ONTARIO COURT OF JUSTICE

DATE: 2026 01 13
COURT FILE No.: 23-11401103

B E T W E E N :

HIS MAJESTY THE KING

Applicant/Cross-Respondent

— AND —

CHRISTOPHER JOHN BARBER

Respondent

AND

C B TRUCKING LTD; JONATHAN BARBER; JUDY BARBER; DAN BARBER

Respondent/Cross-Applicant

AND

SPRING BANK FARMS INC.

Before Justice Heather Perkins-McVey
Reasons for Decision on Application for Forfeiture (*Criminal Code* Section 490.1)
and Cross-Application (*Criminal Code* Section 490.1)
Oral Decision Released on December 19, 2025
Written Decision Released on January 13, 2026

Siobhan Wetscher and Tim Radcliffe ..... counsel for the Crown
Diane Magas ..... counsel for Christopher Barber
Brendan Miller ..... counsel for Jonathan Barber & Spring Bank Farms Inc.

PERKINS-MCVEY, J.:

OVERVIEW

[1] This decision addresses an Application by the Attorney General of Ontario under Section 490.1(1) of the *Criminal Code of Canada* for forfeiture of a red 2004 Kenworth

tractor-trailer bearing Saskatchewan plate 639FCZ and VIN 1XKWDB9X34J974263 known as "Big Red", registered to C B Trucking Ltd. It also addresses a Cross-Application filed by several interested parties, including Spring Bank Farms Inc. and Jonathan Barber, seeking summary dismissal of the Forfeiture Application, return of the property to third parties, and costs. Counsel on behalf of Christopher Barber also seeks dismissal of the Crown's Application.

[2] A Forfeiture Application is separate from the sentencing process, and the regime set out in the *Criminal Code* constitutes a "complete code" to the forfeiture regime. While forfeiture can be punitive, pursuant to *R v. Craig*, [2009] 1 S.C.R. 762 at paras. 22, 47 – 48, the Court writes "it is also aimed at taking offence-related property out of circulation and rendering it unavailable for future designated … offences". Judges have discretion on whether to grant relief from forfeiture as per *R v. Trac*, 2013 ONCA 246 at para. 96. The question is whether the Court is satisfied that the impact of an order of forfeiture "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."

[3] On April 3, 2025, Mr. Barber was convicted of mischief as both a party and a principal and the offence of counselling disobedience of a Court Order in relation to the Freedom Convoy protest. The complete reasons are contained in the Trial Judgment. The Court found that the Freedom Convoy 2022 for which Mr. Barber and Ms. Lich had significant leadership roles blocked streets, roadways, access to buildings, and disrupted businesses and transportation, creating a mass mischief in downtown Ottawa. The Freedom Convoy utilized a large number of trucks and truckers that blocked the streets, access to residential and commercial buildings, and significantly interfered with the lawful use and enjoyment of property in downtown Ottawa. "Big Red" was one of many trucks contributing to the blockage and obstruction of Wellington Street. (Record: Lich & Barber findings as summarized in Crown submissions; Notice of Application, May 1, 2025).

[4] Mr. Barber first received notice of the Crown's Forfeiture Application on or about May 21, 2025. Counsel on behalf of Christopher Barber filed a response to the Crown's

Application, seeking relief from forfeiture on September 24, 2025. The Cross-Application on behalf of Spring Bank Farms and Jonathan Barber was filed on September 12, 2025.

[5] The Cross Application seeks:

> (i) Summary dismissal of the application, arguing that, as the truck was not seized or restrained, this Court lacks jurisdiction to address this forfeiture;
>
> (ii) Further, that the truck not be forfeited on the basis that Spring Bank Farms and Jonathan Barber acquired an interest in Big Red well before receiving notice of the Crown's application and that the parties are innocent of complicity or collusion, and also that the Court should exercise its jurisdiction under Section 490.4(3) and thus not deprive them of this asset or the Court should find forfeiture disproportionate under Section 490.41(3);
>
> (iii) Lastly, Spring Bank Farms seeks cost against the Crown, pursuant to *R. v Fercan*, 2016 ONCA 269.

[6] Counsel for Mr. Barber seeks dismissal of the Crown's Application on the basis that Big Red is not offence related property and that, even if the Court does determine Big Red is offence related property (ORP), the Court should exercise its discretion under Section 490.41(3) and find that forfeiture would be disproportionate in the circumstances of the interest of the third parties and given the findings made in the trial decision.

PART I: FACTS FOR THIS APPLICATION

Summary of the Facts Giving Rise to Mr. Barber's Convictions

[7] Christopher Barber was convicted of mischief and counselling others to disobey a Court Order. This Court found that Mr. Barber personally committed mischief as the leader, organizer, and social media influencer and that he also aided and abetted that mischief and incited followers to continue that activity until the government dropped the

COVID-19 restrictions. Furthermore, this Court found that Mr. Barber was a principal, and, in the alternative, they were aiders and abettors showing a sense of unity with the principals, and by their acts they aided and encouraged those blocking the roads with the backdrop knowledge of what was happening in the downtown core and that residents' lawful use of property was significantly affected by the actions of the protests.

[8] This Court held that Mr. Barber encouraged others to disobey the Court Order against the use of truck horns by posting a video (grab that horn) online, in which he encouraged protesters to, among other things, "lay on the horn".

[9] Although this Court found that Big Red was parked on Wellington Street for eleven days, it did not specifically find that Mr. Barber was blocking any roads in Ottawa.

[10] There are three corporations that have an interest in the truck at issue in this forfeiture hearing. Chris Barber and Jonathan Barber are shareholders and directors of C B Trucking Inc. Jonathan became a director and shareholder of C B Trucking on August 13, 2023, six months after the end of the Freedom Convoy Protest. Prior to this date, he was an employee of C B Trucking. C B Trucking is the registered owner of Big Red. C B Trucking provided a right of possession of Big Red to Spring Bank Farms as security for the $50,000 loan to Spring Bank Holdings to purchase "Great White". Chris Barber is the sole shareholder and director of Spring Bank Holdings Inc. This corporation is the registered owner of Great White.

[11] Danny Barber and Judith Barber are shareholders and directors of Spring Bank Farms Inc.

[12] Big Red is a 2004 Kenworth Truck that was purchased by C B Trucking in 2003/2004. On June 16, 2022, C B Trucking provided the Bill of Sale for Big Red to Spring Bank Farms as security for a $50,000 loan that was provided by Spring Bank Farms to Spring Bank Holdings. The purpose of the $50,000 loan was to finance Spring Bank Holdings' purchase of a White Peterbilt Truck, "Great White", as the bank was not prepared to do so.

[13] On June 16, 2022, Spring Bank Holdings Ltd. purchased a White Peterbilt Truck, known as Great White, which was to be operated by Jonathan Barber on a regular basis while Christopher Barber operated Big Red on a regular basis. Great White was therefore meant to be in the possession of C B Trucking despite its registered ownership being held by Spring Bank Holdings.

[14] Great White's operating expenses are paid by C B Trucking. The purchase price of Great White was $78,855.00. The purchase of Great White was financed by Spring Bank Farms through a $50,000 unregistered secured loan. C B Trucking provided Spring Bank Farms with a Bill of Sale for Big Red as security for the $50,000 loan. There was no lien registered on title to reflect this interest.

[15] On September 4, 2025, Jonathan was operating Great White and had an accident, which rendered Great White inoperable. Great White is currently being repaired but remains inoperable for the time being.

[16] During the proceedings, it came to light that there was a typographical error on the Bill of Sale. C B Trucking provided a Bill of Sale of Big Red to Spring Bank Farms as security for the $50,000 loan. The Bill of Sale states that Big Red was being sold by Spring Bank Farms to C B Trucking for $50,000. In their individual affidavits, both Danny and Jonathan state that this was a typographical error. The Amendment to the Bill of Sale states that the Bill of Sale ought to have stated that Big Red was being sold by C B Trucking to Spring Bank Farms.

[17] During the forfeiture hearing, counsel for Spring Bank Farms and Jonathan Barber tendered affidavits and were cross examined on those affidavits. In his affidavit, Jonathan states that Big Red is C B Trucking's sole revenue-generating asset. In his cross-examination, however, Jonathan acknowledged that Big Red is not the sole revenue-generating asset but insisted that it is the major or primary revenue-generating asset.

[18] Jonathan stated that C B Trucking has three employees (Nathan, Cooper, and Kelly) and that C B Trucking owns two other trucks ("Old Blue" and "Jay"). However, he stated that these are old, unreliable trucks that cannot produce significant revenue for the

business. Jonathan further stated that C B Trucking also generates revenue through two brokers.

[19] Jonathan Barber stated that he drove Big Red into Ottawa while Christopher Barber was a passenger in the truck. While in Ottawa during the Freedom Convoy, Jonathan said he tried to help by walking around, talking to people, and asking people if they needed help. Jonathan stated that he spent a significant amount of time with a love interest in Gatineau when he was not participating in the Ottawa protests.

[20] Danny Barber, Chris Barber's father, stated that he was aware of the trucks owned by C B Trucking. He stated that the $50,000 was a loan and not a gift and that he obtained the Bill of Sale of Big Red as a security on the loan. Under cross-examination, he stated that he has not yet been paid on the loan and he has not taken possession of Big Red. He further stated that he did not obtain a lawyer for the purpose of drafting the Bill of Sale because he trusts his son and he would not need to do that with his family. He further stated that anyone who knows Christopher knows that his word is true.

[21] In their Affidavits, both Jonathan Barber and Danny Barber state that they (and their respective corporations) did not have knowledge of Christopher's conduct which gave rise to the mischief charges. However, Danny Barber stated in cross-examination that he supported Christopher in his efforts to protest the COVID-19 mandates, and that he and Judith gave $500 via cash to Christopher Barber to help him with food costs, etc., to enable him to stay in Ottawa during the protest.

ISSUES TO BE DETERMINED

[22] The issues to be determined are:

i. Whether summary dismissal is warranted;

ii. Whether Big Red is offence-related property (ORP) pursuant to Section 2 and Section 490.1(1) of the *Criminal Code*;

iii. Whether the third parties appear innocent of complicity or collusion within Section 490.4(3);

iv. Whether forfeiture would be disproportionate under Section 490.41(3); and

v. Whether punitive or compensatory costs should be ordered against the Crown. The Court has considered Exhibit No. 7, the 28-tab black binder referenced throughout the Crown's materials. Three portions are especially relevant to the present analysis: Tab 7, Tab 8, and Tab 9.

POSITION OF THE PARTIES

Crown Position

[23] The Crown argues that the evidentiary record establishes that the Kenworth tractor-trailer known as "Big Red" was both a physical instrument and a symbol used in connection with the commission of the mass mischief. Further, its iconic deployment within the Freedom Convoy branding and Big Red's repeated depiction alongside protest messaging are documented in Exhibit No. 7: the truck features prominently on the Freedom Convoy logo (Tab 8) and in a series of screenshots and images collected at Tab 9 (see especially pages 46 - 49, 54, 58, and 60 - 79). These materials, it is argued, corroborate its operational and representational role within the occupation of Wellington Street.

[24] The Crown's submission that "Big Red" qualifies as offence-related property does not rest solely on abstract symbolism. The record, they argue, shows contemporaneous multimedia posts and captures showing the truck situated on Wellington during the Freedom Convoy protest. Further, the truck and the presence of its driver Chris Barber was used to draw and sustain protest activity, as shown in Exhibit No. 7, Tab 9 (pages 46 - 49, 54, 58, 60 - 79). The Crown argues that, when viewed in light of the trial findings concerning the blocking of roads and loss of the emergency lane, the Tab 9 sequence provides independent confirmation that the property was "used in any manner in connection with" the offence within the meaning of Section 2 of the *Criminal Code*. (Exhibit No. 7, Tab 9, pages 46 - 49, 54, 58, 60 – 79).

[25] The Crown argues that the Court's analysis of third-party claims should also engage a review of the Tab 7 – Tab 9 record. In particular, the Crown relies on a contemporaneous statement: "Lettin' this kid drive, right, Jonathan?" captured at Exhibit No. 7, Tab 7, which, read together with the social media and photographic evidence in Tab 9 (pages 46 - 49, 54, 58, 60 - 79), supports the inference that Jonathan Barber knowingly participated in and facilitated the presence and positioning of Big Red on Wellington Street during the relevant period. (Exhibit No. 7, Tab 7; Tab 9, pages 46 - 49, 54, 58, 60 – 79).

[26] The Tab 9 collection further includes sequences of posts and images that situate Big Red at the protest footprint and reflect contemporaneous approval and encouragement of its continued use as a protest platform. The Crown submits that while each item in isolation may be modest, the cumulative effect—when considered at pages 46 - 49, 54, 58, and 60 - 79 of Tab 9—demonstrates sustained, purposeful association of the vehicle with protest activities that interfered with ordinary traffic and enjoyment of property in the downtown core. (Exhibit No. 7, Tab 9, pages 46 - 49, 54, 58, 60 – 79).

[27] The Crown argues that Section 490.1(1) provides for mandatory forfeiture—on application of the Attorney General and on a balance of probabilities—where the Court is satisfied the property is offence-related and related to the commission of the indictable offence, subject to relief provisions in Sections 490.3–490.41. The definition of ORP in Section 2 is broad, encompassing property used "in any manner in connection with" the offence. (Record: Crown's Final Submissions, Appendix A; Notice of Application; *R. v. Trac*, 2013 ONCA 246, paras. 74, 77, 95–96).

[28] The Crown submits that the threshold standard has been met. On the balance of probabilities, Big Red was used "in any manner in connection with" the mischief, and its commission was related to the property. The trial findings and Exhibit No. 7 entries (Tabs 8 - 9) show the truck's physical contribution to obstruction and its symbolic role amplifying the protest's footprint. The statutory definition's breadth, paired with the remedial discretion in Section 490.41(3) supports presumptive forfeiture here. The Crown relies on Appendix A; Exhibit No. 7, Tab 8; Tab 9, pages 46 - 49, 54, 58, 60 - 79).

[29] The Crown submits that with the phrase “Appears Innocent" in Section 490.4(3), Parliament did not assign an express burden or standard to third-party return or the proportionality determinations. The interpretation favored in *Canada ((AG) v. Jamal,* 2015 ONCJ 687) is that neither party bears a strict onus; the Court must be satisfied that innocence appears or that disproportion is made out, with the content of "appears innocent" including negligence in permitting property to be used for unlawful purposes, consistent with forfeiture’s historic roots.

[30] Danny and Judy Barber: The record shows wholehearted support for Mr. Barber’s continued presence in Ottawa with Big Red, knowledge of trucks parked downtown, fundraising to keep truckers in Ottawa, and their direct financial assistance for everyday expenses. On the *Jamal/Laroche* understanding of complicity/collusion in forfeiture, the Crown submits this conduct defeats an appearance of innocence. Their conduct is attributable to Spring Bank Farms Inc. as directing minds. (Record: Crown’s Final Submissions, paras. 24 - 28; Crown’s Reply Submissions, Part II(i) - (ii); Exhibit No. 7, Tab 7; Tab 9.)

[31] Jonathan Barber: The record supports his knowledge of the truck’s presence, his role driving Big Red into Ottawa, his role of assisting his father during the protest and his support for the protest, with credibility concerns noted between his affidavit and testimony. The Crown submits Jonathan Barber does not appear innocent.

[32] On the issue of corporate attribution, the Crown argues that there is no one-size-fits-all rules; courts apply the doctrine purposively, contextually, and pragmatically in the public interest. The Crown seeks attribution of the conduct of Danny and Judy Barber (directing minds) to Spring Bank Farms Inc., and of Mr. Barber’s directing mind to C B Trucking Ltd. Relying on the decision of *Scott v. Golden Oaks Enterprises Inc.*, 2024 SCC 32, para. 62), the Crown argues that corporate attribution can apply to a one-person corporation and thus applies to C B Trucking Ltd. Further, that Mr. Barber’s directing mind is attributed to the company for forfeiture purposes.

[33] Regarding the summary dismissal argument, the Crown submits that applications in criminal proceedings should be summarily dismissed only if "manifestly frivolous," i.e.,

revealing a fundamental flaw in the legal pathway or relying on propositions clearly contrary to settled law. (*R. v. Haevischer*, 2023 SCC 11). The Crown contends its application aligns with settled pathways and is not frivolous. The Cross-Applicants, they argue, have not demonstrated that the Crown's forfeiture application is manifestly frivolous. The statutory pathway advanced—mandatory forfeiture under Section 490.1(1) with discretionary judicial relief—is orthodox. Preservation tools (restraint/seizure) are optional and distinct from forfeiture, and their absence does not fatally undermine jurisdiction to adjudicate forfeiture.

[34] Addressing the application of Section 490.41(3), the Crown argues that forfeiture is not disproportionate to the nature and gravity of the mass mischief or its circumstances. They argue Big Red obstructed Wellington for approximately eleven days, was used in slow-rolls, and occupied significant symbolic stature. Distinguishing the decision of Justice Legault in *R. v. Blanchfield,* they argue the mischief in that case was brief—a half-day of obstructing the roads versus sustained and aggravated interference in the case at bar. The Crown argues that personal hardship carries limited weight in ORP forfeiture.

[35] The Crown argues that the awarding of costs is unwarranted and that the circumstances in *R. v. Fercan* are very different than this case. They submit the record discloses no marked and unacceptable departure from reasonable prosecutorial standards and that, to the contrary, the Crown facilitated remote testimony, provided disclosure, and proceeded on evidence rather than speculation. Further, that compensatory costs are likewise unavailable absent exceptional circumstances. Reliance on *Fercan* is not applicable given its unique constellation of misconduct and meritless pursuit from the outset.

Submissions on Behalf of Christopher Barber

[36] Counsel for Mr. Barber opposes forfeiture on two principal grounds:

i. first, that Big Red is not offence-related property ("ORP") related to the commission of the mischief offence within

Section 490.1(1) of the *Criminal Code* on the facts as found, and second;

ii. that even if ORP were established, forfeiture would be disproportionate under Section 490.41(3) having regard to the impact of forfeiture, the nature and gravity of the offence, and the circumstances surrounding the commission of the offence, including Mr. Barber's cooperation with police and city officials and the economic role of the truck. (*Criminal Code*, Section 490.41(3))

[37] On Offence Related Property, counsel argues that Big Red was not used "in any manner in connection with" the offence within Section 2 because Ottawa Police Service ("OPS") officers directed Mr. Barber where to park, and when Constable Bach requested relocation, Mr. Barber moved the vehicle when it was safely feasible—with Big Red leaving Wellington Street on February 8, 2022 at the request of Cst. Bach—and not returning to the downtown core thereafter. Counsel underscores that slow-rolls were discussed with Cst. Bach, who stated they were a better way to protest, situating the truck's use within police-advised parameters rather than blocking roads in the red zone or downtown core.

[38] Counsel for Mr. Christopher Barber emphasizes the chronology of events: arrival January 28, 2022; OPS mapping and direction to park February 5, 2022; text exchange regarding safe movement with Cst. Bach; successful relocation February 8, 2022, to Exit 88. The Defence argues that Mr. Barber was arrested February 17, 2022, and that there was no seizure of Big Red at the time of his arrest. Chris Barber left Ottawa February 19, 2022, driving Big Red. No steps were taken to seize or restrain the vehicle. Chris Barber was only advised of the Crown's intention to bring the Application to Forfeit on May 25, 2025.

[39] Counsel argues the requisite nexus between property and offence is not met under Section 490.1(1), as the truck's presence was police-managed and its subsequent

movement complied with police requests, thus displacing the characterization of the truck as an instrument of mischief. (*Criminal Code*, Section 490.1)

[40] In the alternative, counsel submits that forfeiture is disproportionate under Section 490.41(3). The statutory analysis is framed by *R. v. Trac*, where the Court of Appeal recognized judicial discretionary relief from forfeiture within the *Code* set out in Section 490.1, and the need to assess disproportionality holistically (see *Trac*, 2013 ONCA 246, para. 96). Counsel draws explicitly on *R. v. Allaudin* and *R. v. Pendleton*, both Ontario Court of Justice decisions granting relief from forfeiture in protest/traffic and farm equipment contexts, respectively, as somewhat analogous fact patterns. The extent and duration of the mischief at the case at bar is, of course, factually distinct.

[41] In terms of the impact, counsel analogizes to *R. v. Pendleton*, where forfeiture of a New Holland T6050 farm tractor was refused because the machine was "an essential component of the operation of [the] family farm", and forfeiture would "detrimentally affect, not just the offender, but the viability of [the] farm" (*Pendleton*, 2013 ONCJ 321, para. 15). Counsel contends Big Red is essential trucking equipment, integral to Mr. Barber's business and family livelihood, and its loss would cause severe economic detriment beyond punitive aims contemplated by Parliament.

[42] On the nature and gravity of the offence, counsel relies on *R v. Allaudin* to demonstrate gradation within mischief: In *Allaudin*, 2019 ONCJ 344, the Court states at para. 25, "while mass protests can yield interference with lawful use of property, the offender's conduct may lie at the "lower end" of criminal gravity when no person is harmed and no property is damaged or lost". Counsel asserts Mr. Barber's actions—complying with OPS direction, moving the truck out of the red zone upon request, and engaging with OPS and the City to reduce the footprint—place this matter toward the lower end of gravity for forfeiture purposes.

[43] On the circumstances surrounding the offence, counsel situates Mr. Barber's participation within a political protest context, stressing that police facilitated protest logistics (maps, parking direction) and endorsed less intrusive protest methods (slow rolls), with no evidence of Big Red returning to the core after February 8, 2022.

Counsel invokes *R. v. Puddy* to underscore the Charter-inflected balance between public order and fundamental freedoms during protests; Justice Green cautioned against "criminalization of dissent" and emphasized that the calculus must respect rights of political speech and assembly (*Puddy*, 2011 ONCJ 399, see discussion of protest policing and Charter balance). This context, counsel says, mitigates the property's role and weighs against punitive forfeiture.

[44] Counsel acknowledges that forfeiture is a separate regime within the *Criminal Code* aimed in part at "taking offence-related property out of circulation" (see *Craig*, [2009] 1 S.C.R. 762, paras. 22, 47 - 48) but stresses that the relief valve in Section 490.41(3) is designed precisely to prevent disproportionate impacts where continued circulation poses no public risk and the offender's conduct, circumstances, and record militate against the punitive removal of essential equipment. In *R v. Allaudin*, Justice Band applied this balancing to grant relief from forfeiture, despite meeting Section 490.1(1) criteria (*Allaudin*, 2019 ONCJ 344, paras. 23 - 28). Counsel says the same proportionality logic—no ongoing need to remove Big Red from circulation and harsh economic impact out of step with offence gravity—applies here. (*Criminal Code*, Section 490.41(3))

[45] Finally, counsel notes that Mr. Barber has no criminal record, a statutory factor under Section 490.41(3), and urges the Court to decline forfeiture and dismiss the Application, or at minimum refuse forfeiture on proportionality grounds, consistent with the cases relied on, *R. v Pendleton and R. v Allaudin*.

Submissions of Spring Bank Farms Inc.

[46] Counsel on behalf of Spring Bank Farms Inc. ("SBFI") contends that the Crown's application under Section 490.1 of the *Criminal Code* is fundamentally flawed and must be summarily dismissed as manifestly frivolous. The argument proceeds on two principal grounds:

i. first, that the statutory scheme does not permit forfeiture of property that has neither been seized nor subjected to a restraint order, and second;

ii. that the remedy sought could never issue on these facts because the Court lacks the ability to effect seizure under a forfeiture order.

[47] Spring Bank Farms Inc. submits that the legislative context, read harmoniously with the scheme and object of the *Criminal Code* as mandated by *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27, implies a prerequisite of seizure or restraint before forfeiture may be ordered. Counsel argues that Sections 489.1, 490 (detention of seized property), and 490.8 (restraint orders) must operate in conjunction with Section 490.1; together, they demonstrate Parliament's intent that forfeiture applies only to property already under state control—either physically through seizure or legally through restraint. Counsel for Spring Bank Farms argues that nothing in Section 490.1 authorizes seizure; forfeiture transfers ownership but presupposes prior custody.

[48] Spring Bank Farms Inc. emphasizes that the truck in issue was never seized by police, nor restrained under Section 490.8. The Crown concedes this point. Without seizure, Counsel submits the Court cannot return property under Section 490.4(3) or terminate a restraint order under Section 490.8(8), rendering the relief sought impossible. The Cross-Applicants argue that the principle of *expressio unius est exclusio alterius* reinforces this interpretation: Section 490.3 empowers courts to void transfers only if they occurred after seizure or restraint, not after the offence. Parliament's omission of "after the offence" signals an intent to exclude such circumstances.

[49] Spring Bank Farms Inc. asserts that the Crown's Application is "manifestly frivolous" within the meaning of *R v. Haevischer*, 2023 SCC 11 (paras. 85 - 86) and should be dismissed summarily. The Applicants note that no reported decision has ever granted forfeiture under Section 490.1 where the property was not previously seized or restrained. They also invoke *R. v. Fercan Developments Inc.*, 2016 ONCA 269, to argue that pursuing a meritless application in these circumstances—despite disclosure showing lawful post-offence acquisition and absence of collusion—warrants costs against the Crown. (*Criminal Code*, Section 490.1)

[50] In sum, SBFI submits that the statutory pathway advanced by the Crown is impermissible, constitutionally suspect, and practically unworkable. The Application should be dismissed at the threshold without requiring the Applicants to endure a full evidentiary hearing.

[51] In arguing the Application on the merits, SBFI submits that the 2004 Kenworth W900L tractor (the "Kenworth") was lawfully purchased from C B Trucking Ltd. on June 16, 2022, for $50,000, well after the offence period (January 28 - February 17, 2022) and at a time when neither the OPS nor the Crown had seized or restrained the vehicle or given notice of intention to do so. The purchase is corroborated by sworn Affidavits, the Bill of Sale (amended September 2025), and banking records evidencing transfer and use of funds.

[52] On the statutory framework, SBFI argues that the Court cannot set aside the June 16, 2022 transfer under *Criminal Code* Section 490.3, which authorizes voiding only conveyances or transfers that occur after seizure or after a restraint order is made. Here, no seizure and no restraint order pre-dated the sale; accordingly, there is no authority to unwind a lawful transaction completed before any preservation order.

[53] Spring Bank Farms Inc. further submits that, because it is the current lawful owner, the Court cannot order forfeiture "*vis-à-vis*" the offender or C B Trucking Ltd., who at most held a possessory right subordinate to the true owner. Absent in *rem jurisdiction* founded on seizure or restraint, forfeiture cannot be ordered against non-owners. On this view, the Crown's Application against a mere possessory interest is moot if the third-party owner appears innocent and is entitled to return.

[54] To organize the analysis under Section 490.4(3), SBFI identifies four inquiries:

i. Whether SBFI has been charged with an indictable offence (it has not);

ii. Whether SBFI acquired its interest under circumstances giving rise to an inference of anti-forfeiture purpose (it did not);

iii. Whether SBFI is lawfully entitled to possess or owns the Kenworth (it does), and;

iv. Whether SBFI appears innocent of complicity or collusion (it does).

[55] As to (i), SBFI has not been charged under the *Criminal Code* (nor any foreign corruption statute); a point the Crown does not contest.

[56] As to (ii), the timing speaks for itself: the transfer occurred almost three years before the Crown's Forfeiture Application (May 2025). There was no restraint order and no registry notice to alert prospective purchasers. On these facts, no inference arises that SBFI acquired its interest to avoid forfeiture; rather, the Crown's delay and laches created a lawful transactional context into which SBFI purchased in good faith for value.

[57] As to (iii), SBFI grounds title in Saskatchewan law. Invoking the Interpretation Act, it submits provincial rules of property and civil rights govern ownership in this criminal context. Under the *Sale of Goods Act* (Saskatchewan), title to specific goods passes when intended by the parties; here, the Bill of Sale and consideration demonstrate title passed on June 16, 2022. Registration is not constitutive of ownership; it is at most *prima facie* proof rebuttable by evidence of true ownership.

[58] In the alternative, SBFI asserts non-title interests that independently defeat forfeiture: a security interest arising "in substance" under the *Personal Property Security Act* (Saskatchewan), and an equitable interest historically recognized even where formal defects undermined statutory bills of sale. The record indicates SBFI's financial stake equals the Kenworth's full value (~$50,000), rendering its interest coextensive with the asset.

[59] As to (iv), SBFI argues that "complicity" denotes partnership/accomplice conduct and "collusion" denotes a secret agreement to facilitate unlawful purposes; willful blindness, while sometimes equated to knowledge, is a narrow, subjective doctrine requiring deliberate avoidance of truth. Applied here, SBFI did not own the Kenworth

during the offence period and had no knowledge of its misuse; it neither allowed its property to be used nor acted negligently in relation to the offence.

[60] Spring Bank Farms Inc. rejects the Crown's attempt to impute parents' conduct to the corporation via corporate attribution. Attribution they argue requires:

> (i) a directing mind acting within the sector of corporate responsibility assigned to them, and;
>
> (ii) actions designed or resulting at least partly to benefit the corporation—even then, courts may refrain from attribution where public-interest considerations counsel against it. On SBFI's case, any parental acts were taken as parents, not in execution of corporate functions, and did not benefit SBFI; public interest weighs against attribution given Crown delay and laches.

[61] SBFI contends that in vehicle-forfeiture contexts, courts properly determine the true owner's entitlement first; where a third-party owner appears innocent, return is ordered without proceeding to proportionality against a mere possessor.

Summary Dismissal and the Interpretation of Section 490.1

[62] The Cross-Applicant (Barber et al.,) filed a Cross-Application seeking a summary dismissal of the Crown's Section 490.1(1) application for a forfeiture order of a Kenworth Truck. The Cross-Applicant contends that it is a necessary statutory prerequisite under the *Criminal Code* that before any property can be subject to forfeiture under Section 490.1 of the *Criminal Code*, the property in issue must be subject to either physical seizure or a restraint order.

[63] The Cross-Applicant argues that the property in issue, the truck, has not been physically seized or made subject to a restraint order and thus the Application must fail. The Cross-Applicant relies on the above-contentions to argue:

i. that the Crown is without jurisdiction to bring a Section 490.1 application, and;

ii. that the Ontario Court of Justice is also without jurisdiction to grant an order of forfeiture under Section 490.1.

[64] The Applicant argues that, given the above argument, the Crown's Section 490.1 Application is "manifestly frivolous" and ought to be summarily dismissed. The Applicant relies on the Supreme Court decision in *R. v. Haevischer,* 2023 SCC 11, in which the Supreme Court held that a summary dismissal of an application in a criminal proceeding is appropriate where the judge is satisfied that the application is "manifestly frivolous". (*Criminal Code*, Section 490.1).

PART II: RELEVANT STATUTORY PROVISIONS & CASE LAW

[65] Section 490.1 of the *Criminal Code* provides (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 or the *Corruption of Foreign Public Officials 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, if the prosecution of the offence was commenced at the instance of the government of a province and conducted by or on behalf of that government, order that the property be forfeited to Her Majesty in right of that province to be disposed of or otherwise dealt with in accordance with the law by the Attorney General or Solicitor General of that province; and in any other case, order that the property be forfeited to Her Majesty in right of Canada to be disposed of or otherwise dealt with in accordance with the law by the member of the Queen's Privy Council for Canada that is designated by the Governor in Council for the purpose of this paragraph.

[66] Section 2 of the *Criminal Code* defines "offence-related property" as follows:

> "Offence-related property" means any property, within or outside Canada, by means in respect of which an indictable offence under this Act or the Corruption of Foreign Public Officials Act is committed, that is used in any manner in

> connection with the commission of such an offence, or that is intended to be used for committing such an offence.

[67] In *R. v. Trac,* 2013 ONCA 246, Justice Doherty at para. 74 summarizes the statutory prerequisites for a forfeiture order under Section 490.1(1):

> Section 490.1(1) provides for mandatory forfeiture, subject to the powers to relieve from forfeiture set out in section 490.3 to 490.41, in the following circumstances: (*Criminal Code*, section 490.1) the accused must be convicted of an indictable offence; the Crown must prove on the balance of probabilities that the property sought forfeited is "offence-related property"; and the Crown must prove on the balance of probabilities that the indictable offence was committed "in relation to that property".

[68] In *Trac* at para. 80, Justice Doherty notes that “offence-related property” includes property used in any manner in connection with the commission of an offence. “Offence-related property" reaches property used in any manner in connection with the commission of an indictable offence. The section is aimed at the means, devices or instrumentalities used to commit offences. Thus, the house used to grow marihuana, or the truck used to carry the marihuana to the point of sale are "offence-related property".

[69] In *R v. Phillips* 2021 ONSC 4973 at para. 19 and *R v. Habib*, at para. 13, Justice Dambrot and Justice Goldstein, respectively, have followed the interpretation of “offence-related property” set out in *Trac* at para. 74.

[70] As noted in *R v. Trac, supra*, at para. 80 and *R v Habib*, 2024 ONSC 2190 at para. 13:

> Offence-related property encompasses property used in any manner in connection with a criminal offence. It is broadly aimed. It aims at the "means, devices, or instrumentalities used to commit offences".

[71] In *R v Habib*, 2024 ONSC 2190 at para. 14, the Court writes:

> The “offence-related property” requirement has three distinct purposes: to punish offenders by taking away property used in the commission of offences to deter offenders by imposing

> costs on the owners of property who have used the property to commit offences or permitted their property to commit offences; and, to ensure that the property cannot be used to commit offences in the future.

[72] The second requirement the Crown must prove on a balance of probabilities is that it meets the definition of “in relation to that property “. In *R. v. Trac*, at paras. 92 - 93, Justice Doherty found that “in relation to that property” requires a connection between the property at issue and the offence.

[73] The Court writes:

> 92. The phrase "in relation to" commonly appears in statutes and other legal writing. It describes in broad terms a connection between two things: *Nowegijick v. R.*, [1983] 1 S.C.R. 29 (S.C.C.), at p. 39. In s. 490.1(1), it describes a connection between the property sought forfeited and the offence.” (*Criminal Code*, s. 490.1)
>
> 93. I think it is fair to say, however, that the requirement that the offence be committed "in relation to that property" demands a more direct connection between the property and the offence than would be necessary to find that property was "used in any manner in connection with the commission" of the offence. For example, although property, such as a bank account used to conceal or disguise money laundering, would be considered "offence-related property", it is arguable that the crime of money laundering could not be said to have been committed "in relation to that property".

[74] Justice Doherty in *Trac* provides a summary of the analysis in a forfeiture application under Section 490.1 of the *Criminal Code*: `

i. Is the specific asset "offence-related property"?

ii. If the asset is "offence-related property", is it subject to forfeiture under s. 490.1(1)?

iii. If the asset is subject to forfeiture under s. 490.1(1), are any of the provisions that provide relief from forfeiture applicable to all or part of the property?

iv. If the "offence-related property" is not subject to forfeiture under s. 490.1(1), is it subject to forfeiture under s. 490.1(2)?

v. If the property is subject to forfeiture under s. 490.1(2), should the judge exercise his or her discretion in favour of ordering forfeiture?

vi. If the judge chooses to order forfeiture, is the asset subject to any of the relieving provisions and, if so, to what extent do those provisions relieve from forfeiture?

vii. Section 490.1(2.1) allows for the forfeiture of property situation outside of Canada: (*Criminal Code*, s. 490.1)

viii. (2.1) An order may be issued under this section in respect of property situated outside Canada, with any modifications that the circumstances require.

Regarding forfeiture where there are third parties with an interest in the property, s. 490.4(3) of the *Criminal Code* provides, 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 the Corruption of Foreign Public Officials 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. (*Criminal Code*, s. 490.4(3))

[75] In essence, Section 490.4(3) allows a court to order the return of the property, subject to a Section 490.1 forfeiture order, to a lawful owner provided that person is not charged with an indictable offence and has not acquired the property under circumstances that give rise to a reasonable inference that they acquired the property for the purpose of avoiding the forfeiture of the property and that they are innocent of complicity and collusion in relation to the offence.

[76] In *R v. Habib,* 2024 ONSC 2190 at para. 25, Justice Goldstein found that Section 490.4(3) does not require an applicant pursuant to that section to be the registered owner of the property to establish lawful entitlement to it. Importantly, Section 490.4(3) requires that the Applicant establish either that he is the “lawful owner”

or that he is “lawfully entitled to possession of all or part of that property”. As I read the statute the Applicant does not need to be the registered owner of the vehicle to establish lawful entitlement to all or part of it.

[77] In *R. v. Habib*, 2024 ONSC 2190 at para. 30, citing *R. c. D’Onofrio*, 2023 QCCQ 10034 at para. 41, the Court states:

> The forfeiture regime is rooted in common sense. Its consequences can be draconian. Where an uncharged property owner acted reasonably, was unaware of and not involved in any criminal activity, and where he did not profit from any illegal acts, logic dictates that he should be spared from losing his property. After all, there is no point to punishing morally innocent person. This would not advance any legitimate social or legal interest.

[78] It is agreed that summary dismissal of an application is an available remedy if an application is found to be manifestly frivolous. In *R. v. Haevischer*, 2023 SCC 11 at para. 66, Justice Martin held that applications in criminal proceedings may be summarily dismissed only where the application is found to be manifestly frivolous, stating: “I conclude that the appropriate standard for summary dismissal is whether the underlying application is manifestly frivolous.”

[79] Justice Martin in *Haevischer* expanded on the definition of “manifestly frivolous”, stating that it means that the application is obviously doomed to fail: At paras. 67 to 69, the Supreme Court of Canada writes:

> 67. The “frivolous” part of the standard weeds out those applications that will necessarily fail.
>
> 68. Aside from the inevitability or necessity of failure, the “frivolous” standard has captured a compendium of other phrases. It is because it will necessarily fail that a frivolous application has also been described as “not arguable” and as “having no basis upon which it could succeed”. Similarly, saying an application is “doomed to failure” connotes inevitability and is just another way of saying an application is “frivolous”.
>
> 69. However, I add the word “manifestly” to capture the idea that the frivolous nature of the application should be obvious.

> "Manifestly" is defined as "as is manifest; evidently, unmistakably, openly", and "manifest" is defined as "clearly revealed to the eye, mind, or judgment; open to view or comprehension; obvious". Just like the civil standard for striking a claim requires that it be "plain and obvious" that the claim discloses no reasonable cause of action, the addition of the word "manifestly" adds another layer to the" frivolous" standard and helpfully indicates that a summary dismissal motion should be based on that which is clearly revealed."

ANALYSIS: SUMMARY DISMISSAL AND OFFENCE RELATED PROPERTY

[80] I find that a plain reading of Section 490.1 of the *Criminal Code* does not require that the property at issue be seized or be subject to a restraint order. Rather, Section 490.1 requires that the Accused be convicted of an indictable offence and that the Crown prove, on a balance of probabilities, that the property at issue is "offence-related property" and that the indictable offence was committed "in relation to that property". Following conviction for an indictable offence, the threshold is the relationship to the offence, not it's detention status.

[81] A purposive reading of Section 490.1 suggests that Parliament intended to broaden the scope of property, subject to a forfeiture order, so as to include any property that amounts to "offence-related property" regardless of whether it has been seized or is subject to a restraint order. The Forfeiture section was amended to include all offence-related property, not only that belonging to a Criminal Organization. If Parliament wanted to limit forfeiture orders to property that had been previously seized or property subject to a restrain order, Parliament could have included those requirements in Section 490.1.

[82] A review of the decision in *R. v. Trac* makes it clear that the origin of the property is not relevant to determine whether the property fits the definition. The issue is the relationship the property has to the index offence. Additionally, Section 490.1(2.1) allows for the forfeiture of property situated outside of Canada. Thus, it can be inferred Parliament intended that the Section 490.1 forfeiture regime capture property not in the possession of the Crown.

[83] Therefore, I find the Cross-Applicant's initial argument that the Crown is precluded in bringing a Section 490.1 Application in relation to the truck and that this court lacks jurisdiction to impose a forfeiture order in relation to "Big Red" is grounded on an understanding of Section 490.1 that is not supported by the plain reading or purposive reading of the *Code* or the case law.

[84] The Cross-Applicant's further contention that the appropriate remedy is a summary dismissal of the Crown's Section 490.1 application because it is manifestly frivolous due to the alleged lack of jurisdiction is thus moot. This is not a case where this Application under Section 490.1 is doomed to fail or that there is no arguable basis to succeed. The Cross-Application for summary dismissal of the Crown's Application is denied.

Offence Related Property ("ORP")

[85] As noted above, Section 490.1(1) provides for mandatory forfeiture once the statutory prerequisites are met, subject to the discretion of the Court to deny forfeiture where to do so is disproportionate under Sections 490.41(3) or 490.4(3). First, the Accused must be convicted of an indictable offence. That criterion is clearly met by Mr. Barber's convictions for Mischief and Disobey Court Order on which the Crown elected to proceed by indictment.

[86] Second, the Crown must prove on balance of probabilities that the offence-related property is related to the commission of the offence. It is found to be so if it is used in any manner in connection with the commission of such an offence.

[87] Third, the Crown must prove on a balance of probabilities that the indictable offence was committed in relation to that property. In relation to that property demands a more direct connection between the property and the offence than what would be necessary to find "used in any manner in connection with the commission of the offence". This section is aimed at seizing the means, devices or instrumentalities used to commit offences. The purpose is to punish the offender by taking property used in commission of offences. This is set out in *R v. Trac*, 2013 ONCA 246 (paras. 74, 77, 95 - 96).

[88] Defence Counsel argues that Big Red was not used in any manner in connection with the offence because the Ottawa Police Service (OPS) directed vehicles–including Big Red–where to park and that when they requested that Chris Barber move Big Red out, he did so when it was safely feasible to do so.

[89] The problem with that argument is that although OPS may have directed them where to park, they also provided clear rules and guidelines in the traffic plan (Trial Exhibit No. 125) for the truckers. Demonstrators were to take direction from police where applicable, there were limits on the number of vehicles on a given street, there was a maximum total weight of those vehicles on each street indicated, and there was a requirement of keeping emergency lanes open at all times and that all staging areas must keep an adjacent emergency lane clear. The Court found that none of this was adhered to (Trial Decision para. 294). For example, the evidence was that on Wellington Street there was an emergency lane open the first weekend (January 28 – 29) but that by the Monday or Tuesday after the first weekend it was completely lost. As noted by witness Kim Ayotte, there was no emergency lane on Wellington Street. Further, as noted by Inspector Lucas regarding Ottawa Police guiding truckers where to park and providing the Traffic Plan (Exhibit No. 125.), “Police were attempting to manage the situation and balance the right of free speech but mitigate the impact on the downtown, but this was not an endorsement or permission for criminal mischief”.

[90] We know Big Red was parked on Wellington Street from January 28 to February 8, 2022. The Court found in the Trial Decision at para. 317; “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 well documented in photographs, text messages and in video.” There is evidence in text messages that Mr. Barber knew that they had train wrecked the city and were completely messing up this city by their placement of trucks blocking streets.

[91] Defence also argues that Big Red was moved by Chris Barber as requested out of the city when it was safely feasible to do so. Yes, Chris Barber did move Big Red out of the city. However, the use of Big Red as a symbol to continue the protest continued regardless of where it was. Big Red took on its own persona.

[92] Also, Mr. Barber did not move the truck when requested by Constable Bach, he did so on his terms. It was a negotiation back and forth. Chris Barber was asked if he is boxed in and needs help. Barber says he is on Wellington Street; “Priority for first out is residential. Wellington, I believe will have to be held”. She offered to assist in the movement of the vehicle. It was he who said, on February 6, “we have a day planned on the stage. Did you see the people here yesterday? It was huge. Monday people go back to work and things calm. With so many people walking around it’s a safety issue.” He asked if she agrees. Constable Bach responds “It depends .. police are supportive of getting as many trucks out of the core areas as possible, as quickly as possible essentially. What’s the planned stage?” Constable Bach never agrees and continues to urge him to leave. Mr. Barber’s response is “you realize there is more coming”. He did move Big Red out of the city and took some other trucks with him, but it was on his terms and he never took Constable Bach up on her offer to assist with getting trucks out. As she said, “you know Chris you guys can leave at any time. Its the best solution for everyone’s safety.” Chris Barber did not respond to that statement.

[93] It is also noted that the evidentiary record supports that not only was Big Red an instrument of the mischief as one of the vehicles directly contributing to the blocking of roads and blocking lanes, but Big Red was also a powerful symbol of the mischief. Big Red became part of the Freedom Convoy branding and was used as a tool to do so. The Truck was predominately featured on the logo, screenshots and Facebook posts set out at Tab 9. There was the repeated depiction of Big Red as a symbol for the Freedom Convoy alongside protest messaging and urging by Chris Barber for truckers to remain where they were, blocking roads and emergency lanes.

[94] The photos show Big Red in the area known as the “red zone” until February 8, 2022. When you consider all of the evidence in the trial findings concerning the blocking of roads and Chris Barber’s knowledge and encouraging of that to continue, his driving by an open intersection and encouraging truckers to come remedy that situation–i.e. encouraging truckers to come block that intersection–Big Red was clearly used in a manner in connection with the offence as set out in Section 2 of the *Criminal Code*.

[95] The cumulative effect of the evidence shows a sustained, purposeful association of the vehicle, with protest activities that interfered with the ordinary traffic and the enjoyment of property in the downtown core.

[96] The definition of offence-related property (ORP) in Section 2 is broad, encompassing property used "in any manner in connection with" the offence. I find that on the balance of probabilities, "Big Red" was used "in any manner in connection with" the mischief. A review of the trial findings and Exhibit No. 7 entries (Tabs 8 - 9) show the truck's physical contribution to obstruction and its symbolic role in amplifying the protest's footprint. The evidence also supports a finding on a balance of probabilities that the offence was committed in relation to that property for the reasons noted above. I find the Crown has met its burden in determining that Big Red is offence-related property.

[97] Having found that the Crown has satisfied its requirements for forfeiture under Section 490.1(1), there is presumptive forfeiture subject to Section 490.41(3) and Section 490.4 (3) of the *Criminal Code*. The Court must determine whether that forfeiture would be disproportionate pursuant to Section 490.41(3) and ought not to be ordered, or grant relief from forfeiture to the affected third parties under Section 490.4(3). This option requires a finding that the third parties are innocent of complicity or collusion in the offence.

Relief from Forfeiture for Innocent Third Parties Under Section 490.4(3)

[98] Section 490.4(3) of the *Criminal Code* grants the Court the power to order restoration of property that would otherwise be forfeited under Section 490.1(1) to a third party. Notwithstanding that a justice is required to impose a forfeiture order where the statutory prerequisites are established (see *R. v. Trac* at para. 74), Section 490.4(3) allows a justice to order the return of the property to the property's lawful owner where the justice is satisfied that the lawful owner appears innocent of any complicity in or collusion in relation to the offence, has not been charged with an indicatable offence under the *Criminal Code* or the *Corruption of Foreign Public Officials Act,* and did not acquire title to or a right of possession of the property 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.

[99] *R v. Craig* 2009 SCC 23 at para. 41 states:

> The forfeiture scheme is focused in part on taking offence related property out of circulation and on confronting organized crime, whether or not the property is owned by the offender. Individuals who have allowed their property to be to be used for criminal purposes, even if their conduct does not rise to the level of criminal liability with respect to the particular offence, may, as a result, also be subject to forfeiture orders, as reflected by s.19 (3) which provides a recovery mechanism for third party owners of offence related property to be forfeited. Under that section a court must be satisfied that individuals are innocent of any complicity or collusion in the offence before they can recover their property.

[100] In *R v. D'Onofrio*, 2023 QCCQ 10034 at para. 47, the Quebec Court defines complicity and collusion as follows:

> The concept of complicity is a broad concept. It refers to involvement with others in an unlawful activity going beyond passive acquiescence. However, it does not have to rise to the level of criminal liability. As for collusion, it implies a covert agreement between two individuals with the objective of deceiving or misleading another, causing him prejudice or achieving an illicit goal.

[101] In *R v. D'Onofrio* at para. 41, the Court states:

> A court ought to consider whether the third party acted reasonably, were aware of and involved in any criminal activity, and whether they profited from any illegal acts
>
> The forfeiture regime is rooted in common sense. […] Where an uncharged property owner acted reasonably, was unaware of and not involved in any criminal activity, and where he did not profit from any illegal acts, logic dictates that he should be spared from losing his property. After all, there is no point in punishing morally innocent persons. This would not advance any legitimate social or legal interest.

[102] In *R. v. Neault* at para. 67, Justice Vezina held that an individual who financed the purchase of the offence-related property has an interest in the property for the purpose of Section 490.41(3), regardless of whether they obtained security on the finance:

> … the father who financed the purchase of his son's truck and who, because of this family relationship, did not obtain a real security on the vehicle as any lending institution would, nevertheless has an interest in this property.

[103] Four individuals and corporate third parties have an interest in Big Red.

[104] Spring Bank Farms has an interest in Big Red as a secured creditor. If Big Red is forfeited to the Crown, Spring Bank Farms will lose its security and would not be able to take ownership of Big Red if Spring Bank Holdings defaults on its loan.

[105] C B Trucking has an interest in Big Red because it is a significant revenue-generating asset for the corporation. Jonathan Barber's evidence in cross-examination was that C B Trucking has at least two other trucks and two independent contractors who do work for C B Trucking. These are also revenue-generating assets. However, Jonathan's evidence under cross-examination was that these assets pale in comparison to the revenue generated by Big Red. I accept that evidence, particularly as Great White is not available for use due to an accident.

[106] Jonathan Barber may have an interest in Big Red in his role as shareholder and employee of C B Trucking. In paragraph 22 of his Affidavit, Jonathan states that he is remunerated by C B Trucking as an employee, director and shareholder. If Big Red is the primary or significant revenue-generating asset of C B Trucking, then his remuneration as an employee is likely to be affected if Big Red is forfeited.

[107] The fundamental principles of corporate law hold that Jonathan, Danny, and Judith Barber do not have a direct interest in Big Red in their roles as shareholders and directors of their respective corporations. However, this Court may rely on *R. v. Kosmopoulos* to find that it would be flagrantly opposed to justice to not lift the corporate veil in the case at bar on the basis that Jonathan, Danny, and Judith have a pecuniary interest in Big Red because its forfeiture would have a significant effect on the value of their shares.

[108] The Third Parties did not acquire a right of possession of Big Red under circumstances that give rise to a reasonable inference that the right was transferred for the purpose of avoiding forfeiture of Big Red.

[109] The Crown did not provide notice of the Section 490.1 Forfeiture Application to Mr. Barber or any of the Third Parties until May 2025, almost three years after any transfer of interests in “Big Red”. This delay in providing notice of intention to seek forfeiture of Big Red is significant. The interested parties could not have known the Crown would seek forfeiture when they gained their various interests in the truck.

[110] The amendment to the Bill of Sale (hereinafter, “Amendment”) states that C B Trucking gave Spring Bank Farms a right of possession of Big Red as security for the $50,000 loan Spring Bank Farms gave to Spring Bank Holdings. The Bill of Sale is dated June 16, 2022.

[111] The Amendment states that the Bill of Sale erroneously lists Spring Bank Farms as the seller of Big Red and C B Trucking as the buyer. The Amendment further states that C B Trucking was the registered owner of Big Red prior to June 16, 2022. While Spring Bank Farms has not registered their proprietary interest in the truck, I do find that they have a valid interest in the vehicle.

[112] Spring Bank Holdings’ bank statement shows that $78,855 was paid out to Canadian Diesel Power Trucks on June 17, 2022, for the purchase of Great White. This is supported by the Canadian Diesel Power Trucks’ Bill of Sale (hereinafter, “Great White Bill of Sale”) dated June 17, 2022, for Great White.

[113] The Crown’s Application not being brought or notice served until May 1, 2025, the Amendment to the Bill of Sale, the bank statement, and the Great White Bill of Sale support the third parties’ contention that the transfer of the right of possession of Big Red from C B Trucking to Spring Bank Farms as security on June 16, 2022, was not undertaken in an attempt to avoid forfeiture of Big Red.

[114] In his Affidavit, Jonathan Barber states that he and C B Trucking are innocent because they had no knowledge that Big Red was being used to willfully obstruct,

interrupt, or interfere with the lawful use, enjoyment, or operation of property, and more specifically, that neither he nor C B Trucking had knowledge that Big Red was being used to block or obstruct a street, highway or road between January 29 and February 17, 2022.

[115] Jonathan's evidence under cross-examination, however, suggests he and C B Trucking drove Big Red to Ottawa leading the Freedom Convoy, and had knowledge that Big Red was parked on a public road as part of the protest because he drove it there in January 2022. Jonathan assisted his father in dealing with the truckers who were part of the Convoy, and did not leave Ottawa until his father's release from custody February 18, 2022.

[116] Jonathan Barber said that he fully supported his dad's efforts protesting in Ottawa and characterized his dad as a hero. He is shown in a photo posing with Big Red on Wellington Street. This photo was posted on his Dad's Facebook. Jonathan was generally aware of the content Christopher Barber posted on his social media accounts regarding the protests and that Christopher Barber had a following on social media. Jonathan Barber had a poor recollection of the details about what occurred during the Freedom Convoy or his own role or helpfulness to his dad.

[117] Jonathan Barber's inability to recall any details regarding what he did during the Convoy and when looking at the differences between his Affidavit and his testimony require this Court to have concerns regarding the credibility, but more particularly the reliability, of his testimony.

[118] Similarly, Danny Barber states in his Affidavit that he, Judith, and Spring Bank Farms had no knowledge that Big Red was being used to willfully obstruct, interrupt, or interfere with the lawful use, enjoyment, or operation of property and more specifically, that Big Red was used to block or obstruct a street, highway, or road.

[119] Danny's evidence under cross-examination, however, shows that he supported Christopher Barber in his protest, and he and his wife agreed with everything their son was doing. Danny was very proud of his son's efforts to express dissatisfaction. Danny said he knew that eventually something started going wrong with the police. He agreed he never told Chris to come home and avoid trouble.

[120] Danny Barber knew that Big Red was one of the trucks parked in downtown Ottawa protesting. He knew fundraising was required for these trucks to stay in Ottawa to keep the protest alive. He said he and his wife donated $500 cash “just to pay for everyday expenses down in Ottawa”.

[121] On the issue of corporate attribution, I agree that there are no one-size-fits-all rules; courts must apply the doctrine purposively, contextually, and pragmatically in the public interest. The fundamental principles of corporate law hold that Jonathan, Danny, and Judith Barber do not have a direct interest in Big Red in their roles as shareholders and directors of their respective corporations. However, this Court may rely on *R. v. Kosmopoulos* to find that it would be flagrantly opposed to justice to not lift the corporate veil in the case at bar on the basis that Jonathan, Danny, and Judith have a pecuniary interest in Big Red because its forfeiture would have a significant effect on the value of their shares.

[122] Relying on the decision of *Scott v. Golden Oaks Enterprises Inc*., 2024 SCC 32 (para. 62), I agree attribution of the conduct of Danny and Judith Barber (directing minds) to Spring Bank Farms Inc., and of Mr. Barber’s directing mind to C B Trucking Ltd does apply.

[123] A further component of Section 490.4(3) is that the Court must be satisfied that the Third Parties appear innocent of any complicity in the mass mischief. In *Canda (Attorney General) v. Jamal* 2015 ONCJ 687 at para. 110 the Court indicated:

> …I conclude that declining forfeiture under s.19(3) requires that the Application judge be satisfied a non-offender lawful owner “appear” not “is” innocent in the sense that he or she did not knowingly or negligently allow their property to be used in relation to the designated substance offence” or in this case in connection to the mass mischief. The threshold is arguably low that being the party with the lawful interest must appear innocent.

[124] Jonathan Barber was aware of his father’s presence on social media and the type of content he was posting regarding the convoy. The evidence supports that Jonathan Barber drove Big Red to Ottawa with his father and in fact drove it onto Wellington. He

had knowledge of Christopher's Barber's role and influence over the protester's actions, and he assisted his father during the convoy protest as indicated in cross-examination. The evidence does not satisfy this Court that Jonathan Barber as a non-offender lawful owner appears "innocent". This Court is not satisfied that Jonathan is innocent of any complicity in relation to the offence as is required by the statute.

[125] Likewise, Danny Barber's evidence suggests that he was aware of Christopher's role as a leader in the protests and that he had knowledge of things going wrong with the police, and awareness that his son was to be arrested for the means used to protest. Additionally, Danny supported the continued mischief, both emotionally and financially, of Christopher Barber in his endeavors in Ottawa. Danny Barber and his wife provided Chris Barber with money specifically to allow him to stay in Ottawa to continue the mischief. This Court is not satisfied that Danny Barber and Judy Barber appear innocent of complicity in relation to the offence as required for the purposes of Section 490.4(3).

[126] So while I find, given the timing of the Crown's Application and the transfers of interest in Big Red, that there is no collusion and that the purpose of the transfer was not to avoid the forfeiture of the property, the finding above that the Third Parties are not innocent of complicity precludes a finding of relief from forfeiture under Section 490.4(3) as both components must be satisfied.

The Disproportionality Test under Section 490.41(3)

[127] Section 490.41(3) of the *Criminal Code* grants the Court a discretionary power to relieve in whole or in part from a forfeiture order made under Section 490.1(1). That section reads:

> (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. (*Criminal Code*, Section 490.4(3))

[128] The three statutory criteria are:

i. the nature and gravity of the offence.

ii. the circumstances surrounding the commission of the offence, and.

iii. whether the offender has a criminal record.

> The focus of the forfeiture scheme is the property itself and its role in past and future crime, its purpose is to take offence related property out of circulation.

The Nature and Gravity of the Offence

[129] The nature and gravity of the offence must be analyzed on the facts of each case. The caselaw offers very little guidance in this regard, particularly in relation to mischief and compelling others to disobey a court order. Nevertheless, a review of the available caselaw on this issue is helpful.

[130] In *R v. Craig* 2009 SCC 23 at para. 56, Justice Abella outlined some of the relevant factors affecting the nature and gravity of the offence of illegal production of drugs:

> The nature and gravity of the offence could include the character and quantity of the substance involved, the level of sophistication of the crime and the extent to which the commercial production or distribution of drugs was involved.

[131] In that case, the offender engaged in the illegal production of marijuana in her home for several years. She sold the marijuana she produced to various clients and hired employees to help her with the operation. She devoted the basement and portions of the main floor of her home to marijuana cultivation and adapted her home to some degree for the purpose of growing marijuana.

[132] In the context of an “over 80” offence, relevant factors may include the blood-alcohol content readings and whether an accident or dangerous driving was present: see

R v. Neault, 2011 QCCA 435 at para. 40. (Leave to the Supreme Court of Canada dismissed)

[133] It is noteworthy that in both *Craig* and *Neault*, the Court did not specify the weight given to the "nature and gravity of the offence". Importantly however, the Courts in both cases concluded that forfeiture was disproportionate pursuant to Section 490.41(3) of the *Criminal Code*.

[134] The presence of firearms is likely to raise the severity of the nature and gravity of the offence. In *R. v. Kabanga-Muanza* 2019 ONSC 1161 at paras. 121 and 124, Justice Spies found that the vehicle had been instrumental in the commission of serious criminal offences involving the hiding of drugs previously and a gun. There, the offender had used the offence-related property, namely his car, to store contraband consisting of a firearm and drugs. Justice Spies concluded that forfeiture of the offender's car was not disproportionate on the basis that the accused had used his vehicle in the past to hide drugs and given that a firearm was found in it. It was found that there was a real risk that the vehicle, if not forfeited, would aid in the commission of future offences, given his criminal record, which is the rationale for the forfeiture regime.

The Circumstances Surrounding the Commission of the Offence

[135] A Judge may consider the way the property was used in the commission of the offence. *In R v. Craig*, 2009 SCC 23 at paras. 57, 59, and 60, the Court indicated that the Judge may consider whether the property was modified, fortified, or otherwise adapted to accommodate to the commission of the offence, or whether the offender or the property has ties to organized crime. In short, the disproportionality test will favor forfeiture where the property was designed or intended to be used for illegitimate purposes. The SCC writes:

> [57] The second factor, the circumstances surrounding the commission of the offence, might include consideration of the offender's role in the commission of the offence, the nature of the property and the manner in which it was used in the offence, risks to the security or safety of the community, whether the property was used in a manner that detrimentally affected its legitimate use and enjoyment, whether the

> property was fortified or otherwise adapted to accommodate the grow operation, the extent of the offender's involvement in organized crime and whether the property itself was held by a criminal organization.
>
> [59]… Full forfeiture may be anticipated, for example, in the case of a fortified property purchased for criminal purposes and solely dedicated to the commercial production and distribution of illegal substances, perhaps with a connection to organized crime. On the other hand, one might decline to order forfeiture in the case of an individual with no criminal record and no connection to organized crime who grows very little marihuana in her home. Each situation will be subject to a judge's appreciation of how the s. 19.1(3) factors should be applied in the particular circumstances, which, as previously stated, may result in no partial or full forfeiture.
>
> [60] The forfeiture scheme is not aimed strictly at defeating organized crime, as a plain reading of the provision shows. However, even absent the legislative history to this effect, there is no doubt that involvement in organized crime is a relevant factor in applying the proportionality test under s. 19.1(3). It is significant not only because it is a serious circumstance in itself, but also because it indicates that the property was dedicated to and adapted for criminal purposes.

[136] In *R v. Nguyen*, 2009 SCC 25 at paras. 11 to 13, the companion case to *Craig*, Justice Abella upheld the trial judge's forfeiture order of the offender's home because the home had been purchased solely for the purpose of growing marijuana:

> [11] While the Nguyens' grow operation was roughly comparable in size and sophistication to Ms. Craig's, at least two important factors distinguish this case and suggest that forfeiture would not be disproportionate within the meaning of s. 19.1(3).
>
> [12] Of particular relevance, in my view, is Josephson J.'s observation that the Nguyens bought the house for the sole purpose of growing marihuana. This means that the property was tainted from the outset by a criminal purpose. (See R. v. Nguyen, 2006 BCSC 1846, [2006] B.C.J. No. 3202 (B.C.S.C.), at para. 14.)
>
> [13] In addition, it is significant that the Nguyens resided elsewhere with their two younger children, while their 18-year-old daughter lived in the house. As the trial judge observed,

> this fact suggests that the property's main function was as the site of a grow operation. This too is relevant in weighing the factors in s. 19.1(3).

[137] *Craig* was distinguished from *Nguyen* because Ms. Craig's home was found to have been purchased for a legitimate reason and merely adapted afterward for the purpose of producing marijuana. Both the trial judge and Justice Abella found that this was a factor weighing in favour of, not imposing, a forfeiture order.

[138] Conversely, where the property in issue was routinely used for legitimate purposes but was used in the commission of the offence only in passing, the disproportionality test will not favour forfeiture.

[139] In *R. v. Neault*, at paras. 45 and 46, Justice Vezina distinguished the legitimate purpose of purchasing a vehicle for daily use from the illegitimate purpose of adapting a home for the purpose of growing marijuana (as was the case in *Craig*):

> [45] Here, the truck was purchased for a legitimate purpose. Indeed, no one purchases a vehicle to drive in an impaired state.
>
> [46] Ms. Craig's home was "adapted to some degree for the purpose of growing marihuana". The respondent's truck was not modified or adapted in such a way as to interfere with its legitimate use.

[140] A Judge may consider how the property is intended to be used in the future. Because one of the underlying purposes of forfeiture is to ensure that the property will not be used for illegitimate purposes, the disproportionality test will not favour forfeiture where the property is intended to be used for legitimate purposes in the future or is intended to be used by a person other than the offender, regardless of whether there will be a transfer of ownership.

[141] In *Neault*, at paras. 52 and 53, Justice Vezina found that the fact that the vehicle was intended to be used for work purposes by one of the offender's employees following the forfeiture hearing was a factor weighing against forfeiture:

> [52] As for the fact that forfeiture of the truck would prevent the commission of future offences, the judge was able to assess

> this. It was proven that a completely legitimate use for the truck had been planned, i.e., that another employee of the business would drive it for the "méchouis".
>
> [53] The judge deemed that, in this case, forfeiture of the truck was too draconian a measure. Not surprising, in comparison.

[142] In *R v. Kabanga-Muanza*, Justice Spies ordered forfeiture of the offender's vehicle on the basis that there was a real risk that the vehicle would be used to commit future offences if not forfeited. In that case, the Court found that the vehicle in the past had been instrumental in the commission of serious crimes, including the transportation of drugs and firearms used in shootings.

Criminal Record

[143] The wording in Section 490.41(3) of the *Criminal Code* requires a Judge to consider an offender's criminal record. However, an offender's criminal record must be weighed against the other factors enumerated in the provision and must not take precedence over the other enumerated factors.

[144] In *R. v. Craig*, the offender had undertaken a sizeable marijuana grow-operation in her home for several years, but she did not have a criminal record. While Justice Abella in *Craig* did not expand on the weight given to the offender's lack of a criminal record, it undoubtedly weighed against a forfeiture order.

ANALYSIS: SECTION 490.41(3)

Nature and Gravity of the Offence

[145] The gravity of an offence depends on the particular facts of each case. In the case at bar, the mass mischief which occurred as result of the Freedom Convoy in downtown Ottawa between January 28 and February 21, 2022, had a significant impact on the citizens and businesses of Ottawa. The Victim Impact statements, and the trial evidence support the significant effect the Freedom Convoy had on the citizens of downtown Ottawa. Mr. Barber was convicted as a party and a principal of mischief and counselling others to disobey a court order, namely asking his supporters to honk their horns—in

contravention of Justice McLean's Order—if police came to start enforcement, to warn others what was happening.

[146] The mischief conviction was entered on the basis that Mr. Barber and the other protesters parked their trucks on public roads which, while not unlawful on its own, created a mass mischief and significantly interfered with the lawful use and enjoyment of property. Mr. Barber's conduct and his acts of encouraging others caused streets to become blocked which, in turn, made it difficult or impossible for people to come and go to and from their residences, places of work, or appointments. Public transit and taxis could not travel into the demonstration area. The noise also made it difficult or impossible for people to sleep at night or concentrate at work during the day.

[147] The blocking of roads affected business's ability to receive customers and supplies and transportation routes were impacted. Mr. Barber's truck "Big Red" became a symbol of the Freedom Convoy movement and was used to block roads and often shown in social media postings.

[148] The Court, however, found that Mr. Barber himself did not advocate or countenance use of violence at any time. He, along with others, came to Ottawa with the noblest of intentions to protest the imposition of COVID-19 restrictions. The Court noted that there were many groups within the Convoy, as noted in the trial evidence by Inspector Lucas and Constables Blonde and Bach and other witnesses. In the text exchanges with Cst. Bach, it was clear there were groups of truckers that Chris Barber could not influence. The Freedom Convoy led by Mr. Barber was but one of the groups who converged on Ottawa during January and February 2022.

[149] There was also a finding of fact made in the Trial Decision that Chris Barber and Ms. Lich were leaders of the Freedom Convoy but were identified by city officials as being part of the broad moderate group, which is why the mayor wrote to Ms. Lich seeking the assistance of that group in reducing the footprint on the downtown core and alleviating the harm caused to its citizens.

[150] Ms. Lich immediately agreed to work with the city and Mr. Barber personally attended one or more meetings with the city to reduce the number of the vehicles in the

downtown core and alleviate the effect on the residents and businesses. He and others, as per this agreement with the city, moved a significant number of trucks out of the downtown core before the then Chief of Police put a stop to this attempt to reduce the footprint. Kim Ayotte agreed that the Freedom Convoy upheld their end of the agreement and that it was the police that put a stop to this plan, as noted in his evidence. Mr. Barber also worked with police liaison team (PLT) Officers Bach and Blonde on occasion to open emergency lanes and unblock streets.

[151] Further, although the mischief went on from January 28 to February 18 when enforcement measures were invoked, Mr. Barber himself removed his truck from the downtown core February 8, 2022, taking it out of town to Exit 88. Although he did so after some urging by Constable Bach, there is no evidence that Mr. Barber ever returned Big Red to the downtown core, and he voluntarily moved his vehicle out of town.

[152] The effect of Mr. Barber's conduct, while disruptive to the public, did not advocate or condone violence and he worked with police and the city to reduce the impact of the mischief. As noted in *R v. Alludin* 2019 ONCJ 344 at para. 25: "While the behaviour of the group of riders who rode dangerously can be said to have caused mayhem, Mr. Alludin's conduct cannot be described as such". The same can be said for Mr. Barber.

[153] Second, would forfeiture be disproportionate to the circumstances surrounding the commission of the offence, courts may consider the way the property was used in the commission of the offence. Here, Big Red was used for transportation purposes and was the means used by the protesters to block public roads and create noise as part of the protest. The trucks were escorted by police into Ottawa and directed where to park. Chris Barber and others had been given an Operational Plan created by Inspecter Lucas and OPS (Exhibit No.125) The directions in the operational plan were, however, not followed. Inspector Lucas agreed that OPS was overwhelmed by the number of vehicles who came in protest.

[154] Importantly, Big Red was not modified, fortified, or otherwise adapted to accommodate the commission of the offence. Big Red, like all other transport trucks, is equipped with an air horn from factory. It was not tendered in evidence that Mr. Barber

did anything to Big Red to facilitate the commission of the offence. Instead, Big Red was used in its default form throughout the commission of the offence.

[155] Courts may also consider how the property is intended to be used in the future. There is no evidence that there is a risk that Big Red will be used in the commission of future offences. On the contrary, the evidence suggests that Big Red will continue to be used for its legitimate and intended commercial purposes as a work truck in the future in much the same way that it has been used since it's purchase in 2004. The continued circulation of Big Red poses no public risk as is the intended purpose of the forfeiture provisions. The truck is an essential component of C B Trucking and is important to its revenue stream. This company employs three or four employees, and the viability of the company would be significantly impacted by its forfeiture which is a small factor for consideration.

[156] The Ottawa Police, in directing the trucks into the downtown core, did so to balance the Charter rights of the protestors with the need to protect public order and reduce the impact on its citizens. The Court considers that the conviction for Mischief occurred in the context of a legitimate public protest which crossed the line when it significantly affected public order and affected the rights of the citizens of Ottawa. The Court recognized the Accused's democratic right to protest in the Trial Decision and considered it also in the sentencing context at para. 289 of the Sentencing Decision. Although the same application of principles do not apply in the forfeiture regime, in my view it is a consideration in the examination of the circumstances surrounding the commission of the offence.

[157] Third, would forfeiture be disproportionate given Mr. Barber's criminal record or lack thereof. Mr. Barber does not have a prior criminal record, so that is not a factor in consideration of risk of future offending. By all accounts, Chris Barber is a hard-working family man, a truck driver who runs a small trucking company along with his son and contract drivers. He has strong family support from his mother and father. Big Red is the main revenue generating transportation vehicle. The truck itself is used as part of a legitimate business. It was only offence related property because of how it was used during the offence. There is nothing to suggest that confiscation would prevent future

crimes. There is no evidence that anything other than a perfectly legitimate use of the truck is planned.

[158] In consideration of the factors set out in Section 490.41(3) and the application of the law, I find that, although Big Red has been found to be offence-related property under Section 490.1 of the *Criminal Code*, Mr. Chris Barber has established on a balance of probabilities that the forfeiture of "Big Red" would be disproportionate, and this Court denies the application for forfeiture of Big Red under Section 490.41(3) of the *Criminal Code*.

Whether Punitive or Compensatory Costs Should be Ordered Against the Crown

[159] Costs in criminal proceedings, including forfeiture applications under Section 490.1 of the *Criminal Code*, are rare and exceptional. The governing principles were articulated in *R v. Fercan Developments Inc.*, 2016 ONCA 269, affirming West J.'s decisions in *R v. Fercan* Costs Entitlement Decision, 2014 ONCJ 779, and *R v. Fercan* Costs Quantum Decision, 2015 ONCJ 695.

[160] The Ontario Court of Appeal held that costs may only be awarded against the Crown where there is either:

i. a marked and unacceptable departure from reasonable prosecutorial standards, or;

ii. other exceptional circumstances such that fairness requires relief (*Fercan* ONCA, paras. 64 - 65, 71, 76, 86).

[161] Punitive costs sanction egregious Crown conduct; compensatory costs relieve unfair burden despite no misconduct. Both are exceptional remedies (*Fercan* Merit Decision, para. 98).

Analysis Regarding Costs

[162] Applying the governing principles from *Fercan Developments Inc*. and related authorities, the Court does not find that the Crown's conduct in this proceeding meets the

stringent threshold for awarding costs. The test requires either a marked and unacceptable departure from the reasonable standards expected of the prosecution, or exceptional circumstances such that fairness demands relief. Neither is established on this record.

[163] First, the Crown had a case to present. The evidentiary record included trial findings of mass mischief, photographic and social media evidence situating Big Red within the protest footprint, and submissions on corporate attribution. While the application was ultimately unsuccessful, this does not render it meritless or frivolous. As the Ontario Court of Appeal cautioned in *Fercan*, costs are not awarded merely because the Crown's position fails; the standard is not 'weak but tenable' but rather a flagrant deviation from prosecutorial norms (*Fercan* ONCA, paras. 64 - 65, 71, 76, 86).

[164] Second, the Crown was mindful of the law governing complicity and collusion. Its written and oral submissions referenced Sections 490.1 to 490.41, *Canada (AG) v. Jamal*, 2015 ONCJ 687, and *Scott v. Golden Oaks Enterprises Inc.*, 2024 SCC 32. The Crown advanced a purposive argument on attribution and public interest deterrence, consistent with established jurisprudence.

[165] Third, the Crown provided full disclosure to the third parties. Unlike the circumstances in *Fercan*, where disclosure was delayed and incomplete, the record here demonstrates timely and comprehensive disclosure of evidentiary materials, including Exhibit No. 7 and supporting submissions. The Crown facilitated remote testimony and maintained responsive communication with counsel, evidencing adherence to fairness obligations.

[166] In sum, the Crown's conduct does not exhibit the 'hardball' attitude or systemic disregard for legal standards that animated the costs award in *Fercan*. Nor do exceptional circumstances arise that would make it unfair for the cross-applicants to bear their own costs. The application was pursued in good faith, grounded in law and evidence, and conducted with respect for procedural fairness. Costs are not awarded. The Crown's conduct does not meet the threshold for punitive or compensatory costs under the governing jurisprudence.

DISPOSITION

[167] In conclusion, the application for forfeiture of "Big Red" is denied, the Court having found forfeiture of Big Red to be disproportionate pursuant to the criteria set out in Section 490.41(3). The Cross-Applications are dismissed in its entirety: summary dismissal is unwarranted; return to third parties is denied for the reasons outlined above. The Court, however, does not find the transfers of proprietary interest were made to defeat the Application for Forfeiture. The criteria for the ordering of costs against the Crown, that being a marked and unacceptable departure from the reasonable standards expected of the prosecution costs, are not met and the Application for costs against the Crown is dismissed.

Released: January 13, 2026

Signed: Justice H. Perkins-McVey