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[McKenzie Meadows class action team to petition province to move forward](#)

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McKenzie Meadows class action team to petition province to move forward



by [Mike Renzella](#)

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CALEDONIA—The team behind the class action lawsuit for those impacted by the McKenzie Meadows protest is preparing a new motion with hopes of pushing the case forward.

The former McKenzie Meadows site, now called 1492 Land Back Lane, remains occupied more than five years after protestors first entered the grounds on July 19, 2020. The class action was filed on November 16, 2020, with the development officially cancelled in July 2021.



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CALEDONIA—An aerial view of the lands in the YouTube video ‘1492 Land Back Lane/Stories from 1492/FOUR YEARS ON’, posted following the four year anniversary of the proposed McKenzie Meadows development site being taken over by Indigenous protestors to claim the land for future generations. —Video posted by Sabrina Hill.

The suit, seeking \$75 million in damages, stalled after the Ontario Court of Appeal ruled it cannot proceed unless granted a provincial waiver under section 17 of the *Crown Liabilities and Proceedings Act, 2019*.

The new waiver motion is being prepared by Class Action Consultant David Johnson and Lead Class Counsel John McDonald.

“I’m anticipating I’m going to win the waiver motion,” said McDonald, noting the motion will likely be considered in late December. “I have to show there’s judicial economy, I have to challenge the behaviour of the government, so on and so forth.”

He is encouraged by a series of calls with Senior Crown Brent McPherson, stating, “Some of the letters class members had written to us were very impactful and they resonated with him.”

McDonald cited ‘Henco Industries Ltd. v. Haudenosaunee Six Nations Confederacy Council, 2006’, a similar class action resulting from the 2006 Douglas Creek Estates protest as an indicator that this suit stands a strong chance at success if allowed to proceed.

In that case, protestors were ordered to leave the lands through a court injunction in February 2006 and again in March 2006, when the court found the protestors to be in criminal contempt. The lands were eventually purchased by the provincial government, who sought to dissolve the injunction as it worked toward negotiations.

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The late Justice David Marshall determined that the injunction was binding despite the sale of the lands, that any criminal charges laid must conclude in court, and that negotiations between the government and protestors must be paused until the occupation ended.

The Court of Appeal overturned parts of Marshall's ruling, allowing negotiations to take place; while the injunction and contempt findings stood, the way they would be pursued was up to the Crown.

"It really tells you in such a clear way what some of our problems in Caledonia are in getting this case settled," said McDonald. "All kinds of orders were coming out of the court by Justice Marshall in 2006.... They mostly related to contempt of court and injunctions related to the fact the police just weren't doing what they're supposed to do – enforce the rule of law."

Brian Haggith, retired police inspector and representative plaintiff in the McKenzie Meadows class action suit, wrote a draft affidavit criticizing the OPP's *Framework for Police Preparedness for Indigenous Critical Incidents*. He said the policy sacrificed the rights of law-abiding "Indigenous and non-Indigenous citizens over the actions of criminals, the Land Defenders, who represent a very small percentage of the Indigenous community."

He cited a blockade of the Highway 6 bypass around Caledonia in November 2021, allegations of known offenders hiding on the lands, and a perceived general lack of accountability in the OPP's response to the situation.

Haggith also alleges that Haldimand OPP Inspector Phil Carter informed him of a deal made between the Crown and Land Back spokesperson Skyler Williams in 2022.

According to Haggith, “Williams would plead guilty to some charges, and the Crown agreed to withdraw the remaining charges. Carter also advised me that it had been agreed Williams’ guilty plea would be entered before an Indigenous judge.”

Johnson said, “The police do not have the ability to persuade or choose judges for any particular trial, yet it happened.... I kind of feel like that is misfeasance in public office 101.”

The Press contacted the OPP to request comment from Carter on the above claims, but did not hear back prior to publication. Should a response be provided, The Press will give an update in a future edition.

Following a request for comment from the Crown, the response was: “As the litigation relating to the McKenzie Meadows class action remains before the court, we are unable to comment on the case.”

Johnson said in his affidavit that several class members refrained from sharing their experiences, with some stating a fear of “reprisals from the Indigenous protestors.”

He said in an interview that a “number of people had said to me that two Indigenous folks had arrived at their front door, dressed in full battle gear ... and said to them, ‘You are living on our land. Leave now or we will burn your house to the ground.’ ... This is intimidation beyond belief.”

Among those who provided statements is Amber Heidman, wife of Caledonia Baptist Church Pastor Allan Heidman, who recalled watching the McKenzie Meadows protest begin from her front yard as trucks carrying large flags drove around the lands. She said over the coming weeks her family lived in “constant stress.”

Tom Hutton, Chair of Property for the church, wrote an affidavit on church damages, including an October 23, 2020 incident when a fire was set out front and a school bus was taken from the church lot and dragged across Argyle Street, causing damage to both the bus and the street. Hutton said the OPP instructed the church to cancel Sunday service that week, prompting both Hutton and Pastor Heidman to contact various government offices to protest the forced closure.

Other incidents noted by Hutton include spray paint on the church sign, a Warrior flag placed on the steeple, smashed windows, and a December 2020 blockade that included tearing up the road at the church's two entrances, with a destroyed vehicle at each.

In total, the affidavit lays out over \$120,000 in repairs and the church remained closed for three months due to the protests.

"This is a most serious affront to our religious freedoms and rights, and we are shocked this was tolerated by law enforcement authorities and Premier Ford," Hutton said in his affidavit.

Class member Desirae Sousa shared that when her family purchased a home in the McKenzie Meadows development, they sold their Hamilton condo and rented it from the new owner while awaiting construction of their new home. She and her husband had a new set of twins at the time.

"We went in, took our \$40,000 and put it down, decided we were going to trust the process," said Sousa, who identifies as Métis. "By the time we got our money back in 2022, prices had surged through the roof. So here we are, renting our condo that we previously owned and we're stuck in it.... My husband and I bought that condo for \$250,000. If we want to repurchase a condo in there, it's over \$500,000 now."

She lays the blame at the feet of the OPP: “They just need to enforce the law, respect the homeowners, and don’t let it destroy families, because that’s what it’s done.”

McDonald said, “There are many other stories like Desirae’s.”

He believes that it’s Premier Doug Ford who must answer for the delay of the lawsuit.

“Ford’s got so many particular things on his list – building highways for billions of dollars, putting a tunnel under the 401, building a billion-dollar park on the waterfront – that somehow the rule of law for the citizens of Caledonia isn’t on his agenda,” said McDonald. “We feel we need to make our voices loud and strong, so it encourages action from Doug Ford. He’s the one with all the say.”

Should funds be awarded in the case, Johnson said the bulk of the proceeds would be divided amongst those who lost property due to the cancelled development, with the remainder going to impacted businesses or organizations.

“We’re trying to bring the cause of justice, the rule of law, to Caledonia. I feel we’re acting in good faith, period, and I feel that the prospect of winning is like 100% because of having won in 2006.”



Mike Renzella

After studying journalism at Humber College, Mike Renzella desired to write professionally but found himself working in technical fields for many years. Beginning in 2019 as a freelancer, he joined the team full-time later that year. Since then, Mike has won several awards for his articles thanks to his commitment to presenting an unbiased, honest look at the important news and events shaping our community.