

**ONTARIO
SUPERIOR COURT OF JUSTICE
Small Claims Court - Cayuga**

BETWEEN:

Court File: **SC-08-103**

GARY MCHALE, Plaintiff

-- and --

JULIAN FANTINO, Defendant

AND:

Court File: **SC-08-102**

MARK VANDERMAAS, Plaintiff

-- and --

JULIAN FANTINO, Defendant

REVISED STATEMENT OF CLAIM

Tab	Description
1	Plaintiff's Revised Statement of Claim
2	Press Releases – OPP, Haldimand County, OPPA
3	Newspaper Stories
4	Emails
5	Letters from Gary/Mark to OPP and Media
6	Court documents and transcripts
7	Public Speeches

List of Evidence

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3	Newspaper Stories <ol style="list-style-type: none">1) Jun 8/06 – CBC: Brass putting image ahead of safety2) Jun 8/08 – Spectator: OPP Brass sacrificing safety4) Jun 10/07 – Spectator: 5 Questions for Fantino6) Jan 12/07 – Spectator: Fantino beef up Caledonia's OPP squad7) Jan 12/07 – Sachem: 50 New OPP officers8) Jan 21/07 – CP: OPP takes "no nonsense" stance10) Mar 17/07 – London Free Press: Little Trust, No Patience11) Nov 8/07 – Spectator: Fantino takes Aim13) Nov. 9/07 – Spectator: Fantino Interview – Full Text21) Dec 2/07 – London Free Press: Protest in Caledonia turns ugly22) Dec. 4/07 – Expositor: Take a hint, McHale23) Dec 5/07 – Turtle Island Cartoon24) Apr. 7/08 – Toronto Star: Fantino asked to attend mediation26) May 8/08 – Spectator: OPP Seize Spectator Photos.28) Oct 1/08 – Regional News: Gayle Hagan letter
4	Emails <ol style="list-style-type: none">ii. Oct 19/06 – OPP McLean to Gary McHale3) Apr. 7/07 – Fantino to Haldimand Council4) Apr. 24/07 – Haldimand to Mark Vandermaas5) Dec. 1/07– Fantino to OPP Goodall

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Revised Statement of Claim

- 1) This *Revised Statement of Claim* should be considered the full statement of claim by the plaintiff.
- 2) On April 23, 2008 the Defendant was interviewed by John Oakley on his radio show at AM640 Toronto during which he made the following statements about the Plaintiffs in response to a question regarding a mediation session that he had been asked to attend regarding a complaint to the Ontario Human Rights Commission by Mr. Mark Vandermaas against him and two other OPP officers regarding alleged human rights violations in Caledonia:

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.**

- a. The clear innuendo from the Defendant's remarks is the following:
 - i. That the plaintiffs have advocated the use of violence, they seek violence, and that they committed acts of violence during their participation in various protests associated with the Caledonia land claim dispute.
 - ii. That the plaintiffs have committed criminal acts of violence and seek to cause others to commit criminal acts of violence.
- 3) The defendant is the Commissioner of the Ontario Provincial Police therefore the Plaintiffs contacted Chris Diana of Ontario Legal Services, who has represented the defendant in the past, to serve legal notice of pending lawsuits.
- 4) Mr. Diana accepted service on behalf of the Defendant on April 24, 2008 – the day after the Defendant's statements were aired on radio. This fulfilled the legal obligation of section 5(1) of the ***Libel and Slander Act*** requiring notice to be served within six weeks.
- 5) The Defendant did not respond to the notice of pending lawsuit. As such the defendant took no steps to **mitigate the damages**.
- 6) On July 22, 2008 the Plaintiffs filed an action in the Small Claims Court in Cayuga thereby fulfilling section 6 of the ***Libel and Slander Act*** requiring the claim to be filed within 3 months.

- 7) This claim seeks damages done due to repeated defamation by the Defendant against the Plaintiffs from November 08, 2007 to the date of filing of the claim as allowed by section 6 of the **Libel and Slander Act**.
- 8) Mr. Vandermaas and Mr. McHale are founding members of CANACE (Canadian Advocates for Charter Equality). CANACE operates under a business license and is incorporated. As an advocacy group its function is to work on behalf of the public to hold police accountable to the 'Rule of Law' and to the rights of individuals under the Canadian Charter of Rights. CANACE operates based on the goodwill of the public in providing donations. The Defendant's statements were designed to attack the credibility of the Plaintiffs in order to cause the public to turn against them. As such the Plaintiffs point out to the Court the following sections of the **Libel and Slander Act**:

16. In an action for slander for words calculated to disparage the plaintiff in any office, profession, calling, trade or business held or carried on by the plaintiff at the time of the publication thereof, it is not necessary to allege or prove special damage, whether or not the words are spoken of the plaintiff in the way of the plaintiff's office, profession, calling, trade or business, and the plaintiff may recover damages without averment or proof of special damage. R.S.O. 1990, c. L.12, s. 16.

Slander of title, etc.

17. In an action for slander of title, slander of goods or other malicious falsehood, it is not necessary to allege or prove special damage,

(a) if the words upon which the action is founded are calculated to cause pecuniary damage to the plaintiff and are published in writing or other permanent form; or

(b) if the words upon which the action is founded are calculated to cause pecuniary damage to the plaintiff in respect of any office, profession, calling, trade or business held or carried on by the plaintiff at the time of the publication, and the plaintiff may recover damages without averment or proof of special damage. R.S.O. 1990, c. L.12, s. 17.

- 9) For the Federal election of Oct 15, 2008, Gary McHale received approval by the Federal Government to list his profession as 'Civil Rights Advocate.' Mr. McHale ran as an Independent in the election.
- 10) The Defendant was well aware of the Plaintiffs' professions as Civil Rights Advocates as shown in the Defendant's defence statement to the Ontario Human Rights Commission in which he makes the following statements: (Tab 6, pg. 26-27)

Mr. Vandermaas does not live in the Caledonia area, but rather lives in London, Ontario. He is involved with two websites that are **dedicated to the criticism of policing** of Aboriginal land disputes in Ontario. He is the Editor of www.voiceofcanada.ca and one of the "founding advocates" and the Director of Research and Investigation for Canadian Advocates for Charter Equality, or CANACE, whose website can be found at www.canace.ca.

In the section titled "Our Struggle" on the VoiceofCanada website it states:

At the present time I am working – on a volunteer basis – to support a most courageous man named Gary McHale in his struggle against Two Tier Justice on behalf of the residents of Caledonia, Ontario, Canada who – until Mr. McHale came

along – had no consistent voice to speak out against those who have terrorized their town and the Ontario Provincial Police (OPP) who have allowed it to continue.

The CANACE website states:

For more than 18 months, the people who founded the Canadian Advocates for Charter Equality (CANACE) have – with vital support of proud and patriotic Canadians in and outside of Caledonia – dedicated many thousands of hours to researching, exposing and peacefully protesting the lies used by the OPP and the McGuinty government to justify the racially-based policing practices that have torn apart Ontario communities and traumatized thousands of lives, native and non-native, in the process.

- 11) The defendant is well aware that the Plaintiffs model their protest methods on the peaceful means used by Dr. Martin Luther King Jr. as testified to by OPP John Murray on Dec. 14, 2007 in Cayuga.
- 12) There are hundreds of voices in the public regarding the issues in Caledonia and the public's view of policing. There are numerous websites that track and debate these issues from both Native and non-Native point of view. There are numerous individuals who have organized protests in Caledonia from the various represented groups. However, the Defendant has singled out ONLY the Plaintiffs for repeated public statements.
- 13) These statements are designed to create in the public's view that the Plaintiffs are not peaceful; are not advocates for others; are not sacrificing their time and efforts for the common good of society; and are not representative of the people of Caledonia.
- 14) The Defendant testified in Hamilton court on Nov. 26, 2008 and stated the following:
 - a. He has never used derogatory terms in connection to anyone else in Caledonia other than the plaintiffs.
 - b. The OPP have laid numerous violence-related criminal charges in Caledonia – none against the plaintiffs.
 - c. The OPP videotape the Plaintiff's events and have OPP officers present to take notes.
 - d. At no time has the OPP ever videotaped or witnessed the Plaintiffs commit any crime.
- 15) The Plaintiffs ask that the Court rule that the statements by the Defendant were designed to discredit both the Plaintiffs and the organization of CANACE of which the Plaintiffs are the public face. The following letter expresses how the public was affected by the repeated public statements by the Defendant. The following letter was published in the *Regional News* in Caledonia on Oct. 1, 2008. (Tab 3, pg. 28)

I must confess, I used to believe the OPP press releases, the McGuinty government, and others who trashed Gary McHale as an "outside agitator" and a troublemaker. My sincere apologies to Mr. McHale. I now realize that his voice was required to be silenced by some... those who were becoming very uncomfortable with his insistence on responsible law enforcement and political accountability...

NOW I believe in you, Mr. McHale. Your tenacity against inequality and injustice on our behalf, after all this time and criticism, has me convinced. I don't really care where you live. You have proven yourself over and over at great personal expense. I am interested in your ideals, not your location. you are for real!...

NOW I believe our future depends on you, Mr. McHale. Positive affirmation has run amok. Please desegregate our laws and bring back common decency. Land claims are a separate issue to be settled in court. Let us once again live in harmony. We are all tired of being pawns in this sick game. The stakes are too high...

Defendant uses his position as Commissioner of the OPP to target Plaintiffs:

- 16) On Dec. 4, 2007 Mr. McHale sent out a press release stating that he and three Caledonia residents, Doug Fleming, Merlyn Kinrade, Brian Hagen, would be holding a press conference at 12:00 noon Tuesday Dec. 4. in the Media Room at Queen's Park.
 - a. Prior to this press conference starting the Defendant sent an email at 7:06 am on Dec. 4, 2007 ordering his officers to create a 'canned strongly worded rebuttal to McHale's diatribe'. (Tab 4, pg. 7)
 - i. This rebuttal was designed to link Mr. McHale to the escalated violence in Caledonia and to remind taxpayers that Mr. McHale has cost them \$500,000.00.
 - ii. It should be noted that the defendant singled out Mr. McHale for this 'canned strongly worded rebuttal' and not Mr. Fleming, Mr. Kinrade or Mr. Hagen who also appeared during the press conference.
- 17) On Dec. 1, 2007 prior to allegations of any crime being committed by the Plaintiffs at a protest in Caledonia organized not by the Defendant but by a resident the Defendant sent an email at 10:29 am stating, 'At some point McHale has to go.' (Tab 3, pg. 10) Chris Lewis, Deputy Commissioner of the OPP, then emailed the Defendant telling him he had forwarded the Defendant's order to line officers in Caledonia."
- 18) On Dec. 2, 2007 the Defendant ordered his officers to ignore 'legal nuances' and to make every effort to bring Mr. McHale into court and, even if the OPP were 'unsuccessful' in court the Defendant stated, 'we will be able to publicly expose him for the mischief-maker that he is...' (Tab 4, pg. 6)

The Defendant believes, as Commissioner, he has the right to destroy a citizen's reputation:

- 19) On June 29/07 the Defendant had a telephone conversation with Shawn Brant leader of the illegal blockade of Highway 401 during the Aboriginal Day of Action that was recorded by the OPP. The transcripts were entered into evidence at a subsequent court hearing and are available on the website of CFRB Radio under the title, '*OPP commissioner Julian Fantino and native activist Shawn Brant.*' This quote is from Part 1, line 130: (Tab 6, pg. 3)

FANTINO: And you know what I don't wanna I don't wanna get on your bad side but you're gonna force me to do everything I can within your community and everywhere else to destroy your reputation.

The Defendant's and Attorney General of Ontario's canned 'vexatious' argument:

- 20) The Attorney General's office, on behalf of the Defendant and others, have created a canned 'frivolous, groundless, vexatious' argument that they have used in criminal court, civil court and before the Ontario Human Rights Commission. Instead of dealing with the legal arguments presented by the Plaintiffs the Attorney General has attempted and continues to attempt to label the Plaintiffs as abusers of the court system. Contradicting this canned argument is the fact that the founding members of CANACE have been very successful in arguing the merits of their actions before the Courts which include Judicial Review applications; Order of Mandamus applications; and motions regarding publication bans.
- a. In mid 2008 the Attorney General office from the Criminal Branch attempted to discredit the founding members of CANACE in a private prosecution case of Parkinson v. OPP officers. The Justice of the Peace refused to issue process in large part due to the Crown's argument that Mr. Parkinson's motives were suspect because he had some animosity towards the OPP.
 - b. The Crown cross-examined Mr. Parkinson and linked him to Mr. Vandermaas, Mr. McHale and the activities of CANACE.
 - c. Mr. Parkinson filed an Order of Mandamus seeking a ruling that the Justice erred in both not issuing process and in the view that Mr. Parkinson's alleged animosity towards the OPP was grounds for refusal. The following is the ruling by Judge Marshall on Jan. 12, 2009 which has already become part of the case law record. ***Parkinson v. R., 2009*** can be found (incorrectly) listed as *R. v. Parkinson, 2009* CanLII 729 (ON S.C.)

[21] Counsel for the crown submits at paragraphs 28, 29 and 30 that under "Crown Law Policy" counsel must watch over private prosecutions to ensure the right of the private citizen to institute prosecutions is not abused and that such prosecutions are in the best interest of the administration of justice. **It is improper she argues to utilize private prosecutions to further personal interests.**

[22] The justice here seems to allude to her discretion in this regard where she says that viva voce evidence would seem to suggest, she said, there was **some animosity**. This, I take it, could taint the credibility of the informant or his witnesses.

[23] Here, as I have said, the incriminating evidence or intent, is virtually all in the video of the police helping to erect the barricade. It is hard to see how animosity in the informant could taint the video.

[24] Besides this, and in any event this discretion to not issue because of vexation or ulterior motives should in my respectful view be very carefully exercised. See **R. vs. Edge, [2004] 21 C.B. (6th) 361**. If it is not, I would expect there would be few private prosecutions. These cases are after all, generally brought by people because the crown or police for reasons of their own apparently have not proceeded in the usual manner through the police and the

crown. A private prosecution such as this is an important part of the public duty to oversee the administration of justice. This is clear on the authorities I have referred to.

[25] Often, much public good is done by people wishing to advance their own ends. The great example outside the law is of course the “invisible hand” of Adam Smith and much philanthropy is, one expects, undertaken with some less laudatory motives than the public good. If one were to pursue motives – one can always find ad hominem motives in a reformer.

[26] We should look - except in the clear case - at public benefit not private demons.

[27] The residual discretion to refuse to issue process in my respectful view should be exercised only in the clearest of cases.

[28] I note, in reviewing the transcript there is evidence of good motive too. Mr. Parkinson stated at line 20, page 23 of the transcript: *“I’m not here out of vengeance, I’m here because of what I saw that day”* and finally at page 24, line 15: *“And, I’m here simply because I believe that these people should be held as accountable as anyone else would be for their actions.”*

[29] For all these reasons, I am satisfied that mandamus should be granted in this case.

- 21) In an unusual arrangement – approved by the office of the Director of Crown Operations for Western Region during Mr. Parkinson's Order of Mandamus application – Justice Marshall and the Crown came to an agreement that Mr. McHale was permitted to sit beside Mr. Parkinson and aid him in his presentation to the Court even though it was a criminal proceeding and Mr. McHale is NOT a lawyer.
- 22) Mr. Parkinson and Mr. McHale became the first people in Canadian history to be successful in a criminal case of using an Order of Mandamus to overturn a ruling of a Justice of the Peace.
- 23) In another unheard of decision related to ***Parkinson v. R.*** Judge Marshall in Oct. 2008 cleared the courtroom for an incamera proceeding but granted Mr. McHale's motion to publish details.
 - a. One month later the Crown would challenge that decision and a full day of evidence was presented regarding a full publication ban on the proceedings.
 - b. During a hearing on Dec. 11, 2008 Judge Marshall ruled against the Crown full publication ban request and change the court proceedings from incamera to open court.
 - c. Once again Judge Marshall demonstrated in his ruling the importance of the cases CANACE founders are bringing before the court and the great public interest in these cases.

[32] **This particular matter is an important one.** Private prosecutions such as this *“are necessary because they enable citizens to bring even the police or*

government officials before the criminal courts where the government is unwilling to make the first move.'

[34] Finally, it seems appropriate to take judicial notice that **matters concerning policing in the county are of great public interest now** and for the benefit of everyone proceedings need be as open as is possible.

- 24) On Aug. 8, 2008 Judge Marshall ruled in favour of a Judicial Review application brought forward by Mr. McHale regarding an error by Justice MacDonald on Dec. 14, 2006.
- 25) On Aug. 4, 2008 Justice MacDonald issued process in private prosecution charges brought by Mr. McHale against Floyd and Ruby Montour on the charge of Extortion, Mischief and Intimidation. The OPP would later lay their own charge of mischief against both accused.
- 26) Prior to 2009 Mr. McHale has won three separate publication ban motions that were heard in Cayuga and Hamilton courts. Each time the Attorney General's office wanted to stop Mr. McHale from publishing information regarding the actions of the Crown and/or the OPP.
- 27) As recent as January 12, 2009 the Attorney General's office requested that Judge Marshall order a limitation regarding information that Mr. McHale was seeking to publish. Judge Marshall denied the Crown's request. To date Mr. McHale has not lost a single publication ban motion.
- 28) In one year's time CANACE founders have gone from being average citizens to preparing and presenting serious legal arguments in court. CANACE has successfully won rulings and created important case law during the process.
- 29) It should be noted that the Ontario Human Rights Commission rejected the canned 'vexatious' argument by the Attorney General against Mr. Vandermaas' complaint.
- 30) Judge Zabel, in a Hamilton court, on reviewing Mr. McHale's three Charter Challenges, questioned him on what legal help had been provided to him in preparing these challenges. After Mr. McHale stated he had received no legal help, Judge Zabel stated that Mr. McHale should be commended for his submission to the court and complimented him on his well-written legal documents.
- 31) Instead of the Attorney General's office dealing with the legal arguments filed by founders of CANACE, they continue to attempt to attack the character of its members by claiming our legal efforts are frivolous and vexatious. There is no basis to the Attorney General's position.

The Defendant's statements are not 'privileged':

- 32) The Defendant is the Commissioner of the OPP and as such does have 'privilege' to speak out regarding issues of policing. However, this position increases the Defendant's liability commensurate with the stature of his office and the influence false statements might cause.
 - a. Furthermore, the defendant is duly bound to speak the truth to the public and to make the public aware of who is responsible for violence and possible future violence as ruled in the Jane Doe case in Toronto. ***Doe v. Metropolitan Toronto (Municipality) Commissioners of Police***, 1998 CanLII 14826 (ON S.C.) This ruling includes the following:

[192] For reasons given above I am satisfied on the evidence and the plaintiff has established that the defendants had a legal duty to warn her of the danger she faced; that they adopted a policy not to warn her because of a stereotypical discriminatory belief that as a woman she and others like her would become hysterical and panic and scare off an attacker, among others.

- b. It is absurdly unreasonable to think that the police are protected by 'privilege' to misinform the public about who is committing crimes in their community. Would it be acceptable for the police to blame an innocent citizen for the violence caused by a biker gang? Or telling the public that a particular person robbed a bank when the police know it was robbed by someone else.
- c. The Defendant is well aware of who has caused officers to seek medical help and who has been charged with violent acts in Caledonia. The repeated attempts by the Defendant to switch public attention away from the people the OPP have charged for violent crimes to the founders of CANACE is NOT 'privileged'.
- d. The Defendant is duty bound to inform the public who is actually responsible for public violence. Clearly the OPP believe others are responsible since they have laid criminal charges for the violence against people other than the founders of CANACE.
- e. It should be noted that, as in the Jane Doe case where the police had a policy not to warn women based on discriminatory stereotypical beliefs, the OPP also have a policy regarding public statements regarding Aboriginal people during land claims set out in a document called *Framework for Police Preparedness for Aboriginal Critical Incidents* (the *Framework*). Although the OPP have laid various violence-related charges against various Aboriginal protesters, the OPP restrict themselves to issuing simple statements of fact about these accused rather than making negative public statements either before or after they are convicted. By way of illustration as to how far the OPP will go not to denigrate even those Aboriginals convicted of violent offences, the Defendant himself provided the Court with a character reference for the man convicted of assaulting Mr. McHale on Dec 04/08.

33) We ask the Court to consider the incalculable damage to democracy that would result if police chiefs and commissioners in Canada were allowed to use their resources and credibility to avoid accountability for their actions by eliminating the Charter-protected freedoms of reformers and critics via campaigns designed to destroy their reputations in their communities with false allegations of the most serious kind of criminal conduct.

- a. The Defendant has accused the Plaintiffs of being "interlopers" who are "inciting people to violence" as part of a violent "agenda" despite his knowledge that they have only advocated the use of non-violent methods of protest against OPP policing practices. In their submission to the Ontario Human Rights Commission on July 22/08 the Defendant and his officers stated, not that the Plaintiffs were violent or about to be violent because they wanted to exercise their right to place a flag on a public utility pole, but that an "extreme element" in the Aboriginal community who were opposed to them might be provoked to violence.
- b. The Plaintiffs ask the Court to carefully consider the great words of Dr. King contained in his famous 'Letter from Birmingham Jail' of April 16, 1963 in which he responded to critics who suggested that he, too, was an outsider who was inciting violence with his protests:

I think I should indicate why I am here in Birmingham, since you have been influenced by the view which argues against “**outsiders coming in.**” (...)

But more basically, **I am in Birmingham because injustice is here.** Just as the prophets of the eighth century B.C. left their villages and carried their “thus saith the Lord” far beyond the boundaries of their home towns, and just as the Apostle Paul left his village of Tarsus and carried the gospel of Jesus Christ to the far corners of the Greco-Roman world, so am I compelled to carry the gospel of freedom beyond my own home town. Like Paul, I must constantly respond to the Macedonian call for aid.

Moreover, I am cognizant of the interrelatedness of all communities and states. **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. Whatever affects one directly, affects all indirectly. Never again can we afford to live with the narrow, provincial “outside agitator” idea. **Anyone who lives inside the United States can never be considered an outsider anywhere within its bounds.**

You deplore the demonstrations taking place in Birmingham. **But your statement, I am sorry to say, fails to express a similar concern for the conditions that brought about the demonstrations.** I am sure that none of you would want to rest content with the superficial kind of social analysis that deals merely with effects and does not grapple with underlying causes. It is unfortunate that demonstrations are taking place in Birmingham, but it is even more unfortunate that the city’s white power structure left the Negro community with no alternative.

You may well ask: “Why direct action? Why sit-ins, marches and so forth? Isn’t negotiation a better path?” You are quite right in calling for negotiation. Indeed, this is the very purpose of direct action. **Nonviolent direct action** seeks to create such a crisis and foster such a tension that a community which has constantly refused to negotiate is forced to confront the issue. **It seeks so to dramatize the issue that it can no longer be ignored.** My citing the creation of tension as part of the work of the nonviolent-resister may sound rather shocking. But I must confess that I am not afraid of the word “tension.” I have earnestly opposed violent tension, but there is a type of constructive, nonviolent tension which is necessary for growth. Just as Socrates felt that it was necessary to create a tension in the mind so that individuals could rise from the bondage of myths and half-truths to the unfettered realm of creative analysis and objective appraisal, so must we see the need for nonviolent gadflies to create the kind of tension in society that will help men rise from the dark depths of prejudice and racism to the majestic heights of understanding and brotherhood.

The purpose of our direct-action program is to create a situation so crisis-packed that it will inevitably open the door to negotiation. I therefore concur with you in your call for negotiation...

I had hoped that the white moderate would understand that the present tension in the South is a necessary phase of the transition from an obnoxious negative peace, in which the Negro passively accepted his unjust plight, to a substantive and positive peace, in which all men will respect the dignity and worth of human personality. **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.

In your statement you assert that our actions, **even though peaceful**, must be condemned because they precipitate violence. **But is this a logical assertion?** Isn't this like condemning a robbed man because his possession of money precipitated the evil act of robbery? Isn't this like condemning Socrates because his unswerving commitment to truth and his philosophical inquiries precipitated the act by the misguided populace in which they made him drink hemlock? Isn't this like condemning Jesus because his unique God-consciousness and never-ceasing devotion to God's will precipitated the evil act of crucifixion? We must come to see that, as the federal courts have consistently affirmed, it is wrong to urge an individual to cease his efforts to gain his basic constitutional rights because the quest may precipitate violence. Society must protect the robbed and punish the robber.

I had hoped that the white moderate would see this need. Perhaps I was too optimistic; perhaps I expected too much...

- 34) The Plaintiffs respectfully submit to the Court that allowing the Defendant to hide behind the defence of privilege in this matter would represent an unconscionable regression to what we had hoped was a long-gone era when politicians and police in another great democracy once used the 'privileges' of their office to deny citizens their constitutional rights so that violent racists might not be offended. We beg the Court not to have any part in allowing it.

Defendant's statements represent an attempt to limit Plaintiffs' Charter Rights:

- 35) The Plaintiffs state that they have the right to freedom of association, freedom of assembly and freedom of expression as guaranteed by the ***Charter of Rights and Freedoms***.
- 36) The repeated public statements by the Defendant and his emails to OPP officers are designed to unreasonably limit and control the Plaintiffs' guaranteed freedoms.
- a. The Defendant's repeated statements that the Plaintiffs incite violence; have caused officers to be harmed; and are mischief-makers are designed to induce action by individual officers to target Mr. McHale particularly and Mr. Vandermaas in general for arrest and negative public statements.
 - b. The Defendant ordered his officers to overlook 'legal nuances' in their effort to 'publicly expose' the Plaintiffs and to target them for arrest.
 - c. The public statements by the Defendant were designed to convince the public to stop associating with us as the Defendant well knew average people would not knowingly assemble and associate with violent criminals which is the direct impression of the Plaintiffs the Defendant presented to the public.

- d. Furthermore, the Defendant as head of the OPP knew full well that Mr. Dave Hartless, a Hamilton Police Officer, was targeted by the OPP to be disciplined partly because Mr. Hartless 'associated' with Mr. McHale.
- e. The Defendant has targeted elected officials who have made positive statements about Mr. McHale or have associated with him. On April 7, 2007 the Defendant sent a threatening email to Haldimand Council because Councilor Craig Grice made what he considered to be positive statements about Mr. McHale. (Mayor Trainer stated she took it as a threat) The Defendant has also sent an intimidating letter to MPP Toby Barrett as has been publicly stated by Mr. Barrett.

Conclusion:

- 37) This portion of *Revised Statement of Claim* is intended to be a summary of the Plaintiff's case and to inform the Court of the circumstances that gave rise to this claim namely, the statement by the defendant on the John Oakley AM640 radio show. A detailed list of further defamatory statements by the Defendant is provided in the following pages. This claim covers repeated statements by the defendant from Nov 08, 2007 to the airing of the radio show on April 23, 2008. Additional examples of the Defendant's statements prior to November 08, 2007 as well as those made since filing this claim are provided in order to demonstrate a pattern of conduct on the part of the Defendant.

BACKGROUND AND HISTORY OF DEFENDANT'S PRIOR STATEMENTS

-- prior to November 08, 2007 --

- 38) Caledonia has been the site of extensive violence and crime by native protesters who have committed attacks on media, residents, police and infrastructure. The role of the OPP in these events, and criticism of their lack of enforcement, has become a major national issue.
- 39) On June 08/06 the Hamilton Spectator reported on their interview with Ontario Provincial Police Association President Karl Walsh in '*OPP brass sacrificing safety: Officers*' that 13 officers had been injured while policing the occupation. Walsh said the injuries were due in large part to senior OPP leadership decisions based on "optical purposes" and that this was putting officer safety in danger. The article also contained this passage: (Tab 3, pg. 2)

"There have been very few charges laid against native protesters since this began. The charges they have laid are being largely ignored. Those arrested are refusing to acknowledge the court system, saying it doesn't apply to them. "That is a two-tiered justice system," Walsh says."

- 40) On Feb 11/08 the Member of Provincial Parliament for the area, Mr. Toby Barrett, created a proclamation which decried both the lawlessness and the existence of racially-biased policing based on race and called for an end to both: (Tab 4, pg. 8)

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.

- 41) Mr. McHale attended a Baptist Seminary and has been a deacon in the church, and preached and/or taught in various churches in Ontario. He has also authored several Christian books. His activism in Caledonia arises out of his deeply-held religious belief that he as a Christian has a duty to speak out against the injustices of what he perceives as racial policing even if it means travelling to another community.
- 42) Mr. Vandermaas is a former member of the Canadian Forces who has served with a United Nations peacekeeping force in the Middle East where he personally saw the remnants of war. His parents suffered under Nazi occupation and watched Jews taken away to be murdered. His father escaped from a Nazi work camp. Having sworn an oath to defend Canadian values at the risk of his own life he feels a deeply-held sense of duty to speak out against what he perceives as racially-based policing and threats to the Canadian rule of law.
- 43) The Caledonia issue has received coverage by many major media outlets including the CBC, CTV, National Post and the Toronto Star. It continues to be a major issue of public debate within the Haldimand, Norfolk and Hamilton areas and it continues to be discussed in the local print and radio media.
- 44) The Plaintiffs have both been cited by name by the Ryerson Review of Journalism for providing news coverage for Caledonians when other media failed them.
- 45) On October 15/06 Mr. McHale held a protest march in Caledonia against 'OPP Two Tier Justice' which attracted approximately 2,000 people who marched peacefully through the streets of Caledonia according to a route worked out in advance between Mr. McHale and the OPP after listening to speakers which included MPP Toby Barrett. Mr. Vandermaas did not play a substantive role in organizing the protest, but he did assist Mr. McHale in promoting it. No violence occurred during the march. Afterwards Mr. McHale was thanked by Caledonia Detachment Inspector Mclean for remaining true to their agreement, march routing and for having such a safe event, conversation he confirmed in an email on Oct 19/06: (Tab 4, pg. 1)

"I called and thanked you for keeping your word on Sunday..."

- 46) On October 30/06 the Defendant became the Commissioner of the OPP. The previous Commissioner had made no derogatory public statements about Mr. McHale despite his activism with respect to OPP policies.
- 47) On Dec 02/06 a Caledonia resident was arrested during an effort organized by local residents to exercise their right to place Canadian flags on public utility poles on Argyle Street across from the occupation site at the Douglas Creek Estates as protected by the *Supreme Court in Ramsden v. Peterborough, 1993*. The Defendant was later quoted by a Caledonia newspaper on Jan 12/07 as acknowledging that the right to raise a flag was so protected.

- 48) On Dec 16/06 the Plaintiffs organized a second protest in Caledonia. The event was an attempt by the Plaintiffs to peacefully exercise their own right to place a Canadian flag on a public utility pole on a public road. The event was organized in support of the Caledonia resident who had been arrested with the goal of encouraging the OPP to provide an explanation as to why it was illegal for non-native citizens to place flags, but not illegal for natives, and drawing attention to the issue of race-based policing.
- 49) On Dec 03/06, unbeknownst to the Plaintiffs, the Defendant, with the cooperation of numerous officers under his command had set in motion a plan designed to target Mr. McHale for arrest and restrictive bail conditions even though they knew there was no evidence he had committed any crime, planned to commit a crime or had attempted to incite violence: (Tab 6 pg. 6)

“Diana advised that Commissioner Fantino had emailed the Director of the Legal Services Branch, Ann McChesney, contacting his office on Sunday December 3rd, 2006. **The Commissioner was looking for legal advice on various options on how the OPP might deal with Mr. McHale**, who had planned various marches and flag raisings in the Douglas Creek Estate (DCE) area.”

MAG lawyer Chris Diana, OPP Professional Standards investigation report, Oct 18/07, p30

“During the course of trying to obtain a legal and valid position to address the persistent attempts by McHale to undermine the peace in Caledonia, A/D Staff Sgt Walton was tasked to research this. I believe the direction came from his manager at the time whom, subject to being corrected was D/Insp Wright.

Greg was contacted and after an extreme and exhausting amount of work and dealings with Legal Branch on this matter he succeeded in obtaining their support and direction.

I further understand that McHale was in fact arrested by OPP and transported to Haldimand detachment where he was held for Bail Hearing the next morning. Unfortunately the Crown of the day did not take the same position as our source had put forth and McHale was released.

Inspector Dave McLean, OPP Professional Standards investigation report, Oct 18/07, p32-33

- 50) Mr. McHale was arrested and held in jail overnight without being charged. He was finally ordered released by the Court on the following morning. Mr. Vandermaas was also arrested but was released after a few hours without being charged.
- 51) The OPP’s own investigator did not know if what was done to Mr. McHale was even legal: (Tab 6 pg. 9)

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. (...) The propriety of the continued use of this unconventional approach cannot be decided at the writers 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.

OPP Professional Standards investigation report, Oct 18/07, p37-38

- 52) Despite the “exhausting” research, investigation, and eventual arrest without charge that involved numerous officers at every level the end result was that Mr. McHale was released on Dec 17/06 without having been charged with a crime.
- 53) On June 21/07 Mr. McHale filed a complaint with the OPP regarding his arrest. After conducting an investigation that included interviews with 18 OPP officers, including senior command officers, the 40 page report does not contain a single allegation that Mr. McHale had committed any crime. Furthermore, it concluded that Mr. McHale does not advocate violence: (Tab 6 pg. 9)

Although McHale himself does not advocate violence, people believe that a violent and dangerous confrontation could precipitate between protesters and occupiers if actions advocated by McHale continue.

OPP Professional Standards investigation report, Oct 18/07, p37

- 54) During the period of Dec 16/06 to April 22/07 – prior to making the statements that caused the Plaintiffs to file this action – the Defendant and his officers made a large number of derogatory statements to the public and members of Haldimand Council about the Plaintiffs by name and/or innuendo.
- 55) Although the Defendant did not reference Mr. Vandermaas by name during this period the association between Mr. Gary McHale and Mr. Vandermaas was well known within the Caledonia and media communities, and well known to the OPP. Since Oct 05/06 he has been Mr. McHale’s closest and most visible supporter, and was arrested with him on Dec 16/06. He has co-organized and spoken at almost every protest and public education event with Mr. McHale since Dec 16/06.
- 56) OPP Detective John Murray later testified under oath on Dec 14/07 regarding the strong link between Mr. Vandermaas and Mr. McHale in the mind of the OPP. Page 20 of the transcript contains information: (Tab 6 pg. 17)

Q. Now, do you have any information as to whether Mr. Vandermaas is in anyway connected to Gary McHale?

MURRAY: Yes, he is what I would class as a very well known associate to him, in fact he is present in court today. (...) Mr. Vandermaas is a very vocal supporter of Mr. McHale’s.

- 57) Where the Plaintiffs are not mentioned by name the Defendant often made references to them in terms of being ‘outsiders’ since they do not reside within the geographical limits of Caledonia although both have former family and/or business ties to the community.
- 58) On Dec 16/06 the OPP issued a news release: *Police Take Action to Keep the Peace in Caledonia – Several Arrested* (Tab 2 pg. 2)

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.

...they [the officers] did an excellent job of keeping the peace and preventing this from escalating into something more serious. Most people used good judgement and stayed away from the rally. These demonstrations will not help to resolve the issues in Caledonia.

- 59) On Jan 02/07 Mr. McHale faxed and emailed to the Defendant and various senior politicians an announcement for a new flag-raising march to take place on Jan 20/07 to protest against the arrests of non-native citizens for attempting to raise Canadian flags.
- 60) Mr. McHale offered to cancel the event if Mr. Fantino would answer three questions for him to post on his website and hold a public meeting to explain his answers to the people of Caledonia. The Defendant did not respond to the request.
- 61) On Jan 08/07, at a Caledonia Rotary Club meeting, the Defendant specifically referred to Mr. McHale by name and stated that he was "a lawbreaker" engaging in illegal activity and that he was provoking violence. Mr. McHale's lawyer was a witness to these statements, and the Defendant has admitted making them and declared them to be "true or substantially true" in paragraph 30 of a Statement of Defence dated Jan 28, 2008 in response to a claim brought by Mr. McHale on June 18/07.
- 62) On Jan 08/07 the Defendant was interviewed by Jamie West on AM900 radio and made the following comments:

FANTINO: "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.**"

"We've incurred a great deal of added impact on our resources when we have people coming into the community to basically stir things up. That's very unhelpful. It's caused a great deal of added anxiety about the potential escalation of the situation while we're trying to keep things peaceful and allow these people to negotiate."

JAMIE WEST: "Should anyone be arrested for putting up a Canadian flag?"

FANTINO: "I don't want to get into the merits of discretionary authority given to and used by our police officers. They were quite well empowered to prevent a **breach of the peace or anything that in fact was escalating potential violence.**"

- 63) On Jan 10/07 the Defendant was quoted by Marrison Nelson of the Hamilton Spectator in an article entitled, '*Five Questions for Julian Fantino.*' (Tab 3 pg. 5)

NELSON: What about Gary McHale's plan to hold a protest in Caledonia and what are you doing to prepare for Jan. 20?

FANTINO: It is totally unhelpful. It's agitating the community. It's creating the potential for confrontation and violence. It's totally unnecessary and unhelpful and what makes me very suspicious is that it's done in the shroud of the Canadian flag and support for our men and women in the Canadian military -- the whole notion of patriotism ...

"People have to see it for what this is -- it's **mischief-making** and there's another agenda here. We've been the target of this nonsense, just as the community has ... The right to demonstrate peace-fully 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.**

- 64) On Jan 10/07 the Defendant was quoted in another story by Marissa Nelson of the Hamilton Spectator entitled, '*Fantino will beef up Caledonia's OPP squad*': (Tab 3 pg. 6)

Fantino also criticized Gary McHale, a Richmond Hill man who is planning to put up Canadian flags and yellow ribbons on utility poles opposite the disputed land on Jan. 20. **Fantino said he is like a bad cold that won't go away.**

- 65) On Jan 11/07 Mr. McHale again faxed and emailed the Defendant and politicians a letter inviting him to attend a townhall presentation the Plaintiffs had planned for Jan 14/07 so that he might explain why putting up Canadian flags by non-natives was a 'Breach of the Peace.' The Defendant did not respond to the request and did not attend.

- 66) On Jan 12/07 the Defendant was quoted by The Sachem as acknowledging that the right to raise a flag was protected in an article entitled, '*Fantino sending 50 new officers to Haldimand*.' (Tab 3 pg.7)

"When it comes to raising flags, Fantino says it is legal to put up a flag on public property. "From what I was told the Supreme Court says it is legal."

- 67) On Jan 18/07, the OPP issued a news release entitled, '*Rally is irresponsible*' in which the Defendant referred to a protest that had been organized for the following weekend. The Defendant has declared that he made the remarks quoted and that they are "true or substantially true" in paragraph 30 of a Statement of Defence dated Jan 28, 2008 in response to a claim brought by Mr. McHale on June 18/07. (Tab 2 pg. 3)

"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."

- 68) On January 18/07 the Ontario Provincial Police Association also issued a media release on behalf of their approximately 8,000 members entitled, '*Extreme Caution Urged for Upcoming Protest*' that echoed the Defendant's remarks on Jan 10/07:

*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.

- 69) On Jan 19/07 the OPP issued a news release entitled, '*OPP Police Line = Public Safety. Breaching it isn't an option.*' (The Defendant has declared that he made the remarks quoted and that they are "true or substantially true" in paragraph 30 of a Statement of Defence dated Jan 28, 2008 in response to a claim brought by Mr. McHale on June 18/07.) (Tab 2 pg. 5)

"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."

- 70) On Jan 19/07 Haldimand County issued a news release '*Caledonia Land Dispute.*' This press release from the county was drafted by the OPP as testified to by Mayor Trainer in court in Hamilton on Nov. 24, 2008. (Tab 2 pg. 4)

"...Mayor Marie Trainer stresses that Haldimand County does not welcome anyone into our community who has the intention of breaking the law, getting arrested or inciting violence."

- 71) On Jan 19/07 OPP Sgt. Rektor made the following comments that were broadcast by A-Channel TV News in London. During his interview for this news report at his home in London, Mr. Vandermaas was handed copies of the above news releases from the OPP, and one from the Ontario Provincial Police Association that accused the Plaintiffs of 'asked for his response.

"This is clearly a group that wants to antagonize another group and **create mischief.**"

- 72) On Jan 20/07 the Plaintiffs and their supporters were again prevented from placing flags on utility poles by an overwhelming police presence that included the London riot squad and a helicopter circling overhead. No arrests were made The Defendant was in Caledonia to personally supervise. Although he met with native protesters he did not meet or speak with the Plaintiffs.

- 73) On Jan 21/07 the Defendant was quoted by Gregory Bonnell of Canadian Press entitled, '*OPP takes "no nonsense" stance at Ont. land occupation.*' (Tab 3 pg. 9)

Fantino, who met with Six Nations residents at the occupation site Saturday and assured them police would handle the demonstration, **reserved his harshest words for the out-of-town activists** who descended on Caledonia.

We're prepared to deal with these people in a way that **we will preserve public safety . . . and officer safety,**" Fantino said from an old schoolhouse on the outskirts of town that serves as a police command centre.

All of this is so counter-productive...we wish they would just stay home.

- 74) On Jan 22/07 Mr. Vandermaas called the London Police Service Media Relations department to advise that he was about to publish an open letter to the force's Chief on VoiceofCanada.ca in order to try to counter any misinformation which may have been provided to him by the OPP. The article was entitled, '*VoC letter to Chief of London Police Service.*'

- 75) On March 17/07 the Defendant was quoted by Sunmedia/London Free Press in, '*Little trust, no patience*' (Tab 3 pg. 10)

*"We have people in the community **that don't live there and their whole interest is to cause trouble.**"*

- 76) On April 07/07 the Defendant sent an email to Haldimand Council because a councillor had made what the Defendant felt was a positive remark about Mr. McHale, a remark that apparently violated a secret agreement the Defendant had negotiated between the Defendant and Council regarding Mr. McHale. This message was copied to three people in the Premier's office as well as other senior OPP officers. (Tab 4 pg. 2)

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

77) Mayor Trainer told members of the media that she took the Defendant's remarks as a "threat."

78) In summary, in the period prior to November 08//07 the Defendant and his officers made public statements stating or implying the following about the Plaintiffs:

- a. They were outsiders coming in to stir things up.
- b. They deceived the public about the purpose of their protests.
- c. They disrupted the peace.
- d. They tried to agitate Caledonia residents.
- e. People who attended their protests did not have good judgement.
- f. They wished the Caledonia situation to become violent.

- g. They were spewing hate.
- h. They had committed offences.
- i. They were flaunting the justice system
- j. They had breached the peace.
- k. They had abused peoples' rights.
- l. Their actions were like looking for a gas leak with a match.
- m. They had escalated potential violence.
- n. They had committed acts of mischief.
- o. They were irresponsible.
- p. They were a danger to public safety.
- q. Their interest was to cause trouble.
- r. They were a danger to OPP officers.
- s. They were responsible for injuries to OPP officers in the past.
- t. They would be responsible for injuries to OPP officers during future protests.
- u. They would be responsible for the OPP terminating its contract with Haldimand County.

BACKGROUND AND HISTORY OF DEFENDANT'S STATEMENTS

- CURRENT CLAIM -

Nov 09/07 to April 23/08

79) On Nov 08/07 the Defendant was interviewed by Susan Clairmont of the Hamilton in '*Fantino Takes Aim*' and noted his obsession with Mr. McHale: (Tab 3 pg. 11)

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...

He [McHale] says all it would take to shut down his rallies would be for Fantino to sit down and talk with him. He could save taxpayers money immediately if he agreed to meet with me," he says.

- 80) On Nov 09/07 the Spectator published the full text of an interview with the Defendant by Ms. Clairmont in *'Full text of the Spec's interview with OPP Commissioner Julian Fantino'* in which the Defendant is quoted as making the following remarks: (Tab 3 pg. 13)

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

FANTINO: And I still don't. 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.**

- 81) On Dec 01/07 a group of Caledonia residents, led by Caledonia resident Mr. Doug Fleming attempted to conduct a peaceful protest approximately 300 feet from the site of an illegal smokeshack on Argyle Street in Caledonia that had been selling cigarettes to the town's children. Mr. Fleming was upset by the continuing lack of law enforcement against illegal smokeshacks and he was upset because the OPP refused to keep promises to meet with him to discuss the issue. The Plaintiffs and two other CANACE founders, Jeff Parkinson and Merlyn Kinrade were present to support Mr. Fleming's protest.
- 82) Violence erupted after the smoke shack supporters from Six Nations initiated the first of several unprovoked assaults against the Plaintiffs and other residents. Mr. Vandermaas was first to be attacked, but the OPP refused to arrest his attackers. McHale was assaulted on 3 distinctly separate occasions after he was falsely accused of assaulting a native woman.

- 83) In the final assault Mr. McHale was swarmed by a group of Six Nations residents led by a man who jumped on his back from behind after screaming obscenities in his face and pushing through police to get at Mr. McHale. He has since pleaded guilty to the assault. As Mr. Powless was jumping on Mr. McHale a woman grabbed his left arm with both hands to assist in pulling him to the ground. Mr. McHale was punched and kicked numerous times as he was pulled to the ground as his attackers screamed, "Get him! Get him! Get the fat fuck! Kill him! Kill him! Mr. McHale went to hospital after suffering broken glasses, a bloodied face, bruised ribs and a bloody toe from being stomped upon.
- 84) The Plaintiffs' associate and videographer for CANACE Mr. Jeff Parkinson filmed the assaults on Mr. McHale and Mr. Vandermaas. When Mr. McHale was swarmed and injured, Mr. Parkinson was – according to an eyewitness - thrown to the ground by an OPP officer, striking his head and leaving him unconscious on the ground for some time until an ambulance arrived. Mr. Parkinson suffered a brain injury that will take up to 18 months to recover from and must cope with some memory loss and difficulty in concentrating.
- 85) Despite the violence directed against the Plaintiffs video evidence clearly shows, in keeping with their beliefs in the use of non-violent protests the Plaintiffs refused to retaliate in kind against the disgusting slurs and violence.
- 86) OPP officers were also assaulted during the protest, but no attempt to make arrests were made during the event for those assaults and, to the best of the Plaintiff's knowledge, no charges have ever been filed since.
- 87) As victims of multiple, unprovoked assaults which they had suffered without retaliating in kind the Plaintiffs were shocked, therefore, to discover that, before any investigation had begun, the Defendant had issued a harshly-worded news release falsely blaming the them for the confrontation as though they were the perpetrators of the violence instead of its victims. Unbeknownst to them at the time, the Defendant had already ordered his officers to target Mr. McHale for arrest – even though Mr. McHale was not the organizer of the protest.
- 88) The protest had begun at approximately 10:00AM. The Defendant -- prior to any allegations of any crime having been committed by the Plaintiffs -- sent an email at 10:29 AM to Chris Lewis, Deputy Commissioner of the OPP stating, 'At some point McHale has to go.' Lewis replied telling the Defendant that he had already sent a message to that effect to line officers in Caledonia.
- 89) At the time the Defendant gave this order to target Mr. McHale he knew that the Plaintiffs had never been charged with a crime in connection with their activism in Caledonia because, as he would later testify on Nov 26/08: the OPP had no evidence to support any charge against him.
- 90) Some time during the day the OPP issued a news release '*Commissioner Fantino Outraged*' in which the Defendant was quoted in an OPP news release. (Tab 2 pg. 7)

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.

- 91) Based on his past references to Mr. McHale and his supporters as "interlopers" and to the \$500,000 cost of policing Mr. McHale's protests during his interview with the Hamilton Spectator published Nov 09/07, it is clear that the Defendant is referring to the Plaintiffs in this press release, that he is blaming them for the day's events and is announcing he will bring them to 'justice.'
- 92) The OPP news release was issued on the same day of the confrontation before the investigation had even begun. This is known because the Defendant's official order to his officers to launch an 'investigation' for the stated purpose of targeting the Plaintiffs, and Mr. McHale specifically, for arrest was only given at 3:22 pm – while Mr. McHale and Mr. Parkinson were still in the hospital.
- 93) The media clearly identified the Plaintiffs as being the ones accused by the Defendant. Later in the day a reporter for the London Free Press contacted Mr. Vandermaas for his reaction to the story.
- 94) On Dec 02/07 excerpts from the release were printed by the London Free Press in '*Protest in Caledonia turns ugly.*'
- 95) On Dec 05/07 the news release was printed in full by the Turtle Island News located on the Six Nations Reserve.
- 96) Later that day the Defendant personally contacted two senior officers at 3:22 pm on the day of the confrontation and told them that the Plaintiffs were to blame for the violence, that he wanted an investigation started and that the Plaintiffs should be targeted: (Tab 4 pg. 5)

From: Fantino, Julian (JUS)

To: Goodall, Bob (JUS)

CC: Lewis, Chris D. (JUS)

Subject: McHale et al

Today we had another flare-up in Caledonia **spearheaded by McHale**. As the event unfolded things turned ugly and some violence erupted. McHale and a few others continue to converge on Caledonia to basically **create mischief**. All in all, but for McHale and his few supporters Caledonia is a relatively peaceful place.

Please assign a CIB inspector to oversee the investigation of today's events and ensure that whatever criminal charges or whatever else fits that they be laid forthwith.

Furthermore, I want every avenue explored by which we now can bring McHale into court seeking a Court Order to prevent him from continuing **his agenda of inciting people to violence** in Caledonia. We should be able to prove to the Court that **McHales' forays into Caledonia have been planned and executed for purposes of breaching the peace which today also resulted in violence**. We can't allow this vicious cycle to continue to the point where time and again we have to expend an inordinate number of police resources to keep people from killing themselves.

To date, **added policing costs are in the area of \$500,000 solely attributed to McHale's forays into Caledonia**.

One final point, I don't want us to sidetracked by Crown lawyers on this. We need to be guided by the long established RPG criteria and not be constantly frustrated by timid Crowns who seem to only get charged up when they have a sure prospect of conviction.

Thank you

jf

97) On Dec 02/07, 9:31pm, 30 hours after ordering an investigation targeting the Plaintiffs, the Defendant sent an email to Deputy Commissioner Chris Lewis expressing his intense desire to see Mr. McHale arrested, travel restrictions placed on him, and even if a conviction was not possible, the effort would be worth it in order to publicly expose him a "mischief-maker." He also told his officers not to "get bogged down in legal nuances.' (Tab 4 pg. 6)

From: Fantino, Julian (JUS)
Sent: December 2, 2007 9:31 PM
To: Lewis, Chris D. (JUS)
Cc: blacked out
Subject: RE: 6 PM Update

Chris:

I totally agree with you. Our people on the ground have been doing a great job managing the events, however, I believe that we are falling short on exploiting every possible proactive investigation strategy that could **curtail the activities of Mchale [sic] et al**.

Did we have a plan to deal with him on the basis of any breach he may have committed regarding his bail conditions? Did we assign an arrest team dedicated to McHale if/when the opportunity presented itself to take him out? etc?

I believe you know where I'm coming from and when this "post event" investigation is done, I trust we will not be relying on a Crown to tell us what RPG looks like There has been far too much of that in the past. Our job is not to act only when there is an absolute likelihood of a conviction as often told by Crowns who don't want to take anything

forward to trial that is not a sure thing. Surely experienced investigators don't have to go running to a Crown to know when they have RPG to arrest/charge someone!

And finally, I want us to take McHale to court to seek a Court Order to keep him out of Caledonia. **Based on his history and especially yesterday's events we should be able to take a good run at a Court Order. And even if we are unsuccessful we will be able to publicly expose him for the mischief-maker that he is and whose activities if not stopped will surely result in more violence.** As a beginning I would like to see a chronological outline of events that we can draw upon to show a **consistent pattern of activities intended to escalate conflict and confrontation that have now resulted in violence that can be directly attributed to McHale.**

I don't want us to get bogged down with legal nuances. We know what information needs to be pulled together to make the case why a Court order is well justified as a way of preventing future violence in Caledonia. I would like to see such a brief asap following which I will deal with getting the matter on to a judge.

jf

- 98) The Defendant knew or ought to have known that at the time he sent the Dec 02/07 email that the Mr. McHale was not, in fact, subject to bail restrictions because he had never been charged with a crime in connection with his activism in Caledonia.
- 99) At 2:03 AM on Dec 04/07 Mr. McHale sent the Defendant an email announcing that he and three Caledonia residents were speaking at a news conference in the Queen's Park Media Studio at 12:00 PM that day to address the events of Dec 01/07 and the Defendant's public announcement blaming them for the confrontation before the investigation had begun.
- 100) At 07:40 AM the Defendant ordered Superintendent, Bureau Commander, Corporate Communications Angie Howe to prepare what he called a "canned" response" – before he or his officers had even heard what Mr. McHale and the residents had to say at the news conference: (Tab 4 pg. 7)

From: Fantino, Julian (JUS)
To: Howe, Angie (JUS)
CC: blacked out
Sent: Dec 4, 2007 7:06 AM

Subject: Fw: Caledonia Residents & Gary McHale at Queen's Park Media Room

Angie:

ASAP, I want a canned strongly worded rebuttal to McHale's diatribe that sets out the following.

During his self serving forays into Caledonia;

- McHale has escalated the conflict
- **Violence has resulted**

- **police officers have been injured in efforts to protect him and his followers and to keep the peace**
- had to bring in police officers from other communities in Ontario policed by the OPP as well as assistance from neighbouring police services
- **caused in excess of \$500,000 in added policing costs** to the taxpayers of Ontario
- when he doesn't get his way resorts to self serving verbal diatribe against the OPP and **engages in frivolous law suits**, the cost of which will also be downloaded on the taxpayers of Ontario.
- etc.

JF

101) On Dec 05/07 after earlier discussions with OPP Detective John Murray in which he was informed that he had been accused of assaulting a woman Mr. McHale provided Detective Sgt. Murray with video evidence proving that he had not committed the assault and that, in fact, he himself had been assaulted by the woman. Other evidence, including video, submitted to the OPP and the Court shows that Mr. McHale was never attacked until after the woman loudly made her false allegation that she had been attacked. The OPP knew, therefore, by Dec 05/07 that it was not the Plaintiffs who had provoked the violence on Dec 01/07 but a supporter of the illegal smokeshack.

102) After reviewing the video provided by Mr. McHale Detective Murray then had a meeting with other officers following which he made a number of entries into his notebook, including a note that the woman played a key role in escalating the confrontation and that she would be charged with Public Mischief which she was: (Tab 6 pg. 15)

“1515 video appears to show Cammille Powless walk up to Gary McHale and intentionally bumping into McHale. At this time she starts to yell at him for pushing her and McHale states that he never pushed her.”

“1800 “public mischief – false assault” “agitator; provoked situation””

103) The Defendant, by his position, and by his intense personal interest in laying charges against the Plaintiffs – especially against Mr. McHale – knew or ought to have known when he made future comments to the public and to his subordinates after Dec 05/07 that Mr. McHale had been a victim of assaults that were provoked not by him or the Plaintiffs or their supporters, but by an irresponsible false accusation by a Six Nations resident opposed to Mr. Fleming's protest against illegal tobacco.

104) On Dec 07/08 Mr. McHale was charged for the first and only time by the OPP in connection with his activism in Caledonia. He currently stands accused of 'Counselling Mischief Not Committed' for allegedly suggesting to the driver of a vehicle blocking the road during the Dec 01/07 protest at an illegal smoke shack that he ask other residents to help him - which the driver did not do. This matter is before the Courts and Mr. McHale has pleaded not guilty to the charge.

105) No charges have ever been laid by the OPP against Mr. Vandermaas in connection with his activism in Caledonia.

106) On December 14, 2007 OPP Detective John Murray testified under cross-examination by Mr. McHale at a bail hearing to the following facts:

- a. When asked if he was aware of any OPP reports that Mr. McHale had committed any offence, he replied, "I have not read one that specifically addresses you committing an offence."
- b. When asked if anyone had been injured at events organized by Mr. McHale, he stated, "Not by my knowledge, sir."
- c. When asked if Mr. Vandermaas had ever been charged with assault at anytime in the last 20 months, he replied, "Not that I'm aware, no sir."
- d. That OPP officers attended a public townhall meeting organized by the Plaintiffs in Caledonia on January 14, 2007 and that Mr. McHale had quoted Dr. Martin Luther King during the presentation. The quotes were, in fact, from Dr. King's 'Letter from Birmingham Jail,' April 16, 1963 in which Dr. King explained the importance and reasoning of non-violent protests.
- e. That Mr. Vandermaas gave an introductory speech at the event. (The speech given by Mr. Vandermaas also included quotes from Dr. King, and has been freely available for viewing on Mr. Vandermaas's website www.voiceofcanada.ca since Jan 14/07, and was republished by him on Nov 10/07.)

107) 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 Gary McHale or the Plaintiff have committed, counselled or condoned acts of violence.

108) On April 07/08 the Canadian Press/Toronto Star carried a story, '*Fantino asked to mediation over Caledonia arrest*' in which the following remarks were attributed to him: (Tab 3 pg. 24)

Vandermaas, along with protester Gary McHale, have come under fire for holding numerous rallies against the police handling of the occupation in the beleaguered town – although neither of them live in Caledonia. Fantino has made no attempt to hide his contempt, labelling them "**mischief-makers**" who have cost taxpayers "**well over half-a-million dollars**" in increased police resources."

109) On April 23/08 the Defendant was interviewed by John Oakley on his radio show at AM640 Toronto and, during a portion of that interview, made the following comments about the Plaintiffs and Mr. Vandermaas' complaint to the Ontario Human Rights Commission regarding his treatment by the Defendant and his officers on Dec 16/06 and Jan 20/07:

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.**

110) The Plaintiffs state that the statements and innuendo from the Defendant's statements to the public are false and defamatory in that they either state or imply the following:

- a. that the Plaintiffs were "mischief making" by using the Courts to seek justice;
- b. that the Plaintiffs were responsible for wasting "over a half million dollars" of taxpayer resources because they were engaged in illegal activities requiring extraordinary policing resources to counter their nefarious conduct;
- c. that the Plaintiffs "cause trouble" in Caledonia;
- d. that the Plaintiffs are "interlopers" whose motives are nefarious because they chose to travel to another town to conduct protests;
- e. that the Plaintiffs were like a "bomb in the community and having everyone live in the ashes."
- f. that the Plaintiffs were engaged in illegal behaviour and the media had not "exposed" the Plaintiffs "for what they are and what they're doing."
- g. that the Plaintiffs want the Canadian Forces to be used as an army of occupation similar to that in Pakistan;
- h. that the Plaintiffs are engaged in activities designed to create a "violent outcome" in Caledonia'
- i. that the Plaintiffs were responsible for the violence that erupted on Dec 01/07 at an illegal smokeshack protest;
- j. that the Plaintiffs have been "involved" in violence;
- k. that the Plaintiffs have an "agenda" of violence;

111) The Plaintiffs state that the statements made by the Defendant were made maliciously, and that they were intended, and have been used by critics of their endeavours, to demean and damage their reputation and diminish their credibility in the community. The Defendant's statements amount to a very serious slander against the Plaintiffs.

112) The Plaintiffs state that the statements and innuendo from the Defendant's communications to senior OPP command officers are false and defamatory in that they either state or imply the following:

- a. that Mr. McHale has an "agenda of inciting people to violence";
- b. that the Plaintiffs have travelled to Caledonia for "purposes of breaching the peace";

- c. that as of Dec 02/07 Mr. McHale had been charged with an offence for which he was subject to bail conditions;
 - d. that Mr. McHale should be publicly exposed “for the mischief-maker he is”;
 - e. that violence has resulted “that can be directly attributed to McHale”;
 - f. that the Plaintiffs are responsible for injuries to police officers;
 - g. that the OPP must “curtail the activities of Mchale [sic] et al” because they are illegal
- 113) The Defendant states that the Defendant’s private communications are defamatory because the Defendant used his position to knowingly disseminate false and misleading information about the Plaintiffs within the OPP organization to the Plaintiff’s detriment, and further ordered a subordinate to distribute them to the public.
- 114) The Plaintiffs state that the statements made by the Defendant were made maliciously, and that they were intended, and have been used by critics of their endeavours, to demean and damage their reputation and diminish their credibility in the community. The Defendant’s statements amount to a very serious slander against the Plaintiffs.

EVENTS AND ADDITIONAL STATEMENTS BY DEFENDANT

- April 24/08 to Present -

- 115) On April 25/08 Mr. Chris Diana at the office of the Ministry of the Attorney General accepted separate notices from Mr. Vandermaas and Mr. McHale objecting to the statements made by the Defendant on April 23/08 and requested an apology. No one on behalf of the OPP or the Ontario government has provided an apology to the Plaintiffs.
- 116) On April 28/08 the Plaintiffs learned that some Caledonia residents were talking openly of using violence and road barricades in retaliation for a new Six Nations’ blockade of the main highway by-passing their town, a fact acknowledged by Mayor Trainer. The latest native blockade was an attempt to force the OPP not to arrest native protesters in Deseronto where there were serious confrontations between police and native residents.
- 117) The Plaintiffs were so disturbed at the thought of residents speaking or acting out of “reactionary anger” rather than heeding the non-violent lessons of Dr. King that they had promoted that they produced a News Advisory that was released at 9:20 PM. which was sent to Mr. McHale’s very extensive mailing list and then posted on the CANACE website at www.canace.ca. It is titled, *‘Violence is Easy, Peace requires Effort.’*
- 118) Mr. Vandermaas also called the Mayor of Deseronto and spoke with him personally to express his concerns and to make an offer that CANACE founders would be pleased to come to his town to conduct a presentation about the non-violent means we were using. He has not yet accepted that invitation.
- 119) On July 22/08 the Defendant and two OPP officers provided a submission to the Ontario Human Rights Commission in response to a complaint by Mr. Vandermaas regarding the role of the two OPP officers in preventing him from attempting to raise a Canadian flag on a public utility pole on Dec 16/06 during which he was arrested. The OHRC complaint also alleged that

the Defendant played a key role in ensuring that Mr. Vandermaas was again prevented from exercising his right to do so on Jan 20/07 at the protest described above herein.

120) Rather than alleging to the OHRC that the Plaintiffs were violent or were engaged in illegal behaviour in attempting to raise a flag when he had the opportunity to do so, the Defendant and his officers instead provided the Commission with an explanation that conflicted dramatically with the Defendant's previous statements about the Plaintiffs: (Tab 6 pg. 27)

Mr. Vandermaas' actions in relation to the situation at Caledonia have made him a potential target of the more **extreme element** who do not share his views. It is the Respondent's position that any actions it has taken in relation to Mr. Vandermaas have been to preserve the peace and to protect Mr. Vandermaas and his supporters from harm.

The Respondents do not dispute that on December 16, 2006 and January 20, 2007 OPP officers objected to Mr. Vandermaas erecting or attempting to erect a Canadian flag across the street from the occupied area. **It was the Respondents' honestly held belief that the placement of the flag could provoke others to breach the peace and put Mr. Vandermaas and others in harms way.**

121) By their own submissions to the OHRC, therefore, members of the OPP knew, prior to the Plaintiff's protest on Dec 16/06 that that it was not the Plaintiffs who were violent or breaching the peace when they attempted to exercise their right to raise a flag. The Defendant, by virtue of his position knew or ought to have known this as well.

122) By his own submission to the OHRC the Defendant knew, prior to the Plaintiff's protest on Jan 20/07, that it was not the Plaintiffs who were violent or breaching the peace as they attempted to exercise their right to raise a flag.

123) On Nov 26/08 the Defendant appeared under subpoena to be questioned by Mr. McHale for the preliminary hearing into the 'Counselling Mischief Not Committed' charge against him. The Defendant testified that the OPP has never laid any charges against Mr. McHale in connection with his activism in Caledonia for any offence other than the one he was charged with because they had no evidence to support such a charge.

124) After testifying that Mr. McHale had never been charged with a crime prior to Dec 01/07 the Defendant then made the following statements:

- a. that "police officers were injured because of you."
- b. that taxpayers had spent \$500,000 of the additional \$30,000,000 spent on occupation-related policing on Mr. McHale's protests because the OPP "had to protect you and your followers."
- c. that Mr. McHale has "an agenda to create mischief";
- d. that Mr. McHale has "promoted violence"

125) The Plaintiffs are unable to provide the Court with a transcript of the proceedings due to financial restrictions however, the admissions were made by the Defendant during questioning by Mr. McHale while Mr. Vandermaas witnessed them and made notes as he sat in the gallery.

126) On Dec 04/08 -- almost exactly one year to the day after Detective Murray noted that the violence of Dec 01/07 was provoked by a Six Nation smokeshack supporter's false allegation of assault against Mr. McHale -- the Defendant provided to the Court a character reference for the Six Nations man who pleaded guilty to Assault in connection with the swarming attack that sent Mr. McHale to hospital on Dec 01/07.

127) The Defendant's letter to the Court on behalf of Mr. Powless falsely blames the Plaintiffs for the majority of the conflict that has occurred in Caledonia; accuses Mr. McHale of 'mischief making' and insinuates that the Plaintiffs themselves and their supporters are somehow responsible for the assault committed against Mr. McHale by Mr. Powless. (Tab 4 pg. 9)

From: Fantino, Julian (JUS) [Julian.Fantino@ontario.ca]

To the Honourable Court:

In my capacity as the Commissioner of the Ontario Provincial Police I have known Mr. Powless for the past two years.

As well, since taking office I have become directly involved in a number of meetings and dialogue with members of the Six Nations Confederacy in mutual effort to keep the peace in Caledonia where many flare-ups have taken place resulting from historical land claim disputes that have necessitated the deployment of an extraordinary amount of OPP resources when flare-ups and conflict has erupted.

Much of the conflict, confrontation and provocation has occurred during the times that Mr. Gary McHale and his followers have converged on Caledonia that invariably resulted in heightened [sic] tensions and conflict that has required an extraordinary deployment of police resources in our efforts to preserve the peace.

Although I am not in a position to address the specific circumstances that resulted in criminal charges being brought against Mr. Powless, **I do feel that but for Mr. McHale's mischief-making forays into Caledonia, the very volatile situation that exists there would not have escalated time and again as it has virtually every time Mr. McHale came to town**

I am not making excuses for Mr. Powless's actions about which he is accused, however, and with respect, **the Honourable Court may wish to consider the volatility of the situation and provocation that simply could have been avoided but for the presence of Mr. McHale and his like minded followers.**

As well, I wish to advise the Honourable Court that on a number of occasions Mr. Powless has been instrumental in diffusing serious conflict and confrontation during which times he has actually been the peace-maker.

Respectfully submitted,

J. Fantino, Commissioner

Ontario Provincial Police

ATTEMPTS BY PLAINTIFFS TO MITIGATE DAMAGES

- 128) Mitigating the damage done by persistent false allegations of criminal behaviour and nefarious motives and behaviour made by one person of equal social status against another of the same status is difficult enough. The effort to overcome such statements when the person making the allegations is the head of the second-most powerful police force in Canada who is using the full weight of his office and credibility to attack the character of two ordinary citizens is nearly impossible.
- 129) Even if every reporter at every media outlet had given the Plaintiffs equal opportunity to make their case side-by-side with the Defendant's comments in every story or interview they published, it would have done little good in the face of the perceived credibility of the Defendant.
- 130) The Plaintiffs have done their very best to attempt to mitigate the damage done by the Defendant in large part by reposting his comments with refuting documentary evidence and editorial comment on their respective websites as they continued to use lawful means to try to hold him accountable. It is not reasonable to suggest that the Plaintiffs should not have reposted the remarks together with their defences to them. It was, and is, their only real defence against the Defendant given that other methods were ineffective.
- 131) In addition to the filing of a lawsuit for defamation against the Defendant by Mr. McHale for statements prior to Nov 08/07 the Plaintiffs have made many attempts to correct the Defendant's behaviour and repair the damages done by his continued statements, including the following:
- a. Jan 02/07 letter by Mr. McHale to Defendant advising him of the ***Ramsden v. Peterborough, 1993*** decision by the Supreme Court which protects the right to place flags on public utility poles as the Defendant later admitted in a direct quote contained in the Sachem news article of Jan 12/06. Defendant did not reply. Mr. McHale offered to call off Jan 20/07 protest if the Defendant will attend a townhall meeting and explain why his force was arresting non-natives for raising Canadian flags. He did not respond.
 - b. Jan 10/07 Mr. Vandermaas sent the OPP a message via their online webform advising he had published an open letter on www.VoiceofCanada.ca asking Commissioner Fantino for an apology with respect to his remarks about the Plaintiffs. The article, '*Dear Commissioner Fantino: Sir, you owe Canadians an apology*' rebuts, point-by-point, most of the insults and allegations Commissioner Fantino had made against the Plaintiffs to date. Defendant did not reply. (Tab 5 pg. 5)
 - c. Jan 11/07 letter by Mr. McHale to Defendant expressing concern over his comment that he was a "bad cold that won't go away" and inviting him to speak at a public meeting. Defendant did not reply. (Tab 5 pg. 10)
 - d. Jan 14/07 townhall meeting organized by Plaintiffs addressed Defendant's comments about the Plaintiffs and explained motivations and goals for Jan 20/07 protest. Defendant did not attend.
 - e. On Jan 20/07 Flag-raising protest in Caledonia: Mr. Vandermaas gave a speech at the beginning of the protest that explained his motivations and how the OPP and OPBA have deliberately mis-characterized the actions and motives of the Plaintiffs. It referenced Mr. Vandermaas's experiences as a peacekeeper in the Middle East and why he is so passionate about preserving the rule of law in Caledonia. His 'Blue Beret' speech has been freely available at www.voiceofcanada.ca since Jan 21/07 under the

title, 'OPP & OPPA vs. Supreme Court of Canada and the Charter of Rights & Freedoms.' (Tab 7 pg. 7)

- f. After giving his speech Mr. Vandermaas was promised by an OPP officer that a senior officer would come and speak with him to answer the questions in his speech, but none came.
- g. Mr. Vandermaas later introduced himself by name to the commander of the London riot squad. To the best of his recollection Mr. Vandermaas explained the ***Ramsden v. Peterborough, 1993*** decision to all officers present and told them that the Defendant's statements about the Plaintiffs were patently false. The squad left not long afterwards.
- h. During a visit to the Unity Road detachment in Caledonia later in the day where the Defendant was photographed looking out the window Mr. Vandermaas asked the sergeant outside if he would see if a senior officer would meet with us to answer our questions and explain why the OPP was slandering us and violating our rights, but he refused to do so. Before leaving Mr. Vandermaas gave the Sergeant his 'Blue Beret' speech notes and asked him to give them to the Defendant. The Plaintiff was never contacted by the Defendant or any member of the OPP leadership however, according to a Canadian Press report on Jan 21/07, '*OPP takes "no nonsense" stance at Ont. land occupation*' the Defendant did meet with the native occupiers during the day.
- i. Jan 22/07 open letter by Mr. Vandermaas to his home police force, the London Police Service whose riot squad had been called out by the Defendant to help ensure non-natives were unable to raise Canadian flags on Jan 20/07. The letter was posted on VoiceofCanada.ca under the title, '*VoC letter to Chief of London Police Service.*' Mr. Vandermaas explained his motivations in an effort to counter the Defendant's statements. (Tab 5 pg. 12)
- j. April 02/07 Police Services Act complaint by Mr. Vandermaas to former Minister of Community Safety and Correctional Services re alleged defamation by Defendant. A lawyer and former Deputy Minister, Mr. Rod McLeod, was assigned by the Minister to review various PSA complaints against the Defendant and make recommendations as to how to proceed. He made clear during his meeting with Mr. Vandermaas and his lawyer that his job was not to perform the investigation. Unfortunately, the Minister abruptly dismissed all complaints regarding the Defendant before Mr. McLeod had finished writing his report. No action was taken against the Defendant.
- k. April 16/07 Police Services Act complaint by Mr. McHale to former Minister of Community Safety and Correctional Services re alleged defamation by Defendant in his April 07/07 email. Dismissed, no action taken.
- l. April 17/07 speech by Mr. McHale at news conference at Queen's Park re defamatory comments by Defendant in April 07/07 email. (Tab 5 pg. 15)
- m. April 17/07 speech by Mr. Vandermaas at news conference at Queen's Park re other defamatory comments by Defendant. (Tab 5 pg. 18)
- n. April 24/07 letter from Haldimand Council informing Mr. Vandermaas they had voted down a request that the Plaintiffs and Caledonia resident Merlyn Kinrade be allowed to appear as a delegation to clear their names of the allegations made by the Defendant in his April 07/07 email to Council. Council did, however, allow Mr. Fantino to appear to explain himself. (Tab 4 pg. 4)

- o. Nov 12/07 email by Mr. Vandermaas to Susan Clairmont at Hamilton Spectator expressing the Plaintiffs' grave concerns regarding the Defendant's comments quoted in her Nov 09/07 article. No response. (Tab 5 pg. 21)
- p. Nov 25/07 email by Mr. Vandermaas to David Estok, Editor in Chief of Hamilton Spectator expressing the Plaintiffs' grave concerns about the Defendant's comments quoted in Susan Clairmont's Nov 09/07 article. No response. (Tab 5 pg. 23)
- q. Nov 23/07 email by Mr. Vandermaas to Rod McLeod with copy of the Nov 09/07 Hamilton Spectator article expressing concern for the Defendant's health and seeking 'back-channel' help in ending defamation by the Defendant without the necessity of having to file a new PSA complaint. Mr. McLeod did not respond. (Tab 5 pg. 25)
- r. Nov 28/07 email by Vandermaas to CanWest Media following CHTV (Hamilton) airing a viewer comment about Mr. McHale telling the people of Caledonia to "kick this piece of garbage to the curb, but use just one bag." Mr. Vandermaas offered that the Plaintiffs would conduct a presentation at CanWest and CHTV, but was rebuffed. (Tab 5 pg. 27)
- s. Dec 04/07 Mr. McHale appears with three Caledonia residents to speak at Queen's Park Media Studio to counter Defendant's public statements – prior to any investigation by his force – that falsely blamed the Plaintiffs and their supporters for the Dec 01/07 confrontation. (Tab 7 pg. 1)
- t. Dec 05/07 Vandermaas posts comprehensive story of Dec 01/07 with video evidence on VoiceofCanada.ca in '*Brantford Expositor endorses violence against civil rights activist*' and advises the Brantford Expositor of the story. They refuse to apologize or retract their Dec 04/07 editorial endorsing violence against Mr. McHale or meet to review our evidence countering the Defendant's false allegations in his Dec 01/07 news release.
- u. Dec 05/07 Urgent Vandermaas email to MPP Toby Barrett, Haldimand Mayor Trainer, Haldimand CAO Don Boyle to counter Defendant's statements in Dec 01/07 OPP release that the Plaintiffs were to blame for the confrontation; and expressing concern that the combination of the Defendant's remarks and the Brantford Expositor's endorsement of the violence against Mr. McHale on Dec 04/07 (see Damages below) was putting his life in danger. (Tab 5 pg. 30)
- v. Dec 06/07 Vandermaas email to MPP Toby Barrett; Haldimand Mayor Marie Trainer; Haldimand CAO Don Boyle; David Crombie; Ministry of Community Safety and Correctional Services; Greg Crone (Aboriginal Affairs), Blair Mackenzie (Osprey Media) begging for assistance in setting up meetings to discuss the issues before a death in Caledonia becomes a reality due to the Defendant's poisonous statements and the Brantford Expositor's endorsement of violence against Mr. McHale. The only person to respond was Don Boyle and Mr. Mackenzie. Not one person, however, stepped forward to facilitate a single meeting. (Tab 5 pg. 31)
- w. Jan 25/08 Mr. Vandermaas forwarded his Nov 23/07 David Estok email to Emerald Austerberry at Ryerson Review of Journalism who was researching a story on how media have covered Caledonia. Her article '*Disputed Land, Failed Coverage*' appeared in the Summer 2008 edition of the Review and highlighted the work of both Plaintiffs by name for covering the Caledonia crisis when other media failed the residents.

- x. April 09/08 Vandermaas letter to London North Centre MPP Deborah Matthews requesting a meeting with her, and assistance in obtaining an apology from Aboriginal Affairs Minister Michael Bryant for his derogatory comments about the Plaintiffs and Mr. Vandermaas' Human Rights complaint quoted in the April 07/08 Canadian Press story. She did not respond.
- y. April 10/08 Vandermaas letter to Aboriginal Affairs Minister Michael Bryant requesting a meeting to discuss his comments. The Minister wrote back on July 22/08 to refuse the meeting. (Tab 5 pg. 32)
- z. May 30/08 Police Services complaint to current Minister of Community Safety and Correctional Services by Mr. Vandermaas on behalf of Mr. McHale and Mr. Parkinson. The complaint conveyed a clear message to the Minister of the very serious frustration felt by the Plaintiffs with the Defendant's conduct in several matters, including his continuing statements linking the Plaintiffs to violence.

DAMAGES AND AGGRAVATING FACTORS

- 132) The Plaintiffs and their lawful endeavours have suffered and will continue to suffer due to the damages caused by the Defendant for years to come.
- 133) The Plaintiffs argue that the sheer volume of evidence showing that the Defendant used his office to deliberately distribute patently false information about the Plaintiffs to the public and police officers for almost two years while never once giving the Plaintiffs the opportunity to explain themselves or clear their names represents conduct so egregiously malicious and shocking on its face that the burden should fall on the Defendant to show how his statements could NOT have caused extreme damages to the Plaintiffs and their lawful endeavours by influencing media, politicians and the public to become fearful, suspicious, hostile, distant and even violent towards the Plaintiffs:
- 134) As evidenced by the numerous unsuccessful attempts to mitigate the damages done by the Defendant, the Plaintiffs reasonably believe that the Defendant's remarks have caused the Plaintiffs to lose credibility in the eyes of the media, politicians and the public at large.
- a. On April 24/07 Haldimand Council wrote a letter to Mr. Vandermaas informing him that they had voted against allowing him, Mr. McHale and Caledonia resident Merlyn Kinrade to appear before them to clear their names with respect to the statements contained in the Defendant's email of April 07/07. (Tab 4 pg. 4)
 - b. On Nov 28/07 CHTV (Hamilton) aired a viewer comment about Mr. McHale telling the people of Caledonia to "kick this piece of garbage to the curb, but use just one bag." (Tab 5 pg. 27)
 - c. On Oct 01/08 the Regional News in Caledonia printed a public apology to Mr. McHale from a long time Caledonia resident entitled, '*I must confess*' in which she writes at length about how she used to believe the Defendant when he called Mr. McHale an "outside agitator" and a "trouble maker." (Tab 3 pg. 28)
 - d. On April 07/08 the Toronto Star/Canadian Press reported in '*Fantino asked to rights mediation*' that then-Minister of Aboriginal Affairs Michael Bryant had made the following comments about the Plaintiffs' activities and Mr. Vandermaas' complaint about the Defendant to the Ontario Human Rights Commission. (Tab 3 pg. 24)

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."

e. On Dec 05/07 the OPP news release of Dec 01/07 in which the Defendant falsely blamed the Plaintiffs for the confrontation that day was printed in full by the Turtle Island News on Dec 05/07. On Dec 12/07 – seven days after Detective Murray learned that the violence had been provoked not by the Plaintiffs but by a Six Nations woman who made a loud false allegation of assault against Mr. McHale – the Turtle Island News published an editorial cartoon making fun of Mr. McHale's injuries that sent him to hospital on Dec 01/07. The cartoon shows Mr. McHale lying on the ground with broken glasses as a turtle reporter joyfully announces, "PUN INTENDED!!...THIS IS THE CAREER PUNCHLINE I'VE BEEN WAITING FOR!" (Tab 3 pg. 23)

- 1) Despite the Defendant's knowledge - as early as Dec 05/07 - that the Plaintiffs had not been the aggressors "provoking" the smokeshack supporters but had, in fact, been innocent victims of their violence provoked by their false allegation the Defendant made no attempt to publicly inform the people of Six Nations of that truth nor has he done so to date.
- 2) The cartoon clearly implies that there exists within the Six Nations community the false belief that Mr. McHale was at fault for the events of Dec 01/07 and deserved to be attacked and injured. There can be little doubt that the Defendant's news release; his failure to correct the record as soon as he became aware of the facts; and his prior statements played a key role in creating that very dangerous impression.

f. On Dec 04/07, clearly influenced by the Defendant's statements on Dec 01/07 the Brantford Expositor published an editorial entitled 'Take a hint, McHale' that used a Christmas carol to ridicule Mr. McHale and endorse the violence against him. (Tab 3 pg. 22)

"What Christmas would be complete without a merry melee, like the one that happened Saturday in Caledonia at the centre? This time, McHale appears to have got more than just a lump of coal as he was injured during the clash, which grew out of a confrontation between natives and a group including McHale that was protesting the presence of a smoke shack in the community.

"It's beginning to look a lot like Christmas..."

135) The Plaintiffs reasonably believe that extreme nature of the sustained campaign of defamatory statements by the Defendant, and in particular those made in the Nov 09/07 Hamilton Spectator article, contributed to inciting the violence against the Plaintiffs on Dec 01/07.

136) Both Plaintiffs have received threats against their personal safety and reasonably believe that they may be exposed to future violence due to the Defendant's comments.

- 137) On March 15/07 Mr. Vandermaas received a threatening message that he reported to the London Police Services. The writer told him "Who the hell do you thing [sic] you are you white asshole? (...) Just Fuck Off before you cause any trouble...Give up or I will personally find you and kick your white ass to the ground." Although Crown lawyers have quoted from VoiceofCanada.ca in their pleadings the Plaintiffs have no direct evidence that the Defendant had personal knowledge of this particular threat.
- 138) There is simply no way to know how others might be encouraged by false allegations by the Defendant that lead someone to believe that the OPP have secret evidence that the Plaintiffs are an extreme danger to the community but can't charge them because of a 'loophole' of some sort.
- 139) The Plaintiffs and their families have suffered great anguish and financial hardship due to the day-to-day frustration of not being able to stop the Defendant from accusing the Plaintiffs of criminal behaviour and involvement in violent activities: from being portrayed as danger to a community in which they have invested so much of their efforts to peacefully and lawfully oppose what they and others believe are racial policing policies enforced by the Defendant and his officers; from the necessity of having to invest countless hours to trying to mitigate the damages to their reputations caused by the Defendant instead of raising badly-needed funds; and finally, from the worry that someone one might interpret from the Defendant's remarks or remarks by others influenced by them that it would be acceptable to injure or even kill the Plaintiffs or their wives.
- 140) Due to the Defendant's refusal to cease making false allegations against them the Plaintiffs have been forced to accept the financial damage limitations of Small Claims Court instead of pursuing a far larger claim in Superior Court at their leisure because they feel a great sense of urgency to bring the Defendant before the Court as expeditiously as possible to try to convince him to stop making further statements.
- 141) By virtue of the Defendant's position and the credibility ascribed to that position, the Defendant's statements may cause future and profound, unforeseeable damages to the Plaintiffs, particularly in the areas of employment and travel opportunities.
- 142) Mr. Vandermaas is a former member of the Canadian Forces who served a tour of duty as a peacekeeper with the United Nations Emergency Force Middle East in 1978 and was later honourably discharged. As recently as August 2003 he held employment as a skilled tradesperson at a major Canadian defence manufacturer of Light Armoured Vehicles for both the Canadian Forces and the United States Armed Services.
- 143) Mr. Vandermaas's work included extensive cross-border travel to the United States Army base at Fort Lewis, Washington. This position required him to obtain a Level II (Secret) security clearance from the Canadian government which expires Feb 11, 2013. Mr. Vandermaas cannot predict what effect, if any, the Defendant's comments may have on his future ability to renew his security clearance, to obtain defence-related employment or to travel in connection with that employment.
- 144) Mr. McHale was visited by personnel from the Canadian Security and Intelligence Services on two occasions in late December 2006 and in early January 2007.
- 145) Even in the unlikely event that the Defendant were to now issue a full, unequivocal apology and a full retraction of his remarks on behalf of himself and the OPP, the risk that security agencies might secretly label the Plaintiffs as security risks is a genuine fear that the Plaintiffs will carry for some time to come. The Maher Arar case is the most obvious example of this

risk. Even in the face of overwhelming evidence that Mr. Arar was never a terrorist threat after being cleared by the Arar Commission the United States refused to remove him from its terrorist watch list.

“It is very likely that, in making the decisions to detain and remove Mr. Arar to Syria, the U.S. authorities relied on information about Mr. Arar provided by the RCMP.

“The Commissioner also found that both before and after Mr. Arar’s detention in the U.S. the RCMP provided American authorities with information about Mr. Arar which was inaccurate, portrayed him in an unfair fashion and overstated his importance to the investigation. Some of this inaccurate information had the potential to create serious consequences for Mr. Arar in light of American attitudes and practices at the time.”

Arar Commission news release, Sept 18/06: *Arar Commission releases its findings on the handling of the Maher Arar case*

- 146) The Plaintiffs will forever ‘look over their shoulders’ wondering if they will be refused employment or denied opportunities because the Defendant’s remarks caused potential employers; clients; donors; business partners; journalists; politicians; or security agencies to undeservedly suspect them of being a threat.

Lack of charges against Plaintiffs

- 147) Despite the Defendant purposefully bringing the full investigative resources of the OPP to bear against the Plaintiffs on at least two occasions and expressing his clear desire to his subordinates to find some way to lay charges against them – especially against Mr. McHale - the OPP have never been able to bring a single charge against either man save and except one allegation of minor civil disobedience that is still before the Court.
- 148) The solitary charge against Mr. McHale in itself illustrates the falsity of the Defendant’s statements. It is telling that the most heinous crime the Plaintiffs have been formally accused of is that Mr. McHale allegedly engaged in a very minor act of peaceful civil disobedience that resulted in no violence, no damage, no inconvenience to the public and no further crimes being committed. Furthermore, the charge against Mr. McHale was filed nearly one year after the Defendant and his officers first began accusing the Plaintiffs of committing offences, spewing hate, inciting violence and injuring OPP officers.
- 149) The lack of charges against the Plaintiffs despite two years of intense scrutiny and investigations by numerous OPP officers acting under the specific direction of the Defendant should serve as prima facie evidence that the Defendant made his statements knowing they were patently false.

Defendant knew Plaintiffs were not responsible for injuries to officers:

- 150) The Defendant knew or ought to have known that no member of the Ontario Provincial Police, their agents or employer, the Government of Ontario, have ever filed any civil action accusing the Plaintiffs of being legally liable for past injuries to OPP officers.
- 151) As set out above, the Defendant knows, the Plaintiffs have never been criminally charged for any violence-related offence, including any related to the injury of OPP officers.

Defendant knew others were responsible for injuries to OPP officers:

152) The Defendant knew or ought to have known that people other than the Plaintiffs were responsible for assaulting, threatening and/or injuring numerous OPP officers – in most cases long before the date of Mr. McHale’s first protest event on Oct 15/06, but also at the very same event at which the Plaintiffs were attacked on Dec 01/07.

- a. On April 20, 2006 the OPP issued a news release regarding an attempt by the force to remove native protesters from the occupation of the Douglas Creek Estates entitled, ‘Protesters removed from Caledonia Housing Development’ the following quote: (Tab 2 pg. 1)

The site was secured, however a short time later the site was re-occupied. During this time **three OPP officers were injured** and required medical attention. Our officers showed tremendous restraint while confronted by the protesters with weapons that included axes, crowbars, rocks and a various assortment of make-shift batons.

- b. On June 08/06 the CBC News and the Hamilton Spectator reported on remarks made by OPPA President Karl Walsh regarding injuries to OPP officers. The CBC’s story was entitled, ‘*Brass putting image ahead of safety at Caledonia, OPP union says.*’ The Spectator’s story, ‘*OPP brass sacrificing safety: Officers*’ reported that 13 officers had been injured while policing the occupation due in part to senior leadership decisions that put officer safety in danger: (Tab 3 pg. 1)

The “**deviation from the usual training and standards**” of the OPP “has been an underlying concern from the get-go” in Caledonia, says Walsh. So far, **13 officers have been injured in Caledonia** while assigned to the stand-off. **Some of those injuries may have been avoided if officers had been allowed to follow the training, policies and procedures they have always abided by.** (...) “But these officers were ordered not to wear them for optical purposes.

- c. On June 05/07 the Ontario Provincial Police Association issued a news release, ‘*First Nations need to do their part to keep the peace at protests says Ontario Provincial Police Association.*’ (Tab 2 pg. 6)

“During the ongoing Caledonia dispute, **several OPP officers have been injured and numerous criminal charges have been laid.**”

- d. OPP Officer McDonald was present during the events of Dec 01/07 at the smokeshack smoke shack protest where the Plaintiffs were assaulted. He later completed a ‘Will Say’ statement regarding an incident that occurred at an OPP roadblock at 1:25pm. He described how he threatened to draw his weapon after a native man twice deliberately drove his vehicle into the officer’s legs in an attempt to get through. He recounts how he and his partner were assaulted, threatened and pushed out of the path of the vehicle by “10-13 other natives from the smoke shop protest.” Officer McDonald testified about these assaults under questioning by Mr. McHale on Nov 26/08 at his pre-trial hearing where he told the court that the OPP never followed up on his report.
- e. On Dec 05/07 OPP Detective John Murray recorded in his notebook that the force planned to charge Clyde Powless – the same man who assaulted Mr. McHale, and the same man for whom the Defendant provided to the Court a character reference on Dec

04/08 - with assaulting an OPP officer during the protest on Dec 01/07. The charge was never laid. (Tab 6 pg. 12)

- f. On May 08/08 the Hamilton Spectator reported in '*OPP seize Spectator photos*' that OPP officers had reported that OPP officers were afraid of being injured when 30-40 native protesters on all-terrain vehicles "intimidated," "threatened" and "harassed" them during a four day native blockade of the by-pass highway in Caledonia on April 26/08. One officer was told he and his family would be killed. Protesters threatened to kill officers and/or their families. One officer considered pulling his sidearm to defend himself. (Tab 3 pg. 28)

Defendant failed to warn or consult Plaintiffs regarding threats against them

153) Despite the Defendant's personal knowledge that it was not the Plaintiffs who were a threat to the community, the Defendant and his officers made no attempt to advise the public of the true nature of the danger, but instead worked to falsely convince the public that the danger was posed by the Plaintiffs.

154) The Plaintiffs argue that the Defendant had a duty to warn the Plaintiffs about the dangers posed by the 'extreme element' on the Douglas Creek Estates of which he had personal knowledge as was held in the 'Jane Doe' case of in which Madame Justice Jean MacFarland ruled:

They made [the] very serious decision not to warn these women of the risk they faced. This they did in the face of the almost certain knowledge that the rapist would attack again and cause irreparable harm to his victim. In my view, their decision in this respect was irresponsible and grossly negligent.

Jane Doe v. Toronto (Metropolitan) Commissioners of Police, 1998

155) Instead of consulting in good faith with the Plaintiffs and truthfully informing them and the public of the dangers, and taking steps to protect their rights the Defendant instead made a willful decision to violate their constitutionally protected right to place a Canadian flag on a utility pole; arrested them; and then began a sustained campaign to knowingly and falsely accuse the Plaintiffs of being a danger to the community. This is akin to the police refusing to meet with specific women they know are in danger from predators in the area and then publicly vilifying and arresting them because they exercised their right to walk down a street where the predators might attack them.

Defendant knew of threats against Mr. McHale's life, and of a secret campaign to falsely accuse the Plaintiffs of being White Supremacists

156) In addition to his knowledge that the Plaintiffs had been threatened if they attempted to raise a Canadian flag on Jan 20/07 the Defendant knew or ought to have known that Mr. McHale had received past threats against his life in 2006 and that OPP officers had been assigned to assist York Regional Police in the investigation.

157) Furthermore, the Defendant knew or ought to have known that Mr. McHale was the target of a deliberate campaign to defame him with false allegations of being a white supremacist waged by a United States private investigator who, coincidentally, met with two OPP officers on Dec 28/06 prior to beginning that campaign.

158) Despite the full knowledge that the Plaintiffs were facing various threats against their safety and a malicious, secret campaign to defame them the Defendant continued to make false allegations against them. It is the Plaintiff's position that the Defendant's statements and failure to correct the record have placed or may place them at risk for their safety.

Defendant has made no effort to help the Plaintiffs repair damages:

159) Despite repeatedly stating his concern for public safety and taxpayer resources with respect to our activities the Defendant has made no attempt to meet with or speak to the Plaintiffs. On Nov 26/08 the Defendant testified that he has never met with non-native protesters.

160) The Defendant has never made any attempt to correct the inaccuracies in his statements.

161) The Defendant has never apologized to the Plaintiffs.

Bias in Defendant's statements and failure to communicate with Plaintiffs:

162) On Nov 26/08 the Defendant testified to the following:

- a. that he has never met with non-native protesters as he has with natives, even those charged with violent crimes. On May 28/08, the Turtle Island News published a photo of the Defendant sharing a joke with Clyde Powless, the man who was charged with, and eventually pleaded guilty to, assaulting Mr. McHale.
- b. that he has never once publicly singled out any native protester by name for criticism as he has done with Mr. McHale.
- c. that he has never publicly singled out any native protester by name for criticism with regards to the costs associated with their lawlessness as he has done with Mr. McHale.
- d. that Mr. McHale is the only person in the province for whom the OPP track policing costs associated with their protests.

Defendant feels he has the right to destroy the reputations of those he opposes

163) The Defendant has made statements indicating that he believes he has the right to destroy the reputations of those who oppose him.

164) On June 29/07 the Defendant had a telephone conversation with Shawn Brant leader of the illegal blockade of Highway 401 during the Aboriginal Day of Action that was recorded by the OPP. The transcripts were entered into evidence at a subsequent court hearing and are available on the website of CFRB Radio under the title, '*OPP commissioner Julian Fantino and native activist Shawn Brant.*' This quote is from Part 1, line 130: (Tab 6 pg. 3)

FANTINO: And you know what I don't wanna I don't wanna get on your bad side but you're gonna force me to do everything I can within your community and everywhere else to destroy your reputation.

165) The Defendant's email from Dec 02/07 to Deputy Commissioner Chris Lewis regarding Mr. McHale shows a willingness by the Defendant to use a criminal charge for the purpose of damaging Mr. McHale's reputation: (Tab 4 pg. 6)

“And **even if we are unsuccessful we will be able to publicly expose him** for the mischief-maker that he is and whose activities if not stopped will surely result in more violence.”

166) The fact that the Defendant has continued to make false allegations linking the Plaintiffs to criminal behaviour since early 2006 until the present day is prima facie evidence that the Defendant feels that he can use his position to attack the reputation of any person he feels is an obstacle to his goals.

Defendant knew that his own conduct with respect to his treatment of the Plaintiffs had wasted significant taxpayers' resources

167) The Defendant has publicly blamed the Plaintiffs for the waste of taxpayers' money due to their protests. The Plaintiffs argue that any money spent on their protests was spent during the lawful exercise of Charter-protected activities in the best traditions of democracy.

168) With respect to the Jan 20/07 protest in particular, however, the Defendant well knows that any money spent on the protest -- for which he arranged to bring in the London Riot Squad and, to the best of the Plaintiff's knowledge, an OPP helicopter -- could have easily been avoided had the Defendant simply accepted Mr. McHale's Jan 02/07 invitation to attend a public townhall meeting and explain why non-natives were being arrested for raising Canadian flags. Mr. McHale even offered the Defendant a second opportunity to open communications in a letter dated Jan 11/07, but he chose to ignore it, preferring instead to make defamatory remarks about Mr. McHale and the protest.

169) It is the Defendant, therefore, who bears the entire responsibility for the policing costs of the Jan 20th protest and NOT the Plaintiffs.

Defendant is the Commissioner of the Ontario Provincial Police:

170) The Defendant, as a public servant, as a police officer and especially as the commander of 8,000 employees that include 5,000 police officers has an onerous duty to be truthful and accurate.

171) The public, the Legislature, the judiciary, the police community, and First Nations communities must all rely on the Commissioner not to mislead them or inflame tensions in the province by falsely accusing innocent citizens of criminality and nefarious motives, especially when his remarks are in connection with an issue of vital importance to the province and country.

Defendant's persistence

172) The Plaintiffs have used every lawful means at their disposal to stop the Defendant from making false statements against them without success. The Defendant has persisted in making additional false statements about the Plaintiffs since this claim was filed.

Defendant has taken his false and misleading statements into the Courts

173) Since filing this action the Defendant has made serious allegations and representations before two separate Courts regarding the Plaintiffs' conduct as activists in Caledonia. The Plaintiffs state that these statements too, are false and defamatory because they either state or imply the following:

- a. that, "police officers were injured because of you."
- b. that the Plaintiffs were responsible for wasting \$500,000 of taxpayers' money because the OPP "had to protect you and your followers."
- c. that Mr. McHale has "an agenda to create mischief";
- d. that Mr. McHale has "promoted violence";
- e. that the Plaintiffs are responsible for "much of the conflict, confrontation and provocation" that has occurred in Caledonia";
- f. that the Plaintiffs' conduct has unlawfully or negligently required an extraordinary deployment of police resources in our efforts to preserve the peace.
- g. that the Plaintiffs have conducted "mischief making forays into Caledonia" with unlawful objectives;
- h. that the Plaintiffs were somehow responsible for the assault on Mr. McHale on Dec 01/07.

174) The Plaintiffs are gravely concerned now that the Defendant's statements have entered the Courts. They believe the Defendant's statements may be taken as fact and then used by others to damage the Plaintiffs' reputation and their endeavours in the future.

ANTICIPATORY DAMAGES

175) The Defendant's conduct to date provides no reason to believe that he will stop making false statements about the Defendants in the future, or will take any steps to assist the Defendants in repairing the damages done. The Plaintiffs fully anticipate that they will continue to suffer additional damages due to the Defendant's actions, particularly if he continues to mislead the Courts.

RELIEF SOUGHT BY DEFENDANTS

176) The Plaintiffs ask the Honourable Court to grant the following monetary relief for each of the Plaintiffs:

1. Damages of \$10,000.00 each;
2. Pre and Post-Judgement Interest of \$200.00 each;
3. Costs of \$250.00 each.

177) The Plaintiffs also ask the Court to grant the following non-monetary relief for each of the Plaintiffs:

1. that the Defendant be ordered to provide an unambiguous apology on OPP letterhead to each of the Plaintiffs within a time period the Court deems reasonable;
2. that the wording of the apology is to be approved by either the Court or the Plaintiffs;
3. that the Defendant provide a copy of the apology to John Oakley or his successor at AM640 Radio in Toronto with a request that he be allowed to read it live to AM640 listeners. If so, that the Defendant will so do and notify the Plaintiff of the scheduled time so that they may listen.
4. that the Defendant provide a copy of the apology to Susan Clairmont of the Hamilton Spectator and Editor with a request that the Hamilton Spectator publish it in full.
5. that the Defendant provide a copy of the apology to: Brantford Expositor; Grand River Sachem (Caledonia); Regional News (Caledonia); Canadian Press; and every other media outlet on the OPP's normal news release distribution list.
6. that the Defendant distribute copies of the apology letters to the following persons:
 - a. Premier of Ontario;
 - b. Minister of Community Safety and Correctional Services;
 - c. Minister of Aboriginal Affairs;
 - d. Attorney General of Ontario;
 - e. Mayor and Council of Haldimand County;
 - f. President of the Ontario Provincial Police Association;
 - g. Canadian Security Intelligence Service;
 - h. Royal Canadian Mounted Police;
7. that the Defendant be ordered to post both apologies on the OPP website with a clear link to it on the site's home page for a period of One (1) year.

178) The Plaintiffs ask the Court to provide a written decision with respect to this matter.