

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(Small Claims Court)**

BETWEEN:

**Jeffrey Parkinson**

Plaintiff

- and -

**Phil Carter**

Defendant

Court File No. SC 08-12

BETWEEN:

**Gary McHale**

Plaintiff

- and -

**John Murray**

Defendant

Court File No. SC 08-19

BETWEEN:

**Gary McHale**

Plaintiff

- and -

**Dave McLean**

Defendant

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**SUPPLEMENTARY AFFIDAVIT OF TRACEY RIGDEN  
(Sworn August 14, 2008)**

---

I, TRACEY RIGDEN, of the City of Toronto in the province of Ontario, MAKE OATH  
AND SAY:


1. I am a Law Clerk at the Crown Law Office – Civil of the Ministry of the Attorney General and I have knowledge of the matters to which I hereinafter depose.

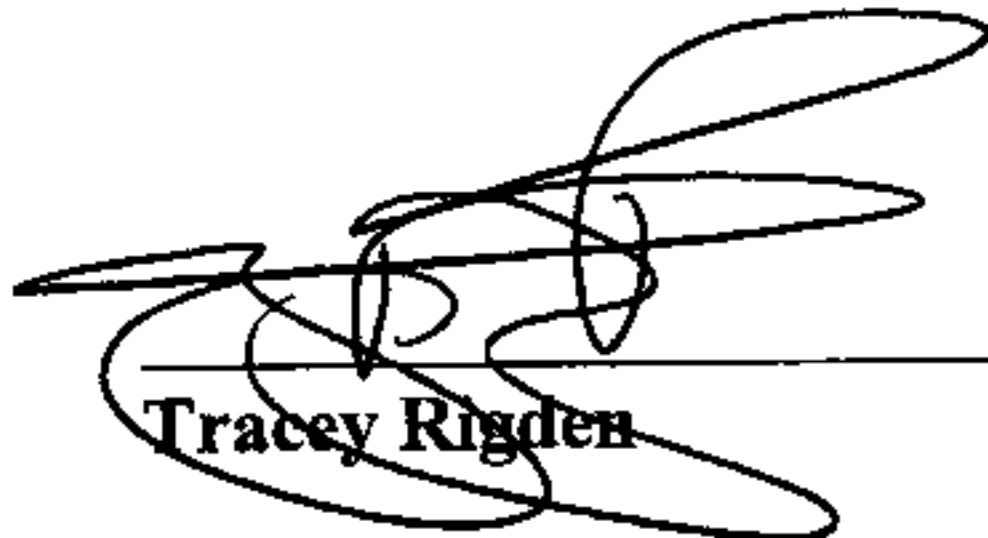
2. I retrieved the following three documents regarding legal and administrative proceedings commenced by Gary McHale or Jeffrey Parkinson that are in the possession of the Ministry of the Attorney General. Attached hereto and marked as exhibits to this affidavit are true copies of the following documents:

Document	Exhibit No
Gary McHale, Letter to Michael Bryant (Notice under <i>Libel and Slander Act</i> ) (April 22, 2008)	53
Jeffrey Parkinson, Private Information Against Rick Fraracci and Christopher Galeazza (May 27, 2008)	54
Gary McHale, Jeffrey Parkinson and Mark Vandermass, Ontario Civilian Commission on Police Services Complaint Against Commissioner Julian Fantino, Detective John Murray, and Sergeant Sloan (May 30, 2008)	55

3. I swear this affidavit in support of the motions to strike out the Statements of Claim as abuses of process and for failing to disclose a reasonable cause of action and for no improper purpose.

Sworn before me at the City of )  
Toronto in the Province of Ontario, )  
on the 14<sup>th</sup> of August, 2008 )

  
Commissioner for Taking Oath )

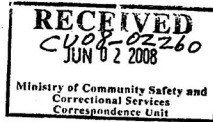
  
Tracey Rigden

Barbara Agnes Joniak, a Commissioner, etc.,  
City of Toronto, for the Government of  
Ontario, Ministry of the Attorney General.  
Expires July 16, 2009.

This is Exhibit "55" to the Affidavit of Tracey Rigden  
Sworn by me this 14<sup>th</sup> day of August A.D. 2008

Barbara Joniak  
A Commissioner, etc

*Barbara Agnes Joniak, a Commissioner, etc.,  
City of Toronto, for the Government of  
Ontario, Ministry of the Attorney General.  
Expires July 16, 2009.*



**Complaint to Ontario Civilian Commission on Police  
Services (OCCPS)**

**ALLEGATIONS**

- Obstruction of Justice
- Influencing Municipal Official
- Breach of Trust by Public Officer
- Racial Policing Policies & Practices
- Injury Caused By Unknown OPP Officer

**COMPLAINANTS**

- Gary McHale
- Jeff Parkinson
- Mark Vandermaas

**SUBJECT OFFICERS**

- Commissioner Julian Fantino, OPP
- Detective John Murray, OPP
- Sergeant Sloan, OPP

**DATE**

May 30, 2008

May 30, 2008

**Ontario Civilian Commission on Police Services**

**BY FAX AND REGULAR MAIL**

25 Grosvenor Street, 1st Floor  
Toronto, Ontario M7A 1Y6  
tel: 1.888.515.5005 (local: 416.326.1189)  
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**The Honourable Rick Bartolucci**

**BY FAX AND EMAIL**

**Minister of Community Safety and Correctional Services**

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**Ms. Barbara Hall, Chief Commissioner**

**BY FAX AND EMAIL**

**Ontario Human Rights Commission**

180 Dundas St. West, 7th Floor  
Toronto, ON M7A 2R9  
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fax: 1.416.326.9520  
info@ohrc.on.ca

**The Honourable Robert Douglas Nicholson**

**BY FAX AND EMAIL**

**Minister of Justice and Attorney General of Canada**

Department of Justice Canada  
284 Wellington Street  
Ottawa, ON K1A 0H8  
tel: 613.957.4222  
fax: 613.954.0811  
webadmin@justice.gc.ca

Dear OCCPS:

This is a joint complaint on behalf of three individuals, including myself. We are in possession of evidence that leads us to reasonably believe that 3 officers of the Ontario Provincial Police, including the Commissioner, have committed offences contrary to the Criminal Code of Canada in addition to violating the Police Services Act, Charter of Rights and the Human Rights Code.

We believe the actions of these officers were part of an ongoing campaign to discredit and illegally oppress the lawful exercise of the rights of non-Native citizens to criticize and protest

against the policies of the OPP and the Ontario government with respect to the issue of racially-based policing practices during aboriginal land claim disputes.

Since submitting our initial complaints in 2007 regarding defamation by the Commissioner, Mr. Fantino has persisted in making scurrilous allegations that we are somehow linked to the encouragement and perpetration of violence.

We have tried, in good faith, to bring our concerns about the Commissioner and other OPP officers to the attention of OCCPS and the former Minister of Community Safety and Correctional Services however, our complaints have been rejected by the Minister or on appeal by the OCCPS as if the entire process of civilian review is little more than a non-transparent rubber stamp for OPP racial policing practices in Caledonia.

I hope you will forgive my bluntness, but the OCCPS/Minister have shown no interest in the civil rights abuses being committed by the OPP against non-Natives. This lack of interest in scrutinizing Mr. Fantino, the officers under his command, and the policies under which they operate has now manifested itself in an egregious perversion of justice based on race as outlined in Part 1 of this complaint; a continued campaign of defamation we believe has crossed the line into criminality as per Part 3; and the necessity of pursuing criminal charges for the Commissioner's 2007 attempt to influence municipal officials to our detriment as per Part 2.

Thankfully, the Ontario Human Rights Commission has chosen to review our previous complaints against Mr. Fantino and other officers and so, we are seeking their involvement in addressing the racial policing practices that have given rise to this complaint.

We believe that the issues raised in this complaint are fundamental to the Canadian justice system. We have, therefore, requested the assistance of the Minister of Justice and Attorney General of Canada.

After reviewing this complaint, I trust you will understand our position that we expect nothing less than a fair, impartial, transparent investigation into our allegations. Again, I hope that you will forgive my directness.

Respectfully,



Mark Vandermaas, Director of Research  
Canadian Advocates for Charter Equality ([www.CANACE.ca](http://www.CANACE.ca))

XXXXXXXXXX  
XXXXXXXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXX

[info@canace.ca](mailto:info@canace.ca)

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## Complainant Details

**Mr. Gary McHale**

Xxxxxxxx

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XXXXXXXXXXXX

info@caledoniawakeupcall.com

**Mr. Jeff Parkinson**

Xxxxxxxx

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**Mr. Mark Vandermaas**

Xxxxxxxx

XXXXXXXXXXXX

XXXXXXXXXXXX

info@canace.ca

## **Summary of Complaint**

### **Part 1. OBSTRUCTION OF JUSTICE, s. 139(2) Criminal Code of Canada**

We are complaining that the following officers of the Ontario Provincial Police deliberately targeted non-native protesters, including Mr. McHale, for arrest for minor offences arising out of a confrontation on December 01, 2008 during a protest at an illegal smokeshack in Caledonia, Ontario while allowing Native smokeshack supporters to escape charges for similar offences and for numerous assaults against police officers.

1. Julian Fantino, Commissioner of the Ontario Provincial Police (OPP)
2. Detective John Murray (lead investigating officer, Dec 01/07 incident)
3. Sergeant Sloan (on-scene Dec 01/07)

We are complaining that the biased treatment accorded non-Native protesters and activists by Mr. Fantino and Sgt. Sloan caused Mr. Vandermaas and Mr. Parkinson not to cooperate with the OPP investigation and not to seek justice from the OPP for assaults/injuries suffered.

We are complaining that these officers have conducted policing decisions based on race and not in the unbiased manner demanded of them by the Police Services Act, the Human Rights Code and the Charter of Rights and, in so doing, perverted and/or obstructed the course of justice contrary to s. 139(2) of the Criminal Code of Canada.

### **Part 2. INFLUENCING MUNICIPAL OFFICIAL, s. 123(2) Criminal Code of Canada**

We are complaining that Commissioner Fantino influenced municipal officials by deceit and threats for the purposes of discrediting Mr. McHale and other non-Native activists and to suppress their lawful criticism of his force contrary to s. 123(2) of the Criminal Code of Canada.

### **Part 3. BREACH OF TRUST BY PUBLIC OFFICER, s. 122 Criminal Code of Canada**

We are complaining that Commissioner Fantino abused the power of his office by targeting non-Native activists for arrest and making allegations he knew to be false against Mr. McHale, Mr. Vandermaas and other non-Native activists in an effort to oppress lawful criticism of the OPP and the Ontario government contrary to s. 122 of the Criminal Code of Canada.

We are complaining that on April 23/08 Commissioner Fantino made derogatory remarks on a Toronto radio station about Mr. Vandermaas's complaint to the Ontario Human Rights Commission about him, and also that he knowingly made false allegations during the same interview that Mr. Vandermaas and Mr. McHale were perpetrators of violence when in fact he knew they were victims of it.

### **COMPLAINT AGAINST O.P.P. RACIAL POLICING POLICIES**

We are complaining that the evidence to support the statements and allegations in Parts 1, 2 and 3 of this complaint reveals that the Ontario Provincial Police has instituted systemic, racially-based policies and practices to the detriment of non-Native citizens contrary to the Canadian Charter of Rights and Freedoms, the Ontario Human Rights Code and the Police Services Act.

### **INJURY CAUSED BY UNKNOWN OPP OFFICER**

Mr. Parkinson is complaining that he was injured by an unknown member of the Ontario Provincial Police on Dec 01/07 while videotaping an Attack by Native smokeshack supporters against Mr. McHale. Mr. Parkinson was knocked unconscious and suffered a brain injury.

## Desired Outcome

We request that OCCPS, the Minister of Community Safety and Correctional Services and Attorney General of Ontario do the following:

1. **JOINT INVESTIGATION BY RCMP AND OHRC:** Given that this complaint makes serious allegations against the Commissioner of the Ontario Provincial Police, and given the credible and ongoing allegations that race-based policing by the OPP does exist in Ontario and that the Ontario government has encouraged and/or tolerated such **[Supporting Evidence, p66, # 4]**, we request that the RCMP and the Ontario Human Rights Commission be asked to conduct a joint investigation into the events of Dec 01/07 and the specific allegations made against the subject officers named in this complaint.

We ask that the RCMP investigate all alleged assaults against the complainants herein, including the cause of the injuries to Mr. Parkinson by an unknown OPP officer.

2. **NO INVOLVEMENT BY OPP PROFESSIONAL STANDARDS:** Given the nature of the allegations, and the ongoing animosity between the OPP and the complainants herein we can not, and will not, cooperate in any way with the OPP Professional Standards Division.

3. **FULL AND FAIR INVESTIGATION:** If the Minister of Community Safety and Correctional Services, OCCPS, and the Attorney General of Ontario refuse to provide an impartial, transparent investigative process to deal with this complaint we will proceed to file charges via private prosecutions. We will also use all legal means available – both civil and criminal – to hold accountable any public official who attempts to obstruct an investigation into the offences alleged to have been committed in this complaint.

4. **REQUEST FOR ASSISTANCE FROM MINISTER OF JUSTICE AND ATTORNEY GENERAL OF CANADA**

We believe that the issues raised in this complaint are fundamental to the Canadian justice system and request, therefore, that the Minister of Justice and Attorney General of Canada appoint a representative to act as an advocate on behalf of the complainants herein and to advise the Attorney General on the progress of the investigation.

As an alternative, we would ask the Attorney General of Canada to supply funds sufficient for the complainants to engage the services of a solicitor to act on their behalf in this matter as the complainants are all experiencing acute financial distress due to the devotion of their time to opposing race-based policing in Ontario.

5. **REVIEW OF OPP RACIAL POLICING POLICIES**

We request that when the RCMP/OHRC investigation is completed, that OCCPS work together with the OHRC to conduct a comprehensive review of OPP racial policing policies and practices.

## Background to Complaint

Please refer to 'List of Supporting Evidence' on page 70 for links to video evidence and additional background information.

### 1. Past complaints against Commissioner Fantino and other OPP officers

On April 02, 2007 Mr. Vandermaas submitted a complaint to the former Minister of Community Safety and Correctional Services regarding derogatory statements made by OPP officers and Mr. Fantino about him as an associate and supporter of Mr. McHale. These comments reveal an intent to falsely portray non-Native activists as having a deliberate agenda of promoting violence.

- OPP release, Dec 16/06: “The rally was organized under the pretext that it was in “Support of Our Troops” but was really an attempt to disrupt the peace and agitate local residents. Despite numerous warnings...he and another male defied police requests to stay away from the Douglas Creek site and incited a small group of peaceful protesters to become hostile toward police.”
- Commissioner Fantino on AM 900 radio, Jan 08/07: “People coming into the community to stir things up are not helpful” We’re trying to keep people from escalating the situation into what some people wish it would become – a violent confrontation.”
- Commissioner Fantino, Hamilton Spectator, Jan 10/07, interview with Reporter Marissa Nelson:

NELSON: What about Gary McHale’s plan to hold a protest in Caledonia...?

FANTINO: People have to see it for what this is – it’s mischief-making and there’s another agenda here. The right to demonstrate peacefully is not a problem is not a problem. The right to incite a breach of the peace or spew hate and commit offences, that’s not a right, it’s an abuse of your rights...It’s like entering a darkened room where there’s a gas leak and looking for it with a match.

- Ontario Provincial Police Association media release, Jan 18/07: “The people behind these protests are not from the area. 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. The OPPA will hold accountable those who provoke or engage in confrontation that results in any of our officers being injured. So far, 32 officers have sustained injuries while preserving the peace in the Caledonia land dispute.”
- OPP media release, Jan 18/07 quoting Mr. Fantino: “This proposed rally is irresponsible, provocative and at the end of the day, people will see it for what it is, mischief making,” states Commissioner Fantino.”
- OPP media release, Jan 19/07 quoting Mr. Fantino: “It deeply disturbs me that persons with self-centred agendas are willing to come into this community to 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.”

On April 16, 2007 Mr. McHale submitted to the Minister of Community Safety and Correctional Services a complaint with respect to an April 07/07 email sent by the Commissioner to Haldimand County Council in which he complained about:

- a. the defamatory aspects of the message – which mentioned him no less than 12 times.
- b. the fact that elected officials were deceived about the nature of his activities and were threatened with OPP retaliation for a Councillor’s perceived positive remarks about him.
- c. the apparent conspiracy between Mr. Fantino and Haldimand council to defame him in order to suppress lawful opposition to OPP policies and practices, and not because he had caused officers to be injured.

Excerpts from Fantino email to Haldimand Council, April 07/07:

CC: Tony Dean, Secretary of the Cabinet; Peter Wilkinson, Chief of Staff to the Premier; Chris Morley, Press Secretary to the Premier (+ others)

Subject: McHale Communications

“...Councillor Grice commends McHale on his efforts in Caledonia.”

”I have no intentions of entering into a debate with Councillor Grice about Charter rights and freedoms of speech and the like...”

“And now, apparently, we have Councillor Grice commending someone that he knows is a lightning rod for confrontation and potential violence. Just as troubling, Councillor Grice has now added another aggravating political dimension to his previous “anti OPP” rhetoric.”

”...I feel a sense of duty to advise you that going forward, in the event any of my officers are injured as a result of further forays into the community by McHale and his followers my position in response will be the following:

1. I will publicly hold accountable Councillor Grice AND Haldimand County along with McHale;
2. I will support any injured officer in the pursuit of civil redress;
3. I will forward the ensuing costs of policing to Haldimand County, and
4. I will strongly recommend to my Minister that the OPP contract with Haldimand County NOT be renewed once the current contract expires.”

”...in the context of the situation that prevails in Caledonia, comments such as those attributed to Councillor Grice are gravely detrimental to the morale and safety of my officers and much more.”

”When I appeared before you several months back I came away believing that we had a mutual understanding about the detrimental effect that McHale and his followers were having on Caledonia. I know that Councillor Grice has some personal issues that he finds particularly aggravating, however, we never expected that he would fall prey to McHale’s propaganda and it is now up to you as a Council to deal with the fall-out.”

On May 01, 2007 Mr. Vandermaas submitted a complaint to the former Minister regarding the Commissioner's role in allowing OPP officers to violate his right to place a flag on a public utility pole in Caledonia on Jan 20, 2007. This matter is now before the Ontario Human Rights Commission who have scheduled a mediation session between Mr. Fantino and Mr. Vandermaas for Oct 01/08.

The previous Minister of Community Safety and Correctional Services dismissed all our complaints – and others from Caledonia residents concerned about the Commissioner's interference with Haldimand Council – without investigation. In fact, the complaints were dismissed even before the Minister's own consultant had finished his report as to how the complaints should be handled.

The office of the Ministry of Community Safety and Correctional Services has, therefore, been well informed about Mr. Fantino's previous statements about us, and our position that they falsely depict our motivations and actions.

Unfortunately, since filing the above complaints and lawsuits, Mr. Fantino has persisted in singling out Mr. McHale and non-Native supporters for what can only be described as bizarre, unfounded, selective criticism and unsubstantiated allegations of criminal behaviour.

## **2. Fantino interview, Hamilton Spectator, Nov 08/07: 'Fantino Takes Aim'**

Even the media sees Commissioner Fantino as targeting Mr. McHale and non-Native protesters as can be seen in an article by Hamilton Spectator reporter Susan Clairmont entitled, '*Fantino Takes Aim*':

The cost of policing the native land occupation in Caledonia has reached \$32 million. All by himself, the town's infamous "interloper," Gary McHale, has racked up a bill of more than half a million...

It takes Fantino just three and a half minutes into an interview at his downtown Toronto office to offer up, unsolicited, the cost of policing McHale. This is at his fingertips. It takes someone else at the OPP to hunt down the \$32-million figure.

This is Fantino on the attack...

Mr. Fantino also accused Mr. McHale, in this article, of 'mischief making' for using the courts to sue him and other OPP officers for defamation. He has, however, never once publicly accused Native protesters of making mischief with their violence and general lawlessness, nor has he ever singled out any Native protester or group for blame in regards to the extreme costs associated with their lawlessness.

## **3. Full Text of Fantino interview, Hamilton Spectator, Nov 09/07**

On November 09, 2007 the Hamilton Spectator published the full text of their interview with Commissioner Fantino in an article by reporter Susan Clairmont entitled, '*Full text of the Spec's interview with OPP Commissioner Julian Fantino.*'

CLAIRMONT: You've been very vocal about that [interlopers coming in to create problems]. Particularly with Gary McHale. You don't mince words.

FANTINO: He can sue all he wants. Any Canadian can do whatever he wants I suppose, but that's all mischief making.

So I can tell you, the taxpayers of this province have had to bear over a half million dollars in policing costs when the likes of Mr. McHale come to Caledonia to stir things up.

CLAIRMONT: What role does the media play in Caledonia and how does that affect what you have to do?

FANTINO: The kind of attention the media have given these interlopers who come in to cause trouble to me is just a total waste of ink or video time or whatever.

When you get these interlopers coming in the media should be asking the question about how is this in the greater good? I mean, I just told you how much the taxpayers of this province are spending and how much of a sacrifice it is for us to keep the peace when these people come in there. They're like throwing a bomb in the community and having everyone live in the ashes. I don't think the media has done an adequate enough job of exposing these people for what they are and what they're doing.

CLAIRMONT: There's a public perception that Commissioner Gwen Boniface left the OPP under a cloud because she did not perform well at Caledonia. Do you have concerns about your legacy and how it will be affected by Caledonia?

FANTINO: You can't call in the army and deal with this issue. You can't do it because what are we going to have? Civil war in our own country. We're a democratic society. We don't use the police as an army of occupation. Look what's happening in Pakistan for goodness sake. And that's what the expectation is that a lot of people have, including McHale and company. But you know they want to see this thing escalate to a violent outcome, and for what? For a piece of land.

Mr. Fantino's statements on Nov 9th about Mr. McHale and his followers are simply beyond the pale. There is no evidence whatsoever that he or his associates have encouraged people to use violence or have a violent agenda or that they want a civil war or a Pakistani-style dictatorship.

#### **4. Additional false allegations by Commissioner Fantino**

In Part 1 of this complaint, which addresses our belief that the subject officers obstructed and/or perverted the course of justice in connection with their handling of a confrontation that occurred at an illegal smokeshack in Caledonia on Dec 01/07, we will show that Mr. Fantino made additional false and derogatory remarks about Mr. McHale, Mr. Vandermaas and other non-Native protesters after Nov 09/07. These occurred on Dec 01/07 and on April 23/08 at which time Mr. Fantino made disparaging remarks about Mr. Vandermaas and Mr. McHale when asked about Mr. Vandermaas's complaint to the Ontario Human Rights Commission about him, and made additional false allegations of criminal behaviour against them. This has resulted in two additional pending legal actions against the Commissioner for defamation.

## Part 1 - Obstructing Justice

Caledonia 'Smokeshack' confrontation, Dec 01/07

### Subject Officers:

- **Julian Fantino, Commissioner of the Ontario Provincial Police**
  - **Detective John Murray (lead investigating officer)**
  - **Sergeant Sloan (on-scene)**

#### Obstructing justice

**139.** (1) Every one who wilfully attempts in any manner to obstruct, pervert or defeat the course of justice in a judicial proceeding,

(a) by indemnifying or agreeing to indemnify a surety, in any way and either in whole or in part, or

(b) where he is a surety, by accepting or agreeing to accept a fee or any form of indemnity whether in whole or in part from or in respect of a person who is released or is to be released from custody,  
is guilty of

(c) an indictable offence and is liable to imprisonment for a term not exceeding two years, or

(d) an offence punishable on summary conviction.

#### Idem

(2) Every one who wilfully attempts in any manner other than a manner described in subsection (1) to obstruct, pervert or defeat the course of justice is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years.

## **Part 1 - History of Events**

### **1. Note re supporting evidence**

All evidence to support statements made in this complaint will be made available to an independent investigator upon request. In the interim, please refer to 'List of Supporting Evidence' on page 70 for links to some of the video evidence in our possession that is related to Part 1 of this complaint.

### **2. OPP News Release, Dec 01/07**

On December 01, 2007 the Commissioner of the Ontario Provincial Police was quoted in an OPP news release issued after violence erupted during a protest organized by a Caledonia resident upset with the lack of law enforcement against illegal, Native-run smokeshacks. This release was quoted widely by mainstream media and reprinted in its entirety in the Turtle Island News:

FROM: Haldimand County OPP

RELEASE: 01 Dec 07

#### **COMMISSIONER FANTINO OUTRAGED**

(Caledonia, Ontario)

The Ontario Provincial Police, Haldimand County Detachment responded to a disturbance at the south end of Argyle St in the area formerly known as Plank Road, Caledonia, Haldimand County.

Today at approximately 10:00am, a small group of protestors known to pursue their own agendas approached a smoke shack on Plank Road taunting and provoking those present.

A confrontation broke out as police struggled to maintain order and peace. Haldimand County OPP was forced to call in numerous police reinforcements to restore peace and order.

Commissioner Fantino expressed his outrage at the interlopers; "The OPP will seek every legal remedy possible to end this madness and to bring them to justice. Taxpayers should be just as outraged at these instigators since these unintelligent acts have cost them in excess of a half million dollars. These incidents, where interlopers put their own personal agendas over those who are striving for a permanent and lasting resolution will not be tolerated."

Haldimand County OPP Crime unit is fully engaged in a thorough investigation of all events including those leading up to today's volatile situation.

The OPP is firmly committed to hold those responsible for today's disturbance.

It is clear, based on his past references to Mr. McHale and his associates as ‘interlopers’ and to the cost of policing their protests, that Mr. Fantino is referring to them in this press release.

This news release was issued on the same day as the confrontation and, obviously, prior to any investigation having been conducted. In fact, it was issued before any police officer had even interviewed Mr. McHale, the victim of numerous assaults by Native smokeshack supporters.

### **3. December 01, 2007: the facts**

Despite Mr. Fantino’s eagerness to blame non-natives for the extensive violence, the evidence clearly shows that it was, in fact, initiated by native smoke shack supporters. Non-Native protesters were the victims of the violence, not the perpetrators. Furthermore, the evidence shows that assaults by Natives against police officers occurred throughout the day, but were deliberately downplayed by the OPP investigation which resulted in no charges for those responsible.

The facts from the day are set out below, and are confirmed by video evidence, police charges, Crown disclosures and/or sworn testimony by OPP Detective John Murray. Much of the video coverage of the events of Dec 01/07 events was provided as part of the OPP evidence provided during Disclosure and was authorized by the Crown to be used for the filing of this complaint. Video sources include, Turtle Island News; Lisa Parent of numberswatchdog.com; Timothy Sywyk of Tekawennake News. Video recorded by complainant Jeff Parkinson will also be made available for an investigation.

1. The protest was not organized by Mr. McHale and Mr. Vandermaas, but by Mr. Doug Fleming, a Caledonia resident who was upset with the continuing refusal of the OPP to enforce the law against illegal smoke shacks which he had personally observed selling cigarettes to children. Mr. Fleming had spent many weeks trying to obtain answers from OPP officials who made promises to meet with him, but failed to do so. Mr. Fleming advertised the event in advance, and Crown disclosures show that OPP officers knew that Mr. Fleming was the organizer.
2. The non-natives did NOT approach the smoke shack ‘taunting and provoking’ the natives as stated in the OPP news release. We were approximately 300 feet from the shack, and the smokeshack supporters came out to meet and provoke us.
3. The first violence of the day was perpetrated against Mr. Vandermaas by natives who threatened him, tried to rip his Canadian flag and pushed him to the ground. Despite the threats and assault, he did not retaliate with words or violence. OPP Sergeant Sloan – the site commander - told Mr. Vandermaas to ‘Back off!’ when he demanded that his attackers be arrested. Sgt. Sloan did, however, later arrest a non-native man – Mr. Kyle Hagan - quietly drinking coffee on the blocked road away from the police line.

Sgt. Sloan’s notes state that he explained to Mr. Vandermaas his opinion that the incident ‘didn’t seem like an assault, it was more of a consent thing’ and that if he wanted to file an assault complaint he could ‘attend the police station.’ This conversation, as recorded by Sgt. Sloan in his notes never occurred.

Video evidence confirms that immediately after telling Mr. Vandermaas to ‘Back off,’ Sgt. Sloan was asked by independent Caledonia videographer Lisa Parent why Natives were not being arrested for Breach of the Peace to which he replied that he had no intention of discussing it.

The interaction with Sgt. Sloan shows that he displayed no sympathy whatsoever for Mr. Vandermaas or other protesters concerned about his assault.

Sgt. Sloan's notes state that Mr. Vandermaas was 'trying to push through' the natives. In fact, he was walking along the side of the road when he was confronted by a group of natives whereupon he stopped to endure their threats and assault without retaliating.

4. It was a Native smokeshack supporter who initially blocked the road with his pick-up truck after Mr. Vandermaas was assaulted. It was later blocked for approximately 25 minutes by non-Native Caledonia resident Mr. Doug Fleming as mentioned above in an effort to force the OPP to answer questions about their continuing refusal to enforce the law against illegal smokeshacks. While Mr. Fleming was charged with Mischief, to the best of our knowledge, the Native who first blocked the road was not charged.
5. Mr. McHale was 'set up' for a phony assault charge by a Native woman who falsely claimed she had been assaulted before pushing him. Fortunately, this 'street theatre' was caught on video, and she was eventually charged by the OPP with 'Public Mischief' for filing a false report. She was not, however, charged for the assault.
6. After the assault by the Native woman, Mr. McHale was assaulted by a Native man who punched him from behind. An OPP officer pulled him off but, as with Mr. Vandermaas's attackers, did not arrest him.
7. It was a Native leader, Mr. Clyde Powless, who screamed obscenities at Mr. McHale - who was not threatening or retaliating in any way - before cowardly jumping him from behind, setting in motion a swarming by natives who were punching and kicking him as he fell to the ground.

Mr. McHale was assaulted numerous times by natives yelling, 'Get the fat fuck!' 'Get him, get him' and 'Kill him, kill him!' They kicked him as he lay on the ground before OPP officers were able to escort him to safety.

Mr. McHale went to hospital for injuries to his face, ribs and foot. Despite the assaults, however, Mr. McHale did not retaliate with angry words or violence even once against those who attacked him. None of his attackers were arrested during the day.

8. The only arrest of the day was of a non-native man standing quietly on the blocked road drinking his coffee - Mr. Kyle Hagan. We have video footage of his puzzling arrest as he was taken away to 'prevent a breach of the peace' which, surprisingly, later changed to a charge of 'Obstructing Police' by site commander Sgt. Sloan, the same police officer who earlier refused to arrest the Natives who assaulted Mr. Vandermaas at the beginning of the protest.

Sgt. Sloan's notes state that he had an extended conversation with Mr. Hagan before arresting him and removing him for processing however, video evidence shows this is not true. Eye witnesses standing within a few feet of Mr. Hagan when he was arrested will testify that Sgt. Sloan had no such conversation with Mr. Hagan.

9. Mr. Jeff Parkinson was filming the assaults on Mr. McHale and Mr. Vandermaas on Dec 01/07. When Mr. McHale was swarmed and injured, Mr. Parkinson was thrown to the

ground by an OPP officer, striking his head and leaving him unconscious on the ground for approximately 20 minutes until an ambulance arrived. His neurologist advises that the resulting brain trauma will likely take 6-18 months to recover from. Mr. Parkinson has been forced to cope with some memory loss and difficulty in concentrating.

10. A number of charges were laid against native smokeshack supporters for some of the assaults on Mr. McHale. Some of these charges were laid by the OPP, one by Mr. McHale. Mr. McHale expects to file additional charges for assaults for which no arrests were made despite having been witnessed by OPP officers.

Sgt Gutenberg became site commander after the departure of Sgt. Sloan to process the arrest of Mr. Hagan.

Sgt. Gutenberg states in his notes that the only crime he witnessed that day was Mr. Vandermaas striking a vehicle with his flag pole, an event which did not occur as described by Sgt. Gutenberg. Other OPP officers have written in their notes that they clearly saw that Mr. Vandermaas did not strike the vehicle. These officers were within a few feet of Mr. Vandermaas at the time. Mr. Vandermaas's pole was, in fact, struck by the driver of a car while travelling the wrong way on the wrong shoulder of the roadway towards the smoke shack.

Sgt. Gutenberg's notes reveal that he spent much of the protest focused on Mr. Fleming and especially, on Mr. McHale's words and actions. Given his focus on Mr. McHale it is not credible that Sgt. Gutenberg did not witness any of the assaults on Mr. McHale, nor any of the assaults on police officers. His play-by-play of Mr. McHale's words cannot be found on any video.

Furthermore, the many positive and calming statements and actions by Mr. McHale throughout the protest to help police maintain the peace are completely absent from Sgt. Gutenberg's notes. These include helping to direct traffic; telling people to stop swearing; telling the crowd not to interfere with the arrest of Mr. Hagan; telling to crowd to move back away from the Native Protesters; telling the crowd to claim down etc.

Finally Mr. McHale's actions speak louder than words when even after being assault three separate times and while be harassed by cheering Native Supporter she refused to swear or make any angry statements against Native Protesters.

Somehow, though, Sgt. Gutenberg missed all these recorded events and makes the following note, "Gary MCHALE was the primary instigator, yelling about the police".

11. The only 'assault' that occurred that day perpetrated by a non-Native was – as mentioned above - a minor 'unwanted touching' incident that occurred when a frustrated Ruth-Ann Chapman – a small woman - allegedly pushed away an aggressive male videographer filming a crying, distraught Christine McHale after her husband was swarmed and attacked. In sharp contrast to the refusal of the OPP to charge the Native woman who fabricated the complaint against Mr. McHale for her assault on him Ms. Chapman was charged with Assault.
12. Non-natives were not the only victims of violence on Dec 01/07 at the hands of the Native smokeshack supporters. We are in possession of video evidence and Crown disclosure that shows that numerous assaults were committed against OPP officers by as

many as 20 Natives including by one driving a vehicle that was used to intentionally and repeatedly hit an officer who threatened to pull his weapon in self-defence. A few minutes later the officer and his partner were swarmed by a group of 10-13 Natives from the smokeshack who assaulted and threatened them.

This is an account received, under Crown disclosure, of multiple assaults on two OPP officers by a group of Native smokeshack supporters that occurred after the main protest was over, and all non-Native protesters had left the scene:

Officer McDonald Will Say statement, "At 1:25pm a red van approached our blockade. I approached the vehicle and the driver and occupants looked to be of native decent, the driver said he was going through the blockade. I told him he would have to drive around to another location to get into Caledonia, and that I had orders not to let anyone through the intersection. The driver told me where to go and started forward. I positioned myself in front of the van and the driver continued to drive his vehicle into my legs. I placed my hand on his hood and told him to backup and that he just assaulted an officer. He then drove forward into my legs again. I then told him that if he made any more movement towards me with his vehicle I would pull my firearm out and use force if I had to. He then stopped the vehicle and placed it in park. His passenger jumped out and ran over to the smoke shop at Argyle Street and Highway 6. At this point the driver got out of the vehicle and started verbally abuse myself and PC Nicholls. A short time after the drivers' passenger arrived with 10-13 other natives from the smoke shop and protest, they proceeded to bump and push us away from the van.

At 1:36pm ART member Atkins arrived on scene and took the driver and the rest of the people away and told them. The extra members that arrived kept yelling back telling PC Nichols and myself to do our jobs or we would get hurt. The situation was then calmed down, and PC Nichols and myself returned to our cruisers.

In another incident caught on video, a Constable Greg Moses was grabbed by Clyde Powless as officers tried to escort Mr. McHale to safety away from Powless who had lost control of himself.

Not one charge has been laid for any of these assaults on police by Natives.

Mr. McHale later attempted to lay charges on behalf of the assaulted officers via private informations supported by the video evidence, but he was opposed by the Crown Attorney who successfully argued that the OPP were capable of laying the charges should they wish to do so.

13. At 1459 Mr. McHale's wife, Christine, made a 911 call using Mr. Vandermaas's cell phone. The call lasted 4:20 minutes, during which Mrs. McHale asked the OPP to come to the Hagersville Hospital to gather evidence to lay assault charges for the attacks on her husband. No one from the OPP attended the hospital to do so.

Mr. and Mrs. McHale left the Hagersville hospital at 1620 with Mr. Vandermaas, and travelled to the Unity Road OPP detachment, arriving there at 1703. There, they were eventually directed to the Cayuga detachment, leaving Unity Road at 1720. Crown disclosure shows that the decision to arrest Mr. McHale for assault had been made by the

time the three had left Unity Road even though no officers had corroborated the (false) assault charge or interviewed Mr. McHale.

At 5:05 pm Sgt. Rektor advised me that Gary McHale, his wife and Mark Vandermaas were standing in the front lobby... I notified D/S/Sgt. Thomson that Mr. McHale had left and would not be attending the detachment. D/S.Sgt. Thomson advised me to arrest Mr. McHale for assault. I had uniform officers check outside but Mr. McHale had left. I notified D/S/Sgt. Thomson who asked me to notify Intelligence officer D/Cst. Scott Wade. I notified him to attempt to locate Mr. McHale so we could arrest him.

S/Sgt Rigby Will Say Statement (pg 376-377)

Section 274 of the Criminal Code notes that an Assault under s. 265 is not one of the offences for which corroboration is not required in order to obtain a conviction.

14. At 1801, approximately 40 minutes after the arrest order had been given, Mr. & Mrs. McHale and Mr. Vandermaas arrived at the Cayuga detachment. Mr. McHale was advised by Detective Murray, the lead investigator for the day's events, that an assault complaint had been filed against Mr. McHale. He did not mention that an arrest order had already been issued. In fact, transcripts of this conversation and two more that follow on Dec 03/07 and Dec 05/07 show that Detective Murray told Mr. McHale that he was NOT being arrested for assault but that there was an allegation against him.

Mr. McHale, given Mr. Fantino's history of making false allegations against him, and knowing that he had not assaulted anyone, was extremely suspicious of the OPP. He made a short statement to Detective Murray stating his intention not to cooperate with the OPP, but that he would gladly do so with an RCMP investigation. Despite the earlier arrest instructions given to officers at Unity Road, Mr. McHale was not arrested by Detective Murray on Dec 01/07.

#### **4. Post-Dec 01/07 events**

15. Mr. McHale spoke with Detective Murray three times (Dec 01, 03, 05/07) and each time he was told he was not being arrested, but was read his rights and advised that there was an allegation of Assault against him even though the decision to arrest him had already been made. At no time did Detective Murray mention any allegation of Counselling Mischief, or that the decision to arrest him had already been made on Dec 01/07.

The Crown has provide the notebooks for 58 officers, and not one states that they witnessed Gary McHale assault anyone. Numerous officers are directly asked whether they saw Mr. McHale assault anyone and each reply 'NO.'

During one of his conversations with Detective Murray, Mr. McHale informed him that he had posted video on his website proving that the Native woman had, in fact, assaulted him, and had fabricated her own assault complaint against him.

In contrast to the OPP's earlier eagerness to charge Mr. McHale on the basis of an uncorroborated assault complaint, Detective Murray, despite having extensive video (News media had already aired video of Mr. McHale being assaulted) and police witness evidence of the assault against Mr. McHale by Mr. Clyde Powless, told Mr. McHale was

told that their investigation was ‘underway’ in response to his question as to whether Mr. Powless had been arrested.

Apparently, the OPP needed to thoroughly investigate a crime that was recorded on video as it occurred right in front of numerous officers before laying charges against the Native perpetrator, but didn’t need to investigate an uncorroborated complaint by a Native woman against a non-Native victim of multiple assaults (including one by her!) – a complaint, as explained earlier, that turned out to be a complete fabrication.

16. On Dec 03/07 Mr. Vandermaas was contacted by OPP Detective Murray and asked if he would be willing to make a statement. He first informed Mr. Vandermaas that the call was being recorded by Command Headquarters. He assured Mr. Vandermaas that he was not familiar with the Caledonia issues and ‘unbiased’ to which Vandermaas replied that that was ‘not in the realm of possibility’ since Commissioner Fantino had already decided that they were guilty. Vandermaas told Detective Murray that he would be pleased to cooperate with an RCMP investigation, but had no intention of doing so with the OPP.

### **Fabricated ‘Assault’ complaint vs. McHale suddenly becomes ‘Counselling Mischief’**

17. Detective Murray’s notes show that at 1515 on Dec 05/07 he acknowledges seeing video evidence proving that the assault complaint against McHale made by the Native woman was fabricated. At 1800, during a meeting with D/I Renton, D/I Dave Cardwell and D/Supt. Ron Gentle, the decision was made to instead charge Mr. McHale with ‘Counselling Mischief.’

Detective Murray’s notes contain no reference to a ‘Counselling Mischief’ charge against McHale until after the fabricated assault charge is exposed.

Detective Murray’s notes for the meeting also contain characterizations of those facing charges:

- Mr. McHale (the victim of multiple assaults who, until this incident, has never been charged with committing a crime in connection with his protests, who has always advocated the use of non-violent protests): “*Agent Provocateur*”
- Mr. Fleming (who, until this incident, has never been charged with committing a crime in connection with his protests): “*Provocator*”
- Mr. Powless (leader of security for the Douglas Creek occupation, leader of the swarming and assaults on Mr. McHale): “*historically been a calming factor; responded to alleged assault on [illegible] sister and acted out of character*”

It should be noted that Mr. Powless has been caught on video as early as May 2006 assaulting OPP Officers. In addition, on Dec. 1, 2007 Mr. Powless is videotaped assaulting at least 4 OPP Officers a full hour before his sister (Camille) falsely claims Mr. McHale assaulted her.

- Mr. Porter (dragged hydro tower across Argyle Street): “*calming factor*”

- Ms. Powless (filed false assault report against Mr. McHale, assaulted him): “*agitor; provoked situation*”

Despite their obvious bias against non-Native protesters who have never committed a crime in connection with their protests the officers did come to the correct conclusion that, contrary to Mr. Fantino’s assertion that non-Native activists were to blame for the events, it was actually Camille Powless who provoked other Natives into violence with her false allegation of assault against McHale. Despite this realization, however, the OPP did not charge her with assaulting him, even though they were fully prepared to charge McHale for assaulting her, and had, in fact, already issued an order to do so on Dec 01/07 as discussed above.

Despite their knowledge of the truth the OPP have never made any attempt to apologize for blaming us – the victims of the violence - or to correct the public record.

18. On Friday, Dec 07/07 Mr. McHale was arrested by Detective Murray and charged with ‘Counselling Mischief’ for allegedly suggesting to Mr. Fleming - who pulled his own truck across the road after it was initially blocked by a smokeshack supporter – that he should get other residents to join him.

#### **Detective Murray lies to McHale to force him to agree to onerous bail conditions**

19. Video evidence shows that Detective Murray lied to Mr. McHale during his arrest regarding the bail conditions the OPP were trying to force upon him. On May 26/08 Mr. McHale submitted a pre-trial motion asking for proper disclosure from the Crown as well as dismissal of the charge against him “due to the failure of the OPP to follow due process of the law.” Here is an excerpt related to his discussion with Detective Murray regarding the bail conditions:

#### **2) Misrepresentation during my Arrest:**

- a. As early as Dec. 2006 it was the stated goal of Commissioner Fantino and other senior officers that they wanted to force travel restrictions upon me. (Entered into evidence at Subpoena hearing in March 2008 based on an OPP Police Service Report).
- b. Officer Murray misrepresented the truth to me on Dec. 7, 2007 to secure my signature for the Release Conditions.

On Dec. 31, 2007, Justice of the Peace, Dan M. MacDonald expressed concern over the videotape of my interview during my arrest. I had claimed that O.P.P. officer John Murray lied to me about when I could see a judge in regards to bail conditions he was trying to get me to sign. The following is part of Justice of the Peace MacDonald’s ruling:<sup>1</sup>

[17] The applicant has indicated in his written material provided to the Court and dated December 10, 2007, that the O.P.P. officer that drafted his release intentionally misled and pressured the applicant into

signing the release documents on December 7, 2007. The applicant has also indicated that this pressure was exerted while the interview was being videotaped. Although this information is certainly disturbing to the Court, at this time I prefer the evidence of the O.P.P. officer regarding the interview, and his recollection that although the applicant did not agree with some of the conditions, he nevertheless signed the papers so that he could be released. Perhaps at a later date, this videotape will be acquired by the Crown, so that a future application for a variation of the applicant's new terms of release may be considered more favourably than the conditions to be imposed today...

The Crown now has a copy of the videotape of this interview which shows I asked three times when can I have a bail hearing and from page 75 to page 83 I am arguing with Officer Murray regarding the Release conditions then finally Officer Murray states:

Unfortunately it's Friday you would go for a what what's called a weekend weekend show cause hearing it's WASH court they call it is the acronym um but they're not gonna address issues so it wouldn't be until Monday morning what I'm telling you what I'm telling ya [pg 83 of transcript]

Time stamp on the video is 1:23:20 and real time stamp is 10:30:00 am Friday morning.

- 1) Stated I would appear before WASH court during the weekend but WASH court would not address the Release Conditions. I contacted the Newmarket courthouse (the closest courthouse to where the O.P.P. was holding me) and was clearly told that WASH court does indeed address bail conditions.
- 2) That I could not have these Release Conditions addressed until Monday Dec. 10, 2007 which is 3 days after this conversation (my arrest). At the time of this conversation with Officer Murray it was approx. 10:30 am and the O.P.P. could have brought me into court the same day.
- 3) I was arrested at 8:10 am on Friday and the OPP could have had me before a Judge the same day.

Detective Murray deceived Mr. McHale into believing that he would have to spend the weekend in jail before appearing in front of a judge. He was forced, therefore, to agree to several conditions that included a ban on travel to Caledonia and a ban on all communication with Mr. Vandermaas, Mr. Parkinson and Mr. Fleming. The ban on communicating with Mr. Vandermaas and Mr. Parkinson was later dropped by the Crown at a bail hearing.

### **Detective Murray & D/Supt Gentle discuss assaults on OPP officers**

20. During Detective Murray's meeting with Renton, Cardwell and D/Supt. Gentle on Dec 05/07, it was also decided that Native leader Clyde Powless would be charged with several offences, including his assault on Constable Greg Moses as shown in Detective Murray's notes (emphasis added):

Meet with D/I Renton, D/I Dave Cardwell & D/Supt. Ron Gentle [to] discuss arrest/charge and release issues with respect to...

Clyde Powless

- Mischief – Blocking Road
- **Assault P.O. vs. Cst. Greg Moses**
- Assault vs Gary McHale

Detective Murray also noted that the assaults on McDonald & Nichols were to be investigated further:

Continue to attempt to ID Driver of white van that struck officer after road block went up.

There is no doubt that, at least as early as Dec 05/07, the OPP had received complaints from officers about assaults by Natives and planned to make at least one arrest, and that senior officers were aware of it.

Unfortunately, even one charge against one Native for the many assaults on police was too many – the decision to charge Mr. Powless for assaulting Constable Moses was reversed, and he was never charged. Not a single Native has ever been charged for any of the assaults on police on Dec 01/07.

### **Perjured testimony by Detective John Murray re assaults on OPP officers**

21. On Dec 14/07 Detective John Murray testified at Mr. McHale's bail hearing where he was cross-examined by Mr. McHale on many subjects, including the issue of whether OPP officers were, in fact, assaulted by Native smokeshack supporters on Dec 01/07 (emphasis added):

Transcript, page 49:

MCHALE: Were O.P.P. officers assaulted on December 1st, prior to my attack?

**MURRAY: I have yet to receive a complaint from an O.P.P. officer identifying an assault.** I can tell you, in fairness sir, that I have viewed the videos and there is conduct in there that certainly causes me concern and I have approached officers with respect to whether or not they wish to make a complaint. **At this point and time I don't have a complainant in order to process a charge.**

Transcript, page 50:

MCHALE: In the video that you saw were O.P.P. officers physically pushed, hit, assaulted, by the definition of assault, from what you saw in the video?

MURRAY: Ya, I, I think that requires a clarification as opposed to yes or no answer sir.

MCHALE: Okay. When you watched the video were O.P.P. officers pushed by native protestors?

MURRAY: Yes there was pushing.

MCHALE: Okay. And, was there any arrests from that?

MURRAY: Not at this point, as I said to you sir.

MCHALE: Okay.

MURRAY: **None of those officers...**

MCHALE: Okay.

MURRAY: **...have come forward to make a complaint.**

Clearly, by the time Detective Murray testified on Dec 14/07 that no officers had complained of being assaulted by Native smokeshack supporters, he knew this to be false. He had already informed Superintendent Cain that charges were to be laid for the assault on Const. Moses.

Detective Murray also knew, from watching the videos and from the complaints he had received, that other Native assaults had been perpetrated against OPP officers. Despite the overwhelming evidence available to him however, he planned to charge only one Native for assaulting police, and that charge was never even laid.

### **Superintendent Cain provides false information to the Court**

22. On Dec 14/07, the same day that Officer Murray told the Court in Cayuga that no Native person was charged for any of the numerous assaults on police officers because there had been no complaints, Superintendent John Cain signed an affidavit for the Edwards Landfill dispute stating that there had indeed been such a charge laid. This is from paragraph 52 (emphasis added):

Despite the OPP presence, violence erupted at a protest on December 1, 2007, on Argyle Street near Douglas Creek Estates. Mr. McHale attended in support of the protest. Tempers flared and an altercation took place. A Caledonia resident was charged with obstructing police. As a result on the incident, Mr. McHale and the protest organizer were charged with mischief. **A First Nations person was charged with mischief, assault and assaulting a police officer.** A second First Nations person was charged with mischief.

The disappearing charge against Mr. Powless raises several questions:

- a. Who overruled the decision by Murray, Renton, Cardwell and D/Supt. Gentle to charge Mr. Powless for assaulting a police officer? Who in the OPP had such authority?
- b. Why did Detective Murray feel the need to lie under oath about not having received complaints from officers?
- c. Why was the Director of Operations for Western Region allowed to provide false testimony to the Court in another case?

**Detective Murray acknowledges political considerations and threats of violence from Natives drive bail conditions and OPP targeting of McHale**

23. During his Dec 14/07 testimony at Mr. McHale's bail hearing, Detective Murray made repeated references to negotiations between Natives and government, and to the threats by the occupiers of the Douglas Creek Estates to 'elevate' the level of violence in response to Mr. McHale's protests. He continually made and/or implied the distasteful argument that the rights of Mr. McHale and his followers should be subordinated to the threat of violence from Native occupiers.

Transcript, page 13-14

MURRAY: Unfortunately, there was a communication error and as a result that process [of trying to impose bail conditions on Mr. McHale after his arrest Dec 16/06 while trying to raise a Canadian flag] was abandoned and Mr. McHale was released without conditions. Subsequent to that confrontation with the police the O.P.P. had occasion to speak with some of the organizers within the Douglas Creek Estates site and were alarmed to discover that they had advised that they were prepared to elevate in response to Mr. McHale's attempts and had he go onto the site there was the potential for violence.

Transcript, page 18-19

MURRAY: The rallies that have been organized by Mr. McHale have met with severe anger by the occupants of the Douglas Creek Estates. There are negotiations continuing between the Federal and Provincial levels. It is believed through our communications with the persons on the First Nations side of this issue that the occupation, or the occupiers feel that the continued instigations from Mr. McHale threaten to push back the process of that peaceful resolution.

McHale Cross-examination of Murray

Transcript, page 55

MCHALE: Well you brought up negotiations, how negotiations are, are hindered by my involvement in Caledonia?

MURRAY: I, I simply said sir, if I can go directly to the quote. But without going directly to it, I believe what I suggested was that there are ongoing negotiations at a political level at both the Provincial and Federal levels and that

there were concerns expressed to the O.P.P. that your continued exposure to this, this issue was hindering that process.

Transcript, page 22

MURRAY: On the 10th of June, 2007, Mr. McHale attended a public meeting at the Lion's Hall. He identified this meeting as a "Canada at Crossroads" meeting. As, at the conclusion of that meeting another known supporter of Mr. McHale's, a gentleman by the, thank you, by the name of Merlin [sic] Kinrade, called the police to complain that he had overheard a Native person making a verbal threat against Gary McHale...

But what we took from that was that even at these public meetings that were being held there appeared to be the threat or potential for threats and violence.

It appears that Detective Murray and the O.P.P. wanted bail conditions to keep Gary McHale out of Caledonia, not because he had committed or was going to commit a crime, but for the sake of political expediency and the appeasement of Native criminals who had clearly threatened to commit further acts of violence should Mr. McHale and his supporters continue to insist on exercising their Charter rights to Freedom of Expression and Assembly.

#### **Detective Murray admits he has no evidence that McHale is responsible for violence**

24. Detective Murray's initial testimony from Dec 14/07 attempted to paint a picture that Mr. McHale's presence in Caledonia creates violent events while glossing over any and all information that shows that others were the cause of violence, and that much of the violence was caused prior to Mr. McHale's involvement in the Caledonia issue. The transcript also shows that Detective Murray provided a dramatically one-sided version of events from Dec 01/07 to the detriment of non-Native protesters.

Significantly, despite his notes from his Dec 05/07 meeting with D/I Renton, D/I Dave Cardwell and D/Supt. Ron Gentle in which Camille Powless is acknowledged to have been an 'agitator' and responsible for provoking the violence on Dec 01/07 with her fabricated allegation of assault against Mr. McHale, Detective Murray leaves this vital information out of his account of the day's events.

Fortunately, the truth was revealed on cross-examination by Mr. McHale:

- a. When asked if he was aware of any OPP reports that Mr. McHale had committed any offence, Detective Murray replied, "I have not read one that specifically addresses you committing an offence." [transcript, p57]
- b. When asked if anyone had been injured at events organized by Mr. McHale, he stated, "Not by my knowledge, sir." [transcript, p59]
- c. He testified that neither Mr. Vandermaas nor Mr. McHale had been charged with assault at any time in the last 20 months. [transcript, p41]

d. He testified that Mr. McHale was falsely accused of committing an assault on December 01, 2007 and that the person who made the false report would be charged. [transcript, p41]

e. He testified that OPP officers attended a townhall meeting Mr. McHale held in Caledonia on January 14, 2007 - to which Mr. Fantino was personally invited, but did not attend – and noted that Mr. McHale quoted from Dr. Martin Luther King. The quotes were, in fact, from Dr. King’s ‘Letter from Birmingham Jail,’ April 16, 1963 in which Dr. King explained the importance of non-violent protests and the legitimacy of the role of ‘outsiders.’ [transcript, p46]

f. Detective Murray testified, prior to cross-examination by Mr. McHale that Mr. Vandermaas gave the introductory speech at this event. This speech was intended to explain why he chose to become involved in the Caledonia issue. His speech – written independently from Mr. McHale’s - also included quotes from Dr. King regarding non-violent protests. This speech was posted at VoiceofCanada on January 14, 2007 under the title, ‘VoC speech in Caledonia: “It WAS worth it, Jack” and again on November 10, 2007 under the title, ‘Let’s remember Jack tomorrow.’ Both posts have remained freely available for viewing since being first published. [transcript, p20]

During his lengthy overview of the Caledonia situation for the court, Detective Murray was unable to set out a single piece of tangible evidence to support the view that either Mr. McHale or any of his supporters, including Mr. Vandermaas have a violent agenda or that any of them have committed or encouraged acts of violence. In fact, Detective Murray’s own evidence shows that Mr. McHale and Mr. Vandermaas specifically encourage non-violent means of protest.

### **Community leaders testify that Mr. McHale is not a danger**

25. On Dec 24/073 the following persons testified under oath, in the presence of OPP officers, that Mr. McHale was not a danger to the community, that he was not a violent person and that he was an advocate for the people of Caledonia.

- Haldimand Mayor Marie Trainer
- MPP Toby Barrett
- Hamilton Police Officer/Caledonia resident, David Hartless

A transcript of their testimony is available.

### **Vandermaas again refuses to make a statement to OPP**

26. On Feb 05/08 Mr. Vandermaas received a call from a Constable Christopher who was ordered by Detective Murray to ask if he wanted to make a statement. Mr. Vandermaas again explained that, given Commissioner Fantino’s statement on Dec 01/07 that non-Natives were to be blamed, he would cooperate with an RCMP investigation, but not with the OPP.

**Fantino radio interview, April 23/08: Human rights complaint attacked, non-Natives falsely blamed for violence - again**

27. On July 18, 2007 Mr. Vandermaas submitted a complaint to the Ontario Human Rights Commission (OHRC) with respect to his arrest on Dec 16/06 while trying to place a Canadian flag on a public utility pole in Caledonia, and the role of Mr. Fantino in preventing him from exercising his right to do so on Jan 20/07. Mr. McHale submitted a similar complaint.

On March 04/08 the OHRC notified Mr. Vandermaas they had requested that Mr. Fantino attend a mediation session with him scheduled for Oct 01/08, and requested copies of supporting evidence from him which he submitted on April 04/08.

On April 07/08 the Minister of Aboriginal Affairs Michael Bryant was asked about the scheduled mediation between Mr. Fantino and Mr. Vandermaas to which he responded by making a number of derogatory comments about Mr. Vandermaas, his complaint and about Mr. McHale that echoed past comments of Mr. Fantino:

Aboriginal Affairs Minister Michael Bryant said the human rights complaint doesn't help resolve a complex situation dating back hundreds of years. Most people don't have much sympathy for Vandermaas or McHale after their tense rallies in the divided town, he said.

"Their activity, generally-speaking, is extremely harmful and, as far as I can tell, unwelcome by everybody," Bryant said. "I know a lot of people in Caledonia feel that they're individuals who are just trying to get attention for themselves and are, in fact, stirring it up."

Toronto Star/Canadian Press, April 07/08: *Fantino asked to attend rights mediation*

On April 22/08 after several attempts to obtain an apology from Mr. Bryant, Mr. Vandermaas personally served the Minister with notices of pending litigation under the Libel and Slander Act on behalf of him and Mr. McHale at approximately 10:40 a.m. prior to his appearance before Haldimand Council.

On April 23/08, the day after Mr. Bryant was served, Commissioner Fantino was interviewed by John Oakley on AM640 Toronto Radio who asked him about Mr. Vandermaas's complaint to the OHRC (emphasis added):

OAKLEY: Some people claim and we've had these people on the program...I know your consternation. Gary McHale is from Richmond Hill, Jim [sic] Vandermaas as well who, by the way, is taking you before the Human Rights Commission here in Ontario. Do you plan to show up for that hearing?

FANTINO: That's in the matters of lawyers and so forth but it is an absolute abominable waste of time and taxpayer resources and there's agendas at play here and we'll leave it at that.

OAKLEY: You don't want to speculate or specify what the agenda might be?

**FANTINO: Well, look, there are those who are quite intent on escalating the situation where the conflict and confrontation will result in violence. It's happened before. They've been involved in it, and that's their agenda.**

On April 25/08 Mr. Fantino, with the cooperation of Mr. Chris Diana of the Ministry of the Attorney General, was served with notices of pending litigation from Mr. Vandermaas and Mr. McHale under the *Libel and Slander Act*. These documents make clear their position – once again – that they have not committed, encouraged or been involved in committing acts of violence.

### **McHale pretrial motion, May 26/08 - abuse of power by Mr. Fantino**

28. On May 26/08 Mr. McHale made a pre-trial motion asking that the charge be dismissed against him due to abuse of power by Mr. Fantino and other officers, and failure of the OPP to provide full disclosure.

The OPP have misrepresented the truth throughout this whole case including false statements prior to my arrest, false statements during my arrest, false statements while testifying on the stand and misrepresentation during Disclosure.

I believe the reason for this misrepresentation is because Commissioner Fantino had already informed the public, as the investigation was starting, that I was the cause of the violence and would face justice for it. Furthermore, Commissioner Fantino had twice before targeted me for arrest for the purpose of forcing Travel Restrictions upon me.

Excerpt from Mr. McHale's motion regarding abuse of power by Commissioner Fantino:

Additional information regarding Motion #1 [Ask Court to Dismiss the Charge]:

#### **Commissioner Fantino's direct involvement:**

The following points demonstrate that Commissioner Fantino not only is aware of the activities of Gary McHale but is directly involved in a campaign to target Mr. McHale for police action.

- 1) On Dec. 3, 2007 Commissioner Fantino directed OPP operations to target Gary McHale to gain travel restrictions upon him.
  - a. The following information is found within two OPP Police Service Complaint reports. One report is dated Nov. 1, 2007 regarding my arrest<sup>2</sup> on Dec. 16, 2007 and the second is dated Oct. 25, 2007<sup>3</sup> regarding being pulled over by the OPP on Dec. 16, 2006.

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<sup>2</sup> Police Service Complaint Report of my false arrest on Dec. 16, 2006 – CD filename: 4-Dec1606Report.pdf

<sup>3</sup> Police Service Complaint Report of being pulled over on Dec. 16, 2006 – CD filename: 5-Dec1606CarStopped.pdf

- b. On Dec. 3, 2007, Commissioner Fantino contacted the Ministry of the Attorney General (Legal Services Branch) to get advice on 'various options on how the OPP might deal with Mr. McHale'. [pg. 30]
- c. The following quotes give a summary conclusion that demonstrates the rarity of the OPP action and demonstrates how far the OPP officers are willing to go to fulfill Commissioner Fantino's request.

The unconventional approach on the detention and bail without charge on an arrest following a breach of the peace is not commonly known or used by the police community. However, to deal with the unique situation in Caledonia, D/S/Sgt. Walton, following consultation and discussions with senior officers and legal professional, opted to use the little used Common Law authority to bring persons arrested for breach of the peace before a Justice for release condition without a formal criminal charge. [pg 37]

The propriety of the continued use of this unconventional approach cannot be decided at the writer's level or even in the police or judicial communities with any certainty. It will likely have to be adjudicated by a court of competent jurisdiction." [pg 38]

- d. After Mr. Fantino contacts the Legal Services, Chris Diana, lawyer for Legal Services, is assigned to advise the OPP. From Dec. 3, 2006 until the arrest on Dec. 16, 2007 the following officers are involved in the planning and/or made aware that Gary McHale would be arrested on Dec. 16, 2007.
  - i. Commissioner Fantino
  - ii. Chief Supt. Dunn
  - iii. A/Supt. Babbitt
  - iv. Insp. McLean
  - v. D/Insp. Wright
  - vi. D/Insp Renton
  - vii. Insp. Nichols
  - viii. Staff Sgt. Walton
  - ix. Staff Sgt. Carter

- x. D/Sgt Cousens
  - xi. Sgt. Luis Mendoza
  - xii. Sgt. Gutenberg
  - xiii. Sgt Rector
  - xiv. Sgt O'Halloran
  - xv. D/Sgt Cowan
  - xvi. D/Cst Kays
  - xvii. Cst Paula Wright
  - xviii. Cst. McGuire
  - xix. D\Cst Ferguson
  - xx. Few members of the ART (Aboriginal Response Team)
  - xxi. Several unnamed OPP officers
- e. The stated purpose of the meeting and planning was to 'bring him before a Justice of the Peace to have condition imposed upon him not to return to the disputed land.' [pg. 8]
  - f. As early as Aug. 29, 2006, Assistant Crown Attorney Larry Brock advised the OPP that it was 'inappropriate to hold someone for a Breach of the Peace or to prevent a breach of the peace without prior warning.' [Pg. 9]
  - g. Staff Sgt. Walton suggested that a Justice of the Peace be on stand-by 'over the weekend of Dec. 16, 2006 (McHale rally)'. [pg. 10]
  - h. The purpose of the arrest of Gary McHale on Dec. 16, 2006 was to 'facilitate a court ordered condition not to re-attend Haldimand County.' [pg. 10]
  - i. Crown Attorneys Goodman, Brock and Paparella collectively concluded that a condition could be imposed only if Mr. McHale agreed. [pg. 11]
  - j. Several OPP officers questioned what authority they had to hold Gary McHale in Jail – Sgt. McDonnell [pg. 18 & 19], Sgt. Gutenberg [pg. 20], Cst Elviss [pg. 22],

Elviss has never heard having a WASH Court appearance for Breach of Peace but accepts he has limited experience. Sgt McDonnell raised some concern regarding this and had spoken to Mike Alexander and had called a Crown at home... In the morning Sgt McDonnell was still questioning the process used... [pg 22]

- k. 'The J.P. stated that with no information in front of him he had no jurisdiction over Mr. McHale and ordered him released.' [pg 24]
- l. D/Cst Alexander's statement [pg. 24-25] is quite telling regarding the Crown's view of the OPP's authority to hold Gary McHale in jail.

At 0925 hours, I met with Assistant Crown Andrew Goodman. He told me that he felt we had arrest authority but no authority to force Mr. McHale into an 810 order... Asst. Crown Goodman advised after getting off the telephone with Assistant Crown Brock that they were in agreement that they couldn't hold Mr. McHale. I telephoned A/D/S/Sgt. Walton, who wanted to phone Chris Diana [Legal Services Lawyer] and have him speak personally with Asst. Crown Goodman. At 1026 hours, A/D/S/Sgt. Walton telephoned me back and advised that Chris Diana had chose not to speak with Asst. Crown Goodman. At 1227 hours, I met with A/D/S/Sgt. Walton, who instructed me to prepare a detailed email relating to my involvement. I forwarded it to Walton as he felt he was being left to look like the bad guy in this matter and he was just following instructions. [pg. 25]

- m. On Dec. 14, 2007, Officer Murray presented in Court the history of why Bail conditions were needed on Gary McHale. This is not the first time the OPP have created a document of the history to get Release conditions on Gary McHale. D/Cst Kays statement on page 25 includes:

Therefore, Gary McHale was held in custody to facilitate a court ordered condition not to re-attend Haldimand County. I was advised by D/S/Sgt Walton to assist with the preparation of the court documents including a descriptive background history of the events involving McHale that lead to his arrest and the reasonable grounds to believe he would breach again.

- n. Approximately a dozen meetings where held from Dec. 3, 2006 to Dec. 16, 2006 by dozens of OPP officers to ensure that travel restrictions would be placed on Mr. McHale.
- o. The above details demonstrate the determination of the OPP, under Commissioner Fantino's leadership, to force Release Conditions upon Mr. McHale

- 2) The OPP target Gary McHale for arrest on Jan. 20, 2007 while Commissioner Fantino is in Caledonia at the Unity Road Command Post. The following information is contained with a lawsuit filed by Dana Chatwell against the OPP.<sup>4</sup>
- a. The OPP were aware that Dave Brown and Dana Chatwell own property next to Douglas Creek Estates.
  - b. On Jan. 20, 2007, at the invitation of the owners, the Flag Raising Protest was held on their property.
  - c. Throughout the day, the OPP repeatedly contacted the owners and attempted to persuade them to allow OPP to charge Gary McHale with trespassing.
  - d. Although there were dozens of people on this property, the OPP were interested in only charging Mr. McHale.
  - e. The following are direct quotes from the lawsuit:

82. Gary McHale ("McHale") is a citizen who resides outside Caledonia who has organized protests in Caledonia. On or about December 16, 2006, McHale was in Caledonia to organize a protest of the native occupation of Douglas Creek Estates. The O.P.P. contacted Chatwell and requested that Chatwell sign a document agreeing that the O.P.P. could charge with trespassing any of the protestors accompanying McHale who entered onto the Property. As the O.P.P. had refused to evict any other trespassers from the Property when Brown and Chatwell requested their assistance, Chatwell refused the O.P.P.'s request...

84 The O.P.P. called Chatwell repeatedly on December 16, 2006 seeking her permission to charge McHale and other non-native protestors on the Property with trespassing.

Mr. Fantino personally targeted Mr. McHale for charges and/or travel restrictions since as early as Dec 03/06 despite him having committed no crime. This was done, as is amply demonstrated throughout this complaint, in conjunction with a personal campaign by the Commissioner to defame Mr. McHale and his followers with false allegations and insinuations of having committed or encouraged crimes related to violence and the spreading of hate.

### **McHale pre-trial motion, May 26/08 - misconduct by OPP, Crown disclosure**

29. On May 26/08 Mr. McHale's pre-trial motion also asked the Court to force the OPP to provide full disclosure which had not been done. Although the Court did not have the authority to issue the order, the judge made it clear that the Crown had no reason to hold back evidence from Mr. McHale, and set a hearing date for his motion to be heard by the appropriate Court.

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<sup>4</sup> Chatwell lawsuit found on CD filename: 7-Chatwell-Amended.pdf

Section 4 of Mr. McHale's motion makes the following allegations:

4) Misrepresentation during Disclosure:

- a. On Jan. 31, 2008 the OPP answered my request for the names of all OPP officers present on Dec. 1, 2007. The list contains the names of 42 officers.
- b. On Feb. 8, 2008 the OPP answered my request for the notebooks of every officer that was present on Dec. 1, 2007. A new list of 58 officers was provided with two officers missing from the original list – S/Sgt. Phil Carter and Insp. McLean.
- c. A quick review of Officer's notebooks reveals that several officers are not listed but were present on Dec. 1, 2007 (or had a role in my arrest) and thus their notes have never been Disclosed. These officers include:
  - i. D/S/Sgt. Thomson whose name appears numerous times in various notebooks and ordered my arrest on Dec. 1, 2007.
  - ii. Dave Cardwell, D/Supt. Ron Gentle who were part of the meeting in which it was decided to arrest me for 'Counseling Mischief'.
  - iii. S/Sgt. Phil Carter and Insp. McLean.
  - iv. Ken Sherman, Gary Lazon, Mike Waechter, Bill Renton, Dave Fadden, Cst. Andy, Gord Moon?, Pete Groshovnicm?, D/C Darmon and PC Bradley.
  - v. A quick review comes up with 15 missing officers and their notes.

### **Government well aware of allegations Commissioner Fantino targeted non-Native activists**

30. Commissioner Fantino has been persistent in misleading the public and Haldimand County officials with false allegations about Mr. McHale and his supporters. Both Mr. McHale and Mr. Vandermaas have submitted complaints via the OCCPS process against the Commissioner regarding similar attempts by him to falsely blame non-Natives for encouraging violence and spreading hatred. Both complaints were dismissed without investigation by the former Minister of Community Safety and Correctional Services. More details on this can be found in Part 2 of this complaint.

The Ministry of the Attorney General and the Ministry of Community Safety and Correctional Services are both well aware of allegations that Mr. Fantino has abused his position by making false statements about non-Native activists and violating their rights. At the time of his arrest, Mr. McHale had an outstanding suit against Mr. Fantino for his defamation campaign and an outstanding complaint to the Ontario Human Rights Commission regarding violations of his civil rights.

### **Fantino meets with McHale's Native attacker, but not non-Native victims of violence**

31. On May 28/08 the Turtle Island News published the photo below taken on May 23/08 at a meeting on the Six Nations Reserve. The picture shows Commissioner Fantino sharing a joke with Mr. Clyde Powless – the man who led the violent swarming of Mr. McHale that put him and Mr. Parkinson in the hospital; the man who, according to Detective Murray's notes, was going to be charged with assaulting police, but never was; the man who Mr. McHale tried to file private prosecutions against on behalf of other assaulted officers, but was opposed by the Crown.

Mr. Floyd Montour is sharing the joke. He is well known for participating in illegal blockades of private construction sites that have driven builders to seek injunctions, and the City of Brantford to ask a judge to request assistance from the Canadian Forces due to possible riots should the Brantford Police be unable to enforce the law against Natives who violate the court order.

In the background is Jesse Porter, the man who allegedly dragged the hydro tower across the road to block Argyle Street on Dec 01/07.



*Land protector Floyd Montour meets OPP Commission Julian Fantino outside the Onondaga Longhouse last Friday. The meeting with some of the chiefs was called by Jessie Porter (background) and Clyde "Bullet" Powless (centre). Porter wanted the chiefs to sanction his plan to go to court over a charge against him for moving the hydro tower down Highway 6. (Photos by Jim C Powless)*

- On Jan 10/07 Mr. Fantino met with Native occupiers of the Douglas Creek Estates, but refused to meet with non-Native protesters.
- Mr. Fantino has never attended a single public information event organized by CANACE directors for the citizens of Caledonia despite being invited to do so.
- Despite his expressed concern over the cost of the protests organized by Mr. McHale, Mr. Fantino has never agreed to meet with him or other CANACE directors.
- Despite the complaints filed against him for defamation he has never made any attempt to meet or speak to Mr. McHale to address those concerns.
- Despite knowing by Dec 05/07 that it was a native woman who was responsible for provoking the violence Mr. Fantino has never made any attempt to meet or talk with the victims of her outrageous conduct and/or correct the public record.
- When asked – nearly six months later –by a Toronto radio host on April 23/08 about a mediation event scheduled by the Ontario Human Rights Commission, he made derogatory remarks about Mr. Vandermaas and his complaint, and accused him and Mr. McHale of having a violent agenda and being ‘involved’ in violence, even though their only involvement in violence was as victims.

Mr. Fantino has met with Natives who have used violence and extreme lawlessness, even giving them his cell phone number, but he has refused to meet or address the concerns of the non-Native activists who became victims of Native violence on Dec 01/07. Even in the face of overwhelming evidence to the contrary, he continues to propagate the fiction that non-Native activists are violent.

To this day, the Commissioner has not singled out one Native protester or group for disparaging remarks for any of the many acts of lawlessness committed against residents and OPP officers in Caledonia.

Mr. Fantino's lack of respect for the truth, and his obvious bias towards Native protesters supports our contention that he played a key role in obstructing and/or perverting justice with respect to the events of Dec 01/07.

## Part 1 – Additional Notes

### **Fantino’s Dec 01/07 news release: did he know he was falsely blaming non-Natives?**

One might argue that the Commissioner was possibly acting on erroneous initial reports from the scene, and not out of malice when he announced his ‘outrage’ at the ‘interlopers’ and promised to bring us to justice even though we were not responsible for the violence. We would argue, however, that the Commissioner had an obvious and professional duty not to issue a news release blaming any party until the investigation had been concluded, especially since the Assault complaint against Mr. McHale was uncorroborated and no investigation had yet taken place.

Even if one argues that the Commissioner honestly believed the uncorroborated, fabricated report by the Native woman who was, in fact, the true instigator of the violence, Mr. Fantino had a duty to correct the record once the evidence had been gathered. This he did not do.

Detective Murray’s notes for Dec 05/07 reveal that senior officers knew that the Native woman who fabricated the false assault allegation against Mr. McHale was responsible for provoking the violence. Further, the Commissioner made additional false statements to a Toronto radio audience on April 23/08 blaming the non-Native victims of the violence when he knew – beyond the shadow of a doubt – that they were not to blame. The Commissioner’s post-investigation insistence – in the face of all evidence to the contrary - that non-Native activists were to blame for the violence supports our contention that his Dec 01/07 news release was not an honest mistake, but yet another attempt to discredit non-Native activists with false allegations.

We believe that the Commissioner used the events of Dec 01/07 for his own purposes to discredit lawful non-Native opposition to OPP policies by issuing an irresponsible news release that he knew or reasonably ought to have known was not, or may not have been, accurate. By this time, Mr. Fantino had a history of making unsubstantiated allegations against non-Native activists which had resulted in several Police Services Act complaints and a lawsuit against him for defamation. He had also made outrageous statements about Mr. McHale and his followers to a Hamilton Spectator reporter which were published Nov 08/07 and Nov 09/07 as noted in the Background section of this complaint.

### **Did OPP officers play a role in allowing the violence to occur on Dec 01/07?**

#### *Lack of resources to police protest*

Mr. Fleming, organizer of the smokeshack protest, had conducted a series of individual protests against illegal smokeshack in the weeks prior to the Dec 01/07 protest. These included selling illegal cigarettes from the back of his truck on private property beside the occupied Douglas Creek Estates, in front of the OPP sub-station in Caledonia, and in close proximity to other existing smoke shacks where his vehicle was vandalized by Native smokeshack supporters.

Mr. Fleming ran an ad in the local newspaper advertising the Dec 01/07 protest. The OPP were, therefore, well aware of it as evidenced by the presence of officers on the scene. They had a duty, to provide – as they had in other previous public protests – adequate policing to separate the sides. According to media sources there were only about 16-20 officers on the scene at the beginning of the protest. Crown disclosure reveals that officers were also distressed at the lack of resources provided for the protest.

It should be noted that the OPP normally would have a few hundred OPP Officers in Caledonia during these protests. In most cases they even bring in outside forces from Toronto Police Services or London Police Services. In every case you can see officers in Caledonia posted nearby as backup. Dec 01/07 was the first time since Mr. McHale's involvement in Caledonia that these standard procedures were not followed.

*Natives allowed to breach police line*

In sharp contrast to previous protests where non-natives were prevented from crossing a police line to put up Canadian flags on public utility poles and threatened with arrests for Breach of Peace and Obstructing Police should they try to do so, the officers allowed the Natives to assault them from behind, and cross the police line at will to reach the non-Native protesters.

At no time on Dec. 1, 2007 did the OPP control or enforce a police line that stopped Native protesters from directly crossing and confronting non-Native protesters.

*Sergeant Sloan's treatment of non-Natives during the protest*

It cannot be overlooked that, despite the numerous assaults by Natives against residents and police officers that were allowed to escalate without arrest throughout the protest, the only arrest of the day was Mr. Hagan. the non-native man standing away from the police line quietly drinking his coffee until spoken to and arrested by Sgt. Sloan. Not only did Sgt. Sloan arrest Mr. Hagan, who was not violent or threatening at any time, but took him away to be processed. Why would a senior NCO – the site commander, in fact - refuse to arrest the Natives who assaulted Mr. Vandermaas then take valuable time to arrest a non-Native man who was no threat whatsoever, and then leave the scene of an escalating confrontation where there was already a shortage of manpower? It simply makes no sense.

Video evidence shows that Sgt. Sloan – the same officer who refused to arrest Mr. Vandermaas's attackers; the same officer who later arrested Kyle Hagan as he quietly drank his coffee – was consulting in a very friendly manner with Clyde Powless, the Native man who went on to attack Mr. McHale from behind. In sharp contrast to his treatment of the non-native protesters that day, Sgt. Sloan seemed unusually friendly with Mr. Powless. On its own, the conversation may not be unusual however, in the context of this sergeant's actions throughout the day, it does give the impression that officers on the scene and the Native leadership were cooperating in some manner to the detriment of non-Native protesters.

Prior to Sgt. Sloan's arrest of Mr. Hagan, Clyde Powless is caught on video assaulting and intimidating four different OPP officers in two separate events. Neither Sgt. Sloan nor any other officer arrested Mr. Powless.

*No videotaping of event by OPP*

There were no OPP officers videotaping Mr. Fleming's protest as was done in previous public protests. One must wonder why. If Mr. Fantino and the OPP leadership honestly believed the Commissioner's own accusations from the past – made both in public, and in private to Haldimand Council – that Mr. McHale's supporters – who included Mr. Fleming, organizer of the day's events - were dangerous to the community and had a violent agenda, why would they not want video evidence to prove it?

In every event prior to Dec. 1, 2007 and since, the OPP have had officers videotaping the events.

*Plenty of lead time before Native group swarms and assaults Mr. McHale:*

OPP Officers record in their notes that Native protesters were preparing for, and then moving, a hydro tower into position across the highway approximately 40 minutes prior to Clyde Powless rallying Native protesters to attack Mr. McHale. Residents living in the area phoned the OPP to inform them that Natives were preparing the tower to be used.

At no time did the OPP arrest any Native person to 'prevent a breach of peace' nor directly hinder the process of blocking the highway, or the rallying of people to attack Mr. McHale.

Even during the attack upon Mr. McHale, video shows Clyde Powless grabbing OPP officers who then grab him in return, but these officers release him in response to Mr. Powless's order to remove their hands from him. Mr. Powless continued to grab and push officers while officers are clearly seen showing that their hands are not on Mr. Powless in response to his orders.

### *Conclusion*

As reprehensible and unbelievable as it may sound, the evidence suggests that senior OPP officers may have deliberately planned in advance to allow the Dec 01/07 situation to get out of control in order to discredit non-Native activists. This causes us to wonder if Mr. Fantino's rush to release his press release falsely blaming non-Natives for the violence before the investigation had begun was done because he knew in advance what was going to happen.

## Part 1 - Summary

### *Two ministries of Ontario government fully aware of complaints vs. Commissioner Fantino*

- Both the Ministry of the Attorney General and the Ministry of Community Safety and Correctional Services are well aware of complaints and lawsuits – pending and filed – with respect to Mr. Fantino’s persistent false statements linking Mr. McHale and his followers to the perpetration and/or encouragement of violence.

### *Commissioner Fantino interferes with investigation by falsely blaming non-Native activists*

- Commissioner Fantino directly interfered with, obstructed and tainted the ‘investigation’ into the Dec 01/07 disturbance by issuing a news release the same day - before the investigation had even begun - falsely stating that non-Native activists, and Gary McHale in particular, were responsible for the violence. The public was led to falsely believe that Natives played no role in the disturbance. The public was led to falsely believe that the protest was organized and led by Mr. McHale, the ‘interloper,’ a man who the Commissioner had previously publicly criticized for costing taxpayers \$500,000 for policing his (lawful) protests. The Commissioner used derogatory terms about Mr. McHale, and stated that the OPP would not only be investigating the events of Dec 01/07, but ‘all events including those leading up to today’s volatile situation,’ clearly a reference to past protests by Mr. McHale.
- Officer's note show that the morning briefing by the OPP informed officers that the protest was organized by Doug Fleming and not by the 'interlopers.'
- Officer Murray's notes show that he is informed – falsely - that ‘McHale has blocked road near smoke shop’ and is told to investigate.
- Detective Murray’s notes from his discussion with D/I Renton, D/I Dave Cardwell and D/Supt. Ron Gentle show that senior OPP officers knew, on Dec 05/07, that it was a female Native ‘agitator’ who had provoked the violence with her false allegation of assault against Mr. McHale.
- The evidence clearly contradicts Mr. Fantino’s assertion that non-Natives were responsible for the violence on Dec 01/07. It shows, in fact, that non-Natives and OPP officers were victims of violence at the hands of the Native smokeshack supporters. In actuality, Mr. Fantino blamed the non-Native victims for the violence perpetrated against them.

### *Abuse of power by Commissioner Fantino*

- Evidence from OPP investigation reports into OCCPS complaints by Mr. McHale reveal that Mr. Fantino personally oversaw attempts by officers to target Mr. McHale for arrest and restrictive bail conditions as early as Dec 03/06 even though Mr. McHale had not committed any crime, and that an extraordinary amount of resources were devoted to this effort.

*Victims of violence refuse to seek justice*

- Mr. Fantino's statements on Dec 01/07 caused non-Native protesters to lose all confidence in the OPP's ability to investigate impartially which resulted in decisions not to file complaints and/or seek justice for assaults and injuries. Mr. Parkinson, who suffered a brain injury after being knocked unconscious by an OPP officer during the swarming of Mr. McHale led by Mr. Powless refused to file a statement due to the obvious bias against non-Native protesters displayed during the event, and afterwards, especially by Mr. Fantino. Mr. Vandermaas, who was attacked by Native thugs, similarly refused to file a complaint against his attackers with the OPP.

*OPP persist in charging McHale once other allegations prove to be fabricated*

- The first false allegation against Mr. McHale was by the OPP themselves which stated that Mr. McHale had blocked the highway. This was the starting point of Detective Murray's investigation. Numerous officer's notebook clearly show that a Native man was the first to block the highway, followed by Caledonia resident and protest organizer, Mr. Doug Fleming. At no time did Mr. McHale block the road.
- The second allegation against Mr. McHale was the fabricated Assault complaint by the Native woman who also assaulted Mr. McHale. Dozens of Officers stated they did not witness Mr. McHale assaulting anyone, and not one of the 58 Officer's notebooks supported the claim of assault.
- Once the assault complaint against Mr. McHale was shown to be fabricated the charge suddenly became 'Counselling Mischief' even though there was no reference to such a charge anywhere in Detective Murray's notes prior to him discovering that the assault charge was falsified. The 'Counselling Mischief' charge is only recorded in Detective Murray's notes after his meeting with senior OPP officers.

*No charges for numerous Native assaults on OPP officers*

- The OPP refused to lay a single charge for any of the numerous assaults on police officers committed by Natives despite having more than enough evidence to do so. One set of assaults involved a Native man intentionally hitting an officer with his van, stopping only after the officer threatened to draw his weapon. The passenger left the scene only to return with 10-13 natives who assaulted the officer and his partner.
- Detective Murray's notes that a Native man was to be charged for assaulting police, but the charge was never laid. On May 23/08 Mr. Fantino is photographed sharing a joke with the man during his visit to the Six Nations reserve.
- Mr. McHale attempted to lay charges against Natives who had assaulted police, but was opposed by the Crown.

*OPP arrest non-Natives for crimes not charged against Natives*

- Sgt. Sloan refused to arrest Natives who assault Mr. Vandermaas, but did make the only arrest of the day – Mr. Hagan, a non-Native man quietly drinking coffee on the already blocked road away from the police line who was no threat to anyone. Sgt. Sloan then

leaves the scene of an escalating confrontation for which the OPP is shorthanded in order to process the arrest.

- The OPP charged a non-Native resident, Mr. Doug Fleming, for blocking the road with his truck, but did not charge the Native person who was the first to do so early on in the protest.
- The OPP decided to arrest Mr. McHale for assault based on an uncorroborated complaint from a Native woman that turned out to be utterly fabricated, but refused to charge the woman for assaulting Mr. McHale, even after he requested that she be so charged.

Several OPP officers' notes identify other Native smokeshack supporters who kicked and punched Mr. McHale but were not arrested at the scene nor since then.

- Mr. McHale is charged with 'Counselling Mischief' by allegedly telling someone to move their car across the road which they do not do, but the Native smokeshack supporter who does block the highway with his truck is never charged. It appears that OPP discretion means that non-Natives who merely talk about blocking the road are arrested, but Natives who do block the road are not arrested.

It should be noted that Native protesters have blocked the highway and railway lines in Caledonia several times over the past two years, including for 6 weeks in April-May 2006 without a single charge being laid.

Even since Dec. 1, 2007, Native protesters blocked the highway and railway lines in Caledonia for 4 days in April 2008 without a single charge being laid. This blockage of the highway included tens of thousands of dollars of damage to the highway, yet still no charges.

- The OPP refused to charge the Native woman mentioned above for pushing Mr. McHale during her attempt to bear false witness against him, but did charge a non-Native resident - Ms. Ruth-Ann Chapman - with assault for allegedly pushing an obnoxious Native-sympathetic videographer away from Christine McHale as her husband was bleeding after being swarmed by Native thugs.
- The charges laid by the OPP by Sergeant Sloan and Detective Murray conformed with Mr. Fantino's statements that non-Natives were to be blamed in that the most serious crimes committed by Natives did not result in charges while the least serious did.

*OPP officers provide false information in notes, to Courts, to accused*

- Detective Murray lied to the Court on Dec 14/07 when he testified that no officers had complained of being assaulted by Natives. His own notes show otherwise.
- Detective Murray provided 'selective information' to the Court on Dec 14/07 in order to make non-Native protesters appear to be the instigators. He failed to mention the role of the Native woman who, according to his own notes, was an 'agitator' who provoked the violence with her fabricated assault allegation against Mr. McHale.
- Detective Murray lied to McHale in order to get him to agree to onerous bail conditions.

- OPP Superintendent John Cain, Director of Operations for Western Region, provided false information in an affidavit on Dec 14/07 when he testified that a Native man had been charged with assaulting police on Dec 01/07.
- Sergeant Gutenberg falsified his notes to paint a negative picture of non-Native protesters.
- Sergeant Sloan's notes do not give an accurate account of his treatment of Mr. Vandermaas after he asked the sergeant to charge his attackers, nor are they accurate with respect to his conversation with Mr. Hagan immediately prior to his arrest.
- Detective Murray testified on Dec 14/07 in such a way as to give the false impression that Mr. McHale and Mr. Vandermaas were responsible for holding violent protests and that they encouraged or tolerated violence. Under cross examination, however, he was forced to admit that he had no such evidence.

*Political considerations and threats from natives used to justify bail restrictions*

- Detective Murray testified on Dec 14/07 that political considerations and threats from Natives were driving the OPP efforts to obtain restrictive bail conditions on Mr. McHale.

*Commissioner Fantino disparages Human Rights complaint, falsely accuses McHale, Vandermaas of being 'involved' in violence*

- On April 23/08 Commissioner Fantino was interviewed on a Toronto radio station and disparaged Mr. Vandermaas, his human rights complaint, and then falsely accused Mr. Vandermaas and Mr. McHale of having a violent agenda and of being 'involved' in violence. Mr. Fantino knew full well that the only involvement the two men had in violence was as victims, not perpetrators. In continuing to falsely blame non-Native activists during a radio interview nearly 6 months after the incident.

In failing to make any attempt to correct the record; and in refusing to address very legitimate concerns about the integrity of the investigation, Mr. Fantino has shown that his statement on Dec 01/07 blaming non-Natives for the violence was not an honest mistake, but another attempt to discredit non-Native protesters without evidence.

*Commissioner Fantino meets with man who attacked Mr. McHale and OPP officers*

- On May 23/08 Commissioner Fantino visited Six Nations and shared a joke with the man who assaulted OPP officers and Mr. McHale, and put Mr. Parkinson in the hospital. He has never agreed to meet with non-Native activists who were victims of the man's attack.

*Possibility that OPP allowed Dec 01/07 events to get out of control*

- The evidence suggests that there is the possibility that the subject officers, including Mr. Fantino, may have had a role in allowing the situation to escalate in order to discredit non-Native activists when things went 'wrong.'

## Conclusion

Section 15(1) of the *Canadian Charter of Rights and Freedoms* guarantees:

Every individual is equal before and under the law and has the right to the **equal protection and equal benefit of the law without discrimination** and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

The Charter guarantees 'equal protection and equal benefit of the law without discrimination' and as such, if a police force deems it necessary to meet with Native activists, even those who have used extreme violence and criminality in furtherance of their goals, then the Charter requires they do the same for non-Natives who have not used violence.

If a police force – rightly or wrongly - decides that the use of discretion allows them to decide not to charge Native suspects for crimes, then the Charter requires that they extend the same discretion to non-Natives for crimes of a similar nature committed during the same event.

It simply cannot be an accident or a coincidence that the outcome of: (a) the treatment of non-Natives by Sgt. Sloan, (b) the public statements by Mr. Fantino falsely blaming non-Natives for violence, and (c) the investigation by Detective Murray, worked perfectly to create the result that non-Natives were charged for the equivalent of spitting on a sidewalk while Natives using widespread violence in support of ongoing illegal activities escaped all responsibility for the serious crimes of attacking and threatening police officers.

If the OPP had applied the same standard of 'discretion' they so obviously used in deciding not to charge Natives for the exact offences charged against non-Natives, then not a single charge would have been laid against non-Native protesters. This, of course, would have been totally unacceptable since Commissioner Fantino had already publicly pronounced the non-Natives guilty and promised they would be brought to justice - before the investigation had begun. Charges had to be laid against non-Natives, and so they were.

Section 7 of the *Canadian Charter of Rights and Freedoms* guarantees:

Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

We believe that there has been an abuse of power by the subject officers that has violated both the letter and the spirit of Section 7 of the Charter.

Parts 2 and 3 of this complaint deal with allegations that Commissioner Fantino used his position and significant OPP resources to illegally suppress legitimate criticism of his force by non-Native activists generally, and Mr. McHale in particular, by making false allegations in public, and in private to Haldimand County officials and further, that he made unlawful threats against those officials in furtherance of his goal.

It is our contention that Mr. Fantino's persistent campaign to discredit non-Native activists contributed greatly to the obstructing and/or perverting of justice as it relates to the events of Dec 01/07.

In conclusion, with respect to the events of Dec 01/07 we submit that the evidence shows that justice was perverted and/or obstructed by Commissioner Fantino, Detective Murray and Sergeant Sloan contrary to Section 139(2) of the Criminal Code, and that these officers' conduct also violated the Police Services Act, the Charter of Rights, and the Human Rights Code.

## Part 2 – Influencing municipal official

- **Influencing Haldimand Council with threats & deceit, April 07, 2007**
  - **Intimidation of Mayor Trainer, June 13-25, 2007**

### Subject Officer:

- **Julian Fantino, Commissioner of the Ontario Provincial Police**

#### Municipal corruption

**123.** (1) Every one is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years who directly or indirectly gives, offers or agrees to give or offer to a municipal official or to anyone for the benefit of a municipal official — or, being a municipal official, directly or indirectly demands, accepts or offers or agrees to accept from any person for themselves or another person — a loan, reward, advantage or benefit of any kind as consideration for the official

- (a) to abstain from voting at a meeting of the municipal council or a committee of the council;
- (b) to vote in favour of or against a measure, motion or resolution;
- (c) to aid in procuring or preventing the adoption of a measure, motion or resolution; or
- (d) to perform or fail to perform an official act.

#### Influencing municipal official

(2) Every one is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years who influences or attempts to influence a municipal official to do anything mentioned in paragraphs (1)(a) to (d) by

- (a) suppression of the truth, in the case of a person who is under a duty to disclose the truth;
- (b) threats or deceit; or
- (c) any unlawful means.

#### Definition of "municipal official"

(3) In this section, "municipal official" means a member of a municipal council or a person who holds an office under a municipal government.

R.S., 1985, c. C-46, s. 123; R.S., 1985, c. 27 (1st Supp.), s. 16; 2007, c. 13, s. 6.

## Part 2 - History of Events

### 1. Note re supporting evidence

All evidence to support statements made in this complaint will be made available to an independent investigator upon request. In the interim, please refer to 'List of Supporting Evidence' on page 70 for links to evidence and background information.

### 2. Fantino email to Haldimand Council, April 07/07

(emphasis added)

Subject: FW: McHale Communications

-----Original Message-----

From: Fantino, Julian (JUS)

Sent: April 7, 2007 5:09 PM

Cc: Ward, Katherine (JUS); Newman, Deborah (JUS); **Dean, Tony (CAB); Wilkinson, Peter (OPO)**; Lewis, Chris D. (JUS); Dennis, Bill (JUS); Cain, John (JUS); McLean, D. G. (JUS); Howe, Angie (JUS); **Morley, Chris (OPO)**; Laing, Paul (JUS)

Subject: McHale Communications

Mayor Trainer and Members of Council:

I have been made aware of a deeply disturbing communication posted at 11:40am this date on McHale's "Caledonia Wake Up Call" web site apparently as a follow-up to an earlier McHale rant in which among other things he criticized Councillor Grice for a demonstrated lack of support to his cause on behalf of Caledonia.

In this latest e-mail, McHale also reported the full content of an alleged e-mail dated April 5, 2007 that he received from Councillor Grice in response to his criticism in which among other strange comments, Councillor Grice commends McHale on his efforts in Caledonia. In fact the comments are perceived to actually encourage McHale.

I have no intentions of entering into a debate with Councillor Grice about Charter rights and freedoms of speech and the like which he apparently framed in the April 5 e-mail to McHale. My primary concern is solely focused on preserving the peace in Caledonia and nothing more; a concern that very much includes preventing provocations that could lead to renewed violence such as has happened in the past. An informed and responsible person would understand all this and more.

In the context of a situation that is not of our doing and one that is not for us to resolve, I am also concerned about the safety of my officers, many of whom have already been injured in their efforts to preserve the peace in a very volatile and dangerous environment. It may not be apparent to our critics and those with special agendas of their own that the OPP, all of us, have worked tirelessly on the front lines and beyond to simply maintain order in an otherwise chaotic and very turbulent situation; made especially difficult every time McHale and his followers come to town.

It is also very relevant and worthy of note that I highlight the extraordinary policing costs that are borne by Ontario taxpayers every time the situation in Caledonia escalates. And now, apparently, we have Councillor Grice commending someone that he knows is a lightning rod for confrontation and potential violence. Just as troubling, Councillor Grice has now added another aggravating political dimension to his previous "anti OPP" rhetoric.

Be that as it may, in the context of the latest comments attributed to Councillor Grice which have the real potential of further inflaming an already volatile situation for the police, and on behalf of the men and women of the OPP I feel a sense of duty to advise you that going forward, in the event any of my officers are injured as a result of further forays into the community by McHale and his followers my position in response will be the following:

- 1) I will publicly hold accountable Councillor Grice AND Haldimand County along with McHale;
- 2) I will support any injured officer in the pursuit of civil redress;
- 3) I will forward the ensuing related costs of policing to Haldimand County, and
- 4) I will strongly recommend to my Minister that the OPP contract with Haldimand County NOT be renewed once the current contract expires.

As much as we, the OPP, sympathise with the Citizens of Caledonia and the difficult political position you face we believe that in the context of the situation that prevails in Caledonia, comments such as those attributed to Councillor Grice are gravely detrimental to the morale and safety of my officers and much more. When I appeared before you several months back I came away believing that we had a mutual understanding about the detrimental effect that McHale and his followers were having on Caledonia. I know that Councillor Grice has some personal issues that he finds particularly aggravating, however, we never expected that he would fall prey to McHale's propaganda and it is now up to you as a Council to deal with the fall-out.

Yours truly,

J. Fantino,  
Commissioner

### **Did Commissioner Fantino attempt to influence a municipal official?**

The Commissioner's email makes clear that he is attempting to eliminate criticism of his force by municipal officials and their reliance on information provided by Mr. McHale. He is not merely making an attempt to correct a factual mis-statement by a councillor for the public benefit.

Mr. Fantino is attempting to influence municipal officials not to exercise their right and duty to represent their constituents as they see fit by speaking out on a subject of considerable importance. He is also influencing them to remain true to their previously agreed upon 'mutual understanding about the detrimental effect' non-Native activists were having in Caledonia.

We also have evidence – set out below - that Mr. Fantino, at a later date, personally attempted to influence Haldimand Mayor Marie Trainer in an effort to quell criticism of the OPP even while the previous Minister of Community Safety and Corrections was considering complaints about the above email.

**Did Mr. Fantino attempt to influence municipal officials by unlawful methods?**

- *123(2)(a): suppression of the truth; in the case of a person who is under a duty to disclose the truth*
- *123(2)(b): threats or deceit*

While it is our position that Mr. Fantino did, in fact, suppress the truth when he had a duty to tell it, we submit that s. 123(2)(b) may be more applicable in that he not only withheld the truth from Haldimand Council members, he actively set about deceiving them with false information and innuendo in order to cause them to enter into an agreement with him that was not in the lawful public interest, but designed to influence them to make decisions and/or statements based on the false information for his own purpose of discrediting legitimate criticism of his force.

Mr. Fantino’s email mentions Mr. McHale 12 times, including in the Subject heading. The Commissioner refers to the ‘detrimental effects’ of McHale’s actions with the clear implication that they had been nefarious or illegal and directly connected to the waste of taxpayers’ resources. It is clear that McHale is the subject of the email and that he and his followers are being linked to acts of violence – past and future - and past injuries to OPP officers as if McHale were somehow responsible for them, as if McHale was a ‘clear and present danger’ to the community by virtue of illegal activities or nefarious motives.

Mr. Fantino would certainly have been aware by the date of his email (April 07/07) that the lawyer for Mr. McHale and Mr. Vandermaas, Mr. John Findlay had served the Ontario Provincial Police Association (OPPA) and its President Karl Walsh with a notice dated Feb 08/07 under the *Libel and Slander Act* in connection with an OPPA press release of Jan 18/07 in which the OPPA falsely accused them of ‘promoting hatred, flaunting the justice system and inciting violence.’ This release also falsely implied – as did Mr. Fantino in his email - that they were, in some manner, responsible for OPP officers being injured in Caledonia.

A full two months after the OPPA was served under the *Libel and Slander Act*, Mr. Fantino made similar allegations in his April 07/07 email that he knew, or ought to have known by then were utterly false. Even if one allows for the unlikely circumstance that Mr. Fantino was unaware of our lawyer’s response to the OPPA statements, Mr. Fantino – by virtue of his position as the Commissioner – knew or ought to have known that OPP officers had been injured prior to our involvement in Caledonia and that those injuries were caused, not by us or during our protests, but by – to the best of our knowledge - native occupiers of the Douglas Creek Estates.

Mr. Fantino was, in this email, causing Haldimand Council members to suspect us of committing crimes we had not committed and that our illegal behaviour had resulted in the loss of money to taxpayers for which they would be made responsible. Apparently, he had made similar comments during an earlier meeting with Council where they had together come to the “mutual understanding” about the “detrimental effect” of our activities.

Mr. Fantino knew or ought to have known that any use of taxpayer’s money was a result of lawful protest protected by the Canadian Charter of Rights and that any waste of money was a direct result of his illegal attempts to stop non-native Canadians from raising Canadian flags on

public utility poles as is our right. This right is protected under the Supreme Court of Canada decision in the case of *Ramsden v. Peterborough* [1993], and is further supported by *Haida Nation v. British Columbia* [2004] which states that third parties to Aboriginal claims have NO duty to consult or accommodate Aboriginal concerns. It is this very issue which gave rise to our complaints to the Ontario Human Rights Commission in July 2007 with respect to Mr. Fantino's actions on Jan 20/07 in preventing us from exercising our rights.

As outlined in Part 1 of this complaint, on Dec 14/07 OPP Detective John Murray provided testimony under oath to the following:

a. During his lengthy overview of the Caledonia situation for the court, Detective Murray was unable to set out a single piece of tangible evidence to support the view that either Mr. McHale or I have a violent agenda or that we have committed or encouraged acts of violence.

b. Detective Murray testified that OPP officers attended a townhall meeting we held in Caledonia on January 14, 2007 - to which Mr. Fantino was personally invited, but did not attend – and noted that Mr. McHale quoted from Dr. Martin Luther King. The quotes were, in fact, from Dr. King's 'Letter from Birmingham Jail,' April 16, 1963 in which Dr. King explained the importance of non-violent protests and the legitimacy of the role of 'outsiders.'

Detective Murray noted that Mr. Vandermaas gave an introductory speech at this event. Mr. Vandermaas's speech – written independently from Mr. McHale's - also included quotes from Dr. King regarding non-violent protests. This speech was posted by Mr. Vandermaas at VoiceofCanada on January 14, 2007 under the title, 'It WAS worth it, Jack' and again on November 10, 2007 under the title, 'Let's remember Jack tomorrow.' Both posts have remained freely available for viewing since.

Under cross-examination by Mr. McHale Detective Murray testified to the following:

a. When asked if he was aware of any OPP reports that McHale had committed any offence, he replied, "I have not read one that specifically addresses you committing an offence."

b. When asked if Mr. McHale had been charged with assault since becoming involved in the Caledonia issue, he replied, "No sir."

c. When asked if Mr. Vandermaas had been charged with assault since becoming involved in the Caledonia issue, he replied, "Not, not that I'm aware, no sir."

d. When asked if anyone had been injured at events organized by McHale, he stated, "Not by my knowledge, sir."

e. When asked if Mr. McHale had ever been accused of assaulting someone, he replied that Mr. McHale had been falsely accused of committing an assault on December 01, 2007 and that the person who made the false report would be charged.

On Dec 24, 2007 Haldimand Mayor Marie Trainer, MPP Toby Barrett and Hamilton Police Service officer David Hartless testified under oath that Mr. McHale was not a danger to the

community, that he was not a violent person and that he was, in fact, an advocate for the people of Caledonia.

- Haldimand Mayor Marie Trainer
- MPP Toby Barrett
- Hamilton Police Officer/Caledonia resident, David Hartless

The day after Mr. McHale's inaugural 'March for Freedom' protest of Oct 15/06, Inspector McLean, commander of the Haldimand Detachment of the OPP called to thank Mr. McHale for having such a peaceful protest. A few days later Insp. McLean sent him an email thanking McHale for holding a peaceful protest and for honouring the mutually agreed-upon arrangements.

Mr. Fantino knew, at the time he wrote his email, and at the time of his meeting with Council referred to in his message, that there was no evidence Mr. McHale or Mr. Vandermaas had encouraged the use of violence or had committed or furthered acts of violence, or that any officers had been injured during any protest that they had organized. As the Commissioner of the OPP he had a duty to disclose the truth to Haldimand Council, but chose not only to suppress it, but to deceive Council with statements he knew or ought to have known were false. We believe, therefore, that this was a violation of s. 123(2)(a) of the Criminal Code.

*Did Mr. Fantino use threats to influence municipal officials?*

- 123(2)(b): *threats or deceit*

Mr. Fantino made a number of clear threats in his email based on his false statement that Mr. McHale was responsible for past injuries to OPP officers and the false, outrageous premise that future injuries to officers would be caused by Mr. McHale, and/or Councillor Grice's or Council's criticism of his force:

- To publicly blame Councillor Grice and Haldimand County for injuries to officers.
- To assist OPP officers in suing the County.
- To pass on policing costs to the County.
- To withdraw police services.

**Were Commissioner Fantino's remarks considered threatening by Haldimand officials?**

In a television news broadcast by CHTV on April 12/07 Haldimand Ward 3 Councillor Craig Grice said the following:

*"I'm totally upset by it. It's one more way that he's trying to quiet Council, that he's trying to quiet the residents of Caledonia, and I'm simply not going to let it happen."*

In a CFRB 640 radio interview broadcast on April 13/07 Mayor Trainer explained why she took Commissioner Fantino's email as a threat:

*"I took it as a threat. 'If you don't do something about Councillor Grice, then maybe we're going to pull out.'"*

The following is taken from the transcript of Mayor Trainer's testimony when questioned by Mr. McHale at the Cayuga Courthouse on Dec. 24, 2007 regarding his bail conditions:

- Q. Were you not on TV talking about the e-mail that Fantino sent to Haldimand Council where you said on TV and radio...
- A. You're right.
- Q. ...that you felt threatened by Fantino?
- A. Yes. Yes, you're correct.
- Q. In that e-mail, did you think it was appropriate for the police force to be threatening elected officials?
- A. Most inappropriate.
- Q. What was Fantino, in your view, attempting to do?
- A. To intimidate.
- Q. To what end?
- A. Maybe to keep us quiet.
- Q. In that particular e-mail, did Fantino use my name [Gary McHale] repeatedly?
- A. Yes.
- Q. And, in that e-mail, did not Fantino state that Council had to gain control over Council, Councillor Grice because of his positive statements?
- A. I don't have the e-mail in front of me but it, it did say something like that.
- Q. Didn't, didn't Mr. Fantino threaten to sue council members and the council if any further positive statements were made?
- A. Yes, No, if was if, if one of his officers were injured, he would hold the, Councilor Grice and the County accountable.
- Q. And again, the e-mail was motivated because Councilor Grice made positive statements about me in public?
- A. That's correct.

**Commissioner Fantino's email cc'd to 3 people in Premier's office**

Note that the Commissioner's email was copied to the following people:

1. Tony Dean – Secretary of the Cabinet (Deputy Premier of Ontario)
2. Chris Morley – Press Secretary for Premier McGuinty
3. Peter Wilkinson – Chief of Staff to Premier McGuinty

**Additional attempt by the Commissioner to influence Mayor of Haldimand**

We are in possession of evidence showing that Commissioner Fantino contacted Haldimand Mayor Trainer directly in a second attempt to influence her to stop her criticism of the OPP on behalf of residents.

This occurred during the period that Mr. Rod McLeod - a consultant hired by the former Minister of Community Safety and Correctional Affairs to make recommendations on how to proceed with the existing complaints against the Commissioner - was conducting inquiries that had included

meetings with Mr. McHale, Mr. Vandermaas and Mr. Merlyn Kinrade. Mr. McLeod also had discussions with Mayor Trainer. On June 25/07 Mayor Trainer complained to Mr. McLeod in frustration at the Commissioner's latest attempt to influence her saying, "This man does not stop."

The exchange between Commissioner Fantino and Mayor Trainer occurred via several emails between June 13/07 and June 25/07, and began with Mr. Fantino querying the mayor about a Canadian Press story entitled, '*Occupation has led to loss of faith in OPP, mayor says*' which he quotes in his initial email:

"Haldimand County's mayor says residents have lost faith in the OPP over an ongoing aboriginal occupation, and council will discuss not renewing their contract. Mayor Marie Trainer says residents are angry with perceived police inaction regarding a 15-month occupation by Six Nations protesters of a former housing development in Caledonia. The council committee, which meets next Monday night, will discuss options other than renewing the contract, which is worth about \$7 million a year and ends in September 2008."

FANTINO, June 13/07: Madam Mayor: Here we go again. Did you say the comments attributed to you? Did you actually say these things about the OPP?

TRAINER, June 25/07: Although these are only an interpretation of my words they are remarks I am receiving from the residents across Haldimand County and not necessarily how I feel.

FANTINO: June 25/07: Mayor Trainer: Thank you for the response. Well then are you speaking on behalf of ALL "the citizens of Haldimand County?" Also, I thought we had agreed to tone down the inflammatory rhetoric?

TRAINER TO MCLEOD, June 26/07: This man does not stop.

*All complaints against Mr. Fantino suddenly dismissed before consultant's report finished*

Three days after complaining to Mr. McLeod about the Commissioner's latest attempt to influence her the Minister suddenly announced, on June 28/07, that he had dismissed all complaints against the Commissioner, including those by Mr. McHale and Mr. Vandermaas. Mayor Trainer was shocked by this since she had spoken to Mr. McLeod twice that day who told her he hadn't finished his report. The Mayor received a call from CP reporter Chinta Puxley around 3:00 PM shortly after speaking with McLeod during which Puxley asked how she felt about the complaints being dismissed. Puxley's first story was published at 5:20 p.m. the same day.

*Mayor Trainer appears before the Ontario Ombudsman*

Soon after Mr. Fantino was cleared by the Minister of Community Safety and Correctional Affairs, Mayor Trainer appeared before the Ontario Ombudsman to present evidence (including audio phone recordings) that Mr. McLeod had not even written his report before Mr. Fantino was cleared. The Mayor informed senior officials with the Ombudsman's office that Mr. McLeod informed her that he was forced to write the final report in a way that he was instructed. We are witnesses to this event because Mr. McHale, Mr. Merlyn Kinrade and Mr. Vandermaas were in the room while the Mayor provided the evidence.

*Was the Commissioner's second attempt to influence the Mayor unlawful?*

Commissioner Fantino did not use 'suppression of the truth' as set out in section 123(2)(a) to influence the Mayor. Although we would argue that his intent was to suppress truth inherent in the Mayor's criticism, he did not lie to her in order to do so as we allege he did in his email of April 07/07.

Certainly, it is appropriate for the Commissioner of the OPP to discuss policing issues with a member of the Haldimand Police Services Board. We see, however, a distinct difference between an attempt to correct a factual error or impression versus attempting to influence the Mayor generally into not publicly criticizing the OPP and not to inform her constituents or acknowledge their concerns on a matter of grave importance to the community.

Although the Commissioner did not directly threaten the Mayor as per section 123(2)(b) we would suggest, given the Commissioner's recent threat to withhold policing services, sue the County and pass on policing costs as contained in his April 07/07 email – for which several complaints were currently pending disposition by the Minister - that his newest attempt to influence the mayor was, by extension, made under an implied threat. Clearly, the Mayor regarded it as such when she complained to Mr. McLeod, else why would she tell him about it?

#### **McHale response to Fantino email**

In response to Commissioner Fantino's email Mr. Mchale submitted a complaint to the former Minister of Community Safety and Correctional Affairs dated April 16/07 which was, as discussed above, dismissed without being investigated. His complaint made it clear his position that Mr. Fantino's allegations and innuendo intimating that he was engaged in criminal and/or violent behaviour, and was responsible for injuring OPP officers were patently false.

This excerpt is the 'Summary' from Mr. Mchale's complaint:

It is clear from Commissioner Fantino's email that:

1. He believes that he had entered into a secret agreement with Haldimand Council to influence their decisions and statements with respect to my protest activities, and that he believed Councillor Grice breached that agreement.

It also appears that Council was coerced into this agreement by false allegations against me. Again, not a single person - police officer or civilian - has been hurt during any of my protests, contrary to the Commissioner's statements throughout his email that implicate me and my co-protesters as having a role in hurting OPP officers.

2. The Commissioner is using his influence and unfounded innuendo to influence Councillor Grice and Council into not providing support for my protests against the OPP. In doing so he is attempting to deny a voice to Caledonians who are distressed by his force's refusal to enforce the law equally. As Councillor Grice said in the CHTV interview cited previously – *"It's one more way that he's trying to quiet Council, that he's trying to quiet the residents of Caledonia."*

3. The Commissioner intends to punish members of Haldimand Council and the citizens of Haldimand for Councillor Grice's breach of their 'understanding' to

maintain a united front against me via co-coordinated attacks on me and my lawful protest activities.

4. The Commissioner has absolutely no regard for my Charter Rights or those of elected officials, or for his obligation to protect them.

In addition to filing the complaint under the Police Services Act, Mr. McHale filed a lawsuit alleging that a conspiracy to defame him existed between Haldimand County, Commissioner Fantino and the Ontario Provincial Police Association.

### **Did Commissioner Fantino's threats have an effect?**

Mr. Fantino's threats succeeded in ensuring that Haldimand Council remained hostile to Mr. McHale and his efforts to expose and oppose racially-based policing in the area.

In a letter from Haldimand County dated April 24/07 Mr. Vandermaas was notified of Council's decision to refuse to allow Gary McHale, Mark Vandermaas and Merlyn Kinrade to appear as a delegation in order to clear their names of the false allegations made by Mr. Fantino in his April 07/07 email.

While Council voted to refuse to allow the targets of Mr. Fantino's allegations to speak to them, they did vote to ask Mr. Fantino to do so.

We want to deal face-to-face and clear the air. Any time you can meet with someone face-to-face and keep the channels of communication open, that's positive. We can get direct answers from him and he can get direct answers from us.

Haldimand Councillor Lorne Boyko, quoted by Hamilton Spectator, Daniel Nolan, April 19/07: *Councillors want meeting with Fantino*

To this day Haldimand Council refuses to meet officially with Mr. McHale and CANACE directors. A meeting with the Mayor and Chief Administrative Officer scheduled for May 01/08 was cancelled two days prior. The purpose of the meeting was to brief the County on important research into 'colour of right' and 'duty to consult' issues of vital interest to landowners in the area that we were about to share in a public presentation.

On May 07/08 CANACE held this presentation where our latest report, '*Legalized MYTHS of Illegal Occupations*' [see 'List of Supporting Evidence,' page 70, #3] was released and discussed. MPP Toby Barrett attended and spoke, but no members of Haldimand Council attended.

Prior to Mr. Fantino's threatening email, members of Haldimand Council had attended various events organized by Mr. McHale. Since then, not a single member of Council has done so, even to support victims of violence and race-based policing. On Oct 08/07 CANACE held a pre-election protest with speakers that included the brother of Sam Gualtieri who had been nearly murdered by Native thugs in a home he was building for his daughter on Sept 13/07, and a 15 year old girl named Pam who must take medication and go to counselling because she is afraid in her home due to the refusal of the OPP to police her street. Not one member of Haldimand Council attended the event or chose to stand beside victims of race-based policing and speak out on their behalf.

## **Part 2 – Summary**

- Commissioner Fantino threatened Haldimand County officials in his email of April 07/07 because he perceived that one Councillor had made a positive statement about Mr. McHale.
- The email was copied to 3 of Premier McGuinty's closest associates.
- The email revealed that a secret agreement existed between Mr. Fantino and Haldimand Council with respect to the defamation of Mr. McHale and his supporters.
- Members of Council were induced to enter into this secret agreement by Mr. Fantino's deliberate misrepresentation of facts regarding the conduct of Mr. McHale. Mr. Fantino falsely gives the impression that Mr. McHale encourages or supports the use of violence and was responsible for injuries to OPP officers, and that any injuries in the future will be his fault.
- The email made a number of threats against Haldimand County, Councillor Grice and Mr. McHale including lawsuits, public humiliation, and withdrawal of police services.
- Mr. McHale's complaint against Mr. Fantino was dismissed – as were all others – by the former Minister of Community Safety and Correctional Services without being investigated before the Minister's own consultant had finished his report advising how to handle the complaints.
- The Commissioner tried to again to influence the Mayor of Haldimand even while the complaints for his first email were outstanding.
- The Mayor of Haldimand made it clear that she felt threatened by Mr. Fantino.
- The Commissioner's threats succeeded in ensuring that Haldimand Council remained hostile to Mr. McHale and his lawful efforts to expose and oppose racially-based policing in the area.

## **Conclusion**

We believe that sufficient evidence exists to lay a charge against Commissioner Fantino under Section 123(2) of the Criminal Code for the offence of 'Influencing municipal official.'

### **Part 3 – Breach of trust by public officer**

- **Abuse of office to defame and oppress rights of non-Native activists**

#### **Subject Officer:**

- **Julian Fantino, Commissioner of the Ontario Provincial Police**

#### Breach of trust by public officer

**122.** Every official who, in connection with the duties of his office, commits fraud or a breach of trust is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years, whether or not the fraud or breach of trust would be an offence if it were committed in relation to a private person.

R.S., c. C-34, s. 111.

## **Part 3 - History of Events**

### **1. Note re supporting evidence**

All evidence to support statements made in this complaint will be made available to an independent investigator upon request. In the interim, please refer to 'List of Supporting Evidence' on page 70 for links to evidence and background information.

### **2. Introduction**

As outlined in Parts 1 and 2 of this complaint, we believe that Commissioner Fantino has committed the Criminal Code offences of 'Obstructing Justice' and 'Influencing Municipal Official.'

In making the case for these two charges, the evidence also shows that the common thread in the two cases is Mr. Fantino's bias against non-Native activists. This evidence shows - with crystal clarity - that the Commissioner has, for more than one year, showed extreme bias against non-Native activists and has used his office and the resources of the OPP to engage in a persistent campaign to discredit and defame them with false allegations, and target them for arrest and restrictive bail conditions.

### **3. Elements required to prove 'Breach of trust'**

According to the Supreme Court of Canada in *R. v. Boulanger*, [2006], a case involving a charge laid against a police chief in Quebec, the offence of 'breach of trust' must meet five tests:

58 I conclude that the offence of breach of trust by a public officer will be established where the Crown proves beyond a reasonable doubt the following elements:

1. The accused is an official;
2. The accused was acting in connection with the duties of his or her office;
3. The accused breached the standard of responsibility and conduct demanded of him or her by the nature of the office;
4. The conduct of the accused represented a serious and marked departure from the standards expected of an individual in the accused's position of public trust; and
5. The accused acted with the intention to use his or her public office for a purpose other than the public good, for example, for a dishonest, partial, corrupt, or oppressive purpose.

We believe that Mr. Fantino's conduct meets these five elements for the following reasons:

#### ***a. Is he a public official?***

Mr. Fantino is a public official serving in the capacity of the Commissioner of the Ontario Provincial Police.

**b. Was he acting in connection with his duties?**

Several of Mr. Fantino's statements were made via OPP news releases and media interviews in his office. All were made in connection with his duties and position as the Commissioner of the OPP.

**c. Did he breach the standard of responsibility and conduct demanded by his position?**

**False allegations against non-Native activists**

The very nature of the office of a police chief or commissioner demands that the public, the media and other public officials be able to place great trust that he/she is telling the truth about all matters, especially those involving of provincial or national importance such as the Caledonia land claim dispute.

Commissioner Fantino and officers of the OPP have persisted for more than one year in knowingly and falsely accusing and insinuating that Mr. McHale, Mr. Vandermaas and non-Native activists associated with them have engaged in nefarious activities that include promoting hate and encouraging and/or committing violent crimes. Mr. Fantino has made these scurrilous allegations in public and in private to Haldimand Council, yet has never brought a charge against us and presented his evidence in a court of law.

Mr. Fantino's false accusations have persisted despite all evidence to the contrary available to him and despite our very best efforts to curb them via OCCPS complaints, lawsuits and personal invitations to speak with us and appear at our events.

**Bias against non-Native activists and non-Native citizens generally**

A police commissioner should exercise his duties in an impartial manner without favoritism to any citizen due to their race or grievance.

Haldimand-Norfolk MPP Toby Barrett has been so distressed by the conduct of the OPP under Mr. Fantino's leadership that he felt compelled to create a draft document called, '*Haldimand Proclamation for Peace, Order and Good Government.*' This shocking document, dated Feb 11/08, validates the complaints of many citizens that the OPP is conducting racially-based policing at a level that is taking Haldimand County to the brink of anarchy, and demands a return to the equal application of the law.

It begins as follows (emphasis added):

WHEREAS, since February 28, 2006, people across Haldimand County and beyond have been subjected to arson, extortion, barricades, land seizures, occupations, militant protests, and related harassment, intimidation, mob violence and threats to public safety.

AND WHEREAS, the community safety, social and economic life, of Haldimand and neighbouring residents, has declined because of the climate

of fear, chaos and uncertainty generated by various acts of lawlessness and related intimidation.

AND WHEREAS, there is a perception, and **evidence, of two categories of law, of justice, of police protection, and government action based on one's race** and geographical location within Haldimand County and beyond.

AND WHEREAS, the lawlessness, and the less than adequate prevention and response on the part of police and other government authorities regarding these illegal acts appears to be tolerated, and perhaps condoned, by provincial and federal government policy.

A copy of Mr. Barrett's proclamation is attached. [4]

Commissioner Fantino has acknowledged meeting, speaking and consulting with native occupiers of the Douglas Creek Estates who, as a group, have committed acts of violence, vandalism and other lawlessness in connection with their occupation. He has even acknowledged giving his cell phone number to them. By contrast, he has never made any effort to communicate and consult with non-Native protesters about our concerns despite the fact that we have never used or advocated the use of violence. He has also never, to the best of our knowledge, singled out any Native protester or group out for public criticism or derogatory remarks.

He has shown little respect for the victims of Native crime. Not only has he falsely blamed them for the violence perpetrated against them, he was photographed on May 23/08 sharing a joke with one of the attackers who also assaulted police officers.

Mr. Fantino has been conducting himself in a manner that is clearly not impartial with respect to how he treats Native protesters versus his treatment of non-Natives. It is this lack of impartiality that resulted in our complaints to the Ontario Human Rights Commission.

#### **Lack of respect for fundamental Charter and Human Rights**

Beginning on Dec 03/06 Mr. Fantino personally got involved in targeting Mr. McHale for arrest and restrictive bail conditions even though he had not committed any crime.

On Dec 16/06 Mr. McHale was arrested during a protest during which non-Natives were trying to exercise their right to place a Canadian flag on a public utility pole. In keeping with Mr. Fantino's goals, Mr. McHale was held overnight without a charge. Mr. Vandermaas was also arrested, but released after several hours. This matter is before the Ontario Human Rights Commission.

On Jan 20/07 Mr. Fantino personally supervised an OPP operation to prevent Mr. McHale, Mr. Vandermaas and other non-Native activists/protesters from exercising their right to place a Canadian flag on a public utility pole in Caledonia. He met with native occupiers of Douglas Creek Estates that day but refused to meet with Mr. McHale, Mr. Vandermaas or any other non-Native protesters. This matter is before the Ontario Human Rights Commission.

On April 23/08, in response to a question from a journalist regarding the news that the Ontario Human Rights Commission had asked him to attend a mediation session with Mr. Vandermaas he stated that it was a “waste of time and taxpayers’ resources” and that we had a “violent agenda.”

Mr. Fantino made derogatory comments about Mr. McHale on Nov 09/7 regarding our use of the courts to seek relief for OPP-related attacks on our character by accusing us of ‘mischief making.’

In his email of April 07/07 threatening Haldimand Council over Councillor Grice’s positive statement regarding Mr. McHale, the Commissioner made clear his disregard for the Charter right to freedom of expression:

I have no intentions of entering into a debate with Councillor Grice about Charter rights and freedoms of speech and the like which he apparently framed in the April 5 e-mail to McHale.

The Commissioner’s derogatory remarks about citizens who use peaceful, lawful remedies to oppose racial policing policies of his force is not conduct one would expect from a police commissioner.

#### **Threats against Haldimand Council over positive McHale statement by councillor**

Mr. Fantino’s email of April 07/07 threatened municipal officials into remaining true to their conspiracy not to make positive statements about Mr. McHale and his supporters.

Between June 13-25/07, Mr. Fantino attempted to influence the Mayor of Haldimand into not speaking out on behalf of constituents regarding their disenchantment with the OPP’s race-based policing practices.

We believe that Mr. Fantino’s conduct in this matter rose to the level of ‘Influencing municipal official’ contrary to the Criminal Code.

#### **Tainted investigation into Dec 01/07 confrontation by falsely blaming non-Natives**

Mr. Fantino tainted and influenced the investigation into violent confrontation by falsely and publicly accusing Mr. McHale and non-Native activists of being responsible for the confrontation before the investigation had begun. He failed to correct the record once the evidence revealed that they were not responsible. He failed to apologize for blaming non-Natives who were, in fact, victims of the violence. He failed to ensure that the appearance of impropriety was rectified by calling in the RCMP to take over the investigation.

His interference with the investigation caused non-Native victims of violence not to cooperate with the OPP investigation or seek justice for the assaults on them. We believe that Mr. Fantino’s role in this matter rose to the level of Obstructing Justice contrary to the Criminal Code.

**Under Mr. Fantino's leadership other OPP officers have:**

- Jan 18/07 – Ontario Provincial Police Association issued news release stating that McHale and Vandermaas are promoting hatred, flaunting justice system, inciting violence, responsible for injuring OPP officers.
- Jan 20/07: OPP officers attempted to lay phony trespassing charges against Mr. McHale and other non-Native protesters by encouraging a resident to sign a document allowing the OPP to charge them. Officers called the resident throughout the day asking her to allow them to charge McHale and other non-Native protesters. Fortunately, she refused.
- Followed the Commissioner's lead in trying to target Mr. McHale for arrest and bail conditions.
- Given false and misleading testimony in court to the detriment of Mr. McHale
- Falsified notes to the detriment of Mr. McHale and other non-Native activists.
- Failed to charge Natives for assaults on police, while charging non-Natives like Mr. McHale, Ms. Chapman, Mr. Fleming and Mr. Hagan for minor crimes not charged against Natives.
- Persisted in charging Mr. McHale once the assault allegation was shown to be fabricated.
- Testified that political considerations and threats were driving OPP efforts to obtain restrictive bail conditions on Mr. McHale.

In summary, Mr. Fantino and numerous officers at every level have wasted valuable time, resources and energy trying to stop Mr. McHale and other non-Native activists from exercising their lawful right to criticize and protest against the racially-based policing practices of the OPP. We believe that the evidence shows that Mr. Fantino breached the standard of responsibility and conduct demanded of him by his office.

***d. Did his conduct represent a serious and marked departure from the standards expected of an individual in his position of public trust?***

It is difficult to believe, by any stretch of the imagination, that any police officer, let alone the Commissioner of the Ontario Provincial Police, should be permitted to target citizens for arrest and publicly vilify them via false statements accusing them of committing serious crimes without evidence, without bringing a charge against them, and without giving them the opportunity to clear their names.

We believe there is no example in modern history in any province in Canada where a senior police officer has conducted himself in a manner similar to that of Commissioner Fantino. We are not aware of a single example of individual Canadians being so publicly targeted by repeated false statements by a police officer of any rank, let alone the Commissioner of the Ontario Provincial Police. It is completely unheard of in Canada for any individual to be singled out for the outrageous treatment and character assassination

that Mr. Fantino has committed against Mr. McHale, Mr. Vandermaas and non-Native supporters of their activities.

We are aware of no cases where a police chief or commissioner has tainted an investigation by informing the public that certain individuals would be facing legal action before an investigation has barely started.

We can find no example of any elected official being deceived by the police with false allegations about a citizen and then threatened as the Commissioner has done towards Haldimand Council. Similarly, we can find no examples of elected officials being instructed as to what topics they may speak on or what views they can express publicly so as not to offend the police.

We believe that Commissioner Fantino's actions have departed, in the extreme, from the standards expected from an individual in a similar position of public trust.

*e. Did he act with the intention to use his or her public office for a purpose other than the public good and not for a dishonest, partial, corrupt, or oppressive purpose?*

Democracy functions because citizens have the Constitutional right to the freedom of speech and assembly to hold governments and police forces accountable for their actions.

The courts have recognized that democracy demands that 'ordinary' people defend the rule of law:

The Rule of Law for our purposes can be simply stated. It is the rule that every citizen from the prime minister to the poorest of our people is equally subject to and must obey the law.

It is a rule of general application. Whenever it is broken – even in a small way, we say there is injustice. We see the unfairness. It is a rule that is woven into every part of our social contract to live peacefully together. Even the small tear in the cloth of our justice system spoils the whole fabric of society.

Who is responsible for upholding the Rule of Law? The answer, of course, is, each of us. I and each of my neighbours are equally responsible.

Judge Marshall Ruling on Aug 8, 2006 pg.2 – pg 15 in file  
<http://www.caledoniawakeupcall.com/court/MotionRecord-Voll.pdf>

Mr. Fantino, however, would have the public believe otherwise. He has consistently and negatively characterized us as 'outsiders,' as 'interlopers,' as though a citizen of Ontario has no right to be concerned about injustice in another Ontario town. This flies in the face of both common sense and of history. In 1963 Dr. King addressed this very issue in his '*Letter from Birmingham Jail*' when he stated:

'I am in Birmingham because injustice is here. I cannot sit idly by in Atlanta and not be concerned about what happens in Birmingham. Injustice anywhere is a threat to justice everywhere. We are caught in an inescapable network of mutuality, tied in a single garment of destiny. What affects one directly, affects all indirectly. Never again can we afford to live with the narrow, provincial

“outside agitator” idea. Anyone who lives within the United States can never be considered an outsider anywhere within its bounds”

Mr. Vandermaas is a former United Nations peacekeeper who lives in London -- equidistant between two communities that have been torn apart by land claim lawlessness – Ipperwash to the west and Caledonia to the east. As he states, “If I can play a role in promoting peace between Egypt and Israel I can, and will, protest against injustice in Caledonia. It is not my right to do so; it is my duty as a citizen of Ontario and of Canada and as a former member of the Canadian Forces to do what I can to preserve Ontario as a place where all the human and Charter rights of all citizens are valued equally before the law.”

The complainants have indeed been outspoken critics of the Ontario Provincial Police and of the government, but our views are not unreasonable, fanatical, nor are we – as Mr. Fantino has accused us – spewing hate or encouraging violence. Our views are, in fact, shared by many other citizens, politicians and respected media outlets including MPP Toby Barrett; PC Party Leader John Tory; Haldimand Mayor Marie Trainer; the National Post; Toronto Sun; and St. Catharines Standard to name a few. Indeed, MPP Toby Barrett’s shocking ‘Haldimand Proclamation for Peace, Order and Good Government’ acknowledges the existence of race-based policing and that it is being tolerated by the Ontario government. [4]

Between our respective websites, CaledoniaWakeUpCall.com (Gary McHale), VoiceofCanada.ca (Mark Vandermaas) and CANACE.ca there are thousands of pages of evidence, news items and commentary.

On VoiceofCanada alone, for example, Mr. Vandermaas has written nearly 200 articles about Caledonia, Ipperwash and Deseronto going back to October 08/06. They have remained freely available on the Internet since first publication, available to all - including the Commissioner and his staff. Nowhere on any site operated by us will you find encouragement of violence or of lawlessness. In fact, you will find exactly the opposite. We all have taken a strong stand against the use of violent protests. History teaches us that Dr. King’s path is the right path. Violence was as abhorrent to him as remaining silent in the face of injustice.

On our websites you will find research and evidence exposing the tragically flawed methodology of the Ipperwash Inquiry, as well as reports on the human and economic costs of illegal occupations, and the lack of legal justification for it. Our goal is to prevent tragedy by sharing the truth that can then be used to effect meaningful change for the benefit of all – Native and non-Native. The truth is that both Native and non-Natives have been victimized by OPP race-based policing.

We believe that society is always better served by truth and openness; it is only in an atmosphere of truth and justice and respect for the rights of all citizens that meaningful reconciliation can flourish. Suppression of truth is anathema to both democracy and the healing process between aggrieved citizens. Dr. King realized this when he wrote:

Actually, we who engage in nonviolent direct action are not the creators of tension. We merely bring to the surface the hidden tension that is already alive. We bring it out in the open, where it can be seen and dealt with. Like a boil that can never be cured so long as it is covered up but

must be opened with all its ugliness to the natural medicines of air and light, injustice must be exposed, with all the tension its exposure creates, to the light of human conscience and the air of national opinion before it can be cured.

Dr. Martin Luther King Jr., *'Letter from Birmingham Jail,'* April 16/63

The complainants herein have given up our careers and endured serious financial difficulties, vicious attacks on our character, and physical assaults and threats in order to research, educate the public and peacefully protest against the policies of the OPP and Ontario government out of a deeply, honestly held belief that the foundation of Canadian democracy is in grave danger due to governmental/police tolerance of lawlessness, and violations of civil rights during aboriginal land claims. We passionately believe that creating injustices today in order to rectify past injustices will only serve to legitimize injustice in the future.

We understand that the OPP, the Provincial government and, of course, the Commissioner would find it more convenient if they did not have to cope with our criticism or our protests or the media attention we bring to their activities. But, such scrutiny is the lifeblood of democracy, no matter how politically-incorrect or provocative it may seem at the time. And...it is protected by the Constitution and by the Police Services Act, a fact which seems to have escaped Mr. Fantino's attention.

We believe that a transparent, independent review of the available evidence for Parts 1, 2 and 3 of this complaint will support the conclusion that Commissioner Fantino has used his public office for a purpose other than the public good. In this case we believe that purpose was to oppress our criticism of him, his force, and the Ontario government.

## Part 3 – Summary

Section One of Ontario's *Police Services Act* sets out the framework for the conduct of police officers (emphasis added):

### Declaration of principles

1. Police services shall be provided throughout Ontario in accordance with the following principles:

1. The need to ensure the safety and security of all persons and property in Ontario.
2. The importance of **safeguarding the fundamental rights** guaranteed by the *Canadian Charter of Rights and Freedoms* and the *Human Rights Code*.
3. The **need for co-operation** between the providers of police services and the communities they serve.
4. The importance of **respect for victims of crime** and understanding of their needs.
5. The need for sensitivity to the pluralistic, multiracial and multicultural character of Ontario society.
6. The need to ensure that police forces are representative of the communities they serve. R.S.O. 1990, c. P.15, s. 1.

Police Services Act, Section 1, Declaration of Principles  
[http://www.e-laws.gov.on.ca/html/statutes/english/elaws\\_statutes\\_90p15\\_e.htm](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90p15_e.htm)

Section 45 of the Act states that officers are required to swear or affirm an Oath of Office: [emphasis added]:

I solemnly affirm that I will be loyal to Her Majesty the Queen and to Canada, and that **I will uphold the Constitution of Canada** and that I will, to the best of my ability, preserve the peace, prevent offences and discharge my other duties...faithfully, **impartially and according to law**.

Police Services Act, s. 45, Oaths of office and secrecy  
Ontario Regulation 114/91, Oaths and Affirmations  
<http://www.canlii.org/on/laws/regu/1991r.144/20080421/whole.html>

Commissioner Fantino has failed to safeguard the rights of non-Native citizens under the Charter and the Human Rights Code. He has shown no co-operation with peaceful non-Native protesters in sharp contrast to his and his force's willingness to engage fully with Native groups who have committed acts of extreme lawlessness. He has shown no respect for the non-Native victims of crime. He has consistently acted in a very impartial manner to the detriment of non-Native activists and protesters in an effort to oppose legitimate criticism and protest against the racial policing practices of his force.

### Conclusion

We believe, therefore, that sufficient evidence exists to lay a charge against Commissioner Fantino under Section 122 of the Criminal Code for the offence of 'Breach of trust by public officer.'

## Witnesses

### **The Honourable Toby Barrett, MPP**

Haldimand-Norfolk-Brant  
39 Norfolk Street North  
Simcoe, ON N3Y 3N6  
toby@tobybarrett.com  
519.428.0446  
905.765.8413  
1.800.903.8629  
Fax: 519.428.0835

Mr. Barrett is the author of the '*Haldimand Proclamation for Peace, Order and Good Government*' which acknowledges the existence of racially-based policing and the tolerance of it by the Ontario government.

A copy of Mr. Barrett's proclamation is attached. [4]

### **Mr. Doug Fleming**

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XXXXXXXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXX

Mr. Fleming was the organizer of the Dec 01/07 protest at the illegal Caledonia smokeshop. He was charged with Mischief for allegedly blocking the road after a Native person had first done so.

### **Ms. Ruth-Ann Chapman**

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XXXXXXXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXX

Ms. Chapman was a participant in the Dec 01/07 protest at the illegal Caledonia smokeshop. She was charged with Assault for allegedly pushing an intrusive videographer recording Christine McHale after the multiple assaults on her husband, Gary McHale.

### **Mr. Kyle Hagan**

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XXXXXXXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXX

Mr. Hagan was a participant in the Dec 01/07 protest at the illegal Caledonia smokeshop. He was charged with Obstructing Police for drinking coffee on the blocked road.

**Mr. Jim Anderson**

XXXXXXXXXX  
XXXXXXXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXX

Mr. Anderson was present throughout the protest of Dec 01/07. He witnessed the assault on Mr. Vandermaas and the assault on Mr. Parkinson. He also witnessed OPP officers facing peaceful non-Native residents even as they were being assaulted from behind by Native smokeshack supporters.

**Mr. Merlyn Kinrade**

XXXXXXXXXX  
XXXXXXXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXX

Mr. Kinrade was present throughout the protest on Dec 01/07. He was threatened with violence by Native smokeshack supporters. He is also a founder and director of CANACE.

## List of Supporting Evidence

All evidence to support statements made in this complaint will be made available to an independent investigator. In the interim, please refer to the following information available at [www.canace.ca](http://www.canace.ca):

### **1. CANACE calls for RCMP to take over investigation after Fantino blames victims of Caledonia violence**

<http://ucare.wordpress.com/2007/12/13/co-founder-arrested-canace-calls-for-rcmp-investigation-after-fantino-interferes-with-investigation-into-dec-0107-caledonia-violence/>

This summary of the Dec 01/07 confrontation at the illegal smokeshack in Caledonia on Dec 01/07 contains some of the video evidence in our possession.

### **2. CANACE report: The Human Costs of Illegal Occupations**

<http://ucare.wordpress.com/2008/02/21/canace-report-the-human-costs-of-illegal-occupations/>

This 101 page report contains an overview of the impact of landclaim lawlessness on innocent citizens – both native and non-Native. Provides some insight into the motivations and actions of the complainants in opposing racial policing practices of the OPP. It has been downloaded over 20,000 times since first being published in December 07.

### **3. CANACE report: Legalized MYTHS of Illegal Occupations**

<http://ucare.wordpress.com/2008/05/08/canace-report-legalized-myths-of-illegal-occupations/>

This report was released on May 07/08 at a public townhall meeting with MPP Toby Barrett as a guest speaker. *Legalized MYTHS* reveals that the OPP is NOT following the directives of the Ipperwash Inquiry with respect to its use of discretion in enforcing the rule of law during Native protests. In addition to explaining the true facts about the ‘Duty to Consult’ doctrine from the Supreme Court’s *Haida Nation* decision, the report cites a legal opinion provided to the Ipperwash Inquiry in June 2006 by the Ontario Ministry of the Attorney General that proves that ‘colour of right’ is not a defence to illegal occupations. *Legalized MYTHS* was downloaded over 2,600 times in the first 24 hours following its release.

## ATTACHED

### **4. ‘Haldimand Proclamation for Peace, Order and Good Government’ by MPP Toby Barrett**

**HALDIMAND PROCLAMATION**  
**FOR PEACE, ORDER AND GOOD GOVERNMENT**

February 2008

WHEREAS, since February 28, 2006, people across Haldimand County and beyond have been subjected to arson, extortion, barricades, land seizures, occupations, militant protests, and related harassment, intimidation, mob violence and threats to public safety.

AND WHEREAS, the community safety, social and economic life, of Haldimand and neighbouring residents, has declined because of the climate of fear, chaos and uncertainty generated by various acts of lawlessness and related intimidation.

AND WHEREAS, there is a perception, and evidence, of two categories of law, of justice, of police protection, and government action based on one's race and geographical location within Haldimand County and beyond.

AND WHEREAS, the lawlessness, and the less than adequate prevention and response on the part of police and other government authorities regarding these illegal acts appears to be tolerated, and perhaps condoned, by provincial and federal government policy.

AND WHEREAS, both the provincial and federal governments have legislative, regulatory, enforcement, decision-making and policy-making capability beyond the mandate and scope of Haldimand County.

NOW THEREFORE, BE IT HEREBY RESOLVED, that Haldimand County, in support of all of its residents, proclaim and request, with utmost urgency, that the following actions be taken where mandated at the provincial and federal level:

1. Restore police patrol, response and enforcement as well as justice, order and the rule of law, including court injunctions, throughout Haldimand County regardless of one's race or geographical location.
2. Cease all land dispute negotiations and related actions until extortion, and illegal occupations and protests are terminated.
3. Budget and publicly set timelines and deadlines to continue to resolve legitimate land disputes expeditiously within a climate of openness, mutual respect, and justice for all affected.
4. Compensate individuals, businesses and the municipality for loss, insecurity, economic decline, and any other collateral damage stemming from provincial and federal decisions and policy, or lack thereof, that have eroded peace, order and good government in Haldimand County and beyond.

**Respectfully submitted, Toby Barrett, MPP**  
**Haldimand-Norfolk — February 11, 2008**