



Court File No.

Electronically issued  
Délivré par voie électronique : 15-Apr-2021  
Cayuga

DEVELOPMENTS INC., LOSANI HOMES (1998) Ltd. and  
MAPLEWOOD ESTATES INC.

**Plaintiffs**

**and**

THE ATTORNEY GENERAL OF CANADA, HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, THE ONTARIO PROVINCIAL POLICE, ONTARIO PROVINCIAL POLICE COMMISSIONER THOMAS CARRIQUE, THE ONTARIO FEDERATION OF LABOUR, SKYLER WILLIAMS, ALICIA ANDERSON, KURT GIBSON, ELYSE MAYO, LAUREL MACGREGOR, KOKO NEWELL, KAITLYN SMITH, NATHAN STRONGITHARM, TODD WILLIAMS, PATRICIA MILLS, AUDRA TAILLEFER, HAILEY BUTLER-HENDERSON, JOSHUA EDGAR, SUMMER MARACLE-MUIR, COURTNEY SKYE, ANDREW GILLETTE, LESLIE SHAPIRO De MARTIGNY, BARRY CONWAY, JEREMY LARIVEE, MOHAMMED SYED, STARLA MYERS, LELA GEORGE, ALLEN GRAHAM, LEAH ROWLINSON, and ROBERT LAMOTHE

**Defendants**

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## STATEMENT OF CLAIM

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TO THE DEFENDANTS

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

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

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

Instead of serving and filing a Statement of Defence, you may serve and file a Notice of Intent to Defend in Form 18B prescribed by the *Rules of Civil Procedure*. This will entitle you to ten more days within which to serve and file your Statement of Defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date \_\_\_\_\_ Issued by \_\_\_\_\_  
Local Registrar

Address of court office: Superior Court of Justice  
55 Munsee Street North  
Cayuga, Ontario, N0A 130

**TO:** The Attorney General of Canada  
Ontario Regional Office  
Department of Justice  
120 Adelaide Street West, Suite #400  
Toronto, Ontario, M5H 1T1

**AND TO:** Her Majesty the Queen in Right of Ontario  
Crown Law Office (Civil Law)  
Ministry of the Attorney General  
720 Bay Street, 8<sup>th</sup> Floor  
Toronto, Ontario, M5G 2K1

**AND TO:** The Ontario Provincial Police  
General Headquarters

Lincoln M. Alexander Building  
777 Memorial Avenue  
Orillia, Ontario, L3V 7V3

**AND TO:** Ontario Provincial Police Commissioner, Thomas Carrique  
General Headquarters  
Lincoln M. Alexander Building  
777 Memorial Avenue  
Orillia, Ontario, L3V 7V3

**AND TO:** The Ontario Federation of Labour  
15 Gervais Drive, Suite 202  
Toronto, Ontario, M3C 1Y8

**AND TO:** Skyler Williams  
2687 Fifth Line  
Ohsweken, Ontario, N0A 1M0

**AND TO:** Alicia Anderson  
Six Nations First Nation

**AND TO:** Kurt Gibson  
Six Nations First Nation

**AND TO:** Elyse Mayo  
Barrie

**AND TO:** Laurel Macgregor  
Ancaster

**AND TO:** Koko Newell  
Bancroft

**AND TO:** Kaitlyn Smith  
Scarborough

**AND TO:** Nathan Strongitharm  
Tyendinaga First Nation

**AND TO:** Todd Williams

Six Nations First Nation

**AND TO:** Patricia Mills  
Hamilton

**AND TO:** Audra Taillefer  
Six Nations First Nation

**AND TO:** Hailey Butler-Henderson  
Barrie

**AND TO:** Joshua Edgar  
Greater Napanee

**AND TO:** Summer Maracle-Muir  
Barrie

**AND TO:** Courtney Skye  
Six Nations First Nation

**AND TO:** Andrew Gillette  
Guelph

**AND TO:** Leslie Shapiro De Martigny  
Hamilton

**AND TO:** Barry Conway  
Hamilton

**AND TO:** Jeremy Larivee  
London

**AND TO:** Mohammed Syed  
St. Catherines

**AND TO:** Starla Myers  
Six Nations First Nation

**AND TO:** Lela George  
London/ Oneida First Nation

**AND TO:** Allen Graham  
Orillia

**AND TO:** Leah Rowlinson  
Toronto

**AND TO:** Robert Lamothe  
Dunnville

**CLAIM AGAINST THE ATTORNEY GENERAL OF CANADA, HER MAJESTY THE QUEEN IN THE RIGHT OF ONTARIO, THE ONTARIO PROVINCIAL POLICE, ONTARIO PROVINCIAL POLICE COMMISSIONER THOMAS CARRIQUE**

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1. The Plaintiffs claim as against the Her Majesty the Queen in Right of Ontario ("**Ontario**"), the Attorney General of Canada ("**Canada**"), Ontario Provincial Police Commissioner Thomas Carrique (the "**Commissioner**"), as well as against the Ontario Provincial Police (the "**OPP**") arising from negligence and failure to act in a reasonable manner or take all reasonable steps required of both Ontario and Canada, their respective Ministers and Ministries, as well as of the OPP to take all reasonable steps and actions that could have prevented the illegal or continued occupation by a number of the Defendants of the Lands (as hereinafter defined) of the Plaintiffs:
  - (a) Damages, including specific, general and aggravated damages, as well damage to reputation, in the amount of Two Hundred Million Dollars (\$200,000,000.00) or such other amount as may ultimately be proven at a trial;
  - (b) An Order directing that Ontario and Canada be required to confirm that title to the lands municipally know as 1535 McKenzie Road, formerly in the Town of Caledonia and the Township of Oneida, now known as The Corporation of Haldimand County, more particularly described legal as: PT LT 3 RANGE WEST OF TOWNSEND TO CALEDONIA ROAD, GEOGRAPHIC TOWNSHIP OF ONEIDA, NOW HALDIMAND COUNTY, DESIGNATED AS PARTS 1-10 INCL. 18R-6318, S/T EASEMENTS AS IN O6293, HC32424, HC119162 & HC119163 , PIN 38168-0390 (LT) (the "**Lands**") is legally held by the Plaintiff, Foxgate Developments Inc. and that the Plaintiffs have complied with all legal steps required to proceed with the development of the Lands;

- (c) An Order directing that Ontario and Canada confirm that the Lands are not subject to a land claim by any Indigenous group, including any member of the Six Nations of the Grand River (“**Six Nations**”), that could impact title to the Lands held by Foxgate or the ability of Foxgate to transfer said title or any portion thereof to any subsequent purchaser free and clear of any land claims or potential land claims;
- (d) An Order directing that Ontario and Canada confirm that the Plaintiffs do not have any obligation to consult with any Indigenous community, including the Six Nations Elected Council (“**SNEC**”) and/or the Haudenosaunee Confederacy Council of Chiefs (“**HCC**”) with respect to development of the Lands;
- (e) A mandatory Order requiring Ontario and Canada to properly execute their statutory obligations, common-law and fiduciary duties as they relate to the matters involving Indigenous Communities in Haldimand County (the “**County**”) and a declaration that the failure on the part of Ontario and Canada to properly execute their constitutional and statutory obligations, as well as common-law and fiduciary duties since at least 2006 has given rise to the incidents outlined herein, including but not limited to the illegal occupation of the Lands, which has given rise to the damages claimed herein;
- (f) Its costs of this Action and all costs incurred by the Plaintiffs on solicitor and own client scale; and
- (g) Such further and other relief as counsel may advise as the Court may permit.

## **CLAIM AGAINST THE ONTARIO FEDERATION OF LABOUR**

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2. The Plaintiffs claim as against The Ontario Federation of Labour (“**OFL**”) the following relief:

- (a) A declaration that the OFL have knowingly and directly assisted the Defendant, Skyler Williams and others, as described further herein, with breaching Orders of this Court and that such assistance has provided for the continued illegal occupation of the Lands and as such has interfered with and supported the interference with the rights of the Plaintiffs in and to the Lands;
- (b) An Order restraining and preventing the OFL, either directly or indirectly, including through members of the OFL from providing any financial or material assistance to any person who may be in breach of any Court Orders relating to the subject Lands that have the intention of supporting or providing for any continued breach or future breach of any Court Orders related to the Lands;
- (c) A declaration that the OFL have intentionally interfered with the economic relations of the Plaintiffs and that by such conduct have interfered with and have caused delays to the development of the Lands by the Plaintiffs;
- (d) Damages arising from such conduct in the amount of Two Million Dollars (\$2,000,000.00) each;
- (e) Its costs of this Action and all costs incurred by the Plaintiffs on solicitor and own client scale; and
- (f) Such further and other relief as counsel may advise as the Court may permit.

### **CLAIM AGAINST THE INDIVIDUAL DEFENDANTS**

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3. The Plaintiffs claim as against the Defendants Skyler Williams, Alicia Anderson, Kurt Gibson, Elyse Mayo, Laurel Macgregor, Koko Newell, Kaitlyn Smith, Nathan Strongitharm, Todd Williams, Patricia Mills, Kaitlyn Smith, Audra Taillefer, Hailey Butler-Henderson, Joshua Edgar, Summer Maracle-Muir, Courtney Skye, Andrew Gillette, Leslie Shapiro De Martigny, Barry Conway, Jeremy Larivee, Mohammed Syed, Starla Myers, Lela George, Allen Graham, Leah Rowlinson, and Robert Lamothe (collectively the “**Individual Defendants**”) the following:

- (a) A declaration that the Individual Defendants, either individually and/or collectively, have knowingly, willingly and deliberately interfered with the economic relations and property rights of the Plaintiffs by, amongst other actions, engaging in activities that are in violation of various Court Orders that have resulted in interference with the Plaintiffs' economic relations as well as the development of the Lands, and have caused the Plaintiffs significant reputational damages;
- (b) An Order restraining the Individual Defendants from providing any financial or material assistance to any person(s) who may be in breach of any Court Orders relating to the subject Lands that support or provide for any continued breach or future breach of any Court Orders related to the Lands;
- (c) Damages arising from such conduct in the amount as against the Individual Defendants in the amount of Twenty Million Dollars (\$20,000,000.00); and
- (d) Its costs of this Action and all costs incurred by the Plaintiffs on solicitor and own client scale.

## **PARTIES**

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- 4. The Plaintiff, Foxgate Developments Inc. ("**Foxgate**"), is a corporation incorporated pursuant to the laws of the Province of Ontario. Foxgate is the owner of the Lands, which it acquired on September 9, 2015. The Lands comprise approximately 25 acres.
- 5. The Plaintiff Losani Homes (1998) Ltd. ("**Losani**") is a corporation incorporated pursuant to the laws of the Province of Ontario. Losani is a leading builder and developer of residential developments in Ontario and is a development partner involved in the development of the Lands. Losani has been a family business for forty-four (44) years with a reputation for community involvement, human compassion and charity. However, the consequence of the collective failure by Ontario, Canada and the OPP to confirm title to the Lands and failure to ensure that the Court Orders are properly and effectively enforced has created a public perception that there is indeed a meritorious land claim and that the Lands were acquired by Foxgate in an improper manner. The result is that the Losani Homes' family and companies have now been branded by the general public as having

stolen the land from Indigenous persons. The reputational damage of that perception is permanent and catastrophic to the family name.

6. The Plaintiff, Maplewood Estates Inc. ("**Ballantry Homes**" or "**Ballantry**"), is a corporation incorporated pursuant to the laws of the Province of Ontario. Ballantry is a leading builder and developer of residential developments in Ontario and is a development partner involved in the development of the Lands. Ballantry Homes is family run business that has been operating for over 30 years and has earned a reputation for building quality homes while ensuring to take care and consideration of the communities in which it operates. The collective failure of Ontario, Canada and the OPP to address the Land title claims and enforce the Court Orders has significantly damaged the reputation that Ballantry has worked for thirty (30) years to achieve. The result of this inaction and lack of execution has helped create the public perception that Foxgate and its partners acted improperly to acquire the subject Lands. This has resulted in Ballantry Homes being perceived as a company that acts with selfishness and greed, and which has actively tried to steal land from the Indigenous people. The damage to the reputation of Ballantry Homes, and the family partners who own the company, is devastating and irreparable.
7. Both Losani and Ballantry have made considerable financial investments in Foxgate and in the development of the Lands through Foxgate, which investments include but are not limited to the acquisition of the Lands; costs related to obtaining the necessary development approvals required under the Planning Act; costs related to providing infrastructure and servicing necessary to support development of the Lands and the design of same; costs related to the marketing and sales of homes to be developed on the Lands; as well as costs related to defending the right of Foxgate to proceed with development of the Lands in the face of actions by members of the Six Nations that have prevented said development from proceeding.
8. Both Losani and Ballantry have sold homes as part of the development that has been approved for the Lands and are contractually committed to constructing the homes for these purchasers. Losani and Ballantry have entered into one hundred and seventy-six (176) sales agreements with different purchasers. Given the ongoing actions and the inability of Foxgate to obtain access to its Lands the development of the Lands has been frustrated and the delivery of the homes has been thwarted.

9. Canada through the Parliament of Canada has the responsibility under Section 91(24) of the Constitution Act, 1967 for "Indians, and Lands reserved for Indians".
10. Canada has failed to exercise its Constitutional and statutory duties arising under Section 91(24) of the Constitution Act. Canada is responsible for the identification of "Lands reserved for Indians" and to identify with certainty and confirm such lands knowing that the identification of such lands are critical to the legal interests of others, including but not limited to the Plaintiffs.
11. Canada issued a Crown Grant in 1853 that transferred title in the lands from the Crown to Mr. Thomas Nicholls ("**Mr. Nicholls**"). Canada by the Crown Grant created a legal right, title and interest in and to the Lands to Mr. Nicholls and all subsequent purchasers, including the Plaintiffs. That right, title and interest in and to the Lands provides the Plaintiffs with the right to be able to use those Lands for all legal purposes as they may so desire and did not reserve or limit any such rights to any claims that could be advanced by any Indigenous person(s). Any failure to provide for any such reservation or limitation, should one exist or potentially exist, is a failure on the part of Canada to protect the rights of the Plaintiffs.
12. The failure on the part of Canada to exercise its authority and to confirm, and uphold the Plaintiffs' legal interest in the Lands as created by the Crown Grant, has created uncertainty that has given rise to the protests and blockades on the Lands by the Individual Defendants and others for which Canada has failed to take steps to prevent.
13. Ontario through the Parliament of the Province of Ontario has established legislation related to the registration of interests in real property, as well as land use planning, including but not limited to the Growth Plan for the Greater Golden Horseshoe, that apply to the subject Lands and have directed where and how development in the Province of Ontario is to proceed. Ontario has not identified any right or interest as part of any registration system that could have impacted the right, title and interest in and to the Lands held by the Plaintiff.
14. The OPP is the provincial police service established under the Police Services Act and, pursuant to section 19, the OPP is responsible for: "Providing police services in respect of the parts of Ontario that do not have municipal police forces other than municipal law enforcement officers."

15. The Commissioner is responsible for the administration and operation of the OPP and the officers who operate thereunder.
16. The OPP, along with all other police services in Ontario, is required to ensure the provision of adequate and effective police services under the Police Services Act which includes the following:
  - Crime prevention.
  - Law enforcement.
  - Assistance to victims of crime.
  - Public order maintenance.
  - Emergency response.
17. The County, in which the lands are located, do not have a municipal police force and, as such, rely upon the provision of police services through the OPP.
18. The OFL is an organization which represents a number of trade unions and labour groups through the Executive Board of the OFL which manages the affairs of the OFL. The OFL, through its Executive Board, has provided direct material support, and financial assistance, including but not limited to materials and supplies for the construction of temporary housing on the Lands which have been erected without the consent of the Plaintiffs and in direct violation of the Court Orders that have been made directing that the Lands are to be returned to the Plaintiffs and that all interference with the Plaintiffs development of same immediately cease and desist.
19. The Defendant Skyler Williams (“**Mr. Williams**”) is an individual residing in the Province of Ontario and who has been named directly in various Court Orders directing, amongst other items, that the illegal occupation and disruption of the Lands cease. Notwithstanding having been named in the Court Orders and having been charged with breach of the Court Orders, and other offences related to the occupation and disruption of the development of the Lands, Mr. Williams, along with others, has continued to occupy the Lands, as well as public roads and has, illegally and without right, prevented development from proceeding.
20. The Defendant, Alicia Anderson, is an individual residing in the Province of Ontario who has been charged with offences related to the occupation and disruption of the development of the Lands.

21. The Defendant, Kurt Gibson, is an individual residing in the Province of Ontario who has been charged with offences related to the occupation and disruption of the development of the Lands.
22. The Defendant, Elyse Mayo, is an individual residing in the Province of Ontario who has been charged with offences related to the occupation and disruption of the development of the Lands.
23. The Defendant, Laurel Macgregor, is an individual residing in the Province of Ontario who has been charged with offences related to the occupation and disruption of the development of the Lands.
24. The Defendant, Koko Newell, is an individual residing in the Province of Ontario who has been charged with offences related to the occupation and disruption of the development of the Lands.
25. The Defendant, Kaitlyn Smith, is an individual residing in the Province of Ontario who has been charged with offences related to the occupation and disruption of the development of the Lands.
26. The Defendant, Nathan Strongitharm, is an individual residing in the Province of Ontario who has been charged with offences related to the occupation and disruption of the development of the Lands.
27. The Defendant, Todd Williams, is an individual residing in the Province of Ontario who has been charged with offences related to the occupation and disruption of the development of the Lands.
28. The Defendant, Patricia Mills, is an individual residing in the Province of Ontario who has been charged with offences related to the occupation and disruption of the development of the Lands.

29. The Defendant, Kaitlyn Smith, is an individual residing in the Province of Ontario who has been charged with offences related to the occupation and disruption of the development of the Lands.
30. The Defendant, Audra Taillefer, is an individual residing in the Province of Ontario who has been charged with offences related to the occupation and disruption of the development of the Lands.
31. The Defendant, Hailey Butler-Henderson, is an individual residing in the Province of Ontario who has been charged with offences related to the occupation and disruption of the development of the Lands.
32. The Defendantm, Joshua Edgar, is an individual residing in the Province of Ontario who has been charged with offences related to the occupation and disruption of the development of the Lands.
33. The Defendant, Summer Maracle-Muir, is an individual residing in the Province of Ontario who has been charged with offences related to the occupation and disruption of the development of the Lands.
34. The Defendant, Courtney Skye, is an individual residing in the Province of Ontario who has been charged with offences related to the occupation and disruption of the development of the Lands.
35. The Defendant, Andrew Gillette, is an individual residing in the Province of Ontario who has been charged with offences related to the occupation and disruption of the development of the Lands.
36. The Defendant, Leslie Shapiro De Martigny, is an individual residing in the Province of Ontario who has been charged with offences related to the occupation and disruption of the development of the Lands.

37. The Defendant, Barry Conway, is an individual residing in the Province of Ontario who has been charged with offences related to the occupation and disruption of the development of the Lands.

38. The Defendant, Jeremy Larivee, is an individual residing in the Province of Ontario who has been charged with offences related to the occupation and disruption of the development of the Lands.

39. The Defendant, Mohammed Syed, is an individual residing in the Province of Ontario who has been charged with offences related to the occupation and disruption of the development of the Lands.

40. The Defendant, Starla Myers, is an individual residing in the Province of Ontario who has been charged with offences related to the occupation and disruption of the development of the Lands.

41. The Defendant, Lela George, is an individual residing in the Province of Ontario who has been charged with offences related to the occupation and disruption of the development of the Lands.

42. The Defendant, Allen Graham, is an individual residing in the Province of Ontario who has been charged with offences related to the occupation and disruption of the development of the Lands.

43. The Defendant, Leah Rowlinson, is an individual residing in the Province of Ontario who has been charged with offences related to the occupation and disruption of the development of the Lands.

44. The Defendant, Robert Lamothe, is an individual residing in the Province of Ontario who has been charged with offences related to the occupation and disruption of the development of the Lands.

## **FACTUAL BACKGROUND**

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### Foxgate Acquisition of the Lands

45. On September 9<sup>th</sup>, 2015, the Lands were acquired by Foxgate. The parcel register identifies Foxgate as the owner of the Lands and that they were acquired from a numbered company, specifically 2036356 Ontario Inc. for Four Million Dollars (\$4,000,000.00). Ontario accepted the transfer on title and as such confirmed for all third parties, including the Individual Defendants and the OFL that title to the Lands had vested in Foxgate.
  
46. Prior to acquiring the Lands, Foxgate, through its solicitors, undertook a full examination of title to identify any claims or encumbrances that may have existed. The search of title even extended to the original Crown Grant and request for information from various government agencies. As part of that process, lawyers for Foxgate at the time requisitioned from the Ministry of Natural Resources and Forestry a copy of the Crown Lands Patent Records ("**Crown Grant**").
  
47. A search of title tracing back to the original Crown Patent identified that the Lands had been granted to Mr. Nicholls on November 21<sup>st</sup>, 1853 and was recorded in the Province of Canada archives on December 3<sup>rd</sup>, 1853.
  
48. There has never been any judicial proceeding commenced by any person or entity to set aside the original Crown Grant which transferred legal title from the Crown to Mr. Nicholls in 1853. That right, title and interest in and to the Lands provides the Plaintiffs with the right to be able to use those Lands for all legal purposes as they may so desire and did not reserve or limit any such rights to any claims that could be advanced by any Indigenous person. Any failure to provide for any such reservation or limitation, should one exist, is a failure on the part of Canada to protect the rights of the Plaintiffs.
  
49. There has also never been any judicial application sought to seek to set aside the transfer from 2036356 Ontario Inc. to Foxgate in 2015 despite such transfer being part of the public record. The 2015 transfer to Foxgate transferred all right, title and interest in the Lands and neither Canada nor Ontario has ever cautioned or advised that any restrictions on those rights as they relate to Indigenous communities could exist.

50. Despite registration as the owner of the Lands and registration of same as part of Ontario's system of land titles registration, and in the face of the illegal occupations and breaches of various Court Orders by the Individual Defendants named and others, Canada and Ontario have failed to take any steps or to provide any formal statements confirming that ownership in and to the Lands has properly vested with Foxgate and that no claim that could impact that title exists.

Ontario Directs Foxgate to Development the Lands through Consecutive Growth Plans and the Application to Develop the Lands

51. Ontario, through the Ministry of Municipal Affairs and Housing (the "MMAH") is responsible for planning with all stakeholders for the identification and designation of lands to which future population growth is to be directed. The Lands have been identified by Ontario, since at least 2006, in the Growth Plan for the Greater Golden Horseshoe (the "**Growth Plan**") for development for urban uses and as an area to where growth has been directed.

52. The Growth Plan, including updates in 2017, identified (and continues to identify) the Lands as being part of the areas to which development and future urban uses are to be directed. It provided for the planning framework in which development of the Lands and others, including other lands within the Haldimand Tract could be developed to accommodate Ontario's growing population.

53. The Growth Plan in 2006 and again in 2015 and 2017, followed extensive public input and consultation, including input from members of the Six Nations and other Indigenous communities. Ontario did not, in the Growth Plan or in any other planning legislation or policy, identify that development should not proceed on the Lands or other lands within the Haldimand Tract because of any claims, or possible claims by any Indigenous community on said lands.

54. The effect of the Growth Plan was to direct municipalities and developers to plan to develop the lands needed to accommodate additional population and to undertake the investment of millions of dollars in terms of infrastructure and other works in the areas identified for growth in order to accommodate future populations.

55. The Plaintiffs and other developers in Ontario have relied upon the identification or urban designated lands under the Growth Plan when identifying lands for acquisition for future development, which involves the expenditure of significant expenses and financial resources. Consecutive Growth Plans from 2006 up to and including 2020, have continued to identify the lands as an area for future growth and as such have encouraged and directed developers such as the Plaintiffs to invest in same. The Plaintiffs specifically acquired the Lands in response to the directions in the Growth Plan and other provincial directives and have invested significant sums to bring these Lands to the state of development as envisioned by these Provincial directions.
56. The Lands comprise a total of approximately twenty -five (25) acres and are approved to be developed for two-hundred and eighteen (218) residential dwellings and associated uses, including public roads. The Lands are designated for residential uses under the County's Official Plan and as such the only planning approvals required in order to proceed with development of the Lands were applications to amend the zoning provisions, in order to allow the proposed site-specific development standards, and the draft plan of subdivision, which identifies the lotting fabric as well as the location of a public roads and other blocks of land that may be identified for public uses.
57. In 1995 a claim was started by the First Nation for an accounting from Canada and Ontario (collectively referred to as the "**Crown**") for the disposition of lands, including the subject Lands (the "**1995 Action**"). The 1995 Action does not claim a legal interest in title to the Lands. The Lands were originally approved for development in 2003, nearly eight (8) years after the 1995 Action was commenced. Both the Court (on a number of occasions) and the parties to the 1995 Action have confirmed that only an accounting is being sought from the Crown through that action and not the return of the Lands, or any other lands.
58. Despite the 1995 Action, Ontario took no steps to identify any concern with future development proceeding on the Lands or to remove the Lands from identification as future urban lands to be developed. The actions by Ontario to continue to identify the Lands for development in the face of the 1995 Action and a failure to identify any potential area of concern regarding such development has directly attributed to and led to the current disruption of the development of the Lands.

59. On December 16<sup>th</sup>, 2016, the County approved an application that had been submitted for Draft Plan Approval by the Foxgate. Both the application for a Zoning By-Law Amendment and Draft Plan of Subdivision (the “**Applications**” or “**Development Proposal**”) were the subject of a fulsome public process. This process included the holding of a public meeting and the opportunity for comments to be submitted by any interested parties in accordance with the applicable provision of the Planning Act as well as in accordance with the Notification Agreement (as defined hereinafter).
60. In addition to the notices sent under the Planning Act, the County also circulated the Applications and all supporting documentation and reports to the Six Nations and the Mississaugas of New Credit First Nations (the “**Mississaugas**”), in accordance with their Grand River Notification Agreement (“**Notification Agreement**”).
61. The Notification Agreement is an agreement between the County; the Six Nations; the Mississaugas; the County of Brant; the Grand River Conservation Authority; and Ontario. It is intended to share information about matters of mutual interest. The Notification Agreement serves as an information exchange mechanism between the First Nations communities, municipalities, and other parties. With respect to planning application matters these applications are circulated to Six Nations and the Mississaugas for their comment and input.
62. As part of this Notification Agreement all required planning applications and supporting studies and reports are circulated amongst the parties for comment. The Applications, along with all supporting documents and reports, were circulated to all parties to the agreement. At no time did any party to the Notification Agreement identify an issue with the development of the Lands or that the Six Nations or any other Indigenous group was seeking a return of the Lands.
63. Just as in 2003, after the Applications were approved in 2016 allowing the Lands to be developed for residential purposes, there was no appeal filed with either the Court or the Ontario Municipal Board, as it then was, by any person, including any Indigenous community.

## Support for the Proposed Development by the Six Nations

64. The Plaintiffs have been engaged in discussions with representatives of the Six Nations regarding the Development Proposal. As part of those discussions, the Applicant, and the Six Nations Elected Council (the “SNEC”), who is the representative body of the Six Nations, entered into an agreement in May of 2019 in which the SNEC indicated its support for the Development Proposal (the “**Definitive Agreement**”). Specifically, the Definitive Agreement provides as follows:

### 2.4 Development Support Covenants by SNEC

#### *SNEC covenants (the “Development Support Covenants”):*

- (a) *to publicly support the Development as it proceeds, including expressions and statements of ongoing support and commitment to the Development (as may reasonably be requested from the owner from time to time);*
- (b) *to not interfere with or disrupt the Development, whether by protest blockade or any other manner of interference; and*
- (c) *to use all reasonable efforts to work with the Owner to support a cessation of any action or conduct by any member of any First Nations that is intended or reasonably likely to delay, frustrate or interfere with the Development. If the Owner must seek legal remedies to deal with such conduct or action, or respond to any legal actions which may be brought by any third party, SNEC shall support the owner and shall provide confirmation of such support in such form as may be reasonably requested by the Owner, provided that SNEC shall be reimbursed by the owner for the legal expenses that SNEC incurs in connection with the provision of the SNEC's support.*

65. On July 24<sup>th</sup>, 2020, the SNEC provided a Community Update of support for the Development Proposal in which they specifically identified that:

Six Nations of the Grand River has been accommodated for the two residential developments along McKenzie Road in Caledonia. The Accommodations were done by Ballantry Homes, a residential development company from the Toronto area.

There are two parts of to the Accommodation. The first was 2016 when 42.3 acres of the land across from Little Buffalo along Townline Road, formerly owned by the Sloat family, was transferred to Six Nations. The second was the transfer in 2019 of \$352,000 to the Six Nations of the Grand River Elected Council that as put

into a Land Banking Account to be used for future purchases of land that will be added to the Reserve.

There is no legal obligation upon any third party owner of lands to Accommodate for land that is under claim against the Crown and which land change goes back to the 1800's. Most of the land in Oneida Township went out of Six Nations possession in the 1850s, 60s and 70s. The Ontario Court of Appeal pronounced this principle of law in the year 2000 in the Chippewas of Sarnia case. The court said the Chippewas could not have the land returned from innocent third parties from an illegal surrender in the 1830s because of the passage of time. However, the court did say that the Chippewas did have a valid Claim against Canada and Ontario for Breach of Fiduciary Duty because of the illegal surrender. The Ontario Court of Appeal confirmed this principle in 2012/2013 in the HDI court case against the City of Brantford. Similarly, Ballantry Homes, as a third party owner of the land, has no legal obligation to accommodate Six Nations but it did anyway because it is aware of the Claims by Six Nations against Crown Canada and Crown Ontario. This in line with what Empire Homes did in 2016 for its development along McClung Road in Seneca Township in Caledonia when it purchased 200 acres in Oneida Township and agreed to transfer it in stages to Six Nations, Presently Six Nations has received 75 acres from that agreement and will receive the remainder as development progresses at McClung Road.

The remedy for lands and money that were unlawfully taken back in the 1800's against Crown Canada and Crown Ontario. Six Nations commenced an action against both Crowns in 1995 in the Ontario Superior Court of Justice. That suit is being actively prosecuted and the trial is scheduled to start in October of 2022. The Claim is that the Crowns breached their Fiduciary Duty in unlawfully dispossessing Six Nations of all its land and money. As well Six Nations is asking the Crown to account as a Trustee for all the land and money that were taken and if the Crown cannot account, then to restore all the land and money that was lost.

66. The statement identifies that there is *"no legal obligation on any third-party owner of lands to Accommodate for lands that is under claim against the Crown..."*. As the third-party owner, by the acknowledgment of SNEC, Foxgate is not obligated to provide Accommodation for its development, as the remedy which the Six Nations has sought from the Crown is for an accounting of monies that may be owed by the Crown. The statement further identifies that most of the land in the Oneida Township, which includes the subject Lands, *"went out of Six Nations possession in the 1850, 60 and 70's."* As previously noted, and consistent with the statement of SNEC, the Lands were granted by the Crown in 1853 to Mr. Nicholls, leaving the Six Nations possession at that time. If any remedy is owed for same that it is an obligation owed by the Crown and not by the Plaintiffs.

67. Notwithstanding this clear statement and understanding, Foxgate met with Six Nations in order to arrive at an agreement with respect to the Development Proposal which included the opportunity for employment and contracting opportunities with qualified members of Six Nations. The Definitive Agreement provides an opportunity for the Six Nations community to benefit further from the Development Proposal, over and above any direct payments and transfers of land that have been provided for, by creating additional employment opportunities that otherwise would not exist. These benefits have all been offered by Foxgate notwithstanding that it was and is under no legal obligation to do so.
68. The failure on the part of the Crown to address any such complaints and to provide for any remedies that may be required has directly given rise to the interference with and attacks on the right, title and interests to the Lands held by the Individual Defendants and others which the Crown should have known would have impacted the Plaintiffs' rights and economic interests.
69. Not only has the Crown failed to address the complaints as identified in the statement by the SNEC, but has further failed, neglected and/or refused to confirm that the Plaintiffs' interests in and to the Lands is not impacted by any such complaints or challenges by any Indigenous persons and to take steps to ensure that any disputes that the Crown may have with any Indigenous person and or group does not impact the rights of the Plaintiffs.
70. Foxgate does not take a position on what if any monies are owing by the Crown to the Six Nations community. That is a dispute between the Six Nations and Canada that cannot and will not be resolved by continuing to allow the protestors to blockade the Lands, prevent development or further the damage suffered by the Plaintiffs.

#### Initial Interference and Obstruction with Use of Land by many of the Individual Defendants

71. On July 19<sup>th</sup>, approximately twelve (12) unidentified individuals, including a number of the Individual Defendants, entered onto the Lands to commence a public display and protest against the approval of the Development Proposal.

Individuals began to spray bomb heavy machinery, vehicles and equipment belonging to a contractor causing significant damage to their property. In addition to spray bombing the equipment, the equipment was also intentionally sabotaged.

72. The blockades, protests and occupation by the Individual Defendants was, and continues to be, premised on allegations that the Crown Grant is invalid to which the Crown, despite having issued the Crown Grant in 1853, has not defended or taken actions to provide certainty regarding the Lands.
73. As part of the protests and damage to equipment, the Individual Defendants raised the flag of the Six Nations on the Lands and displayed signs and banners that read "LANDBACK". The protestors have identified their opposition to the development of the Lands as "reclamation of lands" and have identified their opposition with the social media tag "#1492LANDBACKLANE".
74. In addition to the raising of flags on the Lands, the Individual Defendants have also parked vehicles on the incomplete road network and erected tents as part of the occupation of the Lands.
75. The effect of these protests has been to halt the completion of site servicing on the Lands, delay closings, and make it impossible for the Plaintiffs to complete their lawful development and to deliver purchased homes to those families that have entered into agreements of purchase and sale.
76. In addition to the damage to the development, the continuation of the protests and occupation will also significantly damage the rights and reputation of the Plaintiffs and the rights of developers generally if their ability to develop lands in accordance with the requirements of the planning regime in the Province is allowed to be thwarted by illegal activities.
77. Many of the Defendants, including Mr. Williams, were previously involved in similar actions against a development proposal in 2006 known as Douglas Creek Estates (the "**DCE Matter**"). Mr. Williams and others were previously arrested with regards to actions dating back to the 2006 protests. The failure of the Crown to resolve the issues related to the DCE Matter protests and to ensure that steps were taken to ensure that such future disruption with lawfully approved lands

identified by the Province would not be allowed to proceed in this manner have directly resulted in the actions affecting the Lands today.

78. The issues raised in 2006 DCE Matter by the protestors, as now, are matters that are outside of the authority, ability, or control of the Plaintiffs to address. The Crown in failing to take steps to resolve the outstanding issues have created an environment in which such actions and efforts to halt legitimate development approvals can successfully thwart such legitimate ventures and give rise to damages being suffered by property owners, like Foxgate, that have relied upon the approvals granted and the legal title to their lands.
79. The Crown either was directly aware or should have known or ought to have known that their continued failure to address the issues from 2006 would directly result in further illegal actions against other innocent property owners such as Foxgate and give rise to damages being suffered. The Crown failed to take steps to address this matter in a manner that would have avoided the disruption and damages suffered by the Plaintiffs.

#### Efforts by the Plaintiffs to Advance Their Development Approvals

80. Shortly after the intrusion onto the Lands by many of the Individual Defendants on July 19<sup>th</sup>, 2020 the Plaintiff, Foxgate, sought an ex-parte injunction requiring that the Lands be vacated and that there be no further activities by any party hindering development of the Lands from proceeding (the “**Injunction Proceedings**”).
81. Prior to seeking the injunction, Foxgate, through its counsel, advised the SNEC, through its counsel, that it would be seeking an injunction requiring the removal of the protestors from its Lands. The SNEC has never indicated any objection or concern with the injunctions, including the permanent injunction which was finally obtained by Foxgate on October 22<sup>nd</sup>, 2020.
82. On July 30<sup>th</sup>, 2020 the Honourable Mr. Justice Harper of the Superior Court of Justice for Ontario (“**Justice Harper**”) granted an ex-parte injunction against the Individual Defendants, identified as Jane and John Doe, requiring same to leave the Lands and to no longer interfere with development (the “**First Order**”). The

First Order also provided that upon the request of the local Sherriff the OPP **shall** assist with the enforcement of the First Order.

83. On July 31<sup>st</sup>, 2020 the Sherriff for the County, accompanied by members of the OPP, attended at the Lands and in accordance with the First Order read the terms of same aloud and posted a copy at the entrance to the Lands.
84. Despite the terms of the interim injunction having been read aloud and posted on site, those in attendance refused to vacate the Lands. Neither the Sherriff's Office, nor the OPP, took any further action on July 31<sup>st</sup> to enforce the First Order and to remove those individuals that continued to occupy the Lands in violation of the First Order.
85. On August 5<sup>th</sup>, 2020 the OPP attended the Lands once again. The First Order was read aloud once again and those in attendance were asked to remove themselves as well as all barricades and structures that had been erected. When those in attendance refused the request of the OPP, the police began to clear the Lands of those who were illegally occupying same and halting development in defiance of the First Order.
86. Despite attending on the Lands on August 5<sup>th</sup> the OPP had not properly planned for the possibility of opposition to any removal efforts. Shortly after the Lands were cleared of protestors by the OPP, a number of other protests and blockades began to surface on public highways leading into and out of Caledonia. Blockades were constructed by the protestors, including fires being set on Argyle Street between Highway 6 and Braemar Avenue in Caledonia, as well as on Highway 6 and the overpass of Highway 6. In addition, the Canadian National Railway line through Caledonia was blocked.
87. While fires, blockades and protests were erupting throughout Caledonia, the OPP diverted resources from the Lands to these other sites in an effort to try and maintain public order and in an attempt to reopen these public highways, which unfortunately was unsuccessful.
88. By around 9:00pm on August 5<sup>th</sup>, the OPP advised that the protestors had been removed and that Foxgate could once again enter onto the site. In anticipation that the site would be cleared of protestors, Foxgate had arranged for private

security to be on site to help ensure that protestors would not return, and that development would be allowed to proceed uninhibited. The private security firm that was hired took their direction from the OPP and was advised to locate at different areas through the site and that at first indication that any of the protestors were returning to contact the OPP. Shortly after the OPP left the site, the protestors returned and resumed their occupation of the site.

89. When Foxgate attempted to contact the OPP regarding the fact that the site had now been occupied once again, it was advised by the OPP that they did not have the resources to enforce the Order as it related to the Lands but rather were busy responding to the blockades, fires and destruction of equipment and property that was occurring throughout Caledonia. Despite the efforts of the security firm to keep the Lands from being re-occupied, the effect of the OPP not being able to respond was that the Lands were once again “taken back” and Foxgate has been denied access to their Lands and the development site since that time.
90. The negligence on the part of the OPP and the Commissioner to properly plan for measures to enforce the First Order and ensure that the illegal blockades and occupations would cease has resulted in the continuation of the disruption and the damages claimed by the Plaintiffs.
91. On August 7<sup>th</sup>, as part of the Injunction Proceedings, the County obtained a further Order that provided for an injunction that covered all public roads throughout the County in response to the actions of protestors and the road blockades that occurred on August 5<sup>th</sup> (the “**Second Order**”). The Second Order also extended the injunction originally granted to Foxgate by the First Order. It, again, provided that upon the request of the local Sherriff the OPP **shall** assist with the enforcement of the Second Order.
92. On August 14<sup>th</sup>, 2020 the Sherriff, as well as officers from the OPP attended at the site to read aloud and post the Second Order. Despite the Second Order having been read aloud at the entrance to the Lands and posted by the Sheriff, the Individual Defendants continued to remain in occupation of the Lands in defiance of both the First and Second Court Orders.
93. On August 25<sup>th</sup>, 2020 Foxgate once again appeared in Court before Justice Harper asking that the interim injunction be continued. At that time Foxgate also sought leave of the Court to add Mr. Williams as an identified defendant being one of

the John Does that had participated in the illegal actions since July 19<sup>th</sup>-20<sup>th</sup>. Justice Harper, by Order dated August 25, 2020, further extended the injunction granted to Foxgate (the "**Third Order**"). The Third Order also extended the injunction originally granted to the County by the Second Order. It, again, provided that upon the request of the local Sherriff the OPP **shall** assist with the enforcement of the Third Order.

94. On October 9<sup>th</sup>, 2020 Justice Harper further extended the injunctions that had been obtained by Foxgate and the County on an interim basis and provided Mr. Williams and the other protestors with a final opportunity to comply with the Orders by clearing the Lands and not interfering with any further development (the "**Fourth Order**"). Justice Harper advised that if the contempt were to be purged by Mr. Williams and others that he would allow the Individual Defendants to bring forward Constitutional Questions and a Third-Party Claim against the Crown as part of the Foxgate proceedings. Legal counsel for the OPP was in attendance at the hearing before Justice Harper on October 9, 2020. As such, the OPP was aware that a return date of October 22, 2020 was scheduled at which point Foxgate and the County intended to seek a permanent injunction.
95. On October 15<sup>th</sup>, 2020 in an effort to advance a resolution, Foxgate advised Mr. Williams that if the Lands were to be returned and no further interruptions with development took place then Foxgate would not object to the Individual Defendants bringing forward their Third-Party Claim against the Crown as a cross-claim in the action commenced by Foxgate. Mr. Williams never responded to that offer.
96. In materials filed by Mr. Williams, he has identified that Foxgate is an innocent party in these matters between the Six Nations and the Crown and that Foxgate has no authority or ability to consult with any Indigenous community.
97. The Individual Defendants refused to comply with the four Court Orders and His Honour, Mr. Justice Harper, granted a permanent injunction to both Foxgate and the County on October 22, 2020 (the "**Fifth Order**"). It, again, provided that upon the request of the local Sherriff the OPP **shall** assist with the enforcement of the Fifth Order.
98. Shortly after the permanent injunction was granted on October 22<sup>nd</sup>, a number of the Individual Defendants and others erected blockades on a series of public

highways in the County. Their actions included the destruction of public roads by utilizing a large excavator to tear up the public roads leading to the Lands.

99. The OPP and the Commissioner, despite being aware that the permanent injunction was being sought and may be granted on the October 22<sup>nd</sup> return date, failed to properly plan for or provide any assurance that the Orders would be enforced or that the public order would be maintained.

100. On October 23<sup>rd</sup>, 2020 Foxgate, through their counsel, wrote to counsel for the Crown, as well as counsel for the OPP advising of the situation and seeking confirmation as to what actions will be taken to resolve the situation and prevent any further interference with the development of the Lands.

### **CROWN HAS BEEN NEGLIGENT AND FAILED TO ACT**

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#### Inaction and Failures by the Crown have led to the Damages suffered by the Plaintiffs

101. The actions of Ontario and, in particular, the manner in which it chose to resolve the protests, and continued occupation in the DCE Matter have resulted in Six Nations protesters being emboldened to continue to commit illegal acts by setting up road blockades on County roads. They have done so repeatedly from 2007 to date.

102. Ontario was negligent in concluding the DCE resolution. The resolution was short sighted and did not protect the interests of property owners such as the Plaintiffs, the County or its residents. The Plaintiffs have no authority or power to deal with Indigenous land claims. Canada and Ontario do have such powers and owe a duty to Plaintiffs and others that rely upon the proper exercise of that duty by the Crown to identify and protect their economic and legal interests.

103. The DCE Matter lands are adjacent to both the Six Nations reserve and Argyle Street. The DCE Matter resolution has, among other negative impacts, provided protesters from the reserve direct access to Argyle Street for the purpose of blockading and damaging Argyle Street in subsequent years.

104. The Crown, the OPP and the Commissioner have failed to take sufficient enforcement measures to deter protesters from continuing to engage in illegal activities, including blockading and damaging roads, and such failure further

emboldened the protesters to commit illegal acts this time in relation to the Plaintiffs' Lands. The Crown, the OPP and the Commissioner of the OPP have a duty to ensure that the law was and is enforced adequately so as to deter further criminal behavior. The Crown, the OPP and the Commissioner of the OPP have failed to do so resulting in the damages claimed by the Plaintiffs.

105. In addition to failing to address the underlying issues that gave rise to the protests and blockades in 2006, the Crown has failed, refused or neglected to respond to the current illegal activities despite being the authorities responsible for Indigenous matters and being the only parties with the authority or ability to address the underlying issues that have given rise to the occupation and damages suffered by the Plaintiffs.

106. The failure to take action, including the failure to ensure that no further protests would proceed in light of appropriate and legitimate development approvals on the Lands and other similar lands, by the Crown has directly resulted in the illegal activities that have proceeded on the Lands and the damages that have been suffered to the Plaintiffs, including significant reputational damages.

107. On September 17<sup>th</sup>, 2020 in an effort to resolve the matter and have development proceed, Foxgate contacted the offices of the Ministers of Crown-Indigenous Relations, Minister of Indigenous Services, Minister of Indigenous Affairs and the Premier of Ontario.

108. In recognition of the fact that the Crown alone is responsible for addressing matters related to Indigenous peoples and that the Plaintiffs' rights continue to be impacted by the failure of the Crown to act to resolve the issues outstanding, Foxgate requested assistance in resolving the situation by asking that the Crown act to uphold the laws that all persons are required to comply with and ensure that any discussions with the protestors would not proceed without the Plaintiffs' participation. To date no government authority has responded to the request from Foxgate, though they have responded to outreaches by the protestors with promises of further talks that have not proceeded.

109. To date the Crown has never advised Foxgate that their title to the Lands is in some way or manner impacted by any claim that has been or could be asserted by any Indigenous community. The Crown has further not advised Foxgate that

the original Crown Grant from 1853 is in some way or manner impacted by any claim that has been or could be asserted by an Indigenous community.

110. Despite being aware of the activities and efforts by Foxgate to protect its rights to the Lands and to proceed with its lawful development, and despite being responsible for dealing with Indigenous matters, the Crown has provided no assistance to Foxgate or its purchasers and instead has left Foxgate with the burden of trying to enforce its legal rights in and to the Lands, which can be traced back to the original Crown Grant, in the face of illegal actions and opposition by Indigenous groups.
111. The Crown and its agents were obliged to advise Foxgate of any potential claims to the Lands during the planning approval process and before additional and significant costs and losses were incurred by Foxgate or to ensure that no claim or assertion of Indigenous rights would interfere with the development of the Lands.
112. The Crown has the sole responsibility and obligation for addressing matters related to Indigenous relations and lands. The Crown owes a duty to the Plaintiffs to ensure that it carries out those responsibilities in such a manner that does not interfere with their legal rights and interests. The failure on the part of the Crown to address these matters has resulted in harm to the Plaintiffs that would have been foreseeable by the Crown.
113. The Plaintiffs submit that it is entitled to rely upon (1) the fact that the jurisdiction and ability to address matters related to Indigenous relations, including where such matters arise from claims between Indigenous groups and the Crown rests exclusively with the Crown; and (2) that the Crown would ensure that it carries out this responsibility in a manner that does not prejudice or deny any rights held by the Plaintiffs. It would be unfair and in conflict with the Crown's obligation to the Plaintiffs to ensure that all laws are applied equally to all persons and entities in Canada for the Crown, as it has in this case, to refuse to take actions within an area of its exclusive jurisdiction and allow such failure to cause damage to others.
114. As the Crown has not recognized any land claim by any Indigenous group, including any alleged claim by any of the Defendants, that would conflict with or attempt to remove the ownership and development rights of the Plaintiffs, there is no policy basis upon which the Crown can justify its continued lack of action that has caused the damages suffered by the Plaintiffs.

## THE OPP AND COMMISSIONER HAVE BEEN NEGLIGENT AND FAILED TO ACT

### Inactions, Failures and Decisions by the OPP and the Commissioner that have been Detrimental to the Plaintiffs

115. Despite being responsible for police services in the County and having been directed by the Court on multiple occasions that is **shall** assist with the enforcement of the injunctions granted, the OPP and the Commissioner have failed to properly plan for such enforcement and contrary to the interests of the Plaintiffs have allowed the protestors to establish a permanent presence on the Lands.
116. Additionally, the OPP have intentionally and without right allowed the Lands to be used by the protestors as a safe haven where no OPP action been taken since the original attempt to vacate same on August 5<sup>th</sup>. Treating the Lands as a safe haven is done by the OPP in a deliberate effort to ensure that the public roads are no longer blockaded, including, but not limited to, allowing the protestors to erect structures on the Lands and to take delivery of materials necessary to construct same.
117. As the defiance of the Court Orders has grown and failure of the OPP to enforce same has continued, such inaction has been to the detriment of not only the Plaintiffs, causing irreparable harm to the Plaintiffs, but also to the legal system. Despite the injunctions being in place and despite individuals clearly being aware of the injunction and the prohibition against the continued illegal actions, individuals continue to attend to same and the OPP has failed to take appropriate actions to ensure that such violations do not continue.
118. On July 29<sup>th</sup>, 2020 Mr. Williams in a social media post spoke to the need to construct a permanent structure on the Foxgate Lands. As he indicated “...*High on the priority list is building a more permanent building. So we are raising some funds to build this.*” While this was the first indication of the intention to build a permanent structure and to raising funds for same, the same message has been repeated by Mr. Williams in his Facebook posts including more recently as the protestors have started to insulate the structure in what would appear to be preparation to remain during the coming winter months. Evidence of this intention was put before the Court through the Injunction Proceedings, including at the hearing on October 9, 2020, which was attended by the OPP.

119. The structures which have been constructed by Mr. Williams and others on the Foxgate Lands have been constructed without the consent of Foxgate and through the provision of monetary and material support from Defendants such as Green and OFL. These structures have been allowed to be constructed on the Lands and materials delivered to the protestors on the Lands by the OPP in contravention of the Court Orders and in an effort to preserve the public roads at the expense of the Plaintiffs.
120. On October 5<sup>th</sup>, 2020, Chief Superintendent John Cain, Regional Commander for the West Region of the OPP (“**Chief Cain**”) swore an affidavit in which the OPP attempted to inform the Court of the efforts that have been taken by them to enforce the injunction and the Orders of the Court. The affidavit makes reference to lessons learned by the OPP arising from the Ipperwash Inquiry that resulted in a policy for dealing with land or treaty disputes involving Indigenous people, “*A Framework For Police Preparedness For Indiegnous Critical Incidents*” (“**Framework**”)
121. Amongst other findings, the Framework provides that:
- It is the role of the OPP and its employees to make every effort prior to a critical incident to understand the issues and to protect the rights of all involved parties throughout the cycle of conflict. The policign objective is to preserve the peace prevent offences and enforce the law in a manner that respects the rights of all involved parties.
122. In addition to the Framework, Chief Cain made considerable references to lessons learned during the DCE Matter protests in 2006 which ultimately resulted in the protestors not being removed from those lands. The OPP has, since 2006, not updated their response or policies to such illegal activities by Indigenous groups resulting in the current situation that exists on the Lands and the OPP has failed to respond to these illegal activities in an appropriate manner.
123. The OPP, in appearances before Justice Harper, have advised that as the OPP does not take sides in a land dispute, the OPP welcomes the Court’s assessment of these matters, involving the rights of parties and that the determination by the Court through an application for an injunction helps to resolve that matter of respective rights.

124. During cross-examination before the Court, Chief Cain advised that if the protests and occupation were proceeding in the backyard of a private landowner then the OPP would not allow it to continue or to escalate to the point it has on Foxgate's Lands. When further asked why it has been allowed to escalate, he advised that there was the issue of the "colour of right" and "land claims" by the Indigenous community. Upon further questions, the OPP confirmed that there was no "land claim" to the Lands that justify such a differential treatment.
125. Chief Cain was also asked if the OPP had allowed the protestors to build more permanent structures on the Lands in violation of the Court Orders and that if such buildings would make enforcement of the Court Orders more difficult, he answered both questions in the affirmative.
126. The OPP has repeatedly advised the Plaintiffs that it will enforce the Court Orders requiring removal of all protestors from the Lands. In reliance upon such statements and confirmation of their legal obligation to enforce the Orders of the Court, the Plaintiffs have repeatedly attempted to advance their development and rights to the Lands but the OPP has failed to enforce the Court Orders and rather has permitted the Individual Defendants and others to engage in activities that have entrenched the occupation.
127. Both the OPP and the Commissioner have failed to protect the rights of Foxgate and its purchasers. Instead their decisions, including the decision to allow materials to be delivered to the Lands by some of the Defendants and to be used to create permanent structures, as well as the inaction on the part of the OPP, having failed to follow their own statutory obligations and policy objectives as well as failing to satisfy their legal requirement of preserving the peace, failing to prevent offences, and failing to enforce the law in a manner that respects the rights of Foxgate and others, as determined by the Court, have resulted in the position of the protestors becoming further entrenched on the Lands which has given rise to the damages claimed by the Plaintiffs.
128. As a consequence of the foregoing failures to act, insufficient actions, inactions, and decisions which have been made against the interests of the Plaintiffs by the Crown and the OPP, the Plaintiffs have and will continue to suffer damages.

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**ACTIONS BY OFL THAT HAVE CAUSED DAMAGE TO THE PLAINTIFF**

129. Despite the Court Orders that direct that there be no interference with the rights of the Plaintiffs to develop the Lands the OFL have, on repeated occasions, directly contributed monetary and/or material support to the Individual Defendants which has resulted in permanent structures being constructed on the Lands.
130. Such contributions, including direct trespass on the lands, have been made by the OFL after the issuance of the Court Orders of which the OFL was well aware. The provision of monetary and material support was provided in direct violation of the Court Orders with the knowledge that such contributions would have knowingly or should have reasonably been expected to cause further delays and disruptions to the development of the Lands by the Plaintiffs.
131. The actions of the OFL represent a direct attempt to interfere with the economic relations of the Plaintiffs and to support the illegal activities and actions, including the continued illegal trespass on the Lands, of others that have further interfered with the economic relations of the Plaintiffs.

#### **ACTIONS BY THE INDIVIDUAL DEFENDANTS THAT HAVE CAUSED DAMAGE TO THE PLAINTIFF**

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132. Mr. Williams and the Individual Defendants have all been charged with violating the Court Orders and have at different times committed trespass on the Lands. Despite being charged, Mr. Williams and the other Individual Defendants have been allowed to return to the Lands by the OPP and the Crown and to continue to occupy the Lands at different times.
133. Mr. Williams and the other Individual Defendants have continued to illegally trespass onto the Lands and have intentionally interfered with the rights of the Plaintiffs to develop same in accordance with the planning permissions that have been obtained. They have denied the Plaintiffs, or its agents, access to the Lands and have erected barricades on not only the Lands but also on public roads providing access to the Lands.
134. Mr. Williams and the Individual Defendants do not have a legal right or any permission to enter onto to the Lands and have, without right, interfered with the development of the lands.

135. The development has already suffered irreparable harm to its reputation and desirability.

136. The continued illegal activities and trespass by the Individual Defendants and Williams has caused significant damages to the Plaintiff, the particulars of which will be set out in advance of any trial of this matter and which recovery for said damages are claimed by the Plaintiffs as against the Individual Defendants and Williams.

137. The Plaintiffs therefore seeks the relief set out in paragraphs 1, 2 and 3 as against the Defendants.

The Plaintiff asks that the trial of the within Action be held at: Cayuga, Ontario.

**April 14, 2021**

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**Defendants**

Court File No.

**ONTARIO  
SUPERIOR COURT OF JUSTICE**  
  
PROCEEDING COMMENCED AT  
CAYUGA

**STATEMENT OF CLAIM**

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