

(Court file no. CV - 21 - 0000012 - 000)

Courts of Justice Act

NOTICE OF APPLICATION

BETWEEN:

POORKID INVESTMENTS INC., THE COACH PYRAMIDS INC., and BRIAN HAGGITH

Applicants

SOLICITOR GENERAL OF ONTARIO SYLVIA JONES

ONTARIO PROVINCIAL POLICE COMMISSIONER THOMAS CARRIQUE,

ONTARIO PROVINCIAL POLICE CHIEF SUPERINTENDENT JOHN CAIN,

ONTARIO PROVINCIAL POLICE INSPECTOR PHILIP CARTER and HER

MAJESTY THE QUEEN IN THE RIGHT OF ONTARIO.

Respondents



(Court seal)

NOTICE OF APPLICATION

TO THE RESPONDENT

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicant. The claim made by the applicant appears on the following page.

THIS APPLICATION will come on for a hearing (*choose one of the following*)

- In person
- By telephone conference
- By video conference

on Wednesday, July 7th 2021
@ 10 AM.

at the following location 55 Munsee Street, Cayuga, Ontario N0A 1E0 on a day and time to be set by the Registrar.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must

forthwith prepare a notice of appearance in Form 38A prescribed by the Rules of Civil Procedure, serve it on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date May 11 2021

Issued by [Signature]
Local registrar

Address of court office 55 Munsee St. Cayuga Ontario

TO: **SOLICITOR GENERAL OF ONTARIO**
SYLVIA JONES
Ministry of the Solicitor General
18th Floor, 25 Grosvenor Street
Toronto, ON
M7A 1Y6

AND TO: **ONTARIO PROVINCIAL POLICE**
COMMISSIONER THOMAS CARRIQUE
Ontario Provincial Police
General Headquarters
Lincoln M. Alexander Building
777 Memorial Avenue
Orillia, ON
L3V 7V3

AND TO: **ONTARIO PROVINCIAL POLICE**
****CHIEF SUPERINTENDENT JOHN CAIN****

Ontario Provincial Police

General Headquarters

Lincoln M. Alexander Building

777 Memorial Avenue

Orillia, ON

L3V 7V3

AND TO: **ONTARIO PROVINCIAL POLICE**
****INSPECTOR PHILIP CARTER****

Ontario Provincial Police

General Headquarters

Lincoln M. Alexander Building

777 Memorial Avenue

Orillia, ON

L3V 7V3

AND TO: **HER MAJESTY THE QUEEN**
****IN THE RIGHT OF ONTARIO****

Ministry of the Attorney General

McMurtry-Scott Building,

720 Bay St, Toronto, ON

M7A 2S9

AND TO: THE ATTORNEY GENERAL OF ONTARIO

Constitutional Law Branch

4th floor

720 Bay Street

Toronto, Ontario M5G 2K1

Email: clbsupport@ontario.ca

AND TO: THE ATTORNEY GENERAL OF CANADA

120 Adelaide Street West

Suite 400

Toronto, Ontario M5H 1T1

Email: NCQ-AQC.Toronto@justice.gc.ca

APPLICATION

1. The applicants make application for:

(a) a declaration that section 17 of the Crown Liability and Proceedings Act, S.O, 2019 c.17., violates section 96 of the Constitution Act, 1982, being Schedule B to the Canada Act , 1982 (U.K.), c.11;

(b) a declaration that pursuant to section 52 (1) of the Constitution Act, 1982, section 17 of the Crown Liability and Proceedings Act, 2019 is of no force and effect;

(c) their costs of this application; and

(d) such further and other relief as counsel may advise and this honourable court may permit.

2. The grounds for the application are:

(a) Section 52(1) and Section 96 of the Constitution Act, 1982;

(b) Section 97 of the Courts of Justice Act, R.S.O. 1990 Chap. C43; and

(c) Rule 14.05 of the Rules of Civil Procedure.

(d) the Applicants are the representative Plaintiffs in a class proceeding brought against the Respondents by way of a Statement of Claim issued February 19th 2021 as CV-21-00000003-00CP.

(e) the Applicants in the Statement of Claim claimed damages against the Respondents for themselves and on behalf of all businesses and residents of Caledonia and area affected by a blockade of three public highways and a railway line serving Caledonia and the occupation of a proposed subdivision within Caledonia known as McKenzie Meadows by protestors;

(f) the Statement of Claim pleaded four grounds for liability, namely; misfeasance in a public office, nonfeasance, negligence and nuisance;

(g) under section 17 of the Crown Liability and Proceedings Act, 2019, the entire proceeding is automatically stayed until leave is granted by way of a successful motion for leave. The Plaintiffs must demonstrate the action is brought and good faith and there is a reasonable possibility the action will be resolved in the Plaintiffs' favour;

(h) the Plaintiff is required to deliver an Affidavit setting out the material facts on which they intend to rely upon and Affidavit of Documents. The Crown is not required to deliver any material but may cross-examine on the Affidavits;

(i) the parties must bear their own costs of the motion for leave regardless of the outcome;

(j) the cost of preparing an Affidavit setting out material facts and Affidavit of Documents (basically the entirety of the Plaintiffs' case) and the cost of the motion for leave itself are well beyond the means of many if not most potential litigants;

(k) the test imposed by section 17 ("reasonable possibility of success") is considerably higher than the test under a Rule 21 motion where test is whether or not it is "plain and obvious" the pleading discloses no tenable cause of action;

(l) since its re-emergence in 2001 the tort of misfeasance in a public office in Canadian tort law has become an increasingly effective tool for citizens wishing to hold public officials accountable for unlawful actions;

(m) section 17 of the Crown Liability and Proceedings Act 2019, violates section 96 of the Constitution Act, 1982 by erecting barriers, economic and legal, which prevent access to the provincial superior courts by litigants wishing to bring misfeasance claims against the Crown; and

(n) since 2014 the right of access to provincial superior courts has been held to be an implicit aspect of the constitutionally protected core of the jurisdiction of the superior courts and section 17 of the Crown Liability and Proceedings Act, 2019 for the reasons set out above should be found to be unconstitutional as it violates section 96 of the Constitution Act 1982 and the Rule of Law.

3. The following documentary evidence will be used at the hearing of the application: Affidavit of David Johnson to be sworn.

(Date of issue)

MAY 11 2021

ARRELL LAW LLP

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Caledonia, Ontario
N3W 1C1
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Court File no. CV-21-00000012-0000

COURTS OF JUSTICE ACT

**PROCEEDING COMMENCED AT
Cayuga, Ontario**

NOTICE OF APPLICATION

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Solicitors for the Plaintiff**