

PROVINCIAL COURT OF NOVA SCOTIA

Citation: *R v Gaudet*, 2026 NSPC 17

Date: 20260423

Docket: 8758449, 8758450

Registry: Pictou

Between:

His Majesty the King

v.

David Stewart Gaudet

DECISION REGARDING JUDICIAL INTERIM RELEASE

Judge: The Honourable Judge Del W Atwood

Heard: 2026: 11 February in Pictou, Nova Scotia

Written reasons Released: 2026: 23 April

Charge: Sections 344 and 351, *Criminal Code* [*Code*]

Counsel: Bill Gorman for the Nova Scotia Public Prosecution Service
Ken Greer, K.C. for David Stewart Gaudet

By the Court:

Synopsis

[1] David Stewart Gaudet is charged with a count of robbery (case 8758449), and a count of being masked (case 8758450). He has never had a bail hearing, and has been consenting to his remand since he was arraigned on 14 December 2023.

[2] Mr Gaudet elected trial in Supreme Court [NSSC], without a jury.

[3] Mr Gaudet appeared in NSSC in Pictou on 5 February 2026 and pleaded guilty to both charges; he is to return to that Court on 17 February 2026 to be sentenced. I have been informed by defence counsel that there will be a joint recommendation for “time served”.

[4] Mr Gaudet has applied to this Court [NSPC] for judicial interim release. The prosecution opposes the application and argues that only the NSSC has jurisdiction at this stage to adjudicate on bail.

[5] On 11 February 2026, I rendered a brief oral decision in which I found that the NSPC does have jurisdiction over this matter, and I admitted Mr Gaudet to bail on terms worked out between counsel; I stated that detailed reasons would follow. The following are the reasons of the Court.

Case chronology

[6] The following are key court-appearance dates in proceedings against Mr Gaudet:

- 12 December 2023: public-interest warrant issued for Mr Gaudet.
- 14 December 2023: Mr Gaudet arraigned in custody in NSPC Pictou; the prosecution opposed bail and Mr Gaudet consented to remand.
- 22 April 2024: following a succession of adjournments, Mr Gaudet elects an NSSC-judge-and-jury trial, with a preliminary inquiry [PI]; Mr Gaudet continues to consent to remand.
- 5 November 2024: PI proceeds, and Mr Gaudet is committed as charged; consent to remand continues.
- 5 December 2024: Mr Gaudet is arraigned in NSSC Pictou and pleads not guilty; consent to remand continues.
- 19 September 2025: Mr Gaudet pleads guilty in NSSC; case adjourned for sentencing to 8 December 2025; consent to remand continues.

- 8 December 2025: Mr Gaudet contests facts on sentencing and the presiding NSSC judge reinstates not-guilty pleas; adjourned to 5 February 2026 to set a trial date; consent to remand continues.
- 5 February 2026: Mr Gaudet pleads guilty in NSSC; he accepts a statement of facts read by the prosecution; counsel for Mr Gaudet advises that he intends to apply for bail; the prosecution opposes bail; the presiding NSSC judge proposes that Mr Gaudet apply for bail in NSPC to allow a speedier hearing.
- 6 February 2026: Counsel for Mr Gaudet submits a notice of application to NSPC Pictou seeking bail.
- 11 February 2026: the application is heard in NSPC.

Position of the prosecution

[7] The prosecution argues that, as Mr Gaudet has pleaded guilty in NSSC, and as the presiding judge of that Court went on to make findings of guilt, bail for Mr Gaudet may be adjudicated only in NSSC. The prosecution relies on a number of reported decisions, and pleads specifically ¶ 523(1)(b)(ii) and ¶ 523(2)(a) of the *Code*.

Position of defence counsel

[8] Defence counsel counters that he brought this application on the suggestion of the NSSC judge; if the prosecution intended to object to the jurisdiction of the NSPC, it ought to have done so on 5 February 2026 in NSSC when the presiding judge suggested NSPC would be the speedier venue.

Relevant cases and provisions of the Code

[9] The following provisions of the *Code* have been addressed by counsel and the Court in this bail application:

Marginal note: Definitions

2 In this Act,

“justice” means a justice of the peace or a provincial court judge, and includes two or more justices where two or more justices are, by law, required to act or, by law, act or have jurisdiction; (*juge de paix*)

Marginal note: Release pending sentence

518 (2) Where, *before* or at any time during the course of *any proceedings under section 515, the accused pleads guilty and that plea is accepted*, the justice may make any order provided for in this Part for the release of the accused until the accused is sentenced. [Emphasis added]

Period for which appearance notice, etc., continues in force

523 (1) If an accused, in respect of an offence with which they are charged, *has not been taken into custody or has been released from custody under any provision of this Part*, the appearance notice, summons, undertaking or release order issued to, given or entered into by the accused continues in force, subject to its terms, and applies in respect of any new information charging the same offence or an included offence that was received after the appearance notice, summons, undertaking or release order was issued, given or entered into,

...

(b) in any other case,

(i) until his trial is completed, and

(ii) where the accused is, at his trial, determined to be guilty of the offence, until a sentence within the meaning of section 673 is imposed on the accused unless, at the time the accused is determined to be guilty, the court, judge or justice orders that the accused be taken into custody pending such sentence. [Emphasis added.]

Marginal note: Order vacating previous order for release or detention

523 (2) Despite subsections (1) to (1.2),

(a) the court, judge or justice before which or whom an accused is being tried, at any time,

(b) the justice, on completion of the preliminary inquiry in relation to an offence for which an accused is ordered to stand trial, other than an offence listed in section 469, or

(c) with the consent of the prosecutor and the accused or, where the accused or the prosecutor applies to vacate an order that would otherwise apply pursuant to subsection (1.1), without such consent, at any time

(i) where the accused is charged with an offence other than an offence listed in section 469, the justice by whom an order was made under this Part or any other justice,

(ii) where the accused is charged with an offence listed in section 469, a judge of or a judge presiding in a superior court of criminal jurisdiction for the province, or

(iii) the court, judge or justice before which or whom an accused is to be tried,

may, on cause being shown, vacate any order previously made under this Part for the interim release or detention of the accused and make any other order provided for in this Part for the detention or release of the accused until his trial is completed that the court, judge or justice considers to be warranted. [Emphasis added]

Marginal note: Provisions applicable to proceedings under subsection (2)

(3) The provisions of sections 517, 518 and 519 apply, with such modifications as the circumstances require, in respect of any proceedings under subsection (2), except that subsection 518(2) does not apply in respect of an accused who is charged with an offence listed in section 469.

[10] The prosecution relies on the following reported decisions:

- *R v AMB*, 2022 NSSC 203 [AMB];

- *R v WF*, 2023 NSSC 281;
- *R v Aheer*, 2020 ABCA 232;
- *R v Ross*, 2025 NSPC 7.

Legal analysis

[11] The cases cited by the prosecution address one specific issue: the discretion conferred on a trial judge under ¶ 523(1)(b)(ii) of the *Code* to continue or revoke previously ordered bail for a person who has been determined to be guilty.¹ They do not deal with the sort of situation this Court is dealing with in Mr Gaudet’s application: a person who has pleaded guilty in a superior court of criminal jurisdiction, but who has never has a bail hearing, and who has been consenting to remand since arraignment. Paragraph 523(1)(b) of the *Code* simply does not apply here, as the Court is not called upon to decide whether to continue or revoke bail for Mr Gaudet pending his sentence, as he was never admitted to bail in the first place.

[12] To be sure, the NSSC, being the court before which Mr Gaudet is being tried, would have had jurisdiction to conduct a bail hearing, given the provisions of

¹ To the extent that *AMB* projects beyond that precise issue—*ie* whether a trial judge should continue bail for an accused person who has been determined to be guilty—those portions of the decision are *obiter* and are not binding.

¶ 523(2)(a). However, ¶ 523(2)(a) is not the only bail-hearing-jurisdiction-conferring provision in the *Code*.

[13] I find that § 518(2) is engaged in this case. The conditions that are necessary to engage the statute and confer jurisdiction on the NSPC are complete:

- Mr Gaudet has pleaded guilty (albeit in NSSC);
- his guilty plea has been accepted;
- his guilty plea was accepted before any bail proceedings under § 515 of the *Code* were commenced;
- as a judge of the Provincial Court of Nova Scotia, I am a “justice” as defined in § 2 of the *Code*.

[14] This is in line with decided authority dealing with situations involving persons who do not seek bail until after they have been committed to stand trial in a superior court: the proper venue is a provincial court. See *R v Watts*, 2014 ONSC 6246 at ¶ 12-13; *R v Mayen*, 2014 MBQB 29 at ¶ 19-20. Both of these cases have been widely followed, although neither one has been cited in Nova Scotia.

[15] In oral argument, the prosecution referred to a leading text on the law of bail; the prosecutor noted the author characterizing as “counter-intuitive” the procedure of having bail returning to provincial court when the accused is facing an indictment in superior court. However, as noted by the Court in response to that argument, the author went on to say that, while counter-intuitive, returning to provincial court in such circumstances is the correct process: Gary Trotter, *The Law of Bail in Canada*, 3rd ed, § 4.3 and 11.4, online: Thompson Reuters Westlaw Canada.

[16] It is clear that the NSSC judge who took Mr Gaudet’s guilty plea on 5 February 2026 was of the view that the NSPC had jurisdiction to decide bail: she said so at the 10:11:12 and 10:11:30 time markers of the recorded proceedings for that date. Based on my analysis, she was entirely correct, and her proposal that the bail hearing come here was both legally sound, and efficient. There was a prosecutor present in Court in NSSC; if the prosecution had any objections about bail getting done in NSPC, raising them that day in NSSC would have been the better time and place.

Conclusion

[17] After I rendered a brief oral decision that NSPC had jurisdiction to conduct a bail hearing for Mr Gaudet, counsel quickly worked out terms of release; Mr Gaudet was admitted to bail on release order 2737330 to return to NSSC for sentencing.

Atwood, JPC