

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.