Court File No.: CV-23-00000065-0000[001]

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

ROYAL BANK OF CANADA

Plaintiff

- and -

MARGARET LOIS MORRISON and JOHN ANTHONY MORRISON

Defendants

SUPPLEMENTARY RESPONDING MOTION RECORD

Dated: January 23, 2024

TOM SERAFIMOVSKI
LSO # 30330T
McTAGUE LAW FIRM LLP
Barristers & Solicitors
455 Pelissier Street
Windsor, Ontario N9A 6Z9
(T) 519-255-4386
(E) tserafimovski@mctague.law

LAWYERS FOR THE DEFENDANTS

TO: **FOGLER RUBINOFF LLP**
Lawyers
77 King Street West
Suite 3000, P.O. Box 95
TD Centre North Tower
Toronto, Ontario M5K 1G8

RACHEL MOSES
LSO #42081V
(T) 416-864-7627
(E) rmoses@foglers.com

CAROL LIU
LSO #84938G
(T) 416-849-4150
(E) cliu@foglers.com

LAWYERS FOR THE PLAINTIFF

[2632386/1]

INDEX

TAB 1

Court File No.: CV-23-00000065-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

ROYAL BANK OF CANADA

Plaintiff

- and -

MARGARET LOIS MORRISON and JOHN ANTHONY MORRISON

Defendants

SUPPLEMENTAL AFFIDAVIT OF DARWIN E. HARASYM

I, Darwin E. Harasym, of the Town of Tecumseh, and Province of Ontario, MAKE OATH AND SAY AS FOLLOWS:

1. I am a partner with McTague Law Firm LLP, who has been retained by the Defendants, and, as such have knowledge of the matters hereinafter deposed, except where I have received information from others in which case I have disclosed the source of the information and verily believe it to be true.

2. Further to my Affidavit sworn January 12, 2024, I am advised by John Morrison and verily believe to be true, the last appraisal the Defendants obtained regarding this property is dated April 1, 2019. The Defendants intend to provide a copy of the appraisal to the Judge hearing the Motion by way of a Confidential Record as directed by the Court.

3. Attached hereto and marked as **Exhibit "A"** to this my Affidavit is a true copy of the Trial Record in Court File No. CV-14-51 commenced in Cayuga, setting out the issues regarding the water line to the subject property. I am advised by Tom Serafimovski, who is the lawyer for Margaret Morrison, and verily believe to be true that the litigation is still ongoing with an Assignment Court date scheduled for March 20, 2024.

4. I make this Affidavit in response to the Plaintiff's motion to appoint a Receiver over the subject property and for no other or improper purpose.

SWORN BEFORE ME at the City of Windsor, in the County of Essex and Province of Ontario this 23rd day of January, 2024.

A Commissioner, etc.

Emily Marie Sarah Ryan Harrison,
a Commissioner etc.,
Province of Ontario,
while being a licensed Paralegal.
LSO #P15543

DARWIN E. HARASYM

THIS IS EXHIBIT "A"

REFERRED TO IN THE AFFIDAVIT OF

DARWIN E. HARASYM

SWORN BEFORE ME THIS 23rd DAY

OF JANUARY, 2024

.....E. Ryan.....

A Commissioner, etc.

Emily Marie Sarah Ryan Harrison,
a Commissioner etc.,
Province of Ontario,
while being a licensed Paralegal.
LSO #P15543

Court File No.: CV-14-51

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

MARGARET MORRISON

Plaintiff

- and -

HAGERSVILLE BUSINESS PARK LTD.,
HER MAJESTY THE QUEEN IN RIGHT OF
THE GOVERNMENT OF CANNADA, HER MAJESTY THE QUEEN IN RIGHT OF THE
PROVINCE OF ONTARIO and the COUNTY OF HALDIMAND

Defendants

TRIAL RECORD

1. Statement of Claim
2. Statement of Defence, Counterclaim, and Cross-Claim of Hagersville Business Park Ltd.
3. Statement of Defence and Crossclaim of the Attorney General of Canada
4. Statement of Defence and Cross-Claim of Her Majesty the Queen in Right of Ontario
5. Statement of Defence and Cross-Claim of the County of Haldimand
6. Statement of Defence to the Counterclaim of Hagersville Business Park Ltd.
7. Certificate of Lawyer

TOM SERAFIMOVSKI
LSUC # 30330T
DAVID SUNDIN
LSUC # 60296N
McTAGUE LAW FIRM LLP
Barristers & Solicitors
455 Pelissier Street
Windsor, Ontario N9A 6Z9
(T) 519-255-4344
(F) 519-255-4384

LAWYERS FOR THE PLAINTIFF

[1600340/1]

TO: **WOODWARD B. McKAIG**
LSUC # 16062G
SULLIVAN, MAHONEY LLP
Barristers & Solicitors
40 Queen Street
St. Catharines, Ontario L2R 6Z2
(T) 905-688-8470
(F) 905-688-5814

LAWYERS FOR THE DEFENDANT,
THE COUNTY OF HALDIMAND

TO: **WOLFGANG J. PAZULLA**
LSUC # 17043C
Barrister & Solicitor
16 Four Seasons Place, Suite 202
Etobicoke, Ontario M9B 6E5
(T) 416-622-6669
(F) 416-622-1440

LAWYER FOR THE DEFENDANT,
HAGERSVILLE BUSINESS PARK LTD.

AND TO: **KAREN WATT**
LSUC # 30155H
DEPARTMENT OF JUSTICE CANADA
120 Adelaide Street West
Suite 400
Toronto, Ontario M5H 1T1
(T) 416-973-9341
(F) 416-973-5004

LAWYERS FOR THE DEFENDANT,
HER MAJESTY THE QUEEN IN RIGHT OF
THE GOVERNMENT OF CANADA

AND TO: **JONATHAN SYDOR/EMTIAZ BALA**
MINISTRY OF THE ATTORNEY GENERAL
Crown Law Office – Civil
720 Bay Street, 8th Floor
Toronto, Ontario M7A 2S9
(T) 416-212-1250
(F) 416-326-4181

LAWYERS FOR THE DEFENDANT,
HER MAJESTY THE QUEEN IN RIGHT OF
THE GOVERNMENT OF ONTARIO

Court File No.: CV-14- 51

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

MARGARET MORRISON

Plaintiff

- and -

HAGERSVILLE BUSINESS PARK LTD.,
HER MAJESTY THE QUEEN IN RIGHT OF
THE GOVERNMENT OF CANNADA, HER MAJESTY THE QUEEN IN RIGHT OF THE
PROVINCE OF ONTARIO and the COUNTY OF HALDIMAND

Defendants

STATEMENT OF CLAIM

TO THE DEFENDANTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff. 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 Plaintiff's lawyer or, where the Plaintiff does not have a lawyer, serve it on the Plaintiff, 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 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.

Date: April 10, 2014 Issued by: Lauren Los
Registrar

Address of
Court office: 55 Munsee Street N.
Cayuga, Ontario
N0A 1E0

TO: Hagersville Business Park Ltd.
304 Concession 11, RR#5
Hagersville, Ontario
N0A 1H0

Her Majesty the Queen in Right of the Government of Canada
The Office of the Deputy Attorney General of Canada
284 Wellington Street
Ottawa, Ontario
K1A 0H8

Her Majesty the Queen in Right of the Province of Ontario
Attorney General of Ontario
McMurtry-Scott Building
720 Bay Street, 11th Floor
Toronto, Ontario
M7A 2S9

The County of Haldimand
Cayuga Administration Building
45 Munsee Street North
P.O. Box 400
Cayuga, Ontario
N0A 1E0

CLAIM

1. The Plaintiff claims from the Defendants, Her Majesty the Queen in Right of the Government of Canada, Her Majesty the Queen in Right of the Province of Ontario, and the County of Haldimand:

(a) damages in the sum of $5,000,000.00 as a result of the Defendants' breach of contract, negligence, breach of statutory duty, and/or tortious interference with the economic interests of the Plaintiff;

(b) damages in the sum of $10,000,000.00 for aggravated and punitive damages;

(c) pre-judgment and post-judgment interest pursuant to the provisions of the *Courts of Justice Act*, R.S.O. 1990, as amended;

(d) her costs of this action on a substantial indemnity basis including HST where applicable; and

(e) such further and other relief as this Honourable Court deems just.

2. The Plaintiff claims from the Defendant, Hagersville Business Park Ltd.:

(a) damages in the sum of $2,000,000.00 as a result of the Defendant's unjust enrichment;

(b) damages in the sum of $2,000,000.00 for aggravated and punitive damages;

(c) in the alternative damages on account of the Defendant's use of water and sewage services from 2001 until the present, to be determined on a *quantum meruit* basis;

(d) pre-judgment and post-judgment interest pursuant to the provisions of the *Courts of Justice Act*, R.S.O. 1990, as amended;

(e) her costs of this action on a substantial indemnity basis including HST where applicable; and

(f) such further and other relief as this Honourable Court deems just.

3. In addition to the above, the Plaintiff seeks the following relief:

(a) a declaration that the Plaintiff is not responsible for the water charges related to the supply of water to the Property (as defined below);

(b) if necessary, an accounting as to what amounts are owed by the various owners of the Property (as defined below) for the supply of water, waste water, and/or sewage services to the Property (as defined below);

(c) a temporary and/or permanent injunction preventing the County of Haldimand from selling White Oaks (as defined below) on account of the Plaintiff's non-payment of water charges related to the supply of water to the Property (as defined below);

(d) an Order discharging the Certificate of Tax Arrears from title to White Oaks (as defined below), filed as Registration Number CH48494 by the County of Haldimand on September 13, 2013;

(e) a Declaration that the Plaintiff is not the owner of the Waterline (as defined below) and/or the Lagoon (as defined below), and is not responsible for maintaining either the Waterline (as defined below) and/or the Lagoon (as defined below), or for invoicing the various owners of the Property (as defined below) for the delivery of water, waste water, and/or sewage;

(f) a Declaration that the Government of Canada, the Province of Ontario, and/or the County of Haldimand, or any one or combination thereof, are the owners of the Waterline (as defined below) and/or the Lagoon, and that they, or any one or combination of them, are responsible for maintaining the Waterline (as defined below) and/or the Lagoon (as defined below) and for the delivery of water, waste water, and/or sewage to the Property (as defined below) and for invoicing the various owners of the Property (as defined below) for same; and

(g) such further and other relief as counsel may advise and this Honourable Court may deem just.

The Parties

4. The Plaintiff, Margaret Morrison ("**Ms. Morrison**") is an individual who resides in the Municipality of Chatham-Kent, in the Province of Ontario and owns real property in Haldimand County located at municipal address 274 Concession 11, Hagersville, Ontario ("**White Oaks**"), which property Ms. Morrison uses in carrying on a land lease community business, known as White Oaks Village Estates.

5. The Defendant, Hagersville Business Park Ltd. ("**HBP**") is a corporation incorporated pursuant to the laws of the Province of Ontario, and owns property abutting White Oaks (the "**HBP Property**"), which originally formed part of the Property (as defined below), and carries on business of an industrial nature which is water intensive.

6. The Defendant, Her Majesty the Queen in right of the Government of Canada ("**Canada**"), was the former owner of Property in Haldimand County from which it operated an air base and ancillary services (the "**Property**").

7. The Defendant, Her Majesty the Queen in right of the Province of Ontario ("**Ontario**"), took ownership of the Property from Canada in or about 1965.

8. The Defendant, the County of Haldimand ("**Haldimand**"), is a municipality incorporated pursuant to the laws of the Province of Ontario, and in which the Property is located.

The Property

9. Ms. Morrison states that the Defendant Canada operated a flight training school at the Property near Hagersville, Ontario from 1941-1945, and subsequently used the Property for military uses until in or about 1964. During that time, from in or about 1941 until in or about 1964 the Property was known as "Camp Hagersville".

10. Ms. Morrison states that in or about 1965, the Defendant Canada divested its ownership of the Property to the Defendant Ontario, who, *inter alia*, operated a boy's school known as the Sprucedale Training School on the Property.

11. Ms. Morrison states that at some time after 1978 when the Sprucedale Training School was closed, the Defendant Ontario sold the Property in various parcels to private buyers, which division resulted in, *inter alia*, the creation of the White Oaks and the HBP Property parcels.

12. On or about January 16, 2004, Ms. Morrison purchased the property known as, and defined above as, White Oaks, from a private vendor. Ms. Morrison's purchase of White Oaks resulted in her acquiring a property that contained 36 residential homes and some commercial rental units.

13. Ms. Morrison states that the HBP Property is adjacent to White Oaks and is owned by the Defendant HBP, which operates several industrial businesses at the HBP Property that are water intensive.

The Waterline

14. Ms. Morrison states that municipal water is delivered to the Property via a waterline (the "**Waterline**") that travels from a pumping station at or near the intersection of Highway # 6 and Haldimand Road 55 (the "**Pumping Station**"), which waterline runs alongside Haldimand Road 55 on municipal property owned by the Defendant Haldimand, then passes under Haldimand Road 55 and along Concession 10, on municipal property owned by the Defendant Haldimand, before crossing under HBP Property and ending at White Oaks.

15. Ms. Morrison states that the total distance of the Waterline from the Pumping Station to the property line of White Oaks is approximately six (6) kilometers.

16. Ms. Morrison states that prior to 2009, the only water meter on the Waterline was located at the Pumping Station and that all water usage for the Property was billed to Ms. Morrison including water used by the Defendant HBP and all of the other private owners of the various parcels that make up the Property.

17. Ms. Morrison states that on or about April 30, 1967 the Defendant Ontario entered into an Agreement with a previous tenant at the Property, namely Wyndemere Farms Limited ("**Wyndemere**"), for the provision of water from the Village of Jarvis, which now forms part of the Defendant Haldimand (the "**Water Agreement**").

18. Ms. Morrison states that the Water Agreement provides, *inter alia*, that "the Province is the owner of the [Waterline]...and has agreed, subject to the provisions of this agreement to permit Wyndemere the use of the water main."

19. Ms. Morrison states that the Water Agreement further provides, *inter alia*, as follows:

2. Wyndemere shall have the continuous and uninterrupted right in perpetuity to use and enjoy the water main for the supply of water to its premises.

3. So long as the Province and Wyndemere shall jointly use the water main the Province and Wyndemere shall **share equally in the cost of the operation, maintenance, repair and replacement of the water main...the said cost shall be borne by the parties in the same ratio as the water consumption of each party bears to the total water consumption.** *(emphasis added)*

4. Jarvis shall operate and maintain the water main...

5. Either party may at any time discontinue its use of the water main whereupon the other party shall thereafter assume and pay for all costs of operation, maintenance, repair and replacement for so long as it shall continue to use the water main...

7. **The benefit and burden of this agreement shall be binding upon the Province...and upon Wyndemere...and upon their respective successors and assigns.** *(emphasis added)*

20. Ms. Morrison states that despite her repeated attempts to have the Defendants Canada, Ontario, and Haldimand address this obvious deficiency with supply of water to the Property, they have refused to make the necessary changes to allow separate water metering for each various individual owners of the separate parcels that comprise the Property today.

21. Ms. Morrison states that in or about 2009, she installed a separate water meter (the "**Water Meter**") at the property line of White Oaks so as to properly measure the water usage by the tenants of White Oaks.

22. The installation of the Water Meter identified a massive overcharge for water usage by the Defendant Haldimand to the Plaintiff for which the Defendant Haldimand is attempting to hold the Plaintiff responsible. The full particulars of the overcharge for water usage by the Defendant Haldimand to the Plaintiff will be provided prior to the trial in this action.

The Sewage Lagoon

23. Ms. Morrison states that the Property contains a large sewage lagoon (the "**Lagoon**") wherein all waste water and sewage from the Property is delivered.

24. Ms. Morrison states that she does not own the Lagoon, nor has she ever willingly agreed to be responsible for its maintenance, operation, or capital costs.

25. Ms. Morrison states that she has attempted to determine who is responsible for the operation and maintenance of the Lagoon but has been unable to get a response from the Defendants Canada, Ontario, and Haldimand.

26. Ms. Morrison states that on or about April 30, 1967 the Defendant Ontario and Wyndemere entered into an Agreement with Wyndemere for the provision of sewage service at the Property (the "**Sewage Agreement**").

27. Ms. Morrison states that the Sewage Agreement provided, *inter alia*, as follows:

> 1. The Province will receive and treat sanitary sewage from the premises of Wyndemere...at its sewage disposal plant...

2. Each of the parties agree to maintain and operate in good working condition the storm and sanitary sewer mains located on the respective properties...

3. **The benefit and burden of this agreement shall be binding upon the Province...and upon Wyndemere...and upon their respective successors and assigns.** *(emphasis added)*

28. Ms. Morrison states that due to ongoing issues with the Lagoon and her inability to get a satisfactory response to her inquires to the Defendants Canada, Ontario, and Haldimand, she has been forced to expend considerable funds to undertake basic maintenance on the Lagoon for the express benefit of the residents and business owners of White Oaks.

29. Ms. Morrison further states that the work undertaken by her in relation to the Lagoon has directly benefited the Defendant HBP and other owners of the various parcels of the Property. However, the Defendant HBP has refused to provide any financial assistance or make any contribution for said maintenance of the Lagoon.

30. Ms. Morrison further states that she was given an Order to Comply by the Ministry of the Environment of the Defendant Ontario, to, *inter alia,* undertake significant remediation work on the Lagoon (the **"Order"**), which she does not own and for which she does not have a responsibility to maintain.

Waterline and Haldimand County Tax Sale

31. Ms. Morrison states that she has made numerous efforts, to no avail, to find a satisfactory resolution with the Defendant Haldimand with respect to the water bills that include water

consumption by the Defendant HBP, and other residential and commercial units located along the Waterline on property Ms. Morrison does not own.

32. Ms. Morrison further states that the Defendant Haldimand has been unwilling to address the ongoing concerns since in or about 2004, when Ms. Morrison purchased White Oaks, and when she drew the Defendant Haldimand's attention to the issue of service of water to the Property and issues with the billing of same, the effect of which has resulted in significant accruals of unpaid water bills and interest and penalty charges against Ms. Morrison, despite the fact that the Defendant Haldimand is aware, or should be aware, that Ms. Morrison is not responsible for same.

33. Ms. Morrison states that the Defendant Haldimand placed the unpaid water bills, interest and penalty charges, for water used by persons and businesses not related to Ms. Morrison, and for whose water charges she is not responsible, as a charge against her property tax account for the property known as White Oaks.

34. Ms. Morrison states that on or about September 13, 2013, the Defendant Haldimand filed a Certificate of Tax Arrears on title to White Oaks as Registration Number CH48494 (the "**Certificate**"), and the Defendant Haldimand is now attempting to sell White Oaks in a tax arrears sale as a result of the water bills that were attached to her property tax account (the "**Tax Sale**"), for which the Defendant Haldimand knows, or ought to know, Ms. Morrison is not responsible.

35. Ms. Morrison further states that the filing of the Certificate on title to White Oaks has resulted in Ms. Morrison being in breach of her obligations under a Mortgage in favour of the Bank of Montreal, which may result in Ms. Morrison suffering further damages should the Bank of Montreal demand repayment of the Mortgage. Further, the filing of the Certificate has negatively affected Ms. Morrison's credit rating, restricted the ability of the tenants of White Oaks to obtain mortgages, refinance their existing mortgages, and to sell or purchase units at White Oaks, thereby reducing the value of White Oaks, and interfering with Ms. Morrison's economic interests.

36. Ms. Morrison states that she does not own the Waterline in question and is not responsible for any maintenance, repair, replacement or usage for portions of the Waterline that are not located on White Oaks, and is neither a successor or assign of the Province and/or Wyndemere under the aforementioned Water Agreement, referred to above in paragraphs 17, 18, and 19.

37. Ms. Morrison further states that in or about 2009 she installed the aforementioned Water Meter on the Waterline, where it enters White Oaks, at her own expense. The data collected from this meter clearly shows that the tenants of White Oaks are using only a fraction of the water for which Ms. Morrison is being billed.

38. Ms. Morrison states that the Defendant Haldimand has failed and/or refused to rectify the issue of supply of water, and billing for same, to the Property, despite being aware of the problems, as identified by the Water Meter, which failure and/or refusal has created significant hardship for Ms. Morrison.

39. Ms. Morrison further states that the Defendant Haldimand in a malicious and high-handed manner has, since in or about October of 2013, refused to accept payment on account of property taxes and water usage from the tenants of White Oaks in an attempt to further compound the damages suffered by Ms. Morrison due to the aforementioned Tax Sale.

Sewage Lagoon

40. Ms. Morrison states that the Lagoon serving the Property is not part of White Oaks. Accordingly, the Plaintiff states that she does not own, operate, or have any legal obligation to maintain the Lagoon, and is not a successor or assign of Ontario or Wyndemere under the aforementioned Sewage Agreement.

41. Ms. Morrison states that the maintenance undertaken on the Lagoon for which she has expended a significant amount of money, the full particulars of which will be provided prior to the trial in this matter, was done to ensure that tenants of White Oaks had sewage services, which maintenance has benefitted the Defendant HBP and the owners of the other various parcels of the Property.

42. Ms. Morrison states that she has contacted the Defendants Canada, Ontario, and Haldimand in an effort to have the appropriate owner take responsibility for the Lagoon. However, the Defendants Canada, Ontario, and Haldimand have failed and/or refused to determine which of them is the proper owner of the Lagoon, and none of the Defendants have taken any steps to maintain the Lagoon.

43. Ms. Morrison states that the Defendant Ontario issued an Order against Ms. Morrison to have the Lagoon repaired notwithstanding her lack of ownership of the same.

Damages

44. Ms. Morrison states that the Defendant Canada was negligent in its design of the Lagoon such that it is not capable of handling the volume of sewage from the Property, and in addition the Defendant Canada was negligent in failing to provide satisfactory maintenance and/or a satisfactory maintenance plan for the ongoing operation of the Lagoon at the time of the sale of the Property to the Defendant Ontario.

45. Ms. Morrison states that the Defendant Ontario was negligent in failing to provide reasonable maintenance to the Lagoon, and in addition the Defendant Ontario was negligent in failing to undertake a proper analysis of the sewage capacity of the lagoon prior to selling the Property to private interests.

46. Ms. Morrison states that the Defendant Ontario was further negligent in failing to maintain the Waterline that services the Property contrary to their contractual and statutory duty to do so.

47. The Defendant Ontario has acknowledged that the Certificate of Approval issued in or about 1970 regarding the Lagoon is void of conditions or supporting documentation, but notwithstanding same, the Defendant Ontario, pursuant to the aforementioned Order, is attempting to assign responsibility to Ms. Morrison for repairs and maintenance of the Lagoon that rightfully is the responsibility of the Defendant Ontario or the Defendant Haldimand.

48. Ms. Morrison states that the Defendant Haldimand has been negligent in its oversight, maintenance, repair, and general operation of the Lagoon on the Property. Ms. Morrison further states that the Defendant Haldmiand has subverted any attempts by Ms. Morrison to resolve issues related to the Lagoon.

49. Ms. Morrison further states that the Defendant Haldimand has been negligent in its actions related to the Waterline servicing the Property. Notwithstanding Ms. Morrison's efforts to have water apportioned by user, the Defendant Haldimand has expressly denied Ms. Morrison's requests, causing Ms. Morrison to incur major costs and undergo severe hardships in dealing with her own tenants at White Oaks.

50. Ms. Morrison states that the Defendant Haldimand has been negligent in maintaining the Waterline servicing the Property, which, by its own admission, is deficient and in poor condition. The negligence of the Defendant Haldimand in this regard has caused Ms. Morrison to incur significant additional expense to maintain the Waterline, the full particulars of which will be provided prior to the trial of this action, which maintenance has benefitted the Defendant Haldimand, the Defendant HBP, and the other owners of the various parcels of the Property.

51. Ms. Morrison states that the Defendant HBP has been negligent in maintaining the Waterline that crosses their property and leads to White Oaks by failing to properly inspect and/or repair the Waterline, or to pay for their reasonable share of the water usage at the Property, which negligence has contributed to Ms. Morrison being overcharged for water services at White Oaks.

52. Ms. Morrison further states that the Defendant HBP has purposely and knowingly refused to pay for their water usage and/or the cost of maintaining and operating the Lagoon which has caused severe financial hardship for Ms. Morrison.

53. Ms. Morrison states that the Defendant HBP has been unjustly enriched by the Defendant HBP's failure and or refusal to pay for the water used by the Defendant HBP, and by Ms. Morrison's improvements to the Waterline and the Lagoon, which have benefitted the Defendant HBP.

54. In addition to and/or in the alternative, Ms. Morrison states that she is entitled to be paid by the Defendant HBP on a *quantum merult* basis for the Defendant HBP's water usage that has been improperly charged to Ms. Morrison, and for the improvements Ms. Morrison has made to the Waterline and the Lagoon to the benefit of the Defendant HBP.

55. Ms. Morrison states that the Defendants, or any one or combination of them, were negligent in the design, construction, and maintenance of the Waterline.

56. Ms. Morrison states that the Defendants, or any one or combination of them, were negligent in the design, construction, and maintenance of the Lagoon.

57. Ms. Morrison further states that the actions of the Defendants Canada, Ontario, and Haldimand, in refusing to deal with the issues with the Waterline and the Lagoon, amount to tortious interference with Ms. Morrison's economic relations. Without limiting the generality of the foregoing, Ms. Morrison specifically states that the Defendant Ontario, in issuing the

aforementioned Order, when it knows or ought to know, that Ms. Morrison is not responsible for the Lagoon, and the Defendant Haldimand in commencing the aforementioned Tax Sale, when it knows, or ought to know, that Ms. Morrison is not responsible for the water charges on which the Tax Sale is based, were improper and not attributable to Ms. Morrison or White Oaks, amounts to tortious interference with Ms. Morrison's economic relations.

58. Ms. Morrison states that the Defendants owe her a duty of care with respect to the Waterline and/or the Lagoon, both of which are located on property that she does not own, but whose effective operation is critical for the continued well-being of her tenants at White Oaks as well as Ms. Morrison's economic interests.

59. Ms. Morrison states that the Defendants have failed in the duty of care owed to her with respect to the Waterline and the Lagoon, which failure has caused Ms. Morrison to suffer significant financial losses, and economic hardships.

60. Ms. Morrison also claims for mental and emotional distress caused by the negligence of the Defendants, or any one or combination of them, in failing to respond to Ms. Morrison's attempts to address the ongoing issues related to the Waterline and the Lagoon.

61. Ms. Morrison states that she has suffered damages as a result of the negligence of the Defendants, the full particulars of which will be provided prior to the trial in this action.

62. In addition to and/or in the alternative, Ms. Morrison states that the cause of the aforesaid damages was due to the negligence and/or breach of statutory duty of the Defendants, or any one or combination of them, in that they:

(a) knew or ought to have known that the Lagoon was not the Plaintiff's responsibility but an issue which she had to address for the health and safety of her tenants at White Oaks;

(b) failed to establish or implement any reasonable system of inspection or maintenance for the Waterline and/or Lagoon located on the Property to ensure it was fit for use;

(c) failed to take any or all reasonable steps to investigate and repair the cause of the Waterline issues when they knew or ought to have known that the failure to do so could cause harm to the Plaintiff;

(d) failed to take any or all reasonable steps to investigate and repair the cause of the Lagoon issues when they knew or ought to have known that the failure to do so could cause harm to the Plaintiff; and

(e) such further and other particulars as might be discovered during the course of this proceeding.

63. Ms. Morrison states that as a result of the breach of contract, negligence and/or breach of statutory duty of the Defendants, or any one or combination of them, the Plaintiff has sustained damages in the sum of $5,000,000, the particulars of which will be provided during the course of this action.

64. Ms. Morrison pleads that the Defendants, or any one or combination of them, have acted

with malice and in a high-handed manner in refusing to deal with the issues surrounding the Waterline and the Lagoon, and specifically references the issuing of the Order, the commencement of the Tax Sale, and the refusal to accept property tax payments and water payments, when the Defendants knew, or ought to have known that Ms. Morrison was not and is not responsible for the Waterline and the Lagoon, entitling Ms. Morrison to punitive and aggravated damages.

65. Ms. Morrison therefore claims the relief as set out in paragraphs 1, 2, and 3 of this Statement of Claim.

66. Ms. Morrison states that the Defendants are jointly and severally liable for the damages caused to her.

67. Ms. Morrison pleads and relies upon the *Negligence Act*, as amended.

68. The Plaintiff requests that this action be tried at Cayuga, Ontario.

April 4, 2014

TOM SERAFIMOVSKI
LSUC # 30330T
DAVID M. SUNDIN
LSUC 60296N
McTAGUE LAW FIRM LLP
Barristers & Solicitors
455 Pelissier Street
Windsor, Ontario N9A 6Z9
(T) 519-255-4344
(F) 519-255-4384

LAWYERS FOR THE PLAINTIFF

MARGARET MORRISON vs. HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF ONTARIO et al.

SUPERIOR COURT OF JSUTICE

PROCEEDING COMMENCED AT CAYUGA

STATEMENT OF CLAIM

TOM SERAFIMOVSKI
LSUC # 30330T
DAVID M. SUNDIN
LSUC # 60296N
McTAGUE LAW FIRM LLP
Barristers & Solicitors
455 Pelissier Street
Windsor, Ontario
N9A 6Z9

(T) 519-255-4344
(F) 519-255-4384

LAWYERS FOR THE PLAINTIFF
FILE NO. 57579

[382536/1]

Court File No. CV-14-51

ONTARIO
SUPERIOR COURT OF ONTARIO

BETWEEN:

MARGARET MORRISON

Plaintiff

- and -

HAGERSVILLE BUSINESS PARK LTD., HER MAJESTY THE QUEEN IN RIGHT OF THE GOVERNMENT OF CANADA, HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF ONTARIO and THE COUNTY OF HALDIMAND

Defendants

STATEMENT OF DEFENCE, COUNTERCLAIM AND CROSS-CLAIM OF HAGERSVILLE BUSINESS PARK LTD.

1. The Defendant, Hagersville Business Park Ltd. ("**HBP**") admits the allegations contained in paragraphs 5, 6, 7, 8, 9, 10, 11, 14 and 15 of the Statement of Claim.

2. HBP denies the remainder of the Plaintiff's allegations except as admitted below and puts the Plaintiff to the strict proof thereof.

3. HBP states that it purchased the lands adjacent to White Oaks on August 26, 2005.

4. At the time of the purchase, the HBP Property was serviced by the Waterline (the "**Waterline**") described in the Statement of Claim.

5. HBP assumed ownership of the HBP Property with the benefit of all of the agreements relating to the provision of water to the White Oaks Property and the HBP Property. The Waterline in question runs across the HBP Property from the highway to the White Oaks Property.

6. Contrary to the statements made in the Statement of Claim herein, HBP does not operate any businesses on the HBP Property but rather rents out the buildings located on the Property to third party tenants.

7. Contrary to the statements made in the Statement of Claim herein, the uses of the tenants are not water-intensive and insofar as any water is required for the use of the tenants, there are wells located upon the HBP Property which provide any water which is required for industrial or commercial use.

8. HBP only extracts water from the Waterline for potable and sanitary uses which are very limited in nature and serve only to provide washroom facilities for any employees of the tenants of the various buildings on the Property. HBP's use of water is negligible.

9. Since it assumed ownership of the HBP Property, HBP has been providing and paying for the cost of maintaining the Waterline all the way from the White Oaks Property back to the pumping station.

10. HBP has incurred significant expenses with respect to the maintenance of repairs which has primarily benefitted the Plaintiff.

11. The Plaintiff has refused to provide any contribution towards the expenses incurred in maintaining the Waterline servicing the Plaintiff's Property. The particulars of the full costs and expenses incurred by HBP in maintaining the Waterline will be produced prior to the trial of this proceeding.

12. When HBP assumed ownership of the HBP Property, it installed a check meter on the Waterline before the meter which was installed by the Plaintiff as referred to in the Statement of Claim.

13. HBP has maintained records of water consumption which indicate that its use of the Waterline is minor. HBP has offered to compensate White Oaks. White Oaks has never made formal demand for the payment towards the cost of the water provided by the County of Haldimand and consumed by it until the commencement of these proceedings. HBP pleads and relies upon the provisions of the *Limitations Act, 2002,* S.O. 2002, C. 24.

14. HBP agrees with the claim made in the Statement of Claim that the County of Haldimand (**"Haldimand"**) and Her Majesty the Queen in Right of Ontario (**"Ontario"**) have a legal and statutory obligation to maintain the Waterline and to provide the continuous supply of potable water both to the HBP lands and the White Oaks lands. HBP pleads and relies upon the provisions of the *Municipal Act,* S.O. 2001, C. 25 and amendments thereto and the *Clean Water Act,* S.O. 2006, C. 22 and amendments thereto.

15. HBP had access to the lagoon facilities by agreement entered into between the previous owners of the White Oaks Property and the HBP Property. HBP's use of the lagoon is minor and insignifant compared to the use made by the Plaintiff in the operation of the residential tenants occupying the White Oaks Property. HBP denies that it is responsible for any of the costs, charges and damages claimed by the Plaintiff herein and puts her to the strict proof thereof.

16. HBP further states that the Plaintiff is liable to it for costs incurred by HBP in maintaining the Waterline for the Plaintiff's benefit.

17. HBP claims against Haldimand and Ontario for contribution and indemnity with respect to any claims made by the Plaintiff against HBP herein.

A. Counterclaim:

18. The Defendant HBP claims against the Plaintiff for the following:

(a) Special damages in the amount of $200,000.00;

(b) A declaration that the Plaintiff and her successors in title are fully and completely responsible for the payment of any costs incurred by HBP in maintaining the Waterline;

(c) HBP's costs of these proceedings on a substantial indemnity basis;

(d) Such further or other relief as this Honourable Court deems just.

19. HBP repeats and relies upon the allegations and statements made in the Statement of Defence above.

20. HBP states that it has paid for all of the costs of maintaining the Waterline since its acquisition of the HBP Property and that based on the consumption of water taken from the Waterline by the Plaintiff and HBP, the Plaintiff should be required to pay its proportional share of such maintenance and expenses.

21. Full particulars and details of the expenses incurred shall be produced before the trial of this action.

B. Cross-Claim:

22. HBP claims against the co-Defendants, Ontario and Haldimand as follows:

(a) Contribution and indemnity pursuant to the Negligence Act, R.S.O. 1990, c.N.1, as amended, for any amounts for which this Defendant may be found to be responsible to the Plaintiff in the main action;

(b) Contribution and indemnity under the common law and equity for any amounts which this Defendant may be found to be responsible to the Plaintiff;

(c) Against Ontario and Haldimand for the costs incurred by HBP in maintaining the Waterline from the date of acquisition of the HBP Property to the date of trial;

(d) A declaration that Ontario and /or Haldimand shall pay to HBP the ongoing maintenance and repair costs of the Waterline until the ownership and/or responsibility for the Waterline shall be assumed by Haldimand and/or Ontario;

23. Ontario repeats and relies on the facts cited in the Statement of Defence, above, and proposes that this cross-claim be tried at the same time and place as the main action.

Date: June 2, 2017

Wolfgang J. Pazulla

Barrister and Solicitor
16 Four Seasons Place, Suite 202
Toronto, Ontario M9B 6E5

Wolfgang J. Pazulla (LSUC#17043C)
Tel: 416-622-6669
Fax: 416-622-1440

Solicitor for the Defendant By Crossclaim
Hagersville Business Park Ltd.

TO:

Sullivan Mahoney LLP
Law Office
40 Queen Street, P.O. Box 1360
St. Catharines, ON L2R 6Z2

Woodward B. McKaig (LSUC #16062G)
Tel: 905-688-8470
Fax: 905-688-5814

Solicitors for the Defendant,
The Corporation of Haldimand County

AND TO:

McTague Law Firm LLP
Barristers and Solicitors
455 Pelissier Street
Windsor, Ontario N9A 6Z9

Tom Serafimovski (LSUC#30330T)
David M. Sundin (LSUC#60296N)
Tel: 519-255-4344
Fax: 519-255-4384

Solicitors for the Plaintiff

AND TO: Her Majesty the Queen in Right of the Government of Canada
Department of Justice Canada
Ontario Regional Office
The Exchange Tower
130 King Street West
Suite 3400, Box 36
Toronto, ON M5X 1K6

Karen Watt (LSUC# 30155H)
Tel: 416-973-9341
Fax: 416-973-5004

Solicitors for the Defendant Canada

AND TO: Her Majesty the Queen in Right of the Province of Ontario
Attorney General of Ontario
Crown Law Office – Civil
McMurty – Scott Building
720 Bay Street, 8th Floor
Toronto, On M7A 2S9

Emtiaz Bala
Tel: 416-326-4123
Fax: 416-326-4181

Solicitors for the Defendant Ontario

MARGARET MORRISON
Plaintiff

- and -

HAGERSVILLE BUSINESS PARK LTD., et al.
Defendants

Court File No. CV-14-51

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding Commenced at
CAYUGA

STATEMENT OF DEFENCE, COUNTERCLAIM AND CROSS-CLAIM OF HAGERSVILLE BUSINESS PARK LTD.

WOLFGANG J. PAZULLA
Barrister and Solicitor
16 Four Seasons Place #202
Toronto, Ontario M9B 6E5

Wolfgang J. Pazulla
LSUC No. 17043C
Tel: 416-622-6669
Fax: 416-622-1440

Lawyer for the Defendant,
Hagersville Business Park Ltd.

FORM 18A – STATEMENT OF DEFENCE
Rules of Civil Procedure, (Rule 18.01)

Court File No.: CV-14-51

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

MARGARET MORRISON

Plaintiff

and

HAGERSVILLE BUSINESS PARK LTD., HER MAJESTY THE QUEEN IN RIGHT OF THE GOVERNMENT OF CANADA, HER MAJESTY THE QUEEN IN THE RIGHT OF THE PROVINCE OF ONTARIO AND THE COUNTY OF HALDIMAN

Defendants

STATEMENT OF DEFENCE AND CROSSCLAIM OF THE ATTORNEY GENERAL OF CANADA (INCORRECTLY NAMED AS HER MAJESTY THE QUEEN IN RIGHT OF THE GOVERNMENT OF CANADA)

1. The defendant, the Attorney General of Canada ("Canada"), (incorrectly named as "Her Majesty the Queen in Right of The Government of Canada"), admits the allegations contained in paragraphs 6, 7, and 9 of the statement of claim.

2. The defendant denies the allegations contained in paragraphs 1,2,3,44, and 55-66 of the statement of claim.

3. The defendant has no knowledge in respect of the allegations contained in paragraphs 4, 5, 8, 10, 11-43, and 45-54 of the statement of claim.

4. This defendant states that on or about June 18, 1965, Canada transferred ownership of the property and land known as "Camp Hagersville" to the Province of Ontario.

5. This defendant states that at the time of the aforementioned transfer, all aspects of the property's waterline, sewage system, waste water management, sewage disposal and existing structures adherent to its sewage management were properly designed and maintained in

compliance with all regulatory policies, by-laws, and licensing requirements that existed at the time. Canada further denies that it is the owner of the waterline as alleged.

6. This defendant has no knowledge of any transactions between the plaintiff and the co-defendants. It has had no involvement with the plaintiff's land since the transfer of the land in June of 1965 to the Province of Ontario.

7. This defendant did not commit any tort, breach of contract nor was it negligent as alleged in the claim or in any manner whatsoever. Further, this defendant did not, at any time, enter into a contract with the plaintiff.

8. This defendant denies that it owes any private law duty to the Plaintiff. Alternatively, if such a duty is owed, it was not breached.

9. This defendant denies that the plaintiff suffered the damages as alleged.

10. In the alternative, if the plaintiff suffered any damages, this defendant states that the plaintiff caused or contributed to these damages and that she has further, failed to mitigate her damages.

11. This defendant states that the plaintiff's claim is barred by virtue of the Limitations Act, 2002, S.O. 2002, c.24 and schedules and regulations passed pursuant to this Act.

12. This defendant pleads and relies upon the Crown Liability and Proceedings Act, R.S.C. 1985, c. C-50 and the Negligence Act, R.S.O. 1990, c. N.1 and regulations passed pursuant to these Acts.

13. This defendant therefore denies liability for the relief sought and asks that this claim be dismissed against it with costs.

CROSSCLAIM

14. This defendant claims against the co-defendants, HAGERSVILLE BUSINESS PARK LTD.,HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF ONTARIO and the COUNTY OF HALDIMAND as follows:

a) Contribution and indemnity pursuant to the Negligence Act, R.S.O. 1990, c. N.1, as amended, for any amounts for which this Defendant may be found to be responsible to the Plaintiff in the main action;

b) Contribution and indemnity under the common law and equity for any amounts which this Defendant may be found to be responsible to the Plaintiff;

c) Its costs of the main action , plus all applicable taxes;

d) Its costs of the Crossclaim, plus all applicable taxes; and,

e) Such further and other relief as to this Honourable Court seems just.

15. This defendant repeats and adopts the allegations as against the co-Defendants as contained in the Statement of Claim.

16. This defendant proposes that this Crossclaim be tried at the same time and place as the main action.

July 2, 2014

Department of Justice
Ontario Regional Office
The Exchange Tower
130 King Street West
Suite 3400, Box 36
Toronto, Ontario
M5X 1K6

Per: Karen Watt (LSUC# 30155H)
Tel: 416-973-9341
Fax: 416-973-5004

Solicitor for the Defendant, Her Majesty the Queen in Right of the Government of Canada

TO: McTague Law Firm LLP
455 Pelissier Street
Windsor, Ontario
N9A 6Z9

Tom Searfirmovski (LSUC# 30330T)
David Sundin (LSCU# 60296N)
Tel: 519-255-4344
Fax: 519-255-4384

Solicitors for the Plaintiff

TO: Sullivan, Mahoney LLP
Barristers and Solicitors
40 Queen Street

St. Catherines, Ontario
L2R 6Z2

Woodward B. McKaig (LSUC# 16062G)
Tel: 905-688-8470
Fax: 905-688-5814

Solicitors for the Defendant, the Corporation of Haldimand County

TO: Wolfgang J. Pazulla
Barrister and Solicitor
202-16 Four Seasons Place
Etobicoke, Ontario
M9B 6E5

Solicitor for the Defendant, Hagersville Business Park Limited

TO:

Her Majesty the Queen in Right of the Province of Ontario
Attorney General of Ontario
McMurty-Scott Building
720 Bay Street, 8th Floor
Toronto, Ontario
M7A 2S9

Emtiaz Bala (LSUC# 55452M)
Tel: (416) 326-4123
Fax: (416) 326-4181

Court File No.: CV-14-51

MARGARET MORRISON AND **HAGERSVILLE BUSINESS PARK LTD., HER MAJESTY THE QUEEN IN RIGHT OF THE GOVERNMENT OF CANADA, HER MAJESTY THE QUEEN IN THE RIGHT OF THE PROVINCE OF ONTARIO AND THE COUNTY OF HALDIMAN**

Plaintiff

Defendants

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding Commenced at Cayuga

STATEMENT OF DEFENCE

Department of Justice
Ontario Regional Office
The Exchange Tower
130 King Street West
Suite 3400, Box 36
Toronto, Ontario
M5X 1K6

Per: Karen Watt (LSUC# 30155H)
Tel: 416-973-9341
Fax: 416-973-5004
Solicitor for the Defendant, Her Majesty the Queen in Right of the Government of Canada

Court File No. CV-14-51

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

MARGARET MORRISON

Plaintiff

and

HAGERSVILLE BUSINESS PARK LTD.,
HER MAJESTY THE QUEEN IN RIGHT OF THE GOVERNMENT OF CANNADA,
HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF ONTARIO
and the COUNTY OF HALDIMAND

Defendants

STATEMENT OF DEFENCE AND CROSS-CLAIM OF HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO

---

1. The Defendant, Her Majesty the Queen in Right of Ontario ("Ontario"), admits that it owned the property that is the subject of this action (collectively "the Morrison Lands"): PIN 38244-0190 (LT) ("the White Oaks Village property") and PIN 38244-0192 (LT) ("the lagoon property"). Ontario owned the Morrison lands as until 1983.
2. Ontario denies the remainder of the plaintiff's allegations except as admitted below. In particular, Ontario denies that it has any obligations arising out of the Water and Sewage Agreements or in relation to the Waterline.

A. No Obligations to the Plaintiff

3. In 1983, Ontario sold its interests in the Morrison lands to Mearle Harris and Richard Cerekwicki ("Harris and Cerekwicki"), who were predecessors in title to the plaintiff. Ontario has not had any ownership interest in the Morrison Lands since.

4. Ontario transferred all of the benefits and burdens contained within the Water and Sewage Agreements to Harris and Cerekwicki. The 1983 Deed transferring ownership states that the transfer is:

> [A]ND ALSO TOGETHER with all rights, title, claim or interest of the Grantor [Ontario] as set out in Water and Sewage Agreements registered in the said Land Registry Office as Numbers 65372 and 65373 respectively.
>
> [S]UBJECT TO the rights of Wyndemere Farms Limited, their successors and assigns as set out in Water and Sewage Agreements registered in the same Land Registry Office as Numbers 65372 and 65373.

5. With respect to the Water Agreement with Wyndemere, Ontario was the owner of the waterline in April 1967 when the Water Agreement was made. Particulars of the Water Agreement are as follows:

   a) Wyndemere could purchase water from the Village of Jarvis (now the County of Haldimand) and use Ontario's waterline to transport that water;
   b) Ontario and Wyndemere agreed to split the cost of operation and maintenance of the waterline, so long as the parties jointly used the water main;
   c) Either party could, at any time, discontinue the use of the waterline. If so, the other party would assume costs of operation and maintenance of the Waterline so long as it used the waterline (Ontario did not use the waterline after it transferred the property in 1983);
   d) Jarvis/Haldimand was to operate the waterline;

e) The Agreement does not cover the purchase of water from Jarvis/Haldimand, which is at issue in this action. Ontario had a separate water supply purchase agreement with Jarvis/Haldimand, dated March 25, 1966. That agreement was terminated once the province no longer owned the lands in question and no longer required the supply of water.

6. The Sewage Agreement provided benefits to and imposed obligations on Ontario during the period that it owned the Morrison lands. For instance, Ontario agreed to receive and treat sewage from Wyndemere and Wyndemere agreed to supply electrical power from its substation. The benefit and burden of the Sewage Agreement was transferred in 1983 with the sale of the Morrison lands:

7. The Crown pleads and relies upon the provisions of the *Proceedings Against the Crown Act,* R.S.O. 1990, c. P.27, the *Limitations Act, 2002*, S.O. 2002, C.24, the *Land Titles Act*, R.S.O. 1990, c. L.5 and the *Negligence Act*, R.S.O. 1990 c. N.1.

B. Cross-Claim

8. Ontario claims against the co-defendants, HAGERSVILLE BUSINESS PARK LTD., THE ATTORNEY GENERAL OF CANADA (incorrectly named as "HER MAJESTY THE QUEEN IN RIGHT OF THE GOVERNMENT OF CANNADA") and the COUNTY OF HALDIMAND as follows:

   a. Contribution and indemnity pursuant to the Negligence Act, R.S.O. 1990, c.N.1, as amended, for any amounts for which this Defendant may be found to be responsible to the Plaintiff in the main action;

b. Contribution and indemnity under the common law and equity for any amounts which this Defendant may be found to be responsible to the Plaintiff;

c. Its costs of the main action and the cross-claims;

d. Its costs of the cross-claim, plus all applicable taxes; and,

e. Such further and other relief as to this Honourable Court deems just.

9. Ontario repeats and relies on the facts cited in the main action and proposes that this cross-claim be tried at the same time and place as the main action.

September 10, 2015.

MINISTRY OF THE ATTORNEY GENERAL
Crown Law Office – Civil
720 Bay Street, 8th Floor
Toronto, ON M7A 2S9

EMTIAZ BALA LSUC#55452M
Tel: 416-327-4885
Fax: 416-326-4181
Emtiaz.Bala@Ontario.ca

Solicitors for the Defendant,
Her Majesty the Queen in right of Ontario

TO: **McTague Law Firm LLP**
455 Pelissier St.
Windsor, ON
N9A 6Z9

Tom Serafimovski (LSUC#30330T)
David Sundin (LSUC#60296N)
Tel: (519) 255-4344
Fax: (519) 255-4384

Solicitors for the Plaintiff

AND TO: **Sullivan, Mahoney LLP**
Barristers and Solicitors
40 Queen Street
St. Catharines, ON L2R 6Z2

Woodward B. McKaig (LSUC#16062G)
Tel: (905) 688-8470
Fax: (905) 688-5814

Solicitors for the Defendant,
The Corporation of Haldimand County

AND TO: **Her Majesty the Queen in Right of the Government of Canada**
Department of Justice Canada
Ontario Regional Office
The Exchange Tower
130 King Street West
Suite 3400, Box 36
Toronto, ON M5X 1 K6

Karen Watt (LSUC#30155H)
Tel: (416) 973-9341
Fax: (416) 973-5004

Solicitors for the Defendant,
Her Majesty the Queen in Right of the Government of Canada

AND TO: **Wolfgang J. Pazulla**
Barrister and Solicitor
202-16 Four Seasons PL
Etobicoke, Ontario
M9B 6E5
Tel: (416) 622-6669
Fax: (416) 622-1440

Solicitor for the Defendant,
Hagarsville Business Park Ltd.

Court File No. CV-14-51

MARGARET MORRISON - v.- **HAGERSVILLE BUSINESS PARK LTD., et al.**
Plaintiff **Defendants**

ONTARIO
SUPERIOR COURT OF JUSTICE
Proceeding commenced at **CAYUGA**

STATEMENT OF DEFENCE OF HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO

MINISTRY OF THE ATTORNEY GENERAL
Crown Law Office – Civil
8th Floor – 720 Bay Street
Toronto, ON M7A 2S9

EMTIAZ BALA LSUC#55452M
Tel: 416-327-4885
Fax: 416-326-4181

Solicitors for the Defendant,
Her Majesty the Queen in right of Ontario

Form 18A

Court File Number CV-14-51

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

MARGARET MORRISON

Plaintiff

and

HAGERSVILLE BUSINESS PARK LTD., HER MAJESTY THE QUEEN IN RIGHT OF THE GOVERNMENT OF CANADA, HER MAJESTY THE QUEEN IN THE RIGHT OF ONTARIO AND THE COUNTY OF HALDIMAND

Defendants

STATEMENT OF DEFENCE AND CROSS-CLAIM OF THE COUNTY OF HALDIMAND

1. The defendant, the County of Haldimand ("Haldimand") admits the allegations contained in paragraphs 6 – 10, 15, 18, 19, 23 and 68 of the Statement of Claim.

2. Haldimand denies the allegations contained in paragraphs 1 – 4, 12 – 14, 20, 22, 25, 28, 30 – 39, 47 – 51 and 55 - 66 of the Statement of Claim.

3. Haldimand has no knowledge in respect of the allegations contained in paragraphs 5, 11, 16, 17, 21, 24, 26, 27, 29, 30, 37, 40 – 46 and 52 - 54 of the Statement of Claim.

The Parties

4. The Town of Jarvis ("Jarvis") is a predecessor municipality to the former Regional Municipality of Haldimand-Norfolk ("the Former Region") which in turn is the immediate predecessor municipality to Haldimand. Haldimand was incorporated pursuant to a municipal restructuring which took effect on January 1, 2001.

The Property

5. The property referenced in paragraph 4 of the Statement of Claim, and throughout thereafter, consists of two adjacent parcels which are owned by the Plaintiff. The larger parcel is commonly known as White Oaks. The smaller parcel contains the sewage lagoon.

6. The Plaintiff purchased the properties in 1999 with her husband at the time, Wayne Berry.

7. Title to the properties was transferred in 2004 to the Plaintiff and John Morrison, her current husband.

8. Title to the properties was transferred in 2008 to the Plaintiff as sole owner.

9. The defendant, Hagersville Business Park ("HBP") owns adjacent lands and leases portions of its land to various commercial or industrial tenants. Haldimand has no knowledge as to whether the business carried on by HBP or its tenants is water intensive as alleged in the Statement of Claim.

The Waterline

10. A private waterline ("the Waterline") carries water from the Hagersville Booster Station (referred to in the Statement of Claim and later in this Statement of Defence as "the Pumping Station") for a distance of approximately 6 kilometers until it reaches HBP property and the properties owned by the Plaintiff.

11. Haldimand is not aware of the exact route of the Waterline. Portions run under municipal road allowances and other portions run under private property.

12. Haldimand has no knowledge of any users of the Waterline except for the Plaintiff, HBP and their respective tenants.

13. Jarvis was not a party to the agreement between Wyndemere Farms Limited and the Defendant Ontario ("the Water Agreement") referenced in paragraph 17 and elsewhere in the Statement of Claim. Haldimand denies that it is bound by the terms of that Agreement insofar as they relate to Jarvis.

14. Haldimand denies that either it or the Former Region have at any time assumed responsibility for or undertaken repairs, maintenance or other work respecting the Waterline. Haldimand has searched its records, and the records of the Former Region back to approximately 1982. There is no record of any repair or maintenance of the Waterline by Haldimand or the Former Region during that period.

15. Repair and maintenance of the Waterline has historically been undertaken by the Plaintiff, her predecessors of the title and/or HBP through contractors retained by any or all of those parties.

16. Haldimand has consistently maintained in all of its dealings with the Plaintiff that the Waterline is a private Waterline and that Haldimand has no ownership or other interest in the Waterline, and that Haldimand has no repair, maintenance or other responsibilities respecting the Waterline.

17. Haldimand has no knowledge of the apportionment of water usage between the Plaintiff and other users of water from the Waterline.

18. Haldimand has no obligation or power to mediate disputes between the Plaintiff and other users who have historically apportioned the water taken from the Waterline among themselves.

19. Haldimand states that the Plaintiff and her predecessors in title have been responsible for payment to Haldimand of charges for water leaving the Pumping Station, and that the Plaintiff remains responsible for those charges today. The apportionment of water charges for those taking water from the Waterline has always been a matter between those private users, and not Haldimand.

20. Haldimand denies that it has refused to make changes to allow separate water metering for users who are tied in to the Waterline. It has always been open to users of the Waterline to install meters to assist them in apportioning water charges among themselves.

21. Haldimand states that the Plaintiff and/or HBP is responsible for all water charges based on the amount leaving the Pumping Station.

22. The Plaintiff stopped making regular payments on account of water charges in or about 2009.

23. Haldimand denies that it has been unwilling to address the Plaintiff's concerns respecting water billings, and further Haldimand denies that there has been a massive or any overcharge for water. The billing for water charges to the Plaintiff and her predecessors in title have always been based on the amount of water leaving the Pumping Station. Prior to 2009, the Plaintiff or her predecessors in title and other users of the Waterline were able to apportion the responsibility for water charges.

24. Haldimand denies that there are water supply issues or billing issues which fall within the responsibility of Haldimand, or over which Haldimand has any control. Haldimand states that any such issues have been caused by the Plaintiff and/or HBP in respect of their failure to properly repair and maintain the Waterline, and in respect of being unable to apportion the charges for the water taken by each user from the Waterline.

Sewage Lagoon

25. Haldimand has no knowledge of ownership of the Sewage Lagoon.

26. Haldimand does not and never has had any ownership or other interest in the Sewage Lagoon or the surrounding property.

27. Neither Haldimand nor its predecessor municipalities have ever had any responsibility for repair or maintenance of the Sewage Lagoon, nor has it undertaken any repair, maintenance or other work respecting the Sewage Lagoon.

28. Haldimand has consistently advised the plaintiff that it is not the owner of the Sewage Lagoon, and has no obligations toward the repair or maintenance of the Sewage Lagoon.

Tax Sale

29. As of September 13th, 2013, the Plaintiff was in arrears of water charges in the following amounts:

Principle	$153,594.09
Interest	$ 36,949.03
Total	$190,543.12

There were approximately 4.5 years of water arrears at that time.

30. Pursuant to Section 398 (2) of the *Municipal Act*, S.O. 2001, c. 25, and amendments thereto (the "Act") Haldimand added the water arrears, interest and penalties to the tax rolls.

31. In addition to the water arrears referenced in the Statement of Claim and above, as of September 13th, 2013, the Plaintiff was in arrears of property taxes in respect of both properties in the following amounts:

White Oaks:	Principal Balance	$264,085.84
	Legal Fees, Penalties and Interest Balance	$ 84,373.09
	Total	$348,458.93
Sewage Lagoon:	Principal Balance	$ 8,445.72
	Legal Fees, Penalties and Interest Balance	$ 5,618.02
	Total	$ 14,063.74

The property tax arrears, interest and penalties for both properties totalled $362,522.67 as of September 13th, 2013. There were approximately 5.5 years of arrears respecting the White Oaks property and approximately 6.5 years of arrears respecting the Sewage Lagoon property.

32. Pursuant to Section 373 of the Act, Haldimand registered a Tax Arrears Certificate on September 13th, 2013 in the amount of $408,991.61, which was the amount owing as of December 31, 2012. The cancellation price at the time of registration of the said Certificate was $553,065.79.

33. Pursuant to Section 375 of the Act, Haldimand was precluded from accepting partial payments on account of taxes after the registration of the Tax Arrears Certificate. Except in special circumstances, Haldimand is required to only accept the full amount owing on the Tax Arrears Certificate. Haldimand denies that it acted in a malicious and high-handed manner by refusing payments after October of 2013, or at all.

34. The arrears on account of property taxes, legal fees, penalties and interest and water charges, penalties and interest as of December 31st, 2014 totaled $765,573.73.

35. Haldimand states that the registration of the Tax Arrears Certificate was lawful and appropriate in all of the circumstances and was based on significant default by the Plaintiff in payment of both property taxes and water charges.

36. Haldimand denies that the filing of the Tax Arrears Certificate has resulted in the Plaintiff being in breach of her obligations to a mortgagee, that it has affected her credit rating, that it has restricted the ability of her tenants to obtain mortgages or refinance their existing mortgages or to sell their units, that it has reduced the value of White Oaks or that it has interfered with the Plaintiff's economic interests. To the extent that any of those outcomes may have occurred, they are caused solely by the significant breaches in payment of taxes and water charges by the Plaintiff.

Damages

37. Haldimand states that it has no ownership or other interest in the Sewage Lagoon, and has no obligation or duty to oversee, inspect, maintain, repair, or generally operate the said Sewage Lagoon. Haldimand denies that it has been negligent in respect of any of these matters, and denies that it has subverted attempts by the Plaintiff to resolve Sewage Lagoon issues.

38. Haldimand repeats its statement that it has no ownership, oversight, maintenance, inspection or repair obligations respecting the Waterline and denies that it has been negligent in any respect relating to the Waterline and further denies that any actions of Haldimand have caused any damages or hardships to the Plaintiff.

39. Haldimand is unaware of the full extent of the condition of the Waterline. Any deficiencies in the said Waterline result from improper inspection, maintenance and repair by the Plaintiff and/or HBP.

40. Haldimand denies that it was involved in the design, construction, maintenance or inspection of the Waterline, or that it had any obligations in respect of same, or that it was negligent in respect of same.

41. Haldimand denies that it was involved in the design, construction, maintenance or inspection of the Sewage Lagoon, or that it had any obligations in respect of same, or that it was negligent in respect of same.

42. Haldimand denies that its actions have amounted to tortious interference with the Plaintiff's economic relations and states that all property tax and water billings were appropriate, and that the registration of the Tax Arrears Certificate was appropriate and done in accordance with the provisions of the Act.

43. Haldimand denies that it owes a duty of care to the Plaintiff or anyone in respect of the Waterline and/or the Sewage Lagoon, and alternatively, if such a duty is owed, it was not breached.

44. Haldimand denies that its actions caused or contributed to mental or emotional distress of the Plaintiff and further denies that she has suffered any such mental or emotional distress.

45. Haldimand denies that it did not commit any tort, was not negligent, did not breach any statutory or contractual duty and states that it did not at any time enter into a contract with the Plaintiff.

46. Haldimand denies that the Plaintiff suffered the damages alleged in the Statement of Claim, or at all.

47. In the alternative, if the Plaintiff did suffer any damages, Haldimand states that the Plaintiff caused or contributed to these damages and further that she has failed to mitigate those damages.

48. Haldimand denies that it has acted with malice and in a high-handed manner as alleged, and denies the Plaintiff's claim for punitive and aggravated damages.

49. Haldimand denies that the Plaintiff is entitled to the declarations specified in paragraphs 3(a), 3(c), 3(d), 3(e), 3(f) and 3(g).

50. Haldimand pleads and relies on the provisions of the *Negligence Act*, R.S.O. 1990, c. N.1 and regulations thereto.

51. Haldimand pleads and relies on the provisions of the Municipal Act, S.O. 2001, c. 25 and regulations thereto.

52. Haldimand denies liability for the relief sought by the Plaintiff in the Statement of Claim and asks that the claim against Haldimand be dismissed with costs on a substantial indemnity basis.

CROSSCLAIM

53. Haldimand claims against the co-Defendants, Hagarsville Business Park Ltd., Her Majesty The Queen In The Right of Ontario and The Attorney General as follows:

(a) contribution and indemnity pursuant to the *Negligence Act*, R.S.O. 1990, c. N.1 as amended for any amounts which Haldimand may found to be responsible to the Plaintiff in the main action;

(b) contribution and indemnity under the common law and equity for any amounts which Haldimand may found to be responsible to the Plaintiff;

(c) costs of the main action on a substantial indemnity basis, plus all applicable taxes;

(d) costs of this Crossclaim on a substantial indemnity basis, plus all applicable taxes; and

(e) such further and other relief as this Honourable Court deems just.

54. Haldimand repeats and adopts the allegations as against the co-Defendants contained in the Statement of Claim.

55. Haldimand proposes that this Crossclaim be tried at the same time and place as the main action, and that all matters be tried at Cayuga.

Date: March 5, 2015

Sullivan Mahoney LLP
Law Office
40 Queen Street, P.O. Box 1360
St. Catharines, ON L2R 6Z2

Woodward B. McKaig (LSUC#16062G)

(905) 688-8470
(905) 688-5814 (fax)

Solicitors for the Defendant the Corporation of Haldimand County

TO: McTague Law Firm LLP
455 Pelissier St.
Windsor, ON
N9A 6Z9

Tom Serafimovski (LSUC#30330T)
David Sundin (LSUC#60296N)
(519) 255-4344
(519) 255-4384 (fax)

Solicitors for the Plaintiff

Her Majesty the Queen in Right of the Government of Canada
Department of Justice Canada
Ontario Regional Office
The Exchange Tower
130 King Street West
Suite 3400, Box 36
Toronto, ON M5X 1K6

Karen Watt (LSUC#30155H)
(416) 973-9341
(416) 973-5004 (fax)

Solicitors for the Defendant Canada

Her Majesty the Queen in Right of the Province of Ontario
Attorney General of Ontario
Crown Law office – Civil
McMurty-Scott Building
720 Bay Street, 8th Floor
Toronto, ON M7A 2S9

Emtiaz Bala
416-326-4123
416-326-4181(fax)

Solicitors for the Defendant Ontario

Wolfgang J. Pazulla
Barrister and Solicitor
202-16 Four Seasons Pl.
Etobicoke, Ontario
M9B 6E5

416-622-6669
416-622-1440 (fax)

Solicitor for the Defendant Hagersville Business Park Ltd.

Morrison v. Hagersville Business Park et al

Court File Number: CV-15-51

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT

Cayuga

STATEMENT OF DEFENCE AND CROSSCLAIM

Sullivan Mahoney LLP
Law Office
40 Queen Street, P.O. Box 1360
St. Catharines, ON L2R 6Z2

Woodward B. McKaig (LSUC#16062G)

(905) 688-8470
(905) 688-5814 (fax)

Solicitors for the Defendant the Corporation of Haldimand County

Court File No.: CV-14-51

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

MARGARET MORRISON

Plaintiff

- and -

HAGERSVILLE BUSINESS PARK LTD.,
HER MAJESTY THE QUEEN IN RIGHT OF
THE GOVERNMENT OF CANNADA, HER MAJESTY THE QUEEN IN RIGHT OF THE
PROVINCE OF ONTARIO and the COUNTY OF HALDIMAND

Defendants

DEFENCE TO COUNTERCLAIM OF HAGERSVILLE BUSINESS PARK LTD.

1. The Defendant by Counterclaim, Margaret Morrison, denies each and every allegation contained in the Counterclaim of the Plaintiff by Counterclaim, Hagersville Business Park Ltd., except as specifically admitted herein or in her related Statement of Claim.

2. The Defendant by Counterclaim repeats and relies upon the allegations contained in her Statement of Claim.

3. The Defendant by Counterclaim specifically denies that the Plaintiff by Counterclaim has suffered damages as alleged in its Counterclaim, or at all, and puts it to the strictest proof thereof.

4. If the Plaintiff by Counterclaim sustained any damages as alleged in its Counterclaim, or at all, which is not admitted but expressly denied, such are exaggerated, excessive and too remote and the Plaintiff by Counterclaim failed to mitigate its alleged damages.

5. The Plaintiff by Counterclaim therefore requests that this Counterclaim be dismissed with costs payable to her.

Date: April 25, 2019

TOM SERAFIMOVSKI
LSUC # 30330T
DAVID SUNDIN
LSUC # 60296N
McTAGUE LAW FIRM LLP
Barristers & Solicitors
455 Pelissier Street
Windsor, Ontario N9A 6Z9
(T) 519-255-4344
(F) 519-255-4384

LAWYERS FOR THE PLAINTIFF/
DEFENDANT BY COUNTERCLAIM

TO: **WOLFGANG J. PAZULLA**
LSUC # 17043C
Barrister & Solicitor
16 Four Seasons Place, Suite 202
Etobicoke, Ontario M9B 6E5
(T) 416-622-6669
(F) 416-622-1440

LAWYER FOR THE DEFENDANT/
PLAINTIFF BY COUNTERCLAIM,
HAGERSVILLE BUSINESS PARK LTD.

Court File No : CV-14-51

MARGARET MORRISON vs. HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF ONTARIO et al.

SUPERIOR COURT OF JSUTICE

PROCEEDING COMMENCED AT CAYUGA

DEFENCE TO COUNTERCLAIM OF HAGERSVILLE BUSINESS PARK LTD.

DAVID M. SUNDIN
LSUC # 60296N
McTAGUE LAW FIRM LLP
Barristers & Solicitors
455 Pelissier Street
Windsor, Ontario
N9A 6Z9

(T) 519-255-4344
(F) 519-255-4384

LAWYERS FOR THE PLAINTIFF
FILE NO. 57579

[382536/1]

Court File No.: CV-14-51

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

MARGARET MORRISON

Plaintiff

- and -

HAGERSVILLE BUSINESS PARK LTD.,
HER MAJESTY THE QUEEN IN RIGHT OF
THE GOVERNMENT OF CANNADA, HER MAJESTY THE QUEEN IN RIGHT OF THE
PROVINCE OF ONTARIO and the COUNTY OF HALDIMAND

Defendants

CERTIFICATE OF LAWYER, PURSUANT TO RULE 48.03(1)(H)

I, David M. Sundin, Lawyer for the Plaintiff in the within action, hereby certify:

1. That the within Trial Record contains the documents required by Rule 48.03(1) of the Rules of Civil Procedure;

2. That the time for delivery of pleadings has expired;

DATED at Windsor, Ontario this 25th day of April, 2019.

DAVID SUNDIN
McTAGUE LAW FIRM LLP

LAWYERS FOR THE PLAINTIFF

[1600340/1]

Court File No : CV-14-51

MARGARET MORRISON vs. HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF ONTARIO et al.

SUPERIOR COURT OF JSUTICE

PROCEEDING COMMENCED AT CAYUGA

TRIAL RECORD

DAVID M. SUNDIN
LSUC # 60296N
McTAGUE LAW FIRM LLP
Barristers & Solicitors
455 Pelissier Street
Windsor, Ontario
N9A 6Z9

(T) 519-255-4344
(F) 519-255-4384

LAWYERS FOR THE PLAINTIFF
FILE NO. 57579

[382536/1]

Court Court File No.: CV-23-00000065-000

ROYAL BANK OF CANADA v. MARGARET LOIS MORRISON et al
Plaintiffs Defendants

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
CAYUGA

SUPPLEMENTARY RESPONDING MOTION RECORD

TOM SERAFIMOVSKI
LSO # 30330T
McTAGUE LAW FIRM LLP
Barristers and Solicitors
455 Pelissier Street
Windsor, Ontario
N9A 6Z9

(T) 519-255-4386
(F) 519-255-4384
tserafimovski@mctague.law

LAWYERS FOR THE DEFENDANTS

File #57579