proceeding commenced at Cayuga

MOTION RECORD

ATTORNEY GENERAL OF ONTARIO
Crown Law Office – Civil
720 Bay St., 8th Floor
Toronto, ON M5G 2K1

Dennis W. Brown, Q.C.
LSUC #104680
Tel: (416) 326-4156

Orlando V. Da Silva
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Counsel for the Defendants, Her Majesty the Queen in Right of Ontario, Gwen M. Boniface and Brian Haggith