

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**

**B E T W E E N:**

**KRP ENTERPRISES INC. and 1643078 ONTARIO INC.**

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*

**B E T W E E N:**

**DAVID BROWN AND DANA CHATWELL**

Plaintiffs

- and -

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

Defendants

**B E T W E E N:**

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

Plaintiff

- and -

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO**

Defendant

**B E T W E E N:**

**FRANK PAUL FASANO**

Plaintiff

- and -

**THE PROVINCIAL GOVERNMENT OF ONTARIO**

Defendant

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**FACTUM OF THE DEFENDANT (MOVING PARTY), HER MAJESTY THE  
QUEEN IN RIGHT OF ONTARIO**

(Motion returnable April 18, 2007)

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April 13, 2007

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**Self-represented Plaintiff**

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

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Plaintiffs

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Plaintiff

- and -

**THE PROVINCIAL GOVERNMENT OF ONTARIO**

Defendant

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**FACTUM OF THE DEFENDANT (MOVING PARTY), HER MAJESTY THE  
QUEEN IN RIGHT OF ONTARIO**

(Motion returnable April 18, 2007 at 10:00 a.m.)

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**PART I – OVERVIEW**

- 1) Her Majesty the Queen in Right of Ontario (the “Crown”) has been named as a defendant in four similar actions, including a proposed class action and a Small Claims Court proceeding, arising from what has become known as the Caledonia land dispute (collectively known as the “Caledonia Actions”). In order to avoid unnecessary duplication and inconsistent findings and to secure greater judicial economy, the Crown has brought this motion for the following relief:
- a) an order that all Caledonia Actions be case managed by the Honourable Justice Crane in Hamilton;
  - b) an order transferring the Fasano Action from the Small Claims Court to the Superior Court of Justice, or, in the alternative, an order staying the Fasano action pending the final determination of the Proposed Class Action.
- 2) Each of the Caledonia Actions share striking similarities in the statements of claim, which will result in similar legal analysis and duplicative procedural steps. Each of the Caledonia Actions will call for extensive documentary discovery, lengthy cross examination and considerable *vive voce* evidence. As a result of the similarities and resource-intensive nature of the Caledonia Actions, a form of case management is required to ensure the just and expeditious determination of these claims.
- 3) Absent some form of case management, questions of law and fact underpinning all of the Caledonia Actions could be answered differently in different courts, motions

could be decided differently resulting in conflicting orders, many steps in the litigation would be duplicated, and the Caledonia Actions would proceed slowly.

- 4) For the same reasons, with respect to the Fasano Action the Small Claims Court is inappropriate and not properly equipped to address such a complex, resource intensive and document driven action.

## **PART II - FACTS**

### **The Caledonia Land Dispute**

- 5) On February 28, 2006, a group of protestors belonging to or associated with the Haudenosaunee/Six Nations Confederacy (the "occupiers") blockaded and have occupied the Douglas Creek Estates, a residential subdivision under development in Caledonia (the "DCE Lands") as an act of reclaiming the land. This blockade escalated into barricades of Highway 6, Argyle Street and the local rail line. It also led to reports of civil disobedience, vandalism, thefts and assaults within the vicinity of the DCE Lands.

**Affidavit of C. Perruzza, Motion Record of the Moving Party, Tab 2, para. 2**

- 6) Throughout the occupation of the DCE lands, negotiations to resolve the dispute between Canada, Ontario and Six Nations Authorities have been ongoing (the "Main Table Negotiations"). Although tensions have reportedly ceased, and most of the blockades removed, a resolution has not yet been achieved.

**Perruzza Aff., Motion Record, Tab 2, para. 2**

### **Litigation arising from the Caledonia land dispute**

- 7) A number of legal proceedings have been commenced in relation to the occupation of the DCE Lands. Presently, there are four similar and overlapping actions in Hamilton, Cayuga and Toronto with common defendants and multiple plaintiffs:

- a) *KRP Enterprises Inc. et al. v. Her Majesty the Queen in Right of Ontario et al.* bearing Court File No. 114/2006/CP was commenced in Hamilton pursuant to the *Class Proceedings Act* (the “Proposed Class Action”).
- b) *Chatwell et al. v. Her Majesty the Queen in Right of Ontario et al.*, was commenced in Cayuga bearing Court File No. 172/2006 (the “Chatwell Action”).
- c) *RaiLink Canada Ltd. c.o.b. Southern Ontario Railway v. Her Majesty the Queen in Right of Ontario* was commenced in Toronto bearing Court File No. 07-CV-328469PD1 (the “RaiLink Action”).
- d) *Fasano v. The Provincial Government of Ontario* was commenced in Cayuga bearing Court File No. 39.2007 (the “Fasano Action”).

**Perruzza Aff., Motion Record, Tab 2, para. 3**

**a) The Proposed Class Action**

- 8) The plaintiffs in the Proposed Class Action make claims in negligence, misfeasance in public office and nuisance in connection with the Crown defendants’ response to and failure to prevent the occupation of the DCE lands (and events incidental thereto).

**Perruzza Aff., Motion Record, Tab 2, para. 7**

**b) The Chatwell Action**

- 9) In the Chatwell Action, the plaintiffs claim that the occupation of the DCE lands and related road and rail blockades have adversely affected the enjoyment of their property and life. The plaintiffs claim they have suffered damage for the OPP’s alleged failure to provide police services in Caledonia.

**Perruzza Aff., Motion Record, Tab 2, para. 9**

**c) The RaiLink Action**

- 10) The plaintiff in the RaiLink Action operates a rail service over a railway near the border of the DCE Lands. The plaintiff claims damages allegedly arising from the

blockade of the plaintiff's railway right of way, which was blockaded by the protestors allegedly as a result of the conduct of the Crown defendants.

**Perruzza Aff., Motion Record, Tab 2, para. 11**

**d) The Fasano Action**

11) The plaintiff in the Fasano Action operates a business in Caledonia and alleges that the Crown is liable for the losses his business suffered as a result of the occupation of the DCE Lands.

**Perruzza Aff., Motion Record, Tab 2, para. 13**

12) On March 23, 2007, the Crown Law Office – Civil received a notice of a mandatory settlement conference (the "Notice") scheduled for May 8, 2007. According to the Notice, each party must serve on every other party and file with the court a copy of any document to be relied on at the trial and a list of proposed witness and other persons with knowledge of the matters in dispute in the action at least 14 days before the settlement conference.

**Perruzza Aff., Motion Record, Tab 2, para. 14**

13) Small Claims Court actions in Cayuga are currently being set down for trial for late April or early May, 2007. Based on that information, a trial of the Fasano Action could be held as early as mid-July, 2007.

**Perruzza Aff., Motion Record, Tab 2, para. 15**

14) In addition to the above-mentioned claims, Crown Law Office – Civil has so far received correspondence from eleven other individuals contemplating legal action against the Crown or its servants in relation to the occupation of the DCE Lands.

**Perruzza Aff., Motion Record, Tab 2, para. 4**

### **The Similarities in the Statements of Claim**

15) The Caledonia actions have many similarities. In particular, all of the Caledonia actions:

- are brought by individuals or businesses who reside or carry on business in Caledonia or surrounding areas;
- name the Crown and/or the Ontario Provincial Police (the "OPP") as defendants;
- arise from the occupation of the DCE lands;
- raise claims grounded in negligence and/or misfeasance as a result of the manner in which the Crown and/or the OPP responded to (or failed to prevent) the occupation of the DCE Lands (and events incidental thereto); and
- allege that they have suffered damages as a result of the Crown's response to the occupation of the DCE lands.

**Perruzza Aff., Motion Record, Tab 2, para. 16**

16) As such, many of the issues for trial in all of the Caledonia actions will involve the same legal analysis including, but not limited to:

- in the circumstances giving rise to the Caledonia actions, whether any particular Crown servant owes a private law duty of care to each of the plaintiffs (or a class of plaintiffs);
- if a duty exists, did any particular Crown servant's response to the occupation of the DCE Lands amount to a breach of that duty or to misfeasance in public office;
- did any particular Crown servant's conduct cause the plaintiffs to suffer compensable harm; and
- whether the plaintiffs contributed to their own harm or losses.

**Perruzza Aff., Motion Record, Tab 2, para. 17**