

**PROVINCIAL COURT OF NOVA SCOTIA**

**Citation:** *Application to extend period of detention of items seized*, 2021 NSPC 51

**Date:** 20210511

**Registry:** Dartmouth

**Between:**

DECISION REGARDING ORDER OF FURTHER DETENTION

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**LIBRARY HEADING**

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**Judge:** The Honourable Chief Judge Pamela S. Williams

**Heard:** May 10, 2021 in Dartmouth, Nova Scotia

**Decision:** May 10, 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 extended.

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<b>Judge:</b>	The Honourable Chief Judge Pamela S. Williams
<b>Heard:</b>	May 10, 2021, in Dartmouth, Nova Scotia
<b>Decision:</b>	May 10, 2021
<b>Charge:</b>	Section 490(1)(b) of the <i>Criminal Code of Canada</i>
<b>Counsel:</b>	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 February 11, 2021 pursuant to two General Warrants under Section 487.01 of the *Criminal Code*. When the Warrants were authorized sealing orders pursuant to section 487.3(1) were granted.

[2] The initial Detention Orders, for a period of three months, are due to expire May 11, 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] The problem is that 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 orders, which prohibit disclosure of information related to the ongoing investigation.

**Case Law:**

[6] I have been provided with two decisions directly on point. Both are 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 note 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.

[7] 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.

[8] 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, unlike Superior Courts, Provincial and Territorial Courts do not have inherent jurisdiction. Rather we are statutory courts and must derive our authority from statute.

[9] In the case before me, 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:**

[10] 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 the 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.

[11] 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 over 30 Warrants, Production Orders, and other types of Judicial Authorizations.

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

investigation, the possibility of utilizing physical and technical surveillance and other methods of investigation including Part VI authorizations. Accordingly, the *In-camera Application* will proceed and the *Ex-parte Order* for further detention is granted.

[13] The two Detention Orders will be extended for a period not exceeding one year from the dates 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.

[14] 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.

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

Chief Judge Pamela S. Williams, JPC