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# Bracebridge EXAMINER

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## - TOP STORIES:

### Local OPP accused of violating residents' private property rights

BY SAMANTHA BEATTIE

A Toronto lawyer says Bracebridge court, not the OPP, needs to have the last word on whether police are allowed to enter private property without a warrant.

John Fitzmaurice has filed an application against Bracebridge OPP Inspector Ed Medved, OPP Commissioner Vince Hawkes, the District Municipality of Muskoka, the Attorneys General of Ontario and Canada, and the Ministry of Community Safety and Correctional Services.

The Criminal Lawyers' Association will be applying to intervene, or participate, in the case.

"We care about the result of this case because it raises pretty fundamental issues about the relationship between police and citizens," said attorney Philip Campbell on behalf of the association.

"And if you flip the lens right around, police should want this clarified."

The goal of Fitzmaurice's application, filed in February, is for a judge to decisively say if Bracebridge police can go on private property without a warrant, which they admitted to doing in court in 2014.

"What I am arguing in this application is that a practice (Bracebridge) police are involved in is illegal," Fitzmaurice said in an interview with the Examiner. "Police and the public need to know if it is unlawful."

The practice in question was brought to

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ANNIE WILLIAMS PARK is the setting for a double wedding on Sunday, July 24 as part of the annual Muskoka Pride picnic. Chaplain Jane Craig leads the two couples, Carys Camani and Jay Sutman, and Mike Melidoni and John MacKinnon, through their I do's. (Photo by Mary Beth Hartill.)

### Couples unite in matrimony at Pride picnic

BY MARY BETH HARTILL

Sunday afternoon was a beautiful day for a wedding and that's absolutely what attendees of the Pride picnic at Annie Williams Park had the privilege to witness.

Two couples, Carys Camani and Jay Sutman of Guelph and Mike Melidoni and John MacKinnon of Etobicoke, united in the bonds of holy matrimony on July 24 in the Bracebridge park.

Neither couple involved in the double wedding knew the

other and neither couple were from Bracebridge but they both saw the invitation to be married on the Muskoka Pride Facebook page and decided to embrace a Muskoka wedding and just to go for it.

"We've been engaged for about two years so we decided let's do it," said Sutman. "It's a family event and we wanted the girls to be involved."

The girls are children Nevyn and Ellis Freeman and they

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## Officers crossed property line —

■ Continued from front

Fitzmaurice's attention in 2012 when he represented one of two defendants in Bracebridge court. Originally from Muskoka, and still a seasonal resident, Fitzmaurice occasionally takes on local cases.

The defendants, who were common-law spouses, faced charges relating to marijuana possession and production.

In September of that year, police were tipped off that marijuana was being grown at the rear of the defendants' property on Manitoba Street, outlined the application. As part of their investigation, Det. Cst. Randy Graham and Det. Cst. John Trude drove onto adjacent property and took pictures of the marijuana plants.

Later in court, Judge Justice Crawford found the officers "more likely than not" crossed the property line onto the defendants' property. They did not have search warrants or permission to enter either property. Again without search warrants, Graham went back the next day and confirmed the marijuana plants were still there.

Using evidence mostly gathered illegally, he then applied for and was granted a search warrant of the defendants' property, Judge Crawford found. The defendants were arrested and charged that day, Sept. 5, 2012 and the marijuana plants were seized.

"(Graham) explained (in court) it was a common practice for him and his fellow OPP officers to enter private property without

a warrant or permission in order to conduct surveillance of adjacent property," said Fitzmaurice's application.

In February 2014, Judge Crawford ruled police had infringed upon the defendants' right "to be secure against unreasonable search or seizure," as per the Canadian Charter of Rights and Freedoms. The marijuana seized was excluded from evidence.

"There is an apparent blind spot in the police understanding of their right to enter property without consent," said Judge Crawford to the court. "There is a need for the court to disassociate itself from apparent common police practices, practices which treat private-property rights in quite a loose fashion."

What happened next is what prompted Fitzmaurice to file his application.

Months after Judge Crawford's decision, Medved confirmed to the Examiner that local officers do often enter private property without a warrant.

"It is one of many investigative techniques used by police," Medved said in the June 5, 2014 article, adding he didn't think there was anything to remedy.

To date, neither the OPP nor the Attorney General of Ontario or Canada has made any further public response, said the application. All three parties and the ministry, who were named in the application, told the Examiner it would be "inappropriate" to comment on the issue as it is before the courts.

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## Officers often enter private property without a warrant —

■ *Continued from page 6*

The District of Muskoka's CAO Michael Duben said the district was "surprised to be named as a party" on the application. "We don't have any oversight of the OPP, or choice in the matter" Duben said. "The district pays the bill and they (the OPP) provide the services. We don't have a specific contract or a Police Service Board to oversee what the OPP does or how it operates."

Each of the defendants (with the Attorney General of Ontario acting on behalf of the OPP and ministry) has filed a motion to strike the application, meaning they want it thrown out.

One of their arguments is Fitzmaurice doesn't have the right to bring forward the application because he was not personally impacted by a warrant-less police search.

To fight that claim, Fitzmaurice has asked a law-world heavyweight to assist him. Alan Young, director of the Innocence Project at York University's Osgoode Hall Law School, will argue why Fitzmaurice should represent the community of Bracebridge.

"This application resonated with me," Young said to the Examiner. "It is a little surprising, borderline shocking, any public official could explicitly or implicitly suggest police can go on private property without a warrant."

"Canada is so beyond that."

He added OPP should be well acquainted with the Canadian Charter of Rights and Freedoms, as it has been in place for more than 30 years.

"I respect John Fitzmaurice's attempts to set

the record straight," Young said.

While Fitzmaurice does not have what's called private personal standing, he does have public interest standing, said Young. That means he has a genuine interest in the issue and can speak on behalf of those affected. Upholding private property rights is important to put a check on the breadth of police powers, said Campbell. "At the first level is privacy. People might simply not want police on their property," he said.

According to the Criminal Lawyers Association application to participate in the case, "The Supreme Court has long emphasized the need for ... the protection of privacy as a prerequisite to individual security, self-fulfillment and autonomy as well as to the maintenance of a thriving democratic society."

Then there's the reasoning police should only go on private property if they have strong evidence of a crime. Otherwise if they're acting on a mere possibility, innocent property owners could "suddenly become treated like the accused and be subject to police presence," Campbell explained.

Finally, "if police and property owners are under different assumptions regarding the laws of search warrants, it could lead to an intense, heated situation where each party thinks they have the authority to say they're right," Campbell said. "As the Bracebridge OPP found out, it does no good to launch an investigation based on occupying property unconstitutionally."

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