

PROVINCIAL COURT OF NOVA SCOTIA

Citation: *R. v. Mooers*, 2024 NSPC 16

Date: 20240108

Docket: 8674122; 8674108;

8678037 - 8678042;

8641381 - 8641387;

8653711 - 8653723;

8683037 - 8683044;

8691710 - 8691717;

8686775 - 8686778.

Registry: Bridgewater

Between:

His Majesty the King

Crown

v.

Paul Mooers, Kathy Mooers, Brian Gregory Langille,
Micah Stewart, Jenna Victoria Warnell,
and Melissa Alexa Young

Accused

and

Keith Corcoran / LighthouseNOW Progress Bulletin

Applicant

and

His Majesty the King, Paul Mooers, Kathy Mooers,
Brian Gregory Langille, Micah Stewart, Jenna Victoria Warnell,
and Melissa Alexa Young

Respondents

DECISION ON MEDIA ACCESS TO SEARCH WARRANT MATERIALS

Judge: The Honourable Judge Catherine M. Benton,

Heard: November 28, 2023, in Bridgewater, Nova Scotia

Decision: January 8, 2024

Charges: Paul Mooers: Section 32(1)(x2), *Excise Act*; and s. 85(x2)
RAR

Kathy Mooers: Section 32(1)(x2), *Excise Act*; and s. 85(x2)
RAR

Brian Langille: Sections 117.01(1)(x4), 88, 354(1)(x2), 91(2)(x2) of the *Criminal Code*; Section 5(2)(x9) of the *Controlled Drugs and Substances Act*; and Sections 216(1)(b)(x2) of the *Excise Act*;

Micah Stewart: Sections 88(2), 91(2)(x2), 145(5)(a) of the *Criminal Code*; and sections 5(2)(x3) and 4(1) of the *Controlled Drugs and Substances Act*;

Jenna Warnell: Sections 91(2)(x2) and 145(5)(a) of the *Criminal Code*; and sections 5(2)(x3) and 4(1) of the *Controlled Drugs and Substances Act*;

Melissa Young: Sections 88(2) and 145(5)(a) of the *Criminal Code*; and section 5(2)(x2) of the *Controlled Drugs and Substances Act*.

Counsel: David R. Hirtle, K.C., Counsel for Paul Mooers, Brian Langille, and Jenna Warnell
Matthew Fancey, Counsel for Kathy Mooers
Shawnee Gregory, Counsel for Micah Stewart
Robert Chipman, K.C., Counsel for Melissa Young
Keith Corcoran/Lighthouse Now, Progress Bulletin, Applicant, Self-Represented
Jodi D. Mailman, Counsel for the Public Prosecution Service of Canada

Robert Fetterly, K.C., , Counsel for the Public Prosecution
Service of Nova Scotia

By the Court:

[1] Keith Corcoran of LighthouseNOW Progress Bulletin makes application by way of Form 1 for copies of the redacted ITOs, search warrants, and Report to Justices with respect to matters involving the following individuals:

- Paul Mooers and Kathy Mooers, concerning allegations from January 5 of 2023. Mr. Hirtle, K.C., and Mr. Fancey represent these individuals, respectively. The Crown proceeded summarily and both individuals have not yet entered their plea.
- Brian Langille, concerning allegations from March 3 of 2022 and March 6 of 2022. Mr. Hirtle, K.C., represents Mr. Langille. The Crown proceeded by way of indictment for both matters. The Defence elected judge alone trials in Supreme Court and both matters are currently scheduled for a preliminary inquiry.
- Micah Stewart and Jenna Warnell, concerning allegations from April 5 of 2023, and April 26 of 2023. Ms. Gregory and Mr. Hirtle, K.C., represent these individuals, respectively. The Crown proceeded by way of indictment for both matters. The Defence elected judge alone trials in Supreme Court and both matters are currently scheduled for a preliminary inquiry.
- Melissa Young, concerning allegations from May 2 of 2023. Mr. Chipman, K.C., represents Ms. Young. The Crown proceeded by way of indictment. The Defence elected a judge alone trial in Supreme Court and has yet to schedule a preliminary inquiry date.

[2] The open court principle is a hallmark of a democratic society that applies to all judicial proceedings, including those at a pre-trial stage. Public access to the

courts guarantees the integrity of the judicial process and is necessary to maintain public confidence in the justice system.

[3] The Court has discretion to impose publication bans by virtue of statutory provisions and under the common law. Except for those statutory provisions that are mandatory upon application, the *Dagenais/Mentuck* test applies.

[4] The Court must be mindful that s. 11(d) of the *Charter* guarantees the accused's right to be presumed innocent until proven guilty according to the law in a fair and public hearing by an independent and impartial tribunal. Section 2(b) of the *Charter* guarantees the right of all to freedom of thought, belief, opinion, and expression, including to freedom of the press and other media communication.

[5] The essence of a decision whether to issue a publication ban is a balancing of various factors to determine whether such a measure is necessary and reasonable given the particular circumstances of the case. Once a search warrant has been executed, the warrant and the information upon which it was issued, the ITO, must be made available to the public, unless an applicant seeking a sealing order can demonstrate that public access would subvert the ends of justice or the information might be used for an improper purpose, and these reasons outweigh the importance of access to this information pursuant to s. 487.3 of the *Criminal Code*.

[6] The Crown is not arguing that the requested information should remain sealed from the media. They are prepared to provide redacted copies of the ITOs, copies of the search warrants, and the Report to Justices to the media. The Crown, however, queries whether a further publication ban would be prudent having regard to the indictable matters and the anticipated publication bans at the preliminary inquiries. It is defence counsel that is opposed to the unsealing of the ITOs for the purposes of providing a redacted copy to the media, further submitting that if the redacted ITOs are provided to the media, the Court should then impose a common law publication ban prohibiting the media from disclosing the information contained in the ITOs.

[7] However, before deciding this issue, counsel for the accused has first requested that I dismiss the media's application on the basis that Mr. Corcoran has not provided the necessary foundation to establish that there have in fact been search warrants executed. Counsel for the accused has suggested that Mr. Corcoran is required to file an affidavit advising the Court of how he knows that search warrants have in fact been executed. In the absence of such an affidavit, counsel argues that Mr. Corcoran is embarking on a fishing expedition without proper foundation and that the Court should dismiss the application outright.

[8] Counsel for the accused refers to the decision of my colleague, Judge Scovil, in *R. v. M. M.*, 2017 NSPC 12, and suggests that an affidavit outlining the source of media knowledge that search warrants have been executed must be placed before the Court prior to entertaining the media's application. In *M. M.* the matter proceeded under the *Youth Criminal Justice Act (YCJA)*. The media had requested a copy of the ITO. The Crown provided a redacted ITO. The media then made a further application for the unredacted ITO. Crown and counsel for the Defence were opposed. It was at that point that the media filed an affidavit outlining why they required a copy of the unredacted ITO.

[9] Judge Scovil, at paragraphs 18 to 21, suggested guidelines for these types of applications made under the *YCJA*, but acknowledged it would be difficult to set out a definite procedure given the variety of case-specific circumstances.

[10] The current matters are all proceeding in adult court and are not subject to any further considerations specific to the release of information under the *YCJA*, nor are they subject to a 486.4 ban on publication as was the case in *M. M.* This is also not a situation where the media received a copy of a redacted ITO and is now requesting a copy of the unredacted ITO. Additionally, I was not provided with any of the actual ITOs in a proposed redacted form. I thus did not require Mr. Corcoran to provide an affidavit outlining how he had obtained knowledge of the searches.

Mr. Corcoran, in support of his application, filed a brief attaching links to the news releases and a paper copy of one release referencing the matters before the Court.

Given these circumstances, and the delays in setting the hearing for this application, I found it would be inefficient and unnecessary to adjourn for Mr. Corcoran to file an affidavit and I permitted him to file copies of the news releases as Exhibits 1 through 5.

[11] Exhibit 1 is a news release advising that on March 3, 2022, the police executed a search warrant at the home of a 75-year-old man on Northwest Road in Blockhouse. The police seized a quantity of illegal drugs, cash, and property. The police released the male and directed him to attend court at a later date. The news release references police file # 2022-261213.

[12] Exhibit 2 is a news release advising that the police executed a search warrant at a residence on North Street in Bridgewater on April 5, 2023, and seized a quantity of drugs, cash, and prohibited weapons. The police released a 41-year-old male and a 31-year-old female and directed them to attend court at a later date. The news release references police file # 2023-346849.

[13] Exhibit 3 is a news release advising that the police executed another search warrant at a North Street residence in Bridgewater on April 26, 2023. The police

seized a quantity of illegal drugs, cash, and a prohibited weapon. The police held a 41-year-old male, Micah Stewart, for court, and released an unnamed female and directed her to attend court at a later date. The news release references police file # 2023-0557219.

[14] Exhibit 4 is a news release advising that on January 5 of 2023, the police stopped a vehicle with two occupants and seized a quantity of unstamped cigarettes. Later that day, the police executed a search warrant at a residence on Moirs Road in Milton and seized additional unstamped cigarettes. The police released a 72-year-old man and a 70-year-old female and directed them to attend court at a later date. The news release references police file # 2023-20750.

[15] Exhibit 5 is a news release describing the execution of a search warrant at a residence in Indian Point on May 2 of 2023, and the seizure of illegal drugs, cash, and a weapon. The police released Melissa Young and directed her to attend court at a later date. The news release references police file # 2023-56410.

[16] As Mr. Corcoran pointed out, and counsel should be aware, the police file number attached to each of these news releases corresponds or matches the file numbers on each of the Informations before the Court. The allegations in the Informations before the Court correspond with what is contained in the respective

news releases. I would also note that counsel for the accused has made this submission despite the fact that the Crown has already acknowledged that the search warrants were executed and has indicated their willingness to provide a redacted copy of the ITOs to the media.

[17] Consequently, I do not find that there is any substance to defence counsel's motion to dismiss Mr. Corcoran's application outright for a lack of sufficient evidentiary foundation as to whether there were in fact search warrants executed.

[18] I will now address defence counsel's submission that the Court should not release the redacted ITOs or in the alternative, if the redacted ITOs are released, that the Court should then impose a publication ban on the information contained therein. As noted by the Supreme Court of Canada in *Dagenais v. CBC*, 1994, 3 S.C.R. 835, *R. v. Mentuck*, 2001, 3 S.C.R. 442, *Vancouver Sun (Re)*, 2004, 3 S.C.R. 332, and *R. v. Toronto Star Newspaper*, 2005, 2 S.C.R. 188, the party seeking the issuance or maintenance of a sealing order to deny access to material ordinarily accessible to the public bears the onus or the burden to displace the presumption of openness in court proceedings. It is as a result of this presumption that it is imperative for the Court to have a convincing evidentiary basis for issuing or maintaining a publication ban. Consequently, the party requesting the publication

ban must establish a sufficient evidentiary basis to allow for the Court to make an informed determination. This burden does not shift.

[19] Publication bans can be ordered to protect the fairness of a pending or current trial. However, such bans restrict freedom of expression and freedom of the press, and thus should only be imposed in exceptional cases. This requires that there be a real and substantial risk to the fairness of the trial. This requirement provides some protection to freedom of expression insofar as it's meant to prevent publication bans from being imposed for insufficient reasons or in response to primarily speculative concerns.

[20] The *Dagenais/Mentuck* test provides that access to court proceedings should only be denied when:

- a) such an order is necessary in order to prevent a serious risk to the proper administration of justice because reasonably alternative measures will not prevent the risk; and
- b) the salutary effects of the publication ban outweigh the deleterious effects on the rights and the interests of the parties and the public, including the effects on the right to free expression, the right of the accused to a fair trial, and the efficacy of the administration of justice.

[21] Accordingly, the party, counsel for the accused in this matter, claiming under the common law rule that a publication ban is necessary to avoid a real and serious risk to the fairness of the trial bears the burden of justifying the limitation on freedom of expression.

[22] Counsel for the accused must prove that the proposed ban is necessary, that the proposed ban is as limited as possible, that there is no reasonable effective alternative remedy, and that there is proportionality between the salutary and deleterious effects of the ban.

[23] The thrust of the argument put forward by defence counsel relates to all matters before the Court, with the exception of the Mooers' matters, as those matters proceeded by summary conviction. All of the other matters proceeded by indictment and they require an election to a trial court, that being Provincial Court, Supreme Court judge alone, or Supreme Court judge and jury, and each contain charges that are eligible for a preliminary inquiry.

[24] In most of the cases before the Court, there has already been an election to Supreme Court judge alone and a preliminary inquiry date has been scheduled. In one matter, there has been an election to Supreme Court judge alone but a preliminary inquiry date has not yet been scheduled. When the matters proceed to

preliminary inquiry, there will be a further publication ban pursuant to 539 of the *Criminal Code* on the evidence and the submissions. Counsel for the accused are concerned that the matters before the Court entitle the accused to elect Supreme Court judge and jury and the jury could potentially be tainted or influenced by the information contained in the redacted ITOs provided to the media. This in turn could potentially affect the accused's right to a fair and impartial trial.

[25] Acknowledging that there has not been an election to Supreme Court judge and jury, counsel for the accused request that I consider the accused's right to re-elect without consent of the Crown for a period of time, pursuant to s. 561 of the *Criminal Code*. However, I would note that even if these matters were tried before a judge and a jury, without any further evidence or special circumstances put before the Court surrounding specific cases, the normal procedure would be judicial instructions to the jury members as to what can and cannot be considered in their determination. This is, of course, a reasonable and effective alternative to not releasing the redacted ITOs or imposing such a ban. Although there may be cases where matters are so sensationalized, have received a significant amount of publicity, and the publication ban might be necessary or justified to allow for an unbiased and impartial determination of the matter by the jury, the accused before the court are not in a such a position. The Defence has failed to provide a sufficient

evidentiary foundation on the necessity for a publication ban. The foundation of the application to prevent the release of the redacted ITO, or in the alternative, impose a publication ban on the information contained in the redacted ITO is speculative, at best. The release of the redacted ITO in each of the matters before the Court has not been shown to pose any real, material risk to the fairness of the trial or to the accused.

[26] Hence, it is the order of the Court that the redacted ITOs, the search warrants, and the Report to Justices in the following matters be provided to Keith Corcoran of LighthouseNOW Progress Bulletin:

- i) Paul and Kathy Mooers, concerning the Information from January 5, 2023;
- ii) Brian Langille, concerning the Informations from March 3, 2022, and December 6, 2022;
- iii) Micah Stewart and Jenna Warnell, concerning the Informations from April 5, 2023, and April 26, 2023; and
- (iv) Melissa Young, concerning the Information from May 2, 2023.

Catherine Benton, JPC