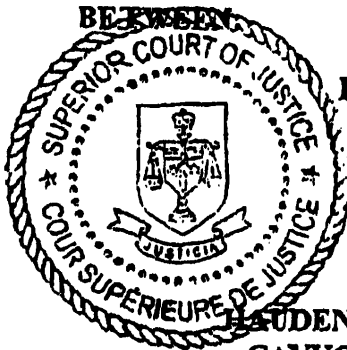


**ONTARIO  
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE MR. ) THE 4<sup>TH</sup> DAY OF  
JUSTICE T. D Marshall ) MAY, 2006  
)



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

**Plaintiff**

**-and-**

**AUDENOSAUNEE CONFEDERACY OF MOHAWK, SENECA,  
CAYUGA, ONONDAGA, ONEIDA, TUSCARORA NATIONS;  
SIX NATIONS OF THE GRAND RIVER BAND OF INDIANS;  
CLYDE POWLESS; JAQUELINE HOUSE; HAZEL HILL;  
DAWN SMITH; SEAN MT. PLEASANT; WES HILL;  
JANE DOE; JOHN DOE; and PERSONS UNKNOWN**

**Defendants**

**ORDER**

**THIS MOTION** made by the Plaintiff for an Order for an injunction and other relief was heard this day in Cayuga.

**ON HEARING THE SUBMISSIONS OF COUNSEL** and upon reviewing the affidavit of Stuart Thomas, sworn May 2, 2006,

1. **THIS COURT ORDERS** that the defendants and any persons having notice of this Order shall forthwith permit and cause removal of any and all obstructions placed or created or imposed by them or by persons under their direction, influence or control in relation to the plaintiff Railway's otherwise full and safe use of its railway right of way lands, premises,

facilities and equipment on its Hagersville Subdivision in or about the Town of Caledonia, County of Haldimand, or in or adjacent to the lands of the Six Nations.

2. **THIS COURT ORDERS** that an interim injunction shall hereby issue against the defendants and all others with notice thereof, restraining and enjoining them from directly or indirectly, by any means:

- (a) Obstructing, delaying or otherwise interfering with or threatening to interfere with any of the plaintiff Railway's operations along the railway right of way described by the Railway as the Hagersville Subdivision, and more particularly any rail works, repair, reconstruction, testing, inspection, patrol and all railway operations along that portion of the railway line works and right of way in or about the Town of Caledonia in the County of Haldimand or through, adjacent to, or in the vicinity of the lands of the defendants described as the Six Nations of the Grand River Band of Indians and Haudenosaunee Confederacy (hereinafter together referred to as the "Six Nations");
- (b) Making unauthorized entry upon the plaintiff's railway right of way, and more particularly in or about the said railway lands and premises in or about the Town of Caledonia;
- (c) Physically preventing, impeding, restricting or in any way physically interfering with, or counselling others to impede, restrict or in any way physically interfere with, the plaintiff's employees or agents and their carrying on of the plaintiff's railway business and any associated repair, construction or reconstruction, inspection, patrol and operations, and further in particular any interference with the plaintiff's right to operate

its trains safely on and over the existing line of railway and associated line works and structures known as the Hagersville Subdivision;

- (d) Physically preventing, impeding, restricting or in any way physically interfering with, or counselling others to prevent, impede, restrict or any way physically interfere with, the removal of any objects or materials from the subject railway line and right of way (including, without restriction, any materials in the nature of debris or remains associated with the former overhead Stirling Street bridge at the Town of Caledonia and other materials at or about mile 17.72 of the plaintiff's Hagersville Subdivision, accumulated materials or barricade at or about mile 17.1 of the plaintiff's Hagersville Subdivision, or other obstructions to safe railway movement);
- (e) Endangering or in any way counselling, encouraging, or failing where possible to issue directions to others under their direct influence or control in relation to, any actions endangering safe railway operations and related community safety;
- (f) Threatening or intimidating the plaintiff's employees, servants, contractors, agents or other persons having business with the plaintiff, whether through obstruction, gesture, word or otherwise;
- (g) Physically interfering with or counselling others to physically interfere with the performance by the plaintiffs of its contractual relations with its employees and contractors and with other persons having lawful business with the plaintiff railway;
- (h) Physically obstructing or otherwise impeding or imperilling, or counselling others to physically obstruct or impede or imperil, the safe movement or operation of the

plaintiff's trains on the subject Hagersville Subdivision line of railway or anything reasonably connected with such railway operations; and

(i) Creating a nuisance, whether by physically obstructing the plaintiff from carrying on its railway operations or otherwise.

3. **THIS COURT ORDERS** that each of the defendants shall forthwith take such steps to communicate the terms of this Order by such means of communication and distribution and posting as may be available to them, so as to promote the objects of this Order of the safe and orderly restoration and resumption of the plaintiff's lawful rail operations through, in or about the Town of Caledonia and in or about the lands of the Six Nations;

4. **THIS COURT ORDERS** that the Sheriff of the County of Haldimand shall do all things reasonably able to be done, with such force and such assistance as is reasonably required in the circumstances, to prevent or stop breaches of this Order and to enable it to be carried out, including communication of the terms of this Order and removal of persons, objects and materials or vehicles as necessary and, for this purpose, this Court Orders that there shall be made available to the Sheriff police officers from the Six Nations Police of the Six Nations of the Grand River Band of Indians and from the Ontario Provincial Police for the Sheriff's accompaniment and assistance to keep the peace;

5. **THIS COURT ORDERS** that the terms of this Order shall remain in force, notwithstanding that this Order may have been granted without notice to the defendants or any of them, until varied or discharged by a further Order of the Court;

6. **THIS COURT ORDERS** that the defendants and anyone with notice of this Order may apply to the Court at any time to vary or discharge this Order or so much of it as affects such person, on grounds to be fully set out in materials delivered, but anyone wishing to do so shall provide the plaintiff's solicitors with at least 24 hours notice thereof, and no such motion shall in any way excuse that person or entity from compliance with the terms of this Order;

7. **THIS COURT ORDERS** dispensation with the requirement of the undertaking that may have otherwise been required under Rule 40.03 of the *Rules of Civil Procedure* of this Court;

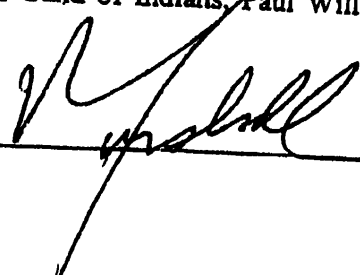
*This paragraph is deferred (see endorsement/Order attached)*

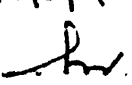
8. **THIS COURT ORDERS THAT** the moving party's costs of this proceeding are reserved to the trial Judge or until further Order of the Court;

9. **THIS COURT ORDERS** leave to examine such witnesses and to present photographic or xerographic evidence as may have been admitted at the hearing of this motion;

10. **THIS COURT ORDERS** the abridging of the time for any service and filing of this Notice of Motion and supporting materials;

11. **THIS COURT ORDERS** that substitutional service on the defendants by electronic (email) and, facsimile abridged service May 3, 2006 of this motion and supporting materials on counsel for the Six Nations of the Grand River Band of Indians, Paul Williams and Kathleen Lickers, is validated "nunc pro tunc".

  
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2006  
MAY 23  
MAY 4 2006  


Plaintiff

Defendants

13/06

Court File No.

May 4/06: The motion with notice such  
regarding relief against the  
defendants. I am satisfied that the  
order for Counsel for the H. Nation  
is acceptable.

On the basis of the  
material before me, the submission  
I had I am satisfied that the  
that set out in R.S.R. 17 - Donald Case  
have been met [1994] 1 R.C.S. (SCR) 312  
I am satisfied that the order  
should issue. The court accepts  
that all parties were well  
represented before this order is  
enforced.

Paragraph 7 is removed in  
order to any further consideration  
in order to go - see with  
in the name of para 7

*[Signature]*

ONTARIO  
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT THE TOWN  
OF

CAYUGA

MOTION RECORD

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