

March 30, 2020

Applications under s. 490 of the *Criminal Code* (Further Detention of Things Seized) during the Suspension of Supreme Court Operations

Applications under s. 490 of the Criminal Code for orders for further detention of things seized raise some distinct procedural issues in the current COVID-19 health emergency, during which the Court is hearing only essential and urgent matters, and keeping in-court appearances to a bare minimum.

Typically, applications under s. 490 face an inherent deadline because an earlier order of this Court or the Provincial Court is due to expire. Under the current circumstances, the required notice of the application to extend the period of detention may be difficult to give to the party(ies) from whom the things were seized because of illness, quarantine, self-isolation, social distancing, or business closures associated with the health emergency. Even where notice is successfully given, the notified party may (for similar reasons) have difficulty consulting counsel or taking the necessary steps to respond.

The following procedures will therefore apply to s. 490 applications in Supreme Court during the health emergency:

1. requests for the hearing of s. 490 applications are to be submitted electronically as a Request for Urgent Hearing in accordance with the general procedure set out in the applicable notice(s) issued by the Chief Justice during the health emergency and posted on the [Court's website](#);
2. if the material supporting a Request indicates that the existing detention period will expire within three weeks of the Request, the judge reviewing the Request will generally consider the application for further detention to be urgent, and will direct a date and time for the hearing of the application by telephone before the expiry date;
3. at the hearing by telephone:
 - (a) the Court may grant any application where the Crown indicates on the record that the person from whom the things were seized consents to the proposed order, or files a written document to that effect;
 - (b) if the Crown indicates that the person from whom the items were seized opposes the application, or if that person's position about the application is not known, or if the application cannot proceed for lack of notice to the person(s) from whom the things were seized, then the Court will generally adjourn the application to a fix-date appearance after the estimated resumption of normal court operations, and, at that fix-date appearance, a date and time for the hearing of the application will be set;
4. the person from whom the things were seized is therefore not required to take part in the telephone hearing during the suspension of the Court's normal operations, although they may do so if they wish on providing Supreme Court Scheduling at least 24 hours in advance with a telephone number at which they can be reached for the telephone hearing;
5. if the application is adjourned according to para. 3(b), the Crown will notify the person from whom the things were seized of the date and time of the hearing of the application, once the date is set.