

**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*

AMENDED 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 Tab 1 to the Plaintiff's Compendium.

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 Acciaccferro, Jeffrey Acciaccferro, 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 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 Haldimand County liable to members of the Caledonia Business Class for damages arising from the County's failure to provide adequate and sufficient police services under s. 4 of the *Police Services Act*?
 - d. 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?
 - e. 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?
 - f. If the answer to any of a., b., c., d. or e. is yes, how should damages of the members of the Caledonia Business Class be assessed?

- g. Is 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?
- h. Is Haldimand County liable to members of the Property Owners Class for damages arising from the County's failure to provide adequate and sufficient police services under s. 4 of the *Police Services Act*?
- i. 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?
- j. 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?
- k. 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?
- l. 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?
- m. 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?

- n. If the answer to any of g., h., i., j., k., l. or m. is yes, how should damages of the members of the Property Owners Class be assessed?
- o. Is Haldimand County liable to members of the Caledonia Business Class for damages arising from the County's failure to provide adequate and sufficient police services under s. 4 of the *Police Services Act*?
- p. 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?
- q. Is the Province of Ontario liable to members of the Contractors Class for imposing a moratorium on development on the Douglas Creek Estates?
- r. If the answer to o., p. or q. is yes, how should the damages of the members of the Contractors Class be assessed?
- s. 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?
- t. 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?
- u. If the answer to s. or t. 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 Acciaccferro 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;
13. The Affidavit of Margaret McCarthy sworn on January 12, 2007;
14. The Plaintiff's Compendium of Key Materials; and
15. 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
Email: findlay@findlaymccarthy.com

Counsel for the Plaintiffs

TO: **STIEBER 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.: 104680

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

KRP ENTERPRISES INC. et al. v. **THE CORPORATION OF HALDIMAND COUNTY et al.**

Plaintiffs

Defendants

ONTARIO
SUPERIOR COURT OF JUSTICE
Action Commenced at Cayuga

AMENDED NOTICE OF MOTION

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

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

Solicitors for the Plaintiffs