

Court File No.

114/2006-CP

**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*

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 WITH 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

CLAIM

1. The plaintiffs claim on their own behalf, and on behalf of all Class Members (as defined herein):
 - a. damages against the Defendant, The Corporation of Haldimand County, (“Haldimand County”) for nuisance and for the closure of Argyle Street;
 - 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;
 - 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

2. 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.

3. KRP Enterprises is a franchisee of Dairy Queen Canada and carries on a retail business selling fast food and frozen food products.
4. 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.
5. 1643078 carries on the business of the St. George Arms, a casual dining restaurant.
6. 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.
7. 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 five year period.
8. The Defendant, Commissioner Boniface, is the Commissioner of the OPP and is the chief of police of the police officers providing police services on Highway 6 and to Haldimand County under the Haldimand Police Services Agreement.
9. The Defendant, Inspector Haggith, is the Detachment Commander of the OPP for Haldimand County and is the chief of police of the police officers providing police services to Haldimand County in accordance with the Haldimand Police Services Agreement.

Class Member

10. A Class Member is a member of the Class as 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.

Course of Events

12. On or about February 28, 2006 a group of protesters 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”).
13. The owner in fee simple with an absolute title to the Douglas Creek Estates is Henco Industries Limited, (“Henco”) a corporation incorporated under the laws of the Province of Ontario.
14. 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.
15. 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 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.

16. 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.”
17. 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.

18. 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'."
19. 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*.
5. THIS COURT FURTHER ORDERS THAT THE CONDITIONS OF THE PROBATION ORDER shall include the compulsory conditions contained in s. 731.1 of the *Criminal Code*:
 - a) Accompany the police to be fingerprinted and photographed.
 - b) Not attend within 100 feet of the Douglas Creek Estate site except for the purpose of normal travel on Argyle Street.
6. THIS COURT FURTHER ORDERS THAT Warrants of Arrest shall be issued forthwith in accordance with paragraphs 1 and 3 of this Order.
7. 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 Arrest are executed.
8. 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 Arrest issued in accordance with paragraph 6 of this order;
9. 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 objects or things 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;

10. 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'."
20. The Sheriff of the Superior Court of Justice at Cayuga attended at the Douglas Creek Estates and served each of the Orders in accordance with the directions set out in the Orders.
21. The Sheriff of the Superior Court of Justice at Cayuga has requested the assistance of the OPP to enforce each of the above Orders.
22. On or about April 20, 2006, peace officers attended at Douglas Creek Estates to enforce the Order dated March 28, 2006, and arrested 16 of the protestors. The protestors were fingerprinted and released. Within hours many of the protestors were back at the Douglas Creek Estates.
23. Aside from the attendance on April 20, 2006, the OPP has taken no further steps to remove the protestors from the Douglas Creek Estates.
24. As a result of the attendance on April 20, 2006, the protestors proceeded to do the following:

- a. They barricaded Argyle Street and prevented any public passage or traffic from running north or south;
- b. They piled tires on Argyle Street, poured gasoline on the tires, and set fire to them;
- c. They set fire to and completely destroyed the wooden bridge on Sterling Street that passes over the CN rail line;
- d. They started a brush fire on the southern shore of the Grand River;
- e. They prevented the fire officers from the Haldimand County Fire Department from attending to the fires referred to in subparagraphs c. and d. above;
- f. They placed barricades on Highway 6 between Argyle Street. and Green Road preventing public passage or traffic from passing either north or south on Highway 6;
- g. They threw a vehicle over the barrier of the Highway 6 overpass which landed on Municipal Highway 54;
- h. They recklessly drove ATV vehicles in a dangerous manner throughout the Douglas Creek Estates and along adjoining property, which included a grade school; and
- i. They broke and entered into the model home owned by Henco, destroyed property belonging to Henco and carried away personal property that belonged to Henco.

25. On May 22, 2006, control systems at the hydro transformer station located on Argyle Street South, just south of the protestors' barricade, were purposefully destroyed and set on fire by participants in the protest causing over \$1 million in damages and power failure throughout Haldimand County and Norfolk County for periods of time ranging from 3 to 48 hours. The act was recorded on security equipment installed at the site and the perpetrators were known to the OPP.

26. Since May 22, 2006, the following criminal acts have occurred:
 - a. on or about May 28, 2006, Matt Walcoff, a business reporter for the Kitchener Record, was assaulted and had his digital camera stolen by protestors on municipal property outside of the Douglas Creek Estates in plain view of OPP officers watching the incident;

 - b. on or about June 4, 2006, after the OPP had refused Hydro One's request to provide policing of the Caledonia transformer station, a 20 year old student, William Cowan, who had been hired by a private security firm to guard the transformer station, was swarmed by a number of the protestors who smashed the security car while he was inside the vehicle, threatened him with death if he did not leave, then put gasoline on the car, lit it on fire and entirely destroyed the vehicle;

 - c. at approximately 10:00 pm on June 4, 2006, David Hartless, a police officer with the Hamilton Police Services, walked outside of his house, which is located on Braemar Avenue approximately 50 feet from Douglas Creek Estates, and observed about 40 to 50 protestors threatening and harassing 3 males who had been sitting at the end of the street passively smoking cigarettes. Mr. Hartless, asked one of the female protestors what was going on and was told: "You got no business here fucking leave or I will knock you dead right now." When the protestors began physically attacking one of the males, he intervened and found himself being

punched in the back and thrown to the ground by other protestors. One of the protestors had a hand held taser and attempted to shock him with it. Only when other residents of the street came out of their houses and formed a line of defence which Mr. Hartless was able to get behind did the assault stop. The OPP were called, took a report and took no further steps against the protestors;

- d. on June 9, 2006, an elderly couple, Kathe Golke and Gunther Golke, of Simcoe, Ontario, stopped their car on Argyle Street near the protestors' barricade to look into Douglas Creek Estates. The couple were followed into the nearby Canadian Tire parking lot by approximately 25 protestors who surrounded their car, would not let them leave, and taunted them with threats of death or physical harm. One protestor put his hand through the open window and others jumped on the vehicle. Mr. Golke suffered a heart attack that required treatment at West Haldimand Memorial Hospital. This incident took place in full view of nearby OPP officers, who took no steps to intervene and prevent the assault;
- e. on June 9, 2006, two CH TV newsmen, Ken MacKay, a reporter and Nick Garbuttt, a cameraman, were assaulted by protestors when they attempted to film the incident referred to in subparagraph d. above. When they arrived at the scene, Garbuttt set up his television camera approximately 50 feet away and was told by one of the OPP officers at the site not to get any closer. A group of the protestors left the Golke's car, walked past two OPP officers, and demanded that Mr. Garbuttt hand over his camera and film. When one of the protestors reached for the camera Mr. Garbuttt grabbed his arm. He was then spun around, thrown against the side of the CH TV van, held in a head lock and punched in the head. His camera was taken and the video tape inside was removed. Mr. Garbuttt required treatment at West Haldimand General Hospital. Mr. MacKay reported

that approximately 15 OPP officers witnessed the assault, but took no steps to prevent it; and

- f. on the evening of June 9, 2006, the residents of Thistlemoor Avenue, were requested by members of the OPP to vacate their premises for the evening.
27. As of the date of this Statement of Claim, no charges have been laid with respect to any of the offences set out in paragraphs 24 and 25.
28. No arrests were made at the scene by the attending OPP officers, nor have any subsequent arrests been made as of the date of this Statement of Claim, with respect to the any of the incidents referred to in paragraph 26.

Closure of Argyle Street

29. Argyle Street is a highway that is within the jurisdiction of Haldimand County in accordance with Part III of the *Municipal Act, 2001*.
30. Haldimand County has taken no steps to close Argyle Street in accordance with the requirements of the *Municipal Act, 2001*.
31. From March 20, 2006 to May 24, 2006 there has been no public passage or traffic allowed by the protestors upon Argyle Street from the Third Line to Celtic Drive.
32. Haldimand County took no steps, either through its own staff or through the OPP to ensure passage at common law along Argyle Street South for the period from March 20, 2006 to May 24, 2006.
33. The police officers of the OPP have taken no steps to ensure passage at common law through Argyle Street from March 20, 2006 to May 24, 2006.

Closure of Highway 6

34. From April 20, 2006 onward, and as of the date of this Statement of Claim, there has been no public passage or traffic allowed by the protestors along Highway 6.
35. Highway 6 has been closed for a period exceeding 72 hours in contravention of s. 29(3) of the *Public Transportation and Highway Improvement Act*.
36. Highway 6 has not been closed in accordance with the provisions of s. 29(2) of the *Public Transportation and Highway Improvement Act*.
37. The OPP has jurisdiction over Highway 6 under the *Police Services Act* R.S.O. R.S.O. 1990, c. P.15.

Duties of Haldimand County

38. Haldimand County has a duty to the plaintiffs and Class Members to provide for the common law right of passage over the highways that are within its jurisdiction.
39. Haldimand County can only close a highway in accordance with the provisions of Part III of the *Municipal Act, 2001*.
40. Haldimand County further has a duty to the plaintiffs and Class Members to provide that the highways that are within its jurisdiction are free of nuisances.

Duties of Commissioner Boniface and Inspector Haggith

41. The police officers of the OPP have failed to provide police services in accordance with the Haldimand Police Services Agreement and in accordance with the responsibilities set out in s. 19(1) of the *Police Services Act*, specifically, maintaining a traffic patrol on Highway 6.

42. The police officers of the OPP have failed to carry on the duties of police officers, in contravention of s. 42 of *the Police Services Act*, specifically,
- a. They have failed to preserve the peace;
 - b. They have failed to apprehend criminals and other offenders and others who may lawfully be taken into custody, specifically,
 - (i) they have failed to carry out the mandatory order of the Honourable Justice Matheson dated March 3, 2006 and the Honourable Justice Marshall dated March 9, 2006, requiring them to remove those who were requested by the Sheriff to comply with the said Order;
 - (ii) they have failed to execute the Warrants of Committal issued by the Honourable Justice Marshall in his Order of March 17, 2006;
 - (iii) they have failed to execute Warrants of Arrest in accordance with paragraph 8 of the Order of the Honourable Justice Marshall dated March 28, 2006;
 - c. They have failed to prevent crimes and other offences, in particular;
 - (i) they have willfully ignored the criminal contempt of the Orders of Justice T. Marshall dated March 17 and March 28, 2006 by the Respondents;
 - (ii) they have willfully ignored violations of suspended sentences and probation orders by the Respondents who returned to the Douglas Creek Estates following their arrest under the Orders of Justice T. Marshall dated March 17 and March 28, 2006;

- (iii) they have willfully ignored acts of break and entry and damage to private property, specifically, the buildings and contents owned by Henco located on the Douglas Creek Estates;
 - (iv) they have willfully ignored acts of theft, specifically, the conversion to their own use by the protestors of property belonging to Henco;
 - (v) they have willfully ignored acts of public mischief that have taken place, specifically the act by protestors of throwing a vehicle over the Highway 6 bypass damaging both the bridge and the municipal road below, and thereby further allowing the endangerment of vehicular and pedestrian traffic passing along the municipal highway below;
 - (vi) they have willfully ignored acts of theft and public mischief to take place by allowing the protestors to take property, specifically, hydro towers owned by Hydro One, and converting them to their own use;
 - (vii) they have willfully ignored acts of arson that have taken place, such as the burning of the Sterling St. bridge;
 - (viii) they have failed to protect the Hydro One Caledonia transformer station when they knew that the transformer station would have been a likely target of attack;
- d. they have failed to provide passage at common law over Argyle Street, as they are required to do as constables under common law;

- e. they have failed to provide passage at common law over Highway 6, as they are required to do as constables under common law;
43. The willful destruction of the Hydro One Caledonia transfer station was a direct and foreseeable consequence of the willful failure on the part of the OPP police officers to carry out their duties as set out in paragraph 42 above.
 44. Commissioner Boniface owes a duty to the plaintiffs and the Class Members to ensure that the police officers of the OPP carry out their duties in accordance with the *Police Services Act*.
 45. Commissioner Boniface has breached her duty under s. 41 of the *Police Services Act*, as follows:
 - a. she has knowingly allowed police officers under her authority to violate their duties as set out in paragraph 42 above;
 - b. she has willfully frustrated the Orders of the Honourable Justice Matheson and the Honourable Justice Marshall in determining, and stating to the representative of the Premier of Ontario, that the protestors would not be forcibly removed from the Douglas Creek Estates in any circumstance;
 - c. she has acquiesced in a commitment by the Minister of Aboriginal Affairs for Ontario not to prosecute the protestors for any criminal offences,
 - d. she has instructed the Defendant, Inspector Haggith, to refrain from enforcing the Orders of the Honourable Justice Matheson and the Honourable Justice Marshall; and
 - e. she has carried out her duties in a manner that ignores the needs of the community of Haldimand County, specifically, she has restricted the

police officers under her jurisdiction from carrying out their duties for fear the exercise of their duties in Haldimand County may, hypothetically, promote breaches of the peace in communities outside of Haldimand County.

46. Inspector Haggith has breached his duty under s. 41 of the *Police Services Act* in the following manner:
- a. by failing to oversee the Cayuga Detachment of the OPP in accordance with the needs of the community of Haldimand County;
 - b. by knowingly allowing police officers under his authority to violate their duties as set out in paragraph 42 above;
 - c. acquiescing in the frustration of the Orders of the Honourable Justice Matheson and the Honourable Justice Marshall by the Defendant, Commissioner Boniface, ensuring that the protestors would not be forcibly removed from the Douglas Creek Estates;
 - d. acquiescing in a commitment by the Minister of Aboriginal Affairs for Ontario not to prosecute the protestors for any criminal offences
47. If the damage to the Hydro One Caledonia transformer station is determined not to be the direct and foreseeable consequence of a willful act on the part of the Defendants, Commissioner Boniface and Inspector Haggith, as set out above, in the alternative, the plaintiffs plead that Commissioner Boniface and Inspector Haggith were negligent in carrying out their duties under s. 41 of the *Police Services Act*, when they knew or ought to have known that the Hydro One transformer station was a likely target for vandalism by the protestors and that they failed to take any reasonable precautions to ensure that the transformer station was protected during the continued occupation of the Douglas Creek Estates by the protestors.

48. Commissioner Boniface and Inspector Haggith both would have known, or ought to have foreseen, that the failure on their part to carry out their duties would cause financial harm to business and property owners, specifically the plaintiffs and Class Members.

Damages

49. The occupation by the protestors of the Douglas Creek Estates has received wide local and national coverage since the beginning of the occupation on February 28, 2006.
50. On April 20, 2006, when the protestors closed Argyle Street and Highway 6, the various illegal acts of the protestors received wide notoriety from the local and the national press. Stories regarding the closure of Argyle Street and Highway 6 were printed in the *Hamilton Spectator*, the *Globe and Mail*, the *Toronto Star*, the *National Post* and the *Toronto Sun* and pictures of the barricades appeared on CHTV, Global, CBC and CTV.
51. Caledonia is a community situated on the Grand River, which has been designated by the Government of Canada as a Heritage River. Business in the community is greatly dependent upon tourism by those wishing to visit the Grand River or those en route to Port Dover on Lake Erie or Hamilton on Lake Ontario.
52. The prolonged occupation by the protestors, which has been allowed by the Defendants in contravention of their respective duties, has created an impression among prospective visitors to Caledonia or to prospective purchasers of property in Caledonia and the surrounding area that Caledonia is not a safe community.

53. As a result of the failure on the part of the Defendants to carry out their duties, the plaintiffs have suffered damages in the form of diminished sales revenues and, as a direct result of the hydro service interruption, in the form of spoiled inventory or business interruption.
54. From April 1, 2006 to May 22, 2006, the sales revenues of KRP Enterprises were reduced by approximately \$19,557.00 from the comparable period in the previous fiscal year, resulting in a loss of profits equal to approximately \$22,000.00 for the period. This loss does not include the loss arising from inventory loss due to the power outage or the loss of profits continuing after May 22, 2006.
55. From April 1, 2006 to May 1, 2006, the sales revenues of 1643078 were reduced by approximately \$4,000.00 from the comparable period in the previous fiscal year, resulting in a loss of profits in excess of \$4,000.00 for the period. This loss does not include the loss arising from inventory loss due to the power outage or the loss of profits continuing after May 22, 2006.
56. The Province of Ontario provided Haldimand County with \$500,000.00 for immediate emergency financial assistance to local businesses which are at risk of closure due to the Douglas Creek Estates blockade. The program is called Local Business Emergency Relief Assistance Program (the "Assistance Program").
57. The Assistance Program only applies to businesses. It does not fully cover losses of profits, nor does it cover losses due to the power outage arising from the destruction of the Caledonia transformer station. It only covers a small percentage of the damages being claimed by the plaintiffs on their own behalf and on the behalf of members of the Class.
58. KRP Enterprises applied to Haldimand County under the Assistance Program and received \$4,426.00. 1643078 had also applied, but as of the date of this Statement of Claim the amount to be received by it, if any, is undetermined.

59. In addition, those Class Members who are not business owners have suffered damages by the devaluation of their property.
60. Each of the breaches of duty as set out above, specifically, the breach by Haldimand County, the breach by Commissioner Boniface, and the breach by Inspector Haggith, has contributed to the damages suffered by the plaintiffs and the Class Members.
61. To the extent that the breaches of duty on the part of Commissioner Boniface and Inspector Haggith, with respect to damages arising from the interruption of hydro services, are considered to be grounded in negligence, the plaintiffs rely upon the provisions of the *Negligence Act* R.S.O. 1990, c. N.1, in determining the extent to which such negligent acts have contributed to the damages suffered by the plaintiffs and the Class Members.
62. The damages suffered by the plaintiffs and the Class Members are continuing and will continue and will not be capable of final determination until all of the following events occur:
 - a. The protestors are removed from the Douglas Creek Estates in accordance with the Orders of the Honourable Justice Matheson and the Honourable Justice Marshall, and
 - b.. Highway 6 is reopened.
63. Full particulars of the damages suffered by the plaintiffs and the Class Members will be determined at trial.

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KRP ENTERPRISES INC. et al.

v.

THE CORPORATION OF HALDIMAND COUNTY et al.

Plaintiff

Defendants

Court File No.

114/2006
-CP

ONTARIO

SUPERIOR COURT OF JUSTICE

Action Commenced at Cayuga

STATEMENT OF CLAIM

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