PROVINCIAL COURT OF NOVA SCOTIA

Citation: *R. v. Francis*, 2026 NSPC 10

Date: 20260303
Docket 8885227-29, 8889721
Registry: Dartmouth

Between:

His Majesty the King

v.

Daniel Francis

Judge: The Honourable Judge Timothy G. Daley

Heard: December 10, 2025, January 16 and February 20, 2026, in Dartmouth, Nova Scotia

Decision: March 3, 2026

Charge: Section 490 of the *Criminal Code*, RSC 1985, c C-46

Counsel: Leonard MacKay, for the Applicant Crown
Christopher Enns, Agent for Respondent Daniel Francis

By the Court:

Introduction

[1] In this matter Daniel Francis has brought a *Garofol*i application in relation to the Warrants to Search (Warrants) granted on November 21, 2024, and November 27, 2024. These Warrants authorized police to search a detached Garage located at 972 Sackville Drive., Middle Sackville, Nova Scotia, where police believed Mr. Francis was operating an illegal cannabis dispensary.

[2] A forfeiture hearing is currently scheduled for June 26, 2026, and this Court rendered a decision on the applicability of section 490 in the circumstances of this matter *R. v. Francis* 2026 NSPC 4.

[3] In that decision I found that the items seized remain under the jurisdiction of the court until the conclusion of a hearing under section 490 and that it was open to Mr. Francis to bring an application under the *Charter* to be considered by the court. It was anticipated that this would be made as part of the *Garofoli* application, which is the subject of this decision.

[4] After the Warrants were executed, the police filed Reports to Justice pursuant to section 489.1 of the *Criminal Code*, RSC 1985, c C-46 (the *Code*) in

relation to the seized items and obtained judicial authorization for continued detention of the seized items.

[5] Police laid two charges under section 10(2) of the *Cannabis Act*, and one charge under the *Excise Act* for unauthorized possession of unstamped tobacco.

[6] Ultimately, the Crown withdrew all the charges. The Crown now seeks forfeiture of all property seized from Mr. Francis and the company pursuant to section 490 of the *Code*.

[7] This decision relates to what Defence calls a "facial" challenge to the Information to Obtain (ITO) and the Warrants a s set out herein. Depending on the outcome of this decision, Defence is also seeking leave to cross examine the affiant for each ITO and perhaps others as part of a "sub-facial" challenge, all under the umbrella of a Garofoli application.

Positions of the Parties

[8] As part of his *Garofoli* application, Mr. Francis seeks a finding that:

1. His Section 8 *Charter* rights (*Everyone has the right to be secure against unreasonable search or seizure*) were violated during the investigation;

2. That the two Information to Obtain a Search Warrants (ITO(s)) filed by the police relied upon evidence obtained because of this *Charter* breach;

3. If so, this court should find, under this *Garofoli* application, the Justice did not have sufficient grounds to issue the Warrants;

4. Therefore, the Warrants were invalid, and the items seized must be returned to him;

5. In the alternative, Mr. Francis seeks leave to cross-examine the Affiant who swore both ITOs in the matter;

6. Mr. Francis reserves the right to make application for relief under Section 35 of the *Charter* and Sections 25 and 52(1) of the *Constitution Act, 1982*.

[9] The Crown seeks a finding that;

1. There was no breach of Mr. Francis's section 8 *Charter* rights or, in the alternative;

2. If there was a breach it was not sufficient to invalidate the Warrants;

3. The ITOs provided sufficient grounds for the Warrants to be issued and executed by police;

4. The Crown therefore seeks a summary dismissal of the *Garofoli* application of Mr. Francis.

Garofoli Application

[10] By way of context, a *Garofoli* application has a core objective of seeking the exclusion of evidence obtained under Warrants or other tools of investigation. In this unique circumstance, there will be no trial as the charges have been withdrawn. Thus, this application must be seen in the context of Mr. Francis seeking the return of the seized items on the basis that the Warrants are invalid and are not saved under section 24 (2) of the *Charter.*

ITO November 20, 2024

[11] In the ITO sworn November 20, 2024, Constable Chris Graham of the RCMP attested that on that date he was conducting traffic enforcement. That evening he stopped a vehicle with tinted windows occupied by Corey Flanagan (Flanagan). Constable Graham said that tinted windows of that type are illegal in Nova Scotia.

[12] Constable Graham said that, during the stop, he detected the smell of marijuana and observed a small package by the shift knob of the vehicle that appeared to resemble an aftermarket cannabis product. He asked Flanagan if he

had cannabis in the vehicle and Flanagan confirmed he did. He handed the officer a package containing two marijuana joints. The officer confirms in the ITO that marijuana cannot be within reach of the driver of a vehicle under the *Cannabis Control Act*. He seized the marijuana as evidence.

[13] Constable Graham said he was aware of Flannigan from other investigations for robbery and firearm offences. He also stated that Flanagan was known to carry weapons.

[14] After completing the Summary Offence Ticket, he returned to Flanagan's driver door, explain the ticket and gave it to Flanagan. He informed Flanagan he was going to search his vehicle given the violation, instructed him to get out of the vehicle and he did. The officer then told him to have a seat in the police vehicle to which Flannigan replied, "your vehicle" and quickly turned and jumped back into the driver seat of his vehicle and locked the door. Flanagan's vehicle engine was roaring, but the vehicle did not take off immediately. It then went forward at a high rate of speed and fled the area.

[15] During the stop the officer said Flanagan mentioned he was on the way to his detailing garage.

[16] Constable Graham then called Constable Bins of the RCMP, a member of the Street Crime Enforcement Unit, and was informed that Bins was aware of the location of Flanagan's detailing shop in a detached garage (the Garage) next to a bungalow style residence and across from an Indian restaurant near the Kent Hardware store in Middle Sackville.

[17] Constable Graham says that he went to the location. Outside the Garage was Peter Saulnier (Saulnier) who said Flannigan no longer had anything to do with the property. The officer asked if Flannigan's vehicle was in the back. Saulnier appeared to be nervous, and his body language suggested he was hiding something. The officer said, "I had concerns Flannigan might be in the Garage and could have a weapon."

[18] Constable Graham says that he pushed open the door to the Garage "a crack" and could see no vehicle but did observe what he believed to be a cannabis dispensary. He arrested Saulnier for possession for the purpose of selling cannabis.

[19] The officer asked Saulnier for his identification and Saulnier requested the officer get his license from inside the Garage. The officer complied and while in

the Garage he observed multiple pounds of (what he believed to be) cannabis and jars and bags with other dried cannabis.

[20] Constable Graham escorted Saulnier to the police vehicle and read him his Charter rights. There is no reference to him reading the Police Caution.

[21] Constable Graham said he spoke to two other officers present who agreed to remain at the scene and secure same until a Warrant could be obtained. Constable Graham then departed the scene.

[22] Constable Graham says that Constable Redden remained at the scene and Mr. Francis then attended and stated he was the owner of the dispensary. He further informed the officer that he was renting the space and that he believed it was his treaty right to operate a dispensary and would continue to do so. Mr. Francis was arrested by Constable Redden for the possession for the purpose of selling cannabis.

Based on this ITO, a Warrant was issued on November 21, 2024, and executed. The Crown alleges this resulted in the seizure of, among other items, 3309 grams of cannabis marijuana.

ITO November 27, 2024

[23] In the ITO sworn by Constable Graham on November 27, 2024, he repeats much of the information contained in the original ITO of November 20, 2024.

[24] He then included that he had spoken to a member of the Halifax Regional Criminal Investigation Division Special Enforcement Section Drug Unit and was informed by that officer that from his experience as a drug investigator, illegal cannabis dispensaries will often have, in addition to dried cannabis, other cannabis products like resins or edibles, scales, packaging, cash, documents pertaining to driver schedules, cell phones and laptops that are all used in the sale of cannabis. He was advised that a search of the dispensary should include the above items.

[25] Constable Graham then attested on November 21, 2024, he and members of the Lower Sackville RCMP executed a Warrant on the Garage. They seized multiple pounds of dry marijuana, marijuana, edibles, marijuana extracts and unstamped tobacco. He believed this provided evidence of possession for the purpose of selling cannabis contrary to the *Cannabis Act*.

[26] The next day he spoke with another officer with the RCMP Halifax Regional Detachment who informed him that he observed a sign at the foot of the driveway to the Garage, that said "Sack Vegas Trading Post Now Open".

[27] He says that on November 24, 2024, he located Mr. Francis's Facebook page and referred to a post made on November 23, 2024. I do not find this reference to the Facebook page is relevant as there is no evidence to confirm that the picture of the man referred to is Mr. Francis or anyone associated with a cannabis dispensary.

[28] On the same day, Constable Graham says that he observed a video posted on Mr. Francis's Facebook page from November 23, 2024, depicting the inside of the Garage and also showed shelves containing bags of what appeared to be marijuana in clear bags. He says he recognized the voice on the video to be Mr. Francis.

[29] Constable Graham said on November 27, 2024, at noon he spoke to a member of the RCMP Halifax Regional Detachment who drove past the Garage and observed three signs outside advertising that the business was open. There was a sign near the street that read "Now Open Sack Vegas Trading Post", a sign closer to the Garage on a utility pole that read "Free Joints" (which I note was hanging upside down in the photograph proffered) and a sign on the Garage that read "Now Open".

[30] Based on this ITO, a Warrant was issued and executed. The Crown alleges this resulted in the seizure of, among other items, 4012.7 grams of cannabis marijuana and 300.7 grams of cannabis resin.

The Law

[31] The starting point for this review of the ITOs and Warrants in this matter is that warrants are presumed valid. As noted by the Ontario Court of Appeal *in R. v. Sadikov*, 2014 ONCA 72:

> [83] Warrant review begins from a premise of presumed validity: *Wilson*, at para. 63; and *R. v. Campbell*, 2010 ONCA 588, 261 C.C.C. (3d) 1, at para. 45, aff'd 2011 SCC 32, [2011] 2 S.C.R. 549. It follows from this presumption of validity that the onus of demonstrating invalidity falls on the party who asserts it….

[32] Thus the burden to prove these Warrants invalid rests with Mr. Francis.

[33] Having said that, any search warrant must conform with section 8 of the *Charter* and that for a search to be reasonable under that section, as noted by the Supreme Court of Canada in *R. v. Collins*, 1 SCR 265:

> 23. A search will be reasonable if it is authorized by law, if the law itself is reasonable and if the manner in which the search was carried out is reasonable.

[34] To further clarify this issue, the Nova Scotia Court of Appeal in *R. v. Wallace*, 2016 NSCA 79 held as follows on the issue of a review of an ITO:

> [25] The parties voice no disagreement about the test. That is understandable. The essential features have been settled since the landmark decision of the Ontario Court of Appeal in *Re Church of Scientology and The Queen* (6) (1987), 31 C.C.C. (3d) 449 (Ont. C.A.): the reviewing judge or court does not determine whether the justice of the peace should have been satisfied on the evidence presented to him, but rather could he have been satisfied on the evidence set out in the ITO that there were reasonable and probable grounds for believing that the articles sought would be of assistance in establishing the commission of an offence and would be found in the premises sought to be searched (see: *Re Carroll and Barker and The Queen* (1989), 1989 NSCA 2 (CanLII), 88 N.S.R. (2d) 165 (N.S.S.C.A.D.)).

> [26] This test has been reiterated numerous times and in all contexts of challenges to warrant based state intrusions into citizens' private lives despite variation in procedure (the more common challenge at trial as opposed to an application for certiorari), and the introduction of the more streamlined statutory language of "reasonable grounds" (see: *Baron v. Canada*, 1993 CanLII 154 (SCC), [1993] 1 S.C.R. 416 at paras. 43-44)….
>
> [27] A succinct and helpful statement of the test a reviewing judge is to apply was penned by Fichaud J.A. in *R. v. Shiers, supra*.:
>
> > [15] Based on these principles, the reviewing judge should have applied the following test. Could the issuing judge, on the material before her, have properly issued the warrant? Specifically, was there material in the Information from which the issuing judge, drawing reasonable inferences, could have concluded that there were reasonable grounds to believe that a controlled substance, something in which it was contained or concealed, offence-related property or any thing that would afford evidence of an offence under the CDSA was in Mr. Shiers' apartment?

[35] In applying this standard, I am mindful of the decision in *R. v. Liberatore*, 2014 NSCA 109 when the Nova Scotia Court of Appeal held as follows:

> [27] The reliability of the information is assessed by recourse to "the totality of the circumstances", including its degree of detail, the informer's source of knowledge and indicia such as the informer's past reliability and confirmation from other sources.

[36] In the same decision the Court of Appeal noted in that same paragraph 27:

> The body of evidence isn't anatomized for a segregated analysis of each fragment. Viewed as a whole, its bits may be cross-confirmatory.

[37] The standard of proof to be applied in granting a Warrant has been commented on repeatedly in the case law including the Supreme Court of Canada decision in *Hunter v. Southam Inc*., [1984] 2 S.C.R. 145 when it set that standard "at the point where credibly based probability replaces suspicion."

[38] It was described further by the Supreme Court of Canada in *R. v. Debot*, [1989] 2 SCR 1140 as "The appropriate standard is one of "reasonable probability" rather that "proof beyond a reasonable doubt" or "*prima facie* case". The phrase "reasonable belief" also approximates the reasonable standard."

[39] In this matter Defence cites the decision of *R. v. West* [2005] OJ No.3548 (CA) in which the Ontario Court of Appeal held as follows:

> [51] Holding that there is a grant of an implied power to order the return of the money as a Charter remedy under s.490(9) does no violence to the wording of the paragraph. Indeed, as indicated in the earlier discussion of the statutory scheme, a person from whom property has been seized may bring an application pursuant to s. 490(7) and ask a justice to order the return of the property under 490(9)(c) upon proof that their possession is "lawful". Insofar as jurisdiction is concerned, it would make little sense for Parliament to empower a justice of the peace to order the return of money to a person whose possession of it was lawful, yet leave the justice who wishes to do so without jurisdiction to exercise the discretion to order a remedy if the seizure was unlawful. Thus, assuming that the Charter applies, I would hold that a justice acting under s. 490(9) is a court of competent jurisdiction and, if a Charter application is brought, has the implied power to order the return of the money under s. 24(1). [page202]
>
> [52] As I read the existing jurisprudence, therefore, in addition to an action in replevin before a superior court judge, or an application pursuant to s. 490(7) before a justice of the peace, West, Beavies and Johnson could in response to the Crown's application under s. 490(9) bring an application under s. 8 of the Charter and seek a declaration for the return of the money under s. 24(1) from a justice of the peace.

Alleged Deficiencies and Response

[40] In this matter, the Defence argues that there are several deficiencies in the ITO and the circumstances surrounding the initial search by opening the Garage

door “a crack," and subsequently entering the Garage to obtain the identification of Saulnier which support a finding of both Warrants were invalid.

[41] Specifically, the Defence argues as follows:

- The first Warrant was issued before the ITO was received by the designated Justice of the Peace (JP). I find that this is not made out. The designated JP certified that the ITO was received at 11:21 PM on November 21, 2024. The Warrant was issued at 11:58 PM on November 21, 2024. I see no discrepancy in the timing of these two. There is a gap of 37 minutes between receipt of the ITO and issuance of the Warrant.
- The same Warrant had expired before it was executed. That Warrant was issued at 11:58 PM on November 21, 2024, and authorized the search to be conducted at night between 10:30 PM on the November 20, 2024 and 9:00 AM on November 21, 2025. Thus, on its face, the Warrant had expired by the time it was issued.
- The second ITO was certified by the designated JP to have been received at 7:30 PM on November 27, 2024. The Warrant was issued at 7:00 PM on November 27, 2024. On its face, this indicates that the Warrant was issued before the ITO was received.
- The ITO dated November 20, 2024, is deficient in part because

Constable Graham did not follow Flanagan when he fled the scene of the traffic stop and there is no indication in the ITO that the officer had knowledge of the location Flanagan might be heading other than he was heading to his detailing shop. Defence further argues that the fact that Constable Bins was able to indicate where Flanagan's detailing shop was by way of description of this location in Lower Sackville near an Indian restaurant and by a Kent Hardware store without a physical address was insufficient to identify Flanagan's likely location and the likely location of his detailing shop.

- Constable Graham's basis for believing that Flanagan might be on the property where the Garage is located, that the officer was concerned the Flanagan may have a weapon and that his observation of Saulnier being nervous and his interpretation of his body language was that he had something to hide, does not form a basis for the officer to open the door of the Garage, even a small amount, to determine if Flanagan or his vehicle were inside. Defence argues these were not exigent circumstances and that there were other options including seeking a warrant or surveillance of the property to determine if Flanagan was present. Defence properly notes that prior to the opening of the Garage

door by the officer, the only basis for the officer's presence on the property was his search of Flanagan.

- On the arrest of Saulnier, he was not immediately read his *Charter* rights or Police Caution. Prior to doing so, the officer asked Saulnier for identification and it was then that he indicated his wallet was inside the Garage and gave authorization to the officer to go in the Garage to retrieve it. The failure to read him his rights and caution before entering the Garage tainted the grounds to obtain the Warrant.
- The circumstances of Mr. Francis arrival and arrest are not relevant as the *Charter* breach as police had already committed the unlawful search of the Garage which did not constitute sufficient grounds to obtain a warrant.
- The photographs introduced as part of the ITO's should be struck as they do not identify any connection between the Facebook page and Mr. Francis, and there is no date on the photographs to identify when they were taken or the video recorded. I have already found that the first photo will not be considered in determining this issue. I will also not consider the other photo(s) as there is no evidence of provenance of same.

- The second ITO dated November 27, 2024, contains new information, but none of it is relevant to the validity of the warrants issued.
- The reference by the officer to Mr. Francis' store being called "Now Open Sack Vegas Trading Post" provides no indication of cannabis sales whatsoever.
- The photos showing a sign indicating "Now Open" and "Free Joints" do not form any ground for issuance of a warrant. It is not illegal to possess marijuana below 30g for personal use and thus the reference to free joints forms no basis for a Warrant. Reference to the store now being open contains no reference to cannabis.

[42] The Crown argues as follows:

- The ITOs disclose sufficient information for the Warrants to be issued. The description of Constable Graham of the traffic stop of Flanagan, his explanation that he has headed to his detailing shop, his flight from the scene when the officer was going to search his vehicle, the officer's knowledge of Flannagan having a prior record for weapons offences and the officer's ability to identify the location of Flanagan's detail shop is sufficient for the purpose of the officer travelling to and coming onto the property in search of Flanagan.

- When the officer attended the property, he had a description of the property which was consistent with where he believed Flanagan's detailing shop to be located. Further, the interaction with Saulnier provided the officer reasonable grounds to believe that he was hiding something and that Flanagan might be armed and on the property.
- The opening of the Garage door slightly by the officer was not a breach of Mr. Francis's section 8 *Charter* rights but rather a reasonable act in the circumstances of his search for Flanagan and the risk he may have posed.
- When Saulnier was arrested, it was appropriate for the officer to request identification and follow the direction of Saulnier to enter the Garage to obtain it. The fact that he had not yet been read his *Charter* rights or Police Caution does not justify setting aside the observations made by the officer in the Garage.
- The fact that Mr. Francis attended the property, admitted to owning a dispensary, claimed his treaty rights to operate a dispensary and that he would continue to do so the next day are sufficient grounds, in and of themselves. The Defence counters that the police would not have been there when Mr. Francis arrived if not for the unlawful search of the

Garage itself.

Expectation of Privacy

[43] In this matter, the first issue to determine is whether Mr. Francis had a reasonable expectation of privacy regarding the Garage that would engage Section 8 of the *Charter*.

[44] The Supreme Court of Canada in the decision of *R. v. Tessling,* 2004 SCC 67 provided direction on the concept of protection of privacy in the home as follows:

> 22 The original notion of territorial privacy ("the house of everyone is to him as his castle and fortress": *Semayne's Case*, [1558-1774] All E.R. Rep. 62 (1604), at p. 63) developed into a more nuanced hierarchy protecting privacy in the home, being the place where our most intimate and private activities are most likely to take place (*Evans*, *supra*, at para. 42; *R. v. Silveira*, 1995 CanLII 89 (SCC), [1995] 2 S.C.R. 297, at para. 140, *per* Cory J.: "[t]here is no place on earth where persons can have a greater expectation of privacy than within their 'dwelling-house'"; *R. v. Feeney*, 1997 CanLII 342 (SCC), [1997] 2 S.C.R. 13, at para. 43), in diluted measure, in the perimeter space around the home (*R. v. Kokesch*, 1990 CanLII 55 (SCC), [1990] 3 S.C.R. 3; *R. v. Grant*, 1993 CanLII 68 (SCC), [1993] 3 S.C.R. 223, at pp. 237 and 241; *R. v. Wiley*, 1993 CanLII 69 (SCC), [1993] 3 S.C.R. 263, at p. 273), in commercial space (*Thomson Newspapers Ltd. v. Canada (Director of Investigation and Research, Restrictive Trade Practices Commission)*, 1990 CanLII 135 (SCC), [1990] 1 S.C.R. 425, at pp. 517-19; *R. v. McKinlay Transport Ltd.*, 1990 CanLII 137 (SCC), [1990] 1 S.C.R. 627, at pp. 641 *et seq*.), in private cars (*Wise*, *supra*, at p. 533; *R. v. Mellenthin*, 1992 CanLII 50 (SCC), [1992] 3 S.C.R. 615), in a school (*R. v. M. (M.R.)*, 1998 CanLII 770 (SCC), [1998] 3 S.C.R. 393, at para. 32), and even, at the bottom of the spectrum, a prison (*Weatherall v. Canada (Attorney General)*, 1993 CanLII 112 (SCC), [1993] 2 S.C.R. 872, at p. 877). Such a hierarchy of places does not contradict the underlying principle that s. 8 protects "people, not places", but uses the notion of place as an analytical tool to evaluate the reasonableness of a person's expectation of privacy.

[45] The Supreme Court of Canada also provided direction on the question of factors guiding the assessment of the reasonable expectation of privacy in the decision of *R. v. Edwards*, 1996 CanLII 255 at paragraph 45 the court wrote:

> 45 A review of the recent decisions of this Court and those of the U.S. Supreme Court, which I find convincing and properly applicable to the situation presented in the case at bar, indicates that certain principles pertaining to the nature of the s. 8 right to be secure against unreasonable search or seizure can be derived. In my view, they may be summarized in the following manner:
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> 1. A claim for relief under s. 24(2) can only be made by the person whose *Charter* rights have been infringed. See R. v. Rahey, 1987 CanLII 52 (SCC), [1987] 1 S.C.R. 588, at p. 619.
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> 2. Like all *Charter* rights, s. 8 is a personal right. It protects people and not places. See Hunter, supra.
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> 3. The right to challenge the legality of a search depends upon the accused establishing that his personal rights to privacy have been violated. See *Pugliese*, *supra*.
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> 4. As a general rule, two distinct inquiries must be made in relation to s. 8. First, has the accused a reasonable expectation of privacy. Second, if he has such an expectation, was the search by the police conducted reasonably. See *Rawlings*, *supra*.
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> 5. A reasonable expectation of privacy is to be determined on the basis of the totality of the circumstances. See *Colarusso*, *supra*, at p. 54, and *Wong*, *supra*, at p. 62.
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> 6. The factors to be considered in assessing the totality of the circumstances may include, but are not restricted to, the following:
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> (i) presence at the time of the search;
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> (ii) possession or control of the property or place searched;
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> (iii) ownership of the property or place;
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> (iv) historical use of the property or item;
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> (v) the ability to regulate access, including the right to admit or exclude others from the place;
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> (vi) the existence of a subjective expectation of privacy; and
>
> (vii) the objective reasonableness of the expectation….

> 7. If an accused person establishes a reasonable expectation of privacy, the inquiry must proceed to the second stage to determine whether the search was conducted in a reasonable manner.

[46] With respect to commercial premises, these attract a reduced but still engaged reasonable expectation of privacy. Our Nova Scotia Provincial Court in *R. v. Enns*, 2021 NSPC 45 made comment on this issue regarding a cannabis related business at paragraph 103 when the court observed:

> [103] The premises searched were business premises. There is a lower expectation of privacy in a business as compared to a residence. However, in this case there was an actual entry and search of premises as opposed to a production order, sniffer dog search etc. The evidentiary record is not complete, I have inferred that the search went beyond the public parts of the business and included a search for records. I say that because the warrant authorized the search for "documentation".

[47] In the present matter, I find that Mr. Francis does have a reasonable expectation of privacy respecting the Garage. Though it came at a later point in the events of that day, he did confirm to the officer that he rented the Garage, he operated a dispensary from that location and therefore this would have at least engaged an expectation of privacy in a business location.

Analysis of ITOs, Warrants and Searches

[48] In analyzing the ITOs, Warrants and searches, I begin with the first ITO and Warrant. Though I find there are no issues respecting the timing of receipt and review of the ITO as indicated earlier, there is a significant issue with this Warrant.

[49] Dealing first with the argument that the ITO and Warrant were not compliant with s.488 of the *Criminal Code* which sets out the requirements for issuance of a warrant to search at night, that section reads as follows:

> 488. Execution of search warrant
>
> A warrant issued under section 487 shall be executed by day, unless
>
> (a) the justice is satisfied that there are reasonable grounds for it to be executed by night;
>
> (b) the reasonable grounds are included in the information; and
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> (c) the warrant authorizes that it be executed by night.

[50] The first ITO in support of the application for a warrant indicates that the officer was seeking a warrant to search at night "because the garage is currently being held by police. There are no occupants inside. An immediate search by night will allow police to release the garage back to the owners earlier, and free police resources. Furthermore, a search by night does not add any more risk to police or the public in this incident."

[51] I find that this is sufficient information and grounds that the Justice of the Peace could have included a search by night provision in the Warrant.

[52] However, the timing of the search authorized under the first Warrant is a significant issue. Specifically, that Warrant confirms "This warrant may be executed by night between: 10:30 PM on the 20th day of November 2024 and 9 AM on the 21st day of November 2024." Yet the ITO in support of the Warrant

was only received at 11:21 PM on 21 November 2024. Therefore, the timeline to search under the Warrant had expired. This is a significant defect in the Warrant and leads me to conclude that it is not valid on its face. Therefore, this was a warrantless search.

[53] In considering the second ITO, it was certified to have been received by the Justice of the Peace on November 27, 2024, at 7:30 PM and the Warrant was issued at 7 PM on the same date. This suggests that the Warrant was issued before the ITO was received. This is not a concern to the court as such typographical errors are not fatal to a Warrant as noted by our Court of Appeal in *R. v. Chartrand*, 2023 NSCA 43 at paragraph 57.

[54] That ITO's contents and the issuance of the second Warrant are largely premised on information contained in the first ITO and the result of the first Warrant being executed. Defence arguments that the use of the term "dispensary" does not necessarily mean that cannabis is being sold at that location, that the reference to Mr. Francis' store being called "Sack Vegas Trading Post" and the signs indicating "Now Open" and "Free Joints" form no ground for issuance of a warrant do not satisfy me that the Warrants are invalid.

[55] When seen individually, and without placing them within the context of the overall information contained in the two ITOs, they may not indicate the presence of a cannabis dispensary. But taken collectively, and without atomizing each fact, I find that they do form the ground to issue the second Warrant.

[56] Specifically, Mr. Francis' statement that he owns a dispensary and would continue to operate it, the reference to the Trading Post business, the sign indicating free joints and the sign that the business is now open, when considered in the context of the entire information contained in the second ITO, I find satisfy me that the issuing Justice of the Peace, on the material before her, could have properly issued the second Warrant.

[57] Turning to the pivotal issue in this matter, I will now consider the circumstances under which Constable Graham made the decision to open the door to the Garage "a crack" which led to him seeing what he believed to be cannabis. If, in doing so, he breached Mr. Francis section 8 *Charter* right to a reasonable expectation of privacy, everything that occurred after he opened the Garage door must be examined carefully to determine if it should be excised from the ITO in determining whether the warrant was properly issued.

[58] In examining this issue, I find that the officer did not conduct an unlawful search by opening the door of the Garage "a crack" and therefore did not breach Mr. Francis' section 8 *Charter* right to an expectation of privacy.

[59] Beginning with the stop by Constable Graham of Flanagan and his fleeing the scene, I find that Flanigan told the officer he was heading to his detailing garage. Constable Graham had a reasonable basis to believe that Flanagan operated a detailing shop on the property where the Garage is located based on the information he received from another officer familiar with Flanagan's circumstances. This description was quite specific and matched what Constable Graham observed when he arrived there.

[60] I not that when he arrived at that property, he was informed by Saulnier that Flanagan no longer had anything to do with the property. The description of Saulnier and his body language, indicating to the officer that he was hiding something, led the officer to conclude that Flanagan might be in the Garage and, based on his knowledge of Flanigan having been investigated for robbery an firearm offences, Flanagan might have a weapon.

[61] I find that the inference that Constable Graham drew from observation of Saulnier's body language when asked if Flanagan's car was in the back is

permissible for consideration and reasonable in the circumstances. Communication can include body language, and a police officer will often have to draw reasonable inferences from such behavior when engaged in an active investigation. The mere fact that Saulnier denied Flanagan had anything to do with the property anymore is not determinative and I find the inference drawn by the officer from Saulnier's body language is reasonable.

[62] It is here that the question of exigent circumstances arises. I find that the only justification for his opening of the Garage door as he did would be the existence of exigent circumstances.

[63] As noted by the Supreme Court of Canada in *R. v. Paterson*, 2017 SCC 15:

> [33] The common theme emerging from these descriptions of "exigent circumstances" in s. 11(7) denotes not merely convenience, propitiousness or economy, but rather *urgency*, arising from circumstances calling for immediate police action to preserve evidence, officer safety or public safety. ….
>
> [34] Even where exigent circumstances are present, however, they are not, on their own, sufficient to justify a warrantless search of a residence under s. 11(7). Those circumstances must render it "impracticable" to obtain a warrant.

[64] *R. v. Fearon,* 2014 SCC 77, when discussing the issue of exigent circumstances that justify a warrantless search, the Supreme Court of Canada confirmed at paragraph 105 as follows:

> Our common law already provides flexibility where there are exigent circumstances — when the safety of the officer or the public is at stake, or when a search is necessary to prevent the destruction of evidence.

[65] In this matter, I find the Crown has met the burden of proof in this matter to establish exigent circumstances. Regarding the question of the safety of the officer or the public, while there was no indication in the ITO that Flannigan was armed at the time of the vehicle stop, it is highly relevant that Flannigan fled when he was informed that the vehicle would be searched and that the officer was aware that Flannigan had been investigated for robbery and firearm offences and was known to carry weapons. Flanagan's statement that he was heading to his body shop, the subsequent information as to that shop's location and the officer's arrival at a location which matched that description is highly relevant. His interpretation of Saulnier's body language that he may be hiding something is also relevant.

[66] I find that there was risk of safety to the officer or the public at stake at the time the Constable Graham opened the door to the Garage as he did. His clear intent was to determine if Flanagan might be in the Garage and that he might be armed.

[67] His initial observations of what he believed to be cannabis in the Garage led him to arrest Saulnier. That resulted in a demand for identification with Saulnier indicating that his wallet was in the Garage. The fact that he was not read his *Charter* rights and Police Caution prior to being asked for identification is

troubling to the court and affects the validity of the officer's entry into the Garage which enabled him to make further observations of its contents.

[68] I also consider that Mr. Francis later attended the property and admitted to owning a dispensary and claimed treaty rights to operate same. I find it reasonable to infer he was speaking of a cannabis dispensary given his claim to those treaty rights and the existence of what appeared to be cannabis in some quantities in the Garage.

[69] Thus, even if I excise the observations made by Constable Graham when he entered the Garage to seek Saulnier's identification, I find that the remaining facts alleged in the first ITO satisfy me that the issuing Justice of the Peace, on the material before her, could have properly issued the first Warrant.

[70] When next considering my finding that the first Warrant was invalid by the time the search of the Garage to place as described earlier, I again find that even if I excised reference to any items seized as a result of that Warrant in the second ITO, I must consider whether the remaining facts alleged in the second ITO satisfy me with respect to the test to be met in issuing the second Warrant.

[71] These facts include what has been considered and not excised from the first ITO, essentially the description of how Constable Graham arrived at the location of the Garage and open the door "a crack" and observed some quantity of cannabis.

[72] Along with this are the observations in the second ITO of the signs indicating that a business called Sack Vegas Trading Post was open and was offering free joints.

[73] I also consider, as discussed earlier, that Mr. Francis admitted to an officer to owning a dispensary, claimed his treaty rights to operate such dispensary and would continue to do so.

[74] When I consider these facts alleged by Constable Graham in the second ITO, and excising the allegations as noted herein, I find that the remaining facts alleged in the second ITO satisfy me that the issuing Justice of the Peace, on the material before her, could have properly issued the second Warrant.

[75] In making this finding I am mindful of the fact that this was a business location which attracts a lower expectation of privacy. I am also guided by the decision in *R. v. Liberatore, supra* which instructs me to consider “the totality of the circumstances” and that “[t]he body of evidence isn’t anatomized for a segregated analysis of each fragment.”

[76] Finally, having found there is no *Charter* breach respecting Mr. Francis as the initial opening of the Garage door was an exigent circumstance, I find *R. v. West, supra* and *R. v. Spindloe*, 2001 SKCA 58 is not applicable.

[77] Thus, at this time the items seized from the Garage remain in the custody of the court pursuant to section 490 of the *Criminal Code* at this time as discussed in the decision of *R. v. Francis* 2026 NSPC 4. I find that they will have to be dealt with as part of a separate hearing under that section of the *Criminal Code* to determine if they should be returned to Mr. Francis or not.

[78] I wish to be clear that this decision is subject to the pending decision respecting the issue of cross-examination of the affiant for the ITOs.

Timothy G. Daley, JPC