

**ONTARIO COURT OF JUSTICE
(East Region)**

IN THE MATTER OF an application by the Attorney General for Ontario pursuant to section 490.1(1) of the *Criminal Code* for the forfeiture of certain property.

BETWEEN:

HIS MAJESTY THE KING

Applicant/Cross-Respondent

-and-

CHRISTOPHER JOHN BARBER

Respondent

-and-

**C B TRUCKING LTD and JONATHAN BARBER
and JUDY BARBER and DAN BARBER**

Respondents/Cross-Applicants

-and-

SPRING BANK FARMS INC

Cross-Applicant

CROWN'S FINAL SUBMISSIONS REGARDING FORFEITURE

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PART I: Overview of the Crown’s Position

- [1] This Honourable Court has determined that “there is no question ... that trucks and truckers and persons who came to Ottawa created a mass mischief” during the Freedom Convoy protest and that this mischief “significantly interfered with the lawful use and enjoyment of property” in downtown Ottawa (*R. v. Lich & Barber*, [2025 ONCJ 304](#), at paras. [255-256](#)). One of the many ways this Court held the mischief was committed was by the blocking and/or obstructing of various streets in downtown Ottawa. On April 3, 2025, Christopher Barber (“Barber”) was found guilty as both a principal and a party to this mischief. Barber used his 2004 Kenworth truck, known far-and-wide as “Big Red”, in connection with the commission of this offence. As the Court found, “Big Red was one of many trucks that contributed to the blockage and obstruction of Wellington Street for a period of time” (*Lich & Barber*, at para. [287](#)). Accordingly, “Big Red” qualifies as offence-related property and is subject to forfeiture.
- [2] There are two applications at bar. *First*, on May 21, 2025, the Crown applied for forfeiture of “Big Red” and identified five Respondents: Barber, his company CB Trucking Ltd, his mother, his father, and his son. (collectively, “the Respondents”). *Second*, on September 12, 2025, four of the original Respondents joined with Spring Bank Farms Inc in a cross-application against the Crown. They seek three orders: (i) summary dismissal of the Crown’s application; (ii) return of “Big Red” owing to their appearing innocent of any complicity in, or collusion in relation to, Mr Barber’s mischief, and (iii) costs against the Crown.
- [3] For reasons set out more fulsomely below, the Crown’s position is that the Respondents have not met their onus in establishing that the Crown’s Application is “manifestly frivolous” (*R. v. Haevischer*, [2023 SCC 11](#), at para. [90](#)). Respectfully, the Application for Forfeiture is fully justified considering this Court’s findings and should be granted. Forfeiture of “Big Red” is not disproportionate, and no Respondent appears innocent of complicity or collusion. All three portions of the cross-application are meritless and should be dismissed.

PART II: (i) Issues, (ii) Law, and (iii) Application

(i) Issues

[4] Resolution of the two applications rests on a determination of the following issues:

- a. Whether the Crown’s application should be summarily dismissed;
- b. Whether “Big Red” is offence-related property in relation to the mass mischief;
- c. Whether any of the third-parties appear innocent of any complicity in, or collusion in relation to, the mass mischief;
- d. Whether forfeiture of “Big Red” would be disproportionate to the nature and gravity of the mass mischief and the circumstances surrounding the commission of the offence; and
- e. Whether costs against the Crown should be ordered.

(ii) Law

The Crown Incorporates Three Previous Submissions on the Law and its Application

[5] *First*, the Crown adopts its written submissions (regarding forfeiture) submitted on July 17, 2025 in paragraphs 87 through 101 of the “Crown Submissions on Sentencing”. For ease of reference, these are enclosed in **Appendix A**.

[6] *Second*, the Crown adopts its written submissions (regarding summary dismissal, return to third-parties, and costs) filed on September 9, 2025 in its “Form 2” Response to the meritless cross-application. For ease of reference, this “Form 2” is enclosed in **Appendix B**.

[7] *Third*, the Crown adopts its oral submissions (regarding summary dismissal) made on September 12, 2025. For ease of reference, the PowerPoint slideshow that amplified the oral submissions is enclosed in **Appendix C**.

Neither Party Carries a Burden regarding “Proportionality” or “Innocence”

[8] To resolve the two applications at bar, the issue of “onus” requires consideration. In turn, to properly assign the onus, the word “satisfied” must be interpreted in its legislative context, accordingly to its grammatical and ordinary sense, harmoniously with the scheme and object of its statute. When drafting the forfeiture regime in the *Criminal Code*, R.S.C. 1985, c. C-46 (“the *Code*”), Parliament saw fit to use variations of the conditional phrase “if a court is satisfied” in numerous instances, including:

- a. Section 490.1(1): “... if a person is convicted ... and, on application of the Attorney General, the court is satisfied, on a balance of probabilities ...” [Emphasis added]
- b. Section 490.4(3): “... if the court is satisfied ... that the person appears innocent of any complicity in, or collusion in relation to, the offence” [Emphasis added]
- c. Section 490.41(3): “... if a court is satisfied that the impact of an order of forfeiture ... would be disproportionate ...” [Emphasis added]
- d. Section 490.5(4): “Where ... the judge is satisfied that the applicant ... appears innocent of any complicity in any indictable offence ... or of any collusion in relation to such an offence ...” [Emphasis added]

[9] Notably, only in the first instance noted above (s. 490.1(1)) did Parliament clarify the onus (*i.e.* on the AG) and standard (*i.e.* balance of probabilities). Parliament did not address both these issues in the other instances when drafting the *Code*.

[10] Similarly, Parliament used nearly-identical language when drafting the analogous forfeiture regime in the *Controlled Drugs and Substances Act*, S.C. 1996 c 19 (“*CDSA*”), including:

- a. Section 16(1): "... if a person is convicted ... of a designated substance offence and, on application of the Attorney General, the court is satisfied, on a balance of probabilities ..." [Emphasis added]
- b. Section 19(3): "Where a court is satisfied ... that the person appears innocent of any complicity in an offence ... or an any collusion in relation to such an offence ..." [Emphasis added]
- c. Section 19.1(3): "... if a court is satisfied that the impact of an order of forfeiture ... in relation to real property would be disproportionate ..." [Emphasis added]
- d. Section 20(4): "Where ... the judge is satisfied that the applicant ... appears innocent of any complicity in any designated substance offence ... or of any collusion in relation to such an offence ..." [Emphasis added]

[11] Again, only in the first instance noted above (s. 16(1)) did Parliament clarify the onus (*i.e.* on the AG) and standard (*i.e.* balance of probabilities). Parliament did not address both these issues in the other instances when drafting the *CDSA*.

[12] This legislative drafting leads the Crown to support the interpretation of "satisfied" (and its impact on onus) favoured in *Canada (Attorney General) v. Jamal*, [2015 ONCJ 687](#) at paragraphs [73-88](#). In *Jamal*, at paras. [83-85](#), Green J's reference to the Conditional Sentence Order regime in section 742.1 of the *Code* is highly persuasive. Mindful of the similarities between the legislative drafting in the *Code* and *CDSA*, *Jamal* at paras. [87-88](#) is instructive:

[87] ... In short, neither side carries a burden with respect to the key issues of proportionality (as was focus in Sundstrom) or innocence. Rather, each of these issues remains "at large" and "wholly within the discretion of a sentencing court, guided of course by the factors listed in the CDSA and the relevant case authority".

[88] That said, and assuming all the other statutory criteria are met, one must remain mindful that dismissal of a forfeiture application commenced by the A.G. under s. 19(3) depends on judicial satisfaction that a lawful owner "appears innocent" (not "guilty") and, under s. 19.1(3), that the impact of the sought forfeiture order "would be disproportionate" (not "proportionate"). Put otherwise, the statutory phrasing of the requisite factual inquiries prescribes the direction of judicial scrutiny. Anything less than a high degree of judicial confidence will not avail an interested party or other relief claimant. That said, the content of the inquiry -- and, in particular, the meaning of "appears innocent" -- remains to be determined. [Emphasis added]

Proper Interpretation of "Appears Innocent" of any Complicity or of any Collusion

[13] *Jamal*, at paras. [103-110](#), also provides a highly persuasive interpretation of the phrase "appears innocent". Again, the similarities between the *Code* and CDSA language are critical to recall in relying upon paragraph [110](#):

[110] Factoring in the Craig-defined minimal blameworthiness requirement, and momentarily leaving aside the concept of "collusion", I conclude that declining forfeiture under s. 19(3) requires that the application judge be satisfied a non-offender lawful owner "appears" -- not "is" -- "innocent" in the sense that he or she did not knowingly or negligently allow their property to be used in relation to a designated substance offence. [Emphasis added]

[14] Additionally, the Court of Quebec (Criminal and Penal Division) usefully analyzed the notions of complicity and collusion in *Attorney General of Quebec v Laroche*, [2024 QCCQ 2295](#) at paras. [44-46](#):

[44] While related, the notions of complicity and collusion are not identical.

[45] Collusion involves an agreement between one or more persons with an aim to mislead or attain an objective prohibited by law.[34] The agreement can be inferred from evidence relating to the behaviour of the parties.[35] Conduct which constitutes wilful blindness may be taken into account to establish that there was collusion.[36]

[46] For its part, complicity usually connotes acting as a party or accomplice with knowledge of the unlawful objective and an intention to further it.[37] In layperson's terms it could be described as a "partnership

in wrongdoing”.[38] When establishing criminal liability the notion of complicity generally excludes mere negligence.[39] The same does not appear to be true in the forfeiture context. In the case of Craig, the Supreme Court clearly distinguished between the threshold for establishing criminal responsibility for complicity and the lower hurdle that applies in the case of forfeiture, pointing to the historic roots of forfeiture to punish those who “negligently” allow their property to be used for wrongful purposes.[40] Consequently, a third-party owner may be subject to forfeiture where he knowingly or even negligently permits his property to be used in connection with the commission of a designated substance offence.[41] [Emphasis added]

Costs

[15] In the criminal context, the Crown is rarely ordered to pay costs because the Crown is not an ordinary litigant. It does not win or lose criminal cases. Instead, it makes decisions in the public interest. Costs, however, can be rarely and exceptionally awarded in two circumstances.

- a. *First*, in situations of egregious misconduct that constitute a marked departure from the reasonable standards expected of the prosecution. Costs in this circumstance are punitive.
- b. *Second*, costs may be awarded (in the absence of Crown misconduct) where exceptional circumstances exist such that the opposing party should not bear the financial burden resulting from the litigation. Costs in this circumstance are compensatory.

[16] Punitive costs against the Crown are typically reserved for cases of misconduct involving “a marked and unacceptable departure from the reasonable standards expected of the prosecution” that goes beyond mere negligence (*R. v. 974649 Ontario Inc.*, [2001 SCC 81](#), at para. 87; *R. v. Leduc*, [\[2003\] O.J. No. 2974](#), at paras. 157-160 (C.A.); *R. v. Singh*, [2016 ONCA 108](#), at paras. 33-35). The burden of proof for establishing an abuse of process lies on the applicant, who must prove it on a balance of probabilities (*R. v. Anderson*, [2014 SCC 41](#), at para. 52). A punitive costs award against the Crown is not an appropriate remedy in the absence of Crown misconduct, unless there is something “rare” or “unique”

about the circumstances that causes extreme hardship to the accused (*R. v. Tiffin*, [2008 ONCA 306](#) at paras. [93-101](#); *Singh*, at para. [38](#)).

[17] Where misconduct has been committed by other parties, such as witnesses or investigators, costs will not be ordered against the Crown unless the Crown participated in the misconduct. Where a third-party has engaged in misconduct, the appropriate remedy is a civil claim for damages, not costs (*Tiffin*, at para. [96](#)).

[18] In the absence of Crown misconduct, costs may also be awarded against the Crown in exceptional circumstances where fairness requires that an individual litigant not carry the financial burden flowing from his or her involvement in the litigation (*R. v. Trask*, [\[1987\] 2 S.C.R. 304](#); *R. v. Garcia*, [\[2005\] O.J. No. 732](#), at para. [13](#) (C.A.); *Tiffin*, at para. [94](#)). This may occur in circumstances where the issue between the Crown and the accused is moot (*R. v. A.J.O.*, [\[2004\] O.J. No. 1221](#) (S.C)), or where the Crown has a minimal interest in the disposition of the specific appeal but a vital interest in the resolution of the legal issue raised on appeal from which the public at large will benefit (*Garcia*, at paras. [21-23](#)). Importantly though, this too is an exceptional remedy, as explained in *Garcia*, at para. [22](#):

... The mere fact that a Crown appeal raises a legal issue of general importance whose resolution will affect other cases cannot suffice to make the appeal an ‘exceptional’ case warranting a costs order against the Crown. Were that the law, costs orders would be commonplace, certainly in this court and the Supreme Court of Canada where most Crown appeals in summary conviction matters raise legal issues that potentially impact on many other cases.

[19] That said, “where an accused has a significant practical stake in the prosecution, high public interest in the outcome of the proceedings would not warrant the characterization of that matter as a “test case” and therefore would not displace the general rule that costs are not awarded against the Crown (*R. v. Ralph*, [2008 NLCA 71](#), at para. [18](#)).

[20] For a list of examples where costs have and have not been awarded for both punitive and compensatory reasons, please see [Appendix D](#).

(iii) Application

Summary Dismissal of the Crown’s Application is Unwarranted

[21] For the reasons articulated in the Crown’s “Form 2” (enclosed in [Appendix B](#)) and during submissions on September 12, 2025 (supported by the PowerPoint slideshow enclosed in [Appendix C](#)), summary dismissal of the Crown’s application is unwarranted. In no way is the Crown’s application manifestly frivolous. Accordingly, the *first* portion of the cross-application should be dismissed.

The Crown Incorporates the “Grounds” from its Notice of Application

[22] The Crown incorporates the “grounds” detailed in paragraphs 1 through 14 of its Notice of Application dated May 1, 2025. For ease of reference, the amended version and the original are enclosed in [Appendix E](#). These grounds are drawn from *Lich & Barber*.

“Big Red” is Offence-Related Property in Relation to the Mass Mischief

[23] In addition to the “grounds” noted in the preceding paragraph (enclosed in [Appendix E](#)), the Crown also relies on paragraphs 95 to 97 of the “Crown Submissions on Sentencing” filed on July 17, 2025 (enclosed in [Appendix A](#)) to establish that “Big Red” is ORP in relation to the mass mischief. In drawing this conclusion, the Crown recalls the Court of Appeal’s characterization of offence-related property in *R. v. Trac*, [2013 ONCA 246](#) at para. [96](#) as having a “very wide definition”. According to section 490.1(1), “Big Red” is therefore presumptively to be forfeiture to the Crown – subject only to any relief issued pursuant to sections 490.3 to 490.41.

Complicity or Collusion of Danny Barber, Judy Barber, and Spring Bank Farms Inc

[24] Following the testimony of Danny Barber on September 25, 2025, neither Danny nor Judy appear innocent of any complicity or collusion. Moreover, their complicity and collusion is attributed to the Cross-Applicant Spring Bank Farms Inc by virtue of the guiding principles of corporate attribution.

- [25] Danny was “very proud” of his son’s efforts to “express dissatisfaction” via the “peaceful protests” that happened in Ottawa in January and February 2022. In his eyes, his son was a “hero”. He and his wife “agreed with everything that [their son] was doing”. Notwithstanding Danny’s knowledge that “eventually something started going wrong with the police”, he never “told Chris to come home and avoid trouble”. This support is further evidenced by the letter from Danny and Judy Barber dated April 12, 2025 filed at sentencing (see Exhibit #7, at tab 25).
- [26] Danny knew that “Big Red was one of the trucks parked in downtown Ottawa protesting”. He knew that “the truckers connected to those trucks [including his son and grandson] were not earning a living as a result of their efforts to be in Ottawa”. He knew that fundraising for these truckers to remain in Ottawa was necessary to keep the protests alive”. Mindful of their wholehearted support, he and wife donated approximately \$500 “just to pay for everyday expenses down in Ottawa”.
- [27] Mindful of their financial support of their son while in Ottawa and their agreement with everything he was doing, the Court cannot be satisfied that they appear innocent of any complicity in the mass mischief – or of collusion in relation to it. Applying the interpretation of complicity from *Jamal* and *Laroche*, they knowingly or negligently allowed their property (*i.e.* their money) to be used in relation (or in connection) with the commission of the mass mischief. Mindful of their 50:50 ownership of Cross-Applicant Spring Bank Farms Inc, their complicity is attributed to the corporation accordingly (based on the guiding principles articulated in *Scott v. Golden Oaks Enterprises Inc.*, [2024 SCC 32](#) at para. [62](#)).
- [28] Additional red flags exist regarding their alleged \$50,000 loan to buy “Great White” for Jonathan, including: (i) their failure to register their ownership interest in “Big Red”; (ii) their failure to possess “Big Red” (to protect their loan security); and (iii) their failure to require any re-payment of the loan by Springbank Holdings.

Complicity or Collusion of Jonathan Barber and CB Trucking Ltd

- [29] Similarly, following Jonathan’s testimony on September 25, 2025, he does not appear innocent of any complicity or collusion. Like his grandfather, Jonathan believed that “peaceful protest” is what occurred in Ottawa in January and February 2022. He “fully supported” his dad’s efforts protesting in Ottawa and characterized his dad as a “hero”. This support is further evidenced by the letter from Jonathan dated April 14, 2025 filed at sentencing (see Exhibit #7, at tab 26). Jonathan knew where “Big Red” was parked on Wellington Street but never asked his dad to move it. He “fully supported the presence of Big Red on Wellington the entire time she was there”.
- [30] Jonathan drove “Big Red” into Ottawa with his father (and Ms Lich in the passenger seat) on January 29, 2022, and he didn’t leave the area until his father’s release from custody on February 18, 2022. Notwithstanding his presence in the National Capital Region for three full weeks, Jonathan has a remarkably poor memory of any details. He identified himself in a photo posing with “Big Red” on Wellington Street (posted to his dad’s Facebook page, indicating that Jonathan “jumps into action”, see Exhibit #7, tab 5 at page 21) but was unable to recall any details whatsoever of his own helpfulness – or his dad’s. He claimed that “My memory doesn’t serve me too well for that stuff”.
- [31] His alleged inability to recall any details regarding his own helpfulness should be treated with caution. More generally, the Court should have concerns about his credibility and reliability when making *four* comparisons between his testimony and his affidavit – notwithstanding having “carefully reviewed it before signing off on it”. *First*, he agreed in cross-examination that “Nobody else was making decisions for the company [CB Trucking] at that time, other than your dad”. In contrast, Jonathan swore at paragraph 38 of his affidavit that “C.B. Trucking Ltd had no knowledge of the Kenworth truck being used to block or obstruct a street, highway, or road between January 28, 2022 and February 17, 2022”. Mindful of the same guiding principles of corporate attribution from *Golden Oaks* at para. [62](#) (which are equally applicable to one-person corporations, see para. [71](#)), CB Trucking Ltd is attributed with complicity in the mass mischief owing to Christopher Barber being the only director of the corporation in January and February 2022.

[32] *Second*, Jonathan prevaricated during cross-examination: “The truck [Great White] is fixable, but the truck is also written off. And so what you do with a written-off truck is you fix it after”. In contrast, Jonathan swore at paragraph 40 of his affidavit that “The Peterbilt Truck was entirely written off and destroyed” [emphasis added]. At paragraph 42, he noted its “wreck and destruction”. Upon confrontation during cross-examination, the status of “Great White” was watered-down to “essentially written off” [emphasis added]. This is more consistent – but still not entirely so – with Danny’s testimony that “Great White” is “sitting in the hospital right now”.

[33] *Third*, during cross-examination of Danny and Jonathan, the Court learned of additional trucks owned by CB Trucking Ltd (including “Old Blue” and “Jay’s Truck”) with income-generating capacity. In contrast, Jonathan swore at paragraph 42 of his affidavit that “Big Red” is the “only revenue generating asset that CB Trucking Ltd has either ownership of or the right to possess” [emphasis added] in the absence of “Great White”. In the same paragraph, he further specified: “It is the only such asset” and “It is the only income generating asset ...” [emphasis added]. Upon confrontation during cross-examination, he again backtracked regarding “Big Red”: “It’s not the only, but it is the top one. It’s the main” [emphasis added].

[34] *And fourth*, Jonathan eventually agreed during cross-examination that the other trucks and lease operators have revenue-generating potential. In contrast, Jonathan swore at paragraph 43 of his affidavit that “there is no known means for CB Trucking Ltd or Springbank Holdings Ltd to pay back Spring Bank Farms Inc” [emphasis added].

[35] Mindful of the complicity and/or collusion of all the Cross-Applicants, the *second* portion of the cross-application should be dismissed because none of them appear innocent.

Forfeiture of “Big Red” would Not be Disproportionate to the Gravity and Circumstances

[36] As the Crown has maintained throughout its various submissions during trial and sentencing, context is critical. Mindful of all the circumstances, the Crown highlights paragraphs 98 to 100 of the “Crown Submissions on Sentencing” filed on July 17, 2025

(enclosed in **Appendix A**) to establish that forfeiture of “Big Red” is not disproportionate to the gravity of the mass mischief (which was widespread and significant) and the circumstances surrounding its commission. Additional relevant circumstances appear in Exhibit #7 (the 28-tab black binder):

- a. Tab 1: The admissions regarding social media, especially: 10-14, 16-20, 25, 28
- b. Tab 2: Screenshot of interference on Wellington Street
- c. Tab 3: *“I just came down to Big Red here to fire it up. It hasn’t been run in probably over a week.”* [Posted on February 7, 2022]
- d. Tab 4: Black and white image of “Big Red” featured on the Freedom Convoy logo (on pages 1 and 170)
- e. Tab 5: “Big Red” featured on numerous pages (1, 17, 21 behind Jonathan, 26 from text message #2438, 29 from text message #2438, 34 from text message, and 41 on the Freedom Convoy logo)
- f. Tab 6: Jonathan driving “Big Red” on Wellington Street (with Barber and Tamara Lich onboard)
- g. Tab 7: *“Lettin’ this kid drive, right, Jonathan?”*
- h. Tab 8: “Big Red” featured on the Freedom Convoy logo
- i. Tab 9: See especially pages 46-49 with screenshots, 54, 58, 60-79
- j. Tab 10: Screenshots texted to Barber at pages 46-49 above
- k. Tab 11: Post re: “Big Red” forwarded to Barber
- l. Tab 12: Front-page article re: “Big Red” forwarded to Barber
- m. Tab 13: Photo of “Big Red” on Wellington Street sent to Barber
- n. Tab 14: Photo of “Big Red” on Wellington Street sent to Barber
- o. Tab 15: Photo of “Big Red” costume sent to Barber
- p. Tab 16: Text from Barber wanting to return “Big Red” onto Wellington Street
- q. Tab 17: Photos of “Big Red” and “Big Red” merchandise sent to Barber
- r. Tab 18: Photos of “Big Red” sent to Barber
- s. Tab 19: Photo of “Big Red” merchandise and front-page article re: “Big Red” sent to Barber
- t. Tab 20: Photo of “Big Red” sent to Barber

- u. Tab 21: Photo of “Big Red” and publicity headshot with “Big Red” sent by Barber
- v. Tab 22: Photo of “Big Red” sent to Barber
- w. Tab 23: Texts with Danny and Judy
- x. Tab 24: Photo of “Big Red” sent to Barber
- y. Tab 25: Letter from Danny and Judy Barber
- z. Tab 26: Letter from Jonathan Barber
- aa. Tab 27: Barber’s testimony on May 21, 2025 (especially pages: 25, 27, 29, 34-36, 44, 60-62, and 67)
- bb. Tab 28: Barber’s testimony on May 22, 2025 (especially pages: 25, 26, 30-32, 35-38, 41, 44-45, 52, 56, 59, and 75-76)

No Costs Should be Ordered Against the Crown

[37] Mindful of the complicity or collusion of the Cross-Applicants, they can no longer reasonably maintain their position that the Crown’s application is “a total failure of the Crown to exercise its discretion in a fair and objective manner”. Accordingly, the *third* portion of the cross-application should be dismissed.

PART III: Conclusion and Requested Disposition

[38] Based on these written submissions, the enclosed appendices, and the amplification scheduled to be heard on November 26, 2025, the Crown respectfully requests that this Honourable Court grant its application for forfeiture of “Big Red” and dismiss the meritless cross-application.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 22nd day of November, 2025



Tim Radcliffe & Siobhain Wetscher
Counsel for the Applicant

APPENDIX A – Forfeiture-Related Submissions
from “Crown Submissions on Sentencing” dated July 17, 2025

[REDACTED]

[REDACTED]

PARV IV – FORFEITURE

SPECIAL NOTE: Although being included with Sentencing for ease of reference, a separate Forfeiture Hearing has yet to be set for this matter. These submissions, and others in light of further identified interested parties will be made at that time.

Forfeiture – The Law

[87] Section 490.1(1) of the *Code* provides for mandatory forfeiture, subject to relief provided in ss. 490.3 to 490.41 in the following circumstances (*R. v. Trac*, [2013 ONCA 246](#), at para. [74](#)):

- a. The accused must be convicted of an indictable offence;
- b. The Crown must prove on the balance of probabilities that the property sought forfeited is “offence-related property”; and
- c. The Crown must prove on the balance of probabilities that the indictable offence was committed “in relation to that property”.

[88] One of the rationales for forfeiture is to remove the instruments, devices, or means by which crime is committed (*Trac*, at para. [80](#)). While sentencing focuses on the offender, the forfeiture scheme focuses on the property itself, and its role in past and potential future crime (*R. v. Kabanga-Muanza*, [2019 ONSC 1161](#), at para. [85](#)). Even where an individual’s conduct

does not rise to criminal liability with respect to a particular offence, if their property has been permitted to be used for criminal purposes, it may well be subject to forfeiture (*R. v. Craig*, [2009 SCC 23](#), at paras. [40-41](#)).

[89] Section 2 of the *Code* defines “offence related property” as property within or outside Canada:

- a. By means or in respect of which an indictable offence is committed;
- b. That is used in any manner in connection with the commission of such an offence; or
- c. That is intended to be used for committing such an offence.

[90] This definition is broad and includes “real and personal property of every description” and “property originally in the possession or under the control of any person and any property into or for which it has been converted or exchanged and anything acquired at any time by the conversion or exchange” (*Trac*, at para. [77](#)). Offence related property can include vehicles used in the commission of an offence. For example, in *Kabanga-Muanza*, the court considered forfeiture of a vehicle used by the offender in a drive-by shooting. The vehicle was 15 years old, and had insignificant monetary value (*Kabanga-Muanza*, at para. [123](#)). Contained within the vehicle had been a firearm that was stored in a discreet location. The court was sympathetic to the offender’s assertions that he lacked the resources to purchase a new vehicle and that its forfeiture would hinder rehabilitation efforts by making it harder to find employment, go back to school, or move away from the city and its negative influences (*Kabanga-Muanza*, at paras. [122](#), [124](#)). That said, however, the court found that there was a real risk the vehicle would, if not forfeited, aid in the commission of future offences (*Kabanga-Muanza*, at para. [124](#)). Forfeiture of the vehicle was subsequently ordered on the basis that it represented offence-related property.

[91] In *Kabanga-Muanza*, the court declined to exercise its discretion conferred by statute to refuse forfeiture pursuant to s. 490.41(3) of the *Code*. That provision provides courts with the ability to refuse forfeiture where it would be “disproportionate to the nature and gravity of the

offence, the circumstances surrounding the commission of the offence and the criminal record, if any, of the person charged with or convicted of the offence” (s. 490.41(3) of the *Code*). In *Trac*, at paras. [95-96](#), the court discussed the judge’s powers to exercise its discretion in granting relief from forfeiture:

Where the Crown establishes a right of forfeiture under s. 490.1(1) or a judge chooses to exercise his discretion in favour of forfeiture under s. 490.1(2), the judge may still grant relief from forfeiture under ss. 490.3 to 490.41. These provisions deal with various persons and types of property, including innocent third party owners and dwelling homes. I need only refer specifically to s. 490.41(3), which creates a broad power to relieve in whole or in part from a forfeiture order made under either s. 490.1(1) or s. 490.1(2) ...

The provision giving the judge a broad power to relieve from forfeiture in respect of “offence-related property” has no comparable provision in the forfeiture scheme applicable to the proceeds of crime. In my view, the discretion to relieve from forfeiture, in whole or in part, found in s. 490.41(3) is a reflection of the very wide definition of “offence-related property” and the consequently broad forfeiture powers in s. 490.1. Parliament recognized that there would inevitably be cases where the forfeiture of “offence-related property” would be unjust in the circumstances. Rather than attempting a narrower definition of “offence-related property” and potentially missing property that should be forfeited to effectively deter criminal conduct, Parliament chose instead to protect against the injustice of excessive forfeiture by giving trial judges the discretion to relieve from forfeiture. [Citation omitted.] [Emphasis added.]

[92] When considering discretion under s. 490.41(3) of the *Code*, all offence-related property forfeiture applications are subject to a proportionality analysis. The section permits the court to refuse forfeiture if it would be disproportionate to:

- a. The nature and gravity of the offence;
- b. The circumstances surrounding the commission of the offence; and
- c. The criminal record of the accused, if any.

[93] When conducting the proportionality analysis, courts are not bound to consider the objectives and principles of sentencing set out in the *Code*, such as the personal circumstances of the offender, in determining whether forfeiture is “disproportionate” under s. 490.41(3) of the *Code*. Importantly, decisions which overemphasize factors such as personal or financial

circumstances of the offender when considering the forfeiture of offence-related property may be subject to appeal (see for example: *R. v. Manning*, [2013 SCC 1](#); *Craig*).

[94] Although forfeiture is part of the sentencing process, it is important to note that sentencing of an offender and forfeiture of offence-related property have very distinct purposes and consequences (*R. v. Black*, [2010 NBCA 65](#), at paras. [22-23](#); leave to appeal dismissed, [2010] S.C.C.A. No. 469). The main focus of forfeiture of offence-related property is not on punishment, but rather, on the relinquishment of the property itself in relation to the offence(s) committed. Courts must be mindful that forfeiture should not be consolidated with sentencing from a totality perspective, as it could lead to lower terms of incarceration for offenders with property available for forfeiture (*Craig*, at paras. [34](#), [40](#)). Unlike sentencing, the personal circumstances of the offender are generally not relevant when it comes to forfeiture of offence-related property (see for example: *R. v. Lavigne*, [2006 SCC 10](#); *Craig*; *Manning*)

“Big Red” is offence-related property and should be forfeited:

[95] From January 28 until February 9, 2022, Barber parked his semi-truck, “Big Red” on Wellington Street. This Court held that “there is no evidence to support he was blocking any street, nor is it required. The Crown must prove that he participated in the obstruction” (*Lich & Barber*, at para. 284). The Court ultimately found that Big Red “was one of many trucks that contributed to the blockage and obstruction of Wellington Street for a period of time” and that “its presence there is documented in photographs, text messages and in video” (*Lich & Barber*, at para. 317). Furthermore, Barber participated in “slow rolls”, where he spoke of “train [wrecking] traffic” and “completely messing up this city” (*Lich & Barber*, at para. 295).

[96] Although OPS permitted trucks, including Big Red, to park on Wellington Street, it did so subject to conditions set out in a Traffic Plan (Exhibit 125). These conditions included, among other things, that demonstrators were to take direction from police where applicable, leave open space for emergency vehicles at all times, and that all staging areas must keep an adjacent emergency lane clear (*Lich & Barber*, at para. 294). This Court held that “none of that was adhered to by the truckers” (*Lich & Barber*, at para. 294). Trial evidence established that

Wellington Street was able to maintain an emergency lane during the first weekend (January 28-30, 2022), but that by the Monday or Tuesday it was completely lost (*Lich & Barber*, at para. 25). According to Kim Ayotte, “there was no emergency lane on Wellington” (*Lich & Barber*, at para. 55). Police were attempting to manage the situation, and “balance the right of free speech but mitigate the impact”, but this was not an endorsement or permission for criminal mischief (*Lich & Barber*, at para. 28).

[97] The Crown respectfully submits that it has met the test for forfeiture as: (1) Barber was convicted of an indictable offence; (2) having been one of the trucks that contributed to the blockage/obstruction of Wellington Street, participated in slow rolls, and therefore the means by which the offence was in part committed, Big Red is offence-related property pursuant to s. 2 of the *Code*; and (3) the factual underpinnings of Barber’s conviction include, among other things, the blocking of streets, meaning that on a balance of probabilities the offence was committed in relation to that property (*Trac*, at para. [74](#)).

[98] The Crown submits that in the circumstances, this Court should not exercise its discretion conferred by statute to refuse forfeiture. Although Barber comes before the Court with no criminal record, as already outlined in these materials, the circumstances surrounding the commission, nature, and gravity of the offences Barber committed are serious. When considered the context of the Freedom Convoy, forfeiture of Big Red is not disproportionate in this case for the following reasons:

- a. Big Red was parked on Wellington Street, contributing to its blockage and obstruction, for eleven days.
- b. Given that an emergency lane was not maintained on Wellington Street, Barber did not adhere to the Traffic Plan provided by OPS, a condition precedent to being able to park Big Red on Wellington Street.
- c. Barber similarly did not take direction to move Big Red when asked by OPS, despite their offer of assistance, and instead moved the truck on his own terms (Exhibit 127, at pp. 54, 58, 60-79).
- d. As of at least February 4, Barber would have been aware that the Freedom Convoy was no longer welcome and police would be seeking to restore public

order, he did not move Big Red for a further five days (*Lich & Barber*, at para. 301).

- e. Barber participated in “slow rolls” which this Court found was an “intentional act to interfere with the enjoyment of others driving on the highway”. Texts associated Barber’s attendance in Ottawa included “we are completely messing this city up”, “we fucked this town up”, “it’s already locked. We train wrecked it”. Speaking of a slow roll, Barber described it as “really good train wrecked traffic” (*Lich & Barber*, at para. 295, 312). Barber did not receive permission from OPS to partake in these activities.

[99] The involvement of Big Red in the mischief occasioned by the Freedom Convoy is far more significant than in other cases that have considered forfeiture in this context. For example, in *R. v. Blanchfield*, April 10, 2025, Ottawa, 04100-998-22-9064 (Ont. C.J.), although the court found the accused’s truck to constitute offence related property due to it blocking Rideau Street for several hours in a demonstration following the Freedom Convoy, its forfeiture would be disproportionate (*Blanchfield*, at p. 19). This was because the truck would prove useful to the accused’s business, and “its use as a tool of mischief was of short duration, a half day” (*Blanchfield*, at pp. 19-20). Unlike Barber (who has no criminal record), the accused in *Blanchfield* had a dated criminal record with no similar offences and the court therefore found that he did not pose a “recurrent and direct threat to public safety” (*Blanchfield*, at p. 20). The court also held that the truck was used as a pedestal which allowed the accused to commit the offence of cause disturbance, which is not an offence attracting forfeiture (*Blanchfield*, at p. 20).

[100] The involvement of Big Red and the ensuing seriousness and impact to the city is far greater than *Blanchfield*. Big Red was directly involved in blocking/obstructing Wellington Street, center of Canada’s law and democracy, for 11 days, it was also used as a tool to interfere with traffic in significant ways. Big Red is also an important symbol of the Freedom Convoy 2022, as documented in text messages, news articles, and in social media. When considering this alongside Big Red’s direct role in the Freedom Convoy, particularly in the context of the impact it had on the city, the forfeiture of Big Red is not disproportionate.

[101] The Crown has recently been made aware of two further individuals who have in interest in Big Red. In light of this, it will reserve further submissions for the Forfeiture Hearing, which has yet to be scheduled.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 17th day of July, 2025

Siobhain Wetscher & Tim Radcliffe

Siobhain Wetscher & Tim Radcliffe
Assistant Crown Attorneys

APPENDIX B – “Form 2” Response
Filed on September 9, 2025

Form / Formule 2

RESPONSE

RÉPONSE

ONTARIO COURT OF JUSTICE
COUR DE JUSTICE DE L'ONTARIO

East / Est

Region / Région

(Rule 2.2, Criminal Rules of the Ontario Court of Justice)
(Règle 2.2, Règles de procédure en matière criminelle de la
Cour de justice de l'Ontario)

23-11401103

Court File No. (if known)
N° du dossier de la cour (s'il est connu)

BETWEEN: / ENTRE

HIS MAJESTY THE KING / SA MAJESTÉ LE ROI

- and / et -

**CHRISTOPHER JOHN BARBER
and CB TRUCKING LTD**

(defendant(s) / défendeur(s))

1. NAME OF RESPONDENT

NOM DE LA PERSONNE INTIMÉE

Ottawa Crown Attorney's Office - On behalf of His Majesty the King

2. CHECK ONE OF THE TWO BOXES BELOW

COCHEZ LA CASE QUI CONVIENT CI-DESSOUS

☐

I am appearing in person. My address, fax or email for service is as follows:

Je comparais en personne. Mon adresse, mon numéro de télécopieur ou mon adresse électronique aux fins de signification sont les suivants :

☒

I have a legal representative who will be appearing. The address, fax or email for service of my legal representative is as follows:

J'ai un représentant juridique qui sera présent. L'adresse, le numéro de télécopieur ou l'adresse électronique de mon représentant juridique aux fins de signification sont les suivants :

Siobhain Wetscher and Tim Radcliffe

Assistant Crown Attorneys, Ottawa Crown Attorney's Office,

3. CONCISE STATEMENT OF REASONS FOR RESPONDING

BRÈVE DÉCLARATION DES MOTIFS DE LA RÉPONSE

(Briefly state why you are opposing the Application. For example, "The Applicant has not provided any medical evidence about pending surgery"; "The Crown disclosure is complete"; or "The length of time is not unreasonable, the Applicant has acquiesced to any delay, and there has been no prejudice flowing from the time to trial.")

(Expliquez brièvement pourquoi vous vous opposez à la demande. Par exemple : « L'auteur de la demande n'a pas produit de preuve médicale au sujet de son intervention chirurgicale imminente. », « La Couronne a divulgué tous les documents qu'elle pouvait. », « Le temps écoulé n'est pas excessif. L'auteur de la demande a accepté n'importe quel retard et le temps écoulé jusqu'au procès ne lui a causé aucun préjudice. »)

1. This Honourable Court should dismiss all three requests made by the Applicants in their Form 1.

2. First, regarding their request for summary dismissal – The Applicants have not discharged their onus to justify summary dismissal. Proper statutory interpretation and binding jurisprudence confirm that it is not necessary for the Crown to possess the alleged ORP (via interlocutory seizure or restraint) as a prerequisite to forfeiture.

3. Second, regarding their request for return – The Applicants can attempt to establish their “innocence” during the hearing of the Crown’s application on September 12, 2025. There is no stand-alone process to establish such “innocence” outside of an application by the Crown pursuant to s. 490.1 of the Code.

4. And third, regarding their request for costs – The Applicants have failed to establish any marked and unacceptable departure from the usual and reasonable standards of prosecution to support an award of costs against the Crown.

4. **RESPONSE TO THE APPLICANT'S GROUNDS TO BE ARGUED IN SUPPORT OF APPLICATION (#6 on application)**
RÉPONSE AUX MOTIFS DE L'AUTEUR DE LA DEMANDE QUI SERONT INVOQUÉS À L'APPUI DE LA
DEMANDE (point 6 de la demande)

THE LAW REGARDING SUMMARY DISMISSAL

1. According to the Supreme Court of Canada in *R. v. Haevischer*, 2023 SCC 11, applications in criminal proceedings should only be summarily dismissed if they are found to be “manifestly frivolous” (*Haevischer*, at paras. 3, 62).
2. This standard strikes a balance between protecting an accused’s right to full answer and defence and ensuring efficient court proceedings (*Haevischer*, at para. 3).
3. The onus rests with the party seeking summary dismissal to establish that the underlying application is manifestly frivolous (*Haevischer*, at para. 90).
4. Applications can only be found manifestly frivolous where there is a “fundamental flaw in the application’s legal pathway” or “applications that depend on legal propositions that are clearly at odds with settled and unchallenged law” (*Haevischer*, at para. 85).
5. The Supreme Court is clear that any fundamental flaw with the application “ought to be manifest” and that the error must be apparent on the face of the record, and if not, the application should proceed (*Haevischer*, at para. 88).

THE LAW REGARDING STATUTORY INTERPRETATION

6. According to the Supreme Court of Canada in *R. v. Jarvis*, 2002 SCC 73, “The approach to statutory interpretation can be easily stated: one is to seek the intent of Parliament by reading the words of the provision in context and according to their grammatical and ordinary sense, harmoniously with the scheme and the object of the statute.” (*Jarvis*, at para. 77, cited with approval in *R. v. Guerrier*, 2024 ONCA 838 at para. 21).
7. The modern approach has been further distilled to the useful shorthand of “text, context, and purpose” (*Guerrier*, at para. 22). A statute is considered to form a system. Every component contributes to the meaning, and the whole gives meaning to its parts. Each provision should be considered in relation to other provisions, as parts of a whole.

ANALYSIS OF THE STATUTORY REGIME

8. Analysis of the following five provisions of the forfeiture regime confirms that:
(i) Parliament did not intend that possession of alleged ORP (via seizure or restraint) is a prerequisite to forfeiture; and (ii) restraint orders are optional - not mandatory.
9. First, if the Applicants are correct that possession is a prerequisite to forfeiture, it makes no sense that Parliament failed to note it in section 490.1(1) alongside the three other prerequisites. As noted by the Supreme Court of Canada in *R. v. Wolfe*, 2024 SCC 34, the maxim *expressio unius est exclusio alterius* (“to express one thing is to exclude another”) can have interpretive significance. “Where express reference is expected, the court can infer that the failure to mention something is the result of a deliberate decision to exclude it” (*Wolfe*, at para. 35).
10. Second, if the Applicants are correct that possession is a prerequisite to forfeiture, it makes no sense that Parliament legislated in s. 490.4(3) that a court “may” return the property to an innocent third-party. The absence of “shall” in this sub-section reveals Parliament’s intention that possession is not a prerequisite to forfeiture.
11. Third, if the Applicants are correct that possession is a prerequisite to forfeiture, it makes no sense that Parliament legislated in s. 490.41(3) that a court “may” revoke any restraint if disproportionality is established. Again, the absence of “shall” in this sub-section reveals Parliament’s intention that possession is not a prerequisite to forfeiture.

5. DETAILED STATEMENT OF SPECIFIC FACTUAL BASIS FOR OPPOSING APPLICATION
DÉCLARATION DÉTAILLÉE DES FAITS PRÉCIS SUR LESQUELS SE FONDE L'OPPOSITION À LA DEMANDE

CONTINUED FROM THE PREVIOUS PAGE

12. Fourth, if the Applicants are correct that possession is a prerequisite to forfeiture, it makes no sense that Parliament legislated in s. 490.8(1) that the Crown “may” apply for a restraint order. Again, the absence of “shall” in this sub-section reveals Parliament’s intention that possession is not a prerequisite to forfeiture.

13. And fifth, if the Applicants are correct that possession is a prerequisite to forfeiture, it makes no sense that Parliament needed to specify in s. 490.9(1) “any [ORP] that is the subject of a restraint order”.

REVIEW OF BINDING JURISPRUDENCE

14. Similarly, binding jurisprudence supports the proposition that preservation is optional. In *Quebec (Attorney General) v. Laroche*, 2002 SCC 72 at para 33, the Supreme Court of Canada considered the connection between restraint and seizure proceedings and orders of forfeiture. The Court noted: “As we saw earlier, restraint orders and warrants of seizure are procedures that the Crown *may use* to preserve property prior to conviction” [Emphasis added]. Effectively, restraint orders and seizure warrants are simply preservation tools and are distinct from forfeiture orders.

PRACTICAL EFFECT

15. The practical effect of the Applicants' position in some cases would be to make the failure to seize or the dismissal of a restraint order dispositive of the question of whether there should be a forfeiture – decided by someone without full knowledge of the underlying facts eventually established at trial.

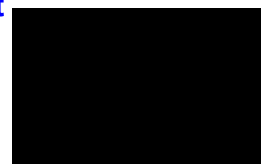
IN CONCLUSION

16. Mindful of the statutory regime, the binding jurisprudence, and the practical effect in some cases, the Applicants have not discharged their onus to establish any fundamental flaw in the Crown’s legal pathway. Accordingly, the Applicants' requests in their Form 1 should be dismissed, and the Crown’s application for forfeiture should proceed on September 12, 2025.

6. INDICATE BELOW OTHER MATERIALS OR EVIDENCE YOU WILL RELY ON IN RESPONSE TO THE APPLICATION
INDIQUEZ CI-DESSOUS D'AUTRES DOCUMENTS OU PREUVES QUE VOUS ALLEZ INVOQUER EN RÉPONSE
À LA DEMANDE

- ☒ Brief statement of legal argument
Bref exposé des arguments juridiques
- ☐ Affidavit(s) (List below)
Affidavits (Énumérez ci-dessous)
- ☒ Case law or legislation (Relevant passages should be indicated on materials. Well-known precedents do not need to be filed. Only materials that will be referred to in submissions to the Court should be filed.)
Jurisprudence ou lois. (Les passages pertinents doivent être indiqués dans les documents. Les arrêts bien connus ne doivent pas être déposés. Il ne faut déposer que les documents qui seront mentionnés dans les observations au tribunal.)
- ☐ Agreed statement of facts
Exposé conjoint des faits
- ☐ Oral testimony (List witnesses to be called at hearing of application)
Témoignage oral (Liste des témoins qui seront appelés à témoigner à l'audience sur la demande)
- ☒ Other (Please specify)
Autre (Veuillez préciser)

Such further materials as this Honourable Court may permit



September 9, 2025

(Date)

Signature of Respondent or Legal Representative / *Signature de l'intimé ou de son représentant juridique*

To: **Brendan Miller**

À : (Name of Applicant or legal representative / *Nom de l'auteur de la demande ou de son représentant juridique*)



(Address/fax/email for service / *Adresse, numéro de télécopie ou adresse électronique aux fins de signification*)

NOTE: Rule 2.2 requires that a response to an application be served on the applicant and on any other affected parties.
NOTA : La règle 2.2 exige qu'une réponse à une demande soit signifiée à l'auteur de la demande et aux autres parties concernées.

APPENDIX C – PowerPoint Slideshow
Presented on September 12, 2025



R. v. Christopher Barber & CB Trucking Ltd.

Amplification by the Crown regarding Summary Dismissal

Overview

1

Onus and
Standard

2

Statutory
Interpretation

3

Analysis of Five
Provisions

4

Confirmation by
the SCC

1

Summary Dismissal – Onus and Standard

R. v. Haevischer,
2023 SCC 11
(at para. 90)

The onus rests with the party seeking summary dismissal to establish that the underlying application is manifestly frivolous.

R. v. Haevischer,
2023 SCC 11
(at para. 85)

Applications can only be found manifestly frivolous where there is a “fundamental flaw in the application’s legal pathway” or

“applications that depend on legal propositions that are clearly at odds with settled and unchallenged law”.

2

Statutory Interpretation – The Modern Approach

R. v. Jarvis,
2002 SCC 73
(at para. 77)

“The approach to statutory interpretation can be easily stated: one is to seek the intent of Parliament **by reading the words of the provision in context** and according to their grammatical and ordinary sense, **harmoniously with the scheme and the object of the statute.**”

3

Analysis of Five Provisions

Provision #1 – Section 490.1(1)



s. 490.1(1) – Mandatory Forfeiture

Does **not** include a prerequisite of restraint or seizure
(despite numerous other prerequisites)

s. 490.1(1) – Mandatory Forfeiture

490.1 (1) Subject to sections 490.3 to 490.41, if a person is convicted, or discharged under section 730, of an indictable offence under this Act ... and, on application of the Attorney General, the court is satisfied, on a balance of probabilities, that offence-related property is related to the commission of the offence, the court shall

(a) ... order that the property be forfeited to Her Majesty in right of that province ...



Thursday, February 3, 2022

SCBEX 2020 Hall of Fame Inductee

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to
Ottawa

Provision #2 –
Section 490.4(3)

s. 490.4(3) – Return to 3rd Parties

Return to innocent third-parties is optional

(*i.e.* not mandatory)

s. 490.4(3) – Return to 3rd Parties

490.4 (3) A court **may order** that all or part of **the property** that would otherwise be forfeited under subsection 490.1(1) or 490.2(2) **be returned** to a person — other than a person who was charged with an indictable offence under this Act ... or a person who acquired title to or a right of possession of the property from such a person under circumstances that give rise to a reasonable inference that the title or right was transferred for the purpose of avoiding the forfeiture of the property — if the court is satisfied that the person is the lawful owner or is lawfully entitled to possession of all or part of that property, and that the person appears innocent of any complicity in, or collusion in relation to, the offence.

Provision #3 – Section 490.41(3)



s. 490.41(3) – Disproportionality Test

Revocation of restraint is optional

(*i.e.* not mandatory)

s. 490.41(3) – Disproportionality Test

490.41 (3) Subject to an order made under subsection 490.4(3), if a court is satisfied that the impact of an order of forfeiture made under subsection 490.1(1) or 490.2(2) would be disproportionate to the nature and gravity of the offence, the circumstances surrounding the commission of the offence and the criminal record, if any, of the person charged with or convicted of the offence, as the case may be, it may decide not to order the forfeiture of the property or part of the property and **may revoke any restraint** order made in respect of that property or part.

Provision #4 – Section 490.8(1)



Exhibit 135, Volume 2, Tab 66, Conversation 2340

s. 490.8(1) – Restraint Order

Application for restraint is **optional**

(*i.e.* not mandatory)

s. 490.8(1) – Restraint Order

490.8 (1) The Attorney General may make an application in accordance with this section for a restraint order under this section in respect of any offence-related property.

Provision #5 – Section 490.9(1)

Exhibit 135, Volume 2, Tab 63, Conversation 2320

s. 490.9(1) – Application of 489.1/490

Identifying a specific type of ORP

(*i.e.* not all ORP is subject to restraint)

s. 490.9(1) – Application of 489.1/490

490.9 (1) Subject to sections 490.1 to 490.7, sections 489.1 and 490 apply, with any modifications that the circumstances require, to any offence-related property that is the subject of a restraint order made under section 490.8.

4

Confirmation by the SCC
that restraint is optional

***Quebec
(Attorney
General) v.
Laroche,
2002 SCC 72
(at para 33)***

“As we saw earlier, restraint orders and warrants of seizure are procedures that the Crown may use to preserve property prior to conviction.”

The Applicants have not discharged their onus to establish any fundamental flaw in the Crown's legal pathway.

Accordingly, the Applicants' requests in their Form 1 should be dismissed.

Exhibit #135, Vol 1, Tab 34 at p.11



APPENDIX D – Examples of “Costs” Cases
(Punitive and Compensatory)

PUNITIVE COSTS – AWARDED

- ***R. v. Armstrong***, [2006] O.J. No. 1526 (S.C.J.). Costs awarded for failure to respond to disclosure requests in a timely manner which required the defence to prepare and argue disclosure motions resulting in an adjournment of a trial date.
- ***R. v. Huard***, [2009] O.J. No. 6221 (S.C.J.). Costs awarded following a mistrial due to Crown and police misconduct involving juror background checks in a first-degree murder trial.
- ***R. v. B.M.***, [2003] O.J. No. 1373 (S.C.J.). Costs awarded where the Crown failed to engage in a realistic assessment of the facts and proceeded with charges against a young person despite a lack of identification evidence. The young person suffered prejudice due to strict bail conditions that were in place for 16 months.
- ***R. v. Brown***, 2009 ONCA 633. Costs award upheld for failure to bring multiple accused persons before a justice within 24 hours of their arrest and to ensure a timely determination of their bail. The situation was the direct result of the Crown’s failure to ensure that sufficient resources were available to deal with the massive and predictable influx of prisoners on a project case.
- ***R. v. Zarinchang***, 2010 ONCA 286. Costs award upheld for systemic and long-standing bail delays in York Region that resulted in a 24-day delay in the accused’s bail hearing.
- ***R. v. Singer***, 2010 ONSC 6196. Costs awarded where the accused was found unfit to stand trial and ordered detained in a mental health centre but remained in jail thereby necessitating a *habeas corpus* application.
- ***R. v. Kocet***, 2015 ONCJ 804. Costs awarded where the Crown proceeded to trial based on a verbal statement given to an officer in the face of a written recantation and sworn testimony given by a domestic complainant at the bail hearing that her original allegations were untrue.
- ***R. v. Fercan Developments Inc.***, 2016 ONCA 269. \$1 million costs award upheld following the dismissal of a Crown application to forfeit two properties under the *Controlled Drugs and Substances Act*. The forfeiture application lacked merit from the outset and was conducted with an “intransigent, hardball attitude”.

PUNITIVE COSTS – NOT AWARDED

- *R. v. Veri*, [2000] O.J. No. 384 (Ont. C.A.). Trial judge was correct in declining to order costs after the dismissal of charges on a motion for non-suit in the absence of Crown misconduct.
- *R. v. Leduc*, [2003] O.J. No. 2974 (C.A.). Trial judge erred in awarding costs for nondisclosure which was not willful and did not amount to a marked departure from the reasonable standards expected of the prosecution.
- *R. v. Knott*, [2007] O.J. No. 761 (S.C.J.). Costs not granted following directed verdict on accessory after the fact to murder where defence counsel alleged the Crown proceeded to trial without a reasonable prospect of conviction.
- *R. v. Whyte*, [2008] O.J. No. 4537 (S.C.J.). Costs not granted for *habeas corpus* application following 29-day illegal detention where defence counsel could have sought an earlier date via the trial coordinator.
- *R. v. Tiffin*, 2008 ONCA 306. Trial judge erred in awarding costs for a section 8 *Charter* breach in the absence of Crown misconduct.
- *R. v. Singh*, 2016 ONCA 108. Trial judge erred in awarding costs for nondisclosure that did not amount to a marked departure of the standards reasonably expected of the prosecution and erred by failing to take defence inaction into account.
- *R. v. Guindon*, 2016 ONSC 1140. Costs not granted for late disclosure of a police report which was the result of an error in judgment on a complicated case involving a large amount of disclosure.
- *R. v. Carter*, 2018 ONSC 1272. Costs not granted for unreasonable undertaking sought by the Crown as a condition of providing disclosure.
- *R. v. Villanti*, 2020 ONCA 436. Costs not granted for unexplained nine-month delay in Crown perfecting its appeal.
- *R. v. Sandhu*, 2024 ABCA 47, leave to appeal to SCC ref'd 12 September 2024 [41218]. Costs not granted for retrial due to issues with interpretation at first trial.

COMPENSATORY COSTS – AWARDED

- ***R. v. Pawlowski***, [1992] O.J. No. 562 (Gen. Div.). Costs awarded pursuant to section 24(2) of the *Charter* following unsuccessful Crown application for appointment of a rogatory commission under [section 709 Criminal Code](#) in a war crimes prosecution. It was appropriate to reimburse the costs incurred by an impecunious pensioner to defend himself against the Crown’s applications which were supported by unlimited resources.
- ***R. v. Curragh Inc.***, [1997] 1 S.C.R. 537. Costs awarded where the trial judge refused to recuse himself despite the existence of a reasonable apprehension of bias against the Crown. The accused parties should not have suffered a financial burden due to systemic problems that were beyond their control.
- ***R. v. Munkonda***, [2015 ONCA 309](#). Costs awarded where the preliminary inquiry judge failed to ensure that the language rights of two francophone accused were respected during a bilingual preliminary inquiry on serious drug charges.

COMPENSATORY COSTS – NOT AWARDED

- ***R. v. Garcia***, [2005] O.J. No. 732 (C.A.). Summary conviction appeal court erred in awarding costs on the basis that the appeal was a test case and the legal issue raised by the Crown could have been raised earlier. Neither reason justified the costs award and the issues between the Crown and the accused were not moot.
- ***R. v. D.B.***, [2006] O.J. No. 1112. Trial judge erred in awarding costs to a young person who challenged the constitutionality of provisions of the *Youth Criminal Justice Act* that placed an onus on the young person to demonstrate why he should not be sentenced as an adult. The case was not a test case and the young person, who had pled guilty to manslaughter, had a substantial interest in the issues raised.

APPENDIX E – Notice of Application
dated May 1, 2025 (amended version and original)

**ONTARIO COURT OF JUSTICE
(East Region)**

IN THE MATTER OF an application by the Attorney General for Ontario pursuant to section 490.1(1) of the *Criminal Code* for the forfeiture of certain property.

BETWEEN:

HIS MAJESTY THE KING

Applicant

-and-

**CHRISTOPHER JOHN BARBER
and C B TRUCKING LTD and JONATHAN BARBER
and JUDY BARBER and DAN BARBER**

Respondents

NOTICE OF APPLICATION

TAKE NOTICE that an application will be made by the Attorney General for Ontario, through his counsel, on May 21, 2025 at the Ottawa Courthouse located 161 Elgin Street in the City of Ottawa, for an order pursuant to section 490.1(1) of the *Criminal Code* for the forfeiture of the following property:

- A red 2004 Kenworth truck with license plate [REDACTED] vehicle identification number [REDACTED], registered to C B Trucking Ltd., a company owned by Christopher Barber ["Big Red"]

THE GROUNDS FOR THIS APPLICATION ARE:

1. From January 28 to February 17, 2022, the offender, Christopher John Barber was actively involved in the so called "Freedom Convoy" being held in Ottawa, Ontario. The trucks, truckers, and persons who came to Ottawa for the Freedom Convoy created a mass mischief during the protest period that significantly interfered with the lawful use and enjoyment of property.

2. Starting on January 28, 2022, several thousand individuals came to Ottawa from all parts of Canada, some arriving in private vehicles, many drove large commercial tractor-trailers and other types of trucks. This was a grassroots movement which galvanized persons wanting to protest COVID-19 health mandates and other perceived government overreach. Some people and their vehicles were part of the Freedom Convoy, some were curious onlookers, and some were in Ottawa to protest but were unaffiliated with the Freedom Convoy.
3. With the arrival of trucks from various parts of Canada, the Ottawa Police Service ("OPS") assisted or directed trucks where to park on Wellington Street and the downtown area and gave them additional parking on Coventry Road. It became quickly apparent that the police vastly underestimated the number of vehicles and persons who joined this protest. The downtown core areas were jammed with trucks and vehicles blocking many downtown streets. Trucks lined the streets, their engines running and their horns honking.
4. The resulting impact disrupted public transportation routes and public streets were occupied by vehicles, food stations, structures, speaking platforms, and people. Noise from truck horns made it difficult for downtown residents to sleep and focus on work. The egress from certain buildings was blocked and due to streets being blocked, it was difficult or impossible for some to get to work and/or appointments. Generally, the central core of the city came to a standstill. Those working and residing in the downtown area suffered significant interferences in the use and enjoyment of their property and in their daily activities because of the protest.
5. As the Freedom Convoy participants continued to occupy Ottawa's downtown area over a three-week period, they and their spokespeople (including Mr Barber) told the police and public they would not leave until the government agreed to terminate COVID-19 mandates. OPS sought to manage the situation and ensure public safety by controlling the movement of traffic and public transportation and by attempting to keep one traffic lane open on most streets to permit emergency vehicle access. OPS was overwhelmed as the situation escalated and grew out of control. The City of Ottawa declared a municipal state of emergency on February 6, 2022. Downtown residents, through private legal counsel, sought and obtained injunctive relief against honking of air horns and train horns. The City of Ottawa declared a State of Emergency on February 9, 2022. The Government of Ontario declared a provincial State of Emergency on February 11, 2022. The situation contributed to the Federal Government's invocation of the *Emergencies Act*, R.S.C., 1985, c. 22, and the ensuing declaration of a national state of emergency.
6. On February 18, 2022, a three-day multi-jurisdictional police enforcement operation began to clear the Freedom Convoy participants still within the downtown core of Ottawa. Mr Barber was arrested on February 17, 2022, and had no further involvement in Freedom Convoy activity from that point forward.

7. Mr Barber was one of the leaders of the Freedom Convoy 2022 movement. He (alongside Tamara Lich) was involved in organizing and leading trucks and other vehicles from western Canada to Ottawa. Mr Barber was also on the initial Board of Directors of the Freedom Convoy 2022 Corporation. Mr Barber came to Ottawa in his truck, "Big Red", a 2004 Kenworth tractor-trailer, and parked on Wellington Street for approximately 11 days (between January 28 and February 9, 2022).
8. As part of the Operational Plan, OPS prepared maps directing certain types of trucks to various routes and parking areas. This was done in an effort to balance the protestors' right to demonstrate while at the same time reducing the impact on the residents of Ottawa. As part of this, certain blockades were erected to contain the footprint of the demonstration and funnel trucks into certain areas. OPS were completely overwhelmed by the number of trucks that arrived. None of the rules set out in the Operational Plan, such as "take direction from police whenever applicable", "leave open space for emergency vehicles at all times", "no closed trailers on Wellington Street", as well as vehicle capacities, etc. were adhered to by the demonstrators. As a result, the Ottawa downtown came to a gridlock.
9. As of January 30, 2022, Mr Barber was advised by OPS that they wanted trucks gone by 8:00 a.m. on January 31, 2022 (framed as "more of a wish", as found by this Honourable Court). Mr Barber response to this was that they would stay until the mandates came down. By February 4, 2022, the OPS made their position clear that the Freedom Convoy was no longer welcome, and that police would be seeking to restore public order. Mr Barber understood this.
10. Mr Barber did attempt to negotiate with OPS and the City of Ottawa to reduce the footprint of the occupation, thereby reducing the disruption to downtown residents and businesses. Mr Barber periodically assisted OPS in relocating trucks out of residential areas and into other areas where they would be less disruptive. With that said, however, he did not heed their direction to leave, nor did he use his sizeable influence to direct others to do the same.
11. Mr Barber was a principal, aider, and abettor to the mass mischief that came as result of the Freedom Convoy. "Big Red", specifically, was one of many trucks that contributed the to blockage and obstruction of Wellington Street for a period of time. Its presence there is documented in photographs, text messages, and in video. In addition to the truck's physical contribution to the blockage and obstruction of Wellington Street, as well as other streets through "slow rolls", it is also an important symbol of the Freedom Convoy 2022 movement as documented in text messages, news articles, and in social media.
12. On April 3, 2025, Mr Barber was convicted of committing mischief and counselling the disobedience of a court order.
13. Pursuant to section 490.4(1) of the *Criminal Code*, the following persons appear to have a valid interest in the 2004 red Kenworth Tractor-Trailer:

- a. Christopher Barber
- b. C B Trucking Ltd
- c. Jonathan Barber
- d. Judy Barber
- e. Dan Barber

14. No liens or other encumbrances are registered against "Big Red" in Ontario or Saskatchewan.

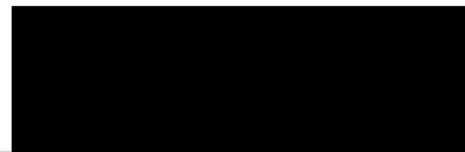
IN SUPPORT OF THIS APPLICATION, THE APPLICANT RELIES UPON THE FOLLOWING:

1. The facts adduced at trial that led to Mr Barber's guilt of an indictable offence;
2. Testimony of Detective Kari Launen of the Ottawa Police Service (and relevant material adduced through him); and
3. Such further material as counsel may advise and this Honourable Court may permit.

THE RELIEF SOUGHT IS:

1. That "Big Red" be ordered forfeited to His Majesty the King in Right of Ontario to be disposed of or otherwise dealt with in accordance with the law by the Attorney General for Ontario.
2. Such further relief as counsel may advise and this Honourable Court may permit.

DATED at Ottawa, Ontario, this 15th day of July, 2025.



Tim Radcliffe & Siobhain Wetscher
Counsel for the Applicant

Ottawa Crown Attorney's Office
Ministry of the Attorney General



**ONTARIO COURT OF JUSTICE
(East Region)**

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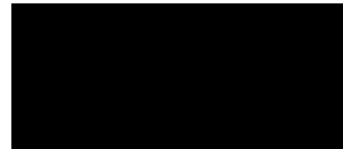
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DATED at Ottawa, Ontario, this 1st day of May, 2025.



Tim Radcliffe & Siobhain Wetscher
Counsel for the Applicant

Ottawa Crown Attorney’s Office
Ministry of the Attorney General



Court File No. 23-11401103

**ONTARIO COURT OF JUSTICE
(East Region)**

HIS MAJESTY THE KING

-and-

CHRISTOPHER JOHN BARBER

-and-

**C B TRUCKING LTD and JONATHAN BARBER
and JUDY BARBER and DAN BARBER**

-and-

SPRING BANK FARMS INC

CROWN'S FINAL SUBMISSIONS RE: FORFEITURE

Siobhain Wetscher and Tim Radcliffe
Assistant Crown Attorneys

Ottawa Crown Attorney's Office

