



Last Date of Incident: January 20, 2007

Complainant	Respondent	Staff	File No.
Gary McHale	Ontario Provincial Police	[REDACTED]	[REDACTED]

Human Rights Complaint Form

For instructions on how to complete this form, please refer to the Commission's *Guidelines for Drafting Complaints under the Ontario Human Rights Code*. This is available from the Commission.

Once completed, mail this form to the following address:

The Ontario Human Rights Commission
Inquiry and Intake Office
180 Dundas Street West, 7th Floor
Toronto, Ontario M7A 2R9

Disponible en français

Complaint Template approved by the Commission: May 25, 2005



Human Rights Complaint Form

Under the *Human Rights Code*, R.S.O. 1990, c. H.19

Inquiry Number: [REDACTED] [REDACTED]

(Only Sections 1 to 9 will be sent to the person(s) named in the complaint form)

1. Person making the complaint:

First name Gary	Last name McHale
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2. Business, organization or association you are complaining about:

Name of business, organization or association Ontario Provincial Police		
Address 777 Memorial Ave.		
City/Town Orillia	Province ON	Postal Code L3V 7V3
Telephone Number 705-329-6051	Fax Number 705-329-7407	

3. Names of persons you are complaining against (Please ensure that you have the correct spelling):

First Name Julian	Last Name Fantino	Job Title Commissioner
First Name (see Appendix 'A' attached)	Last Name	Job Title Police Officers
First Name	Last Name	Job Title

4. In what area did the discrimination happen?

(Please check (✓) only the one that applies to your complaint; all others will not be accepted)

<input checked="" type="checkbox"/> Goods and Services (Policing)	<input type="checkbox"/> Employment
<input type="checkbox"/> Accommodation (Housing)	<input type="checkbox"/> Vocational Associations
<input type="checkbox"/> Contract	

5. On what ground(s) did the discrimination happen?

(Please check (✓) only the ones that apply to your complaint; all others will not be accepted)

<input type="checkbox"/> Age	<input type="checkbox"/> Citizenship	<input type="checkbox"/> Disability	<input type="checkbox"/> Marital Status	<input type="checkbox"/> Receipt of Public Assistance	<input type="checkbox"/> Sex
<input type="checkbox"/> Ancestry	<input type="checkbox"/> Colour	<input type="checkbox"/> Ethnic Origin	<input type="checkbox"/> Place of Origin	<input type="checkbox"/> Record of Offences	<input type="checkbox"/> Sexual Orientation
<input type="checkbox"/> Breach of Settlement	<input type="checkbox"/> Creed	<input type="checkbox"/> Family Status	<input checked="" type="checkbox"/> Race	<input type="checkbox"/> Reprisal	<input type="checkbox"/> Sexual Solicitation

6. When did the last incident happen? (Date) Jan 20, 2007

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7. **Particulars:** A summary of the incidents you are complaining about. Your summary must answer the following questions listed below. Section 7(a) should not be LONGER than two (2) pages; otherwise the complaint may be returned to you for redrafting.

- Date incident(s) happened (month/day/year)
- Where did the incident(s) happen?
- Who was involved (Name and Title)?
- What happened?
- How were you treated differently from others?
- How do the incidents relate to the ground(s) you selected?
- Remedy/Resolution you are seeking

Section 7 begins on next page

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Introduction: It was OPP Association President Karl Walsh who first used the phrase "Two Tier Justice" regarding how the OPP is operating in Caledonia. Since then the following people have repeated the phrase: OPP Officers, Local Elected Officials – Mayor Trainer, Councillor Grice, MPP Toby Barrett, local Residents and Business owners. In Caledonia, like Ipperwash, all OPP officers are under orders to determine the Race of the person before taking any action – this has been proven many times and several lawsuits have been filed.

The Proof – Raising the Canadian Flag: 1. Dec 02/06: Non-aboriginal Caledonia residents attempted to place a Canadian flag on a public utility pole. One was arrested by OPP officers who created illegal charges about trespassing – the next day two OPP Officers formally apologized for this arrest and left their business cards.

2. Dec 16/06: I went to Caledonia as part of a protest to raise a Canadian flag in support of this resident. Although the OPP allowed aboriginal protesters to place flags on the same utility poles, they formed a line to block our access despite 2 separate Supreme Court of Canada decisions that protect our right to do so (*Ramsden v. Peterborough, 1993* and *Haida Nation v. British Columbia, 2004*).

3. At no time was our protest violent or threatening to police however, OPP officers arrested me and another man for 'Breaching the Peace.' They held me in a jail cell at the OPP detachment in Cayuga overnight and forced me to appear before a judge even though they knew they were not laying any charges. The Crown told the Judge that they had no information on this case at all – the whole court hearing lasted 1 minute.

4. **Jan 12/07:** In an article entitled, '*Fantino sending 50 new OPP officers to Haldimand,*' Commissioner Fantino was quoted by Katie Dawson of The Sachem: 'When it comes to raising flags, Fantino says it is legal to put up a flag on public property. "From what I was told the Supreme Court says it is legal."'

5. **Jan 14/07:** I invited Fantino to a Town Hall Meeting to explain why raising the Canadian flag was illegal – he did not show up. I then did a 90 minute Powerpoint Presentation on why it was important to remain peaceful and to raise the Canadian Flag. That meeting was attended by OPP, Six Nation's Police, Native Chiefs, and people from both Caledonia and Six Nations – all were welcome to listen.

6. **Jan 20/07:** I went to Caledonia to again attempt to place a Canadian flag on a public utility pole. Despite Fantino's admission that placing flags on public utility poles was lawful, the Commissioner did not order his officers to protect our right to do so. Instead, the Commissioner went to Caledonia to personally supervise as his officers again violated our rights. The OPP even called out the London riot squad to assist in preventing us from raising flags. They also issued a news release threatening to charge protesters with the dubious charge of 'Obstructing Police' should any attempt be made to move around police to place flags on the poles.

7. Native occupiers had placed additional flags including a Canadian Flag across from DCE since December, but the OPP refused to allow us to even walk down Argyle Street let alone place our flags on the poles. Later in the day I confronted Fantino (who remained peeping out the window) at the Unity Station Headquarters. Again I asked why it was illegal to put up a Canadian Flag. We were there for 40 minutes with various media outlets filming the event. No officer could explain why Natives were allowed to put up a Canadian flag while non-Natives would be arrested.

8. I went to the utility pole and quickly raised a Canadian Flag within 2 feet of another Canadian Flag which had been erected earlier by a native. Over 40 OPP Officers attempted to arrest me but they finally decided not to. OPP officer (#6276) removed the Canadian Flag I put up while leaving the other Canadian Flag there – he claims my Flag was illegal – this was based solely on the Race of the person who put it up

9. On Jan 9, 2007, Fantino had told the Business Owners at a public meeting that OPP officers had no authority to remove any flags. However, 11 days later OPP officers did remove Canadian Flags raised by a non-Native person while leaving the one raised by a Native person.

Note: Witnesses are available for all facts in this report – video is available for all public events.

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Systemic Racism by the OPP: Native vs. Non-Native Citizens

10. It is well documented that officers of the OPP have stood by while native protesters have used violence, destruction and intimidation against the citizens and infrastructure of Caledonia, and have allowed natives to erect flags on utility poles across the street from the Douglas Creek Estates. I believe that the denial of my right to place a flag on the same poles, and my arrest were based solely upon my race in accordance with systemic, race-based policing practices currently in use by the OPP in Caledonia.

11. Are police officers justified in indefinitely suspending the rights of non-native citizens as a convenient alternative to protecting those rights against native protesters who might use violence?

The OPP argue that a non-Native person placing a Canadian flag on a utility pole is a 'breach of peace,' that it is 'provoking violence.' With such an argument one should consider a hypothetical scenario:

Let's say that a White Supremacy Group owns some land that touches the 401. They make it clear to the OPP that if any Black person drives down the highway past their land then they will attack them. The OPP don't believe them but one day a black man is attack, assaulted and put in the hospital. The OPP, know this Supremacy Group is armed and fear that anything they do could raise tensions so instead of arresting the group the OPP block the highway and turn back all black people. Black leaders get angry and form a protest for Black Rights. They create a convoy to drive down the 401 to demonstrate that Black people have Rights – the OPP stop the convoy and place the Black leaders in Jail for 'Breach of the Peace'. Meanwhile, the White Supremacy Group spreads their control of the 401 to other areas and the OPP stop Black people in those areas as well.

It is unacceptable for the OPP to arrest non-violent law abiding people who are arrested solely based on their Race. The OPP are fearful of the violence that Native Protesters have demonstrated they are willing to do upon the citizens of Canada. Audio Taped threats by Native Protesters to kill residents, OPP officers, and town workers is available upon request. Native protesters demonstrated their willingness to use extreme violence when they assaulted residents, US border guards, OPP officers, camera crews, and even an attempted murder. In each example the OPP stood by and watched the crimes being committed without stepping in to help. **Please note** that Mayor Trainer, Councillor Grice and MPP Toby Barrett have all been out to support several of my rallies to date – Councillor Grice and MPP Barrett both have been guest speakers. I have had four rallies and four town hall meetings and there has never been any violence or any crimes committed. I have been thanked by OPP Inspector McLean by phone for having such a peaceful March.

12. I am a reasonable person, and am quite willing to show restraint in the exercising of my rights during a short-lived situation wherein the police are actively engaged in law enforcement activities against criminals, but in the absence of a temporary 'clear and present danger' the OPP have no right to restrict my rights solely based on my Race.

13. **Summary:** Three non-natives, including myself, have been arrested despite the OPP knowing we have committed no crime and intended to commit no crime. At each event the OPP created a different trumped-up charge to intimidate non-natives: 'Trespassing,' 'Breach of the Peace' and 'Obstructing Police' – all designed to help them 'get around' the Supreme Court decisions that protect our right to place Canadian flags on public utility poles. Even today, the OPP threaten non-natives with arrest for attempting to do so.

14. It is very clear that I would never have been arrested if my Race was of Aboriginal Origin. If I was an Aboriginal my Canadian Flag would never have been removed.

15. Throughout the world, Government and Police forces believe they have the right to promote one Race over another or to suppress one Race – such beliefs cannot be allowed to continue in Ontario. Equality under the Law has to be a fundamental HUMAN RIGHT whether that is in some 3rd world country or in Ontario.

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7(b). What remedy/resolution are seeking to resolve this complaint (See Guidelines)

1. Obtain a written apology from the OPP for violating my rights on Dec 16/06 and Jan 20/07 because of my race.

2. Obtain a written apology from the OPP for arresting me on December 16/06 because of my race.

3. Obtain a commitment from the Commissioner of the OPP that he will issue a directive that no officer shall interfere with a citizen's right to place items on public utility poles - as has been upheld by the Supreme Court of Canada in *Ramsden v. Peterborough (City)*, [1993].

4. Obtain a commitment from the Commissioner of the OPP that he will issue a directive that all officers are required to respect and protect the constitutional and human rights of all citizens, including those who are third parties to aboriginal land claims - as has been upheld by the Supreme Court of Canada in *Haida Nation v. British Columbia (Minister of Forests)*, [2004]. (See paras 52-56, Do Third Parties Owe a Duty to Consult and Accommodate?)

(See also, Jan 12/07 Plaintiff's Factum for Caledonia Class-Action suit by solicitor John Findlay at www.caledoniaclassaction.com: "*The Supreme Court of Canada has made it clear that third parties to Aboriginal treaty claims have no duty to consult or accommodate the group that is making the claim. Further, third parties are not subject to any duty or are required to make any accommodation to enable the province to obtain a remedy to an Aboriginal claim. It is up to the Province to find that remedy without affecting or compromising third party interests.*")

5. Obtain a commitment from the Commissioner of the OPP that he will issue a directive that all officers have an individual duty to disobey any order that could reasonably be interpreted as being intended to conduct policing operations based on race.

6. Apply other remedies as the Commission may deem appropriate.

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8. What have you done, if anything, to stop the discrimination?

-
1. **Sept & Oct 2006:** Several Faxes were sent to Prime Minister Harper and to Premier Dalton McGuinty pointing out how the OPP were operating on a Race Based Policing Policy.
 2. **Late Dec 06/Early Jan 07:** We contacted OPP Inspector Dave McLean, Detachment Commander of Caledonia/Cayuga Detachments of OPP after my arrest on Dec 16/06. He was unapologetic for the actions of his officers.
 3. **Jan 2007:** We were able to get both Radio and TV media to question Mr. Fantino why raising the Canadian Flag was illegal and he avoided the question each time. Mr. Fantino refused to explain why Native people were allowed to raise flags while non-Natives were arrested.
 4. **Jan 03/07:** We left a detailed message for the Vice President of the Ontario Provincial Police Association (OPPA) Mr. Ron Middel seeking a meeting to discuss ways in which we could work with the association to eliminate discrimination against non-natives. Mr. Middel did not return my call. On Jan 10/07 we again left a detailed message for Mr. Middel. He did not return my call.
 5. **Early Jan/07:** Commissioner Fantino was invited several times to attend a town hall meeting on Jan 14/07 in Caledonia to explain why the raising of a Canadian flag by non-natives is a 'breach of the peace.' The Commissioner did not respond.
 6. **Jan 20/07:** After once again being blocked by OPP officers from placing a flag on a utility pole, I visited the OPP Unity Road detachment in Caledonia and requested a meeting with senior OPP officials. Commissioner Fantino was there. He met that day with native protesters who have used violence and crime against residents during their occupation, but he and his officers refused to meet with non-native protesters, including myself, even though we have not committed a single crime in connection with our peaceful protests.
 7. **May 2007:** Filed complaint against Commissioner Fantino with Minister of Community Safety and Corrections regarding Commissioner's role in violating my constitutional rights on Jan 20/07. Met with Minister's consultant Mr. Rod McLeod on June 05/07. Complaint dismissed on June 29/07 **prior to Minister receiving his consultant's report.**
 8. **May/June 2007:** Filed complaints with OPP Professional Standards Bureau regarding violations of my constitutional rights on Dec 16/07 and Jan 20/07 by non-arresting officers.
 9. **June 18/07:** Filed lawsuits against OPP/Ontario government for unlawful arrest, violations of constitutional rights and defamation. Filed lawsuit against OPP/Ontario Government/Haldimand County/OPPA president Karl Walsh for trying to end my Constitutional Right to Free Speech.

9. **Do you have a union? If yes, have you filed a grievance about the discrimination? If so, what happened to your grievance? I am not part of a union.**

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CONTACT INFORMATION

This information will not be sent to the person(s) named in the complaint form

Please Forward This Information With Your Complaint Form

The personal information collected in this section of the human rights complaint form is for the purpose of contacting you during the proceedings of your human rights complaint only. The information will not be disclosed to any other person or organization, except as authorized by the **Freedom of Information and Protection of Privacy Act**, R.S.O. 1990, c. F.31.

This information is collected under the authority of the Ontario **Human Rights Code**, R.S.O. 1990, c. H.19, as amended, for the purpose of its enforcement. For information concerning the collection and use of this information, please contact the Registrar's Office, Ontario Human Rights Commission, 180 Dundas Street West, 7th Floor, Toronto M7A 2R9. Telephone 416-314-4561.

Personal Information

First name of complainant Gary	Last name of complainant McHale	
Mailing address 612-30 Harding Blvd. W.		
City/Town Richmond Hill	Province ON	Postal Code L4C 9M3
Home phone number 905-770-5435	Business phone numbers Same as Home	May we contact you at work? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

If any of this personal contact information changes during the proceedings of your complaint, it is your responsibility to inform the Commission

The information below is important, but **optional**. The Commission may use the information to locate you in the event that you forget to advise the Commission about your change of address.

Birth Date:	
Drivers' License No.:	
Social Insurance No. (SIN):	

Alternate Contact Information

Person who will know where to contact you in the event the Commission cannot locate you during the proceedings of your complaint

First name Mark	Last name Vandermaas	
Address 371 Vesta Place		
City/Town London	Province ON	Postal Code N5Y 1G4
Telephone Number 519.457.0709	Fax Number	

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