



## JOURNALIST'S QUICK REFERENCE EVIDENCE GUIDE (Feb 01/10)

### 'Counselling Mischief Not Committed' charge vs. Gary McHale (OPP & Fantino target non-native activists)

- subject to change as evidence becomes available for release -

Readers of print editions can download the latest PDF version with active hyperlinks on the CANACE.ca *Race-Based Policing* reference page: <http://joincanace.wordpress.com/race-based-policing/>

- **Journalists covering breaking stories:** contact Gary McHale, 289.286.0423, info@canace.ca. If no answer and you are on deadline, contact Mark Vandermaas, 519.457.0709, info@voiceofcanada.ca.
- **Investigative journalists:** Please contact Mark first.

#### - References -

- Court Exhibits & Transcripts: <http://www.caledoniawakeupcall.com/trial/preliminary/preliminary.html>
- CaledoniaWakeUpCall.com feature: Influencing Municipal Officials charge v. Fantino <http://www.caledoniawakeupcall.com/topics/fantinogate.html>
- Police Services Act complaint to Minister Bartolucci, May 30/08: Vandermaas et al v. Fantino <http://joincanace.files.wordpress.com/2010/01/gov-exh55-jeff-markcomplaint.pdf>
- Statement of Claim (defamation), Feb 02/09: McHale/Vandermaas v. Fantino <http://joincanace.files.wordpress.com/2010/01/090202-plaintiff-claim-ammended-mchale-vandermaas1.pdf>

#### - Other CANACE Resources -

- CANACE reference feature: *Race-Based Policing* <http://joincanace.wordpress.com/race-based-policing/>
- CANACE report: *The Human Costs of Illegal Occupations* <http://www.caledoniawakeupcall.com/canace/HumanCost.pdf>
- CANACE report: *Legalized MYTHS of Illegal Occupations* <http://www.caledoniawakeupcall.com/canace/Myths.pdf>
- CANACE report: *McGuinty's Ipperwash Cover-Up: The Caledonia Legacy* <http://joincanace.files.wordpress.com/2009/02/mcguintys-ipperwash-cover-up-full-version.pdf>
- CANACE project: *The Ipperwash Papers* <http://www.ipperwashpapers.ca/>

- Evidence & Testimony (Preliminary Hearing) -

**JULIAN FANTINO, COMMISSIONER, OPP**

**a. Fantino Emails**

These are the only emails which can be legally released at this time:

- **April 07/07:** threatens Haldimand Council into not supporting McHale. Currently facing criminal charge of ‘Counselling Mischief Not Committed.’  
<http://www.caledoniawakeupcall.com/trial/preliminary/8-fantino-council.pdf>
- **Dec 01-07 to Dec 07/07** (day of attacks on McHale & other non-natives at illegal smokeshack until day of McHale’s arrest.)  
<http://www.caledoniawakeupcall.com/trial/preliminary/Exhibit38-FantinoEmail.pdf>

**Dec 01/07, 3:22pm** - blames victim McHale for day’s violence; orders investigation; orders officers to target McHale for charges; “I don’t want us to get sidetracked by Crown lawyers on this.” Tells them not to “be constantly frustrated by **timid Crowns**”

**Dec 02/07, 4:19pm** –upset by “**feeble Crowns**” and OPP’s “own lack of fire” re McHale.

**Dec 02/07, 9:31pm** – refers to non-existent bail conditions on McHale (see Fantino testimony, Nov 26/07, [54-55]); feels OPP falling short on “exploiting every proactive investigative strategy that could curtail the activities of McHale et al;” not OPP’s job to act “only when there is an absolute likelihood of a conviction”; “even if we are unsuccessful we will be able to expose him for the mischief-maker he is”; “**I don’t want us to get bogged down with legal nuances.**”

**Dec 04/07, 6:14am** – tells Angie Howe to prepare press release blaming McHale for violence; that he is responsible for injuring OPP officers; caused \$500K in extra policing costs

**Feb 18/07: Political interference w/free speech:** Fantino complaint to Hamilton Police Services Chief Mullan re Caledonia resident/HPS officer Dave Hartless; set off by two separate emails from **Ontario government Senior Negotiator John Nolan** to Haldimand Detachment Commander Insp. Dave McLean; McLean tells superior Chief Mullan might want ‘heads up’ in case the Premier or Minister of CS & CS wants to call to talk to him about Hartless’s comments; McLean says Hartless should be disciplined – in part - because of his association w/McHale who has 1. taken a position against past/present commissioners, 2. sponsored a protest rally; 3. can’t follow rule of law.

Copies of emails, affidavits, correspondence re Hartless complaint [24p]:  
<http://www.caledoniawakeupcall.com/trial/preliminary/Hartless-FullDocuments.pdf>

- **Dec 04/08:** Character reference to aid Clyde Powless in sentencing re assault on Gary McHale; blames victim McHale for assault; calls Powless ‘peacemaker.’  
<http://www.caledoniawakeupcall.com/trial/preliminary/Clyde-Fantino.gif>
- **IMPORTANT:** see Fantino testimony, Nov 26/08, [35-40] and April 28/09 [92-98] re lack of charges/evidence vs. McHale. In addition to the OPP never laying any charge against McHale other than the current ‘Counselling Mischief Not Committed’ charge before the Court, not a

single OPP officer has ever filed a lawsuit vs. Gary McHale claiming that he was responsible for injuring them. Furthermore, we can send, on request, evidence showing that native protesters were responsible for injuring and threatening OPP officers. See McHale/Vandermaas defamation claim in References section above for quotes/dates from various media reports.

**b. FANTINO testimony: November 2008** [92p]

<http://www.caledoniawakeupcall.com/trial/preliminary/Fantino-TestimonyNov08.pdf>

Nov 26/08

- [20-25] Has looked at McHale’s website “the odd time.” Doesn’t know what’s on it, but knows it is “inflammatory, misleading, false.”
- [26-31] Told public McHale is cause of Caledonia’s troubles.
- [26-31] Told public McHale has cost taxpayers \$500K.
- [26-31] Never told public that policing the occupation during the time McHale was not allowed in town cost \$800K per month.
- [35-40] **OPP did not charge McHale with a crime prior to Dec 01/07 “for the lack of evidence” because they “don’t charge people frivolously.”**
- [46-47] Was not told McHale told angry crowd on Dec 01/07 to allow the OPP to peacefully arrest a non-native man (the only arrest of day, a non-native who was quietly drinking coffee).
- [54-55] McHale questions reference to non-existent bail conditions in Dec 02/07 email.
- [56-60] Never made derogatory comments by name vs. anyone but McHale.
- [88] Meets with native protesters, including Clyde Powless (assaulted McHale, Dec 01/07).
- [88] Never met with non-native protesters.

**c. FANTINO testimony: April 2009** [134p]

<http://www.caledoniawakeupcall.com/trial/preliminary/Trans-Fantino-April09.pdf>

April 22/09

- [17-20] **Wrote reference letter for native man - Clyde Powless - who assaulted McHale**, Dec 01/07 (and his officers).
- [17-20] Attempts (unsuccessfully) to mislead Court by evading question as to whether Clyde Powless was to be charged for assaulting police on Dec 01/07. See April 29/09 [73-81].
- [17-20] Met/spoke with Clyde Powless “numerous times.”
- [17-20] Gave Clyde Powless his cell phone #.
- [53-64] **Political interference w/free speech:** Filed complaint about Dave Hartless (Caledonia resident/Hamilton Police Services officer) with HPS Chief Mullan after OPP received email complaints from Ontario government’s senior negotiator for Caledonia John Nolan re Hartless’s comments about OPP & Premier re Caledonia policies. Claims not to know who John Nolan is.

Copies of emails, affidavits, correspondence re Hartless complaint [24p]:

<http://www.caledoniawakeupcall.com/trial/preliminary/Hartless-FullDocuments.pdf>

April 28, 2009

- [73-81] **Personally overuled investigation team and intervened to drop an ‘Assault Police’ charge vs. Clyde Powless re his assault on an officer** on Dec 01/07. Fantino claims not to know what ‘Assault PO’ means; can’t recall what charge had been ‘minused.’

NOTES: At 4:44pm on Dec 06/07 Fantino rec’d email from Supt. Gentle entitled ‘Last Weekend’s Incident’ - Powless to be charged w/Assault, **Assault Police**, Mischief. We know Fantino read this because at 4:53pm he forwards the message on to Angie Howe, Corporate Communications Commander.

At 5:52 Fantino sends out another email to Angie Howe entitled ‘McHale release’ with an attachment saying “I have tinkered with the original item. Have a look and not that the charges need to be specified correctly.” The attachment (06 Dec 2007 Charges laid1.doc) he sends is a draft news release listing charges vs. Powless as Assault, Mischief. The ‘Assault Police’ charge is gone. Also, even at this late date – 5 days after the events of Dec 01/07, and 1 day before McHale is arrested, the OPP still don’t know what McHale will be charged with, but they know he will be charged with something.

At 8:47am on Dec 07/07 Fantino sends email to Bob Goodall asking that someone send him the final news release saying, “I still have not received the latest version **minus the charges, etc.**, that included my input to the original draft.”

(See also: Supt John Cain’ affidavit below.)

- [92-98] Issued news release Dec 01/07 blaming non-natives before investigation began.
- [92-98] Can’t cite any example of McHale making racist statements.
- [92-98] Has never made derogatory about native ‘interlopers’ coming into Caledonia.
- [92-98] OPP had no evidence to lay any charge vs. McHale prior to Dec 01/07.

## **JOHN CAIN, SUPERINTENDENT, OPP**

### **a. CAIN affidavit re: Edwards Landfill project protest, Dec 14/07 [19p]**

<http://www.caledoniawakeupcall.com/trial/preliminary/22-OPP-JohnCain-affidavit.pdf>

Dec 14/07

- Eight days after Fantino ‘minused’ Assault Police charge vs. Clyde Powless (see Fantino testimony, Aug 28/09 [73-81]), Cain swears that a native man was charged with assaulting police arising out of events of Dec 01/07. Either he is lying in deposition, or he honestly believes Powless was charged. (See Fantino testimony, April 22/09, [17-20].)
- No mention by name of any native protesters, even though they have committed criminal offences including violent crimes and police are deathly afraid of them becoming violent should they try to enforce court order requiring them to remove protesters.

- The only name mentioned is the leader of non-native protesters who has had absolutely nothing to do with the Edwards Landfill project/protest - Gary McHale - who is charged with a minor, non-violent offence – the only charge since being involved in Caledonia since June 2006.

## JEFFREY BIRD, CONSTABLE. OPP

### a. BIRD testimony: April 2009 [99p – includes 2 other witnesses]

<http://www.caledoniawakeupcall.com/trial/preliminary/090424-27-King-Bird-Parkinson.pdf>

April 24/09

- [20-21] Dec 01/07 protest by residents vs. illegal smoke shack was organized by Doug and Randy Fleming (not by Gary McHale as continually stated by Fantino). No misunderstanding by officers on this point.
- [21-22] Felt that **OPP's lack of resources was a "problem" during protest**; upon arrival at OPP Unity Rd. detachment **3 hrs prior to protest he was "alarmed" at lack of resources provided.**
- [23-25] Normal protest in Caledonia would deploy 90-120 public order officers plus support staff, support vehicle, intelligence officers, ID officers and videographers.
- [23-25] For Dec 01/07 protest there was only "20 uniform officers, several supervisors..." "...it wasn't a lot of people."
- [23-25] Sometimes brought in helicopter for protests.
- [23-25] SOP for OPP to videotape protest events in Caledonia. Did not see any OPP officers taping on Dec 01/07.

NOTE: We know that there were no OPP officers videotaping Dec 01/07. No tapes have been disclosed, and email by OPP obtained under disclosure confirms this (cannot yet be published). Why? First time ever no videotaping by OPP; first time OPP under-resourced a protest; first time violence against McHale & non-natives. Was it done on purpose?

- [27-28] Native driver blocked the highway (1st to do so); doesn't know if someone tried to get him to move vehicle as he had done with Doug Fleming who blocked road in retaliation.
- [29-30] Does not believe the day was "captured" because of McHale's presence; McHale wasn't conducting himself any different than usual; "put it this way, my attention wasn't focused specifically on you because you were there."; doesn't think "things came off the rails" because of McHale.
- [31-35] Clyde Powless angrily threatened to close down the road after Fleming blocked road in retaliation for native who blocked it first. Later in the day Argyle St. was blocked by a (hydro) tower. Believes Powless was charged w/Mischief.
- [36] Witnessed assault on McHale by Clyde Powless.
- [36] After McHale was led away after assault by Powless, he was very concerned about the safety of people after the attack.
- [36] Clyde Powless and native woman were yelling "**Get the whites out of here.,**" **Yeah, 'Get their gun belts, you cops are ours, and just the usual comments.** So I was very concerned...."

April 27/09

- [39-41] On April 20/06 120-150 OPP officers tried to make arrests of Douglas Creek Estates occupiers, but were attacked by several hundred natives which grew to 4-500 as day progressed.
- [39-41] Natives attacked with weapons including chair legs, table legs, axes, a chain saw, socks filled w/rocks. Believes one officer was hurt.
- [42] Officers were hurt before McHale was involved in Caledonia.
- [44-46] **Confirms race-based policing practices in OPP operations:**

\* has heard **instructions over the OPP radio to identify the race of the person**; ie. traffic stops: **“if...occupants were non-White**, then basically the instructions were to obtain the information of the occupants of the vehicle and do a follow-up investigation later.”

\* **“They would refer to Native.** And when I say “they”, I’m talking the conversation between the unit that was involved and the dispatcher.”

\* **Has personally witnessed events where the OPP applied law differently for Natives versus non-Natives.** “...I personally did witness...say a common assault as an example – where under normal circumstances, had I been working, I would have made an arrest at that time; however, arrests were not made at that time.”

- [48-49] Has been present at home of Dave Brown & Dana Chatwell more than once when DCE occupiers were confrontational towards them.
- [48-49] **Was present when an OPP hidden camera was discovered in kitchen of Brown-Chatwell home.** Was property of tactical support branch of the OPP.
- [50-51] At Dec 01/07 protest a vehicle struck the flag pole of Mark Vandermaas and forced it to skid 8-12 inches in gravel; Vandermaas did not hit the car. NOTE: Native driver of car falsely claimed that Vandermaas struck car w/flagpole. He was taken away & req’d to give statement to police who later told him they did not get the licence # of car or the driver’s info.
- [51-52] Saw resident Kyle Hagan at protest but did not see him get arrested by Sgt. Sloan. Knew Hagan and did notice him acting his usual manner – quiet, peaceful.

NOTE: Despite numerous assaults on McHale, Vandermaas, other non-natives and police on Dec 01/07 the only arrest was of a quiet, peaceful Kyle Hagan quietly drinking coffee on the already blocked road by the site commander (Sgt. Sloan) who had earlier refused to arrest the people who assaulted Vandermaas. His arrest of the peaceful Kyle Hagan was ‘so important’ that he left a situation where the police were desperately shorthanded to take Hagan away.

- [52-55] Clyde Powless rallies the occupiers and threatens to close road.
- [52-55] Formed the opinion that Powless was about to breach the peace.
- [52-55] Heard Clyde Powless and other relatives of his and other occupiers make derogatory remarks through the whole event along the lines of ‘You better run McHale.’
- [66] re Dec 01/07 protest: “...we were well-understaffed for that event.”
- [67-68] compares dramatic difference between Dec 01/07 smokeshack protest with extraordinary measures to keep non-natives from putting up flags across from DCE.

- [69-70] McHale Q: "... Commissioner Fantino said, **But for you things would be peaceful in Caledonia. Do you agree with that statement?**" Bird A: "Not in its entirety, no." "Well, there was a number of volatile situations that arose in Caledonia without you being there."

## JOHN MURRAY, DETECTIVE SERGEANT, OPP

### a. Transcript of testimony, Dec 14/07: McHale bail review hearing [70p]

<http://www.caledoniawakeupcall.com/trial/preliminary/BailCourt-Dec1407-OPPMurray.pdf>

CAUTION: Detective Murray's testimony was read from a prepared text and he testified he had no personal knowledge about Gary McHale and his role in Caledonia. His 'testimony' therefore, was prepared by other OPP officers who were out to discredit McHale after receiving the instructions passed down from Fantino to target him for charges. His testimony has a number of errors, omissions and 'evidence' taken utterly out of context in order to suggest that McHale and Mark Vandermaas were dangerous or deliberately inciting violence.

Do not take anything Detective Murray says at face value unless it goes against 'self-interest.' Please contact Gary McHale or Mark Vandermaas before relying on any aspect of Murray's testimony with respect to our actions or motivations.

See McHale/Vandermaas Statement of Claim for defamation vs. Fantino for complete details on OPP's shocking campaign to defame us with false allegations. Supporting evidence available on request. <http://joincanace.files.wordpress.com/2010/01/090202-plaintiff-claim-amended-mchale-vandermaas1.pdf>

#### Dec 14/07 (Bail review hearing)

- [18-19] Anger from Native occupiers towards McHale is threatening the "peaceful resolution" of "negotiations between Federal and Provincial levels."
- [20-21] On Jan 14/07 McHale held townhall meeting where he spoke to the crowd about Martin Luther King Jr. and his fight for civil rights. Asked for people to volunteer to be arrested on Jan 20/07 protest (while peacefully putting up a Canadian flag, a right protected by Supreme Court in *Ramsden v. Peterborough, 1993*. OPP were arresting non-natives who tried to put Cnd flags near DCE, calling it a 'breach of the peace.' Fantino's lawyer later told the OHRC/HRTO he and his officers stopped us to 'protect' us from an 'extreme element' who might want to harm us).
- [22] McHale's townhall meeting 'Canada at the Crossroads': **native person made a verbal threat. Merlyn Kinrade called police. Lesson for OPP: it was McHale's fault because "what we took from that was that even at these public meetings...there appeared to be the threat or potential for threats and violence."**
- [34] "He [McHale] is behind a number of these protests that have turned violent..." NOTE: The Dec 01/07 protest was not McHale's (see Officer Jeffrey Bird's testimony above); McHale was the victim of a number of assaults by native people, not the perpetrator; none of McHale's protests have turned violent."

#### McHale cross-examination

- [36-37] Police officers were hurt prior to McHale's involvement; doesn't know how many. Someone tried to kill an OPP officer; U.S. border guards were attacked, vehicle stolen.

- [39] He is reading from text prepared by someone else and has no first hand knowledge of the events he is talking about other than the investigation of Dec 01/07.
- [39] Never listened to Sabin tape, so McHale can't question him on that.
- [40] Does not have a list of people who were hurt at McHale's rallies he claims turned violent.
- [41] Neither McHale or Vandermaas have been charged with Assault since becoming involved in Caledonia.
- [41] McHale was falsely accused of assault and the person who filed the false allegation will be charged.
- [44] McHale has not been charged with any offence since he organized his first rally in Caledonia on Oct 15/06.
- [44-45] Doesn't know who the speakers were at McHale's Oct 15/06 protest; doesn't know MPP Toby Barrett was a speaker. Knows that Mayor Trainer has been present at some of McHale's rallies. Didn't know Jon Sabin was a speaker.
- [46-47] Knows Dr. King also encouraged people to be arrested and was jailed for having an 'illegal' march.
- [47-48] Smokeshack that residents and McHale & co. were protesting at on Dec 01/07 was illegal.
- [49-50] **"I have yet to receive a complaint from an OPP officer identifying an assault."**

NOTES: 1. Not true – his own notes and the emails of Fantino prior to Dec 14/07 prove that Clyde Powless was to be charged with assaulting a police officer before Fantino made the charge disappear on Dec 06/07. (see Fantino testimony, April 28, 2009 [73-81])

2. See testimony from Officer Paul McDonald who filed a report about how he and his partner were assaulted multiple times by 10-13 Six Nations smokeshack supporters, including with a vehicle, during which he threatened to pull his gun. No one in the OPP even interviewed him. Summary of McDonald's testimony to be included in next update. For now, see transcript of Officer McDonald here:

<http://www.caledoniawakeupcall.com/trial/preliminary/Trans-Trainer-Merlyn-McDonald.pdf>

- [53] Attack on Sam Gualtieri (by native protesters inside the home he was building for his daughter that left him w/brain damage) had nothing to do with McHale.
- [55] **Political interference:**

*"...what I suggested was that there are ongoing negotiations at a political level at both the Provincial and Federal levels and that there were concerns expressed to the O.P.P. that your continued exposure to this, this issue was hindering that process."*

*"What I said sir was that the O.P.P. officers had occasion to speak with people that were affected stakeholders and those affected stakeholders related to us that they believed that your interference in their issue was creating problems. I never suggested that the Federal government or the Provincial government came down and had any input at all, with anything that we have done."*

NOTE: If the 'stakeholders' (who can only be feds, province, aboriginal groups) didn't want the

OPP to do something about McHale messing up negotiations, why would Murray even mention it at the bail hearing as justification for keeping McHale out of Caledonia? Clearly the OPP felt it was important that the Court know the ‘stakeholders’ wanted him kept out of town.

- [57] Not aware of McHale committing any offences prior to Dec 01/07.
- [58-59] Has no knowledge of any McHale event where people have been injured.

**b. MURRAY testimony at McHale preliminary hearing**

**(transcripts to become available soon)**

**PAUL MCDONALD, OPP**

- a. **MCDONALD testimony: November 2008** [101p – includes 2 other witnesses]  
<http://www.caledoniawakeupcall.com/trial/preliminary/Trans-Trainer-Merlyn-McDonald.pdf>

Nov 25/08 **(to be summarized & included soon – see link for transcript)**

**MARIE TRAINER, MAYOR, HALDIMAND COUNTY**

- a. **TRAINER testimony: November 2008** [101p – includes 2 other witnesses]  
<http://www.caledoniawakeupcall.com/trial/preliminary/Trans-Trainer-Merlyn-McDonald.pdf>

Nov 25/08 **(to be summarized & included soon – see link for transcript)**

**BILL RENTON, INSPECTOR, OPP**

**(transcripts to become available soon)**