

**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

**MOTION RECORD
(Returnable June 18, 2007)**

June 5, 2007

**STIEBER BERLACH LLP
Barristers and Solicitors
130 Adelaide Street West
Suite 900
Toronto, Ontario
M5H 3P5**

Steven Stieber LSUC#: 13317W

**Tel: (416) 594-4670
Fax: (416) 366-1466**

**Solicitors for the Defendant,
Corporation of Haldimand County**

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

John W. Findlay

Tel: 905-526-8943

Fax: 905-526-8696

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

AND TO: ATTORNEY GENERAL FOR ONTARIO
Crown Law Office - Civil
720 Bay Street - 8th floor
Toronto, Ontario
M5G 2K1

Dennis W. Brown, Q.C.

Tel: 416-326-4156

Fax: 416-326-4181

Solicitors for the Defendant,
Her Majesty the Queen in Right of Ontario

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**NOTICE OF MOTION
(Returnable June 18, 2007)**

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**NOTICE OF MOTION
(Returnable June 18, 2007)**

THE DEFENDANT, The Corporation of Haldimand County (the "County") will make a motion to a Judge of the Ontario Superior Court of Justice on June 18, 2007, at 10:00 a.m. or as soon after that time as the motion can be heard at 393 University Avenue, Toronto, Ontario.

PROPOSED METHOD OF HEARING: The motion is to be heard

- in writing under subrule 37.12.1(1) because it is on consent or unopposed or made without notice;
- in writing as an opposed motion under subrule 37.12.1(4)
- orally.

THE MOTION IS FOR:

- (a) an order granting summary judgment dismissing the claim against the County;

- (b) the costs of this motion and of this action on a substantial indemnity basis; and
- (c) such further and other relief as counsel may advise and this Honourable Court may permit.

THE GROUNDS FOR THE MOTION ARE:

- a) The only claims being advanced by the plaintiffs as against the County are for nuisance and the closure of Argyle Street, Caledonia;
- b) The County did not pass a by-law closing Argyle Street permanently or at all and accordingly, Part III of the *Municipal Act, 2001*, S.O. 2001, c. 25, and section 34 in particular, is not applicable;
- c) A portion of Argyle Street was effectively closed between April 20, 2006 and May 23, 2006 as a result of barricades that were constructed by members of the Six Nations of Grand River band and others (hereinafter referred to as the "protesters") and was not the result of any acts or omissions on the part of the County;
- d) The County has never given permission or license to the protesters to construct the barricades on Argyle Street;
- e) The County did not close a highway or give license for the erection or commission of a nuisance on a highway;
- f) The County did not owe a duty to the plaintiffs to forcibly remove the barricades and protestors from Argyle Street in order to provide for a common law right of passage over Argyle Street;
- g) The response to the occupation of the Douglas Creek Estates and the barricades on Argyle Street was at all times under the jurisdiction and control of the federal and provincial governments and the Ontario Provincial Police;

- h) There was nothing that could have reasonably been done by the County to remove the barricades on Argyle Street;
- i) The plaintiffs have failed to establish that there is a genuine issue for trial with respect to the claim against the County;
- j) Rule 20 of the *Rules of Civil Procedure* and sections 24 to 68 of the *Municipal Act, 2001*, S.O. 2001 c. C.25; and
- k) 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:

- a) Affidavit of William Pearce and exhibits attached thereto;
- b) Pleadings and proceedings herein;
- c) Such further and other documentary evidence as counsel may advise and this Honourable Court may permit.

June 5, 2007

STIEBER BERLACH LLP
Barristers and Solicitors
130 Adelaide Street West
Suite 900
Toronto, Ontario
M5H 3P5

Steven Stieber LSUC#: 13317W
Tel: (416) 594-4670
Fax: (416) 366-1466

Solicitors for the Defendant
Corporation of Haldimand County

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Cayuga

NOTICE OF MOTION

STIEBER BERLACH LLP
900 - 130 Adelaide Street West
Toronto, ON M5H 3P5

Steven Stieber LSUC#: 13317W

Tel: (416) 366-1400

Fax: (416) 366-1466

Solicitors for the Defendant
The Corporation of Haldimand County

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Defendants

AFFIDAVIT OF WILLIAM PEARCE

I, **WILLIAM PEARCE**, of the Community of Cayuga, in the Province of Ontario, **MAKE OATH AND SAY:**

Overview:

1. I am the Chief Administrative Officer of The Corporation of Haldimand County (the "County"), a single-tier municipality located in southwestern Ontario, and as such have knowledge of the matters to which I hereinafter depose.
2. The Community of Caledonia is located within the County and lies just east of the Six Nations of the Grand River Indian Reserve ("Six Nations"), which is the most populous reserve in Canada. Douglas Creeks Estates is a parcel of property located in Caledonia which was owned by Henco Industries Limited ("Henco").
3. Since February 28, 2006, the Douglas Creek Estates have been occupied by a group of protesters, mainly comprised of members of the Six Nations, who claim

that the Douglas Creek Estates belongs to them and oppose the building of a subdivision on the property (the "Protesters").

The Police Services Agreement:

4. On or about January 28, 2004, the County entered into a five-year agreement with the Ontario Minister of Community and Safety Correctional Services on behalf of the Solicitor General for the provision of adequate and effective police services, pursuant to section 10 of the *Police Services Act*, R.S.O. 1990 c. P.15 (the "Police Services Agreement"). Attached hereto and marked as Exhibit A to this my affidavit is a copy of the Police Services Agreement.
5. Pursuant to the Police Services Agreement, the Ontario Provincial Police ("O.P.P.") is responsible for the provision of police services to the County in accordance with minimum service level requirements set out in of the Agreement, which included 24-hour proactive and reactive policing, crime prevention, incident command and traffic services. The O.P.P. is also required to be capable of providing provincial level response that can be mobilized for emergencies, disaster or specialized needs.
6. The Haldimand County O.P.P. Detachment Commander is responsible to oversee all aspects of the delivery of police services to the County.
7. The Police Services Agreement provides that the O.P.P. shall be liable for any damages that may arise as a result of any negligent acts or omissions of its members in the performance of agreement.

The Occupation:

8. The occupation of the Douglas Creek Estates by members of the Six Nations commenced on February 28, 2006. Although initial contact with the Protesters was through the local O.P.P. Detachment, responsibility for dealing with the Protesters and the occupation, shifted almost immediately to the provincial and federal government levels.

9. The response to the occupation was controlled entirely by the provincial and federal governments and the O.P.P. The County did not have any authority to act other than at the request and direction of the provincial and federal governments. The County responded to all requests made by both levels of government as described in more detail below.
10. The O.P.P. set up a Command Centre, separate from the local O.P.P. Detachment, to deal with the situation under the direction of a provincially-appointed Command Post Commander.
11. On March 3, 2006, Henco brought an application to the Superior Court of Ontario against the Haudenosaunee Six Nations Confederacy Council (the "Confederacy"), various individual band members and the County, requesting, among other things, an injunction restraining Confederacy and the individual band members from continuing the occupation of the Douglas Creek Estates as well as an order requiring the respondents to remove any barricades from the public roadways which traverse the Douglas Creek Estates. Although the Court made various orders requiring action to be taken on behalf of the Confederacy, the individual band members and the O.P.P., no orders were made requiring the County to do or refrain from doing anything.
12. On March 24, 2006, the County participated in a conference call with the Honourable Jim Prentice, the Federal Minister of Indian Affairs and Northern Development ("Prentice") and the Honourable Diane Finley, the Federal Minister of Human Resources and Social Development ("Finley") regarding the occupation. The County requested that the federal government formulate a speedy resolution to the occupation of the Douglas Creek Estates and surrounding issues.
13. On April 7, 2006, County representatives met with Ministers Prentice and Finley as well as Lloyd St. Amand, a Member of Parliament. During this meeting, the County formally requested that the federal and provincial governments take action. Although the County advised that it was prepared to assist, practically speaking, the County was relegated, and continues to be relegated to the sidelines by the