

CANADA / JUDGMENT

Further Detention of Things Seized (Re)

2024 BCSC 2132

COURT

Supreme Court of British Columbia

DECIDED

25 November 2024

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2024 BCSC 2132 Further Detention of Things Seized (Re)

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Further Detention of Things Seized (Re),

2024 BCSC 2132

Date: 20241125

Docket: X084876

Registry: New Westminster

In the Matter of an Application for the Further Detention of Things Seized

pursuant to section 490(4) of the Criminal Code

Before: The Honourable Madam Justice Sukstorf

Reasons for Judgment

Counsel for the Attorney General of Canada:

M. Inuzuka

Place and Date of Hearing:

New Westminster, B.C.

November 8, 2024

Place and Date of Judgment:

New Westminster, B.C.

November 25, 2024

Table of Contents

Background..	3
Overview of the Case.	3
Key Events Leading to the Convictions.	4
Seizure of the Money and Its Legal Status.	5
Issue.	7
Legal Framework..	8
Legislative Framework Under ss. 489.1 and 490.	8
Sub-Section 490(4): Supervision and Disposal of Seized Items.	9
Sub-Section 490(9): Limited Applicability.	10
Analysis.	10
Application of s. 490(4) to the Money.	10
Inherent Jurisdiction: Unnecessary to Consider	11
Proceeds of Crime and Ex Turpi Causa.	12
Conclusion and Order..	13

Background

Overview of the Case

- [1] Pursuant to s. 490(4) of the Criminal Code, R.S.C. 1985, c. C-46, the Attorney General of Canada, on behalf of the Royal Canadian Mounted Police (the "RCMP"), apply for an order to forfeit \$30,000 (the "Money") seized from Milan Nenadic on August 10, 1992, during the investigation into the murder of Alexandra Pesic.
- [2] In the alternative, if this Court is not prepared to issue an order pursuant to s. 490(4), the RCMP requests an order for the forfeiture of the Money pursuant to the court's inherent jurisdiction.
- [3] In 2020, the RCMP requested that the British Columbia Prosecution Service (the "BCPS") seek an order for forfeiture of the Money, but it declined. Given the amount of time that had passed since the prosecution, the BCPS was of the view that it was not the appropriate party to pursue such an application.
- [4] On August 20, 2020, Corporal White of the RCMP emailed the Federal Department of Justice and requested assistance obtaining a Forfeiture Order in relation to the seized Money.

- [5] The Attorney General of Canada filed this application on July 6, 2023. The application was first heard on July 18, 2023, before Justice Blok. Both Mr. Nenadic and Jelka Pesic ("Mrs. Pesic"), Alexandra Pesic's mother-in-law who was also convicted of the first-degree murder of Alexandra Pesic, were personally served with notices of the hearing, but neither presented themselves or had representatives attend the hearing on their behalf.
- [6] During the July 18, 2023, hearing, Justice Blok expressed concern that s. 490.1(1)(a) of the Criminal Code permitted the Attorney General of British Columbia to seek forfeiture of the Money. Consequently, Justice Blok adjourned the application generally so that the Attorney General of Canada could obtain a written waiver from the Attorney General of British Columbia waiving its right to make an application for forfeiture of the Money.
- [7] On November 6, 2023, the Deputy Regional Crown Counsel with the BCPS in New Westminster sent a letter to the Federal Crown indicating that the British Columbia Provincial Crown waived its right to make any application for the forfeiture of the Money.

Key Events Leading to the Convictions

- [8] By way of background, on August 5, 1992, Alexandra Pesic was shot and killed outside her workplace in Coquitlam. She died from two gunshot wounds to the head.
- [9] According to the Crown's theory, Mrs. Pesic enlisted Mr. Nenadic to arrange the killing. Mr. Nenadic then hired David Segoviano and Lawrence Delorme and provided them with the murder weapon, a handgun that belonged to Mr. Nenadic's father. The Crown argued that while Mr. Segoviano shot Alexandra Pesic, and Mr. Delorme drove the get away vehicle, the murder was orchestrated by Mrs. Pesic and possibly other family members.
- [10] On December 10, 1993, a jury convicted Mrs. Pesic, Mr. Nenadic, and Mr. Delorme of first-degree murder. Mr. Segoviano had his trial severed after the preliminary hearing and was later convicted of first-degree murder.
- [11] Mrs. Pesic, Mr. Nenadic, and Mr. Delorme appealed their convictions. On March 14, 1997, the British Columbia Court of Appeal (the "BCCA") upheld all three convictions on appeal. The BCCA acknowledged that the cases against Mrs. Pesic and Mr. Nenadic were circumstantial, but decided that a properly instructed jury could have drawn an inference that Mrs. Pesic paid Mr. Nenadic to arrange Alexandra Pesic's murder: *R. v. Nenadic*, [1997] 34 W.C.B. (2d) 11, 1997 CanLII 3802 (B.C.C.A.) at para. 143.
- [12] As highlighted in the BCCA's reasons, the Money played a role in this inference. At para. 28 of the BCCA's reasons, the court highlighted the following evidence:

- [27] [] Later in the afternoon the police observed Milan and Jelka Nenadic arrive in separate cars at Metrotown, proceed to a lottery booth in a store in the mall and then return to Jelka Pesic's car. Jelka Pesic left Metrotown with Milan Nenadic in the back of her car hidden from view. The Pesic vehicle was observed to leave the area and return to the parking lot not long after. Milan Nenadic left the Pesic vehicle and returned to his own car.
- [28] Milan Nenadic was arrested as he got out of his car outside his home on a street in Surrey shortly after 3:30 p.m. on August 10. As the police handcuffed and searched Mr. Nenadic a package fell from around his waist to the ground. Mr. Nenadic was told that he was under arrest for possession of drugs. Referring to the package Mr. Nenadic said, "That's not drugs. That's money. I don't do drugs". The package was found to contain \$30,000.
- [13] Shortly after Mr. Nenadic's arrest, the police searched his home. The search uncovered a note, which contained his fingerprints. The note read:
- [29] The job was done but the foreman was arrested for questioning. Don't worry he didn't say anything. Now he's leaving the country and the price is \$30,000 more. There's people following him now so try to get the money together as soon as possible. The best way is the key to the upstairs.

Seizure of the Money and Its Legal Status

- [14] The RCMP's investigation into the murder of Alexandra Pesic was assigned RCMP police file number 92QC27475. As part of this application, Constable Hopkins reviewed this police file and submitted an affidavit describing the contents of the file.
- [15] Constable Hopkins attests that, according to the police records, on August 17, 1992, RCMP Corporal Goodall submitted a Report to a Justice for police file 92QC27475 and applied for a detention order in relation to the items seized from Mr. Nenadic's person and his residence. This included the Money which was described as a "bundle of money (\$30,000) toilet paper plastic + elastics" and assigned number "106". According to Constable Hopkins' affidavit, the detention order was granted.
- [16] The Money seized from Mr. Nenadic was then made an exhibit at trial, in support of the Crown's case. In her affidavit, Constable Hopkins states that she reviewed the Exhibit Card for New Westminster Supreme Court File X034066 dated November 23, 1993. From her review of the card, the Money seized from Mr. Nenadic was entered into evidence during the trial and marked as exhibit #49.
- [17] After the conclusion of the appeal, the forfeiture of the Money was not addressed, and it was therefore returned to the custody of the RCMP in 1998. Constable Hopkins states that she reviewed the RCMP Property Report contained in police file number 92QC27475, but states that due to an absence of records, she is unable to determine why the forfeiture of the Money was not addressed after the conclusion of Mr. Nenadic and Mrs. Pesic's appeal 26 years ago.

[18] In her affidavit, Constable Hopkins further attests to the following relevant facts:

- a) In 2017, Constable Nickel of the Coquitlam RCMP was assigned to dispose of any remaining exhibits related to this case. During his review, he discovered the \$30,000 in May 2017.
- b) On April 11, 2023, the Seized Property Management Directorate informed Constable Hopkins that beginning in March 2018, they had assumed management of the \$30,000.
- c) Constable Hopkins received an email from the Receiver General and Pension Branch of Public Services and Procurement Canada, including bank deposit slip information confirming that the \$30,000 had been deposited into a Receiver General Account at the Royal Bank of Canada on March 13, 2018.
- d) On January 31, 2019, Constable Nickel obtained an unsealing order from Judge Dossa for court records related to this case. He subsequently accessed the court records, including a Report to a Justice for police file 92QC27475.

[19] Constable Hopkins also attests that she reviewed a document authored by Constable Nickel in 2017, which detailed his attempts to contact both Mr. Nenadic and Mrs. Pesic. According to the document, neither party expressed interest in claiming the money at that time. Constable Hopkins highlighted the following efforts made by Constable Nickel to reach out to Mr. Nenadic and Mrs. Pesic:

- a) On November 16, 2017, Constable Nickel emailed Mr. Nenadic at a recently used email address. In the email, he informed Mr. Nenadic that the RCMP intended to seek a Forfeiture Order for the \$30,000 and invited Mr. Nenadic to indicate if he wished to lay claim to the money. Mr. Nenadic did not respond.
- b) On November 29, 2017, Constable Nickel and Corporal O'Charchin visited Mrs. Pesic's residence but received no response when they knocked on her door. Constable Nickel left his business card in the mail slot along with a note requesting for her to call him.
- c) Later that day, Mrs. Pesic contacted Constable Nickel. He informed her that the RCMP planned to apply for a Forfeiture Order to have the Money forfeited to the Attorney General as proceeds of crime. He also advised her that she could lay claim to the money, as it had originally been in her possession.
- d) Mrs. Pesic informed Constable Nickel that she could not claim the \$30,000. She stated that she was not involved in Alexandra Pesic's murder and, therefore, the money did not belong to her.

[20] The Money is currently being managed by the Seized Property Management Directorate and held in a Receiver General Account at the Royal Bank of Canada.

Issue

- [21] The issue to be decided is whether this Court should order the Money seized from Mr. Nenadic to be forfeited to His Majesty in Right of Canada.

Legal Framework

Legislative Framework Under ss. 489.1 and 490

- [22] Sections 489.1 and 490 of the Criminal Code establish a detailed legislative scheme which governs the handling of property which has been seized by the state. This framework balances the interests of law enforcement with the protection of individual rights, and together, these sections ensure that property and privacy rights are protected in compliance with s. 8 of the Charter, which guards against unreasonable search and seizure.
- [23] If an item is seized by the police, s. 489.1 requires that a peace officer either return the seized property to the person lawfully entitled to its possession, or bring the seized property before a justice, who will determine the handling of the item in accordance with s. 490.
- [24] This section has therefore been characterized as the "front end" of the process for managing seized property, or alternatively, as the "gateway" which brings seized property under judicial supervision: *R. v. Bottomley*, 2022 BCSC 2192 at para. 34.
- [25] In contrast, s. 490 enables judicial oversight and control of the continued detention and final disposition of seized items.
- [26] In *Bottomley*, Justice Devlin emphasized that this s. 489.1 and 490 framework applies broadly to all seizures, including those authorized via either a statutory or a common law authority.
- [27] That being said, once charges have been laid, no further applications for detention are necessary and there is no need to renew the detention order: *R. v. Alekseev* (1990), 58 C.C.C. (3d) 544, 1990 CanLII 10992 (B.C.P.C.); *R. v. Fortress Real Capital Inc.*, 2020 ONSC 4123 at para. 15.
- [28] Instead, once charges are laid, s. 490(4) of the Criminal Code takes effect.

Sub-Section 490(4): Supervision and Disposal of Seized Items

- [29] Section 490(4) specifies what happens to seized items once charges are laid and refers to the court's ability to dispose of seized items. It reads as follows:

When accused ordered to stand trial

- (4) When an accused has been ordered to stand trial, the justice shall forward anything detained pursuant to subsections (1) to (3) to the clerk of the court to which the accused has been ordered to stand trial to be detained by the clerk of the court and disposed of as the court directs.

- [30] In the recent decision *Pickton (Re)*, 2024 BCSC 2025 at para. 21–37 Justice Verhoeven thoroughly analysed the function and appropriate application of this section. I adopt Justice Verhoeven's analysis on this point.
- [31] From a pragmatic perspective, Justice Verhoeven described that while s. 490(4) requires items detained in accordance with s. 490(1) to (3) to be forwarded to the clerk of the court handling the trial, in practice, the seized items can be reported to the justice using Form 5.2, instead of being physically forwarded to the court clerk. These items, which are only "notionally" detained by the clerk are nevertheless "under the control of the court, even though in most cases the police continue to have physical custody of them": at para. 21.
- [32] Section 490(4) therefore provides that items detained by the clerk, including those only notionally under the custody or control of the court, are to be "disposed of as the court directs." Justice Verhoeven found that this wording is intentionally broad, as a broad interpretation aligns with the overall purpose of the comprehensive s. 490 legislative scheme, which grants the court general supervisory authority over items seized by the police and detained in connection with criminal investigations or judicial proceedings.
- [33] The broad interpretation empowers the court to make orders which balance the protection of individual property and privacy interests with the societal interest in investigating and prosecuting crimes.

Sub-Section 490(9): Limited Applicability

- [34] The only other part of s. 490 which refers to the disposal of seized items is 490(9). Counsel for the Attorney General of Canada argues that s. 490(9) does not apply.
- [35] This assertion is consistent with *Pickton (Re)*. At para. 18 Justice Verhoeven states that s. 490(9) only applies in two limited circumstances:
- a) When the time for detention has expired and no proceedings have been initiated in which the detained item may be required; or
 - b) When the periods of detention provided for or ordered under ss. 490(1) to (3) have not yet expired, but the detained item is no longer required for an investigation or proceeding: *R. v. Raponi*, 2004 SCC 50, at para. 30.
- [36] Given that a proceeding was initiated in this proceeding, and the \$30,000 was used as evidence in this proceeding, s. 490(9) does not apply to the case at bar.
- [37] In accordance with case law, I therefore accept the Attorney General of Canada's submissions on this point.

Analysis

Application of s. 490(4) to the Money

- [38] In this case, proceedings were initiated, charges were laid, a trial was held, and convictions were entered and upheld by the Court of Appeal. When the accused was ordered to stand trial in this Court s. 490(4) required that the Money, as an item seized, be transferred to the clerk of this Court. This did occur.
- [39] The Money seized from Mr. Nenadic was made an exhibit at trial and was properly under the control of the clerk. When all the proceedings were completed, the Money was returned to the custody of the RCMP and is currently held in a Receiver General Account at the Royal Bank of Canada.
- [40] As stated above, even though the RCMP maintain physical custody of the Money, it nevertheless remains legally under this Court's authority and control.
- [41] Consistent with Justice Verhoeven's analysis in *Pickton*, I find that s. 490(4) provides clear authority for this Court to order the disposal of the Money which remains detained by the clerk in accordance with s. 490(4).

Inherent Jurisdiction: Unnecessary to Consider

- [42] In Canada, superior provincial courts exercise a jurisdiction that is referred to as "inherent." In his widely cited paper I.H. Jacob defined inherent jurisdiction as:
- [T]he reserve or fund of powers, a residual source of powers, which the court may draw upon as necessary whenever it is just or equitable to do so, and in particular to ensure the observance of the due process of law, to prevent improper vexation or oppression, to do justice between the parties and to secure a fair trial between them.
- I.H. Jacob, "The Inherent Jurisdiction of the Court" (1970) 23:1 *Current Legal Problems* at page 51.
- [43] Inherent jurisdiction is a key part of the Canadian legal system. It gives superior courts the authority to address gaps in legislation, including where the law is silent or lacks clear direction for a specific situation, to ensure that justice is served.
- [44] However, inherent jurisdiction is not unlimited. It must operate within the limits of statutory frameworks and cannot override clear legislative intent or provisions. Courts must therefore use it cautiously, and only when necessary, to prevent injustice or maintain their authority.

[45] Considering the precedent established in *Pickton*, and based on the specific facts of this case, I have concluded that this Court has clear legislative authority under s. 490(4) of the Criminal Code to order the disposal or forfeiture of the Money. Therefore, it is unnecessary to determine whether the Court's authority also stems from its inherent jurisdiction. Given this, I decline to opine further on this point.

Proceeds of Crime and Ex Turpi Causa

[46] The Attorney General of Canada argues that the Money has no lawful owner as it was tainted by criminality and should not be returned to either Mr. Nenadic or Mrs. Pesic.

[47] The Attorney General of Canada's submission rely on the legal maxim *ex turpi causa non oritur actio* (commonly referred to as "*ex turpi causa*"), which means that no right of action arises from an illegal or immoral cause.

[48] The Attorney General of Canada relies on the following evidence:

- a) Shortly after meeting with Mrs. Pesic, Mr. Nenadic was caught with \$30,000.
- b) The \$30,000 fell from Mr. Nenadic's waistband during his arrest.
- c) Both Mr. Nenadic and Mrs. Pesic were convicted of the murder of Alexandra Pesic; and
- d) The BCCA acknowledged the circumstantial nature of the case against Mr. Nenadic and Mrs. Pesic but accepted that, in coming to their findings, the jury drew an inference that Mrs. Pesic paid Mr. Nenadic the \$30,000 to orchestrate the murder.

[49] In forfeiture cases, the principle of *ex turpi causa* helps ensure that courts do not allow money or property linked to illegal activities to be kept by the wrongdoers. The rule protects the fairness of the legal system and supports the greater public interest in justice.

[50] The evidence shows that Mrs. Pesic paid Mr. Nenadic to orchestrate the crime. The Money was therefore directly tied to the murder of Alexandra Pesic. This connection taints the Money with criminality. Allowing either Mr. Nenadic and Mrs. Pesic to benefit from these funds would contradict the societal interest in ensuring that individuals cannot benefit from criminal activity.

[51] The *ex turpi causa* doctrine also upholds the broader societal interest in deterring crime and maintains public confidence in the justice system. Returning the Money to either party would undermine trust in the courts.

[52] From a proprietary standpoint, *ex turpi causa* invalidates any claim to property connected to illegal activity. In this case, neither Mr. Nenadic or Mrs. Pesic has a legitimate claim to the Money, as the funds were used to facilitate a premeditated and violent crime. Mr. Nenadic cannot claim entitlement because the Money was tied to his role in arranging the murder, while Mrs. Pesic, who provided the funds, has no lawful basis to assert ownership.

- [53] Procedurally, both parties were given the opportunity to assert ownership, but both declined to participate in these proceedings. Neither Mr. Nenadic nor Mrs. Pesic responded to this application. They made no effort to attend the proceedings or submit any representations regarding the return of the Money. The parties' opportunity, and ultimate refusal, to claim the Money reinforces the fairness and appropriateness of a Forfeiture Order.
- [54] Given the facts of this case and the doctrine of *ex turpi causa*, I find that neither Mr. Nenadic nor Mrs. Pesic should be permitted to profit from their unlawful action, and that the Money should therefore be forfeited.
- [55] Ultimately, the forfeiture of the Money reflects the court's responsibility to uphold justice. It reinforces the legislative purpose of s. 490 and serves the broader societal interest by ensuring that the proceeds of crime are not returned to the perpetrators of the crime.

Conclusion and Order

- [56] It is undisputed that both Mr. Nenadic and Mrs. Pesic were convicted of the murder of Alexandra Pesic and that the BCCA accepted the inference that the Money was used as a payment from Mrs. Pesic to Mr. Nenadic to coordinate the murder.
- [57] In balancing societal interests with the proprietary rights of individuals, I have concluded that the offenders in this case should not be permitted to retain property obtained or used unlawfully. In this scenario, the application of *ex turpi causa* justifies the forfeiture of the Money. This decision upholds justice, deters criminal activity, and maintains public confidence in the integrity of the legal system.
- [58] For all the above reasons, pursuant to s. 490(4) of the Criminal Code, I order the Money seized in this case to be forfeited to His Majesty the King in right of Canada, to be disposed of as the Attorney General of Canada may see fit.

"Sukstorf J."

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/24/21/2024BCSC2132.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/further-detention-of-things-seized-re-2024-bcsc-2132>

Prepared on 28 October 2026 · Esheria