

Court File Number: CV-20-000000-32-000

**ONTARIO SUPERIOR COURT OF JUSTICE
(Brantford)**

BETWEEN

FOXGATE DEVELOPMENTS INC.

Plaintiff

-and-

**JANE DOE, JOHN DOE,
or any agent or person acting under their instructions, and other persons
unknown, and THE CORPORATION OF HALDIMAND COUNTY**

Defendants

IN THE MATTER OF rule 14.05(3)(e) of the RULES OF CIVIL PROCEDURE;
and
IN THE MATTER OF Section 101 of the *COURTS OF JUSTICE ACT*, R.S.O.
1990, c. C. 43, as
Amended

AFFIDAVIT OF JOHN CAIN

I, John Cain, of the Town of Paris, County of Brant, in the Province of Ontario, MAKE
OATH AND SAY AS FOLLOWS:

1. I hold the rank of Chief Superintendent and my position is Regional Commander for West Region of the Ontario Provincial Police ("OPP"). I have been, and continue to be, directly involved in the OPP's response to the land dispute and occupation of the McKenzie Meadows development site in the Town of Caledonia, Ontario and in the

response to the protest activities in the Caledonia area. In that capacity, I have knowledge of the facts and matters deposed to in this affidavit.

2. In my role as Regional Commander, I am responsible for all aspects of the OPP's operations in West Region. As part of that, I am responsible for overseeing the implementation of OPP operations governing its response to land disputes, occupations or blockades in West Region. Caledonia is in West Region and therefore falls under my jurisdiction.

3. I have previous experience in responding to land disputes in this area. From late February 2006 to the end of April 2006, as a Superintendent in West Region, I was the Incident Commander responsible for managing the police response to the occupation of Douglas Creek Estates in Caledonia. Subsequently, I resumed my position as Director of Operations for West Region and remained involved in responding to that dispute.

OPP's Approach to Blockades, Occupations or Land Disputes Involving Indigenous Persons

4. On September 6, 1995, Dudley George, a member of the Kettle and Stoney Point First Nation, was shot and killed by a member of the OPP. He was participating in a protest and occupation relating to a land dispute in and around Ipperwash Provincial Park. Dudley George's death resulted in a comprehensive public inquiry (the "Ipperwash Inquiry") that resulted in numerous findings and recommendations made by former Justice Sydney Linden. The OPP participated in the Ipperwash Inquiry and

adopted many of the recommendations arising from it. The evidentiary portion of the Ipperwash Inquiry ended in June 2006; Justice Linden's Report and Recommendations were released on May 31, 2007.

5. The shooting of Dudley George caused the OPP to carefully consider the appropriate response to protests involving Indigenous persons and its policies and practices related to such instances. From the end of the Ipperwash Inquiry through today, the OPP's response to such protests has been guided by adherence to the OPP policy entitled "A Framework For Police Preparedness For Indigenous Critical Incidents" (the "Framework"), which is the OPP's strategic and operational policy for dealing with land or treaty disputes involving Indigenous peoples. The Framework governs the OPP's response to Indigenous critical incidents that may occur as Indigenous communities and the various levels of government work to resolve outstanding issues associated with such matters as land claims, self-determination and treaty rights. The Framework incorporated OPP policies and best practices that had been in use for some time.

6. The Framework was drafted over the course of several years and received approval as a formal Police Order in January 2005. Its evolution was greatly influenced by the OPP's analysis of the outcomes of other crises, occurrences and high-risk calls to which the OPP have responded, including hostage takings and barricades, as well as the events at Ipperwash Provincial Park. The Framework was introduced publicly in January 2006 at the Policy and Research phase of the Ipperwash Inquiry.

7. The purposes of the Framework are threefold:

- to promote an operationally sound, informed and flexible approach to resolving conflict and managing crisis in a consistent manner;
- to offer a framework that demonstrates accommodation and mutual respect of differences, positions and interests of the involved Aboriginal community and the OPP; and
- to promote and develop strategies that minimize the use of force to the fullest extent possible.

Attached hereto and marked as **Exhibit "A"** is a true copy of the Framework.

8. The Framework is premised on the recognition that a critical incident is often avoidable. The Framework advocates applying the strategies and approaches within the Framework well before any Indigenous-related issue becomes a critical incident. Given that disputes with Indigenous communities frequently originate with government agencies other than the police, the Framework is meant to be applied to the negotiation and mediation of police-related issues surrounding a dispute.
9. The Framework is complemented by specialty positions or teams. Initially, the OPP created an Aboriginal Relations Team and a Major Events Liaison Team to assist with outreach, communication and mediation. Those units were subsequently replaced by the Provincial Liaison Team ("PLT"). The role of PLT is, amongst other things, to

facilitate ongoing dialogue with all stakeholders and work to effect a peaceful resolution to reduce the likelihood of violence.

10. Since the death of Dudley George, the OPP has responded to hundreds of Indigenous "critical incidents"¹ across Ontario, including the land claim occupation at Douglas Creek Estates. With very few exceptions, those incidents were resolved peacefully. In that sense, the principles behind the Framework have been remarkably effective in dealing with such land disputes.

11. The current approach of the OPP to dealing with blockades, occupations or land disputes generally, and the situation at McKenzie Meadows in particular, is informed by experience and is nuanced in its application.

12. The OPP does not take sides in blockades, occupations or land disputes. The role of the OPP in those circumstances is to maintain public safety by keeping the peace and engaging in discretionary enforcement of the law. Police officers are responsible for enforcing warrants of arrest, warrants of committal and any other orders compelling persons to be arrested and brought into custody. Police officers are also responsible to assist the Sheriff in the enforcement of injunctions further to section 141 of the *Courts of Justice Act*.

13. Protecting and restoring public order or safety necessarily involves keeping the peace. A peaceful site promotes the safety of all interested parties. A fundamental

¹ Such incidents include a wide range of activities, from lengthy occupations of development sites or infrastructure to highway slowdowns and providing pamphlets to motorists.

component of keeping the peace is the exercise of discretion by police officers. I am familiar with the decision of the Ontario Court of Appeal in *Henco Industries Ltd. v. Haudenosaunee Six Nations Confederacy Council*, (20061 O.J. No. 4790. I understand that the immediate enforcement by use of force may not always be the wise course of action or the course of action that best serves the public interest.

The Land Dispute at McKenzie Meadows and Ongoing Protests in Caledonia

14. In 2013, I recall that a previous owner of McKenzie Meadows moved for an injunction to prohibit any activities that may interfere with its development of that site. Former Supreme Court of Canada Justice Iacobucci became involved in mediation efforts.² I do not believe an injunction was obtained following that intervention.

15. McKenzie Meadows is situated close to Douglas Creek Estates. There is a path accessible by ATV and motor vehicles between those two properties.

16. On July 19, 2020, OPP officers attended at McKenzie Meadows in response to reports of several protesters occupying the property³. Several vehicles were on site along with several tents. The next day, spray paint was observed on construction equipment on site with "1429 Landback Lane" and "#LANDBACK" messages. On July 22, 2020, members of PLT attended the site and asked the protesters to leave. The protesters

² I am advised by Christopher Diana, and verily believe, that Justice Iacobucci participated in mediation sessions on May 29 and June 10, 2013.

³ I use the generic term "protesters" in my affidavit to include all individuals who attended on the McKenzie Meadows site (other than journalists), supplied goods or equipment to the site, occupied the site or otherwise been in breach or potential breach of the injunctions obtained by Foxgate, Haldimand County and CN.

refused to do so. The OPP cautioned the protesters that they would be charged with Mischief if they remained on site. On July 23, 2020, the protesters placed various items, including pieces of wood, piping, plastic fencing, cement blocks and pieces of metal at the ingress to the site.

17. In the time period leading up to the serving of an injunction at McKenzie Meadows, the number of protesters and vehicles on site would vary. Typically, there would be an average of 4-5 protesters on site but those numbers would vary and typically increase in the afternoons. Items such as tires and pallets were added as further obstructions to the ingress to the site. There was no clear leader of the protesters. There was no violence on site in that period of time.

18. On July 30, 2020, Foxgate obtained an injunction with respect to the McKenzie Meadows site (the "Foxgate Injunction"). On July 31, 2020, the OPP attended at McKenzie Meadows with the Sheriff and kept the peace while the Sheriff read the Foxgate Injunction to the protesters and posted it on a large construction pylon at the front of the driveway to the property. There were 11 vehicles and 17 protesters on site at the time. The protesters refused to vacate the property as directed by the Foxgate Injunction.

19. In the days that followed, protesters continued to occupy McKenzie Meadows. The protesters began construction of a wooden building and posted an individual at the main entrance driveway. Calls went out on social media for support in the event of police

enforcement. One of the protesters contacted the police service of Canadian National to advise that its railways would be shut down in the event of police enforcement.

20. On August 5, 2020, at approximately 10:30 a.m., the OPP's Public Order Unit attended at McKenzie Meadows and made a further demand that protesters leave the site. When the protesters refused, the OPP arrested and removed them from the site and laid a number of criminal charges against those individuals. Some of the protesters engaged in violence. One of the protesters poured an accelerant on the ground and threw the accelerant towards the police. Others threw rocks, bricks and other items, injuring several police officers though none required medical attention and damaging police vehicles. One of the protesters assaulted an officer with punches to the face and kicked another one in the chest area⁴. Another protester advised she had COVID-19 and coughed in the face of an officer. Charges included Mischief, Disobey Court Order, Obstruct Police, Assault Peace Officer, Resist Peace Officer. Those who were arrested and charged were released on conditions. The OPP had taken control of McKenzie Meadows by 11:00 a.m. A true copy of the full list of charges related to OPP enforcement activities is attached hereto and marked as Exhibit "B".

21. Following enforcement of the injunction, significant violence took place in and around Caledonia throughout the day. Protesters set up four blockades of roads and highways in and around Caledonia with wood pallets and other large items. Items such as tires and a portable bathroom were thrown off bridges on to Highway 6. Multiple fires were lit, including burning tires resulting in thick black smoke on Highway 6. Police

⁴ A Conducted Energy Weapon was deployed in the process of arresting this individual due to his violent behaviour.

officers setting up check points were swarmed, pushed back and assaulted with rocks. A CN train was forced to stop as a result of a large number of protesters (approximately thirty) being on the tracks along with several vehicles. As the train started to reverse course, protesters smashed its windshield. Protesters set fire to CN tracks and an electrical shed. Several pieces of equipment and heavy machinery were unlawfully taken from a local construction company and damaged. An excavator was set on fire at 6th Line and Highway 6. The window of a fire truck responding to that fire was damaged by a rock thrown by a protester.

22. The OPP's resources were subsequently split in many directions. By 2:00 p.m., approximately fifty protesters pushed the OPP off of 6th Line. As the afternoon progressed the OPP was pushed North on Argyle Street into the Town of Caledonia and further south on Highway 6 all the way down to 4th Line. The OPP remained on site at McKenzie Meadows with a significant number of Public Order Unit officers until approximately 9:00 p.m. while waiting for the developer's security detail to take over. Shortly thereafter, a large number of protesters once again occupied McKenzie Meadows.⁵

23. It was never the OPP's intention to try to "hold" the McKenzie Meadows site. The OPP intended to maintain the site for a short period of time before turning it over to the developer's private security detail. The developer had been advised to have security ready to be put in place for that date.

⁵ It is noteworthy that many protesters are not from the immediate vicinity but are from other parts of the province, including some who are known to the police for involvement in previous protests.

24. On August 6, 2020, Canadian National obtained an injunction (the "**CN Injunction**") prohibiting, among other things, trespassing on CN property in the Caledonia area and obstructing the ability of its trains to move along the CN rail line. The CN Injunction was renewed on August 17, 2020 and, to my understanding, remains in effect.
25. On August 7, 2020, Haldimand County obtained an injunction (the "**Haldimand Injunction**") prohibiting, among other things, the blockade and occupation of various roads and highways in or around Caledonia.
26. On August 14, 2020, the OPP attended at McKenzie Meadows and other locations with the Sheriff with respect to the enforcement of renewed injunctions for McKenzie Meadows and Haldimand County. Protesters remained in place notwithstanding the injunctions.
27. On August 21, 2020, largely due to the efforts of PLT, barricades on Argyle Street and Highway Six were removed and the blockade of CN Rail ended. Approximately \$30,000-\$50,000 in physical damage was caused by the Argyle Street blockade.
28. On August 24, 2020, a protester was arrested and charged with Mischief, Intimidation and Fail to Comply with Release Order for her actions on August 5, 2020.

Rather than releasing her on conditions, she was held for a bail hearing where she was subsequently released on further conditions.

29. On August 27, 2020, the parties attended before the Court to address the continuation of the Foxgate Injunction and the Haldimand Injunction. Both were continued. OPP counsel attended to give an update on the status of enforcement.
30. On September 2, 2020, three more protesters were arrested and charged for their conduct with respect to the recent protests, one of whom was held for a bail hearing.
31. On September 3, 2020, four more protesters were arrested and charged for their conduct with respect to the recent protests.
32. On September 4, 2020, the OPP attended with the Sheriff at McKenzie Meadows to read and post the amended injunction dated August 27, 2020. Protesters purposefully chose not to be on site at that time but observed the Sheriff's attendance from a distance.
33. On September 5, 2020, the OPP observed two protesters on site at McKenzie Meadows in breach of the injunction. Upon leaving the site, they were arrested and charged with Mischief and Disobey Court Order.
34. On September 7, 2020, the OPP observed two more protesters on site at McKenzie Meadows in breach of the injunction. Upon leaving the site, they were arrested

and charged with Mischief and Disobey Court Order. One of them was also charged with Fail to Comply with Release Conditions and held for bail.

35. On September 12, 2020, approximately thirty protesters attended a rally and march along Argyle Street in protest of the OPP's enforcement activities. Some protesters blocked the roadway in and around Douglas Creek Estates.

36. On September 15, 2020, the OPP arrested and charged a protester with two counts of Mischief and Disobey Court Order. Further arrests and charges were made on September 16 (one protester), 21(one protester), 29 (two protesters), October 1 (one protester) and 5 (one protester), 2020.

37. A Warrant for Arrest has been issued for Skyler Williams for charges relating to his actions in relation to the occupation of McKenzie Meadows. The OPP expects he will be arrested and charged.

38. In total, to date, the OPP has arrested 29 individuals, laid 77 charges under the *Criminal Code* and one charge under the *Railway Safety Act* related to the protests and breaches of the injunctions.

Other Land Disputes in Caledonia Area

39. In addition to the Framework and the injunctions, the OPP's response to the occupation of the McKenzie Meadows site and the other blockades in Caledonia is informed in part by the recent history of land disputes involving Indigenous persons in the Caledonia area. The policing response must be informed by context. There have been numerous protests, blockades and occupations in the Caledonia area over the last fifteen years. In discharging its policing obligations, the OPP must be aware of that context and the impact on public safety in Caledonia and elsewhere that may result from the use of force and other means of enforcement.

40. On or about February 28, 2016, the occupation of Douglas Creek Estates in Caledonia began with eighteen Indigenous protesters occupying the land. On March 3, 2006, an interim injunction was granted by Justice Matheson prohibiting further interference with the then land-owner, Henco Industries Limited ("Henco"), in the performance of work relating to the construction of the sub-division and ordering, among other things, that all barricades preventing access to Douglas Creek Estates be removed. Paragraph 4 of that Order compelled the OPP to assist in the execution of the Order by removing any persons who refused to obey the injunction.

41. On or about March 5, 2006, the Sheriff for Haldimand County read the terms of the injunction to the protesters at Douglas Creek Estates and posted it at the site. Up to

that point, the mood of the protesters had been relatively cordial. The mood quickly changed. The protesters were not prepared to leave.

42. By Orders of Justice Marshall dated March 9, 2006, the injunction granted by Justice Matheson was made permanent and the motion brought by Henco for a contempt order against the protesters was put over to the afternoon of March 16, 2006.

43. Tensions amongst the protesters and residents of Caledonia increased noticeably following Justice Marshall's Orders of March 9, 2006. There was a significant increase in numbers of protesters from Indigenous communities outside of the Caledonia area. Mohawk Warriors started to appear in greater numbers. The protesters adopted a more militant stance. Approximately 200 protesters were on site in anticipation of a potential move to evict them. When the OPP did not immediately react with force or increase its presence, many of the protesters left the Douglas Creek Estates site.

44. After hearing submissions on March 16 and 17, 2006, Justice Marshall found the protesters present at the Douglas Creek Estates to be in civil and criminal contempt of court.

45. At 8:00 a.m. on March 22, 2006, there were approximately twelve protesters on the site. By 2:00 p.m. that afternoon, the deadline for leaving the Douglas Creek Estates site set by Justice Marshall, approximately 135 protesters were on the site. By evening, there were only about fifty protesters present. Justice Marshall subsequently signed

Warrant of Arrest for certain named individuals as well as for unidentified persons referred to as John Doe and Jane Doe.

46. Recognizing the complexity of the situation, the risks involved in any ill-conceived, or hasty enforcement action, as well as the fact there were ongoing negotiations, the OPP continued to monitor the situation and remained involved in dialogue with the protesters with a goal of effecting a peaceful resolution and reducing the likelihood of violence. With public safety as the paramount concern, the OPP continued, during the ensuing time period, to assess the feasibility of executing the Warrant of Arrest.

47. The protesters remained at Douglas Creek Estates for more than three weeks after the issuance of the Warrant of Arrest. Talks had broken down between the Province of Ontario, Government of Canada and representatives of the Six Nations. On the morning of April 20, 2006, the OPP entered the site to enforce the injunction and to execute the outstanding Warrant of Arrest. The protesters who were on site at that time were given an opportunity to leave the site. It is estimated that fewer than ten people chose the option to exit the property. Those refusing to leave were arrested. As a result, nineteen persons were arrested, taken into custody and processed. Two women, fourteen men and three youths were arrested pursuant to the Warrant of Arrest for John Doe and Jane Doe. One of the individuals was arrested again that day upon returning to the site and was also charged with breach of conditions. One other adult male was arrested near the site for

various *Criminal Code* offences. He was taken to the Haldimand Detachment and held for a bail hearing. He was not arrested pursuant to the Warrant of Arrest.

48. After making those arrests and clearing the Douglas Creek Estates site of protesters, the OPP remained on the site. Shortly thereafter, the OPP was confronted by more than 100 protesters. Some of those protesters carried weapons. To ensure officer and public safety, the OPP was forced to withdraw its officers from the site. To remain on site would have resulted in an escalation of violence that may have resulted in serious injury or death.

49. By noon, approximately 400 protesters occupied the site. The area of occupation was expanded to include portions of roadway and railway not previously occupied. Barricades were erected at various locations around Caledonia. Argyle Street and 6th Line was blockaded by burning tires. Highway #6 By-Pass bridge was blocked with metal bars and guard railings. The Highway #6 By-Pass was blocked with a burnt vehicle and tires. Argyle Street was blockaded by a gravel truck and gravel and the former Sterling Street Bridge location. The Sterling Street Bridge was burnt to the ground. Fires were observed near railway tracks at 6th Line. This response was clearly a planned, coordinated action by at least some of the protesters to reoccupy the Douglas Creek Estates site and to expand the area of occupation.

50. Sympathy protests were held in Montreal and Vancouver and CN rail tracks were blockaded for approximately 24 hours at Marysville, Ontario.

51. Unfortunately, the execution of the John Doe and Jane Doe Warrant of Arrest was not without incident. An officer was hit in the head with a bag of rocks by a protester and suffered injuries to his face and head. Charges were laid against various individuals for Intimidation, Obstruct Police, Assault Police, Cause a Disturbance, Assault with a Weapon, Dangerous Driving, Flight from Police and Mischief.

52. Immediately following the events of April 20, 2006, the OPP worked to re-establish communications and dialogue with the protesters. The OPP's objectives were to reduce the likelihood of violence and to facilitate the removal of the road and rail blockades.

53. On or about April 29, 2006, the Province of Ontario appointed David Peterson to work towards removal of the road and rail blockades.

54. On or about May 3, 2006, the Province of Ontario and Government of Canada appointed Jane Stewart and Barbara MacDougall respectively to address the land issues at the heart of the dispute with the Six Nations. The OPP facilitated the initiation of substantive negotiations.

55. On May 4, 2006, counsel for Railink Canada Ltd. obtained injunctive relief in respect of the blockade by the rail way by the protesters.

56. On May 22, 2006, an arrangement was reached resulting in the protesters removing the barricade at Argyle Street to allow through vehicular traffic. During the process of opening the roads to traffic, a disturbance broke out and the protesters immediately set up another barricade by dragging a large, unused electrical tower across Argyle Street. A large backhoe was brought in by the protesters. A portion of Argyle Street was dug up. Tempers flared between a group of approximately 300 Caledonia residents who opposed the occupation and approximately 500 protesters. Additional police were called in to keep the two sides apart. In the melee, an officer was assaulted and slightly injured.

57. At approximately 2:30 p.m. on May 22, 2006, the Caledonia Electrical Transfer Station suffered damage by unknown persons resulting in a major power outage in parts of Norfolk and Haldimand Counties.

58. On May 23, 2006, the barricade was once again removed from Argyle Street and traffic was allowed to resume. The other barricades remained in place.

59. On May 29, 2006, on the court's own motion, Justice Marshall issued an Order directing various parties to attend court on June 1, 2006. None of the parties involved in the proceedings to that point had asked for intervention by the court.

60. On the evening of June 4, 2006, a number of residents of Caledonia opposing the occupation approached the barricades on Braemar Avenue and confrontations occurred.

The OPP laid two assault charges against one individual as a result of the incidents. In addition, a security car located at the Caledonia hydro transformer station and a barn were set on fire.

61. On June 9, 2006, a number of violent incidents took place and arrest warrants were subsequently issued against eight individuals for violence-related offences. As a result of these incidents, four civilians and a police officer were injured and treated for injuries varying in severity from chest pains to a concussion.

62. On June 12, 2006, the Premier of Ontario announced that all talks related to land issues involving the Douglas Creek Estates would be suspended as a result of the violence and would not resume until all the barricades were removed.

63. On June 13, 2006, the barricades on Highway 6 By-Pass and the rail line were cleared.

64. At a further attendance before Justice Marshall on June 16, 2006, the Province of Ontario, through its counsel, announced that it had made an offer to purchase the Douglas Creek Estates property from Henco.

65. On June 21, 2006, Justice Marshall, again acting on the court's own motion, ordered all parties to attend before him so that the parties "may apprize (sic) the Court of the progress or lack thereof, being made in this matter – so that the Court will be in a

position to properly monitor the matter and to make any appropriate order in the face of the ongoing attempt, outstanding injunctions and outstanding warrants or arrests of the Superior Court of Justice.” There were no obvious events or circumstances which appear to have prompted this Order.

66. On June 29, 2006, a rail line was blocked at 6th Line in Caledonia for approximately twelve hours, apparently in sympathy for a protest that had been planned by Aboriginal groups in Manitoba.

67. Further to his request, the parties attended before Justice Marshall on July 5, 2006. The Province of Ontario, through its counsel, announced that it had purchased the Douglas Creek Estates land from Henco. Henco brought a consent motion to dismiss its action and vacate the injunction. Justice Marshall reserved his decision. On the afternoon of Friday, August 4, 2006, just before the Civic Day long weekend, Justice Marshall announced that he would be reading his decision on August 8, 2006. It is that decision which led to the Ontario Court of Appeal decision in *Henco v. xxx*

68. The mood was tense over that long weekend. On the evening of August 6, 2006 and early morning hours of August 7, 2006, residents and protesters threw rocks and golf balls at one another and were armed with sticks, golf clubs and baseball bats. A police officer was hit by a rock but was not injured. Similar incidents occurred on August 8, 2006.

69. In addition to the occupation of Douglas Creek Estates and the dispute over the McKenzie Meadows development site described above, the OPP have had to respond to numerous other land disputes in or near Caledonia involving Indigenous persons. A number of other residential developments were delayed or halted by protesters, as well as commercial developments.

70. On September 13, 2007, a developer at the Stirling Woods development was seriously injured following a confrontation with a number of First Nations protesters. The victim was hospitalized with injuries including a concussion and fractures to the nose and cheek. Two Indigenous protestors and one young offender were subsequently charged with assault, aggravated assault, threatening and break and enter.

71. There have also been a number of protests and rallies initiated by non-Indigenous persons in the Caledonia area relating to the situation at Douglas Creek Estates. There have been numerous arrests made and charges laid with respect to such incidents or arrests made to prevent a breach of the peace.

72. In response to the incidents described in this affidavit, and other incidents, the OPP have on numerous occasions deployed public order units and emergency response teams to maintain peace and security in the Caledonia area. Various municipal forces have provided assistance by deploying members and equipment to Caledonia. Dialogue, negotiation and police presence have prevented many situations from deteriorating into serious altercations between Indigenous and non-Indigenous communities. I believe that

the OPP's strong presence on the ground in Caledonia has helped reduce the number and severity of incidents and injuries.

73. On February 24, 2020, a large number of Indigenous protesters and supporters blocked Highway 6 in Caledonia in support of the Wet'suwet'en protests and in response to the OPP's enforcement in Tyendinaga, Ontario on the same day. Wooden pallets, tires and barbed wire was used for that purpose. Protesters blocked Highway 6 By-Pass and the CN rail line. Highway 6 By-Pass was blocked for approximately one month.

Enforcement Action

74. As set out in a previous section of my affidavit, the OPP has taken a number of steps to enforce the injunctions, including the use of its Provincial Liaison Team, direct action by clearing the McKenzie Meadows site and arresting protesters in breach of the injunctions. Those activities are continuing.

75. From the outset, the OPP has used its Provincial Liaison Team to try to reduce tension in the community and at McKenzie Meadows with the goal of achieving compliance with the injunctions. The PLT has been successful in its efforts with respect to removing the blockades on Highway Six, Argyle Street, the Highway Six By-Pass and the CN rail line. However, protesters remain in occupation of McKenzie Meadows.

76. On August 5, 2020, the OPP used its Public Order Unit to arrest, remove and charge all the protesters who were in breach of the Foxgate Injunction. Protesters came back in large numbers later that day and continued with their occupation of that site.

77. The OPP has arrested numerous protesters and laid a variety of charges under the *Criminal Code*. All of the accused were released on conditions; some were held for bail hearings and ultimately released by the Court. The OPP continues its investigation in respect of these matters and it is highly likely that more criminal charges will be laid.

78. The OPP continues to engage in operational planning for removal of the protesters on McKenzie Meadows. This is a complicated process. As seen from the reaction to the enforcement activity on August 5, 2020⁶, the OPP has to also prepare for an almost inevitable backlash to such action. The past history of disputes in the Caledonia area make it very likely that protesters will respond with violence and further blockades, which would likely cause property damage to goods and infrastructure and interrupt the free flow of traffic on highways and rail lines. There is also a significant risk of injury to police officers, protesters or members of the public, not only in the course of enforcement activities but in its aftermath. There could also be sympathy protests, blockades and occupations in other parts of Ontario or Canada that could cause significant property and economic damage. The situation remains tense and volatile.

79. The OPP's belief that enforcement action will cause a significant backlash and likely result in violence is not only based on historical precedent, but also its own

⁶ As well as the reaction to the removal of protesters from Douglas Creek Estates in 2006.

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intelligence and information-gathering and risk assessments. While I am not prepared to advise of the source of that information or to share the risk assessments⁷, I can advise that some of the protesters have access to weapons. I also believe, based on the information available to me, that protesters have access to incendiary devices and may use them in the event of an operation to forcibly remove protesters⁸. I further believe that critical infrastructure such as railways, bridges and hydro stations may be attacked and damaged in retaliation for the use of force by the police. I am responsible to ensure that all appropriate precautions are taken to minimize the risk of injury to members of the OPP, protesters and members of the public and to reduce the likelihood of a significant breach of the peace.

80. While there has been some violence that has resulted in physical injuries to police officers, I believe that by applying the Framework and engaging in continuing dialogue with the protesters and other members of the community, the OPP has, to the extent possible, minimized the quantity and severity of injuries arising from this difficult problem. To date, there have been no serious injuries or deaths.

81. Operational and tactical decisions are never made in a vacuum. They must be made by considering the full context of the situation. The OPP is doing its best to ensure compliance with the injunctions while minimizing the risk to public and officer safety. The OPP is continuously assessing information to determine what course of action is best

⁷ This information is privileged.

⁸ In fact, one of the protesters unsuccessfully tried to ignite a flammable liquid on August 5, 2020 as the Public Order Unit was clearing the site.

intelligence and information-gathering and risk assessments. While I am not prepared to advise of the source of that information or to share the risk assessments⁷, I can advise that some of the protesters have access to weapons. I also believe, based on the information available to me, that protesters have access to incendiary devices and may use them in the event of an operation to forcibly remove protesters⁸. I further believe that critical infrastructure such as railways, bridges and hydro stations may be attacked and damaged in retaliation for the use of force by the police. I am responsible to ensure that all appropriate precautions are taken to minimize the risk of injury to members of the OPP, protesters and members of the public and to reduce the likelihood of a significant breach of the peace.

80. While there has been some violence that has resulted in physical injuries to police officers, I believe that by applying the Framework and engaging in continuing dialogue with the protesters and other members of the community, the OPP has, to the extent possible, minimized the quantity and severity of injuries arising from this difficult problem. To date, there have been no serious injuries or deaths.

81. Operational and tactical decisions are never made in a vacuum. They must be made by considering the full context of the situation. The OPP is doing its best to ensure compliance with the injunctions while minimizing the risk to public and officer safety. The OPP is continuously assessing information to determine what course of action is best

⁷ This information is privileged.

⁸ In fact, one of the protesters unsuccessfully tried to ignite a flammable liquid on August 5, 2020 as the Public Order Unit was clearing the site.

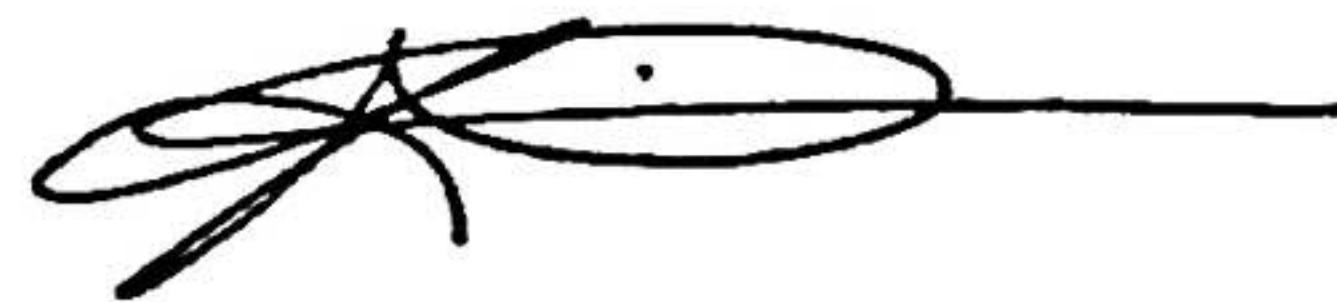
in this regard. In fact, the OPP has twice daily briefings to consider the latest information relevant to operations and enforcement.

82. The OPP understands and accepts that it has a legal obligation to assist the Sheriff in enforcing the injunctions. The best-case scenario is for the protesters to leave without further enforcement action and the use of force. This was achieved with respect to the Haldimand Injunction. For the reasons described herein, the OPP is concerned about the risks involved with using force to remove protesters from McKenzie Meadows and is actively involved in trying to bring about a peaceful resolution. However, to the extent the use of force is necessary, an operation of this type requires carefully planning so as to reduce the likelihood of violence and managing any backlash. The existence of police discretion as to the timing and means of enforcing the Order is crucial in this respect.

83. The use of force, except where required to keep the peace and maintain order, is a blunt instrument that cannot resolve the issues underlying land disputes of this nature.

84. I swear this affidavit for the purpose of updating the court on the status of the enforcement activities undertaken by the OPP to date and for no other or improper purpose.

Sworn before me on this 5th day of October
2020, in the City of London, in
the Province of Ontario.



John A. Cain
Regional Commander
West Region
Ontario Provincial Police