

Court file no. 172/2006

ONTARIO  
SUPERIOR COURT OF JUSTICE

BETWEEN:

DAVID BROWN, DANA CHATWELL,  
and DAX CHATWELL BY HIS LITIGATION GUARDIAN DANA CHATWELL

Plaintiff

- and -

HER MAJESTY THE QUEEN, in the RIGHT OF THE  
PROVINCE OF ONTARIO, ONTARIO PROVINCIAL POLICE COMMISSIONER  
GWEN M. BONIFACE, ONTARIO PROVINCIAL POLICE COMMISSIONER  
JULIAN FANTINO AND ONTARIO PROVINCIAL POLICE INSPECTOR  
BRIAN HAGGITH

Defendants

**FRESH AS AMENDED STATEMENT OF CLAIM**

**TO THE DEFENDANTS:**

**A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU** by the Plaintiff. The claim made against you is set out in the following pages.

**IF YOU WISH TO DEFEND THIS PROCEEDING**, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service, in this Court office, **WITHIN TWENTY DAYS** after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If

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you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

**IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.** If you wish to defend this proceeding but are unable to pay legal fees, legal aid may be available to you by contacting a local Legal Aid office.

**Date:**

**Issued by:**

**Address of**

**Court Office:**

55 Munsee St.  
Cayuga, Ontario  
N0A 1E0

**TO: HER MAJESTY THE QUEEN  
IN THE RIGHT OF THE PROVINCE OF ONTARIO  
Crown Law Office  
Civil Law  
720 Bay Street, 8<sup>th</sup> Floor  
Toronto, Ontario  
M5G 2K1**

**AND TO: ONTARIO PROVINCIAL POLICE  
COMMISSIONER GWEN M. BONIFACE  
777 Memorial Avenue  
Orillia, Ontario  
L3V 7V3**

**AND TO: ONTARIO PROVINCIAL POLICE  
COMMISSIONER JULIAN FANTINO  
777 Memorial Avenue  
Orillia, Ontario  
L3V 7V3**

**AND TO: ONTARIO PROVINCIAL POLICE  
INSPECTOR BRIAN HAGGITH  
72 Hwy 54  
Cayuga, Ontario  
N0A 1E0**

1. The Plaintiffs claim:
  - a. damages against the Ontario Provincial Police Commissioner Gwen M. Boniface ("Commissioner Boniface"), Ontario Provincial Police Commissioner Julian Fantino ("Commissioner Fantino"), and Ontario Provincial Police Inspector Brian Haggith ("Inspector Haggith") for misfeasance in a public office, negligence, false imprisonment, assault, trespass, illegal surveillance and breach of the Plaintiffs' rights under the Canadian Charter of Rights and Freedoms in the amount of \$5,000,000.00;
  - b. damages against Her Majesty The Queen in the right of Ontario (the "Crown") for private nuisance, for misfeasance in a public office of her servants and agents, and in vicarious liability for the conduct and torts committed by Commissioner Boniface, Commissioner Fantino, Inspector Haggith and the Crown's agents, servants and/or employees in the amount of \$5,000,000.00;
  - c. an interim and permanent injunction prohibiting the conduct creating the private nuisance and requiring the Crown and her Minister, the Minister of Public Infrastructure and Renewal, to immediately prevent the conduct creating the private nuisance;
  - d. damages pursuant to the *Family Law Act*, R.S.O. 1990 c. F 3, as amended;
  - e. prejudgment interest payable pursuant to s. 128 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43;
  - f. aggravated and punitive damages in the amount of \$2,000,000.00;

- g. postjudgment interest payable pursuant to s. 129 of the *Courts of Justice Act*;
- h. their costs on a substantial indemnity scale; and
- i. such further and other relief as this Honourable Court deems just.

### **Parties**

2. The Plaintiffs, David Brown and Dana Chatwell ("Brown" and "Chatwell"), are the registered legal owners in joint tenancy of property known municipally as 445 Argyle Street South, Caledonia, Ontario. Brown and Chatwell are the parents of the Plaintiff Dax Chatwell, born January 21, 1991 ("Dax"). Brown, Chatwell and Dax live in the home on the Property (the "Residence").
3. On or about January 28, 2004, in accordance with s. 10 of the *Police Services Act*, R.S.O. 1990, c. P.15, the County of Haldimand ("Haldimand County") entered into an agreement with the Minister of Community Safety and Correctional Services (the "Haldimand Police Services Agreement") under which it was agreed that police services would be provided to Haldimand County by the Ontario Provincial Police (the "O.P.P." – hereinafter O.P.P. includes O.P.P. officers) for a 5 year period.
4. Until on or about October 30, 2006, Commissioner Boniface was at all material times the Commissioner of the O.P.P. and the chief of police of the police officers providing police services to Haldimand County under the Haldimand Police Services Agreement.
5. On October 30, 2006 Julian Fantino was appointed Commissioner of the Ontario Provincial Police and became the chief of police of the police officers

providing police services to Haldimand County under the Haldimand Police Services Agreement.

6. Inspector Haggith was at all material times the Detachment Commander of the O.P.P. for the Haldimand County Detachment providing police services to Haldimand County in accordance with the Haldimand Police Services Agreement.

7. The Crown is a party pursuant to s. 5(1) of the *Proceedings Against the Crown Act*, R.S.O. 1990. c. P.27, for torts committed by its servants the Minister of Public Infrastructure Renewal, the Minister of Aboriginal Affairs, the Minister of Community Safety and Correctional Services, the Attorney General of Ontario, and Commissioners of the O.P.P. and O.P.P. officers and in respect of a breach of duties attaching to the ownership, occupation, possession or control of property as described below.

8. Pursuant to Order-In-Council 1708-2003, the powers assigned to the Solicitor General of Ontario, including those set out in the *Police Services Act*, have been transferred to the Minister of Community Safety and Correctional Services.

#### **Haldimand Police Services Agreement**

9. Pursuant to the Haldimand Police Services Agreement, the Minister of Community Safety and Correctional Services is required to provide adequate and effective police services in accordance with the needs of Haldimand County in compliance with the terms and conditions of the Haldimand Police Services Agreement for the benefit of the citizens of Haldimand County including the Plaintiffs.

10. Pursuant to the Haldimand Police Services Agreement the Ontario Provincial Police are required to provide police services to Haldimand County including the enforcement of mutually agreed upon by-laws.

11. Pursuant to the Haldimand Police Services Agreement, the O.P.P.:

a) are liable for any damages that may arise as a result of any negligent acts or omissions of members of the O.P.P. in the performance of the Haldimand Police Services Agreement;

b) must be capable of providing Provincial-level response that can be mobilized for emergencies, disaster or specialized needs; and

c) shall undertake and be responsible for ensuring that all mandatory standards of adequate and effective police services and policies as required by Ontario Regulation 3/99 under the *Police Services Act* are met and maintained.

### **The Property**

12. At the time Brown and Chatwell purchased and acquired title to the Property on or about August 1, 2005, Brown and Chatwell were aware that Douglas Creek Estates was under development and that residential housing would be developed around the Property.

13. The Property is zoned commercial. After purchasing the Property, Brown and Chatwell renovated the basement of the Residence to accommodate Chatwell's business, Shear Body Sense. Shear Body Sense was a successful hair dressing and related services business attracting customers from the Caledonia region who traveled to the Property.

14. The Property is bounded on one side by Argyle Street South, on two sides by Douglas Creek Estates, and on the fourth side by a vacant lot.

#### **Native Protestors Take Over Douglas Creek Estates**

15. On or about February 28, 2006, a group of protesters belonging to or associated with Six Nations and/or Haudenosaunee Six Nations Confederacy Council occupied a parcel of property in Caledonia that had been registered under the *Ontario Land Titles Act* R.S.O. 1990, c. L.5, as a Plan of Subdivision in the Land Registry Office for the Land Titles Division of Haldimand comprised, firstly, of Parts of Lot B and C, Range West of Plank Road, geographic township of Oneida, in Haldimand County and being Parts 2 and 3 on Reference Plan 18R-6217 and, secondly, part of Lot 18, Broken Front Concession on the Grand River, geographic Township of Oneida, in Haldimand County and being Parts 2 and 3 on Reference Plan 18R-6217 (hereinafter referred to as the "Douglas Creek Estates").

16. On February 28, 2006, the owner in fee simple with an absolute title to the Douglas Creek Estates was Henco Industries Limited ("Henco"), a corporation incorporated under the laws of the Province of Ontario.

17. As of February 28, 2006, approximately ten new homes were under construction on Douglas Creek Estates. Douglas Creek Estates is comprised of approximately 72 lots in Phase I and several other blocks reserved for future development covering approximately one square kilometre.

#### **Injunctions and Contempt Orders**

18. On or about March 3, 2006 Henco brought an application to the Superior Court of Ontario at Cayuga against the Haudenosaunee Six Nations Confederacy Council, Janie Jamieson, Dawn Smith, any agent or person acting under their

instructions, John Doe, Jane Doe and The Corporation of Haldimand County. On March 3, 2006, Justice Barry H. Matheson issued an *ex parte* Order, the effect of which was to enjoin the protestors from interfering with construction on Douglas Creek Estates and from blocking the entrances to Douglas Creek Estates. The terms of the Order were:

1. THIS COURT ORDERS an interim and interlocutory injunction restraining the Haudenosaunee Six Nations Confederacy Council ('Confederacy Council') and the individual Respondents and their servants or agents, whose identity is unknown, from interfering with the Applicant [Henco] or its employees or agents, or the Applicant's contractors or subcontractors, or their agents, use of roadways known municipally as Thistlemoor Drive and Surrey Street, formerly in the Town of Caledonia and the Township of Oneida, now known as The Corporation of Haldimand County, or from in any way obstructing these or other roadways in Douglas Creek Estates or, preventing the Applicant or its employees or agents, or the Applicant's contractors or subcontractors, or their agents, from using these or other roadways for the purpose of entering Douglas Creek Estates more particularly described in Schedule 'A' attached hereto;
2. THIS COURT FURTHER ORDERS an interim and interlocutory injunction restraining the Confederacy Council and the individual Respondents, their servants or agents, and any other person having notice of the injunction, from hindering, interfering with, intimidating, physically obstructing or otherwise impeding the operations of the Applicant or its employees or agents, or the Applicant's contractors or subcontractors, or their agents, in the performance of work relating to the construction of the Douglas Creek Estate subdivision ('the subdivision') within the area, set out at Schedule 'A', until the trial of this matter or until such time as this Honourable Court may direct;
3. THIS COURT FURTHER ORDERS that an interim mandatory Order requiring the Respondents to remove any vehicles and to tear down and remove any barricades owned, placed or maintained by them, constructed across Thistlemoor Drive and Surrey Street, the public highway and/or roadway, or any other obstruction on the public highway and/or roadway, owned and maintained by the Respondent, The Corporation of Haldimand County, preventing access to the Douglas Creek Estates;



4. THIS COURT FURTHER ORDERS that any peace officer of the Ontario Provincial Police shall, at the request of the Sheriff, accompany the Sheriff and assist in the execution of the Order, including the removal of any persons who refuse the request of the Sheriff to obey the provisions of the interlocutory Order.

19. The Sheriff delivered and served Justice Barry H. Matheson's March 3, 2006 Order on the protesters on March 5, 2006. The protesters would not accept delivery. One of the protesters burned the Order. The burning was broadcast on local television. The next day, the protesters burned Justice Barry H. Matheson's March 3, 2006 Order again.

20. On March 9, 2006, Justice T. David Marshall issued an Order making permanent the injunctions ordered by Justice Barry H. Matheson on March 3, 2006.

21. On March 17, 2006, Henco brought a Motion for contempt of Court. Protestors appeared and made submissions at the Motion. The Attorney General for Ontario and the O.P.P. were separately represented by counsel at the Motion. Following submissions by protestors, counsel for Henco, counsel for the Attorney General and counsel for the O.P.P., Justice T. David Marshall made the following Order, the effect of which was to find in contempt of court protestors participating in the occupation and blockade of Douglas Creek Estates. The Order also provided for Warrants of Committal. The terms of the Order were:

1. THIS COURT ADJUDGES that the Respondents, including unknown persons identified in the Application as John Doe and Jane Doe, with the exception of the Corporation of Haldimand County and Tom Deer, being persons present at the barricades and blocking access to Douglas Creek Estates, as described in Schedule 'A' attached to this Order (hereinafter referred to as 'the Respondents') are in contempt of the Order of Justice Matheson dated March 3, 2006;

2. THIS COURT ORDERS that the Sheriff shall:

a) Attend at Douglas Creek Estates forthwith and read aloud to any persons present the Order of Mr. Justice Matheson dated March 3, 2006 and this Order; and

b) Distribute copies of this Order to any persons present.

3. THIS COURT FURTHER ORDERS that the Respondents are hereby sentenced:

a) to 30 days imprisonment;

b) this sentence is suspended for a term of 6 months;

c) the suspension takes effect immediately after the Respondents have been fingerprinted and photographed as required by the *Identification of Criminals Act*, R.S.C. [sic] b. I-1, to be released immediately thereafter;

d) this suspended sentence is conditional for six months, upon the Respondents keeping the peace and being of good behaviour, including complying with the Orders of the Court and not returning to Douglas Creek Estates; and

e) there shall be no other terms for the release of the Respondents;

4. THIS COURT FURTHER ORDERS that Warrants of Committal shall be issued forthwith in accordance with paragraphs 1 and 3 of this Order. These Warrants are not to be executed until on or after Wednesday, March 22, 2006 at 2:00 pm.

5. THIS COURT FURTHER ORDERS that the Respondents be made aware of the consequences of failing to quit the blockade and leave Douglas Creek Estates and be asked to quit the blockade before the Warrants of Committal are executed.

6. THIS COURT FURTHER ORDERS that any persons present at Douglas Creek Estates as of and after Wednesday, March 22, 2006 at 2:00 pm in contravention of the Order of Mr. Justice Matheson dated March 3, 2006, are subject to arrest pursuant to the Warrants of Committal issued in accordance with paragraph 4 of this order;

7. THIS COURT. ORDERS that the Respondents may leave their objects or things at the site for up to 48 hours starting March 22, 2006 at 2:00 p.m., provided these objects or things are not blocking any roadway, before the Applicant is entitled to remove these objects or things. The Applicants may remove any object or thing still blocking

the lawful flow of traffic on Thistlemoor Drive, Surrey Street or any other public roadway in Douglas Creek Estates; and may also remove any objects or things present on any lands owned by the Applicant after 48 hours after March 22, 2006 at 2:00 p.m. The Applicant is not responsible for the welfare or safe keeping of the objects or things left by the Respondents;

8. THIS COURT ORDERS THAT this order imposes duties and obligations on non-parties to respect the terms of this Order, including complying with the order of Justice Matheson dated March 3, 2006 attached hereto as Schedule 'B'.

22. On March 28, 2006, the Attorney General for Ontario brought a Motion before Justice T. David Marshall. The Attorney General and the O.P.P. were separately represented by counsel at the Motion. After hearing submissions by counsel for the Attorney General for Ontario, which were supported by counsel for the O.P.P., Justice T. David Marshall amended his March 17, 2006 Order. The essential difference between Justice T. David Marshall's March 17<sup>th</sup>, 2006 Order and March 28<sup>th</sup>, 2006 Order were the provisions dealing with sentencing of persons found in contempt of court. Justice T. David Marshall's March 28, 2006 Order provided:

1. THIS COURT ADJUDGES that the Respondents, including unknown persons identified in the Application as John Doe and Jane Doe, being persons present at the barricades and blocking access to Douglas Creek Estates, as described in Schedule 'A' attached to this Order (hereinafter referred to as 'the Respondents') are in civil and criminal contempt of the Order of Justice Matheson dated March 3, 2006;

2. THIS COURT ORDERS that the Sheriff shall:

a) Attend at Douglas Creek Estates forthwith and read aloud to any persons present the Order of Mr. Justice Matheson dated March 3, 2006 and this Order, and

b) Distribute copies of this Order to any persons present.

3. THIS COURT SUSPENDS the passing of sentence and directs that the Respondents be released on the conditions prescribed in a probation

order for a term not exceeding six months, pursuant to s. 731(1) of the *Criminal Code*.

4. THIS COURT FURTHER ORDERS. THAT CONDITIONS OF THE PROBATION ORDER shall include the compulsory conditions contained in s. 732.1(2) of the *Criminal Code*.

5. THIS COURT FURTHER ORDERS THAT THE CONDITIONS OF THE PROBATION ORDER shall include the compulsory conditions contained in s. 731.1 of the *Criminal Code*:

a) Accompany the police to be fingerprinted and photographed.

b) Not attend within 100 feet of the Douglas Creek Estate site except for the purpose of normal travel on Argyle Street South.

6. THIS COURT FURTHER ORDERS THAT Warrants of Arrest shall be issued forthwith in accordance with paragraphs 1 and 3 of this Order.

7. THIS COURT FURTHER ORDERS THAT the Respondents be made aware of the consequences of failing to quit the blockade and, leave Douglas Creek Estates and be asked to quit the blockade before the Warrants of Arrest are executed.

8. THIS COURT FURTHER ORDERS THAT any persons present at Douglas Creek Estates as of and after Wednesday; March 22, 2006 at 2:00 pm in contravention of the Order of Mr. Justice Matheson dated March 3, 2006, are subject to arrest pursuant to the Warrants of Arrest issued in accordance with paragraph 6 of this order;

9. THIS COURT ORDERS THAT the Respondents may leave their objects or things at the site for up to 48 hours starting March 22, 2006 at 2:00 pm, provided these objects or things are not blocking any roadway, before the Applicant is entitled to remove these objects or things. The Applicants may remove any objects or things still blocking the lawful flow of traffic on Thistlemoor Drive, Surrey Street or any other public roadway in Douglas Creek Estates; and may also remove any objects or things present on any lands owned by the Applicant after 48 hours after March 22, 2006 at 2:00 pm. The Applicant is not responsible for the welfare or safe keeping of the objects or things left by the Respondents;

10. THIS COURT ORDERS THAT this order imposes duties and obligations on non-parties to respect the terms of this Order, including

complying with the order of Justice Matheson dated March 3, 2006, attached hereto as Schedule 'B'.

23. The Sheriff of the Superior Court of Justice at Cayuga attended at Douglas Creek Estates, served, and read out each of the Orders in accordance with the directions set out in the Orders.

24. The Plaintiffs plead that the Sheriff of the Superior Court of Justice at Cayuga requested the assistance of the O.P.P. to enforce each of the above Orders.

**Wrongful Conduct of Protestors – February 28 to April 19, 2006**

25. Between February 28, 2006 and April 19, 2006, the Plaintiffs were subjected to the following conduct by and from the protestors:

- a. repeated trespass to the Property; when the Plaintiffs requested that the O.P.P. remove the protestors from the Property, the O.P.P. refused to do so;
- b. the shining of spotlights and headlights on the Property and the Residence from Douglas Creek Estates all night long while the O.P.P., stationed in the Plaintiffs' driveway, refused to take any steps to end the protestors' conduct;
- c. loud noises from chanting, music, drums, screaming, yelling and making loud unusual verbal noises throughout the day and night and into the early hours of the morning on numerous occasions; and
- d. threats of bodily harm to the Plaintiffs and threats to take the Property from the Plaintiffs.

26. The Plaintiffs plead that the above conduct of the protestors was known to the O.P.P. and was known by the O.P.P. to be unlawful. The O.P.P. failed or refused to take any steps to prevent crimes or other offences, apprehend criminals or other offenders, or assist the Plaintiffs as victims of crime.

**O.P.P. Raid Douglas Creek Estates on April 20, 2006**

27. Between March 17, 2006 and April 20, 2006, the O.P.P. took no steps to enforce the contempt Orders of Justice T. David Marshall. During this period, the number of protesters swelled at times from a dozen protesters to hundreds and on occasion in excess of one thousand protesters on Douglas Creek Estates.

28. The O.P.P. were aware that there were hundreds and, on occasion, in excess of one thousand protesters willing to defend their possession of Douglas Creek Estates.

29. In or about the early morning of April 20, 2006, approximately 180 O.P.P. officers attended at Douglas Creek Estates to enforce Justice T. David Marshall's Order dated March 28, 2006. The O.P.P. initially arrested approximately 16 of the protestors and took possession of Douglas Creek Estates. However, as a result of the failure of the O.P.P. to attend at Douglas Creek Estates with sufficient force, resources and numbers of officers, the O.P.P. were overrun and routed by protesters who entered Douglas Creek Estates from various points of access. Within hours, the protesters had smashed police vehicles, assaulted O.P.P. officers and had driven the O.P.P. out of Douglas Creek Estates and had resumed possession and control of Douglas Creek Estates.

30. After the failed O.P.P. raid and commencing April 20, 2007, the Plaintiffs were imprisoned in the Residence on the Property and faced terrifying and threatening circumstances as further set out in paragraphs 34 and 43 below.

### **Failure of Commissioner Boniface and O.P.P. to Request Assistance**

31. The Haldimand Police Services Agreement requires the O.P.P. to be capable of providing provincial-level of response that can be mobilized for emergencies, disasters and specialized needs. Section 55 of the *Police Services Act* authorizes the Solicitor General, now the Minister of Public Infrastructure and Renewal, to make an agreement with the Crown in Right of Canada or of another Province or with any Federal or Provincial agencies including the Canadian Armed Forces for the provision of police services in an emergency.

32. In the early morning of April 20, 2006, a contingent of approximately one hundred RCMP officers was stationed at the Mount Hope Airport in Hamilton ("RCMP officers"). However, the O.P.P., Commissioner Boniface and Inspector Haggith failed to coordinate their efforts with the RCMP officers or to request the assistance of the RCMP officers on April 20, 2006 when they attempted to evict and arrest the protesters and obtain control of Douglas Creek Estates.

33. The O.P.P. and/or Commissioner Boniface and Inspector Haggith failed to require the assistance of the Canadian Forces as they were entitled to do pursuant to the *Police Services Act* and as they were required to do pursuant to the Haldimand Police Services Agreement.

### **Conduct of Protestors as a Result of O.P.P. Inaction and Failed Raid**

34. As a result of the failure of the O.P.P. to enforce the Orders of Justices Barry H. Matheson and T. David Marshall both before and after April 20, 2006, and the O.P.P.'s failure to evict the protesters and take possession and control of Douglas Creek Estates on April 20, 2006, the protesters engaged in extreme lawless conduct. The lawless conduct of the protesters and the fact that the O.P.P. were not taking necessary steps to attempt to prevent it and to protect the Plaintiffs left the Plaintiffs

living on their property in fear for their personal safety and the safety of the Property and gave substance to the threats being received by the Plaintiffs from the protestors. The extreme unlawful conduct of the protestors included:

- a. They barricaded Argyle Street South between Line 6 and the entrance to Douglas Creek Estates and prevented any public passage from running north or south;
- b. They piled tires on Argyle Street South, poured gasoline on the tires, and set fire to them;
- c. They set fire to and completely destroyed the wooden bridge on Sterling Street that passes over the CN rail line;
- d. They started a brush fire on the southern shore of the Grand River;
- e. They prevented the Haldimand County Fire Department from attending to the fires referred to in subparagraphs b., c. and d. above;
- f. They placed barricades on Highway 6 between Argyle Street South and Green Road preventing public passage from passing either north or south on Highway 6;
- g. They threw a vehicle over the barrier of the Highway 6 overpass which landed on the Highway 6 bypass;
- h. They recklessly drove ATV vehicles in a dangerous manner throughout the Douglas Creek Estates and along the Property;



i. They broke and entered into the model home owned by Henco, destroyed property belonging to Henco and carried away personal property that belonged to Henco; and

j. On May 22, 2006, control systems at the hydro transformer station located on Argyle Street South, just south of the protestors' barricade, were purposefully destroyed and set on fire by participants in the protest causing over \$1 million in damages and power failure throughout Haldimand County and Norfolk County for periods of time ranging from 3 to 48 hours. The act was recorded on security equipment installed at the site and the perpetrators were known to the O.P.P.

35. The O.P.P., and/or other senior Ministers of the Crown directing the O.P.P., made a decision not to take steps to prevent or prosecute the above lawless conduct of the protestors. The Plaintiffs' fear of the threats made by the protestors were reasonable and left the Plaintiffs subject to the unlawful, intimidating and harassing conduct of the protestors.

#### **Closure of Argyle Street South**

36. Argyle Street South is a highway that is within the jurisdiction of Haldimand County in accordance with Part III of the *Municipal Act, 2001*. Argyle Street South is old Highway 6, the main street of Caledonia, the location of most commercial enterprises in Caledonia.

37. Haldimand County has a duty to provide for the common law right of passage over the highways that are within its jurisdiction. Haldimand County can only close a highway in accordance with the provisions of Part III of the *Municipal Act, 2001*.

38. Haldimand County further has a duty to provide that the highways that are within its jurisdiction are free of nuisances and to provide adequate and effective police services to prevent crime and enforce the law. This duty was delegated by Haldimand County to the O.P.P. pursuant to the Haldimand Police Services Agreement.

39. Haldimand County requested the assistance of the Crown and the O.P.P. to re-open and ensure passage along Argyle Street South and to restore law and order to the community.

40. The O.P.P. and the Crown took no steps to ensure passage at common law through Argyle Street South from April 20, 2006 to May 24, 2006.

41. The barricades on Argyle Street South were not removed by the protesters or by the Defendants until on or about May 23, 2006.

42. From April 20, 2006 to May 23, 2006 there was no public passage allowed by the protestors upon Argyle Street South from Line 6 to the entrance of Douglas Creek Estates, a distance of approximately 700 meters. The Plaintiffs' Residence and Property was located within the barricades.

#### **Impact on Plaintiffs of Failed O.P.P. Raid**

43. Between April 20, 2006 and May 23, 2006 when the barricades were up on Argyle Street South, the Plaintiffs were subjected to the following:

- a. They were refused passage through the native barricades to leave their home or return to their home unless they presented a "passport" that had been prepared by the protesters;

- b. At times, they were denied passage through the native barricades and were unable to return home;
- c. Intimidation, harassment and threats including threats to their person and property from the protestors;
- d. Repeated threats from the protestors that "your house is next," that the protestors would burn their Residence down and that the protestors would take over their Property;
- e. Illegal searches of their vehicle and theft of vehicle contents by force by the protestors on three occasions to which the Plaintiffs were forced to submit without assistance from the O.P.P. who witnessed the incidents;
- f. Repeated trespass onto the Property by protestors;
- g. Loud noises, shouting, yelling, cries, chanting strange and unusual noises, and music as well as large bonfires on Douglas Creek Estates in the immediate vicinity of the Property including in the ditch in front of the Property during the day and into the early hours of the morning on many occasions;
- h. Spotlights and high-beam headlights shining on their house for many hours until early hours of the morning on many occasions;
- i. Emotional and psychological abuse by the protestors; and
- j. During most of the above described conduct by the protestors, the protestors were wearing camouflage and face masks or bandanas to disguise their identity.

44. Brown and Chatwell were unable to leave their Property for extended periods of time for fear that the Property would be taken over by the protesters as had been threatened and that they would lose their Property.

45. The Plaintiffs plead that the above conduct of the protesters was known to the O.P.P. and was known by the O.P.P. to be unlawful. The O.P.P. failed or refused to take any steps to prevent crimes or other offences, apprehend criminals or other offenders, or assist the Plaintiffs as victims of crime.

#### O.P.P. Duties

46. The O.P.P. have the following duties pursuant to s. 42 of the *Police Services Act*:

- a. preserving the peace;
- b. preventing crimes and other offences and providing assistance and encouragement to other persons in their prevention;
- c. assisting victims of crime;
- d. apprehending criminals and other offenders and others who may lawfully be taken into custody;
- e. laying charges and participating in prosecutions;
- f. executing warrants that are to be executed by police officers and performing related duties;
- g. performing the lawful duties that the chief of police assigns; and

- h. in the case of a municipal police force and in the case of an agreement under section 10 (agreement for provision of police services by O.P.P.), enforcing municipal by-laws.

47. The O.P.P., as the local police service pursuant to the Haldimand Police Services Agreement, are charged with the duty of preserving law and order within the community including the protection of the Plaintiffs as members of the public from those who would commit or have committed crimes.

#### **Failure of O.P.P. to Enforce the Law**

48. Many of the above-mentioned unlawful acts and breaches of the peace by the protesters were carried on in full view and in the presence of the O.P.P. The O.P.P. failed to take any steps to prevent said conduct, or to arrest perpetrators when unlawful acts were committed in the presence of the O.P.P.

49. During the period the barricades were up, the Plaintiffs lived between the native barricades in a zone in which the laws of Canada, the Province of Ontario and the bylaws of the County of Haldimand were not enforced by the O.P.P.

#### **Harm Suffered by Plaintiffs as a result of O.P.P. Inaction and Failed Raid**

50. As a result of the O.P.P.'s failure to enforce Justice T. David Marshall's Orders, the failure to arrest protesters and take possession and control of Douglas Creek Estates, and the breach of the O.P.P.'s duties under s. 42 of the *Police Services Act* and the Haldimand Police Services Agreement:

- a. The Property was the only residence located within the protestors' blockade which had no access except through the barricades;

b. Brown, Chatwell and Dax were trapped on the Property for several days and were unable to leave the Property as Argyle Street South had been blocked by the protesters North and South of the Property;

c. Brown, Chatwell and Dax were subject to the control and authority of the protesters having been told by the O.P.P. that they would not come to the assistance of Brown and Chatwell;

d. The O.P.P. failed or refused to attend at the Property to assist or protect the plaintiffs, even after several calls by the Plaintiffs to 911, the emergency service to which the O.P.P. are required to respond pursuant to their duties under the *Police Services Act* and Ontario Regulation 3-99 under the *Police Services Act*;

e. Chatwell had to close her business, Shear Body Sense, which operated out of the lower level at the Premises; and

f. Brown, Chatwell and Dax lived in fear for their personal welfare and safety as well as fear that their Property and personal belongings would be taken from them or destroyed by the protesters and suffered loss of income, mental distress and psychological harm.

51. The Plaintiffs plead that the harm suffered by the Plaintiffs and the conduct to which the Plaintiffs were subjected as described in the preceding paragraphs were foreseeable and within the reasonable contemplation of the O.P.P., Commissioner Boniface, and Inspector Haggith.

### **Failure of O.P.P. to Warn Plaintiffs**

52. The Defendants did not warn Brown and Chatwell that the O.P.P. were going to attempt to enforce Justice T. David Marshall's Orders on April 20, 2006. In fact, Chatwell called the O.P.P. several days earlier and asked that the O.P.P. advise Chatwell and Brown if the O.P.P. were to attempt to evict the protestors so that Brown and Chatwell could take steps to protect themselves and their family. The O.P.P. refused to warn of any enforcement efforts. The O.P.P. failed to provide Brown and Chatwell with an opportunity to leave the Property prior to the O.P.P. action or to prepare for the O.P.P. action.

53. The Defendants had been aware of the protest for approximately six weeks as of April 20, 2006 and were aware of the unique location of the Property and the risk of harm and damages to Brown and Chatwell of a failure by the O.P.P. to secure Douglas Creek Estates on April 20, 2006.

54. The Plaintiffs plead that the O.P.P. owed them a duty to warn them of the pending raid by the O.P.P. on the protestors. Despite request from the Plaintiffs, the O.P.P. refused to do so. The Plaintiffs plead that in the absence of such a warning, the O.P.P. were required to adequately protect the Plaintiffs from the subsequent conduct by the protestors, which resulted in harm and damages to the Plaintiffs. The Plaintiffs plead that the O.P.P. and Commissioner Boniface breached their duty to warn the Plaintiffs and their duty to protect the Plaintiffs. The breach of the duty to protect is particularly egregious where the O.P.P. refused to warn the Plaintiffs and then failed to protect the Plaintiffs from the consequences of the failure to warn.

### **Agreements Not to Enforce Orders, Prosecute or Obtain Assistance**

55. Aside from the attendance on April 20, 2006, the O.P.P. has taken no further steps to remove the protestors from Douglas Creek Estates. The Plaintiffs plead that

Commissioner Boniface, and other responsible senior agents or servants or officers of the Crown, directed that no steps be taken by the O.P.P. to remove the protestors from Douglas Creek Estates.

56. On or about April 21<sup>st</sup>, 2007, the Minister for Aboriginal Affairs for Ontario, David Ramsey, entered into an agreement with the protestors and the Haudenosaunee Six Nations Confederacy Council not to proceed further with any criminal charges arising from the raid by the O.P.P. on April 20<sup>th</sup>, 2006.

57. On May 3<sup>rd</sup>, 2006, the Minister of Community Safety and Correctional Services for Ontario, Monte Kwinter, provided a written undertaking to the protestors and the Haudenosaunee Six Nations Confederacy Council that the Crown would not ask the Federal Government to provide military support to the O.P.P. with respect to Douglas Creek Estates.

#### **Other Criminal Acts of Protestors and Failure of O.P.P. to Act**

58. Since May 22, 2006, the protestors engaged in extreme unlawful behavior. The lawless conduct of the protestors and the fact that the O.P.P. were not taking necessary steps to attempt to prevent it and to protect the Plaintiffs left the Plaintiffs living on their property in fear for their personal safety and the safety of the Property and gave substance to the threats being received by the Plaintiffs from the protestors. Since May 22, 2006, the following criminal acts, among others, have occurred:

- a. on or about May 28, 2006, Matt Walcoff, a business reporter for the Kitchener Record, was assaulted and had his digital camera stolen by protestors on municipal property outside of the Douglas Creek Estates in plain view of O.P.P. officers watching the incident;



b. on or about June 4, 2006, after the O.P.P. had refused Hydro One's request to provide policing of the Caledonia transformer station, a 20-year-old student, William Cowan, who had been hired by a private security firm to guard the transformer station, was swarmed by a number of the protestors who, smashed the security car while he was inside the vehicle, threatened him with death if he did not leave, then put gasoline on the car and entirely destroyed the vehicle;

c. at approximately 10:00 pm on June 4, 2006, David Hartless, a police officer with the Hamilton Police Services, walked outside of his house, which is located on Braemar Avenue approximately 50 feet from Douglas Creek Estates, and observed about 40 to 50 protestors threatening and harassing 3 males who had been sitting at the end of the street passively smoking cigarettes. Hartless, asked one of the female protestors what was going on and was told: "You got no business here fucking leave or I will knock you dead right now." When the protestors began physically attacking one of the males, he intervened and found himself being shoved and pushed around by other protestors who also attempted to punch him. One of the protestors had a hand-held taser and attempted to shock him with it. Only when other residents of the street came out of their houses and formed a line of defence which Hartless was able to get behind did the assault stop. The O.P.P. were called, took a report and took no further steps against the protestors;

d. on June 9, 2006, an elderly couple, Kathe Golke and Gunther Golke, of Simcoe, Ontario, stopped their car on Argyle Street South near the protestors' barricade to look into Douglas Creek Estates. The couple was followed into the nearby Canadian Tire parking lot by approximately 25 protestors who surrounded their car, would not let them leave, and taunted them with threats of death or physical harm. One protestor put his hand through the open window and others jumped on the vehicle. Mr. Golke suffered a heart attack

that required treatment at West Haldimand Memorial Hospital. This incident took place in full view of nearby O.P.P. officers;

e. on June 9, 2006, two CH TV newsmen, Ken MacKay, a reporter and Nick Garbutt, a cameraman, were assaulted by protestors when they attempted to film the incident referred to in subparagraph d. above. When they arrived at the scene, Garbutt set up his television camera approximately 50 feet away and was told by one of the O.P.P. officers at the site not to get any closer. A group of the protestors left the Golkes' car, walked past two O.P.P. officers, and demanded that Garbutt hand over his camera and film. When one of the protestors reached for the camera, Garbutt grabbed his arm. He was then spun around, thrown against the side of the CH TV van, held in a head lock and punched in the head. His camera was taken and the video tape inside was removed. Garbutt required treatment at West Haldimand General Hospital. Mr. MacKay reported that approximately 15 O.P.P. officers witnessed the assault, but took no steps to prevent it;

f. In or about the summer of 2006, two O.P.P. officers who inadvertently drove onto Line 6 were surrounded by protestors and held hostage for several hours while the O.P.P. refused to come to their assistance.

59. The O.P.P. and/or other senior Ministers of the Crown directing the O.P.P. made a decision not to take steps to prevent or prosecute the above lawless conduct of the protestors. The Plaintiffs' fear of the threats made by the protestors were reasonable and left the Plaintiffs subject to the unlawful, intimidating and harassing conduct of the protestors.

**False Imprisonment of Plaintiff David Brown by O.P.P.**

60. On or about 1:00 a.m. on the 8<sup>th</sup> day of May, 2006, Brown was returning to his residence having attended a Blue Jays baseball game in Toronto. Brown was allowed to pass through an O.P.P. barricade on Argyle Street South and then had to pass through a native barricade in order to get to the Residence. The native person at the native barricade advised Brown that he was past the "curfew". Brown was told that he could not return to his home. The Plaintiffs had not been advised of, and were not aware of, any "curfew". The curfew had apparently been arbitrarily set by native protestors at 11:00 p.m. without notice to Brown. Brown, realizing that his spouse Chatwell was at the Residence, continued through the barricade to drive to his home.

61. Approximately 15-20 native protestors followed Brown and trespassed onto the Property. One of the protestors on an ATV took a run at Brown. Brown defended himself against the protestors' attack. The native protestors forced Brown to get into their vehicle and took him to the O.P.P. at the barricades. The native protestors told the O.P.P. that Brown was disturbing the peace and trespassing and that Brown had assaulted them. The allegations of infractions by Brown were untrue. Despite the fact that the native protestors trespassed onto Brown's Property and assaulted Brown and that Brown was defending his property rights, the O.P.P. officer at the barricade roughly seized Brown and arrested him and ordered he be detained in a prison cell. The O.P.P. refused to enforce the law to protect Brown's property rights and right to safe passage to his Residence.

62. When Brown was told he was being taken to prison he protested and argued his position with the O.P.P. officer at the barricade. Other O.P.P. officers at the barricade attempted to explain Brown's position to the O.P.P. officer who ordered Brown be imprisoned. That officer became angry and stated that Brown had to be imprisoned because of the way Brown spoke to him.

63. Brown was taken to Cayuga and placed in a locked cell overnight. The O.P.P. did not charge Brown with any offences. Brown was not advised of the basis for his arrest. Brown was not advised of his rights. Brown was not offered the opportunity to call legal counsel. Brown was not allowed to make any phone calls nor to call Chatwell whom he knew to be at home surrounded by native protestors on her Property.

64. Brown was not released until 7:30 a.m. the next day. Brown states that the next day he was left to fend for himself to return to his residence, approximately 10 miles away. At the barricades, the O.P.P. refused to escort Brown back to his Property located inside the barricades.

65. Chatwell states that when she saw Brown surrounded by native persons in her own driveway, she attempted to contact the O.P.P. through a 911 call. That service declined to send anyone to assist her and advised that they would call her back. They did not. Chatwell again called 911 and was told not to call again.

66. Chatwell further states that when Brown was detained by the O.P.P., she made a request to come and pick her spouse up. That request was denied by O.P.P.

67. Brown pleads that his imprisonment by the O.P.P. constitutes a total deprivation of his liberty without lawful cause. The deprivation was against his will and constitutes the tort of false imprisonment. Brown pleads that the officer who arrested him at the barricade had no authority to do so and committed the torts of assault and battery. Brown pleads that the O.P.P. did not comply with their own policy and procedures in arresting him. Brown pleads that Commissioner Boniface and Inspector Haggith, and, pursuant to s. 5(1) of the *Proceedings Against the Crown Act*, the Crown is liable for the torts committed by the unknown O.P.P. officer and the O.P.P.

68. Brown pleads that his imprisonment was in violation of s. 9 and s. 11 of the Canadian Charter of Rights and Freedoms which grants Brown, as a Canadian citizen, the right not to be arbitrarily detained or imprisoned.

**Crown Purchases Douglas Creek Estates For \$12,300,000.00**

69. On July 4, 2006 the Province of Ontario through the Minister of Public Infrastructure and Renewal became the legal registered owner of the Douglas Creek Estates. Her Majesty the Queen in the right of Ontario, through her Minister paid Henco \$12,300,000.00 for Douglas Creek Estates.

70. On July 5<sup>th</sup>, 2006, Henco moved to dissolve the injunction granted by Justice Barry H. Matheson and made permanent by Justice T. David Marshall. The Crown supported Henco's motion to dissolve the injunction. The motion Judge refused to dissolve the injunction unconditionally and postponed its dissolution until the criminal contempt had been disposed of. On December 14<sup>th</sup>, 2006, the Court of Appeal overturned this portion of the motion Judge's Order and dissolved the injunction.

71. The Court of Appeal did not overturn the original contempt Orders which remain in force. The Court of Appeal was critical of the lack of procedural fairness afforded to persons charged with contempt among other things. The Court of Appeal did allow new contempt proceedings to be brought for breaches of the injunction between April 21<sup>st</sup> and July 4<sup>th</sup>, 2006.

72. Since the Court of Appeal's decision, neither the Attorney General of Ontario nor the O.P.P. brought any further contempt proceedings against the protestors.

**Nuisance Caused by Protestors Allowed by the Crown at Douglas Creek Estates**

73. Since July 4, 2006, the Minister of Public Infrastructure and Renewal has intentionally allowed the protestors to continue to occupy Douglas Creek Estates. The protestors are the only persons who are on Douglas Creek Estates.

74. Since July 4, 2006, repeatedly and on a continuing basis during the day and night:

a. loud noises emanate from Douglas Creek Estates in close proximity to the Property at all hours of the day and night, including gunfire, shouting, yelling, cursing, chanting, strange and unusual verbal noises, heavy machinery, explosions, unmuffled ATVs, firecrackers, racing of vehicles, music and drum beating;

b. smoke, ashes and sparks blow onto the Property from open fires on Douglas Creek Estates in violation of the municipal by-laws, covering the Residence with ashes and causing the Plaintiffs to fear that fires will spread and burn down the Residence;

c. the protestors have not allowed the municipal Fire Department, the O.P.P. or the Ontario Fire Marshall to attend to investigate the fires;

d. the protestors have illegally constructed a stone road immediately behind the Property and drive all manner of vehicles recklessly and at excessive speed on the road;

e. the protestors have constructed a bunker, both above ground and under ground, behind the Property from which they watch and videotape the Plaintiffs;

f. when the Plaintiffs go onto the rear deck of the Residence or are outside on their Property, they are beset by protestors who harass, threaten, intimidate and abuse the Plaintiffs and prevent the Plaintiffs from using or enjoying their Property;

g. the protestors in large numbers line up along the boundary between Douglas Creek Estates and the Property and:

(i) verbally assault the Plaintiffs making derogatory and racial comments and threatening the Plaintiffs with physical harm;

(ii) throw rocks and other objects onto the Property causing damage to the Property;

(iii) play loud music and shine lights on the Plaintiffs residence into the night; and

(iv) hide in the bushes and chant, yell, shout, curse, threaten the Plaintiffs, and make strange and unusual sounds in loud voices.

h. the protestors have raced ATVs and other vehicles at high speeds immediately behind the property and throughout Douglas Creek Estates;

i. the protestors regularly appear in camouflage attire, with bandanas covering their faces and carry bats or other large objects and gather in large numbers on the edge of the Property in a threatening manner including threatening the Plaintiffs and their Property;

j. the protestors have repeatedly threatened the Plaintiffs with bodily harm, threatened to burn down the Plaintiffs' Residence and take over the Property;

- k. the protestors have shot firecrackers at the Residence;
- l. bright security lights have been erected along the perimeter of Douglas Creek Estates which are on at all times disrupting sleep;
- m. protesters have repeatedly trespassed onto the Property from Douglas Creek Estates and:
  - (i) stepped out from behind evergreen trees to frighten and terrorize the Plaintiffs when they are on their own Property;
  - (ii) peered in through the windows of the Residence at night;
  - (iii) knocked on the windows and doors of the Plaintiffs' residence all through the night;
  - (iv) driven vehicles onto the Plaintiff's Property and shone the headlights of the vehicles on the Residence and blared loud music until the early hours of the morning;
  - (v) driven ATV's over the Plaintiffs' Property;
  - (vi) vandalized the exterior of the Property including but not limited to the Plaintiffs' wooden deck, satellite dish and Canadian flag and flagpole; and
  - (vii) deflated the tires on the Plaintiffs' vehicle and tampered with the vehicle so it would not start.



### O.P.P. Breach of Duties

75. The Plaintiffs plead that the above conduct of the protestors was known to the O.P.P. and was known by the O.P.P. to be unlawful. The O.P.P. failed or refused to take any steps to prevent crimes or other offences, apprehend criminals or other offenders, or assist the Plaintiffs as victims of crime.

76. The Plaintiffs have reported the above conduct to the O.P.P. on numerous occasions. On numerous occasions the O.P.P. witnessed the conduct described in the immediately preceding paragraphs but have failed to:

- a. prevent crimes and other offences;
- b. assist the Plaintiffs as victims of crimes;
- c. apprehend criminals and other offenders;
- d. protect the Plaintiffs; and
- e. lay charges and participate in prosecution of offenders.

77. On numerous occasions since July 4, 2006, the Plaintiffs have called 911 to obtain the assistance of the O.P.P. to remove protestors who were trespassing on their property and to prevent the harassing, intimidating, and criminal conduct described in paragraph 74 above. However, the O.P.P. have either refused to attend at the property at all, or have attended at the property but have failed or refused to provide any assistance to the Plaintiffs and perform their duties under the *Police Services Act*, or failed to respond in a timely and effective manner leaving the Plaintiffs without assistance for hours on end.

78. The O.P.P. have failed to come to the assistance of and to protect the Plaintiffs on numerous occasions. For example, on June 28, 2007, O.P.P. officer David McLean was stationed in the vicinity of Douglas Creek Estates. At approximately 10:30 p.m. McLean called Chatwell to advise her that he was concerned for her safety and that she should leave the Residence. Chatwell was home alone at the time.

Chatwell asked McLean if it had anything to do with the reported sighting of a protestor on Line 6 who was walking carrying fire-arms. McLean confirmed that was the reason for his call. However, although McLean and other O.P.P. officers were stationed less than 500 metres from Chatwell's Residence, no O.P.P. officers attended at her Residence to ensure her safe evacuation from the Residence.

**Brown's Employment Terminated as a Result of Harm Suffered**

79. As of February 28, 2006, Brown had been employed with Nicholson and Cates Limited Forest Products for approximately seven years. Brown had an exemplary record as an employee with Nicholson and Cates. Brown regularly received bonuses for his performance and worked overtime hours. Brown was dedicated to his employment and was respected and well-liked by his employer, supervisors and co-workers.

80. As a result of the establishment of the native barricades between April 20, 2006 and May 23, 2006, Brown was delayed and late for work on many occasions and had to leave work early on many occasions.

81. As a result of the conduct of the protestors detailed above, the failure of the O.P.P. to perform their duties pursuant to s. 42 of the *Police Services Act*, the O.P.P.'s failure to protect the Plaintiffs, and the false imprisonment of Brown, Brown suffered mental distress and psychological harm as pleaded above. As a result, Brown began experiencing problems at work. His personality changed. He began being late for work and missing days of work. Brown began to be belligerent and insubordinate to his supervisors. As a result, Brown's employment was terminated by Nicholson and Cates on July 24<sup>th</sup>, 2006.

### Plaintiff's Residence Ransacked

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

83. The Plaintiffs left their residence on December 16, 2006, the day of McHale's protest. The O.P.P. were on the Property during McHale's protest. McHale and others entered onto the Property to come face to face with native protestors who were surrounding the Property where it bordered Douglas Creek Estates.

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

85. In the evening of December 16, 2006, after McHale's protest was over, Brown and Chatwell returned to the Property. As soon as they returned to the Property, native protestors surrounded the Property shouting racial insults and threats of bodily harm and harm to the Plaintiffs' property. Brown and Chatwell left the Property to visit at a friend's house.

86. Plaintiffs Brown and Chatwell returned to the Property at approximately 1:30 a.m. on December 17, 2006 to find that the Residence had been broken into and ransacked. Electronics and computer equipment were smashed, racist and vulgar

comments were painted on the walls, furniture was broken and overturned. Brown and Chatwell reported the incident to the O.P.P.

87. During subsequent investigations of the break and enter, the O.P.P. conducted extensive interrogations of Chatwell and Brown and made significant inquiry as to whether Chatwell and Brown ransacked their own home. Interrogations of Brown and Chatwell lasted several hours.

#### Illegal Surveillance of Interior of Plaintiffs' Residence

88. After the break-in and the ransacking of the Plaintiffs' Residence, the O.P.P. suggested to the Plaintiffs that the O.P.P. would install a security system including an alarm and motion lights with surveillance cameras inside the lights. Brown specifically required that cameras would only be installed outside the Residence and not inside. The O.P.P. expressly confirmed that no cameras would be installed inside the Residence, only outside. Brown was present when the lights with the hidden camera were purportedly installed outside the Residence. Brown was told the motion lights installed at the rear of his residence contained a surveillance camera. The security system was installed on or about December 21, 2006.

89. Brown and Chatwell were leaving on holidays on December 26, 2006 to return on January 9, 2007. The O.P.P. refused to allow persons of the Plaintiffs' choice to stay at the Residence to protect the Residence. The O.P.P. would allow only one individual, Chatwell's uncle, to attend to check on the Residence.

90. At the request of the O.P.P., Brown and Chatwell provided the O.P.P. with a key to the Residence on the condition that the O.P.P. would only use the key should it be absolutely necessary in the event of an emergency at the Residence. The O.P.P. also had the pass code to the newly installed alarm system.

91. On the morning of January 12, 2007, Brown received a telephone call from Detective Sergeant Dave Hillman ("Hillman") of the O.P.P. in Cayuga. Hillman told Brown that the O.P.P. had heard that Brown and Chatwell were going to be selling the Property and that he had to come over to the Residence to show Brown where a camera was installed in the basement of the Residence. Hillman had been advised by the O.P.P. headquarters in Orillia that a hidden camera was installed in the basement without the Plaintiffs' knowledge or consent.

92. After receiving Hillman's call, Brown discovered that, contrary to the explicit representations of the O.P.P., the O.P.P. had installed a hidden surveillance camera in the kitchen in the Residence. The camera was focused primarily on the kitchen table. At the time of the discovery of the surveillance camera, Brown was meeting a real estate agent in order to list the Property for sale.

93. Upon his attendance at the Residence, Hillman could find no camera in the basement. Brown advised Hillman that they had already found the camera and that it was upstairs. Hillman was visibly upset and showed Brown his notes which stated that the camera was installed in the basement.

94. Upon discovering the camera, Brown telephoned Haldimand Mayor, Marie Trainer, to advise her that a camera had been installed inside his house by the O.P.P. Brown advised Hillman that he called Trainer. Shortly after Hillman left the Property, Trainer called Brown and advised that she had received a called from an O.P.P. Sergeant and was told not to discuss the camera with anyone.

95. The Plaintiffs plead that the conduct of the O.P.P. sergeant was outside the scope of his statutory authority and in breach of the officer's statutory duties under the *Police Services Act* and was deliberate an unlawful conduct in that officer's capacity as a public officer in the exercise of his public function.

**Trespass and Unreasonable Search**

96. The Plaintiffs plead that the installation of the illegal surveillance camera in the kitchen of the Residence, contrary to the express representation of the O.P.P., was a voluntary entry upon the Property and Residence. The Plaintiffs plead that the voluntary placing of an object (the surveillance camera) in the Residence by the O.P.P. was without lawful justification and constitutes trespass to property.

97. The Plaintiffs plead that installation of the surveillance camera in the kitchen of the Residence is a violation of the Plaintiffs' right to be secure against unreasonable search or seizure pursuant to s. 8 of the Canadian Charter of Rights and Freedoms.

**Private Nuisance**

98. The Ministry of Public Infrastructure and Renewal's use of Douglas Creek Estates in allowing the protestors to occupy the site and engage in unlawful conduct as pleaded in paragraph 74, interferes with the use and enjoyment of Brown and Chatwell's Property. In all the circumstances, the interference caused by the use of Douglas Creek Estates is unreasonable. The Plaintiffs plead that there is no social utility in allowing the occupants of Douglas Creek Estates to engage in criminal acts and other unlawful acts on and from Douglas Creek Estates. The invasion of Brown and Chatwell's Property is substantial and serious. The Plaintiffs plead that the nuisance originates from Douglas Creek Estates. The Crown is liable pursuant to s. 5(1)(c) of the proceedings against the *Crown Act* for the nuisance.

**Duty of Care Owed by O.P.P., Commissioners Boniface and Fantino, and Inspector Haggith**

99. The Plaintiffs plead that the O.P.P., Commissioners Boniface and Fantino, and Inspector Haggith owed them a duty of care. The Plaintiffs plead that there is a sufficiently close relationship between the Plaintiffs and the O.P.P., Commissioners Boniface and Fantino, and Inspector Haggith that in the reasonable contemplation of the O.P.P., Commissioners Boniface and Fantino, and Inspector Haggith, carelessness on their part was likely to cause damage to the Plaintiffs. The facts which support the duty of care are:

- i) the O.P.P., Commissioner Boniface and Inspector Haggith were aware from shortly after February 28<sup>th</sup>, 2006, when the native protestors took possession and control of Douglas Creek Estates, of the unique location of the Property in relation to Douglas Creek Estates and that the Plaintiffs lived in the Residence;
- ii) the O.P.P., Commissioner Boniface and Inspector Haggith were aware between April 20<sup>th</sup>, 2006 and May 23<sup>rd</sup>, 2006 that the Property and Residence were located within the boundaries of the native barricades of Argyle Street South and that the Plaintiffs had no access to the Property and the Residence except through the native blockades;
- iii) the O.P.P., Commissioner Boniface and Inspector Haggith were directly aware of the risk to personal safety and safety of their property experienced by the Plaintiffs;
- iv) the O.P.P. personally witnessed, and Commissioner Boniface and Inspector Haggith were aware of through the O.P.P., numerous

unlawful acts committed by the protestors directed against the Plaintiffs and their property including:

1. threats of bodily harm;
  2. threats to burn down the Plaintiff's Residence;
  3. theft of the Plaintiffs' property;
  4. intimidation and harassment;
  5. large bonfires burning in close proximity to the Plaintiffs' Residence;
  6. trespass onto the Plaintiffs' Property;
  7. the unlawful detention of Brown and Chatwell and theft of property from Brown and Chatwell's vehicle;
- v) on numerous occasions the Plaintiffs called 911 for assistance from the O.P.P.; and
- vi) the Plaintiffs directly advised the O.P.P. of their situation and circumstances and the conduct of the protestors to which they have been subjected.

**O.P.P. Breached Duty**

100. The Plaintiffs plead that the O.P.P. breached its duty to the Plaintiffs. The O.P.P.:



- a. failed to carry out the duties of police officers in contravention of s. 42 of the *Police Services Act*;
- b. failed to preserve the peace;
- c. failed to apprehend criminals and other offenders and others who may lawfully be taken into custody;
- d. failed to carry out the contempt orders of the Court,
- e. failed to execute the Warrants of Committal issued by Justice T. David Marshall in his Order of March 17, 2006;
- f. failed to execute Warrants of Arrest in accordance with paragraph 8 of the Order of Justice T. David Marshall dated March 28, 2006;
- g. failed to prevent crimes and other offences, including:
  - (i) violations of suspended sentences and probation orders by protestors who returned to the Douglas Creek Estates following their arrest under the Orders of Justice T. David Marshall dated March 17 and March 28, 2006;
  - (ii) acts of break and entry and damage to Property;
  - (iii) acts of public mischief by protestors including throwing a vehicle over the Highway 6 bypass damaging both the bridge and the municipal road below;

(iv) acts of arson that have taken place, such as the burning of the Sterling St. bridge;

(v) threats of physical violence against the Plaintiffs;

(vi) threats of violence and criminal conduct against the property of the Plaintiffs;

(vii) intimidation and harassment of the Plaintiffs;

(viii) theft of the Plaintiffs' property including contents of the Plaintiffs vehicles and flags on the Plaintiffs property;

(ix) trespass onto the Property by protestors;

h. failed to apprehend the individuals responsible for the above conduct, particularly where the O.P.P. were aware of those individuals;

i. failed to provide passage over Argyle Street South, as they are required to do as constables under common law; and

j. failed to properly protect the Plaintiffs.

101. In further breach of the duty resulting in damages to the Plaintiffs, the police officers of the O.P.P. have failed to provide police services in accordance with the Haldimand Police Services Agreement, specifically they:

a. failed to provide adequate and effective police services;

b. failed to enforce the mutually agreed upon bylaws of the County of Haldimand;

c. were not capable of providing a provincial level of response mobilized for emergencies or special needs; and

d. failed to ensure that all mandatory standards of adequate and effective police services as required by Ontario Regulation 3/99 under the *Police Services Act* were met and maintained.

102. In further breach of the duty, the O.P.P. decided not to enforce the laws of Canada, the Province of Ontario and the County of Haldimand on Douglas Creek Estates and the Property and surrounding areas against native persons. The Plaintiffs plead that the O.P.P. have not exercised their discretion but have abdicated their responsibilities and duties and have simply complied with the direction of politicians, of native protestors and of the Haudenosaunee Six Nations Confederacy Council or other native groups.

103. The damages suffered by the Plaintiffs were a direct and foreseeable consequence of the failure on the part of the O.P.P. to carry out their duties pursuant to the *Police Services Act*.

#### **Breach of Duty by Police Commissioners and Inspector Haggith**

104. Pursuant to s. 41 of the *Police Services Act*, Commissioner Boniface and Commissioner Fantino owe a duty to the Plaintiffs to ensure that the police officers of the O.P.P. carry out their duties in accordance with the *Police Services Act*.

105. Commissioners Boniface and Fantino have breached their duty by:

- a. knowingly allowing police officers under their authority to violate their *Police Services Act* duties;
- b. making a policy decision not to enforce the laws of Canada, the Province of Ontario and the county of Haldimand on Douglas Creek Estates and on the Property of the Plaintiffs;
- c. instructing officers of the O.P.P. not to make any arrests of protestors without prior authorization from O.P.P. headquarters in Orillia;
- d. upon making a decision to attempt to enforce the Orders of Justice T. David Marshall and Justice Barry H. Matheson, Commissioner Boniface failed to ensure that the O.P.P. entered onto Douglas Creek Estates with sufficient force and resources to ensure their success and ensure the safety of the Plaintiffs and the Plaintiffs' Property and failed to ensure the O.P.P. had the assistance of the RCMP and of the Canadian Armed Forces;
- e. failing to adequately investigate the circumstances at Douglas Creek Estates, consult internally with the O.P.P. or with the RCMP and the Canadian Armed Forces in planning for and implementing the offensive at Douglas Creek Estates on April 20<sup>th</sup>, 2006;
- f. Commissioner Boniface willfully frustrating the Orders of Justice Barry H. Matheson and Justice T. David Marshall in determining, and stating to the representative of the Premier of Ontario, that the protestors would not be forcibly removed from the Douglas Creek Estates in any circumstance;
- g. acquiescing in a commitment by the Minister of Aboriginal Affairs for Ontario not to prosecute the protestors for any criminal offences;

h. instructing the Defendant, Inspector Haggith, to refrain from enforcing the Orders of Justice Barry H. Matheson and Justice T. David Marshall;

i. carrying out their duties in a manner that ignores the needs of the community of Haldimand County and the Plaintiffs, specifically, restricting the police officers under their jurisdiction from carrying out their duties for fear the exercise of their duties in Haldimand County may, hypothetically, promote breaches of the peace in communities outside of Haldimand County;

j. preferring the interests and "rights" of the native protestors engaged in unlawful conduct to the lawful rights of the Plaintiffs; and

k. failing to properly protect the Plaintiffs.

106. The Plaintiffs plead that if any of the above decisions of Commissioners Boniface and Fantino and the O.P.P. are policy decisions, then those policy decisions are outside the scope of the authority of Commissioners Boniface and Fantino and are grossly negligent, arbitrary, and unreasonable.

107. Inspector Haggith owes a duty to the Plaintiffs to ensure that the police officers of the local detachment of the O.P.P. carry out their duties in accordance with the *Police Services Act*.

108. The Plaintiffs plead that the Inspector Haggith have not exercised their discretion but have abdicated their responsibilities and duties and have simply complied with the direction of politicians, of native protestors and of the Haudenosaunee Six Nations Confederacy Council or other native groups.

109. Inspector Haggith has breached his duty by:

- a. failing to oversee the Cayuga Detachment of the O.P.P. in accordance with the needs of the community of Haldimand County;
- b. knowingly allowing police officers under his authority to violate their duties under s.42 of the *Police Services Act*;
- c. making a policy decision not to enforce the laws of Canada, the Province of Ontario and the county of Haldimand on Douglas Creek Estates and on the Property of the Plaintiffs;
- d. upon making a decision to attempt to enforce the Orders of Justice T. David Marshall and Justice Barry H. Matheson, failing to ensure that the O.P.P. entered onto Douglas Creek Estates with sufficient force and resources to ensure their success and ensure the safety of the Plaintiffs and the Plaintiffs' Property and failed to ensure the O.P.P. had the assistance of the RCMP and of the Canadian Armed Forces;
- e. failing to adequately investigate the circumstances at Douglas Creek Estates, consult internally with the O.P.P. or with the RCMP and the Canadian Armed Forces in planning for and implementing the offensive at Douglas Creek Estates on April 20<sup>th</sup>, 2006;
- f. acquiescing in the frustration of the Orders of Justice Barry H. Matheson and Justice T. David Marshall by the Defendant, Commissioner Boniface, by ensuring that the protestors would not be forcibly removed from the Douglas Creek Estates;
- g. acquiescing in a commitment by the Minister of Aboriginal Affairs for Ontario not to prosecute the protestors for any criminal offences;

h. preferring the interests and "rights" of the native protestors engaged in unlawful conduct to the lawful rights of the Plaintiffs; and

i. failing to properly protect the Plaintiffs.

110. The Plaintiffs plead that, if any of the above decisions of Inspector Haggith are policy decisions, then those policy decisions are outside the scope of the authority of Inspector Haggith and are grossly negligent, arbitrary and unreasonable.

111. The Plaintiffs plead that the O.P.P., Commissioners Boniface and Fantino, and Inspector Haggith negligently failed to comply with their own internal policies and standards and directives.

112. Commissioner Boniface and Inspector Haggith both would have known, or ought to have foreseen, that the failure on their part to carry out their duties would cause financial harm to the Plaintiffs, including but not limited to diminution of property value, business loss, mental distress and psychological harm.

### **Misfeasance in Public Office**

113. The agreement by the Minister of Aboriginal Affairs made with the native protestors and the Haudenosaunee Six Nations Confederacy and Council on or about April 21, 2006, not to proceed any further with any criminal charges arising from the raid by the O.P.P. on April 20, 2006 is outside of his authority and improperly interferes with the lawful duties of police officers of the O.P.P., the duties of Commissioner Boniface, Commissioner Fantino, and Inspector Haggith and the duties and obligations of the Attorney General of Ontario and constitutes misfeasance in public office.

114. The Plaintiffs plead that the agreement made by the Minister of Aboriginal Affairs was made with the knowledge and acquiescence of the Attorney General of Ontario and that such acquiescence constitutes a violation of s. 5(b) of the *Ministry of the Attorney General Act*, R.S.O. 1990, c. M.17, as an administration of public affairs that is contrary to law and constitutes misfeasance in public office.

115. Under s. 3(2) of the *Police Services Act*, the Solicitor General for Ontario, now the Minister of Community Safety and Correctional Services, has a duty to ensure that adequate and effective police services are provided at the municipal and provincial levels. The Minister has failed to ensure that the O.P.P. has sufficient police services to carry out the following:

- a. the enforcement of the Orders of Justice Barry H. Matheson dated March 3, 2006 and the Orders of Justice T. David Marshall dated March 9, 17 and 28, 2006;
- b. to ensure that Argyle Street South was free of nuisance and open for passage; and
- c. protect the Plaintiffs.

116. The written undertaking given by the Minister of Community Safety and Correctional Services to the native protestors and the Haudenosaunee Six Nations Confederacy and Council on May 3, 2006 not to ask the federal government to provide military support to the O.P.P. at Douglas Creek Estates was in excess of his authority as Minister of Community Safety and Correctional Services and was a wrongful interference with the lawful duties of Commissioners Boniface and Fantino and Inspector Haggith and constitutes misfeasance in public office.



117. The Minister of Aboriginal Affairs, the Minister of Community Safety and Correctional Services and the Attorney General must carry out their duties within the authority provided to them by their governing legislation.

118. The Plaintiffs plead that the O.P.P., Commissioners Boniface and Fantino, and Inspector Haggith have not exercised their discretion but have abdicated their responsibilities and duties and have simply complied with the direction of politicians, of native protestors and of the Haudenosaunee Six Nations Confederacy Council or other native groups.

119. The Minister of Community Safety and Correctional Services, the Minister of Aboriginal Affairs, the Attorney General, and the O.P.P. engaged in a course of conduct which actively protected and condoned unlawful and criminal conduct and activity of the protestors and failed to protect the rights of the Plaintiffs as citizens of Canada, Ontario and Haldimand County, denying the Plaintiffs the equal protection that they are entitled to under the law in a free and democratic society. Said conduct constitutes misfeasance in public office.

120. The installation of the surveillance camera in the kitchen of the Residence, the deliberate misrepresentation with respect to the installation of surveillance cameras by the O.P.P., and the O.P.P. misleading the Plaintiffs in order to obtain the Plaintiffs' keys to the Residence constitute an abuse of public office and misfeasance in public office by the O.P.P.

121. The conduct of Commissioner Boniface, Commissioner Fantino, Inspector Haggith, the Minister of Aboriginal Affairs, the Minister of Community Safety and Correctional Services, the Attorney General, and the O.P.P. as pleaded herein was deliberate conduct in their capacity as public officers which was known to them to be inconsistent with the obligations of their office and which constituted a breach of statutory provisions for improper purposes or motives. The improper purposes or

motives include political gain, designing and implementing plans for police work which protects unlawful conduct, a desire to see the Plaintiffs removed from the area of Douglas Creek Estates, and because the Plaintiffs refused to comply with the desires and wishes of the said public officers, among other things.

122. Commissioner Boniface, Commissioner Fantino, Inspector Haggith, the Minister of Aboriginal Affairs, the Minister of Community Safety and Correctional Services, and the Attorney General and the officers of the O.P.P. were aware that their conduct was likely to harm the Plaintiffs. They acted with conscious disregard for the Plaintiffs and their conduct contributed to the damages suffered by the Plaintiffs.

123. Pursuant to the *Proceedings Against the Crown Act*, Her Majesty the Queen in Right of Ontario is liable for the torts committed by her servants and agents as described herein.

### Damages

124. The occupation by the protestors of Douglas Creek Estates has received wide local and national coverage since the beginning of the occupation on February 28, 2006.

125. The prolonged occupation by the protestors, which has been allowed by the Defendants in contravention of their respective duties, has created an impression among prospective purchasers of property in Caledonia and the surrounding area that Caledonia is not a safe community.

126. As a result of the public nuisance, for which the owner of Douglas Creek Estates, the Minister of Infrastructure and Renewal is responsible, and as a result of the negligence of the O.P.P., Commissioners Boniface and Fantino and Inspector Haggith, the false imprisonment and assault and battery of Brown, the trespass and

illegal surveillance, and as a result of the misfeasance in public office of the Minister of Infrastructure and Renewal, Commissioners Boniface and Fantino, Inspector Haggith, the Minister of Aboriginal Affairs, the Minister of Community Safety and Correctional Services, and the Attorney General for Ontario, the Plaintiffs have suffered the following damages:

- a. they have been denied the protection to which they are entitled under the law;
- b. the minor Plaintiff Dax had to live away from his home and his family for extended periods of time;
- c. the minor Plaintiff Dax was unable to complete the last month of school in his grade nine year (2006) and his performance declined;
- d. Chatwell had to close down her business and suffered a loss of business income;
- e. Brown's employment was terminated and he had suffered a loss of income;
- f. all of the Plaintiffs have endured days and nights living in fear for their lives, their safety, their property, fear of home invasion and violence, and have lived under siege without the protection of the law, through the O.P.P., to which every Canadian citizen and resident is entitled;
- g. loss of a sense of security;
- h. nights and weeks of sleeplessness;

- i. numerous nights having to sleep in the homes of friends and relatives on short notice to avoid the conflict and the danger posed by the protestors at Douglas Creek Estates;
- j. a loss of guidance, care and companionship from each other;
- k. Brown and Chatwell's 12-year relationship has deteriorated and may not be able to sustain the stress they have endured;
- l. the Plaintiffs' insurer has advised them that they will no longer insure the Residence in the event of fire caused by terrorist acts;
- m. mental distress;
- n. psychological harm,
- o. anger and anxiety;
- p. depression;
- q. post-traumatic stress;
- r. loss of enjoyment of life;
- s. a loss of use and quiet enjoyment of their Property;
- t. a devaluation of the Property;
- u. Brown and Chatwell have been unable to sell their Property at Fair Market Value;

v. pain and suffering;

w. general damages;

x. special damages, the full particulars of which will be provided prior to trial;  
and

y. damages pursuant to s. 24(1) of the Canadian Charter of Rights and Freedoms.

127. The Plaintiffs plead that the conduct of the Defendants and of the senior servants and the agents of Her Majesty the Queen as pleaded herein was high-handed, outrageous, egregious conduct carried on with wanton disregard for the rights of the Plaintiffs and potential and actual harm to the Plaintiffs justifying an award of aggravated and punitive damages against the Defendants.

128. The Plaintiffs plead and rely upon the *Negligence Act* R.S.O. 1990, c. N.1, the *Police Services Act*, the *Family Law Act*, the *Proceedings Against the Crown Act*, and the Canadian Charter of Rights and Freedoms.

July 18, 2007.

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Court File No. 172/2006

DAVID BROWN and DANA CHATWELL et al v. HER MAJESTY THE QUEEN et al

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceedings commenced at  
Cayuga, Ontario

**FRESH AS AMENDED  
STATEMENT OF CLAIM**

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