

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

22 Named Officers

Plaintiffs

- and -

GARY MCHALE

Defendants

BETWEEN:

GARY MCHALE

Plaintiff by Counterclaim

- and -

22 Named Officers

**KARL WALSH,
JULIAN FANTINO, CHRIS MORLEY, PETER WILKINSON and
THE COUNTY OF HALDIMAND**

Defendants by Counterclaim

STATEMENT OF DEFENCE AND COUNTERCLAIM

TO THE DEFENDANTS TO THE COUNTERCLAIM

A LEGAL PROCEEDING has been commenced against you by way of counterclaim in an action in this court. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS COUNTERCLAIM, you or an Ontario lawyer acting for you must prepare a defence to counterclaim in Form 27C prescribed by the Rules of Civil Procedure, serve it on the plaintiff by counterclaim's lawyer or, where the plaintiff by counterclaim does not have a lawyer, serve it on the plaintiff by counterclaim, and file it, with proof of service, in the this court, WITHIN TWENTY DAYS after this statement of defence and counterclaim is served on you.

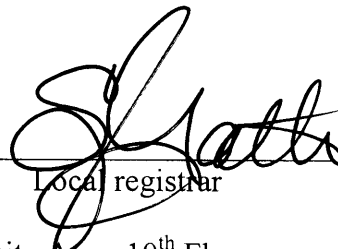
If you are not already a party to the main action and you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

If you are not already a party to the main action, instead of serving a filing a defence to counterclaim, 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 defence to counterclaim.

IF YOU FAIL TO DEFEND THIS COUNTERCLAIM, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FUTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOUR BY CONTACTING A LOCAL LEGAL AID OFFICE.

June 1, 2007

Issued by



Local registrar

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Solicitors for the Plaintiffs

AND TO: **KARL WALSH**
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AND TO: **JULIAN FANTINO**
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AND TO: **CHRIS MORLEY**
Office of the Premier
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AND TO: **PETER WILKINSON**
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AND TO: **THE CORPORATION OF HALDIMAND COUNTY**
45 Munsee Street North
Cayuga, Ontario
N0A 1E0

1. The Defendant admits the allegations contained in paragraphs 3, 5, 12, 15, 20, 23, 26 and 27 of the Statement of Claim.
2. The Defendant denies the allegations contained in paragraphs 4, 6 to 11, 13, 14, 16 to 19, 21, 22, 24 to 25, 28 and 29 of the Statement of Claim.
3. The Defendant has no knowledge of the allegations contained in paragraphs 2 of the Statement of Claim.

Events Leading Up to Publications

4. The Defendant states that the on-going land claim dispute referred to in paragraph 3 of the Statement of Claim is taking place on a subdivision in Caledonia known as the Douglas Creek Estates.
5. The Defendant denies that he has ever attended at the Douglas Creek Estates. Despite the fact that the land is owned by the Province of Ontario, the Ontario Provincial Police (“OPP”) do not allow anyone other than the protestors on the Douglas Creek Estates.
6. The Defendant states that he has on occasion attended at Caledonia and that when he has done so he as always remained on either on private property or public property other than the Douglas Creek Estates with permission of the property owner.
7. The Defendant denies that when he has attended at Caledonia it was to express opposition to the Aboriginal protesters, as alleged in paragraph 4 of the Statement of Claim, but to raise public awareness of what is often referred to a “two-tiered” justice, which is a phrase, originally used publicly by the Defendant by Counterclaim, Karl Walsh, President of the Ontario Provincial Police Association

(the "OPPA"), which phrase he used to refer to the unequal treatment between natives and non-natives in the application of the laws of Ontario and Canada.

8. On February 28, 2006 a group of protesters occupied the Douglas Creek Estates.
9. The owner of the Douglas Creek Estates was, at that time, Henco Industries Limited ("Henco").
10. On March 3, 2006 Henco brought an application to the Superior Court of Ontario at Cayuga seeking an interim and permanent injunction restraining the protesters from interfering with Henco or its employees or agents and a mandatory order requiring any peace officer of the OPP to remove any person who refused the request of the Sheriff to obey the interim injunction.
11. On March 3, 2006, Mr. Justice Matheson, issued an interim injunction and mandatory order requiring the OPP to remove any protesters that interfered with Henco.
12. On March 9, 2006, Justice T. Marshall issued an Order making permanent the injunctions ordered by Justice B. Matheson on March 3, 2006.
13. From March 6, 2006 to April 20, 2006, the OPP took no steps to enforce the injunction and mandatory orders of Justices Matheson and Marshall.
14. On April 20, 2006, the OPP attended at Douglas Creek Estates and arrested 16 of the protesters. The protesters were fingerprinted and released. Within hours many of the protesters were back at the Douglas Creek Estates.
15. Aside from the attendance on April 20, 2006, the OPP has taken no further steps to remove the protesters from the Douglas Creek Estates.

16. As a result of the attendance on April 20, 2006, the following events have occurred:
- (a) the protestors barricaded Argyle Street, the main street in Caledonia, and prevented any public passage or traffic from running north or south and this barricade was in place until May 24, 2006, when the road was again opened for public passage, which had the effect of devastating business commerce in Caledonia during that period;
 - (b) the protestors piled tires on Argyle Street, poured gasoline on the tires, and set fire to them;
 - (c) the protestors set fire to and completely destroyed the wooden bridge on Sterling Street that passes over the CN rail line and prevented the operator of the rail line from being able to carry on business;
 - (d) the protestors started a brush fire on the southern shore of the Grand River endangering neighbouring landowners;
 - (e) the protestors 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, suppressing business commerce throughout Haldimand County. This barricade was in place until June 13, 2006, when the highway was again opened for public passage;
 - (f) the protestors threw a vehicle over the barrier of the Highway 6 overpass which landed on Municipal Highway 54;
 - (g) the protestors attacked several of the OPP officers with bats and other weapons requiring several of the OPP officers to receive medical attention; and

- (h) the protestors recklessly drove ATV vehicles in a dangerous manner throughout the Douglas Creek Estates and along adjoining property, which included the grade school, Notre Dame School.
17. On May 22, 2006, control systems at the hydro transformer station located on Argyle Street, just south of the protestors' barricade, were purposefully set on fire and destroyed, 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.
18. To the Defendant's knowledge, no one has been arrested, and no one has been charged, with respect to any of the incidents referred to paragraphs 16 and 17 above, even though they took place in plain sight of many witnesses, including OPP police officers.
19. On May 22, 2006, and on one other day which followed, Notre Dame School was forced to close, and children were unable to attend school, because of concern on the part of the school board with respect to the disturbing events that were taking place on the Douglas Creek Estates.
20. The role of the OPP in these events, and criticism of their lack of enforcement, has become a major national issue. It has received coverage on CBC and CTV national broadcasts and it has been reported in the *Globe and Mail*, the *National Post* and the *Toronto Star*. It continues to be a major issue of public debate within the Haldimand, Norfolk and Hamilton areas and it continues to be extensively discussed in the local print and radio media.
21. On Saturday, December 2, 2006, a resident of Caledonia, Quintin Chausse, along with other residents of Caledonia attempted to put up Canadian flags on hydro poles along Argyle Street near the Douglas Creek Estates. There were many flags

that had been placed on poles along Argyle Street on both sides of the street that displayed the Mohawk 'Warrior Society' symbol. At no time was Mr. Chausse doing anything other than holding a Canadian flag on a public thoroughfare.

22. The Warrior Society has been identified by the Canadian Security and Intelligence Service ("CSIS") as an organization that has advocated the use of violence to carry out its intended purposes and the Canadian Department of Defence has associated the Warrior Society with other international terrorist organizations.
23. On December 2, 2006, Mr. Chausse was prevented from putting the Canadian flag up by several unidentified OPP officers. He was grabbed by unidentified OPP officers, handcuffed, thrown into a holding vehicle and relieved of his personal possessions.
24. At no time, despite repeated requests by Mr. Chausse, did any of the arresting OPP officers identify to him for what offence he was being held.
25. One of the OPP officers, who appeared to be in charge, told Mr. Chausse that the police had received a telephone call from the Caledonia Baptist Church suggesting that he, among others, was trespassing on the church's property, but Mr. Chausse subsequently contacted the minister of the church and was advised by the minister that, to the minister's knowledge, no such call had been made on behalf of the church.
26. Mr. Chausse was taken, without his consent, to the OPP Cayuga Detachment Office in Cayuga, Ontario, a 30-minute drive from Caledonia, where he was held, against his will, for a period of more than 2 hours.

27. At no time, prior to or during his arrest, or during his subsequent detention, was Mr. Chausse ever informed of the offence for which he was being arrested or held.
28. Mr. Chausse was not given any ticket, information, summons or any other document in any form that would have indicated to him what offence he had committed.
29. On Sunday, December 3, 2006, two OPP Sergeants, Bernie Cowan and Jim Muskola, appeared at Mr. Chausse's home. They told Mr. Chausse, in the presence of his wife, that, on behalf of the OPP, they were sorry for what had happened the previous day and that it never should have happened.
30. On December 2, 2006 and December 3, 2006 the OPP issued news releases that contained inaccuracies regarding the events of December 2, 2006 and was defamatory of Mr. Chausse.
31. Mr. Chausse has since commenced action in the Superior Court of Ontario against Her Majesty the Queen in right of Ontario seeking damages for wrongful arrest and defamation arising from the conduct of the OPP officers on the scene at the time of his apprehension and for the defamatory news releases.

The December 3rd Story

32. On or about December 3, 2006, the facts surrounding Mr. Chausse's treatment by the OPP officers came to the attention of the Defendant.
33. The Defendant admits that on or about December 3, 2006 he posted on www.caledoniawakeupcall.com (the "Website") a story that read "OPP: Hang Your Heads in Shame Dec. 3, 2006 statements about the incident and photographs of OPP officers (the "December 3rd Story").

34. The OPP officers who were pictured in the December 3rd Story were OPP officers who were in attendance on or near Argyle Street at the time that Mr. Chausse was apprehended.
35. The Defendant was not aware of the name of the OPP officers whose pictures appeared in the December 3rd Story. None of the names of the OPP officers were mentioned in the December 3rd Story.
36. The Defendant states and pleads that the statements made in the December 3rd Story constituted fair comment based upon his honest belief that OPP officers pictured were violating their oaths of office as police officers and that they were contravening the provisions of the *Canadian Charter of Rights and Freedoms* (the “Charter”) by preventing Mr. Chausse from exercising his right to freedom of thought, belief, opinion and expression as guaranteed under s. 2(b) of the Charter.
37. The Defendant specifically denies that statements made in the December 3rd Story were actuated by malice and puts the Plaintiffs to the strict proof thereof.

December 9th Story

38. The Defendant admits that on or about December 9, 2006 he posted on the Website a picture of an OPP officer with the caption as set out in paragraph 15 in the Statement of Claim (the “December 9th Picture”).
39. The Defendant was not aware of the name of the OPP officers who was depicted in the December 9th Picture. The name of the OPP officer was not used in the December 9th Picture.
40. The Defendant states and pleads that the statements made in December 9th Picture constituted fair comment based upon his honest belief that OPP officer pictured

had violated, along with other OPP officers whose picture he represented, violated his oath of office as a police officers and that he were contravening the provisions of the Charter by preventing Mr. Chausse from exercising his right to freedom of thought, belief, opinion and expression with respect to the events that had taken place in Caledonia as set out above.

41. The Defendant specifically denies that statements made in the December 9th Picture were actuated by malice and puts the Plaintiffs to the strict proof thereof.

The December 16th Story

42. On Saturday, December 16, 2006, the Defendant arrived in Caledonia, Ontario, with the intention of placing a Canadian flag on a hydro pole along Argyle Street across the street from the Douglas Creek Estates.
43. Upon entering Caledonia, the Defendant was stopped by an OPP officer, without any reasonable grounds for doing so, and asked by the officer why he was in Caledonia. The Defendant indicated that his purpose was to raise a Canadian flag and in doing so make the OPP look foolish.
44. When the Defendant attempted to place a Canadian flag on a hydro pole on Argyle Street he was prevented from doing so and was forcibly apprehended by various OPP officers. The Defendant asked the arresting officer what he was being charged with and the officer did not provide an answer. The officers then handcuffed the Defendant, stripped him of his personal possessions and put him in an OPP vehicle. The Defendant was then taken to a holding cell in Cayuga, Ontario by other OPP officers.
45. The Defendant was held at Cayuga against his will and the supervising OPP officer refused to release the Defendant even after his wife and a friend attended at the station later in the evening of that day and requested to know with what

offences the Defendant was being charged. The attending officers at the Cayuga detachment refused to provide an answer to the Defendant, his wife or his friend of what offence he was being charged.

46. The supervising OPP officers refused to release the Defendant until he appeared before a justice of the peace the next day on Sunday, December 17, 2006 in Hamilton, Ontario. The Defendant's wife and friend were required to attend the bail hearing in Hamilton the next morning.
47. When the Defendant appeared before Justice of the Peace, K. Boon, on Sunday, December 17, 2006, the attending OPP officers had not provided the Crown Attorney with any information regarding charges against the Defendant.
48. The Defendant states that his detention was not done for any lawful purpose and was done maliciously to punish the Defendant from engaging in lawful conduct that the OPP did not approve of.
49. The Defendants admits that on December 16, 2006, he caused to be published on a story entitled "OPP: Hang Your Heads in Shame" which story was similar to the December 3rd Story.
50. The December 16th Story included the pictures of OPP officers who were not pictured in the December 3rd Story, but who were present along Argyle Street when either the residents or the Defendant were prevented from raising the Canadian flag.
51. The Defendant was not aware of the name of the OPP officers whose pictures appeared in the December 16th Story. None of the names of the OPP officers were mentioned in the December 16th Story.

52. The Defendant states and pleads that the statements made in the December 16th Story constituted fair comment based upon his honest belief that OPP officers pictured were violating their oaths of office as police officers and that they were contravening the provisions of the Charter by preventing Mr. Chausse, the Defendant and others from exercising their right to freedom of thought, belief, opinion and expression, including freedom of the press and other media communication, as guaranteed under s. 2(b) of the Charter.
53. The Defendant specifically denies that statements made in the December 16th Story were actuated by malice and puts the Plaintiffs to the strict proof thereof.

Notices

54. The Defendant admits that on or about July 2006 he posted pictures of OPP officers on the website with the heading “WANTED: The return of your pay for services not rendered. These OPP officers stood by while criminal acts were committed (the “July Story”).
55. The Defendant acknowledges that he was served with a notice on or about July 17, 2006 (the “July Notice”) but the July Notice did not identify any of the individuals who were alleged to have been slandered, thereby rendering it impossible for the Defendant to determine whether or not any of the Plaintiffs to this action had been defamed.
56. The Defendant states that notice did not satisfy the requirements of s. 5 of the *Libel and Slander Act* in that it did not identify any of the Plaintiffs. As a result, the Defendant was not able to determine whether he had defamed an individual or, if so, how he should comply with s. 5(2) of the *Libel and Slander Act*.
57. The Defendant denies that any of the Plaintiffs are the officers identified in the July Story and puts the Plaintiffs to the stick proof thereof.

58. In any event, upon receipt of the July Notice, the Defendant removed the July Story from the Website.
59. The Defendant states and pleads that the statements made in the July Story constituted fair comment based upon his honest belief that the OPP officers depicted were not providing the police services that were required under the *Police Services Act* and in accordance with the contract for police services entered into by the County of Haldimand and the Minister of Community Safety and Correctional Services dated January 28, 2004 (the “Police Services Contract”).
60. The Defendant specifically denies that statements made in the July Story were actuated by malice and puts the Plaintiffs to the strict proof thereof.
61. The Defendant admits that he received a notice on or about December 21, 2006 that was purported to be a notice served pursuant to s. 5 of the *Libel and Slander Act* (the “December 21st Notice”), but states that the December 21st Notice did not identify any of the Plaintiffs.
62. The Defendant states that the December 21st Notice did not satisfy the requirements of s. 5 of the *Libel and Slander Act* because it did not identify any of the Plaintiffs. As a result, the Defendant was not able to determine whether he had defamed any individual or, if so, how he should comply with s. 5(2) of the *Libel and Slander Act*.
63. On or about January 25, 2007, the Defendant was served with a notice dated January 21, 2007, purported to be served under s. 5 of the *Libel and Slander Act*, (the “January 21st Notice”) which, for the first time, identified the Plaintiffs and demanded removal of the December 16th Story.

64. On January 26, 2007, the day following service of the January 21st Notice, the Defendant immediately removed the December 16th Story from the Website.
65. On February 28, 2007, the solicitors for the Defendant sent a letter to the solicitors for the Plaintiffs (the "February 28th Letter") confirming that the Defendant had taken down photographs of the Plaintiffs from the Website and advised the solicitors for the Plaintiffs that the Defendant was willing to offer an apology to each of the individual officers listed in the January 21st Notice.
66. The solicitors for the Defendant advised the solicitors for the Plaintiff in the February 28th Letter that the Defendant was willing to have the following apology posted on the Website:

"In the past I have posted photographs of individual members of the Ontario Provincial Police on this website. The pictures, and commentary that accompanied the pictures, suggested that each of these officers knowingly violated the oath that they took upon becoming Ontario Provincial Police officers.

Although, to my knowledge, each of these officers was present and formed part of the line that prevented me from placing a Canadian flag on a hydro pole along Argyle Street across from the Douglas Creek Estates in Caledonia, I cannot unequivocally say that each of these individual officers knowingly violated their oaths.

If, in the case of any of the officers whose pictures appeared on the website, I have wrongfully suggested that they knowingly violated their oaths as police officers, then I offer my apology to that officer and regret any embarrassment that he or she may have suffered as a result."


The solicitors for the Defendant further advised the solicitors for the Plaintiffs that the Defendant was willing to have the apology posted on the OPPA website as well as the Website.

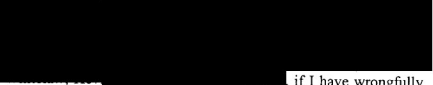
67. The solicitors for the Defendant in the February 28th Letter, further requested that the solicitors for the Plaintiff advise whether or not they wished the names of the officers to be specifically listed in the apology.
68. The solicitors for the Plaintiff did not respond to February 28th Letter prior to their issuing the Statement of Claim on March 13, 2007.
69. Despite the fact that the Statement of Claim was issued on March 13, 2007, the Statement of Claim was not served upon, and did not come to the attention of the Defendant until April 14, 2007.
70. Upon receipt of the Statement of Claim on April 14, 2007, the Defendant immediately posted an apology on the Website as follow:

“APOLOGY TO OPPA & OPP
Officers

In the past I have posted photographs of individual members of the Ontario Provincial Police on this website. The pictures, and commentary that accompanied the pictures, suggested that each of these officers knowingly violated the oath that they took upon becoming Ontario Provincial Police officers.

Although to my knowledge, each of these officers was present and formed part of the line that prevented me from placing a Canadian flag on a hydro pole along Argyle Street across from the Douglas Creek Estates in Caledonia, I cannot unequivocally say that each of these individual officers knowingly violated their oaths.

If, in the case the officers whose pictures appeared on the website, being officers, 

 if I have wrongfully suggested that they knowingly violated their oath as police officers, then I offer my apology to these officers and regret any embarrassment that he or she may have suffered as a result.”

71. The apology was put on the home page of the Website in the most prominent position and had animated bells both above it and below to draw the viewer's attention to it.
72. The solicitors for the Defendant by letter dated April 16, 2007, advised the solicitors for the Plaintiffs that the Defendant had posted the apology on the Website.
73. In response to the April 16th letter, the solicitors for Plaintiff, by letter dated April 18, 2007, complained about the fact that the officers were named in the apology, and suggested their own apology, the form of which was not acceptable to the Defendant.
74. Following the receipt of the letter dated April 18, 2007 from the solicitors for the Plaintiffs, the Defendant, immediately, as of April 18, 2007, revised the apology as follows:

“APOLOGY TO THE OPP OFFICERS

In the past I have posted photographs of individual members of the Ontario Provincial Police on this website. The pictures were accompanied by commentary that each of the officers knowingly violated the oath that they took upon becoming Ontario Provincial Police and that they openly violated the *Canadian Charter of Rights and Freedoms*.

Although, to my knowledge, each of these officers was present and formed part of the line that prevented me from placing a Canadian flag on a hydro pole along Argyle Street across from the Douglas Creek Estates in Caledonia, I cannot unequivocally say that each of these individual officers knowingly violated their oaths or was party to the prevention of the lawful exercise of my rights under the *Canadian Charter of Rights and Freedoms*.

I unreservedly apologize to each officer whose picture has been posted on this website and who was not involved in the prevention of the exercise of my rights under the *Canadian Charter of Rights of Freedoms* for any harm, embarrassment or ridicule that they may have suffered as a result.

75. The Defendant denies that the Plaintiffs have suffered any loss to their professional reputation or embarrassment as a result of any of the July Story, the December 3rd Story, the December 9th Picture and the December 16th Story and puts the Plaintiffs to the strict proof thereof.
76. The Defendant states that, if the Plaintiffs have suffered loss to their professional reputations and embarrassment, it is not a result of any broadcast made by the Defendant, but a result of the critical public discussion, including editorial in major newspapers throughout Ontario, of the conduct of the OPP during the occupation of the Douglas Creek Estates by the protestors.
77. The Defendant states that if any of the July Story, the December 3rd Story, the December 9th Picture and the December 16th Story were all published in good faith and did not involve a criminal charge.
78. The Defendant further states that if any of the Plaintiffs was not present in Caledonia or not involved in any of the events set out above, then their identification in the July Story, the December 3rd Story, the December 9th Picture or the December 16th Story was a result of a mistake or misapprehension of the facts which the Defendant has acknowledged in a full and fair retraction in the published apology.
79. The Defendant states that the apology was broadcast with a reasonable period of time following the receipt of the notices and that the apology was broadcast in a more conspicuous place and for a longer period of time than the original broadcasts.

80. The Defendant relies upon s. 5(2) of the *Libel and Slander Act* and states that, if any of the Plaintiffs have actually suffered damages that they should be restricted to their respective actual damages only.
81. Alternatively, the Defendant, relies upon s. 9 of the *Libel and Slander Act* and pleads that he has completely mitigated any damages suffered by the Plaintiffs by broadcasting a full apology for the libel.
82. The Defendant requests that this action be dismissed with substantial indemnity costs being awarded to the Defendant.

COUNTERCLAIM

83. The Defendant claims against the Plaintiffs and the Defendants by Counterclaim, Karl Walsh and Julian Fantino:
- (a) damages for maintenance and abuse of process in the amount of \$250,000.00;
 - (b) prejudgment and postjudgment interest in accordance with ss. 128 and 239 of the *Courts of Justice Act*;
 - (c) his costs on substantial indemnity basis; and
 - (d) such further and other relief as this Honourable Court deems just.
84. The Defendant claims against all of the Defendants by Counterclaim:

- (a) damages in the amount of \$250,000.00 for conspiring to defame the Defendant and under s. 24 of the Charter for violating of his rights to freedom of thought, belief, opinion and expression, including freedom of the press and other media communication, guaranteed under s. 2(b) of the Charter;
 - (b) punitive damages in the amount of \$1.5 million;
 - (c) prejudgment and postjudgment interest in accordance with ss. 128 and 129 of the *Courts of Justice Act*;
 - (d) his costs on substantial indemnity basis; and
 - (e) such further and other relief as this Honourable Court deems just.
85. The Defendant repeats and relies upon paragraphs 1 to 82 of this Statement of Defence and Counterclaim in support of his Counterclaim.
86. The Defendant by Counterclaim, Karl Walsh, is the President of the OPPA and resides in the City of Barrie, Ontario.
87. The Defendant by Counterclaim, Julian Fantino, is the Commissioner of the OPP and resides in the City of Toronto, Ontario.
88. The Defendant by Counterclaim, Chris Morley, is a member of the staff of Dalton McGuinty, the Premier of Ontario, and resides in the City of Toronto, Ontario.
89. The Defendant, Peter Wilkinson, is the Chief of Staff to Dalton McGuinty, the Premier of Ontario, and resides in the City of Toronto, Ontario.

90. The Defendant, Haldimand County, is a municipal corporation incorporated under the *Town of Haldimand Act, 1999*, S.O. 1999, c. 14, Schedule B.

Maintenance

91. The Defendant states that Defendant by Counterclaim, Julian Fantino (“Commissioner Fantino”) has publicly stated that he will arrange for the OPP to financially support individuals in actions against the Defendant.
92. The Defendant states that the Defendant by Counterclaim, Karl Walsh (“Walsh”), as President of the OPPA, provides instructions to the solicitors for the Plaintiffs with respect to action commenced by the OPPA and member officers of the OPPA.
93. The solicitors for the Plaintiffs are the same solicitors for the OPPA.
94. The Defendant states that both Commissioner Fantino and Walsh are personally interested in suppressing public discussion of their personal involvement in the events surrounding the occupation of the Douglas Creek Estates and in particular, in suppressing the dissemination of information that is critical about their own conduct through the Defendant’s Website.
95. The Defendant states that Commissioner Fantino and Walsh have encouraged the Plaintiffs to bring this Action and have agreed to subsidize the costs of the Plaintiffs for doing so out of budgets of the OPP and/or the OPPA.
96. The Defendants state that Commissioner Fantino and Walsh have provided maintenance to the Plaintiff’s action for the improper and ulterior purpose of causing financial harm to the Defendant in having to defend the action and thereby suppressing the legitimate public discussion of the issues raised in the Defendant’s Website

97. The Defendant states that Walsh has provided instructions to the solicitors for the Plaintiff not only to prevent the Defendant from publishing images of the Plaintiffs and to seek damages on their behalf, but also to seek concessions from the Defendant that would prevent him from referring to any officer of the OPP in the future and to suffer sanctions if he did so.
98. The Defendant states that the real purpose of the action is to act as what is known as a “SLAPP” suit, which is an action that is commenced and designed to inhibit the public participation of the Defendant.
99. The Defendant states that but for the financial support provided by Commissioner Fantino and Walsh, the Plaintiffs would not have pursued their action.
100. The Defendant states that as a result of the maintenance on the part of Commissioner Fantino and Walsh the Defendant has suffered damages in the form of legal fees and out-of-pocket expenses in having to defend himself in this action.

Conspiracy to Defame

101. The Defendant states that Chris Morley (“Morley”) and Peter Wilkinson (“Wilkinson”), whose employment depends upon the continuing popularity of the Premier of Ontario, Dalton McGuinty, each have a personal interest in suppressing the public discussion of the events surrounding the occupation of the Douglas Creek Estates and suppressing the activities of the Defendant including the publication of his Website.
102. Since at least December of 2006, the Defendants Commissioner Fantino, Walsh, Morley, Wilkinson and the County of Haldimand, have conspired to engage in a course of conduct designed to discredit and defame the Defendant.

103. In or about January 9, 2007 Commissioner Fantino met with the council of Haldimand County, in a session that was closed to the public, and came to what he later described as “a mutual understanding about the detrimental effect that McHale and his followers were having on Caledonia”.
104. The Defendant states that the “mutual understanding” was an agreement to enter into a common communications policy regarding the Defendant.
105. Prior to January 19, 2007, in various discussions among the Defendants by Counterclaim, and in the case of Haldimand County, with members of staff and councilors of the Haldimand County, the particulars of which are unknown to the Defendant, a common communications strategy was arrived at that was intended to harm the reputation of the Defendant and to discredit him in the eyes of the public.
106. On January 19, 2007, the OPP, upon the direction of Commissioner Fantino, issued a news release that said the following:

“Caledonia ON – O.P.P. are proactively warning anyone planning on protesting in Caledonia tomorrow that attempting to go around or through the Police Line could face criminal charges of obstructing police. Persons attempting to cross or crossing that police line could be arrested, charged, fingerprinted and photographed.

‘Officers continue to bravely police the community and will continue to preserve the peace that exists in Caledonia. It deeply disturbs me that persons with self-centred agendas are willing to come into this community and undermine our efforts. The OPP and other legitimate stakeholders do not want ‘mischief makers’ in Caledonia – persons with their own agendas bring an added element of risk and will be held accountable for their actions’ said Fantino.

The O.P.P. remains committed to ensuring the fragile peace currently established in Caledonia remains this weekend and the

days to come and encourages everyone to stay clear of rallies or demonstrations propagated by persons with self-centred agendas.”

107. On January 18, 2007 the Defendant Karl Walsh, on behalf of the OPPA, issued a news release that said the following:

“Barrie, Ontario, January 18, 2007, -- The Ontario Provincial Police Association (OPPA) today issued an appeal to those organizing a protest in the Caledonia area this weekend to exercise extreme caution.

‘The people behind these protests are not from the area,’ said OPPA President Karl Walsh. ‘They are, however, acting on a sustained basis to push an aggressive political agenda that includes promoting hatred, flaunting the justice system and inciting violence.’

One protest organizer has already been arrested in connection with a previous demonstration and is now soliciting up to 50 other to join him this weekend to act in a manner that causes his arrest.

‘The OPPA will hold accountable those who provoke or engage in confrontation that results in any of our officers being injured,’ said President Walsh. ‘The OPPA will seriously consider lawsuits and other legal remedies against those responsible for direct injury of officers and against those who instigate violence resulting in injury.’

The OPPA has repeatedly and consistently advocated for the safety of front line officers who have served and are serving in the Caledonia area. So far, 32 officers have sustained injuries while preserving the peace in the Caledonia land dispute.

‘Front line officers are putting their life and well being on the line every time they report for duty in Caledonia,’ said President Walsh. ‘We recognize the right of citizens to protest but will not tolerate any activity that result in harm coming to officers.’

The OPPA represents over 8,000 Ontario Provincial Police uniformed and civilian members who provide community-based policing and specialized police services to residents in over 300 municipalities across Ontario.

For further information: Karl Walsh (705) 728-6161”

108. On January 19, 2007, Haldimand County issued a news release that stated the following:

“(Caledonia, ON) On behalf of Council, Mayor Marie Trainer stresses that Haldimand County does not welcome anyone into our community who has the intention of breaking the law, getting arrested or inciting violence. These types of behaviours [sic] jeopardize officer and public safety for the sake of a willful and purposeless arrest.

The people of Haldimand County have a history of living in harmony and co-operation. Mayor Trainer encourages everyone to continue this tradition of peace to ensure it is maintained.

Authorized by Mayor Marie Trainer”

109. All three of these news releases were issued just before the Defendant had planned to attend at Caledonia for the purpose of raising a Canadian flag, as he had attempted to do in December of 2006.
110. The Defendant’s Website is closely monitored by the OPP, the OPPA, the Premier’s Office, and Haldimand County and each of the Defendants by Counterclaim, at the time of the issuance of the news releases that the Defendant intended to come to Caledonia on January 20, 2007.
111. All of the news released are clearly defamatory of the Defendant and designed to discredit the Defendant and to impress in the public’s mind that the Defendant:
- (a) has an ulterior “self-centred” agenda;
 - (b) is a “mischief maker”;
 - (c) promotes hatred;

- (d) flaunts the justice system;
- (e) promotes violence;
- (f) is an intentional law breaker;
- (g) is a criminal;

all of which statements are completely unfounded and are stated for the improper purpose of diminishing the reputation of the Defendant in the community.

112. The Defendant's attended at Caledonia on January 20, 2007, which attendance was peaceful and his attendance received a great deal of media attention.
113. After the attendance by the Defendant, several public meetings were convened by residents of Caledonia and at such meetings, most of which were attended by members of council of Haldimand County, some residents of Caledonia expressed support for the efforts of the Defendant and questioned Haldimand County's criticism of the Defendant. Some residents, by letters and email to staff and councilors of Haldimand County expressed their disappointment in not publicly supporting the Defendant.
114. This public support of the Defendant prompted Commissioner Fantino to send an email to Mayor Marie Trainer of Haldimand County on April 7, 2007 in which characterizes the Defendant as "a lightening rod for confrontation and potential violence" and someone who engages in "anti OPP rhetoric" and a purveyor of "propaganda".

115. In the email of April 7, 2007 Fantino threatens that if any of his officers is injured “as a result of further forays into the community by McHale and his followers” he would:
- (a) hold Councilor Grice (who had expressed support for the Defendant), Haldimand County and the Defendant accountable;
 - (b) support any injured officer in the pursuit of civil redress;
 - (c) forward the ensuing related policing costs to Haldimand County; and
 - (d) make a recommendation to “my Minister” that the OPP contract with Haldimand County not be renewed once the current contract expires.
116. The email was copied to Morley and Wilkinson, among others.
117. The Defendant states that he has been defamed by each of the news releases described in paragraphs 106, 107 and 108 above, and the news releases have caused him embarrassment and have diminished his reputation in the community.
118. The Defendant states that the news releases were part of a communications policy designed by the Defendants by Counterclaim maliciously designed for the specific purpose of suppressing the Defendant’s freedom of expression by engaging in personal attacks upon the Defendant so that public attention would be diverted away from the legitimate public issues that were being discussed on his Website.
119. The Defendant states that this tortuous activity on the part of the Defendants by Counterclaim is a violation of the Defendant’s right to freedom of thought, opinion and expression, including freedom of the press and other media of communication, guaranteed under s. 2(b) of the Charter and gives rise to a remedy under s. 24 of the Charter.

120. The Defendant states that the conduct on the part of the Defendants by Counterclaim has been carried out in a high-handed and oppressive manner.

121. The Defendant further states that the Defendants by Counterclaim have used public resources for this improper purpose and that this conduct should give rise to an award of punitive damages sufficient to ensure that it will act as a deterrent to other public servants who use public resources for these improper purposes.

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STEVEN LORCH et al

v. **GARY MCHALE et al.**

Plaintiff

Defendants

ONTARIO
SUPERIOR COURT OF JUSTICE
Action Commenced in Toronto

STATEMENT OF DEFENCE
AND COUNTERCLAIM

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