

ONTARIO
SUPERIOR COURT OF JUSTICE

Attorney General Of Ontario

Applicant

and

2269 Highway # 105, Rugby Township, (IN REM) AND MONTY'S GUNSMITHING
INC., WILLIAM BRUCE MONTAGUE, AND DONNA JEANNE MONTAGUE

Respondents

MOTION FOR PRESERVATION ORDERS UNDER THE
REMEDIES FOR ORGANIZED CRIME AND OTHER UNLAWFUL ACTIVITIES ACT, 2001

FACTUM OF THE ATTORNEY GENERAL OF ONTARIO

INDEX

FACTUM	Tab 1
AUTHORITIES	
<i>Remedies for Organized Crimes and Other Unlawful Activities Act, 2001</i>	Tab 2
<i>Ontario (Attorney General) v. \$78,000 et al., 2003 CanLII 16958 (ON S.C.)</i>	Tab 3
<i>Ontario (Attorney General) v. \$29,020 et al., 2005 CanLII 24251 (ON S.C.)</i>	Tab 4
<i>Cybermind Canada Inc. v. Imler, [1995] O.J. 3135 (O.C.G.D.)</i>	Tab 5
<i>Peel Food Corp. v. Deb-Bac Investments Ltd., [1985] O.J. 365 (S.C.O.)</i>	Tab 6

**ONTARIO
SUPERIOR COURT OF JUSTICE
PROCEEDING COMMENCED IN KENORA**

BETWEEN:

ATTORNEY GENERAL OF ONTARIO

Applicant

and

**2269 Highway # 105, Rugby Township, (IN REM) AND MONTY'S GUNSMITHING
INC., WILLIAM BRUCE MONTAGUE, AND DONNA JEANNE MONTAGUE**

Respondents

**MOTION FOR A PRESERVATION ORDER UNDER THE *REMEDIES FOR
ORGANIZED CRIME AND OTHER UNLAWFUL ACTIVITIES ACT, 2001.***

FACTUM OF THE ATTORNEY GENERAL OF ONTARIO

PART 1 – FACTS

1. Douglas Carlson is a Det. Staff Sergeant with the Ontario Provincial Police and he represents the Chief Firearms Office and has been designated to perform the duties of the Chief Firearms Officer for Ontario in the North West Region.

Affidavit of Douglas Carlson at paragraphs 1 and 4.

2. Det. Staff Sgt. Carlson first visited Monty's Gunsmithing on May 11th, 1999 at which time he introduced himself to William Bruce Montague (hereinafter "Mr. Montague").

Affidavit of Douglas Carlson at paragraph 9.

3. "Monty's Gunsmithing" is operated out of the basement of Mr. Montague's house and is restricted to mainly two separate rooms. He sells non-restricted, restricted and prohibited firearms as well as repairs all types of firearms.

Affidavit of Douglas Carlson at paragraph 10.

4. Mr. Montague expressed his displeasure with the Firearms Act very strongly and made comment about constructing a device and hiding firearms rather than registering them. Mr. Montague spoke irrationally and had to be warned that if he continued with this line of thinking he would likely find himself and his business in trouble with the police.

Affidavit of Douglas Carlson at paragraph 11.

5. On November 14th, 2000 while trying to mediate a dispute between Mr. Montague and the Chief Firearms Office concerning his Business Licence renewal Det. Staff Sgt. Carlson advised Mr. Montague that he was required to inspect his place of business even if he did not renew his business licence. Mr. Montague advised him that he would have to come with a warrant and to ensure he gave him notice. Det. Staff Sgt. Carlson advised Mr. Montague that he would hope it would not come to that but if a warrant was to be executed, he would not be given notice. Mr. Montague advised that maybe we would be surprised as well.

Affidavit of Douglas Carlson at paragraph 12.

6. Det. Staff Sgt. Carlson considered his response a threat to the safety of any Police Officer or Firearms Officer who would possibly attend at his residence unannounced to execute a search warrant.

Affidavit of Douglas Carlson at paragraph 13.

7. Det. Staff Sgt. Carlson had other conversations with Mr. Montague at two different gun shows, one in Dryden and one in Vermilion Bay, in which again Mr. Montague voiced his objections to the Firearms Legislation.

Affidavit of Douglas Carlson at paragraph 14

8. On August 19th, 2002, Det. Staff Sgt. Carlson inspected Mr. Montague's business at which time he discovered many irregularities, which upset Mr. Montague. Because of the results of his inspection he recommended Mr. Montague not be issued any type of a business licence.

Affidavit of Douglas Carlson at paragraph 15.

9. During the inspection of Mr. Montague's business, Mr. Montague confirmed with Det. Staff Sgt. Carlson that he would not do any work on any firearm which is registered and also confirmed he refused to work on a firearm owned by an individual who had complained to me on 06 February 2002.

Affidavit of Douglas Carlson at paragraph 16.

10. Mr. Montague described the legislation as evil.

Affidavit of Douglas Carlson at paragraph 17.

11. On May 23rd, 2003, Det. Staff Sgt. Carlson called Mr. Montague and advised him that he had to do a "Close-Out" inspection and pick up Mr. Montague's ledger, which was not properly completed as required by the Chief Firearms Office.

Affidavit of Douglas Carlson at paragraph 18.

12. Mr. Montague advised him that he would not assist in clearing up outstanding inventory issues and would mail in his incomplete ledger. He also admitted he was still operating his firearms business even though his business licence expired November 22, 2002.

Affidavit of Douglas Carlson at paragraph 19.

13. Mr. Montague had firearms that he still had to transfer from his business licence to his own licence but refused to do so.

Affidavit of Douglas Carlson at paragraph 20.

14. Det. Staff Sgt. Carlson assisted Mr. Montague in the transfer some of his handguns from his business inventory to his personal inventory.

Affidavit of Douglas Carlson at paragraph 21.

15. These handguns had been the subject of concern by the Royal Canadian Mounted Police at the Canadian Firearms Registry.

Affidavit of Douglas Carlson at paragraph 22.

16. On January 1st, 2003, Det. Staff Sgt. Carlson saw Mr. Montague on a television newscast from Ottawa carrying a loud hailer and apparently burning firearms registration cards as part of a group who is opposed to the Firearms Act.

Affidavit of Douglas Carlson at paragraph 23.

17. On January 8th, 2003, Det. Staff Sgt. Carlson heard Mr. Montague on a local news broadcast advising he wanted to be arrested while exchanging unregistered firearms in Ottawa.

Affidavit of Douglas Carlson at paragraph 24.

18. Mr. Montague's firearms licence (Firearms Acquisition Licence) expired 04 November 2003 and his wife's (Donna Jeanne Montague) Possession And Acquisition Licence expired on 26 March 2004.

Affidavit of Douglas Carlson at paragraph 25.

19. As of September 10th, 2004 neither applied for as firearms licence which was confirmed by checking the Canadian Firearms Information System (CFIS).

Affidavit of Douglas Carlson at paragraph 26.

20. CFIS indicated that Donna Montague and William Bruce Montague both have firearms registered under the old RWRS system (old system under Part III of the

Criminal Code) and not re-registered by 01 January 2003 as required by law. They also had firearms registered under the new system.

Affidavit of Douglas Carlson at paragraph 27.

21. Section 17 of the Firearms Act requires all restricted and prohibited firearms to be possessed only at the dwelling house of the owner unless the individual has an Authorization To Transport it to another location, or the owner has an authorization to carry. Without a firearms licence an individual will not be issued an ATT or Authorization to carry.

Affidavit of Douglas Carlson at paragraph 29.

22. Every firearms owner had to have a Firearms Licence by Jan 1st, 2001. Failing to have a firearms licence while having possession of a firearm is a violation of both sections 91 and 92 of the Criminal Code Of Canada.

Affidavit of Douglas Carlson at paragraph 30.

23. Persons cannot transfer, including giving a firearm to another individual who does not have a firearms licence.

Affidavit of Douglas Carlson at paragraph 31.

24. As a result of the fact that William Bruce Montague and Donna Jeanne Montague were in possession of numerous firearms that neither had a licence to which they could possess them, a section 487 Criminal Code Search Warrant for their

residence was issued to search the Montague residence and it was valid from 0900 hours on the 11th of September until 2100 hours on the 12th of September 2004.

The Information to Obtain the Search warrant has been sealed.

Affidavit of Dwain Hill at paragraph 19.

25. Detective Constable Don CUNNINGHAM of the Dryden O.P.P. Crime Unit on the 09th of September 2004, appeared before Justice MORRISON in Kenora, Ontario and swore a criminal Information charging both William Bruce Montague and Donna Jeanne Montague with possession of firearms without a licence contrary to Section 91(1) of the *Criminal Code*. Warrants were issued for the arrest of both parties, with a Feeney endorsement present for Mrs. Montague's arrest warrant. Due to officer safety concerns, it was decided that Mr. Montague would be arrested prior to attending at the residence to execute the search warrant.

Affidavit of Dwain Hill at paragraph 20.

26. On the 11th September 2004, members of the Ontario Provincial Police arrested Mr. Montague at the Agricultural Fair Grounds in Dryden Ontario where he had attended in preparation for a gun show that was to commence that day at 1000 hrs. He was arrested at 0839 hrs. by Detective Constable Belluz and was advised of his Constitutional rights. While being searched by Detective Sergeant Wade Meeks at the time of his arrest, Mr. Montague was asked if he was in possession of any weapons and he advised that he just had the .22 Coeey rifle that he said someone took out the back door when the police arrived. Police went back into the building

and eventually recovered the firearm, a .22 caliber Coeey rifle lying on a display table. The rifle had a sign attached to it that read:

"For Sale – Unregistered Coeey Collectable 100 % Original (Incl. Magazine!)"

Make: Coeey Model: Sure shot .22 Lr. Semi-auto. 10 shot Price: \$200."

Affidavit of Dwain Hill at paragraph 21.

27. There was the following conversation between Det. Const. Belluz and Mr. Montague:

- a. Det. Const. Belluz asked, "Mr. Montague, would you please come outside and speak with us?"
- b. Mr. Montague refused and turned away from Constable Belluz, holding a saddle.
- c. Mr. Montague began to put his hand into his pocket. Constable Belluz grabbed Mr. Montague's hand and advised him that he was under arrest. Mr. Montague asked why. He responded with, "for having possession of firearms without a licence".
- d. Mr. Montague was asked several times, "to please not make a scene in front of people and come outside". After several tries at calming him down, Mr. Montague finally came outside in company of Detective Constable Belluz, Detective Sergeant PISTOLKORS, and several officers that had to be called in to assist.

Affidavit of Dwain Hill at paragraph 26.

28. On his arrest, Mr. Montague was carrying a clip on folding knife with a serrated edge clipped to his belt on the inside of his pants near the small of his back. He also had a multi-purpose tool in a pouch on his right hip and a small pocketknife in his front right pocket. When he was first approached by arresting officers and told they had a warrant for his arrest and asked to step outside, he was reluctant to do so and put his hand inside his right pocket where the pocket knife was later located.

Affidavit of Dwain Hill at paragraph 27.

29. Daniel Robert Landrie gave a statement to Det. Cst. Cunningham of which parts are reproduced below:

Q) What would you describe your relationship with William Bruce MONTAGUE as?

A) A friend and a person that does my gunsmith and a neighbour.

Q) How long have you known William Bruce MONTAGUE?

A) About 12 - 14 years, I call him Bruce.

Q) When is the last time you had any of your firearms in Bruce's care?

A) Last fall I had my 38 handgun Smith & Wesson in there for cleaning as I used it all summer, I have some loading powder (R22 Reload), Swedish 65 X 55 Brass - maybe a hundred, 65 X 55 Bullets - approx 100, 200 - Federal large rifle primers, 2 Sten Gun Bolts, I think 3 sten gun Barrels - cut off by hacksaw or torch, I had got the Sten gun parts to make a display cabinet or table and *they* were there to get him to machine them all the same length so I could use them for my project, I was going to make a display cabinet or table type thing for displaying my war memorabilia that I collect.

Q) Do you have any knowledge in regards to whether or not Bruce MONTAGUE was licenced to possess and or work on firearms?

A) It was my understanding he had burnt his registration cards for his guns, I had no knowledge if he did or not have a FAC or PAL, I just assumed he did have, I knew he was opposed to registering guns.

Q) The gun Bruce was carrying at the gun show in Dryden on the 11 Sep 04, have you seen him on any other occasions with this gun?

A) It was common knowledge at gun shows Bruce would carry this gun around with the sign on it protesting gun registration, I remember seeing him at the Waldof and previous Dryden Gun Show carrying the gun around slung over his shoulder with the sign on it.

and so on

for 48 pages. - Tab 1

Bill 30 - Tab 2

11 pages tab 3

~ 25 pages tab 4