

PROVINCIAL COURT OF NOVA SCOTIA

Citation: *Application to extend period of detention of items seized*, 2021 NSPC 56

Date: 20210621

Registry: Dartmouth

Between:

DECISION REGARDING ORDER OF FURTHER DETENTION

LIBRARY HEADING

Judge: The Honourable Chief Judge Pamela S. Williams

Heard: June 21, 2021 in Dartmouth, Nova Scotia

Decision: June 21, 2021

Subject: Order of Further Detention of Things Seized

Summary: The Crown applied to extend the period of detention of items seized pursuant to two General Warrants.

Issues: (1) Can and should the application proceed *In-camera* and without notice to the interested parties?
(2) Should the Detention Orders be extended?

Result: The application proceeds *In-camera* and without notice to the interested parties. The Detention Orders are executed.

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DECISION REGARDING ORDER OF FURTHER DETENTION

Judge:	The Honourable Chief Judge Pamela S. Williams
Heard:	June 21, 2021, in Dartmouth, Nova Scotia
Decision	June 21, 2021
Charge:	Section 490(1)(b) of the <i>Criminal Code of Canada</i>
Counsel:	Eric Taylor, for the Nova Scotia Public Prosecution Service <i>In-camera Proceeding and Ex-Parte</i>

By the Court:

Introduction:

[1] This is an application under section 490(1)(b) of the *Criminal Code of Canada* to extend the period of detention of items seized on March 22, 2021 pursuant to a General Warrant under Section 487.01 of the *Criminal Code*. When the Warrant was authorized, a sealing order pursuant to section 487.3(1) was granted.

[2] The initial Detention Order, for a period of three months, is due to expire June 22, 2021. The Crown requests an *In-camera Proceeding* and an *Ex-parte Order* for the continued detention of items seized. The Crown relies on the Affidavit of the affiant for the warrants, in support of the application.

[3] The Crown also seeks a sealing order with respect to the materials filed in support of this Application pursuant to section 487.3(2)(a)(ii) of the *Criminal Code*.

Threshold Issue:

[4] The threshold issue is whether the Application hearing can and should proceed *In-camera* and without notice to the interested parties. The concerns, set out in the affiant's affidavit, are that notice would jeopardize the ongoing investigation.

[5] Section 490(2) of the *Criminal Code* requires applications of this sort be made after providing three clear days notice to the person from whom the thing detained was seized. This provision is clearly in conflict with and contrary to the spirit and the object of the sealing order, which prohibits disclosure of information related to the ongoing investigation.

Case Law:

[6] On May 10, 2021 I heard a similar application brought on by the Public Prosecution Service of Nova Scotia. In that case I considered two decisions directly on point and agreed to hear the *In-camera Ex parte* application, in camera. I granted the order for further detention.

[7] The cases considered were both from British Columbia; one from the Supreme Court: *Further Detention of Things Seized (Re)*, 2018 BCSC 2506, and the other from the Provincial Court: *Further Detention of Things Seized (re) unreported (2 August 2018)*. Both cases noted a 'legislative gap' in section 490 of

the *Criminal Code*. Provisions of the *Criminal Code* related to General Warrants and the Interception of Private Communications do allow for a delay in notification and a delay of disclosure of materials related to the application to maintain the integrity of an investigation. Section 490 does not.

[8] The British Columbia Supreme Court decision, citing its inherent jurisdiction to supplement gaps in legislation to prevent an absurdity, granted the *In-camera* Application and made an *Ex-parte order* for the further detention of items seized.

[9] The British Columbia Provincial Court cited the Supreme Court decision and authorized an *In-camera* proceeding, granting an *Ex-parte* order. In so doing, the Court cited "...judicial comity to allow for a consistent approach, consistent with those decisions that have been rendered in the Supreme Court under similar circumstances". However, as I stated in my May 10, 2021 ruling, unlike Superior Courts, Provincial and Territorial Courts do not have inherent jurisdiction. Rather we are statutory courts and must derive our authority from statute.

[10] As in the previous case, I am being asked to derive my authority from the *Nova Scotia Provincial Court Rules*, passed pursuant to section 482 of the

Criminal Code. The Crown argues the Rules permit the withholding of notice upon order of the Court. They cite the following Rules:

Rule 1.1 – The fundamental objective of these Rules is to ensure that cases in the Provincial Court of Nova Scotia are dealt with fairly, reasonably, and efficiently.

Rule 3 regulates the serving of notice generally.

Rule 5.3 – The Court may excuse non-compliance with any Rule at any time to the extent necessary to ensure that the fundamental objective set out in Rule 1.1 is met.

Analysis:

[11] Section 482(3)(a) of the *Criminal Code* provides that Court Rules may be made to regulate matters considered expedient to attain the ends of justice and carry into effect the provisions of the law. The *Criminal Code* empowers statutory courts to make Rules, that have as an objective, the ability to attain the ends of justice, which could include addressing gaps in legislation. For these reasons I am persuaded the *Nova Scotia Provincial Court Rules* provide me with the authority to dispense with the notice requirement under section 490(2) of the *Criminal Code* and order an *In-camera* proceeding.

[12] On the merits of the application, as set out in the affiant's affidavit, I am told the investigation is both complex and serious in nature, with police investigators having obtained 95 judicial authorizations/ warrants and orders to date.

[13] I accept that if notice of this application were provided to interested parties, it would disclose information sealed, thereby compromising the ongoing investigation.

[14] The Detention Order will be extended for a period not exceeding one year from the date of seizure, unless proceedings are instituted in which the things detained may be required; or consent pursuant to section 490(3.1) of the *Criminal Code* is given or a Supreme Court judge orders their further detention in excess of one year from the dates of seizure until the conclusion of the investigation or until it is required to be provided for the purpose of a preliminary hearing or trial or other proceeding.

[15] I also order that all materials filed in support of this Application for Further Detention shall be placed in a separate packet, sealed, and stored in a secure place in the Court Administration office and shall not be disclosed except by Order of a Judge or a Justice of competent jurisdiction.

[16] A copy of the Order shall be provided to the Applicant.

Chief Judge Pamela S. Williams, JPC