SUPREME COURT OF CANADA

CITATION: R. *v.* Nguyen, 2026 SCC 10

APPEAL HEARD: October 16, 2025
JUDGMENT RENDERED: April 17, 2026
DOCKET: 41400

BETWEEN:

His Majesty The King
Appellant

and

Thi Huyen Nguyen,
Thi Hong Cun and
Alexander Nguyen
Respondents

- and -

Director of Public Prosecutions
Intervener

CORAM: Wagner C.J. and Karakatsanis, Côté, Rowe, Martin, Kasirer, Jamal, O'Bonsawin and Moreau JJ.

REASONS FOR JUDGMENT: (paras. 1 to 159)

Kasirer J. (Wagner C.J. and Karakatsanis, Côté, Rowe, Martin, Jamal, O'Bonsawin and Moreau JJ. concurring)

His Majesty The King *Appellant*

v.

Thi Huyen Nguyen,
Thi Hong Cun and
Alexander Nguyen *Respondents*

and

Director of Public Prosecutions *Intervener*

Indexed as: R. *v.* Nguyen

2026 SCC 10

File No.: 41400.

2025: October 16; 2026: April 17.

Present: Wagner C.J. and Karakatsanis, Côté, Rowe, Martin, Kasirer, Jamal, O'Bonsawin and Moreau JJ.

ON APPEAL FROM THE COURT OF APPEAL FOR QUEBEC

Criminal law — Criminally tainted property — Forfeiture — Individuals charged with various offences following investigation into cannabis production

operation — Property of individuals seized and placed under restraint orders — Stay of proceedings granted before individuals' trial due to unreasonable delay — Whether Crown can seek forfeiture of seized or restrained property belonging to individuals whose proceedings were stayed — Controlled Drugs and Substances Act, S.C. 1996, c. 19, s. 16(2) — Criminal Code, R.S.C. 1985, c. C-46, ss. 462.37(2), 490(9), 491.1.

Several individuals were accused of various offences relating to an alleged conspiracy to produce cannabis. In connection with the investigation and criminal proceedings, some of their property was seized or frozen by the police. One of the individuals pleaded guilty and was sentenced accordingly. The Court of Québec subsequently stayed the proceedings against the other individuals after finding that the delays in their case violated their right to trial within a reasonable time under s. 11(b) of the *Canadian Charter of Rights and Freedoms*.

After the stay was granted, the Crown filed an application in the Court of Québec to have certain property that had been seized or restrained during the police investigation forfeited. The individuals who owned the property applied to dismiss the Crown's application for forfeiture, alleging that the Court of Québec had no jurisdiction to consider forfeiture of the property. The court concluded that it had jurisdiction based on ss. 462.37(2) and 491.1 of the *Criminal Code* ("*Cr. C.*") and s. 16(2) of the *Controlled Drugs and Substances Act* ("*CDSA*") but that it was without jurisdiction under s. 490 *Cr. C.* The individuals filed an application for prohibition with *certiorari* in aid in the Superior Court, arguing again that the Court of Québec had no jurisdiction

to hear the Crown's application for forfeiture. The Superior Court dismissed their application. The Court of Appeal allowed the appeal brought by the individuals and granted the requested order of prohibition with *certiorari* in aid. It concluded that, since no criminal liability was proven against the individuals and the effect of the stay is to foreclose any possibility that such liability can be proven against them, there was no jurisdiction under ss. 462.37(2) or 491.1(2) *Cr. C.* or s. 16(2) *CDSA* upon which the Crown's application for forfeiture could proceed.

Held: The appeal should be allowed in part.

The Court of Québec does have jurisdiction to proceed with the criminal forfeiture hearing in the instant case. The stay of proceedings does not oust statutory jurisdiction in respect of forfeiture. Although the Court of Québec does not have the power in the instant case to order forfeiture under ss. 462.37(2) or 491.1(2) *Cr. C.* or s. 16(2) *CDSA*, which tie that authority to trial and sentencing, jurisdiction to conduct criminal forfeiture proceedings survives under statutory rules that operate independently of trial and sentencing, including under s. 490 *Cr. C.* An order prohibiting the continuation of forfeiture proceedings before the Court of Québec under ss. 462.37 and 491.1 *Cr. C.* and s. 16 *CDSA* should be granted, and the matter should be remanded to that court for continuation of forfeiture proceedings, together with consideration of the individuals' application for return of the property at issue.

Forfeiture proceedings are distinct from other criminal proceedings. They are not aimed at determining the criminal responsibility of accused persons, nor at

punishing them. Forfeiture provisions found in contemporary criminal legislation in Canada instead reflect a long-standing general principle of law and give statutory expression to the Latin maxim *ex turpi causa non oritur actio* (from a shameful cause an action does not arise). Since courts must not be understood to be facilitating illegality by returning criminally tainted property to unclean hands, they will not lend their aid to a person who founds their claim, such as a claim to have property returned to them, on illegality. A court that returns criminally tainted property risks facilitating the commission of a criminal offence, as it is generally a crime to possess inherently tainted property, as well as to knowingly possess proceeds of crime. Returning property used to commit an offence also risks facilitating further criminal offences. Returning criminally tainted property to unclean hands therefore risks offending the public interest, placing the administration of justice into disrepute and undermining the goal of ensuring that crime does not pay.

Although a stay of the proceedings aimed at determining an accused's criminal liability brings criminal liability proceedings to a conclusive end and leaves the accused in a position of presumptive innocence, it does not deprive a court of all forfeiture jurisdiction. It is not, for the purposes of the forfeiture matter, tantamount to an acquittal. Many provisions permit criminal forfeiture without a finding of guilt against the possessor of the property. A stay of the criminal proceedings for unreasonable delay does not *ipso facto* lead to a stay of the proceedings relating to the property.

Moreover, a stay does not foreclose any possibility that criminality may be proven in forfeiture proceedings. Unlike criminal liability proceedings, forfeiture proceedings do not involve charges brought against accused persons and do not place their liberty in jeopardy. Therefore, forfeiture proceedings do not engage double jeopardy protections. Where the issues required to establish whether property is criminally tainted were not decided in the accused's favour at trial, it is open to the Crown to lead evidence on those issues to support forfeiture even after the accused has been acquitted. In the instant case, the stay flowed from the unreasonable delay in the individuals' trial, not reasonable doubt as to whether the charged offences were committed. In the circumstances, issue estoppel cannot prevent the Crown from leading evidence on that point in distinct forfeiture proceedings.

Whether there is jurisdiction under a specific forfeiture provision is a matter of statutory interpretation. The *Criminal Code* and the *CDSA* contain provisions aimed at various forms of criminally tainted property in different settings, and each must be interpreted in accordance with its specific text, context and purpose. Notably, some forfeiture provisions are tied to trial or sentencing proceedings that determine an individual's criminal liability, while others are independent of such proceedings.

Sections 462.37 and 491.1 *Cr. C.* and s. 16(2) *CDSA* are engaged only after trial or during the sentencing process. Section 462.37 *Cr. C.* addresses proceeds of crime. A court imposing sentence for a designated offence is empowered to make a forfeiture order if the Crown can show on a balance of probabilities that the property is

the proceeds of the offence on which there is a finding of guilt or show beyond a reasonable doubt that the property is otherwise the proceeds of crime. Section 16 *CDSA* addresses offence-related property in connection with certain offences under the *CDSA*. When convicting or discharging an offender, the court is empowered to make a forfeiture order if the Crown can show on a balance of probabilities that the property is related to the offence on which there is a finding of guilt or show beyond a reasonable doubt that the property is otherwise offence-related property. Section 491.1 *Cr. C.* addresses any property that was obtained by the commission of an offence and that, at the time of trial, is available to be dealt with and will not be required as evidence in other proceedings. When an accused is tried for an offence and the court determines that an offence has been committed, whether or not the accused has been convicted or discharged, that court must dispose of the property.

The scope of forfeiture jurisdiction under these provisions is not limited to property connected to the offence on which there is a finding of guilt or for which the accused was tried. Further, the property need not be the offender's property or that of the person who was tried. However, forfeiture under ss. 462.37(2) and 491.1 *Cr. C.* and s. 16(2) *CDSA* requires a sufficient nexus between the property and the criminal allegations underlying the proceedings in which the forfeiture power is triggered: the property must reasonably form part of the broader context surrounding the allegations. This does not mean that all the evidence justifying forfeiture need be adduced at trial, but merely that there is some connection between the property and the criminal allegations underlying the information or indictment that circumscribes the criminal

liability proceedings. The nexus ensures that a court can order forfeiture regardless of whether property is connected to an offence on which a finding of guilt is made against a specific accused, but without the need for forfeiture completely unrelated to the criminal proceedings to which the legislation expressly ties it.

Sections 462.37(2) and 491.1 *Cr. C.* and s. 16(2) *CDSA* do not empower any judge of the trial court to order forfeiture at any time. Rather, these provisions may only be exercised by the court that tried the offence or that is imposing a sentence in respect of an offence on which there is a finding of guilt. They require a temporal link between the trial or sentencing proceedings and the forfeiture, and they cannot be exercised where there is no longer a trial or sentencing court seized of the matter. This ensures that the court that has heard evidence relevant to forfeiture can efficiently address the forfeiture issues, while providing necessary finality once those proceedings have ended.

Other criminal forfeiture provisions empower a court to order forfeiture of tainted property independently of trial and sentencing proceedings. Section 490 *Cr. C.* notably sets out default rules for the detention and disposition of seized property, which apply unless Parliament has provided more specific, conflicting rules. It also applies with necessary modifications to property that has not actually been seized but is nonetheless subject to judicial supervision, where this is contemplated by statute. The purpose of s. 490 is to ensure that courts supervising seized property can carefully

balance the private interests in that property against the public need for that property to be detained in pursuit of investigating and prosecuting crime.

When it is validly engaged, s. 490(9) empowers the court to order the return of property to a lawful owner or possessor or, if there is no known lawful owner or possessor, order it forfeited to the Crown. A court will only order forfeiture pursuant to s. 490(9) if the Crown can satisfy it that three prerequisites are met. First, the Crown must satisfy the court either that the periods of detention have expired and proceedings have not been instituted in which the property may be required, or that the periods of detention have not expired but the continued detention of the property is not required for the purposes of investigation or prosecution. Second, the Crown must show that possession of the property by the person from whom it was seized or restrained is unlawful, or that it was not in the possession of any person. The fact of the property being in the possession of a person immediately prior to seizure raises a presumption that possession by that person is lawful, and the Crown must rebut that presumption by proving beyond a reasonable doubt that possession is unlawful. To meet this burden, the Crown may have to call evidence of the person's unlawful acts in the context of the forfeiture hearing. Third, the Crown must show that no other known person lawfully owns or is entitled to possession of the property.

Forfeiture remains available under s. 490(9) *Cr. C.* despite proceedings having been instituted. Interpreting s. 490(9) to be inapplicable if proceedings were instituted at any point in the past would risk the indefinite detention of property in cases

where charges were laid but proceedings were stayed before trial. The language "proceedings have not been instituted in which the thing detained may be required" in s. 490(9) ensures that the disposition of seized property under s. 490(9) does not occur until the continued detention of the property is no longer required for a proceeding. The prerequisite is not that proceedings must never have been instituted, but rather the absence of proceedings in which the detained thing "may be required". When proceedings were commenced in the past but have since definitively ceased, it cannot be said that "proceedings have not been instituted", but it is true that "proceedings have not been instituted in which the thing detained may be required". No thing will "be required" for proceedings that have come to an end. This reading is further supported by the legislative context of s. 490(9), including the other subsections of s. 490, the wider scheme of the *Criminal Code*, and related provisions in the *CDSA*. It aligns with the purpose of s. 490, which is to provide a residual regime for the orderly detention and disposition of seized property.

In the instant case, the Court of Québec has no forfeiture jurisdiction under ss. 462.37 and 491.1 *Cr. C.* and s. 16 *CDSA*. There is no longer a trial or sentencing court seized of the matter. The Crown cannot rely on the conviction of the individual who pleaded guilty to ground the forfeiture of the subject property, as his sentencing proceedings have ended. The other individuals, meanwhile, were never themselves tried for an offence, and there is no court currently seized with determining their criminal liability, due to the stay of proceedings. Forfeiture may nonetheless be available: the property subject to restraint orders under s. 490.8 *Cr. C.* and s. 14 *CDSA*,

as well as the property seized under s. 487 *Cr. C.* and s. 11 *CDSA*, is subject to the s. 490 *Cr. C.* regime. Since there are no ongoing proceedings and the detention periods have long since expired, it is open to the Court of Québec to dispose of this property under s. 490(9) *Cr. C.*, including by ordering forfeiture. Some of the subject property, restrained only by an order under s. 462.33 *Cr. C.*, may not be subject to s. 490 *Cr. C.* However, there is a more specific provision — s. 462.43 *Cr. C.* — that provides for the residual disposition of this property. It is for the Court of Québec to exercise its proper jurisdiction and consider the possibility of forfeiture under these provisions.

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Distinguished: *R. v. Jewitt*, [1985] 2 S.C.R. 128; *R. v. Taylor*, 2011 NLCA 72, 285 C.C.C. (3d) 293; *R. v. Spindloe*, 2001 SKCA 58, 42 C.R. (5th) 58; **referred to:** *Fleming (Gombosh Estate) v. The Queen*, [1986] 1 S.C.R. 415; *Vu v. R.*, 2017 QCCQ 14782, aff'd 2019 QCCA 1709; *9141-2023 Québec inc. v. R.*, 2021 QCCS 386; *Vellone v. R.*, 2020 QCCA 665; *Guimont v. R.*, 2020 QCCA 1759; *R. v. Lavigne*, 2006 SCC 10, [2006] 1 S.C.R. 392; *R. v. Hape* (2005), 201 O.A.C. 126; *Bessette v. British Columbia (Attorney General)*, 2019 SCC 31, [2019] 2 S.C.R. 535; *Quebec (Attorney General) v. Laroche*, 2002 SCC 72, [2002] 3 S.C.R. 708; *R. v. Craig*, 2009 SCC 23, [2009] 1 S.C.R. 762; *R. v. Vallières*, 2022 SCC 10, [2022] 1 S.C.R. 144; *Denis v. R.*, 2018 QCCA 1033; *R. v. Angelis*, 2016 ONCA 675, 133 O.R. (3d) 575; *R. v. Wilson* (1991), 68 C.C.C. (3d) 569; *Lorraine (Ville) v. 2646-8926 Québec inc.*, 2018 SCC 35, [2018] 2 S.C.R. 577; *Anderson v. The Queen*, [1970] S.C.R. 843; *Hardy v. Motor Insurers' Bureau*, [1964]

2 All E.R. 742; *Hall v. Hebert*, [1993] 2 S.C.R. 159; *Lapointe v. Messier* (1914), 49 S.C.R. 271; *Further Detention of Things Seized (Re)*, 2024 BCSC 2132; *Holman v. Johnson* (1775), 1 Cowp. 341, 98 E.R. 1120; *R. v. Ayotte*, 2026 QCCQ 454; *R. v. Mac* (1995), 80 O.A.C. 26; *R. v. Lu*, 2021 ONCJ 563; *Trecartin v. R.*, 2019 NBCA 84; *R. v. Breton*, 2025 ONCA 781; *Desjardins v. R.*, 2010 QCCA 1947; *R. v. Gisby*, 2000 ABCA 261, 148 C.C.C. (3d) 549; *R. v. Di Paola*, 2025 SCC 31; *La Presse inc. v. Quebec*, 2023 SCC 22; *R. v. Basque*, 2023 SCC 18; *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27; *R. v. Lore* (1997), 116 C.C.C. (3d) 255; *R. v. Hollaman*, 2025 BCCA 315, [2025] 11 W.W.R. 595; *Further Detention of Things Seized (Re)*, 2024 BCSC 297; *Further Detention of Things Seized (Re)*, 2024 BCSC 93; *R. v. Bouvette*, 2025 SCC 18; *R. v. R.V.*, 2021 SCC 10, [2021] 1 S.C.R. 131; *R. v. Mahalingan*, 2008 SCC 63, [2008] 3 S.C.R. 316; *R. v. Punko*, 2012 SCC 39, [2012] 2 S.C.R. 396; *R. v. Raponi*, 2004 SCC 50, [2004] 3 S.C.R. 35; *Telus Communications Inc. v. Federation of Canadian Municipalities*, 2025 SCC 15; *Piekut v. Canada (National Revenue)*, 2025 SCC 13; *R. v. Alex*, 2017 SCC 37, [2017] 1 S.C.R. 967; *R. v. Wilson*, 2025 SCC 32; *Montréal (City) v. 2952-1366 Québec Inc.*, 2005 SCC 62, [2005] 3 S.C.R. 141; *R. v. Rafilovich*, 2019 SCC 51, [2019] 3 S.C.R. 838; *Sun Indalex Finance, LLC v. United Steelworkers*, 2013 SCC 6, [2013] 1 S.C.R. 271; *R. v. Khill*, 2021 SCC 37, [2021] 2 S.C.R. 948; *R. v. Safarzadeh-Markhali*, 2016 SCC 14, [2016] 1 S.C.R. 180; *R. v. Lanteigne* (1994), 156 N.B.R. (2d) 17; *R. v. Shearer*, 2015 ONCA 355, 336 O.A.C. 30; *Croussette v. R.*, 2017 QCCA 1040; *Procureur général du Québec v. Hydrobec (9031-7579 Québec inc.)*, 2022 QCCA 534; *R. v. Witvoet*, 2015 ABCA 152, 600 A.R. 200; *Agraira v. Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36, [2013] 2 S.C.R. 559; *R.*

v. Dolbec, 2011 QCCA 1610; *Arif v. R.*, 2020 QCCA 848; *R. v. Archambault*, 2024 SCC 35; *R. v. Gagnon*, 2013 QCCA 1744, 6 C.R. (7th) 134; *Canada (Transportation Safety Board) v. Carroll-Byrne*, 2022 SCC 48, [2022] 3 S.C.R. 515; *R. v. Piché*, 2003 SKQB 405, 240 Sask. R. 282; *R. v. Piccirilli*, 2025 QCCQ 6579; *Canadian Broadcasting Corp. v. Manitoba*, 2021 SCC 33, [2021] 2 S.C.R. 785; *R. v. Barton*, 2019 SCC 33, [2019] 2 S.C.R. 579; *Further Detention of Things Seized (Re)*, 2024 BCSC 354; *R. v. Backhouse* (2005), 195 O.A.C. 80; *Ayotte v. R.*, 2025 QCCS 546, 2 C.R. (8th) 289; *Rex v. Rocco* (1931), 39 Man. R. 453; *R. v. James*, 2016 ONCJ 424; *Echostar Corporation v. Service de poursuites pénales du Canada*, 2009 QCCQ 4827; *British Columbia Human Rights Tribunal v. Schrenk*, 2017 SCC 62, [2017] 2 S.C.R. 795; *R. v. Proulx*, 2000 SCC 5, [2000] 1 S.C.R. 61; *Pointe-Claire (City) v. Quebec (Labour Court)*, [1997] 1 S.C.R. 1015; *R. v. Ulybel Enterprises Ltd.*, 2001 SCC 56, [2001] 2 S.C.R. 867; *R. v. Savard*, 2021 QCCS 5717; *Directeur des poursuites criminelles et pénales v. Hébert*, 2019 QCCQ 8754; *Directeur des poursuites criminelles et pénales du Québec v. Lacelle*, 2013 QCCQ 10269; *R. v. MacLeod*, 2005 MBQB 15, 194 C.C.C. (3d) 257; *R. v. Elansooriyanathan*, 2025 ONSC 5823; *Procureur général du Québec v. Bagui*, 2021 QCCQ 12225; *R. v. Cunningham*, 2010 SCC 10, [2010] 1 S.C.R. 331; *Gendron v. Supply and Services Union of the Public Service Alliance of Canada, Local 50057*, [1990] 1 S.C.R. 1298; *British Columbia (Attorney General) v. Forseth* (1995), 99 C.C.C. (3d) 296; *R. v. West* (2005), 199 C.C.C. (3d) 449; *Canada (Attorney General) v. Acero*, 2006 BCSC 1015, 210 C.C.C. (3d) 549; *R. v. Grant*, 2009 SCC 32, [2009] 2 S.C.R. 353.

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APPEAL from a judgment of the Quebec Court of Appeal (Mainville, Healy and Cournoyer JJ.A.), 2024 QCCA 674, [2024] Q.J. No. 4233 (Lexis), 2024 CarswellQue 5592 (WL), [2024] AZ-5203129, setting aside a decision of Poulin J., 2021 QCCS 4807, [2021] J.Q. n^{o} 15535 (Lexis), 2021 CarswellQue 18933 (WL), [2021] AZ-51809932, dismissing an application for prohibition with *certiorari* in aid against a decision of Perreault J.C.Q., 2021 QCCQ 2722, [2021] Q.J. No. 6522 (Lexis), 2021 CarswellQue 24182 (WL), [2021] AZ-51757462. Appeal allowed in part.

Émilie Robert, *Marie-Ève Lavoie* and *Magalie Cimon*, for the appellant.

Annik Magri, for the respondents.

Jeremy van Doorn and *Mathieu Stanton*, for the intervener.

The judgment of the Court was delivered by

KASIRER J. —

I. Overview

[1] Parliament's justification for its various rules authorizing the forfeiture of criminally tainted property to the Crown is easy enough to identify: the state can and indeed should confiscate that property to ensure that crime does not pay.

[2] Interpreting a statutory forfeiture rule in *Fleming (Gombosh Estate) v. The Queen*, [1986] 1 S.C.R. 415, at p. 432, Wilson J. gave expression to this deeply held sense that a person should not profit from criminal activity by referring to the Latin maxim *ex turpi causa non oritur actio* ([TRANSLATION] "from a shameful (immoral) cause an action does not arise": see A. Mayrand, *Dictionnaire de maximes et locutions latines utilisées en droit* (4th ed. 2007), at p. 173). That general principle of law animates, to different degrees, the various statutory regimes for criminal forfeiture to which the maxim properly applies: from the base or illegitimate "cause" of criminal activity, an "action" by those involved for the return of their ill-gotten gains and other property tainted by criminal activity "does not arise". This same idea that crime does not pay has been widely recognized by Canadian scholars as the moral foundation for statutory forfeiture schemes like those at issue in this appeal (see, e.g., M. Vauclair, T. Desjardins and P. Lachance, *Traité général de preuve et de procédure pénales 2025* (32nd ed. 2025), at paras. 15.19 and 15.46; P. M. German, *Proceeds of Crime and*

Money Laundering (loose-leaf), at § 5:1; M. Gallant, "Civil Processes and Tainted Assets: Exploring Canadian Models of Forfeiture", in C. King and C. Walker, eds., *Dirty Assets: Emerging Issues in the Regulation of Criminal and Terrorist Assets* (2016), 165, at p. 165).

[3] This justification reflects, as well, a deterrent effect on crime, by reducing the incentive for offending and by depriving individuals and criminal organizations of property that sustains illegal activity. Moreover, returning criminally tainted property to unclean hands runs the risk that the administration of justice be brought into disrepute should that taint be somehow transferred to the court itself (see generally J. Boucht, *The Limits of Asset Confiscation: On the Legitimacy of Extended Appropriation of Criminal Proceeds* (2017), at p. 98).

[4] The circumstances of this appeal challenge the proper contours of the *ex turpi causa* principle as it is carried forward in forfeiture regimes in the *Criminal Code*, R.S.C. 1985, c. C-46 ("*Cr. C.*"), and the *Controlled Drugs and Substances Act*, S.C. 1996, c. 19 ("*CDSA*"). The unusual feature of this case is that the persons who claim ownership of the property that the Crown seeks to confiscate obtained a stay of proceedings before they went to trial on related criminal charges. Their situation recalls that the *ex turpi causa* principle cannot stand easily as an unbending rule (see P. Alldridge, *Money Laundering Law: Forfeiture, Confiscation, Civil Recovery, Criminal Laundering and Taxation of the Proceeds of Crime* (2003), at pp. 54-55). At the very least, where those seeking the return of property seized have themselves not been

convicted of a crime, one might expect the statutory rules on forfeiture, which are predicated on the notion that "crime does not pay", to take this into account and perhaps even give way to the return of the property.

[5] In this case, the respondents — Thi Huyen Nguyen, Thi Hong Cun and Alexander Nguyen — and several others were accused of various offences relating to an alleged conspiracy to produce cannabis. In connection with the investigation and planned criminal proceedings, some of their property in Quebec and British Columbia was seized by the police. One of their number — Manh Hung Nguyen, who is not a party to this appeal — pleaded guilty in the Court of Québec and was sentenced accordingly.

[6] Some time later, in the same court, the three respondents obtained a stay of proceedings on the charges brought against them by reason of a violation of their constitutional right to a trial within a reasonable time. The Crown nevertheless sought forfeiture of items of the respondents' property — including cash and homes the respondents said they owned or lawfully possessed — that had been seized or restrained during the police investigation relating to the illegal production of cannabis.

[7] Seeking the return of their property, the respondents brought an application for prohibition with *certiorari* in aid, in which they argued that the Court of Québec had no jurisdiction to consider the forfeiture of their property. They argued that the stay of proceedings was tantamount to an acquittal. It may be that crime does not pay but, they said, we have been convicted of no crime. On appeal, the Quebec Court of Appeal

agreed, granted the application for extraordinary remedies, and declared that the Court of Québec did not have jurisdiction to hear the Crown's forfeiture application.

[8] The Crown appeals to this Court, arguing that the Court of Appeal misinterpreted the statutory provisions in question and that, properly applied, they do serve to prevent [TRANSLATION] "anyone from profiting from crime", even the respondents who, the Crown acknowledges, have neither been convicted nor sentenced for the offences initially alleged against them (A.F., at para. 1). The Crown insists that even if the respondents have not themselves been convicted, the property is tainted by crime and, accordingly, the Court of Québec has jurisdiction to order forfeiture under statute.

[9] For the reasons that follow, I would allow the appeal in part and remand the matter to the Court of Québec, which, in my respectful view, does have jurisdiction to proceed with the criminal forfeiture hearing in this case.

[10] First, the stay of the trial proceedings is not, for the purposes of the forfeiture matter, tantamount to an acquittal. The stay may be equated to an acquittal for the purposes of the plea of *autrefois acquit* and the exercise of appeal rights because they engage a person's risk of criminal liability and liberty interests. But the stay has no decisive effect on the forfeiture proceedings. The matters required to establish that the property is criminally tainted were not decided in the respondents' favour in a prior criminal proceeding, such that it is open to the Crown to lead evidence on those issues to support its forfeiture application. There is no necessary issue estoppel between

matters decided on the stay — whether the delay was unreasonable — and matters at issue in subsequent forfeiture proceedings — whether the property is tainted by crime. The stay does not oust statutory jurisdiction in respect of forfeiture.

[11] Second, I agree with the Court of Appeal that, as a matter of statutory interpretation, the Court of Québec does not have the power in the instant case to order forfeiture under the principal provisions invoked by the Crown in the *Criminal Code* and the *CDSA*, which tie that authority to trial and sentencing proceedings. But with due regard for other views, jurisdiction to conduct criminal forfeiture proceedings survives under statutory rules that operate independently of trial and sentencing. Parliament has provided for a number of circumstances in which forfeiture can be ordered even where no accused has been tried.

[12] Now that the criminal liability proceedings to which the property is related are at a definitive end, the judicial supervision of property that was seized or restrained during the associated investigation must also end. The property is presently in limbo — it is neither forfeited to the Crown nor returned to the respondents — and this plainly cannot be what Parliament intended in circumstances like these. In accordance with legislative provisions governing the residual disposition of such property, which reflect the *ex turpi causa* principle, the provincial court can now consider forfeiture or the proper return of the property. In these proceedings, the Crown will bear the burden of showing beyond a reasonable doubt that the respondents' possession of the property is

not lawful and that there is no known lawful possessor to whom the property can be returned.

[13] I would therefore remand the matter to the Court of Québec to dispose of the competing applications by the Crown, for forfeiture, and by the respondents, for the return of the property.

II. Background

A. *Searches and Seizures in Montreal*

[14] In 2013, the Montreal police carried out an investigation called "Propagation" targeting a network of family members allegedly running cannabis plantations at several properties in Montreal. The three respondents are members of this family.

[15] Between June 11 and June 18, 2013, police obtained warrants to search a number of Montreal immovables for evidence of drug production, money laundering, and possession of property obtained by crime. On June 19, police executed the search warrants simultaneously at the different locations, seizing hundreds of cannabis plants and tens of thousands of dollars in cash. Notably, they seized 400 cannabis plants and $4,000 in cash from a residential property owned by Thi Hong Cun, and 845 cannabis plants and five kilograms of cannabis leaves from a residential triplex owned by Thi Huyen Nguyen. Police also seized over $10,000 in cash from another address where

Thi Huyen Nguyen was residing, and €30,000 from a bank safety deposit box belonging to Thi Hong Cun.

[16] On June 25, 2013, the Director of Criminal and Penal Prosecutions ("DCPP") obtained restraint orders freezing the residences where the cannabis plants were seized as suspected offence-related property under the *CDSA*. Thi Hong Cun and Thi Huyen Nguyen later sold these residences; the restraint orders continue to apply to the proceeds of sale, which exceed $200,000.

B. *Arrests*

[17] The day after the execution of the search warrants, police obtained a warrant for the arrest of 10 members of the Nguyen family, including Thi Huyen Nguyen and Thi Hong Cun. Thi Huyen Nguyen was arrested the same day, and Thi Hong Cun was arrested two weeks later.

[18] All 10 co-accused were charged with conspiring to produce cannabis in Montreal between November 2012 and June 2013. Both Thi Huyen Nguyen and Thi Hong Cun were also charged with producing cannabis in Montreal during that period and with possessing property obtained by crime. Thi Huyen Nguyen was further charged with stealing over $5,000 in electricity from Hydro-Québec.

[19] In 2014, police obtained an arrest warrant for Alexander Nguyen. He was accused of conspiring with nine of the others to produce cannabis in Montreal between

2010 and 2013. He was arrested in British Columbia, and his proceedings were later joined with those of the other accused (*Vu v. R.*, 2017 QCCQ 14782, at para. 9).

C. *Property Is Frozen in British Columbia*

[20] In 2014, Montreal police turned their focus to targeting the proceeds of crime of the alleged Nguyen family cannabis production ring.

[21] On April 24, 2014, the DCPP obtained restraint orders under s. 462.33 *Cr. C.* freezing three properties in Vancouver and Burnaby, owned separately by Alexander Nguyen, Thi Hong Cun and Thi Huyen Nguyen. The DCPP also obtained restraint orders freezing 13 bank accounts held by Thi Huyen Nguyen, 13 bank accounts held by Thi Hong Cun, and 11 bank accounts held by Alexander Nguyen. The restraint orders froze over $170,000 in bank balances.

[22] The following day, police obtained warrants to search locations in Vancouver and Burnaby belonging to the respondents for evidence of money laundering and possession of property obtained by crime. Police executed the warrants and seized significant sums of cash. From Alexander Nguyen's safety deposit box at a bank in Vancouver, they seized CAN$30,000 and US$5,000. From Thi Huyen Nguyen's property in Vancouver, they seized CAN$2,870. And from the residence of Alexander Nguyen and Thi Hong Cun in Burnaby, they seized CAN$6,500, US$459, €2,915, and $2,800 in gift cards.

[23] Less than a week later, the DCPP obtained another s. 462.33 *Cr. C.* restraint order freezing, as suspected proceeds of crime, a sum of CAN$29,495 held in trust for Alexander Nguyen by a British Columbia law firm.

D. *Guilty Plea*

[24] On November 25, 2016, one of the co-accused, Manh Hung Nguyen, pleaded guilty before Paradis J. in the Court of Québec to one count of producing cannabis. He was sentenced to 12 months' imprisonment. The same day, the Crown stated that it did not have evidence to offer with respect to two of the co-accused, the spouse and son of Manh Hung Nguyen.

[25] The sentencing court also ordered the forfeiture, under s. 16(2) *CDSA*, of the property belonging to Manh Hung Nguyen's spouse, which had housed a cannabis plantation. At this time, the Crown did not seek the forfeiture of Thi Hong Cun's residential property in Montreal, which had housed the plantation in which Manh Hung Nguyen had been involved, as Thi Hong Cun still faced outstanding charges. The court also ordered that $4,000 seized from that property be returned to Manh Hung Nguyen.

E. *Charges Are Stayed*

[26] On December 15, 2017, Dupras J. of the Court of Québec stayed the proceedings against the remaining eight co-accused, including the three respondents, after finding that the delays in the case violated the right to trial within a reasonable

time under s. 11(b) of the *Canadian Charter of Rights and Freedoms* (*Vu*). The Court of Appeal dismissed the Crown's appeal and upheld the stay (*R. v. Vu*, 2019 QCCA 1709).

III. Judicial History

A. *Court of Québec, 2021 QCCQ 2722 (Perreault J.)*

[27] After the stay became final, the respondents applied to the Court of Québec for the return of property pursuant to ss. 490(7) and 490(9) *Cr. C.* The Crown later filed its own application in the Court of Québec to have certain property that had been seized or restrained during the police investigation forfeited. The application was founded on ss. 462.37(2), 490(9) and 491.1 *Cr. C.* and s. 16(2) *CDSA*.

[28] The respondents answered with an application to dismiss the Crown's application for forfeiture, alleging that the Court of Québec had no jurisdiction to consider forfeiture of the property. They asked further that the property seized be returned to them and that the restraint orders to which other property was subject be revoked. The application to dismiss was sought pursuant to ss. 462.37, 462.43 and 490(4) *Cr. C.*, s. 16 *CDSA*, as well as ss. 7, 11(b), 11(d) and 24 of the *Charter*.

[29] In light of the allegations in the application to dismiss, Perreault J. addressed first whether a judge of the Court of Québec has jurisdiction to hear an application for forfeiture when another judge of the same court has stayed proceedings

pursuant to s. 11(b) of the *Charter* against those claiming the property. He noted the context as one in which a co-accused had previously pleaded guilty to a charge of producing cannabis.

[30] Perreault J. granted the application to dismiss in part. He concluded that he did have jurisdiction based on ss. 462.37(2) and 491.1 *Cr. C.* and s. 16(2) *CDSA* but declared himself to be without jurisdiction under s. 490 *Cr. C.*

[31] The applications judge noted that the Court of Québec's jurisdiction to order forfeiture is necessarily statutory. He then carefully reviewed the jurisprudence relating to the different possible legislative bases to confer jurisdiction on the court to order forfeiture notwithstanding the stay.

[32] Turning his attention first to s. 490(9) *Cr. C.*, Perreault J. observed that a person who asks for restitution of property must establish that they were in possession of the property at the time of seizure — possession that is presumed to be lawful. To show that possession is unlawful, the prosecution has the burden of showing, beyond a reasonable doubt, that the property is tainted by criminality.

[33] He observed that the jurisprudence was divided as to whether the court has that power after proceedings have been instituted. It was settled law, however, in his view, that the Court of Québec [TRANSLATION] "does not have jurisdiction to apply s. 490(9) to seized property not filed into evidence in proceedings that were instituted and concluded" (para. 91). Pointing to *9141-2023 Québec inc. v. R.*, 2021 QCCS 386,

the judge held that while he did not have jurisdiction to hear the forfeiture application under s. 490(9), the Crown could apply for a forfeiture order for property obtained by the commission of an offence pursuant to s. 491.1(2) *Cr. C.* This latter provision does not require that an accused be found guilty, but only that an offence has been committed. The Crown's burden is to show that the property seized must be forfeited because ownership or possession is not lawful and no lawful owner or possessor is known.

[34] Perreault J. held that ss. 462.37(2) *Cr. C.* and 16(2) *CDSA* provide a further basis for the provincial court to hear an application for forfeiture. He rejected the respondents' argument that the stay of proceedings should be treated as equivalent to an acquittal and, as such, that it barred forfeiture of the property under s. 462.37(2) *Cr. C.* and s. 16(2) *CDSA*. The judge held that the court did have jurisdiction given the guilty plea of the respondents' co-accused Manh Hung Nguyen. In order to justify the forfeiture, the DCPP would be required to show beyond a reasonable doubt that the respondents' property is proceeds of crime, under s. 462.37(2) *Cr. C.*, or offence-related property, under s. 16(2) *CDSA*. But it need not be linked to the commission of the designated offence for which Manh Hung Nguyen was convicted.

[35] In response to the decision in the Court of Québec, the respondents filed an application for prohibition with *certiorari* in aid in the Superior Court in which they argued that Perreault J. did not have jurisdiction to hear the application for forfeiture,

in particular because he had not himself received Manh Hung Nguyen's guilty plea and that the charges against the respondents had been stayed.

B. *Quebec Superior Court, 2021 QCCS 4807 (Poulin J.)*

[36] Poulin J. dismissed the application for prohibition with *certiorari* in aid. He rejected the respondents' argument that the Court of Québec had no jurisdiction to consider forfeiture.

[37] He noted that proceedings for forfeiture should be considered as distinct from proceedings for sentencing. The Superior Court judge further observed, citing *Vellone v. R.*, 2020 QCCA 665, that the purpose of forfeiture is to remove property from circulation, not to punish an offender whose liberty interests are not at issue in forfeiture proceedings. Moreover, the fact that the sentencing judge in Manh Hung Nguyen's case could have heard an application for forfeiture did not deprive Perreault J. of jurisdiction over the application. Perreault J. did not exceed his jurisdiction in taking up the forfeiture application simply because the respondents had benefitted from a stay of proceedings for unreasonable delay, and he fairly relied on *Vellone* and *Guimont v. R.*, 2020 QCCA 1759, to this end. Poulin J. further rejected the respondents' argument that the Court of Québec exceeded its jurisdiction when it allowed the respondents to be called as witnesses by the Crown in the forfeiture proceedings.

[38] The respondents filed a notice of appeal against the judgment of the Superior Court dismissing their application for prohibition with *certiorari* in aid.

C. *Quebec Court of Appeal, 2024 QCCA 674 (Healy J.A., Mainville and Cournoyer JJ.A. Concurring)*

[39] The Court of Appeal allowed the respondents' appeal, granted the order of prohibition with *certiorari* in aid, and declared that the Court of Québec does not have jurisdiction to hear the Crown's application for a forfeiture order against the respondents.

[40] Citing *R. v. Lavigne*, 2006 SCC 10, [2006] 1 S.C.R. 392, and *R. v. Hape* (2005), 201 O.A.C. 126, Healy J.A. noted for a unanimous court that s. 462.37 *Cr. C.* and s. 16 *CDSA* preclude a court from ordering forfeiture of either offence-related property or property that is the proceeds of crime "in the absence of a finding of guilt or a discharge" (para. 13). He wrote further that the preconditions for jurisdiction under s. 491.1(2) *Cr. C.* were not met. First, there was no trial, as required by the *Criminal Code*, because the proceedings were stayed. Second, there was no proof at trial that an offence had been committed, except for the guilty plea of a co-accused before another judge. "That guilty plea", wrote Healy J.A., "is not proof of an offence at trial that would bring within its scope the other ten co-accused and all of the property seized or detained in the police investigation" (para. 14). As a result, s. 491.1(2) could not confer jurisdiction to the Court of Québec over the forfeiture application.

[41] In any event, the application could not succeed without proof beyond a reasonable doubt that each item was proceeds of crime. Given that the property is associated only with other co-accused, and not the one who pleaded guilty, the court

held that "such proof is foreclosed by the effect of the stay ordered by Judge Dupras because criminality cannot be proved" (para. 15).

[42] The court cited *R. v. Jewitt*, [1985] 2 S.C.R. 128, in support of the proposition that a judicial stay of proceedings is tantamount to an acquittal. Consequently, the respondents are not accused in the forfeiture proceedings, but third parties. The court rejected the argument that the guilty plea of the co-accused is sufficient to confer jurisdiction on the Court of Québec to order the forfeiture in the circumstances. An application for forfeiture under s. 462.37(2), like one under s. 462.37(1), requires a finding of guilt, and the only finding of guilt lies in the evidence of the guilty plea of Manh Hung Nguyen in the distinct proceedings before Paradis J. The court held that the provincial court's jurisdiction in the respondents' case "does not allow the application for forfeiture to include any property that is unrelated to the offences covered by the guilty plea" (para. 18).

[43] The scope of the application for forfeiture, as *in rem* proceedings that seek to remove the proceeds of criminal activity from circulation, is, according to the Court of Appeal, limited by the requirement for proven criminality under the terms of the statute. "No statutory provision allows an application for forfeiture to proceed", wrote the court, "in the absence of proven criminality" (para. 19). In the present case, no criminal liability was proven against the respondents, and the effect of the stay is to foreclose any possibility that such liability can be proven against them. In the absence of such proof, the Court of Appeal concluded that there was no jurisdiction under

ss. 462.37(2) or 491.1(2) *Cr. C.* or s. 16(2) *CDSA* upon which the application could proceed.

[44] While the court declared that the Court of Québec does not have jurisdiction to hear the Crown's application for forfeiture, it declined to make an order with respect to the return of the seized property.

IV. Issues and Positions of the Parties

[45] The Crown appeals, seeking to set aside the Court of Appeal's judgment and to recognize that the Court of Québec has jurisdiction to decide upon the forfeiture application. The Crown asks that the matter be returned to that court for the purpose of hearing that application.

[46] The Crown submits that the Court of Appeal was wrong to suggest that the facts underlying the criminal allegations made against the respondents cannot be proven in a forfeiture application, now that the proceedings have been stayed (A.F., at para. 71). Forfeiture proceedings are not aimed at punishing a guilty person but rather at preventing anyone from profiting from crime (para. 1). It submits that the Court of Appeal further erred in narrowly construing s. 462.37(2) *Cr. C.* and s. 16(2) *CDSA*, provisions that the Crown says ground forfeiture jurisdiction in this case given the guilty plea of the respondents' co-accused (para. 44).[1] At the hearing before this Court,

[1] Subsequent to the dates of the alleged offences, the *CDSA* was amended to remove cannabis from its schedules of controlled substances (*Cannabis Act*, S.C. 2018, c. 16, s. 204). Forfeiture in respect of

the Crown also invoked the position it had taken before the Court of Québec, that jurisdiction to order forfeiture in the provincial court is available under s. 490(9) *Cr. C.*, which concerns the residual disposition of seized and restrained property (see transcript, at pp. 3 and 5; outline of argument, at p. 2, in appellant's condensed book).

[47] The respondents say that the appeal must be dismissed, confirming the Court of Appeal's conclusion that there is no jurisdiction to consider forfeiture here.

[48] They submit that the Court of Appeal was correct to conclude that the relevant forfeiture provisions cannot apply to them given that their criminal proceedings have ended in a stay of proceedings. In their view, the effect of the stay is that all seizure and restraint orders must fall away. In any event, the respondents argue that the Court of Appeal's interpretation of s. 462.37(2) *Cr. C.* and s. 16(2) *CDSA* was well founded and that these provisions do not apply here for two reasons. First, because there must be a link between the evidence grounding a finding of guilt and the property that is to be forfeited. And second, because forfeiture under these provisions can only occur in the context of sentencing proceedings. While the Court of Québec has power under s. 490(9) *Cr. C.* to order the return of property and to forfeit property that is by its nature unlawful, it has no jurisdiction under this provision to order forfeiture of the subject property in this case as it is not *per se* unlawful (transcript, at pp. 62-65).

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cannabis-related offences is now governed by an analogous provision in the *Cannabis Act* (s. 94). As this provision was not invoked by the Crown in its application before the Court of Québec, it is not addressed further in these reasons.

[49] I am mindful that this appeal is taken from a decision on an application for prohibition with *certiorari* in aid and is accordingly focused on jurisdictional error (see *Bessette v. British Columbia (Attorney General)*, 2019 SCC 31, [2019] 2 S.C.R. 535, at para. 23). The ultimate issue is whether the Court of Québec erred when it took jurisdiction under ss. 462.37 and 491.1 *Cr. C.* and s. 16 *CDSA* while declining jurisdiction under s. 490 *Cr. C.* In light of the positions of the parties, I propose to examine the following questions in turn:

1. Does the respondents' stay of proceedings pursuant to s. 11(b) of the *Charter* prevent the Crown from seeking forfeiture of their property before the Court of Québec?

2. Does the Court of Québec have criminal forfeiture jurisdiction under the provisions tied to the guilty plea and sentencing of the respondents' co-accused (i.e., ss. 462.37 and 491.1 *Cr. C.* and s. 16 *CDSA*)?

3. Does the Court of Québec have criminal forfeiture jurisdiction under provisions concerning the residual disposition of property seized or restrained during the investigation (i.e., s. 490 *Cr. C.*)?

V. Analysis

A. *Principles Governing Criminal Forfeiture*

[50] Before turning to the issues on appeal, it is worth recalling the general purposes and scope of criminal forfeiture, which provide helpful context for the dispute.

(1) Nature and Purpose of Criminal Forfeiture Generally

[51] Forfeiture proceedings are distinct from other criminal proceedings. They are not aimed at determining the criminal responsibility of accused persons, nor at punishing them (see *Quebec (Attorney General) v. Laroche*, 2002 SCC 72, [2002] 3 S.C.R. 708, at para. 25; *R. v. Craig*, 2009 SCC 23, [2009] 1 S.C.R. 762, at paras. 34-37 and 40; *R. v. Vallières*, 2022 SCC 10, [2022] 1 S.C.R. 144, at para. 24; *Vellone*, at para. 41; *Denis v. R.*, 2018 QCCA 1033, at para. 160; *R. v. Angelis*, 2016 ONCA 675, 133 O.R. (3d) 575, at para. 39; Vauclair, Desjardins and Lachance, at para. 15.19, who helpfully remark that such measures only punish [TRANSLATION] "incidentally, through their effects"). Rather, the general purpose of criminal forfeiture is to avoid returning criminally tainted property to unclean hands, as this would offend the public interest, place the administration of justice into disrepute and undermine the goal of ensuring that crime does not pay (see generally *Lavigne*, at paras. 10 and 16; *Craig*, at para. 41; *R. v. Wilson* (1991), 68 C.C.C. (3d) 569 (Ont. Gen. Div.), at p. 574). At the same time, criminal forfeiture schemes typically consider not just society's interest in ensuring that crime does not pay but also fairness to the individual, including the property and privacy interests of innocent third parties (see K. E. Davis, "The Effects of Forfeiture on Third Parties" (2003), 48 *McGill L.J.* 183, at p. 185). This Court has made it clear,

in other contexts, that the state's exercise of power to deprive owners of their property is strictly regulated given the importance the law places on private property rights (see, e.g., *Lorraine (Ville) v. 2646-8926 Québec inc.*, 2018 SCC 35, [2018] 2 S.C.R. 577, at para. 1).

[52] Forfeiture has a long history. Early English forfeiture was organized around discrete common law doctrines like deodand and attainder (see German, at § 5:1; J. Gurulé, "Introduction: The Ancient Roots of Modern Forfeiture Law" (1995), 21 *J. Legis.* 155, at pp. 156-57; A. Freiberg and R. Fox, "Fighting Crime with Forfeiture: Lessons from History" (2000), 6 *Aust. J. Leg. Hist.* 1, at pp. 16-28 and 33-38), which have since been abolished by statute (see *The Criminal Code, 1892*, S.C. 1892, c. 29, ss. 962 to 965; *Anderson v. The Queen*, [1970] S.C.R. 843, at p. 849; see also *Forfeiture Act 1870* (U.K.), 33 & 34 Vict., c. 23, s. 1, now repealed). *The Criminal Code, 1892* abolished criminal forfeiture except as provided by statute, stating that "no . . . conviction or judgment of or for any treason or indictable offence or *felo de se* shall cause any attainder or corruption of blood, or any forfeiture or escheat", while preserving "any forfeiture in relation to which special provision is made by any Act of the Parliament of Canada" (s. 965). The latter part of the 20th century saw a significant expansion in the availability of such statutory forfeiture powers, through legislation aimed at disrupting the material substrate of criminal enterprises (see German, at §§ 1:1 and 6:1; *Lavigne*, at paras. 8-9; see also Davis, at p. 185).

[53] As noted, forfeiture provisions found in contemporary criminal legislation in Canada reflect a long-standing general principle of law and give statutory expression to the Latin maxim *ex turpi causa non oritur actio* (see *Fleming*, at pp. 445-47, citing a leading English private law application, *Hardy v. Motor Insurers' Bureau*, [1964] 2 All E.R. 742 (C.A.), at pp. 750-51; see also *Hall v. Hebert*, [1993] 2 S.C.R. 159, at pp. 170-71, citing D. Gibson, "Comment: Illegality of Plaintiff's Conduct as a Defence" (1969), 47 *Can. Bar Rev.* 89, at p. 89; and, relying on a related maxim in a Quebec case, *Lapointe v. Messier* (1914), 49 S.C.R. 271, at p. 297). Importantly, for our purposes, the courts and the judicial process must not be used to further abusive or illegal purposes (see, in connection with criminal forfeiture, *House of Commons Debates*, vol. VII, 2nd Sess., 33rd Parl., September 14, 1987, at p. 8890 (Hon. R. Hnatyshyn, Minister of Justice); *Further Detention of Things Seized (Re)*, 2024 BCSC 2132, at paras. 51-52). Since courts must not be understood to be facilitating illegality by returning criminally tainted property to unclean hands, they "will not lend their aid" to a person who founds their claim, in this case a claim to have property returned to them, on illegality (*Holman v. Johnson* (1775), 1 Cowp. 341, 98 E.R. 1120, at p. 1121; see also *Fleming*, at pp. 446-47; *R. v. Ayotte*, 2026 QCCQ 454, at para. 73). When made aware that property is criminally tainted, a court must therefore carefully consider the available powers of forfeiture to determine whether, according to the applicable statutory regime, confiscation under criminal legislation is justified.

[54] Property can be "tainted by criminality", and thereby engage criminal forfeiture under the legislation, in various ways (*R. v. Mac* (1995), 80 O.A.C. 26, at

para. 15). “Tainted” is not used to suggest “spoiled” property as both “tainted” and the French “*vicié*” might suggest in ordinary parlance, but rather property that is “corrupted” through its criminal connections. Strictly speaking, the corruption comes not from the inanimate thing itself but from the conduct with which it is linked. Thus, even where property is “tainted” by its very nature — like unlicensed narcotics or unregistered firearms — the corruption comes from its potential for illicit use or possession by any person. Thus, some property is, by its nature, unlawful to possess and thus “tainted” and subject to forfeiture (contraband, e.g., ss. 115, 164 and 462 *Cr. C.*). For example, possession of child sexual abuse and exploitation material is an offence (s. 163.1(4) *Cr. C.*), and when the court is satisfied on a balance of probabilities that such material has been seized, it can order its forfeiture (s. 164(4) *Cr. C.*). Where property is not corrupt by its nature, it may instead become tainted because it was acquired illegally and can be forfeited on that basis (property obtained by crime, e.g. s. 491.1, or proceeds of crime, e.g. s. 462.37; see generally *Lavigne*, at paras. 8-9; *Wilson*, at pp. 573-74; *Angelis*, at paras. 32 and 39). Further, property may have become tainted because it was used to commit or facilitate a criminal offence, and may be exposed to forfeiture as such (offence-related property, e.g. s. 490.1 *Cr. C.* and s. 16 *CDSA*; see generally *R. v. Lu*, 2021 ONCJ 563, at para. 4; *Trecartin v. R.*, 2019 NBCA 84, at para. 28).

[55] If a court returns criminally tainted property, it risks facilitating the commission of a criminal offence, as it is generally a crime to possess inherently tainted property, as well as to knowingly possess proceeds of crime (see, e.g., ss. 91(1) and

354(1)(a) *Cr. C.*; s. 4 *CDSA*; *R. v. Breton*, 2025 ONCA 781, at paras. 47-48; *Desjardins v. R.*, 2010 QCCA 1947, at para. 28). Returning property used to commit an offence, such as property designed or modified for drug trafficking, also risks facilitating further criminal offences (see *Craig*, at para. 17, citing *R. v. Gisby*, 2000 ABCA 261, 148 C.C.C. (3d) 549, at para. 20; *Vellone*, at para. 64). This emphasizes the overarching policy orientation of the statutory forfeiture scheme, reflecting the *ex turpi causa* maxim and the notion that crime does not pay.

[56] The *Criminal Code* and the *CDSA* contain provisions aimed at these various forms of criminally tainted property in different settings. Each statutory forfeiture provision must be interpreted in accordance with its specific text, context and purpose (see generally *R. v. Di Paola*, 2025 SCC 31, at para. 33; *La Presse inc. v. Quebec*, 2023 SCC 22, at para. 22; *R. v. Basque*, 2023 SCC 18, at para. 63; *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27, at para. 21). But one can observe certain recurring patterns in the language and structure of the provisions that are relevant to their interpretation. Notably, some forfeiture provisions are tied to trial or sentencing proceedings that determine an individual's criminal liability, while others are independent of such proceedings. Both categories work together to ensure that regardless of the outcome of a specific criminal charge, forfeiture of criminally tainted property may still be considered where appropriate. I turn to consider each of these two categories in more detail.

(2) Forfeiture Tied to Trial or Sentencing Proceedings

[57] Some forfeiture provisions are engaged only after trial or during the sentencing process. This makes sense because a court that has overseen a trial may have heard evidence first-hand alerting it to the fact that certain property is tainted by criminality. It is in a privileged position to efficiently and fairly determine forfeiture issues, informed by what it has learned through an accused's criminal trial.

[58] Often, such provisions are engaged only once there has been a finding of guilt (see, e.g., ss. 462.37 and 490.1 *Cr. C.*; s. 16 *CDSA*). A forfeiture order, while distinct from the sentence, helps advance the objectives of deterrence and crime prevention by ensuring crime does not pay and removing property used to facilitate crime from circulation (see *Lavigne*, at paras. 16-17). It would bring the administration of justice into disrepute to place property tainted by those findings of guilt back into unclean hands.

[59] The degree to which the property must be tied to the finding of guilt varies depending on the applicable statutory provision. In some cases, the property subject to forfeiture may need to be directly related to the specific findings of guilt, such as proceeds of the offence or property used to commit it (see, e.g., ss. 192, 462.37(1) and 490.1(1) *Cr. C.*; s. 16(1) *CDSA*). In other cases, property subject to forfeiture need only be tainted as proceeds of, or property related to, a different offence (ss. 462.37(2) and 490.1(2) *Cr. C.*; s. 16(2) *CDSA*; see also *R. v. Lore* (1997), 116 C.C.C. (3d) 255 (Que. C.A.), at p. 276). For example, as I shall endeavour to explain below, s. 462.37(2) bears on the forfeiture of proceeds of crime in respect of offences other than the designated

offence on which the offender is convicted or discharged. Even in that instance, however, forfeiture remains tied to that offender's criminal liability proceedings. This ensures that an offender involved in a broader criminal enterprise is not able to protect criminally tainted property by claiming that it is connected to a crime other than that of which they were found guilty (see German, at § 15:14; *House of Commons Debates*, September 14, 1987, at p. 8889).

[60] Further, forfeiture tied to the trial of an accused can occur even if the court does not find any accused guilty. If the court, following a trial, nonetheless concludes that an offence has been committed, property obtained through that offence is still susceptible to forfeiture in some circumstances (s. 491.1 *Cr. C.*). This ensures that, irrespective of the criminal responsibility of an accused, where the court is aware that this property was obtained illegally and there is no known lawful possessor, it will generally have the power to withdraw the property from circulation.

(3) Forfeiture Independent of Trial and Sentencing Proceedings

[61] Other criminal forfeiture provisions empower a court in circumstances that are not directly connected to proceedings seeking to determine the criminal liability of an accused. This reflects the reality that property is placed before the courts, engaging the *ex turpi causa* concern considered above, even when no trial of an accused ever takes place. In other words, in this category of statutory forfeiture proceedings, the property may be "tainted" even where there are no trial and sentencing proceedings against an accused.

[62] First, some provisions authorize the court to order forfeiture soon after property is seized by authorities, on proof that the property is a specific type of criminally tainted property, such as obscene publications (s. 164(4) *Cr. C.*), terrorism-related property (s. 83.14(5) *Cr. C.*) or terrorist propaganda (s. 83.222(4) *Cr. C.*). These powers apply independently of any proceeding to determine a specific person's criminal responsibility related to that property.

[63] Second, forfeiture can also occur when an accused is charged but never tried because they have died or absconded. In those circumstances the criminal law still empowers courts to consider the forfeiture of proceeds of crime or offence-related property (see, e.g., ss. 462.38 and 490.2 *Cr. C.*; s. 17 *CDSA*). This ensures that barriers to trying and sentencing an absent accused do not prevent the court from being able to withdraw tainted property from circulation (see German, at §§ 16:2 and 32:5).

[64] Third, forfeiture can be engaged by the court's detention and eventual disposition of seized or restrained property (see, e.g., ss. 490(9) and 462.43 *Cr. C.*). Property that is seized or restrained is generally subject to continuing supervision by the courts, to ensure the appropriate balance "between the societal interest in the investigation of crime on the one hand, and the property and privacy interests of individuals from whom the things were seized on the other" (*R. v. Hollaman*, 2025 BCCA 315, [2025] 11 W.W.R. 595, at para. 97, citing *Further Detention of Things Seized (Re)*, 2024 BCSC 297, at para. 54, per Donegan J., and *Further Detention of Things Seized (Re)*, 2024 BCSC 93, at para. 17, per Riley J.; see also Uniform Law

Conference of Canada, *Working Group on Section 490 of the Criminal Code: Final Report*, July 2024 (online), at paras. 12-13).

[65] As discussed below, when the court's continuing supervision of such property is no longer required, the court must generally make an order returning the property to a lawful owner or possessor and, if no such owner or possessor is known, Parliament has provided for the forfeiture of the property to the Crown (s. 490(9) *Cr. C.*). Forfeiture is available under s. 490(9) [TRANSLATION] "even where the prosecutor decides not to lay charges against a suspect or the court has ordered a stay of proceedings" (A. Bergevin and E. Darbouze, "La confiscation des produits de la criminalité et des biens infractionnels incluant l'amende compensatoire", in Service de la qualité de la profession du Barreau du Québec, vol. 516, *Développements récents en droit criminel* (2022), 49, at p. 76). This avoids the court having to make an impossible choice between perpetually detaining property under court supervision or facilitating its unlawful possession.

B. *A Stay of Proceedings Does Not Exclude Criminal Forfeiture Jurisdiction*

[66] Having set out some general principles relevant to the statutory schemes advanced on appeal, I turn to consider the first issue raised by the parties, concerning the effect of the stay on the availability of criminal forfeiture.

[67] It is true that a judicial stay brings criminal liability proceedings to a conclusive end and leaves the accused in a position of presumptive innocence (see *R.*

v. Bouvette, 2025 SCC 18, at para. 64, citing *R. v. R.V.*, 2021 SCC 10, [2021] 1 S.C.R. 131, at para. 76, and *Jewitt*, at p. 148). In my respectful view, however, the Court of Appeal erred in relying on this fact to suggest that the stay of the proceedings aimed at determining the respondents' criminal liability precluded all criminal forfeiture jurisdiction (C.A. reasons, at paras. 16 and 19-20). On this point, I prefer the conclusion of Perreault J. in the Court of Québec, who decided that a stay for unreasonable delay was not a bar to forfeiture proceedings here because, as he wrote, [TRANSLATION] "[t]he main purpose of the forfeiture of offence-related property is to take that property out of circulation, not to punish the person who committed the offence" (para. 139). This stay of proceedings does not necessarily limit forfeiture jurisdiction, nor does it necessarily prevent the Crown from leading evidence of criminality underlying the stayed charges in the context of an application for forfeiture.

[68] First, to the extent the Court of Appeal suggested that forfeiture would only be available if criminality had already been proven against the respondents beyond a reasonable doubt in a criminal trial (paras. 19-20), I respectfully disagree. Many provisions permit criminal forfeiture without a finding of guilt against the possessor of the property (see, e.g., ss. 462.38(2), 490(9), 490.2(2) and 491.1 *Cr. C.*; s. 17(2) *CDSA*). Recall, for example, that s. 491.1 *Cr. C.* provides, following a trial, for the forfeiture of property obtained by the commission of an offence "whether or not the accused has been convicted". Of these provisions, some even permit criminal forfeiture without evidence having been heard in a criminal trial at all (see, e.g., ss. 83.14(5) and 117.05(4) *Cr. C.*). Recall the provision addressing obscene publications, which can be seized and

made subject to forfeiture without a trial under s. 164(4) *Cr. C.* Therefore, the fact that a stay of proceedings means that the respondents' criminal liability has not been, and cannot be, established at trial for the relevant offences does not necessarily preclude criminal forfeiture. I agree with Poulin J. that a [TRANSLATION] "stay of the criminal proceedings for unreasonable delay did not *ipso facto* lead to a stay of the proceedings relating to the property" (Sup. Ct. reasons, at para. 29).

[69] Second, the Court of Appeal was mistaken to suggest that the stay forecloses any possibility that criminality could be proven against the respondents in forfeiture proceedings (para. 20). Unlike criminal liability proceedings, forfeiture proceedings do not involve charges brought against accused persons and do not place their liberty in jeopardy. Therefore, they do not engage double jeopardy protections (see generally *Vellone*, at para. 41; *Breton*, at para. 45). The respondents are neither "accused" within the meaning of the *Criminal Code* nor persons "charged with an offence" for the purposes of s. 11 of the *Charter*. The Court of Appeal's reliance on *Jewitt* was accordingly misplaced (para. 16). *Jewitt* equates a stay to an acquittal for the purposes of the plea of *autrefois acquit* and the exercise of appeal rights, both engaging a person's risk of criminal liability (at pp. 145-48) and, ultimately, their liberty interests. It says nothing, however, about the effect of a stay or acquittal on subsequent forfeiture proceedings.

[70] Indeed, even when an accused is acquitted following a trial, the Crown may lead evidence in subsequent criminal proceedings on some issues raised in the context

of that trial. Issue estoppel applies only to preclude the relitigation of issues that were resolved in the accused's favour at trial (see *R. v. Mahalingan*, 2008 SCC 63, [2008] 3 S.C.R. 316, at paras. 31 and 33). To engage issue estoppel, the person invoking it "must show that the question was or must necessarily have been resolved on the merits in the accused's favour in the earlier proceeding" (para. 52; see also *R. v. Punko*, 2012 SCC 39, [2012] 2 S.C.R. 396, at paras. 7-8). Showing that an issue was raised and an acquittal was entered is not enough: there "must be a necessary inference from the trial judge's findings or from the fact of the acquittal that the issue was in fact resolved in the accused's favour" (*Mahalingan*, at para. 52).

[71] Accordingly, where the issues required to establish whether property is criminally tainted were not decided in the accused's favour at trial, appellate courts have concluded that it is open to the Crown to lead evidence on those issues to support forfeiture even after the accused is acquitted (see *Breton*, at para. 41; *Vellone*, at para. 42). For example, in *Breton*, after critical evidence was excluded under s. 24(2) of the *Charter*, the accused was acquitted (para. 42). Writing for a unanimous court, Fairburn A.C.J.O. concluded that the Crown was not estopped from proving that property related to the charges was unlawfully possessed and having it forfeited under s. 490(9) *Cr. C.* following the acquittal (para. 41). Since the property was excluded as evidence at trial and determining its provenance was not necessary to the acquittal, issue estoppel did not apply (paras. 46-53).

[72] Here, the respondents' criminal liability proceedings were stayed before the trial began. As in *Breton*, the relevant issues were not necessarily decided in their favour as part of those criminal liability proceedings; indeed, nothing about the criminal allegations against the respondents was decided at the time the stay was entered. The stay flowed from the unreasonable delay in their trial, not reasonable doubt as to whether the charged offences were committed. In the circumstances, issue estoppel cannot prevent the Crown from leading evidence on that point in these distinct forfeiture proceedings. This accords with the Quebec Court of Appeal's decision in *Guimont*, where the Crown was successful in establishing grounds for forfeiture *after* criminal liability proceedings had been stayed, as here, due to unreasonable delay.

[73] The stay of judicial proceedings does not, therefore, preclude criminal forfeiture in this case. This Court must go on to consider whether, as a matter of statutory interpretation, there is jurisdiction in the Court of Québec under the specific forfeiture provisions on which the Crown relies. I recall that the Court of Québec, as a statutory court, must ground its jurisdiction in a statutory grant of power, not the common law (see *R. v. Raponi*, 2004 SCC 50, [2004] 3 S.C.R. 35, at paras. 32-34).

C. *Forfeiture Tied to Trial or Sentencing Proceedings (Sections 462.37 and 491.1 Cr. C.; Section 16 CDSA)*

[74] I turn first to consider the Crown's argument that there is jurisdiction under certain forfeiture provisions tied to trial and sentencing proceedings, namely ss. 462.37 and 491.1 *Cr. C.* and s. 16 *CDSA*. While these provisions differ on points of detail and

apply in different legislative contexts, they share a similar structure and similar statutory prerequisites relevant to the Crown's appeal. I reflect briefly on their key features.

[75] Section 462.37 *Cr. C.* addresses proceeds of crime, which in this context generally means any property, benefit or advantage obtained directly or indirectly from the commission of an offence, prescribed under any federal statute, that may be prosecuted as an indictable offence (see s. 462.3(1)). A court imposing sentence for such an offence is empowered to make a forfeiture order under s. 462.37(1). The Crown must show on a balance of probabilities that the property is the proceeds of the offence on which there is a finding of guilt (s. 462.37(1)) or show beyond a reasonable doubt that the property is otherwise the proceeds of crime (s. 462.37(2)). I recall that the Crown relies principally on this latter provision, and the fact that one of the respondents' co-accused pleaded guilty to another offence, to ground jurisdiction here.

[76] Section 16 *CDSA* addresses offence-related property in connection with certain offences under the *CDSA*. When convicting or discharging an offender, the court is empowered to make a forfeiture order under s. 16(1). The Crown must show on a balance of probabilities that the property is related to the offence on which there is a finding of guilt (s. 16(1)) or show beyond a reasonable doubt that the property is otherwise offence-related property (s. 16(2)). While the scope of s. 16 is limited to the controlled substances offences context, property related to other offences is addressed by a similar provision at s. 490.1 *Cr. C.*, which is not at issue on this appeal.

[77] Section 491.1 *Cr. C.* addresses any property obtained by the commission of an offence that, at the time of trial, is available to be dealt with and will not be required as evidence in other proceedings. When an accused is tried for an offence and the court determines that an offence has been committed, whether or not the accused has been convicted or discharged, that court must dispose of the property (s. 491.1(1)). If there is no known lawful owner or possessor of the property, it must be forfeited to the Crown (s. 491.1(2)(b)).

[78] The parties' disagreement is focused on two interpretative controversies concerning each of these three provisions: (1) whether there must be a nexus or link between the criminal accusations underlying the criminal liability proceedings and the property sought to be forfeited; and (2) whether these provisions must be exercised at the time of trial and sentencing.

[79] In accordance with the modern approach to statutory interpretation, these interpretative controversies must be resolved by reference to the text, context and purpose of the provisions (*Rizzo*, at para. 21; *Basque*, at para. 63; *Telus Communications Inc. v. Federation of Canadian Municipalities*, 2025 SCC 15, at para. 30; P.-A. Côté and M. Devinat, *Interprétation des lois* (5th ed. 2021), at paras. 165-70). It is worth emphasizing the key elements of the modern approach that are particularly relevant to our task in this appeal.

[80] First, while the text is an important indicator of legislative intent, it is not in itself determinative of the meaning of a statutory provision (see *Piekut v. Canada*

(National Revenue), 2025 SCC 13, at para. 45, citing *R. v. Alex*, 2017 SCC 37, [2017] 1 S.C.R. 967, at para. 31; *R. v. Wilson*, 2025 SCC 32, at para. 34). Even words that appear clear on their face may reveal a different meaning when viewed in their full context and in light of their purpose (see *La Presse*, at para. 23, citing *Montréal (City) v. 2952-1366 Québec Inc.*, 2005 SCC 62, [2005] 3 S.C.R. 141, at para. 10). This is a necessary and well-accepted feature of the modern approach (*2952-1366 Québec*, at para. 10), which represented a departure from an analysis centred on whether text is plain or ambiguous towards a broader search for legislative meaning (see R. Sullivan, *The Construction of Statutes* (7th ed. 2022), at § 2.04; Côté and Devinat, at paras. 155-60). It is a methodological mistake — a mistake that can lead the reader to fall into a reviewable error of law — to end the interpretative exercise by concluding the perceived meaning of the *text* to be plain. It is the meaning of the provision of the *statute* and its clarity that is at issue, informed by its text, context and purpose. The meaning assigned to plain text may coincide with the true statutory meaning, but it is perilous to assume that it does without undertaking the proper analysis in keeping with the modern approach. Text read in isolation cannot be simply characterized as plain or ambiguous but is, in all cases, one among a broader range of factors relevant to the exercise of statutory interpretation (Sullivan, at § 2.04[5]; Côté and Devinat, at para. 160).

[81] Second, the overall purpose or goal of a legislative scheme informs the analysis, although one must be mindful that the legislature's intent is rarely that one purpose be pursued at all costs. Other interests and subsidiary purposes, revealed

through a careful analysis of the legislative scheme and the means the legislature has chosen to achieve its goal, are also important in ascertaining the intended meaning (*R. v. Rafilovich*, 2019 SCC 51, [2019] 3 S.C.R. 838, at para. 30, citing *Sun Indalex Finance, LLC v. United Steelworkers*, 2013 SCC 6, [2013] 1 S.C.R. 271, at para. 174). The aim is to achieve a fitting harmony between these various purposes in a manner that best accords with the legislature's intent (see Sullivan, at § 9.02[5]; A. Barak, *Purposive Interpretation in Law* (2005), at p. 116; *Telus*, at para. 32).

[82] Third, extrinsic aids like Hansard are relevant to the exercise of discerning legislative intent, but should be treated with caution and not be given undue weight in the interpretative exercise (see *R. v. Khill*, 2021 SCC 37, [2021] 2 S.C.R. 948, at para. 111; see also *Wilson*, at para. 44; *R. v. Safarzadeh-Markhali*, 2016 SCC 14, [2016] 1 S.C.R. 180, at para. 36). Statements of individual members can be imperfect indicators of what the legislature as a whole intended (see Sullivan, at §§ 23.03[2][c] and 23.03[4][d]).

[83] With these principles in mind, I address the two interpretative controversies that divide the parties here.

(1) Forfeiture Requires a Sufficient Nexus With the Proceedings

[84] The Court of Appeal concluded that ss. 462.37(1) and 462.37(2) *Cr. C.* "d[o] not allow the application for forfeiture to include any property that is unrelated to the offences covered by the guilty plea" of the respondents' co-accused (para. 18).

With respect, I disagree. While a nexus is required between the subject property and the underlying criminal liability proceedings, the scope of forfeiture jurisdiction under these provisions is not limited to property connected to the offence on which there was a finding of guilt. On this point I agree with the Crown that s. 462.37(2) [TRANSLATION] "does allow the court to order the forfeiture of 'property that is *not* directly connected with the offence for which an accused is being sentenced'" (A.F., at para. 8 (emphasis in original)). Nor is it limited to property belonging to the person found guilty of that offence.

[85] First, the Crown is right to say that the property does not necessarily need to be connected to the offence on which there is a finding of guilt or for which the accused was tried and may be related to a different offence (A.F., at paras. 52-53; see also German, at § 15:14). This is express in the language of ss. 462.37(2) and 491.1 *Cr. C.* and s. 16(2) *CDSA*. Sections 462.37(2) and 491.1(1) *Cr. C.* read as follows:

462.37 . . .	**462.37** . . .
(2) If the evidence does not establish to the satisfaction of the court that property in respect of which an order of forfeiture would otherwise be made under subsection (1) was obtained through the commission of the designated offence of which the offender is convicted or discharged, but the court is satisfied, beyond a reasonable doubt, that the property is proceeds of crime, the court may make an order of forfeiture under subsection (1) in relation to that property.	**(2)** Le tribunal peut rendre une ordonnance de confiscation aux termes du paragraphe (1) à l'égard de biens dont il n'est pas convaincu qu'ils ont été obtenus par la perpétration de l'infraction désignée pour laquelle le contrevenant a été condamné — ou à l'égard de laquelle il a été absous — s'il est convaincu, hors de tout doute raisonnable, qu'il s'agit de produits de la criminalité.
491.1 (1) Where an accused or defendant is tried for an offence and the court	**491.1 (1)** Lorsqu'un accusé ou un défendeur subit un procès et que le

determines that an offence has been committed, whether or not the accused has been convicted or discharged under section 730 of the offence, and at the time of the trial any property obtained by the commission of the offence	tribunal conclut qu'une infraction a été commise, que l'accusé ou le défendeur ait été déclaré coupable ou absous en vertu de l'article 730 ou non, et qu'au moment du procès, des biens obtenus par la commission de l'infraction :
(a) is before the court or has been detained so that it can be immediately dealt with, and	**a)** d'une part, sont devant le tribunal ou sont détenus de façon à être disponibles immédiatement;
(b) will not be required as evidence in any other proceedings,	**b)** d'autre part, ne seront pas nécessaires à titre de preuve dans d'autres procédures,
section 490 does not apply in respect of the property and the court shall make an order under subsection (2) in respect of the property.	l'article 490 ne s'applique pas à ces biens et le tribunal rend une ordonnance en vertu du paragraphe (2) à l'égard de ceux-ci.

Section 16(2) *CDSA* reads as follows:

(2) Subject to sections 18 to 19.1, if the evidence does not establish to the satisfaction of the court that property in respect of which an order of forfeiture would otherwise be made under subsection (1) is related to the commission of the designated substance offence of which a person is convicted or discharged, but the court is satisfied, beyond a reasonable doubt, that the property is non-chemical offence-related property, the court may make an order of forfeiture under subsection (1) in relation to that property.	**(2)** Sous réserve des articles 18 à 19.1, le tribunal peut rendre une ordonnance de confiscation aux termes du paragraphe (1) à l'égard de biens dont il n'est pas convaincu qu'ils sont liés à la perpétration de l'infraction désignée pour laquelle la personne a été condamnée — ou à l'égard de laquelle elle a été absoute — s'il est convaincu, hors de tout doute raisonnable, qu'il s'agit de biens infractionnels non-chimiques.

[86] The purpose of s. 462.37(2) *Cr. C.* and related provisions was, according to the then Minister of Justice, to "deal with cases in which the offender is engaged in

a wide range of illicit activities and seeks to protect his profits by claiming that they were derived from an illegal source other than that for which he has been convicted" (*House of Commons Debates*, September 14, 1987, at p. 8889 (Hon. R. Hnatyshyn); see also German, at § 15:24). In its absence, s. 462.37(1) *Cr. C.* would require, in every case, the court to be satisfied on a balance of probabilities that the property to be forfeited is "proceeds of crime obtained through the commission" of the offence on which there has been a finding of guilt. To similar effect, the analogous provision in the *CDSA* — s. 16(1) — would require the Crown to show, in every case, that the property to be forfeited is, on a balance of probabilities, "related to the commission of the offence".

[87] Subsection (2) of both provisions expressly broadens the basis for forfeiture to include property that the Crown cannot show was obtained through the commission of the offence on which there is a finding of guilt (s. 462.37(2) *Cr. C.*) or cannot show was related to the commission of that offence (s. 16(2) *CDSA*). Forfeiture is still available if the Crown can satisfy the court beyond a reasonable doubt that the property is otherwise proceeds of crime or offence-related property (see generally *Craig*, at para. 42; *Lavigne*, at para. 17; *R. v. Lanteigne* (1994), 156 N.B.R. (2d) 17 (Q.B.), at para. 29; *R. v. Shearer*, 2015 ONCA 355, 336 O.A.C. 30, at paras. 12-13; *Croussette v. R.*, 2017 QCCA 1040, at para. 10 (Lexis); see also *Procureur général du Québec v. Hydrobec (9031-7579 Québec inc.)*, 2022 QCCA 534, at para. 7; *R. v. Witvoet*, 2015 ABCA 152, 600 A.R. 200, at para. 27; *Trecartin*, at para. 31; Bergevin and Darbouze, at p. 65). In contrast to subsection (1) of each provision, which specifies

that the court "shall" order forfeiture, subsection (2) says that the court "may" order forfeiture, indicating greater discretion for the sentencing court.

[88] The fact that Parliament has raised the evidentiary threshold from a balance of probabilities in subsection (1) to beyond a reasonable doubt in the scenario captured by subsection (2) reflects that the subject property is no longer directly connected to a finding of guilt, which would also have had to be made out on the higher standard. It would have been pointless for Parliament to legislate in respect of property not directly connected to an accused's finding of guilt, and to impose an enhanced evidentiary threshold for the forfeiture of such property, if a direct connection to the finding of guilt were always required to justify forfeiture. This view is further supported by the marginal notes to these subsections, "Proceeds of crime — other offences" ("*Produits de la criminalité : autre infraction*") (s. 462.37(2) *Cr. C.*) and "Property related to other offences" ("*Biens liés à d'autres infractions*") (s. 16(2) *CDSA*), which explicitly suggest that these provisions are directed at offences other than the one on which there is a finding of guilt.

[89] The Court of Appeal's narrow interpretation is not consistent with the text of the provisions, read in their full context, and, most importantly, ignores Parliament's central purpose in enacting the rule: ensuring that criminally tainted property does not escape forfeiture merely because it lacks a direct connection to the offence on which there is a finding of guilt.

[90] Second, I also agree with the Crown that the property need not be the offender's property or that of the person who was tried (A.F., at paras. 62-63; see also German, at § 15:14). The language of the provisions does not expressly limit their scope in this way. In *Craig*, this Court recognized that forfeiture pursuant to s. 16 *CDSA* "may apply to property owned by a complicit individual who is neither sentenced nor even charged with an offence" (para. 41). Significantly, the 2018 change of "*biens d'un contrevenant*" to "*biens*" in the French text of s. 462.37(2) supports the view that Parliament's intention is that forfeiture orders may target property that does not belong to the offender whose conviction or discharge triggered the application of the provision (see *An Act to amend the Controlled Drugs and Substances Act and to make related amendments to other Acts*, S.C. 2017, c. 7, s. 59).

[91] This is in clear contrast to closely associated provisions like s. 462.37(3), which are restricted to property belonging to an offender: a court can only impose a fine in lieu of forfeiture in respect of "property <u>of an offender</u>" ("*un bien . . . <u>d'un contrevenant</u>*") (see also s. 462.49(2)). Different terms used in related provisions raise a presumption that Parliament intended different meanings (see *Agraira v. Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36, [2013] 2 S.C.R. 559, at para. 81; Sullivan, at § 8.04[2]; Côté and Devinat, at para. 1144). Nothing serves to rebut that presumption here. Further, the fact that property subject to forfeiture under both s. 462.37 *Cr. C.* and s. 16 *CDSA* is also subject to a mechanism for innocent owners to recover their property shows that forfeiture of property belonging to third

parties was contemplated by Parliament (see ss. 462.41(3) and 462.42(4) *Cr. C.*; ss. 19(3) and 20(4) *CDSA*).

[92] Therefore, forfeiture under these provisions is available even where the property is not directly related to a finding of guilt or the accused to whom that finding relates.

[93] That said, I disagree with the Crown's suggestion that no nexus to the underlying criminal proceedings is required at all (A.F., at para. 67; transcript, at pp. 31-33). That position raises concerns of procedural and substantive fairness for third parties who could face forfeiture of their property in the context of broader criminal proceedings grounded in allegations that have nothing to do with them.

[94] It is important not to lose sight of the fact that, while the scope of the property subject to forfeiture is broader than an accused's finding of guilt, an accused's finding of guilt (s. 462.37 *Cr. C.*; s. 16 *CDSA*) or trial for an offence (s. 491.1 *Cr. C.*) is still required to engage the forfeiture power in the first place. Denying the existence of some requisite connection between the proceedings that engage forfeiture and the subject property would create an expansive forfeiture power that Parliament could not have intended. It would mean that the Crown could ground the forfeiture of virtually any proceeds of crime or offence-related property on any unrelated trial or finding of guilt, and could undesirably burden an accused's criminal proceedings with wholly unrelated matters. As Doherty, Feldman and LaForme JJ.A. put it in *Hape*, at para. 41,

this kind of broad unstructured forfeiture power and loose connection to criminal proceedings would raise serious concerns for our system of justice:

> The Crown's submission that it can introduce entirely new allegations, unrelated to those advanced at trial, as part of a forfeiture hearing during the sentencing proceedings raises serious constitutional problems. The forfeiture provisions cannot be read so as to allow the Crown to circumvent the comprehensive process complete with constitutional protections, associated with the charging and prosecuting of criminal allegations. The section does not contemplate the forfeiture of property that was not the subject matter of the criminal allegation made at trial.

[95] I therefore agree with the Court of Appeal for Ontario in *Hape* that some nexus to criminal liability proceedings is required (para. 40; see also *R. v. Dolbec*, 2011 QCCA 1610, at para. 27). Specifically, while no direct link between the property and the finding of guilt or the accused is necessary, there must be a sufficient nexus between the property and the criminal allegations underlying the proceedings in which the forfeiture power is triggered. This does not mean that all the evidence justifying forfeiture need be adduced at trial, but merely that there is some connection between the property and the criminal allegations underlying the information or indictment that circumscribes the criminal liability proceedings. The property must reasonably form part of the broader context surrounding the allegations. For example, in this case, the court that heard Manh Hung Nguyen's guilty plea could have considered forfeiture of property if there was a reasonable basis to believe it was connected to the broader alleged cannabis production enterprise in respect of which he was charged. Forfeiture of the property could have been considered even if that property was not directly tied to Manh Hung Nguyen himself or to the offence of which he was found guilty.

[96] Thus, this nexus ensures that if, in the course of criminal proceedings, the court becomes aware that property linked to the criminal allegations underlying those proceedings is tainted, it can order forfeiture regardless of whether that property is connected to an offence on which a finding of guilt is made against a specific accused. Parliament's object is achieved without the need for forfeiture completely unrelated to the criminal proceedings to which the legislation expressly ties it.

(2) Forfeiture Must Be Ordered by the Trial or Sentencing Court

[97] A second, related point of controversy concerns which decision maker may make forfeiture orders under these provisions. I agree with the respondents that they do not empower any judge of the trial court to order forfeiture at any time. Rather, the text of these provisions, read in context and in light of their purpose, suggests that they may only be exercised by the court that tried the offence or that is imposing a sentence in respect of an offence on which there is a finding of guilt. Not only has this been the consistent understanding of these provisions since they were enacted, but it is inescapable on a close reading of the legislative context in which these provisions are found. It also serves the important purpose of ensuring that it is the court with first-hand knowledge of the criminal allegations triggering the forfeiture proceedings that exercises the power, as it is best placed to do.

[98] As is plain when both linguistic texts are read together, s. 462.37(1) *Cr. C.* explicitly empowers "the court imposing sentence on or discharging the offender" ("*le tribunal qui détermine la peine à infliger à un contrevenant condamné pour une*

infraction désignée — ou qui l'en absout") to order the forfeiture of certain property as proceeds of crime where there has been a finding of guilt on a designated offence:

462.37 (1) Subject to this section and sections 462.39 to 462.41, if an offender is convicted, or discharged under section 730, of a designated offence and the court imposing sentence on or discharging the offender, on application of the Attorney General, is satisfied, on a balance of probabilities, that any property is proceeds of crime obtained through the commission of the designated offence, the court shall order that the property be forfeited to Her Majesty to be disposed of as the Attorney General directs or otherwise dealt with in accordance with the law.	**462.37 (1)** Sur demande du procureur général, le tribunal qui détermine la peine à infliger à un contrevenant condamné pour une infraction désignée — ou qui l'en absout en vertu de l'article 730 — est tenu, sous réserve des autres dispositions du présent article et des articles 462.39 à 462.41, d'ordonner la confiscation au profit de Sa Majesté des biens dont il est convaincu, selon la prépondérance des probabilités, qu'ils constituent des produits de la criminalité obtenus par la perpétration de cette infraction désignée; l'ordonnance prévoit qu'il est disposé de ces biens selon les instructions du procureur général ou autrement en conformité avec le droit applicable.

[99] As discussed above, subsection (2) broadens the basis on which these orders under s. 462.37(1) may be made, by clarifying that forfeiture is available even if the property was not obtained through the commission of the offence on which there is a finding of guilt. But the provision specifies that this remains an "order of forfeiture under subsection (1)" ("*ordonnance de confiscation aux termes du paragraphe (1)*"), in other words one that must be made by the sentencing court (see *Laroche*, at paras. 59-62, citing *Lanteigne*, at paras. 29-30 and 32; see also *Arif v. R.*, 2020 QCCA 848, at para. 126). I recall that s. 462.37(2) provides:

(2) If the evidence does not establish to the satisfaction of the court that property in respect of which an order of forfeiture	**(2)** Le tribunal peut rendre une ordonnance de confiscation aux termes du paragraphe (1) à l'égard de biens dont

would otherwise be made under subsection (1) was obtained through the commission of the designated offence of which the offender is convicted or discharged, but the court is satisfied, beyond a reasonable doubt, that the property is proceeds of crime, the court may make an order of forfeiture under subsection (1) in relation to that property.	il n'est pas convaincu qu'ils ont été obtenus par la perpétration de l'infraction désignée pour laquelle le contrevenant a été condamné — ou à l'égard de laquelle il a été absous — s'il est convaincu, hors de tout doute raisonnable, qu'il s'agit de produits de la criminalité.

[100] The context of s. 462.37(2) and its place within the statutory scheme further confirm that the power is meant to be exercised as part of the proceedings determining the sentence or discharge that follows a finding of guilt, not after those proceedings are over. Notably, expressions such as "the court imposing sentence" or "*le tribunal qui détermine la peine*" are used in other contexts in the *Criminal Code* where it is clear that what must be meant is the sentencing judge, not the court as a whole (see, e.g., ss. 264(4), 286.2(6) and 738(1) *Cr. C.*; see also ss. 130.1, 320.22 and 348.1 *Cr. C.*). For example, it would make little sense if the obligations to consider certain aggravating factors in sentencing an offender were imposed on the court as a whole rather than on the specific sentencing court (ss. 264(4) and 286.2(6) *Cr. C.*). Nor would it make sense for a restitution order to be made by a court other than the sentencing court (s. 738(1) *Cr. C.*). Adopting a reading of s. 462.37 that empowers any Court of Québec judge at any time would therefore be in tension with the presumption that recurring patterns of expression used by Parliament mean the same thing (see *R. v. Archambault*, 2024 SCC 35, at paras. 63 and 285; Sullivan, at § 8.04[1]).

[101] Empowering the sentencing court specifically to exercise forfeiture powers under s. 462.37 serves a clear purpose within the broader proceeds of crime scheme. It

ensures that the court that has heard evidence relevant to forfeiture can efficiently address the forfeiture issues, while providing necessary finality once those proceedings have ended. Indeed, the trial court will often be "the proper and best forum for a determination of the issues" (German, at § 15:5.40).

[102] It is unsurprising, then, that the link between sentencing proceedings and forfeiture under s. 462.37 has been a constant feature since that provision was first enacted in 1988. At second reading of the bill that added this provision to the *Criminal Code*, the sponsoring Minister of Justice noted this explicitly:

> Lengthy terms of imprisonment and substantial fines may not be sufficient deterrents to criminals who believe that they may acquire and keep their ill-gotten gains. . . .
>
> Accordingly, the main feature of this legislation is to provide the courts with the power to confiscate from an offender those assets that are found to be derived from criminal activity. This would normally be done after an individual has been found guilty of a criminal offence and would be done at the sentencing stage of the proceeding. [Emphasis added.]
>
> (*House of Commons Debates*, September 14, 1987, at p. 8888 (Hon. R. Hnatyshyn))

[103] Parliament has subsequently broadened the forfeiture power under this section considerably. In 2001, the offences attracting the application of this provision were expanded from certain enumerated crimes to nearly all offences that may be prosecuted by way of indictment (*An Act to amend the Criminal Code (organized crime and law enforcement) and to make consequential amendments to other Acts*, S.C. 2001, c. 32, ss. 12 and 19; see also *House of Commons Debates*, vol. 137, No. 46, 1st Sess.,

37th Parl., April 23, 2001, at p. 2955 (Hon. A. McLellan, Minister of Justice)). And I recall that Parliament subsequently removed language in the French version of s. 462.37(2) that purported to restrict the scope of forfeiture to property belonging to the offender found guilty of a designated offence (*An Act to amend the Controlled Drugs and Substances Act and to make related amendments to other Acts*, s. 59(1)).

[104] But Parliament has never sought to break the link between the trial and sentencing process and s. 462.37 forfeiture, which remains apparent in the text of the provision read in context with related parts of the *Criminal Code*. As the Court of Appeal observed in *R. v. Gagnon*, 2013 QCCA 1744, 6 C.R. (7th) 134, [TRANSLATION] "[t]he order of forfeiture must be rendered when the court sentences an accused guilty of a designated offence" (para. 104 (emphasis added); see also *Desjardins*, at para. 22).

[105] Section 16 *CDSA* was enacted later, in 1996, as part of Canada's response to international efforts to deter criminal organizations engaged in drug trafficking specifically (see *House of Commons Debates*, vol. II, 1st Sess., 35th Parl., February 18, 1994, at pp. 1561-62 (Hon. D. Marleau, Minister of Health); German, at § 32:1). Given that s. 16 *CDSA* was patterned on s. 462.37 *Cr. C.* (see German, at § 15:2), it is unsurprising that it too is tied to the trial and sentencing process.

[106] In the English text, s. 16(1) *CDSA* empowers "the court" upon a person's conviction or discharge, not any court at any time:

> **16 (1)** Subject to sections 18 to 19.1, if a person is convicted, or discharged under section 730 of the *Criminal Code*, of a designated substance offence and, on application of the Attorney General, the court is satisfied, on a balance of probabilities, that non-chemical offence-related property is related to the commission of the offence, the court shall
>
> > **(a)** 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
> >
> > **(b)** 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 purposes of this paragraph.

[107] Read in context, this suggests that it is the court convicting or discharging that must order forfeiture. If there were any ambiguity on this point, it is cleared away by the French version, which is narrower and more specific and thereby indicative of shared meaning (see *Canada (Transportation Safety Board) v. Carroll-Byrne*, 2022 SCC 48, [2022] 3 S.C.R. 515, at para. 72). It says it is specifically "*le tribunal qui condamne une personne pour une infraction désignée ou l'en absout*" (the court that convicts a person of a designated offence or discharges them of it) that is so empowered:

> **16 (1)** Sous réserve des articles 18 à 19.1 et sur demande du procureur général, le tribunal qui condamne une personne pour une infraction désignée ou l'en absout en vertu de l'article 730 du *Code criminel* et qui est convaincu, selon la prépondérance des probabilités, que des biens infractionnels non-chimiques sont liés à la perpétration de cette infraction ordonne qu'ils soient confisqués au profit :

> **a)** soit de Sa Majesté du chef de la province où les procédures relatives à l'infraction ont été engagées, si elles l'ont été à la demande du gouvernement de cette province et menées par ce dernier ou en son nom, pour que le procureur général ou le solliciteur général de la province en dispose conformément au droit applicable;
>
> **b)** soit de Sa Majesté du chef du Canada pour que le membre du Conseil privé de la Reine pour le Canada chargé par le gouverneur en conseil de l'application du présent alinéa en dispose conformément au droit applicable, dans tout autre cas.

[108] As with s. 462.37(2) *Cr. C.*, s. 16(2) *CDSA* broadens the circumstances in which forfeiture is available, but the order-making power remains that of the trial or sentencing court under s. 16(1):

(2) Subject to sections 18 to 19.1, if the evidence does not establish to the satisfaction of the court that property in respect of which an order of forfeiture would otherwise be made under subsection (1) is related to the commission of the designated substance offence of which a person is convicted or discharged, but the court is satisfied, beyond a reasonable doubt, that the property is non-chemical offence-related property, the court may make an order of forfeiture under subsection (1) in relation to that property.	**(2)** Sous réserve des articles 18 à 19.1, le tribunal peut rendre une ordonnance de confiscation aux termes du paragraphe (1) à l'égard de biens dont il n'est pas convaincu qu'ils sont liés à la perpétration de l'infraction désignée pour laquelle la personne a été condamnée — ou à l'égard de laquelle elle a été absoute — s'il est convaincu, hors de tout doute raisonnable, qu'il s'agit de biens infractionnels non-chimiques.

[109] Section 491.1 *Cr. C.*, meanwhile, which was enacted in 1985 (*Criminal Law Amendment Act, 1985*, R.S.C. 1985, c. 27 (1st Supp.), s. 74), is even more specific than s. 462.37 *Cr. C.* and s. 16 *CDSA*. It contemplates forfeiture by a court that, on trying an accused, concludes that "an offence has been committed" ("*une infraction a été commise*") and that "at the time of the trial" ("*au moment du procès*") the relevant

criteria are met in respect of the property (see, e.g., *R. v. Piché*, 2003 SKQB 405, 240 Sask. R. 282, at para. 24).

[110] A similarly worded provision was repealed when s. 491.1 was first enacted, though this predecessor provision did not contemplate forfeiture, but rather only the return of property to a lawfully entitled third party (see *Criminal Law Amendment Act, 1985*, s. 160). The fact that this predecessor provision was found in the part of the *Criminal Code* concerning "punishments" and contained the same language expressly contemplating the determination being made by the trial court (see *Criminal Code*, R.S.C. 1970, c. C-34, s. 655) only serves to underline the requisite link with the trial process that the language of s. 491.1 continues to reflect. Given the clear link required with the trial court, it is unsurprising that the Crown did not press the availability of s. 491.1 in its appeal to this Court (see A.F., at p. 34). All of this aligns with the purpose outlined above: establishing an efficient, timely and fair process for forfeiture, based on the idea that the trial or sentencing court that had first-hand exposure to the evidence is best placed to decide the matter.

[111] This interpretation of all three provisions finds further confirmation in s. 673 *Cr. C.*, which treats forfeiture orders under any of ss. 462.37 and 491.1(2) *Cr. C.* and s. 16(1) *CDSA* as part of an offender's sentence for the purposes of an appeal. It would make little sense for these orders to be appealed as part of a sentence if they were not made by the trial or sentencing court.

[112] I acknowledge that the Superior Court in this case came to a different conclusion on the need for these powers to be exercised by the trial or sentencing court (see also *R. v. Piccirilli*, 2025 QCCQ 6579, at para. 9). With respect, its conclusion that [TRANSLATION] "nothing in the statutory provisions at issue requires that this always be the case" (para. 25) cannot be reconciled with the language in these provisions, which refer not to the generic "court" in the sense of the Court of Québec, but to the "court imposing sentence on or discharging the offender" (s. 462.37(1) *Cr. C.*). The conclusion is similarly out of step with the legislative purpose advanced by vesting these forfeiture powers with the court that heard the evidence at trial first-hand. For the reasons given above, Parliament's intention was to give the more specific language in these provisions a legal effect. While forfeiture is distinct from the sentence, it is not open to this Court to ignore the way in which this class of forfeiture powers was tied explicitly to the trial and sentencing process.

[113] In sum, the proper interpretation is that all these provisions require a temporal link between the trial or sentencing proceedings and the forfeiture. They cannot be exercised where there is no longer a trial or sentencing court seized of the matter.

(3) Forfeiture Is Not Available Here

[114] For the purposes of applying ss. 462.37 and 491.1 *Cr. C.* and s. 16 *CDSA* to the respondents' case, it is sufficient to note that there is no longer a trial or sentencing court seized of the matter.

[115] The Crown can no longer rely on Manh Hung Nguyen's conviction to ground the forfeiture of the subject property — his sentencing proceedings ended in 2016 (A.R., vol. II, at pp. 4-5). A forfeiture order was made at this time but did not address the property now at issue before this Court (A.F., at paras. 19-20; R.F., at para. 21; A.R., vol. II, at pp. 4-5). Indeed, the Crown considered seeking forfeiture of the Montreal property owned by Thi Hong Cun, where Manh Hung Nguyen had acknowledged producing cannabis, but it ultimately declined to do so (A.F., at paras. 18 and 20). No one suggests that the matter was adjourned to allow for the continuation of forfeiture proceedings tied to the guilty plea at some later date. The judge who presided over the guilty plea, and who considered and ordered forfeiture, is now *functus officio* (see *Canadian Broadcasting Corp. v. Manitoba*, 2021 SCC 33, [2021] 2 S.C.R. 785, at para. 33). Just as another judge of the Court of Québec cannot now intervene to modify Manh Hung Nguyen's conviction or sentence, they cannot reopen the forfeiture decision made at this hearing.

[116] The respondents, meanwhile, were never themselves tried for an offence, and there is no court currently seized with determining their criminal liability, due to the stay of proceedings.

[117] Therefore, there is no forfeiture jurisdiction under these provisions tied to the criminal liability proceedings.

D. *Forfeiture Independent of Trial and Sentencing Proceedings (Section 490 Cr. C.)*

[118] Having concluded that there was no jurisdiction under the provisions tied to trial or sentencing proceedings, the Court of Appeal ended its analysis and decided that there was no forfeiture jurisdiction whatsoever in the Court of Québec (para. 20). It stated that "[n]o statutory provision allows an application for forfeiture to proceed in the absence of proven criminality" (para. 19). With great respect, I am of the view that the court failed to recognize that the relevant property is subject to legislative provisions governing its detention and residual disposition, which provide for forfeiture in an appropriate case by the Court of Québec, notably under s. 490(9) *Cr. C.*

[119] In fairness to the courts below, the Crown did not press the issue of s. 490 before the Superior Court or the Court of Appeal, but it is nonetheless appropriate and important that this Court consider this provision. As I will explain, failing to address this possibility would risk an injustice, namely leaving the seized and restrained property in an indefinite limbo. Section 490(9) was argued by both parties before the Court of Québec (see A.R., vol. II, at p. 168; C.Q. reasons, at paras. 29-30, 33 and 43-93). The respondents have always relied on s. 490(9) as a basis for the return of their property (see A.R., vol. II, at p. 70), and the Crown discusses s. 490 at some length in its factum (see A.F., at paras. 1, fn. 1, and paras. 34, 38, 40-43, 66, 96 and 102). Therefore, at the hearing, the parties' views on the possibility of forfeiture under s. 490(9) were solicited and are considered here (see transcript, at pp. 2-7, 25-28, 47-48, 52-64 and 67-75).

[120] It is true that the intervener the Director of Public Prosecutions also invoked s. 490(9) before our Court, but it did not do so at the expense of the parties' representations, nor did it unduly widen or add to the points in issue (see generally *R. v. Barton*, 2019 SCC 33, [2019] 2 S.C.R. 579, at para. 53). In addition to their oral arguments at the hearing, the respondents' factum treats the provision extensively, and the Crown's condensed book speaks to this alternative argument. Importantly, our Court could not confirm the Court of Appeal's decision to declare "that the Court of Québec did not have jurisdiction to hear the [Crown's] application for an order of forfeiture against the [respondents]" (para. 6) without addressing s. 490(9), which, as I will explain, provides a residual basis for forfeiture in the *Criminal Code*.

(1) Forfeiture Is Engaged by the Residual Disposition of Seized or Restrained Property

[121] Section 490 sets out default rules for the detention and disposition of seized property, which apply unless Parliament has provided more specific, conflicting rules ("[s]ubject to this or any other Act of Parliament" / "*[s]ous réserve des autres dispositions de la présente loi ou de toute autre loi fédérale*" (s. 490(1) and (9))). Where s. 490 has not been displaced by legislation, police who seize any property in the execution of their duties under federal legislation, and who do not return it, must submit that property to judicial supervision under s. 490 (ss. 489.1(1)(b) and 490(1) *Cr. C.*; see N. Hasan et al., *Search and Seizure* (2021), at pp. 538-39). The purpose of s. 490 is to ensure that courts supervising seized property can carefully balance the private interests in that property against the public need for that property to be detained in pursuit of

investigating and prosecuting crime (see *Hollaman*, at paras. 97-98; *Breton*, at para. 62; see also Uniform Law Conference of Canada, at paras. 12-13; *Further Detention of Things Seized (Re)*, 2024 BCSC 354, at para. 15; *Ayotte*, at para. 51). It purports to provide a "complete scheme" for this purpose (*Raponi*, at para. 28; see also paras. 8-15 and 30; *R. v. Backhouse* (2005), 195 O.A.C. 80, at para. 111). Section 490 also applies with necessary modifications to property that has not actually been seized but is nonetheless subject to judicial supervision, such as property subject to a restraint order, where this is contemplated by statute (see, e.g., s. 490.9(1) *Cr. C.*; s. 15(1) *CDSA*).

[122] Under s. 490(1), the property must be returned unless the court is satisfied that detention is required for the purposes of criminal investigation or proceedings. Where so satisfied, detention can be ordered for a period of up to three months from the date of seizure (ss. 490(1)(b) and 490(2)). This period of detention can be extended, provided the court is satisfied that further detention is warranted (ss. 490(2)(a), 490(3)(a) and 490(9.1)). Regardless of initial detention orders and their extension, s. 490 authorizes the continued detention of property if proceedings are instituted in which the property may be required, such as where charges are laid and criminal liability proceedings are ongoing (ss. 490(2)(b), 490(3)(b) and 490(4); see Hasan et al., at p. 555).

[123] Applications for disposition of the property can be made both before and after the detention periods provided for under s. 490(1) to (3) have expired (s. 490(5) to (8); see Hasan et al., at p. 558). Under s. 490(9), the court is empowered to dispose

of the property if it meets different criteria depending on whether the relevant detention periods have expired (see generally Hasan et al., at p. 559). If they have not expired, the court must be satisfied that the property will not be required for the purposes of criminal investigation or proceedings. If the detention periods have expired, the court must still be satisfied, in deciding whether to dispose of the property, that proceedings have not been instituted in which the property may be required.

[124] When it is validly engaged, s. 490(9) empowers the court to order the return of property to a lawful owner or possessor or, if there is no known lawful owner or possessor, order it forfeited to the Crown (see *Breton*, at paras. 68-69; *Gagnon*, at para. 105; see also *Hollaman*, at para. 97; *Ayotte v. R.*, 2025 QCCS 546, 2 C.R. (8th) 289, at paras. 49-50). This is the forfeiture provision we are asked to consider here:

(9) Subject to this or any other Act of Parliament, if	**(9)** Sous réserve des autres dispositions de la présente loi ou de toute autre loi fédérale :
(a) a judge referred to in subsection (7), where a judge ordered the detention of anything seized under subsection (3), or	**a)** le juge visé au paragraphe (7), lorsqu'un juge a ordonné la détention d'une chose saisie en application du paragraphe (3);
(b) a justice, in any other case,	**b)** le juge de paix, dans tout autre cas,
is satisfied that the periods of detention provided for or ordered under subsections (1) to (3) in respect of anything seized have expired and proceedings have not been instituted in which the thing detained may be required or, where those periods have not expired, that the continued detention of the thing seized will not be required for any	qui est convaincu que les périodes de détention prévues aux paragraphes (1) à (3) ou ordonnées en application de ceux-ci sont terminées et que des procédures à l'occasion desquelles la chose détenue peut être requise n'ont pas été engagées ou, si ces périodes ne sont pas terminées, que la détention de la chose saisie ne sera

purpose mentioned in subsection (1) or (4), he shall	pas requise pour quelque fin mentionnée au paragraphe (1) ou (4), doit :
(c) if possession of it by the person from whom it was seized is lawful, order it to be returned to that person, or	**c)** en cas de légalité de la possession de cette chose par la personne entre les mains de qui elle a été saisie, ordonner qu'elle soit retournée à cette personne;
(d) if possession of it by the person from whom it was seized is unlawful and the lawful owner or person who is lawfully entitled to its possession is known, order it to be returned to the lawful owner or to the person who is lawfully entitled to its possession,	**d)** en cas d'illégalité de la possession de cette chose par la personne entre les mains de qui elle a été saisie, ordonner qu'elle soit retournée au propriétaire légitime ou à la personne ayant droit à la possession de cette chose, lorsqu'ils sont connus;
and may, if possession of it by the person from whom it was seized is unlawful, or if it was seized when it was not in the possession of any person, and the lawful owner or person who is lawfully entitled to its possession is not known, order it to be forfeited to Her Majesty, to be disposed of as the Attorney General directs, or otherwise dealt with in accordance with the law.	en cas d'illégalité de la possession de cette chose par la personne entre les mains de qui elle a été saisie, ou si nul n'en avait la possession au moment de la saisie, et lorsque ne sont pas connus le propriétaire légitime ni la personne ayant droit à la possession de cette chose, le juge peut en outre ordonner qu'elle soit confisquée au profit de Sa Majesté; il en est alors disposé selon les instructions du procureur général ou autrement en conformité avec le droit applicable.

[125] Since Canada's *Criminal Code* was first enacted in the late 19th century, setting out rules governing the seizure of property for purposes of criminal investigation and prosecution, there have been ancillary provisions managing the detention and eventual disposition of that property, including its possible forfeiture to the Crown (see *The Criminal Code, 1892*, s. 569; *Criminal Code*, S.C. 1953-54, c. 51, s. 432). Initially, the circumstances in which forfeiture was expressly foreseen were relatively narrow. The property was generally to be returned to the hands from which

it was seized, unless the justice was "authorized or required by law to dispose of it otherwise" (see *The Criminal Code, 1892*, s. 569(4); see also *Rex v. Rocco* (1931), 39 Man. R. 453 (C.A.), at p. 454). Specifically noted exceptions in *The Criminal Code, 1892* included *per se* unlawful property like improved firearms, forged banknotes and counterfeit coins, which were generally to be forfeited to the Crown or otherwise disposed of or destroyed (s. 569(4) to (6)).

[126] The circumstances in which forfeiture was expressly provided for were significantly broadened in the 1953-54 *Criminal Code*, which introduced a provision that looks much like the current s. 490(9). The law was now clear that if there was no known lawful owner, the justice supervising the detention of seized property could order that property forfeited to the Crown (see *Criminal Code* (1953-54), s. 432(3); *House of Commons Debates*, vol. III, 1st Sess., 22nd Parl., March 9, 1954, at pp. 2830-34; *House of Commons Debates*, vol. III, 1st Sess., 22nd Parl., March 15, 1954, at p. 3009 (Hon. S. S. Garson, Minister of Justice)). Despite various amendments to the provision in the intervening decades, notably the introduction of timelines for detention and other measures to facilitate the return of items to lawful owners (see, e.g., *Criminal Law Amendment Act, 1968-69*, S.C. 1968-69, c. 38, s. 29; *Criminal Law Amendment Act, 1985*, s. 73; see also *Backhouse*, at para. 107; *House of Commons Debates*, vol. I, 1st Sess., 33rd Parl., December 20, 1984, at p. 1390 (Hon. J. C. Crosbie, Minister of Justice)), the language foreseeing forfeiture as an option for the disposal of seized property has remained constant.

[127] Commentators have noted that, despite subsequent legislative development creating more specific forfeiture provisions, such as s. 462.37 dealing with proceeds of crime, forfeiture under s. 490(9) continues to provide an important route to seek forfeiture of criminally tainted property (see German at § 33:1; J. A. Fontana and D. Keeshan, *The Law of Search and Seizure in Canada* (13th ed. 2024), at § 7.03[1][a]). There are, of course, circumstances in which property would be susceptible to forfeiture under those more specific provisions, but not under s. 490(9). For example, I recall that s. 490(9) forfeiture applies only to property that is seized, or deemed to have been seized for the purposes of s. 490, and only where there is no known lawful owner of the property. Further, as I note below, it imposes a higher evidentiary threshold than provisions that make forfeiture available on a balance of probabilities standard. Still, s. 490(9) continues to play an important role as a residual basis for forfeiture in circumstances where it does apply. Forfeiture under s. 490(9) serves the same purposes as forfeiture elsewhere in the *Criminal Code*, namely deterring further criminal activity and ensuring the court is not facilitating unlawful possession (see German, at § 33:13, citing *Lavigne*, at para. 16, and *R. v. James*, 2016 ONCJ 424, at para. 7).

(2) Forfeiture Remains Available Despite Proceedings Having Been Instituted

[128] The Court of Québec concluded that s. 490(9) could not apply to this case because of the language "proceedings have not been instituted" and the fact that proceedings were instituted in this case but have now concluded (paras. 56-91, citing *inter alia R. v. Taylor*, 2011 NLCA 72, 285 C.C.C. (3d) 293; *R. v. Spindloe*, 2001

SKCA 58, 42 C.R. (5th) 58; *9141-2023 Québec*; *Echostar Corporation v. Service de poursuites pénales du Canada*, 2009 QCCQ 4827). With respect for this view, I disagree.

[129] Interpreting s. 490(9) to be inapplicable if proceedings were instituted at any point in the past would risk the indefinite detention of property in many cases like this one where charges were laid but proceedings were stayed before trial. I agree with the Uniform Law Conference of Canada's report on this provision that this narrow interpretation of s. 490(9) would "create difficulties and legal voids for those things that cannot otherwise be dealt with via some other legal substratum" (para. 211).

[130] Some decisions have suggested that s. 491.1 would fill any gap by permitting forfeiture after proceedings have ended (see, e.g., *9141-2023 Québec*, at para. 68; C.Q. reasons, at para. 92). But in my humble view, this does not account for the fact that, as discussed above, s. 491.1 applies (1) only to property obtained by the commission of an offence; (2) only if there has been a trial; and (3) only if there is still a trial court seized of the matter. Other decisions have pointed to s. 490(4) *Cr. C.*, which provides that when an accused "has been ordered to stand trial" seized property is forwarded to the clerk of the court in which the trial will occur to be detained and "disposed of as the court directs", as another means to close the resulting gap in forfeiture jurisdiction (see, e.g., *Spindloe*, at para. 119). But even if this is read to confer a forfeiture power on the trial court, from which there would be no appeal, an apparent gap would remain where charges are laid, commencing criminal proceedings, but the

accused is not ordered to stand trial. While there may be other mechanisms through which property could be returned or forfeited, such as a *Charter* application, a civil forfeiture application, or a common law property claim by a lawful owner, there will be property that is not susceptible to disposition under any of these regimes. Not every case will involve a *Charter* breach, an applicable civil forfeiture regime or a lawful owner who can make out a common law action for the recovery of the property. Despite the various routes to disposition of the property before criminal courts, gaps would remain.

[131] Respectfully stated, it is best to be wary of a proposed interpretation of s. 490(9) creating these kinds of gaps in a scheme that, as discussed above, is intended to provide a residual regime for the orderly detention and disposition of seized property (see generally *Backhouse*, at para. 111).

[132] Indeed, it is significant that both parties to this litigation took the position that the Court of Québec *retains* s. 490(9) jurisdiction to dispose of the subject property even though proceedings were instituted against the respondents and have since been stayed (A.F., at paras. 40-41; R.F., at para. 54). While the respondents argue that there is no jurisdiction to *forfeit* the property at issue, for the reasons I have considered and rejected above, they seek an order returning the property to them under the same provision, s. 490(9) (R.F., at para. 154). This position is incompatible with the conclusion of the Court of Québec that, proceedings having been instituted against the respondents, s. 490(9) is not available to either party (para. 91).

[133] To the extent that the case law suggests a narrow interpretation of s. 490(9), that reading is largely hinged on the words "proceedings have not been instituted" ("*des procédures . . . n'ont pas été engagées*") (see, e.g., *Taylor*, at para. 49; *Spindloe*, at para. 111; *Echostar*, at paras. 26-27). I acknowledge that the plain meaning of these words, if read in isolation from the remainder of s. 490(9), could suggest that the requirement is that proceedings have never been instituted. But recall that the modern approach to statutory interpretation requires that even superficially plain text always be read in context and in light of its purpose (see *Wilson*, at para. 34). Applying that approach, with an eye to both linguistic texts and the context and purpose of the provision, shapes a proper reading of s. 490(9).

[134] As we shall see, even a purely textual analysis coincides with the meaning revealed by the provision's context and purpose and supports the broader reading. The text immediately surrounding the words "proceedings have not been instituted" ("*des procédures . . . n'ont pas été engagées*") suggests strongly that Parliament is concerned with ensuring that the disposition of seized property does not occur until the continued detention of the property is no longer required. The text of the requirement in its entirety is: "proceedings have not been instituted <u>in which the thing detained may be required</u>" ("*des procédures <u>à l'occasion desquelles la chose détenue peut être requise</u> n'ont pas été engagées*") (s. 490(9)). The underlined words make plain that the prerequisite is not that proceedings must *never* have been instituted, but rather the absence of proceedings in which the detained thing "may be required" ("*peut être requise*"), a modal phrase referring to the present and future, for proceedings that have been instituted at some

time in the past. When proceedings were commenced in the past but have since definitively ceased, it cannot be said that "proceedings have not been instituted", but it is true that "proceedings have not been instituted in which the thing detained may be required". No thing will "be required" in the present or future for proceedings that have come to an end.

[135] Thus, the language ensures that property that may be required for a proceeding is not prematurely released from the court's supervision. Even where the periods for detention provided for or ordered under s. 490(1) to (3) have expired, Parliament has ensured, through this language in s. 490(9), that seized property will remain in detention where it is still required for judicial proceedings that have been instituted. Once the property is no longer required for those proceedings, such as when a stay is entered, there is no purpose to the continued detention of the property, and the prerequisite to disposition is satisfied.

[136] Tracing the legislative evolution of this provision makes this even clearer. The equivalent provision in the earliest iteration of the *Criminal Code* simply contemplated the justice detaining the property until the "conclusion of the investigation" or where required for "the purpose of evidence on the trial" (*The Criminal Code, 1892*, s. 569(4)). The provision was significantly recast in the 1950s, but disposal of seized property was still made conditional on the justice being satisfied that the property "will not be required" for the purpose of further investigation or trial (*Criminal Code* (1953-54), s. 432(3)). The language "proceedings have not been

instituted in which the thing detained may be required" in s. 490(9) simply reflects a homologous prerequisite, focused on the necessity of continued detention. It does not somehow require that proceedings have never been instituted.

[137] This reading is further supported by the legislative context of s. 490(9), including the other subsections of s. 490 itself. The initial detention order is made to ensure that the property is preserved until the conclusion of the investigation or until it is required to be produced for criminal proceedings, not simply until proceedings are commenced (s. 490(1)(b)). Indeed, ss. 490(2)(b) and 490(3)(b) specify explicitly that detention of property under the authority of s. 490(1)(b) is permitted to continue if "proceedings are instituted in which the thing detained may be required". This would be meaningless if s. 490 ceased to apply as soon as proceedings were commenced. Further, s. 490(10) says a lawful owner can apply for return of the property "at any time", suggesting that s. 490 continues to apply after proceedings have been instituted.

[138] This interpretation also achieves harmony with the wider scheme of the *Criminal Code*. For example, s. 491.1 specifies that when its prerequisites are met "section 490 does not apply" in respect of the property, which would be a tautology if s. 490 could not apply after proceedings had been commenced against an accused person. As discussed above, s. 491.1 can *only* apply where there has been a trial and, by extension, only after proceedings have been commenced. Interpretations that render any words in a statute "mere surplusage" should generally be avoided (*British Columbia Human Rights Tribunal v. Schrenk*, 2017 SCC 62, [2017] 2 S.C.R. 795, at

paras. 45-46, citing *R. v. Proulx*, 2000 SCC 5, [2000] 1 S.C.R. 61, at para. 28; see also Côté and Devinat, at paras. 1009-15).

[139] Understanding s. 490 in this way also avoids complicating the interpretation of related provisions in the *CDSA*. In a case like the present where the accused were neither convicted nor discharged, because the proceedings were stayed, and did not die or abscond, the only mechanism contemplated to put an end to restraint orders under the *CDSA* is an order made under s. 490 (see s. 14(9) *CDSA*). To avoid property being locked in a state of restraint forever, it seems clear that Parliament intended that s. 490 remain available even when proceedings had been instituted in the past. The interpretation that results in a harmonious fit between these related provisions is to be preferred over discordant or disjointed readings (see *Pointe-Claire (City) v. Quebec (Labour Court)*, [1997] 1 S.C.R. 1015, at para. 61; *R. v. Ulybel Enterprises Ltd.*, 2001 SCC 56, [2001] 2 S.C.R. 867, at para. 52).

[140] As I suggested above, this reading of s. 490(9) aligns with the purpose of s. 490, which is to provide a residual regime for the orderly detention and disposition of seized property. The narrower reading would undermine this purpose by creating gaps in the regime, thereby risking that some property would become trapped in a state of limbo. Reading the text of this provision in context and in light of this purpose, there is no ambiguity as to its meaning. This is not, therefore, a case for the application of the principle of strict construction of penal statutes (see *La Presse*, at para. 24).

[141] Many trial and appellate courts across the country have similarly concluded that s. 490(9) remains available even after charges have been laid and proceedings have begun (see, e.g., *Breton*, at para. 63; *Guimont*, at para. 31; *Desjardins*, at paras. 27-28; *R. v. Savard*, 2021 QCCS 5717, at paras. 28-31; *Directeur des poursuites criminelles et pénales v. Hébert*, 2019 QCCQ 8754, at para. 7; *Directeur des poursuites criminelles et pénales du Québec v. Lacelle*, 2013 QCCQ 10269, at paras. 42-45; see also *R. v. MacLeod*, 2005 MBQB 15, 194 C.C.C. (3d) 257, at para. 32; *R. v. Elansooriyanathan*, 2025 ONSC 5823, at paras. 36 and 91). This was the view of Poulin J.C.Q. (as he then was) in *Procureur général du Québec v. Bagui*, 2021 QCCQ 12225, at paras. 10 and 90. With respect, the Court of Québec in our case did not meaningfully grapple with these sources in coming to the opposite conclusion on s. 490(9).

[142] Instead, the Court of Québec placed greater weight on the appellate authorities *Spindloe* and *Taylor* in support of the narrower reading of s. 490. But, importantly, both decisions involve complications not present in the respondents' case and reach outcomes that are, in any event, reconcilable with the broader interpretation proposed here. As their narrower interpretation of s. 490 is not consistent with the text, context and purpose of the provision, for the reasons I have set out above, they should not be followed on this point.

[143] At issue in *Spindloe* was jurisdiction over property that had been made an exhibit at trial. The provincial court judge had returned the property to an offender who had been convicted at trial on the understanding that her forfeiture power was limited

to s. 490(9) and that the criteria to order forfeiture found there were not met (paras. 95-96). The Court of Appeal found this conclusion to be in error because it overlooked an implied power of a judge overseeing a trial to return only those exhibits that were not tainted by criminality (paras. 125-26 and 161). In exercise of that power, the Court of Appeal declined to return exhibits tainted by illegality to the offender, as doing so would "defeat Parliament's intention" and offend *ex turpi causa* principles (para. 127; see also paras. 162 and 173-74).

[144] The analysis in *Spindloe* turned on the application and exercise of the implied power of trial courts over exhibits. The grant of jurisdiction to conduct a proceeding includes implied powers to manage that proceeding (see generally *R. v. Cunningham*, 2010 SCC 10, [2010] 1 S.C.R. 331, at paras. 18-19), including powers to manage exhibits (see E. G. Ewaschuk, *Criminal Pleadings & Practice in Canada* (3rd ed. (loose-leaf)), at § 16:175). There is no necessary inconsistency between the power of the trial court to manage exhibits during the trial and the continued application of s. 490 after the trial has ended or where it never takes places. Indeed, the power of the trial court to manage seized property relevant to the trial is expressly contemplated in s. 490(4), which provides for property detained under s. 490 to be made available to the trial court after an accused is ordered to stand trial.

[145] In the respondents' case, though, the relevant property was not entered as an exhibit, since they never went to trial, and the forfeiture application was made after their criminal liability proceedings had permanently ceased. The concern in *Spindloe*

was that the lower courts had too *narrowly* construed their powers to dispose of the subject property. The result that the Court of Appeal in that case intervened to correct was one that would have allowed tainted property to be returned to unclean hands. It would be perverse to rely on it here to deny forfeiture jurisdiction in a case in which there are no exhibits and no trial court.

[146] In *Taylor*, an accused was ordered to stand trial in superior court following a preliminary inquiry (para. 6). After her arraignment in that court, proceedings were stayed for unreasonable delay. She applied to the superior court for the return of property seized from her (para. 7). The Crown objected on jurisdictional grounds, relying on s. 490 to say that the superior court's jurisdiction to deal with the property was ousted (paras. 18-22). The Court of Appeal concluded, on the contrary, that the superior court retained jurisdiction to dispose of the property (paras. 54-55).

[147] The majority's reasoning turned on its conclusion that s. 490 did not implicitly oust the inherent jurisdiction of the superior court with the "irresistible clearness" that would be required to that end (para. 54, citing *Gendron v. Supply and Services Union of the Public Service Alliance of Canada, Local 50057*, [1990] 1 S.C.R. 1298). The conclusion was that s. 490 did not confer on the provincial court "exclusive" jurisdiction to deal with the property (para. 54). The majority's explicit intention was to decide the case narrowly, confining its comments to "matters necessary to resolve the questions as to jurisdiction that are specifically raised on this appeal . . . in factual circumstances such as exist in this case" (para. 29).

[148] The degree to which provincial and superior courts may have concurrent jurisdiction to order forfeiture when proceedings were pursued in the superior court but have since ceased need not be resolved in our case, where the respondents were never arraigned or tried in the superior court. Without the benefit of full submissions on the issue, I would leave it to another day.

[149] In sum, it was not necessary for the courts of appeal in these cases to adopt a narrow reading of s. 490(9). To the extent their analyses conflict with the proper statutory interpretation set out above, their decisions should not be followed. The fact that proceedings have been instituted in the past does not on its own vacate forfeiture jurisdiction under s. 490(9).

(3) Forfeiture May Be Available Here

[150] In this case, the property subject to restraint orders under s. 490.8 *Cr. C.* and s. 14 *CDSA*, as well as the property seized under s. 487 *Cr. C.* and s. 11 *CDSA*, is subject to the s. 490 *Cr. C.* regime (see s. 490.9(1) *Cr. C.*; ss. 13(1) and 15(1) *CDSA*). Since there are no ongoing proceedings and the detention periods have long since expired, it is open to the Court of Québec to dispose of this property under s. 490(9), including by ordering forfeiture where appropriate.

[151] It appears that some of the subject property, restrained only by an order under s. 462.33, may not be subject to s. 490, since that property was not seized and there is no deeming provision referring to the s. 490 regime as there is for other forms

of restrained property. However, there is a more specific provision — s. 462.43 — that provides for the residual disposition of this property.

[152] It is for the Court of Québec to exercise its proper jurisdiction and consider the possibility of forfeiture under these provisions. Proceedings before that court must be allowed to continue for this purpose.

[153] Given the discussion of the matter before our Court, the nature of the Crown's burden when seeking forfeiture under s. 490(9) before the Court of Québec bears some comment. When the Crown determines that the continued detention of seized or restrained property is no longer required for the purpose of criminal investigation or prosecution, it must apply to the court for an order under s. 490(9) (see s. 490(5) and (6) *Cr. C.*). The court will only order forfeiture pursuant to that application if the Crown can satisfy it that three prerequisites are met. First, the Crown must satisfy the court either that the periods of detention have expired and proceedings have not been instituted in which the property may be required, or that the periods of detention have not expired but the continued detention of the property is not required for the purposes of investigation or prosecution (s. 490(9)). Second, the Crown must show that possession of the property by the person from whom it was seized or restrained is unlawful, or that it was not in the possession of any person (s. 490(9)(c) and s. 490(9) *in fine*). Third, the Crown must show that no other known person lawfully owns or is entitled to possession of the property (s. 490(9)(d) and s. 490(9) *in fine*).

[154] Many cases will turn on whether the Crown can prove that a person's possession of the property is unlawful. No standard of proof is specified in the express language of the provision, but this Court has held that the fact of the property being in the possession of a person immediately prior to seizure raises a presumption that possession by that person is lawful (see *Fleming*, at pp. 444-45; see also *Mac*, at para. 17). To rebut the presumption the Crown must prove beyond a reasonable doubt that possession is unlawful (see *Fleming*, at p. 446). Wilson J. explained in *Fleming*, interpreting a forfeiture provision in the *Narcotic Control Act*, R.S.C. 1970, c. N-1, that similarly did not specify a standard of proof, that "[f]undamental principles of criminal justice . . . make it inappropriate to transform a restoration hearing into a trial in which the Crown need only meet the civil standard of proof" (p. 445). Therefore, "[i]n the absence of a specific finding at trial of the requisite 'tainted connection', the Crown may fill the evidentiary gap by proving taint on the reasonable doubt standard" (p. 446). In the specific context of s. 490(9), the Court of Appeal for Ontario has held that interpreting the Crown's burden "in any other way" would mean that "the person from whom [property] was seized would be powerless to recover it without proving that it had been acquired honestly" and that "[t]hat is not our way" (*Mac*, at para. 16). I agree.

[155] To meet this burden, the Crown may have to call evidence of the person's unlawful acts in the context of the forfeiture hearing (see *British Columbia (Attorney General) v. Forseth* (1995), 99 C.C.C. (3d) 296 (B.C.C.A.), at paras. 27 and 30). The Crown can rely on a previous conviction or adduce evidence to prove unlawful possession in accordance with the applicable rules of criminal procedure. If the Crown

adduces evidence, normal rules of criminal evidence will apply (see *R. v. West* (2005), 199 C.C.C. (3d) 449 (Ont. C.A.), at paras. 27-28; see also *Fleming*, at pp. 445-46). While evidence may be adduced through affidavit, it must comply with the relevant rules of evidence in the context of criminal applications (see *West*, at paras. 27-31 and 35; *Canada (Attorney General) v. Acero*, 2006 BCSC 1015, 210 C.C.C. (3d) 549, at paras. 53 and 56-58; see also Uniform Law Conference of Canada, at para. 218).

[156] The forfeiture proceeding is distinct from any related criminal liability proceedings in terms of its evidentiary record (see *Vellone*, at paras. 41 and 53; *Breton*, at para. 76). For example, if evidence was excluded at trial under s. 24(2) of the *Charter*, this does not mean that this evidence will necessarily be excluded in an application for forfeiture (see *Vellone*, at paras. 48-49; *Breton*, at paras. 77-82). As the analysis prescribed in *R. v. Grant*, 2009 SCC 32, [2009] 2 S.C.R. 353, is inherently contextual, it may look different in a forfeiture application than it would even in a related trial to determine a person's criminal liability (*Breton*, at para. 77; *Vellone*, at para. 55).

[157] If the Crown meets its burden of showing that the property was seized from unlawful hands and that there are no known lawful possessors, the *ex turpi causa* concerns that justify forfeiture will be engaged. In order to ensure that the court is not facilitating illegality in respect of the tainted property, that property would have to be withdrawn from circulation.

VI. Conclusion

[158] In the result, the respondents' stay of proceedings did not deprive the Court of Québec of all forfeiture jurisdiction, nor did it preclude the Crown from bringing proof that the disputed property is tainted by criminality. In light of the Crown's original application, the Court of Québec must consider whether the property should be forfeited to the Crown.

[159] The appeal should be allowed in part. The judgments of the Court of Appeal and the Superior Court should be set aside, and the Court of Québec's judgment on jurisdiction should be quashed. An order prohibiting the continuation of forfeiture proceedings before the Court of Québec under ss. 462.37 and 491.1 *Cr. C.* and s. 16 *CDSA* should be granted, and the matter should be remanded to that court for continuation of forfeiture proceedings, together with consideration of the respondents' application for return of the property, in accordance with these reasons.

Appeal allowed in part.

Solicitor for the appellant: Director of Criminal and Penal Prosecutions, Montréal.

Solicitor for the respondents: Annik Magri, Montréal.

Solicitor for the intervener: Public Prosecution Service of Canada, Montréal.