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PAGES (including cover sheet): 21 DATE: February 8, 2010

TO: Mr. John W. Findlay FAX #: 905-526-8696

Mr. Orlando V. Da Silva 1-416-326-4181

Ms. Connie Vernon 1-416-326-4181

FROM: Margaret Graham, Assistant to Justice Crane

RE: KRP Enterprises Inc. et al. v. Ontario Provincial Police Commissioner et al.

Comments:

Attached is the Reasons for Judgment of the Honourable Mr. Justice D.S. Crane, released today.

CITATION: KRP Enterprises Inc. v. Ontario Provincial Police Commissioner, 2010 ONSC 901
COURT FILE NO.: 114/2006-CP
DATE: 2010-02-08

ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N:	
KRP ENTERPRISES INC. and 1643078 ONTARIO INC., KEVIN CLARK, ESTA CLARK, CHRISTINA ACCIACCAFERRO, JEFFREY ACCIACCAFERRO, STEVE TONG, LORI TONG, RUSSELL KAVANAGH, MICHELLE KAVANAGH, PAUL DURCEK, STEFANY DURCEK, QUINTIN CHAUSSE, DONNA CHAUSSE, ANNE MARIE VANSICKLE, JAMES PAUL VANSICKLE, J.P. WOOLLEY SURVEYING LTD. and MARGARET COOK	John W. Findlay, for the Plaintiffs
Plaintiffs	
- and -	
ONTARIO PROVINCIAL POLICE COMMISSIONER GWEN M. BONIFACE, ONTARIO PROVINCIAL POLICE INSPECTOR BRIAN HAGGITH and HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO	Orlando Da Silva and Connie Vernon, for the Defendants
Defendants	
	HEARD: 18 November, 2009 (reserved)

CRANE J.

PRESENT PROCEEDINGS

[1] The motion for certification on the requirement of section 5.5(1)(a) of the Class Proceedings Act, 1992 (CPA), was heard as a corollary to the Rule 21 motion brought by the Crown for an order dismissing the action on the basis that the Statement of Claim does not disclose a cause of action. The defendants' motion was dismissed upon written reasons released on 21 December, 2007. Those reasons found that section 5.5(1)(a) of the CPA was satisfied in the context of the early stage of the litigation proceedings. In particular, reference may be had to the concluding section of those reasons under Continuing Proceedings commencing at paragraph 34.

[2] The present continuation of the certification motion is at essentially the same early stage of litigation proceedings as of December 2007, notwithstanding that there has been two years to return the motion to court. The defendants have not pleaded therefore the motion request within this proceeding to deliver a Fresh As Amended Statement of Claim, dated March 27, 2009 is granted as a formality, given that the present motion argued on 18 November, 2009 was with reference to this pleading.

A CAUSE OF ACTION PLEADED

[3] It follows that the onus on the plaintiffs under section 5.5(1)(a) is satisfied for the purposes of the present motion.

IDENTIFABLE CLASSES

[4] Counsel for the plaintiffs conceded that the proposed class definitions with the words "persons affected by" did not meet the certainty requirements for class definition. During the hearing of 18 November, 2009, counsel filed a proposed amendment to the plaintiffs' notice of motion which substituted the words "suffered an economic loss as a result":

[5] This action is a systemic tort action. The claims are common to all persons residing or carrying on business at specific places at specific times, see for example *Hollick*, infra. The proposed amendments are unnecessary, creating only uncertainty.

The business class:

[6] The Fresh As Amended Statement of Claim names persons proposed as plaintiffs for each of the submitted four subclasses. The representatives of the Caledonia business class remain as the plaintiffs from the original Statement of Claim. Each of these proposed plaintiffs has filed a Consent to Act and an Affidavit of the events or circumstances occasioning their respective claims to be made in this action. Mr. Richard Pert and Mr. Christopher Leonard, the Presidents of the named corporation plaintiffs under the business claim is each the chief officer of the plaintiff corporations, each deposes to loss of revenues and profits not otherwise compensated, due, as as they allege to the closure and blockade of Argyle Street, from 20 April, 2006 to the reopening for traffic on 24 May, 2006. Each affiant deposes to direct economic loss due to the cessation of electric services during the two day period commencing on 22 May, 2006 by the shutdown of the Hydro One Caledonia transformer station.

The property occupiers class:

[7] The Fresh As Amended Statement of Claim proposes seven married couples, each couple occupying residential property in the proposed geographic area for this class from the period from 28 February, 2006 to date. An affidavit has been submitted on this motion from one of each of the aforesaid couples. Each affiant deposes to repeated threats, harassment and intimidation together with nuisances of "loud noises, including drums, shouts and yelling, gun shots and blaring music at all hours of the day". Some of the affiants have deposed to direct threats of death, others to the posting of signs with the resident named. Others have deposed that they received direct threats that their homes would be burned down. Some have deposed to personal physical assault. These issues are stated to have originated from the Douglas Creek Estates by persons they identify as occupants of that property. Each affiant deposes to the continuing behaviour of complaint, by the same group of persons. There is further affidavit evidence that the affiants and their families have been accosted by protesters "dressed in camouflage, wearing face masks and carrying weapons such as bats and pieces of wood". Some of the affiants have stated that they have been subject to road blocks restricting access to and from their homes. The evidence is of a continuing nature with complaints and requests to the police, with no effective response.

[8] In summary, I am satisfied that the proposed plaintiffs for this class will fairly represent the claims of all within it. They meet the requirements of section 5(1)(b) of the CPA.

The contractors class:

[9] The motion record contains the affidavit of Mr. Patrick Woolley, the President of the proposed representative plaintiff, J.P. Woolley Surveying Ltd. Mr. Woolley deposes that he had a contract from a builder who had been allocated 20 lots in the Douglas Creek Estates and that he, Mr. Woolley, had completed only two surveys under his contract when the protesters shut down the building site after occupation commencing 28 February, 2006. Mr. Woolley states in his affidavit that the announced moratorium by the Minister of Aboriginal Affairs on all development within Douglas Creek Estates in May of 2006 ended all attempts of work on the site. This deponent states that he has been unable to recover his losses occasioned by the frustration of his contract.

[10] The records of Henco Industries Limited will identify the persons with whom contracts were established and from those records the parties who subcontracted for goods and services may be reasonably ascertained.

[11] I accept that the proposed subclass is able to be identified and that the proposed representative plaintiff, J.P. Woolley Surveying Ltd. meets the requirements under section 5(1)(d) of the CPA.

The highway 6 class:

[12] The motion record contains the affidavit of Margaret Cook. Ms. Cook states that she is the owner of the business registered as Verrips Greenhouses. It is a commercial business that grows and sells retail plant products, and sells horticultural products and garden supplies from its

location at 2990 Highway 6. The affiant deposes that her "Business is very dependent upon traffic proceeding on Highway 6. "It is the only direct access to our Burlington, Ancaster and Caledonia clients." Ms. Cook deposes that from the closure of Highway 6 on 20 April, 2006 her business suffered a loss of revenues of $160,000 and a loss of profits in the range of $71,000.

[13] I am satisfied that Margaret Cook would meet the requirements of section 5(1)(b) as to a Highway 6 Class.

[14] The classes are:

Caledonia Business Class

All those persons, including sole proprietors, partnerships, corporations or organizations, who carried on business, whether for profit or non-profit on April 20, 2006, with business addresses on Argyle Street between Highway 6 and Green Road and on Caithness Street East and Caithness Street West between Inverness Street and Edinburgh Square East in Caledonia, Ontario, and who were in business during the occupation by protesters of the Douglas Creek Estates, the closure of Argyle Street, the interruption of hydro services, the shutdown of the Hydro One Caledonia transformer station, or the occupation of the lands of the Province of Ontario, formerly the Douglas Creek Estates lands.

Property Occupiers Class

All those persons who from February 28, 2006 have occupied real property located within the boundaries and at the addresses set out in Schedule "A" attached hereto, and have been in occupation for one or more of; the occupation by protestors of Douglas Creek Estates, the closure of Argyle Street, the closure of Highway 6 between Green Road and the junction of Argyle Street South and the occupation of protestors of the property of the Province of Ontario, formerly the Douglas Creek Estates lands.

Contractors Class

All contractors or subcontractors of Henco Industries Limited or their agents, who were contracted to provide services and materials to owners, developers, builders or contractors on the Douglas Creek Estates subdivision as of March, 2006.

Highway 6 Class

> All those persons, including sole proprietors, partnerships, corporations or organizations, carried on a business, whether for profit or non-profit on April 20, 2006, with business addresses on Highway 6 from Highway 3, to Haldibrook Road, and who were in business during the occupation by protestors of Douglas Creek Estates, the closure of Argyle Street, the interruption of hydro services, the shutdown of the Hydro One Caledonia transformer station, or the occupation of the lands of the Province of Ontario, formerly the Douglas Creek Estates lands.

[15] The aforesaid simplified class definitions are within the discussions during oral argument with counsel on this motion and in my view are consistent with the action as proposed by the plaintiff particularly as to the evidence in the affidavits of the proposed representative plaintiffs, all, as may be understood through the determination of the common issues.

[16] Counsel advises that there are approximately 200 businesses that would fall within a business class, 442 municipal addresses that fall within the property occupiers class, that the contractors class is limited to those persons who have contracts and subcontracts for the construction of the Henco Estates development at the time of the injunction and that there are some 300 business addresses under the Highway 6 class.

COMMON ISSUES

[17] The approach and analysis of the circumstances in *Western Canadian Shopping Centres Inc. v. Dutton,* [2001] 2 S.C.R. 534; *Cloud v. Canada (Attorney General)*, [2004] O.J. No. 4924, *Pearson v. Inco Ltd.*, [2005] O.J. No. 4918, and *Hollick v. Toronto (City)* (2001), 205 D.L.R. (4th) 19 are sufficiently similar to this case to be instructive.

[18] The Supreme Court of Canada in *Dutton* set out conditions for certification, commencing at paragraph 38 with class definition, paragraph 41 with class representation and for common issues at:

> 39. Second, there must be issues of fact or law common to all class members. Commonality tests have been a source of confusion in the courts. The commonality question should be approached purposively. The underlying question is whether allowing the suit to proceed as a representative one will avoid duplication of fact-finding or legal analysis. Thus an issue will be "common" only where its resolution is necessary to the resolution of each class member's claim. It is not essential that the class members be identically situated *vis-à-vis* the opposing party. Nor is it necessary that common issues predominate over non-common issues or that the resolution of the common issues would be determinative of each class member's claim. However, the class members' claims must share a substantial common ingredient to justify a class action. Determining whether the common issues justify a class action may require the court to examine the significance of the common issues in relation to individual issues. In doing so, the court should remember that it may not always be possible for a representative party to plead the claims of each class member with the same particularity as would be required in an individual suit.
>
> 40. Third, with regard to the common issues, success for one class member must mean success for all. All members of the class must benefit from the successful prosecution of the action, although not necessarily to the same extent. A class action should not be allowed if class members have conflicting interests.

The Supreme Court has endorsed a broad and equitable approach for the motion judge;

> 43. The class action codes that have been adopted by British Columbia and Ontario offer some guidance as to factors that would generally not constitute arguments against allowing an action to proceed as a representative one. Both state that certification should not be denied on the grounds that: (1) the relief claimed includes a demand for money damages that would require individual assessment after determination of the common issues; (2) the relief claimed relates to separate contracts involving different members of the class; (3) different class members seek different remedies; (4) the number of class members or the identity of every class member is unknown; or (5) the class includes subgroups that have claims or defences that raise common issues not shared by all members of the class: see Ontario *Class Proceedings Act, 1992*, s. 6; British Columbia *Class Proceedings Act*, s. 7; see also Alberta Law Reform Institute, *supra*, at pp. 75-76. Common sense suggests that these factors should no more bar a class action suit in Alberta than in Ontario or British Columbia.

> 44. Where the conditions for a class action are met, the court should exercise its discretion to disallow it for negative reasons in a liberal and flexible manner, like the courts of equity of old. The court should take into account the benefits the class action offers in the circumstances of the case as well as any unfairness that class proceedings may cause. In the end, the court must strike a balance between efficiency and fairness.

[19] The Supreme Court of Canada has recognized class actions as important in modern Canadian jurisprudence. This is readily apparent in the *Dutton* case, the Court approved certification of an action in which its many complexities would otherwise cause a Court to refuse certification.

[20] The Supreme Court of Canada found a common issue simply stated, "The essence of the investors' complaint is that the defendants owed them fiduciary duties which they breached." (*Dutton,* para. 52)

[21] In *Cloud* the Court of Appeal focused on the conduct of the defendants in its consideration of common issues. I quote paragraph 32;

> In summary, he found that the focus of the trial of the common issues would be on the conduct of the respondents rather than on the precise circumstances of particular class members and that the existence of individual issues such as limitation periods or causation of harm to individual students was not enough to outweigh the conclusion that resolution of the common issues would significantly advance this action.

[22] In terms of the approach to the common issues question, there is much instruction in *Cloud:*

> In other words, an issue can constitute a substantial ingredient of the claims and satisfy s. 5(1)(c) even if it makes up a very limited aspect of

> the liability question and even though many individual issues remain to be decided after its resolution. In such a case the task posed by s. 5(1)(c) is to test whether there are aspects of the case that meet the commonality requirement rather than to elucidate the various individual issues which may remain after the common trial. This is consistent with the positive approach to the CPA urged by the Supreme Court as the way to best realize the benefits of that legislation as foreseen by its drafters (para. 53).

[23] In the result, the Court of Appeal stated the correct approach for the motions judge was to, "...analyzed whether there were any issues the resolution of which would be necessary to resolve each class member's claim and which could be said to be a substantial ingredient of those claims." (para. 55)

[24] As in *Cloud,* I focus on the plaintiffs' claim of a systemic breach of duty. In *Cloud* it was whether, in the way the defendants ran the residence school, they breached their lawful duties to members of the three classes of claimants. I take the same approach in this motion. The analysis then is whether there are any issues, the resolution of which would be necessary to resolve each class member's claim and which could be said to be a substantial ingredient of those claims.

[25] The defences raised by the respondents in this motion have similarities to those raised in *Cloud.* The Court of Appeal responded in part at paragraph 60:

> The respondents also say that the affidavit material shows that many of the appellants and other class members did not suffer much of the harm alleged, such as loss of language and culture. They argue that this underlines the individual nature of these claims and negates any commonality. Again, I disagree. There is no doubt that causation of harm will have to be decided individual by individual if and when it is found in the common trial that the respondents owed legal duties to all class members which they breached. However, this does not undermine the conclusion that whether such duties were owed, what the standard of care

> was, and whether the respondents breached those duties constitute common issues for the purposes of s. 5(1)(c).

[26] The Court of Appeal found that a significant part of the claim of every class member focused on the conduct of the respondents, stating at paragraph 66:

> I therefore agree that the appellants have met the commonality requirement. A significant part of the claim of every class member focuses on the way that the respondents ran the School. It is said that their management of the School created an atmosphere of fear, intimidation and brutality that all students suffered and hardship that harmed all students. It is said that the respondents did this both by means of the policies and practices they employed and because of the policies and practices they did not have that would reasonably have prevented abuse. Indeed, it is said that their very purpose in running the School as they did was to eradicate the native culture of the students. It is alleged that the respondents breached various legal duties to all class members by running the School in this way.

[27] I find a parallel in the present motion. The plaintiffs state that the defendants failed to provide reasonable policing by policies and practices that are in breach of their common law and statutory duties, in particular, the Police Services Act sections 3(2), 19(1), 41, 42 and 42(4); the Public Transportation and Highway Improvement Act sections 2, 2(3), and 33(1), that the then Minister of Aboriginal Affairs and the then Solicitor General, agents of the defendant Crown, acted unlawfully in breaches of duty and so as to exacerbate the situation for the claimants.

[28] As stated in *Cloud* at paragraphs 80 and 81, an important part, indeed for the present motion the central and overriding issue, "…turns on the way the respondents ran the school [the policing] over the time frame of this action." Whether found in negligence, breach of statutory duty or nuisance, "…the nature and extent of the legal duties owed by the respondents to the

class members and whether those duties were breached will be of primary importance in the action as framed."

[29] The property occupiers class allege that the defendant Crown continued to permit the protestors to occupy its land without a requirement for remission and cessation of the allegedly unlawful behaviour by the occupants from those lands.

[30] In my reasons of December 2007 (which form a part of the reasons upon the present certification motion) I quoted at pages 15, 16 and 17, the cases involving the policing of civil protests; *R. v. Chief Constable of Sussex* and *Phoenix Aviation v. Coventry Airport* in which the English courts put the police authorities to their defence so to scrutinize the balancing the police authority made, upon a test of what is fair and reasonable. This is the overarching concern of the claimants in this action and indeed on an inference from the publicity given to the Caledonia protest situation, the larger Ontario community.

[31] In *Pearson* the Court of Appeal listed the plaintiff's common issues at paragraph 22 of its decision, issues five and six are relevant here:

> (v) What was the appropriate standard of care that Inco had to meet with respect to preventing the ongoing discharge of the Contaminants of Concern?
>
> (vi) Did Inco breach the standard of care referred to in [(v)] above?

[32] It is readily apparent that the core issue of this lawsuit is whether there was a failure of the OPP to provide statutorily and contractually required policing services to the residents of Caledonia in each of the identified circumstances (supra) and whether there were errors and

omissions of the Province in conjunction with the O.P.P. Put another way, and in reference to the House of Lords in *Phoenix Aviation*, the essential issue in the litigation as a class proceeding is the question of whether the defendants surrendered to readily to threats of disruption in the formation of their policing policies and the carrying into effect of those policies in the varying circumstances presented. Did the defendants allow a state of lawlessness to exist? Did the defendants respond reasonably to circumstances that required a balanced approach?

[33] The respondents submit that there is not one circumstance involved in this litigation. I agree. In my view the conduct of the defendants is to be measured in the following circumstances.

- The initial occupation of the Douglas Creek Estates property commencing from the time of the interim and the permanent injunctions.
- The 20 April, 2006 police action and the 'blow-back'.
- The period of the blockades 20 April to 13 June, 2006.
- The period from the purchase of the Henco property by the Province.
- Response to individual encounters between protestors and non-protestors as identified in the Fresh As Amended Statement of Claim, as to policing policy and practices, both official and unofficial.

PREFERABLE PROCEDURE

[34] This action requires ongoing active case management as in *Rumley, Dutton, Cloud, Pearson*, and many other similar class actions. It is my conclusion that a trial of the common issues as identified will be a fair, efficient and manageable method of advancing the claims pleaded and would be preferable to other procedures. See *Caputo v. Imperial Tobacco Ltd.* [2005], O.J. No. 842 at para. 29. It is my view that the goal of access to justice could not be served by individual actions in the circumstances of this case.

[35] There are compensation packages. Counsel for the plaintiffs claims they are not to be assumed to be adequate. He cites for this submission that adequacy is not to be determined at the certification motion stage, *Brimner v. Via Rail Canada Inc.*, [2000] O.J. No. 1648 and *L.R. v. British Columbia* 180 D.L.R. (4th) 639. The affidavit evidence of the plaintiffs supports this submission.

[36] Plaintiffs' counsel advises that the business classes are composed of mostly small retail businesses, the submission being that individual actions would deny them access to justice. The property occupiers are of modest means, again, it is an issue of access to justice in the context of what is "a fair efficient and manageable method of advancing the claim" per McLachlin C.J.C. in *Hollick* at para. 28.

[37] Counsel for the respondents submits that there may be a compensation by negotiation process. However, any such process would be out of the control of the claimants. I conclude that the class proceeding is the preferable procedure to satisfy judicial economy, access to justice

and should the plaintiffs be successful at trial, behavioural modification. Class proceedings is a fair, efficient and manageable method of advancing the claim.

[38] The determination of the common issues will, if successful, open the issue of a negotiation process; if unsuccessful, the result is the dismissal of all claims.

REPRESENTATIVE PLAINTIFFS

[39] The material filed in the motion record for certification tabs 22 to 32 sets out the position and interests of each of the proposed representative plaintiffs. The respondents raise in their factum a submission as to possible conflict of interest. There is not at this stage any basis to make this determination. Support is in reference made to the responses of the Supreme Court of Canada in *Dutton* to similar submissions.

[40] I conclude that the persons proposed meet the requirements of section 5(1)(e)(i), CPA.

LITIGATION PLAN

[41] I take direction from the approach taken in *Dutton* of flexibility in the management of these difficult complex systemic tort actions including the authority in the case manager to hear motions for decertification should the individual issues overwhelm the common issues. I adopt with respect the approach approved by the Court of Appeal in *Cloud* at paragraph 33:

> He concluded by finding that although the proposed litigation plan required reformulation in light of his findings, its deficiencies were not sufficient to deny the motion. He would have allowed the appeal, granted certification, and left the details of the litigation plan to be resolved by counsel under the supervision of the judge assigned to case manage the proceedings.

[42] Class counsel will revise the litigation plan in response to these Reasons.

[43] The litigation plan proposed suggests a timetable for interlocutory proceedings. This timetable will be subject to case management.

[44] A case management meeting will be held to consider the response of the defendants' counsel to the time-table proposed by class counsel for the completion of pleadings, the discovery of documents, for examinations for discovery and for other interlocutory matters.

DECISION

[45] (a) The classes are set out in paragraph 14 of these reasons. I am satisfied that the members of the respective classes are appropriately identifiable and represented;

(b) The representative plaintiffs as named in the style of cause herein and in the Fresh As Amended Statement of Claim;

(c) The representative plaintiffs assert through the four classes respectively, damages for negligence and breach of statutory duty against the Ontario Provincial Police; and in nuisance, negligence and breach of statutory duty as against the Crown in Right of Ontario, all in consequence of the occupation by native protestors of the former Douglas Creek Estates and the events thereafter.

(d) There will be a trial upon the common issues to be prosecuted by the representative plaintiffs. Should the plaintiffs be successful on the

common issues, proceedings will continue with consideration as to whether there is an alternative preferable procedure for individual claims and whether global damages are appropriate. Should the plaintiffs fail to succeed on the common issues, the action will be dismissed and the claims of all class members will be terminated.

(e) The plaintiffs claim on behalf of all claimants respectively, general damages, special damages, economic loss and property damage.

[46] The common issues are:

a) What were the defendants' official or unofficial policies, systems and practices in the circumstances of;

b) What is the duty of the defendants to the claimants in the provision of police services in the circumstances of;

c) Have the defendants failed to provide fair and reasonable police services to the claimants in accordance with their duty, through their policing policies and practices both official and unofficial in the circumstances of;

- The occupation by protestors of the Douglas Creek Estates land from the period of the interim injunction to the police enforcement upon those lands of 20 April, 2006;

- The response of the protestors to the police enforcement of 20 April, 2006, through the period of the barricades on Argyle Street and Highway 6 from 20 April to 6 June, 2006;

- The purchase of the Henco property by the Province of Ontario with the decision that the protestors may remain in occupation from the date of purchase of July 4, 2006;

- The interaction of the protestors and other persons that occurred in the Town of Caledonia and County of Haldimand including the response protests, both before and after the purchase of the Henco lands by the Province of Ontario.

d) Has the defendant Crown breached a duty owed to the claimants in consequence of its ownership use of the Henco lands?

OPTING OUT

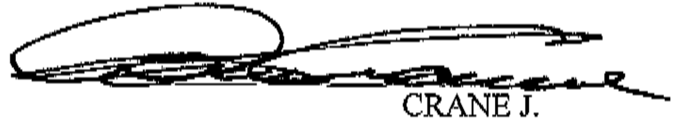
[47] Notice of the certification Order and the right to, and procedure for, opting out will be given by publication in The Toronto Globe and Mail, The Hamilton Spectator, The Regional News This Week, The Grand River Sachem and the Simcoe Reformer and by posting the notice on the www.caledoniaclassaction.com website, on www.caledonia-ontario.com, the website of the Caledonia Regional Chamber of Commerce, on www.haldimandcounty.ca, the website of Haldimand County, on www.aboriginalaffairs.osaa.gov.on.ca, the website of the Ontario Secretariat of Aboriginal Affairs, and on www.opp.ca, the website of the Ontario Provincial

Police, with the cost of such notification being borne by the defendants. The notice will provide information to the class members as to opting out of this action with a procedure and a form.

[48] Class counsel will draft the formal Order in accordance to these Reasons to the requirements of the CPA section 8 and section 17 to be submitted to me (after service on defence counsel) for approval within 14 days of this date. Should either counsel request, a telephone conference will be held to discuss the formal orders and whether a motion is required to settle the form and content of the draft order.

COSTS

[49] The parties will provide written submissions on the issue of costs of the proceedings to date, to be served and filed within 30 days. Each party may serve and file a reply within 15 days thereafter.



CRANE J.

Released: February 8, 2010

CITATION: KRP Enterprises Inc. v. Ontario Provincial Police Commissioner, 2010 ONSC 901
COURT FILE NO.: 114/2006-CP
DATE: 2010-02-08

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

KRP ENTERPRISES INC. and 1643078 ONTARIO INC., KEVIN CLARK, ESTA CLARK, CHRISTINA ACCIACCAFERRO, JEFFREY ACCIACCAFERRO, STEVE TONG, LORI TONG, RUSSELL KAVANAGH, MICHELLE KAVANAGH, PAUL DURCEK, STEFANY DURCEK, QUINTIN CHAUSSE, DONNA CHAUSSE, ANNE MARIE VANSICKLE, JAMES PAUL VANSICKLE, J.P. WOOLLEY SURVEYING LTD. and MARGARET COOK

Plaintiffs

- and -

ONTARIO PROVINCIAL POLICE COMMISSIONER GWEN M. BONIFACE, ONTARIO PROVINCIAL POLICE INSPECTOR BRIAN HAGGITH and HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO

Defendants

BEFORE: **The Honourable Mr. Justice D.S. Crane**

COUNSEL: John W. Findlay, counsel for the Plaintiffs

Orlando Da Silva and Connie Vernon, counsel for the Defendants

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REASONS FOR JUDGMENT

DSC:mg

CRANE J.

Released: February 8, 2010