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6 **Notification of Charter Challenge**

7 **July 2, 2008**

8 I, Gary McHale, make the Court aware of pending Charter Challenge related to the
9 criminal charges laid against me. Three separate Charter Challenges will be presented:

- 10 1) Section 7 of the Charter: "Everyone has the right to life, liberty and security of
11 the person and the right not to be deprived thereof except in accordance with
12 the principles of fundamental justice."
- 13 2) Section 15 (1) of the Charter "Every individual is equal before and under the
14 law and has the right to the equal protection and equal benefit of the law
15 without discrimination and, in particular, without discrimination based on race,
16 national or ethnic origin, colour, religion, sex, age or mental or physical
17 disability."
- 18 3) Section 2 (b) (c) (d) of the Charter "Everyone has the following fundamental
19 freedoms: *b*) freedom of thought, belief, opinion and expression, including
20 freedom of the press and other media of communication; *c*) freedom of
21 peaceful assembly; and *d*) freedom of association.

22
23 **Section 7: Principles of fundamental Justice**

24 On Dec. 3, 2006 OPP Commissioner Julian Fantino contacted Ontario Legal Services
25 for the purpose of finding some way to arrest me, hold me in jail, force me to appear
26 before a judge and force travel restrictions upon me knowing that I had committed no
27 criminal offense. From that point on the resources of the OPP and Legal Services were
28 focused directly towards me.

29 Chris Diana, lawyer for Legal Services, was assigned to advise the OPP and conducted
30 numerous meetings with dozens of OPP officers to target me for arrest. On Dec. 16,
31 2006 I was arrested, held in jail, and forced to appear before a Judge. Hamilton
32 Assistant Crown, Andrew Goodman, repeatedly told the OPP they had no authority to

33 hold me in jail but the OPP argued with the Crown and finally the Judge ordered my
34 release due to the fact that the OPP filed no charges against me.

35 Since my arrest on Dec. 16, 2006, Commissioner Fantino has made it clear that he and
36 the OPP were targeting me. This became a public campaign to slander me and wilfully
37 provide false information about me to get the public to see me as a violent criminal.
38 Commissioner Fantino even informed the public that my goal was to create a 'Civil War'
39 in Canada.

40 The OPP spent endless resources to find any means to arrest me or make it appear I
41 was a violent person. A few weeks prior to my arrest of this charge Commissioner
42 Fantino informed the media the of the following, "the taxpayers of this province have
43 had to bear over a half million dollars in policing costs when the likes of Mr. McHale
44 come to Caledonia".

45 This campaign against Gary McHale extended to silencing anyone who made any
46 positive statements about me. On April 7, 2007 Commissioner Fantino sent an email to
47 Haldimand Council which had my name in it 13 times. The Mayor and Councilor Grice
48 repeatedly stated they saw this email as a threat to force them to be silent. Mayor
49 Trainer testified on Dec. 24, 2007 the following regarding Mr. Fantino's email:

50 Question: What was Fantino, in your view, attempting to do?

51 Answer: To intimidate...

52 Question: Was the e-mail sent because, and stated in the e-mail because
53 Councillor Grice had made some positive statements about me [Gary McHale] in
54 public?

55 Answer: Yes

56 This email demonstrates just how far Commissioner Fantino is willing to go to control
57 the fundamental freedoms of people in Haldimand Council. He functions as if the OPP
58 can silence and threaten elected officials as a means of controlling public opinion about
59 Gary McHale. It should be noted that after Mayor Trainer's testimony she was
60 interviewed outside the courthouse and she stated that Mr. Fantino's actions, in her
61 view, were 'Treason' as stated on CHCH TV.

62 The media has taken notice of Commissioner Fantino's repeated attempts at attacking
63 me personally. No greater example of this can be found than the story in the Hamilton
64 Spectator entitled "Fantino Takes Aim" and is titled this way because of Mr. Fantino's
65 willingness to publicly attack me. The following excerpt is from this story:

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

69 This is Fantino on the attack.”

70 The events of Dec. 1, 2007 demonstrate the extreme by which the OPP were willing to
71 overlook serious criminal acts as long as they could find the smallest of charges to lay
72 against me. Their stated goal in Dec. 2006 was to force travel restrictions upon me. This
73 goal was finally accomplished in Dec. 2007.

74 The Crown in Cayuga played a role in agreeing to my arrest, my imprisonment and my
75 being forced before a Judge in Dec. 2006. As such the Crown in Cayuga is well aware
76 of the OPP's extreme desire to force travel restrictions upon me even if I have
77 committed no criminal acts. As such the Crown in Cayuga has allowed itself to work
78 hand in hand with the OPP who was targeting me solely because of my political views
79 and my lawful protests.

80 In the Police Service Complaint Report which covers the events of my arrest in Dec.
81 2006, Cayuga Crown staff Alex Paparella and Assistant Crown Larry Brock are listed
82 as having a role in my arrest.

83 As such my Charter Challenge based on Section 7 could see Cayuga Crown staff called
84 as witnesses along with Hamilton Assistant Crown Goodman.

85

86 **Section 15 (1): Discrimination based on race**

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

90 My arrest for the events on Dec. 1, 2007 would never have taken place if I was a Native
91 person. In fact, numerous examples of Natives blocking roads in Caledonia for days and
92 even weeks without a single arrest clearly demonstrate that point.

93 The OPP would have taken a completely different approach based on their policies and
94 as such I have been discriminated against based on my Race.

95 If OPP discretion in Caledonia permits negotiation versus arrest then ' equal before and
96 under the law and has the right to the equal protection and equal benefit of the law'
97 would support the view that this discretion cannot be based on Race.

98 For two years I and others have made repeated attempts to have a meeting with the
99 OPP to explain our views of the problems faced by the people of Caledonia. Repeated
100 examples are caught on video where the OPP agree to have a meeting only if we leave
101 the area. We repeatedly comply only to have the OPP refuse to meet with us.

102 On Dec. 1, 2007 OPP Officer Gutenberg once again stated the same promise that has
103 been made several times. He states to Mr. Fleming, "I personally promise that if you
104 move your vehicle you will be able to speak to someone by the end of today." Mr.
105 Fleming does move his vehicle.

106 As of July 2, 2008, a full seven months after this promise, the OPP has refused to meet
107 with Mr. Fleming. Instead of having the promised meeting the OPP laid criminal charges
108 against Mr. Fleming for Mischief and against me for Counselling Mischief.

109 The Provincial Government and Commissioner Fantino have repeatedly told the public
110 that negotiations and face to face meetings are preferred to laying criminal charges.
111 This stated policy of the Province of Ontario and of the OPP is extended solely to
112 people based on their Race.

113 Commissioner Fantino has had meetings and has spoken directly to several Native
114 Protesters who were or are facing several criminal charges. The OPP repeatedly
115 promise to extend the same benefit to non-Native protesters but instead continuously
116 use force and the criminal justice system to deal with someone where a problem could
117 be resolved simply by having a meeting.

118 It should be noted that OPP Officer Murray did testify that he believed my statement
119 was, "we need some answers, let's close some roads down and make the man come
120 down here and give us answers to our questions". This so-called quote (accuracy aside
121 for a moment) occurred after Officer Gutenberg had promised to allow Mr. Fleming to
122 speak with a senior officer ['the man'].

123 After 18 months of repeated lies and broken promises by the OPP in regards to having
124 a simple meeting while they have dozens of meetings with Native Protesters
125 demonstrates just how far Race Based Policing has gone in Caledonia.

126 To be treated as 'Equal before and under the law and has the right to the equal
127 protection and equal benefit of the law' is all we have ever asked for. The OPP
128 repeatedly promise it and repeatedly use force and criminal charges instead of having a
129 simple meeting.

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131 **Section 2 (b): fundamental freedoms**

132 **b) freedom of thought, belief, opinion and expression, including freedom of**
133 **the press and other media of communication;**

134 **c) freedom of peaceful assembly; and**

135 **d) freedom of association**

136 Within any Democratic society the fundamental freedoms allow for a certain amount of
137 civil disobedience. To quote **R. v. Mayer** [1994] Y.J. No 142 para 7-9:

138 7 A healthy democracy demands an active, informed citizenry willing, nay,
139 eager, to engage in constructive public debate. Our laws must sustain and
140 promote free public discussion. To interfere unduly with this freedom threatens
141 the survival of our democratic existence. Any laws limiting freedom of speech
142 must be designed to protect other fundamental freedoms and be enforced with
143 utmost sensitivity to avoid unnecessarily daunting the desire of any citizen to
144 engage in public debate. Our laws, institutions and society as a whole must
145 develop and abide by a healthy tolerance for the commitment some exercise in
146 pursuing their beliefs.

147 8 In the diversity of views and values within our society and in the freedom
148 enshrined to express our differences, we, as a democracy, find the source of our
149 enduring ability to survive. Through constructive resolution of our differences and
150 conflicts, through an open invitation for all to participate in our processes of
151 decision making, our society finds the creativity and energy to develop
152 innovations that overcome the challenges threatening our survival as a
153 democratic society. In this spirit of democracy and in keeping with the
154 fundamental importance of free public discussion, the laws applicable to the
155 actions of the accused must be interpreted and applied.

156 9 The accused, with pride, acknowledge that in passionately embracing their
157 beliefs they will be civilly disobedient when necessary to promote the changes
158 they pursue. Civil disobedience lies at the heart of many democratic changes. If
159 acts of civil disobedience do not endanger anyone, or damage property, or
160 significantly restrict essential services and processes within society, and interfere
161 in a minor fashion with the rights of others, the State response must be clear but
162 need not be harsh.

163 At no point was anyone endangered or was there any threat of property damage. Based
164 on OPP Officer Murray's testimony the purpose of my so-called 'counseling' was to get
165 the 'man' to meet with Mr. Fleming and not to block the highway – 'the State response
166 must be clear but need not be harsh.'

167 In this situation criminal charge versus having a meeting is far too harsh in a country
168 that claims to respect 'Freedom of Expression'.