

Citation: *R. v. Lamha*, 2008 YKTC 1

Date: 20071211
Docket: T.C. 07-10120
Registry: Watson Lake

IN THE TERRITORIAL COURT OF YUKON

Before: His Honour Chief Judge Faulkner

REGINA

v.

GERALD DOUGLAS LAMHA

Appearances:
Kevin Komosky
Gerald Lamha

Counsel for Crown
Appearing on his own behalf

REASONS FOR JUDGMENT

[1] FAULKNER C.J.T.C. (Oral): I am prepared to give my decision. This is an application by the Crown, pursuant to s. 111(2) of the *Criminal Code*, to prohibit Mr. Lamha from having in his possession any firearm, ammunition or explosive substance.

[2] In support of that application, the Crown filed an affidavit, sworn by a constable attached to the Royal Canadian Mounted Police here in Watson Lake. While it undeniably raises some concerns with respect to Mr. Lamha, in my view, a hearing of this kind, having a regard to my understanding of what the *Code* requires, cannot be decided simply on an affidavit filed by the Crown.

[3] The leading case with respect to hearings in this regard is the decision of the Supreme Court of Canada in *R. v. Zeolkowski*, [1989] 1 S.C.R. 1378. *Zeolkowski* indicates that while the same evidentiary standards as would apply in a trial do not apply to a hearing of this kind; nevertheless, it is incumbent upon the Court to consider and weigh the evidence to ensure that it is credible and trustworthy. In my view, this cannot be done where the Crown simply files an affidavit, and does not even produce the affiant for cross-examination. Given that the onus is on the Crown in this proceeding, the application must stand dismissed.

[4] MR. KOMOSKY: Your Honour, Crown would apply to adjourn the application so that we can present the affiant for cross-examination, and to present *viva voce* testimony.

[5] THE COURT: Well, you had your chance. You want to --

[6] THE ACCUSED: Your Honour, my --

[7] THE COURT: Do what you have to do, but I gave you every opportunity to indicate to me that you wanted to call some further evidence. You did not. So now you want an adjournment in face of my dismissal based on that. You do not -- I am not going to give you an adjournment.

[8] MR. KOMOSKY: Yes, Your Honour.

[9] THE ACCUSED: Thank you, Your Honour.

FAULKNER C.J.T.C.