

CANADA / JUDGMENT

Further Detention of Things Seized (Re)

2025 BCSC 1043

COURT

Supreme Court of British Columbia

DECIDED

25 April 2025

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2025 BCSC 1043 Further Detention of Things Seized (Re)

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Further Detention of Things Seized (Re),

2025 BCSC 1043

Date: 20250425

Docket: X085354

Registry: New Westminster

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

Pursuant to Section 490(9.1) of the Criminal Code

Before: The Honourable Justice Norell

Oral Reasons for Judgment

Counsel for the Applicant:

N.M.D. Reithmeier

Application Respondent, appearing in person:

J.E.

Place and Date of Hearing:

New Westminster, B.C.

April 25, 2025

Place and Date of Judgment:

New Westminster, B.C.

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- [1] THE COURT: This is an application brought pursuant to s. 490(9.1) of the Criminal Code for an order authorizing the further detention of approximately 140 items seized on December 1, 2022, pursuant to a search warrant of a warehouse.
- [2] The items were seized in the investigation of the potential offence of weapons trafficking contrary to s. 99 of the Criminal Code. There are two interested parties, one of whom consents to the further detention to June 30, 2025, and the other, J.E., who appeared on this application. I had understood that he opposed the application but it seems that he does not oppose it or not vigorously so. Both S.D. and J.E. were associated to the warehouse that was searched.
- [3] The items sought to be detained include firearms, ammunition, firearm magazines, firearm accessories, some documents which I will return to, throwing stars, stun batons, equipment used to make ammunition, and some magic mushrooms and cannabis edibles. To the extent that there are controlled substances, I will return to that as well.
- [4] The police believed that both interested parties were associated with the warehouse. It appeared to be used as an E-cigarette manufacturing and distribution facility. As well, there was an ammunition manufacturing facility in the warehouse. There were a multitude of firearms stored throughout the warehouse, accessible to staff members.

Legal Principles

- [5] Section 490 of the Code provides for judicial oversight when items are seized in the course of a criminal investigation and charges have not yet been laid. The section provides a legislative framework for balancing legitimate investigation requirements with the property and privacy interests of owners to have seized property returned to them.
- [6] Pursuant to s. 490(3), the test to be applied on such an application is that the judge must be "satisfied, having regard to the complex nature of the investigation, that the further detention of the thing seized is warranted for a specified period and subject to such other conditions as the judge considers just".
- [7] The word "satisfied" imposes a persuasive burden on the applicant which, while more substantial than a prima facie standard, falls short of a requirement to demonstrate the necessity of further detention on the balance of probabilities: *Re Further Detention of Things Seized*, 2024 BCSC 2488.

- [8] The key point in considering detention beyond one year, which is this case, is the concept of complexity. Under s. 490(3), the judge must be satisfied that, having regard to the complex nature of the investigation, detention was warranted: *Further Detention of Things Seized (Re)*, 2021 BCSC 1323 at para. 119 [1323 Decision].
- [9] The focus of complexity in 490(3) is whether the investigation is complex and how that complexity impacts the need for continued detention. The court may consider what work is yet to be done in the investigation and whether work should have been done earlier: *Canada Revenue Agency v. Okoroafor*, 2010 ONSC 2477 [Okoroafor].
- [10] In *Okoroafor* at para. 20, a complex investigation was described as:
- [20] one that has many varied interrelated parts, patterns, or elements and consequently is hard to understand fully. It is an investigation that involves many parts, aspects, details, and notions necessitating earnest study or examination to understand or cope with
- [11] In *Re. Tran et al; Re. Spurka*, 2004 BCSC 339 at para. 29, it was described as "something intricate and composite, something requiring analysis and reflection before moving forward to results and always considering the implications".
- [12] In the 1323 Decision at para. 122, Justice Riley, then of this court, discussed that complexity is not a binary concept, as in an investigation is either complex or not. There may be different degrees or levels of complexity. The investigation must have "something beyond a run of the mill criminal investigation such that the police are unable to successfully complete the investigation, and either obtain approval for charges, or otherwise return the seized things within one year of the date of seizure".
- [13] When an application is brought after the expiration of extension has expired, the test under s. 490(9.1) must be met. Under this subsection, a judge may order that the item seized continue to be detained for such period as the judge considers necessary, if the applicant satisfies the judge:
- a) that the continued detention of a thing might reasonably be required for a purpose mentioned in subsection (1) or (4), and that (4) is trial; and
 - b) that it is in the interests of justice to do so.
- [14] The interests of justice require the court to weigh the property rights and privacy interests of the person from whom things have been seized against the rights of the authorities and the public in the proper investigation and prosecution of alleged crimes: 1323 Decision at para. 170.

- [15] In the 1323 Decision at paras. 111 to 118, Justice Riley noted that in some respects, the burden under s. 490(9.1) is higher than under s. 490(3). The wording injects an objective element. The factors under s. 490(3) are still important because the court must be wary of situations where the police effectively place themselves in a better position by bringing a remedial application under 490(9.1) than they would have if they had brought the application within time under s. 490(3).
- [16] Therefore, the interest of justice analysis necessarily involves a consideration of the factors in s. 490(3). However, the factors considered under a s. 490(3) application are not necessarily dispositive of what is in the interest of justice.
- [17] I have read the affidavit of Constable Miryans in support of the application. I rely upon all of the evidence there, but I will summarize very briefly what the affidavit says. The seizure took place on December 1, 2022. Between December 2022 and January 2023, the police attempted to locate a firearms laboratory which had the capacity and expertise to test and analyze the firearms. There were 38 firearms, 165 firearms magazines, and hundreds of rounds of ammunition. It was difficult to find a laboratory that was willing or able to accept the project. Eventually in February 2023, the B.C. Firearms Lab was provisionally approved, but the RCMP had to wait for full approval before they could drop off the firearms.
- [18] Meanwhile, the police sent one of the firearms for forensic analysis for DNA and fingerprints. That was sent to the National Forensic Laboratory Services and, due to the backlog there, there was only one exhibit sent.
- [19] Then also meanwhile in February of 2023, the police also approached a private digital forensic lab to access and analyze the digital media from the CCTV system that was seized. The police were advised this could take months. The approval was obtained and the CCTV was sent to a private lab. In April of 2023, that analysis was received, and in May 2023 it was assigned to one of the police officers. There were hundreds of hours of CCTV to be analyzed.
- [20] In August of 2023, the police got the final approval for or the full approval for the firearms lab. The time required for approval was a result of the backlog. In September, the firearms were sent, and the affidavit of Constable Miryans describes the type of testing that was required. In May of 2024, the firearms lab completed their reports, and in June of 2024, the investigating officers met with the National Weapons Enforcement Support Team.
- [21] By July of 2024, a report to Crown counsel was completed and submitted, but that required further internal review, as there was a confidential informant, agencies involved, and other review. This was completed in November of 2024, and it was finally sent to Crown counsel in that month.
- [22] In January of 2025, the Crown counsel met with the investigators, and then in it was discovered that the previous s. 490(3) order granted by Justice Veenstra in March of 2024 had expired in September of 2024, so at that point a decision was made that this application had to be brought.

- [23] At this stage, the Crown counsel has the report and the expectation is that the work should be completed within the next month. So, as a result, as this is the end of April, the police are requesting an extension until the end of June 2025, so that the Crown counsel can review the report and make a decision.

Analysis

- [24] Addressing first the requirements under s. 490(3). Based on the supporting affidavit, I am satisfied that this is a complex investigation. The investigation so far has involved analysis by third party experts. This included the forensic lab for firearms and weapons. It also involved the forensics for DNA and lab. It also involved the private firm for the CCTV. The RCMP do not have control over the capacity or ability of third parties to complete their work.
- [25] The analysis on what I will call the real evidence, the firearms, was only completed -- just got to get the date again -- last year and then towards the summer, and then a report to Crown counsel was completed.
- [26] I cannot detect any foot dragging or lack of diligence on the part of the police. I am satisfied that the times estimated by Constable Miryans for completing the review by Crown counsel is reasonable. The applicant is asking for a further detention of only two months.
- [27] I am satisfied, having regard to the complex nature of the investigation, that the further detention is warranted until June 30, 2025.
- [28] That does not complete the analysis though, because I next have to address the requirements of s. 490(9.1). I am similarly satisfied that detention might reasonably be required for the purpose of the investigation. The items seized are 39 handguns, rifles, shotguns, and receivers. Some of them are non-restricted firearms, restricted firearms, and prohibited firearms. They are likely to be real evidence if charges are approved.
- [29] There was an expiration of the detention order made by Justice Veenstra. That expired in September of 2024. That was not discovered until January of 2025, and then this application was brought reasonably soon after that. Mr. Reithmeier has been quite candid in saying that it should not have happened, but sometimes mistakes do happen and the police or the Crown acted quickly to bring this application.
- [30] I find it is in the interest of justice to extend the detention until June 30, 2025. In deciding whether to do that, I must balance the property and privacy interests of owners to have seized property returned to them and the legitimate investigation requirements. Seizure of the items sought does involve physical property interest, but does not appear to engage significant privacy interests. However, many of the items seized cannot be lawfully returned.

- [331] The investigation involves very serious alleged crime. Numerous appellate case authorities, have spoken of the dangers of firearms. Society has a very strong interest in investigating serious crimes and allowing the police to properly conduct those investigations.
- [32] The police investigation appears to have been completed. The report to Crown counsel is done and it is only the review of Crown that is required, and the applicant is seeking a relatively short further two months of detention.
- [33] In my view, the balance weighs in favour of detention of the items sought and meets the test in s. 490(9.1).
- [34] The application is granted, except for two items which I noted at the very beginning of the reasons. Apparently, some of the documents are -- yes, it is. It is Exhibit 22-13819D-3, which are Alberta insurance registration documents. Those do not appear to be reasonably required, or for the originals to be kept, so the application is dismissed with respect to those. And the other is the controlled substances, and I am not sure if I have got --
- [35] CNSL N. REITHMEIER: If you look at the 9, Madam Justice.
- [36] THE COURT: Nine of the --
- [37] CNSL N. REITHMEIER: Affidavit.
- [38] THE COURT: -- affidavit, thank you. Oh, I am just -- I am looking at -- is it -- if I am looking at page 3, is that Exhibit 22-13819D to 137 to 13 -- 131 to 137?
- [39] CNSL N. REITHMEIER: Oh yes, so the item was in averment -- paragraph 7(f) and (g) would be them.
- [40] THE COURT: Not (f).
- [41] CNSL N. REITHMEIER: Oh no, pardon me, (g).
- [42] THE COURT: (g), just (g), yes.
- [43] CNSL N. REITHMEIER: Yes.
- [44] THE COURT: Okay, so it is Exhibit 22-13819D, 131 to 137, and as Mr. Reithmeier has pointed out, those do not appear to be reasonably required for this investigation. The application with respect to the continued detention of those items is dismissed as well.
- [45] That concludes my reasons.

"Norell J."

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