Court File No.: 34358

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE COURT OF APPEAL FOR QUEBEC)

BETWEEN:

HER MAJESTY THE QUEEN

Appellant
(Appellant)

- and -

ALPHIDE MANNING

Respondent
(Respondent)

- and -

BRITISH COLUMBIA CIVIL LIBERTIES ASSOCIATION, CANADIAN CIVIL LIBERTIES ASSOCIATION, DIRECTOR OF PUBLIC PROSECUTIONS OF CANADA and ATTORNEY GENERAL OF ONTARIO

Interveners

FACTUM OF THE INTERVENER BRITISH COLUMBIA CIVIL LIBERTIES ASSOCIATION

(Rules 37 and 42 of the *Rules of the Supreme Court of Canada*)

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PART I: OVERVIEW

1. In recent years, Canadians have witnessed a proliferation of the use of forfeiture as a law-enforcement tool, both at the provincial level through the enactment of civil forfeiture regimes (*see e.g. Chatterjee v. Ontario (Attorney General)*, 2009 SCC 19 ("***Chatterjee***")) and at the federal level through the expansion of the type of property and range of offences in connection with which forfeiture can be imposed under the *Criminal Code*.

2. While forfeiture is undoubtedly a useful and potentially lucrative instrument for government, if exercised without proper checks and balances, the power to compel an individual to forfeit his or her property to the state can quickly become a "draconian measure" (*R. v. Craig*, 2009 SCC 23, para. 50 ("***Craig***")).

3. This appeal calls upon the Court to interpret the safeguards that Parliament has put in place under the *Criminal Code* to protect against potential abuse or overuse of forfeiture under the expanded regime governing "offence-related property".

4. This is the first time this Court will examine the issue since considering the substantially similar provisions of the *Controlled Drugs and Substances Act*, S.C., 1996, c.19 ("***CDSA***") in *Craig* and its companion cases, *R. v. Ouellette*, 2009 SCC 24 ("***Ouellette***") and *R. v. Nguyen*, 2009 SCC 25 ("***Nguyen***").

5. *Craig* and its companion cases concerned the forfeiture of dwelling houses used in marijuana grow operations. The central question before the Court was whether a forfeiture order under the *CDSA* should be considered as part of the offender's global sentence, including jail time. The majority of the Court, deeply concerned that a global approach might permit offenders to "trade property for jail time", held that forfeiture pursued a separate rationale from that of sentencing and that it must therefore be considered independently of other aspects of the sentence. In determining whether to order forfeiture of real property under the *CDSA*, the sentencing judge must therefore be guided solely by the factors set forth at s. 19.1(3) *CDSA*.

6. The present appeal tests the limits of the compartmentalized approach adopted by the majority in *Craig*. Far removed from the context in which the forfeiture regime was enacted – the battle against organized crime and drug trafficking – this case calls upon the Court to

consider the proper application of the forfeiture regime to an offender who has already received a just and fit sentence for an offence that, by its nature, does not have a network or profit dimension.

7. In this context, the risk is not that the offender will be able to trade his or her property for a lighter punishment, but, to the contrary, that forfeiture will arbitrarily impose a harsher punishment on those who have property to forfeit, a punishment which may be more or less severe depending on how integral the property is to the offender's basic needs and those of his or her family.

8. This case therefore brings the debate as to the nature and purpose of forfeiture back to the fore and highlights the pivotal role of the proportionality test in ensuring fairness to the offender. It calls upon this Court to revisit and adapt *Craig* so as to provide guidance to lower courts in situations where forfeiture and other aspects of the sentence serve essentially the same purposes.

9. In the BCCLA's view, judges must have the flexibility to ensure fairness and proportionality in sentencing in all circumstances, including those in which the forfeiture of property is at issue. Forfeiture may be punitive in nature and may effectively serve as an additional punishment of the offender for having committed the offence. The decision to order forfeiture should not occur in a factual vacuum. This will necessarily involve consideration of the individual circumstances of the offender, including consideration of the sentence imposed.

10. The BCCLA relies on the facts as set forth by the parties.

PART II: BCCLA'S POSITION ON APPELLANT'S QUESTION

11. The question submitted by the Appellant is whether the Court of Appeal erred with respect to the proper factors that a judge can consider in determining whether the forfeiture of property, other than a dwelling house, is disproportionate pursuant to s. 490.41(3) of the *Criminal Code*.

12. The Appellant takes the position that both *Craig* and the French version of s. 490.41(3) preclude an analysis of the impact of forfeiture on the offender and, outside the context of a dwelling house, of the impact of forfeiture on members of his family.

13. The BCCLA's position is that the proportionality analysis is essential to maintaining the fairness of the forfeiture scheme in its expanded form. The BCCLA supports the Court of Appeal's approach and further invites this Court to re-examine the relationship between forfeiture and the other aspects of the offender's sentence.

PART III: ARGUMENT

A. ***What* Craig *Decided***

14. The central issue that came before the Court in *Craig* was whether a forfeiture order for offence-related real property under the *Controlled Drugs and Substances Act* should be considered as a distinct inquiry, or interdependently with terms of imprisonment or other aspects of the offender's sentence.

15. The Court split 5-2 on this issue. Writing for the majority, Abella, J. determined that forfeiture orders must be considered independently of the broader sentencing inquiry because of the impermissible possibility that an offender's custodial sentence might vary according to how much property he or she had to forfeit (paras. 33-37).

16. The majority was particularly concerned that, in at least two of the three cases before it, the offender in question appeared to have been given a conditional sentence instead of a custodial one because he or she was also being ordered to forfeit property of considerable value (para. 38). In this light, Abella, J. concluded that the only offenders who stood to benefit from a global or interdependent approach were those with property to forfeit (par 39).

17. The majority viewed forfeiture and sentencing as fulfilling distinct functions and pursuing qualitatively different goals:

> In addition to my concern that those without property should not be treated more harshly than those who have it, I see the purpose and statutory language underlying the forfeiture scheme as a reflection of Parliament's intention that forfeiture orders be treated independently, pursuant to a separate rationale and as a distinct response to distinct circumstances. The sentencing inquiry focuses on the individualized circumstances of the offender; the main focus of forfeiture orders, on the other hand, is on the property itself and its role in past and future crime. (para. 40; emphasis added)

18. For the majority, the forfeiture inquiry is about the property itself and its use as an instrument of crime. In concurring reasons, McLachlin, C.J. and Rothstein, J. explained:

> Forfeiture of offence-related property under the Act (as under the *Criminal Code*, R.S.C. 1985, c. C-46) is generally mandatory and total. The intention of Parliament was to deprive offenders and other complicit individuals of the tools of the trade: see *R. v. Gisby*, 2000 ABCA 261, 148 C.C.C. (3d) 549, at paras. 20-21. This is distinct from the forfeiture of proceeds of crime, the purpose of which is to deprive an offender of ill‑gotten gains: *R. v. Lavigne*, 2006 SCC 10, [2006] 1 S.C.R. 392, at paras. 9‑10. Where forfeiture of the proceeds of crime is at issue, the focus is on the assets accumulated as a result of criminal activity. In the case of offence-related property, the focus is on the physical property itself and the criminal opportunity that continued possession of the property furnishes to the offender or to other complicit persons. Section 19.1(4), which supplements s. 19.1(3), similarly focuses on the use, rather than the commercial value of the offence‑related real property. (para. 81; emphasis added)

19. Having determined that a judge could not consider forfeiture in fashioning the other aspects of an offender's sentence, Abella, J. likewise held that a judge could not consider the offender's personal circumstances, such as the other aspects of an offender's sentence, stating: "A court is entitled to refuse forfeiture only if the impact of the forfeiture would be disproportionate with respect to the three listed factors" (para. 46).

20. The majority's focus on the property and view of the distinctive purpose of forfeiture is again evident in its discussion of what a judge *should* consider as part of the second prong of the proportionality test:

> The second factor, the circumstances surrounding the commission of the offence, might include consideration of the offender's role in the commission of the offence, the nature of the property and the manner in which it was used in the offence, risks to the security or safety of the community, whether the property was used in a manner that detrimentally affected its legitimate use and enjoyment, whether the property was fortified or otherwise adapted to accommodate the grow operation, the extent of the offender's involvement in organized crime and whether the property itself was held by a criminal organization. (para. 57; emphasis added)

21. Fish, J., dissenting (LeBel, J. concurring on this point), viewed the distinction between forfeiture and the other aspects of sentencing in less absolute terms. In his view, while forfeiture may well have other purposes, there are situations in which a forfeiture order is undeniably punitive. Again focussing on property, he viewed forfeiture as punitive where the property in

question was "honestly and legally acquired *before* engaging in criminal activity, *independently of* criminal activity, and *not in contemplation of* future criminal conduct" (para. 96; emphasis in original).

22. In his view, with respect to this limited category of punitive forfeiture orders, there was no principled reason to dissociate the forfeiture inquiry from the broader evaluation of the offender's sentence, since it is the *global punishment* that must, as a principle of fundamental justice, be proportional to the offence and to the offender. Put simply, "A sentence that is disproportionately severe only in light of the forfeiture order by which it is accompanied *as a penal consequence of the same conviction* is nonetheless disproportionately severe" (para. 94; emphasis in original).

B. *The Debate Re-opened*

23. This case brings the debate in *Craig* back to the fore because it calls into question the distinctiveness of forfeiture as opposed to other aspects of an offender's sentence.

24. Mr. Manning was convicted of impaired driving. He was alone, driving his sole asset, a truck worth $1000. A forfeiture order in this case would serve no purpose that is distinct from the purposes that are meant to be served by the other aspects of his sentence.

25. The majority's view of forfeiture as a "distinct response to distinct circumstances" was wholly supported by the legislative history. The provisions dealing with the confiscation of offence-related property first appeared in the *Criminal Code* in 1997 as a corollary to the regime governing the forfeiture of proceeds of crime (*An Act to Amend the Criminal Code (Criminal Organizations) and to amend other acts in consequence*, S.C. 1997, c.23).

26. As then Minister of Justice Allan Rock explained:

> Mr. Rock: […] In Bill C-95 the ambit of the proceeds section have been extended so that they cover criminal organization offences as well as the offences to which they apply at present. However, we have done something else and this is the first time it has been done. We have extended the powers of the court to include the instrumentalities of crime. This has been under discussion for many years in Canadian law. It has never before been done.
>
> This means that you can not only seize the money that is made from the crime or the property to which you turn it but you can also seize the property used for the

> purpose of committing the crime. If an organized crime syndicate is using boats to take contraband across the border, using trucks to drive explosives to the scene of the crime, using a building, especially fortified or modified, to facilitate the commission of a crime, then the court will be empowered to order the forfeiture of that property as an instrument of the crime as well as the proceeds which would be in keeping with the practice in Canada to date.
>
> We believe this is going to give the authorities an important new tool to take from the criminal organizations those assets which they use to commit their crimes and to provide a way of shutting them down by depriving them of the very tools they need to carry on their nefarious trade. (Canada. House of Commons. *House of Commons Debates*, Vol. 134, No. 160, 2nd Sess., 35th Parl., April 21, 1997, p. 9983; emphasis added)

27. In accordance with the approach governing forfeiture of the proceeds of crime, offence-related property was defined in relation to "criminal organization offences" and included only real property that was "built or significantly modified for the purpose of facilitating the commission of a criminal organization offence". "Criminal organization offence" was in turn defined as follows:

> "**criminal organization offence**" means an offence under section 467.1 or an indictable offence under this or any other Act of Parliament committed for the benefit of, at the direction of or in association with a criminal organization for which the maximum punishment is imprisonment for five years or more, or
>
> (b) a conspiracy or an attempt to commit, being an accessory after the fact in relation to, or any counselling in relation to, an offence referred to in paragraph (a);

28. However, in 2001, the ambit of both the proceeds of crime and forfeiture regimes was expanded dramatically. As part of the same Bill that implemented the amendments to the *CDSA* forfeiture scheme at issue in *Craig*, Parliament did away with the criminal organization offences approach under the *Criminal Code* such that, on conviction, the Attorney General could ask that a court order forfeiture of any property, used in any manner, in committing any indictable offence under the Code (Bill C-24, *An Act to Amend the Criminal Code (organized crime and law enforcement) and to make consequential amendments to other Acts*, 1st Sess, 37th Parl. (2001).

29. The Appellant's position rests on this expansion. For the Appellant, since 2001, forfeiture is essentially a broad law enforcement-enhancing tool that serves as an additional

deterrent for criminals generally and, in this case, provides an "ultimate hope" in the battle against impaired driving (Appellant's Factum, paras. 70, 73, 80).

30. Indeed, on their face, the forfeiture provisions apply to Mr. Manning, as was conceded by counsel throughout these proceedings, as well as in R. c. *Neault*, 2011 QCCA 435 ("***Neault***"), the decision on which the Court of Appeal relied. And impaired driving is unquestionably a serious offence. But yet, this is likely neither the crime nor the criminal that Parliament had in mind when it expanded the offense-related property regime in 2001, or that this Court had in mind when it rendered its decision in *Craig*.

C. ***Revisiting the Proportionality Analysis***

31. The challenge presented in the present case is therefore to revisit and adapt *Craig* to situations in which forfeiture cannot meaningfully be distinguished from the broader sentence.

32. It bears remembering that Abella, J. inferred in *Craig* that the proportionality test under s. 19.1(3) *CDSA* was adopted to counterbalance the potentially harsh effects of extending the definition of offence-related property, without qualification, to all real property (para. 22). This is all the more true of the test under s. 490.41(3) of the *Criminal Code*, which extended the forfeiture regime to *all* indictable offenses under the *Criminal Code*. This test must therefore be considered in this even broader remedial light.

i. The offender's personal circumstances

33. When Abella, J. stated in *Craig* that a judge should not take the individual's personal circumstances into account in determining whether forfeiture is "disproportionate", it is clear that the majority's main preoccupation was to draw a firm line between forfeiture and the custodial sentence and between the purposes of forfeiture and the purposes of sentencing more generally.

34. It must be recalled that the majority's fundamental pre-occupation was one of fairness:

> Such a result troubles not only the conscience by inadvertently rewarding offenders with property available for forfeiture and penalizing those without, it offends our bedrock notions of fitness in sentencing since individuals with no property to forfeit are no more blameworthy than those with property. It would be unjust for them to receive more severe custodial terms simply because they have no property to forfeit. (para. 35)

35. Applied too rigidly, however, the majority's approach runs the risk of creating serious unfairness for offenders like Mr. Manning with respect to whom the severity of forfeiture cannot properly be evaluated if his individual circumstances are *not* taken into account.

36. Mr. Manning was 62 at the time of his sentencing. He was living on social assistance in a hotel room in Chute-aux-Outardes, Quebec. The truck valued at $1000 was his only asset and was necessary to allow Mr. Manning and his spouse to meet their basic needs and access the nearest hospital.

37. How can a judge evaluate whether forfeiture is "disproportionate" in its severity without knowing just how severe forfeiture will be *for Mr. Manning*?

38. This is essentially the same reasoning the Court of Appeal applied in *Neault*:

> L'idée de « démesure » (disproportionate to) et le terme de comparaison « par rapport à » impliquent de soupeser deux réalités pour constater s'il y a équilibre ou déséquilibre entre les plateaux de la balance. D'un côté, il y aura les faits relatifs à l'infraction, évalués selon l'objectif de l'ordonnance et les trois facteurs de la loi, et de l'autre, les effets plus ou moins draconiens de la confiscation (the impact of the forfeiture). Le poids relatif des faits et des effets fera pencher la balance en faveur ou contre la confiscation. (para. 24)

39. Contrary to the arguments of the Appellant on this point, the BCCLA submits that this is not a consequence of the inclusion of the word "impact" in the English version of s. 490.41(3) but rather flows from the very concept of proportionality. Indeed, the Ontario Court of Appeal took the same view in relation to s. 19.1(3) *CDSA* in *R. v. Van Bemmel*, 2010 ONCA 276, paras. 55, 58.

40. Even if we go back and apply *Craig* rigidly, it is only fair that the flipside of focussing on the property and its role in organized crime should, at a minimum, lead to a consideration of the property and its role in the offender's daily non-criminal life.

41. But what about consideration of the just and proportionate sentence that has already been imposed? The BCCLA submits that where forfeiture and sentencing are essentially serving the same purposes, i.e. punishment and deterrence, the analysis of whether forfeiture is "disproportionate" in its severity necessarily depends on what other punitive and deterrent measures have been imposed on the offender.

42. This is especially so if an offender has already been sentenced to a significant fine, since forfeiture, in addition to a fine, could have a devastating impact on the offender.

43. Moreover, judges also need to be able to ensure that forfeiture does not work at cross-purposes with other fundamental criminal justice goals, such as rehabilitation. This concern is evident in a case like *Neault* where the sentencing judge notes that the vehicle is essential to the offender's employment, an important part of his rehabilitation:

> [TRANSLATION] Mr. Neault is a young man in the grips of addiction. He is presently trying to overcome this problem. He has the unconditional support of his parents. He is fortunate to have a steady job. He needs his vehicle to operate the "méchoui" business, as he has to travel from place to place to organize the meals. (*R. c. Neault*, 2010 QCCQ 3991, para. 17)

ii. The impact of forfeiture on the offender's family

44. The Appellant also argues that the Court of Appeal erred in holding that the sentencing judge could consider the impact of forfeiture on Mr. Manning's spouse. In its view, the specific inclusion of this factor with respect to dwelling-houses pursuant to s. 490.41(4) indicates Parliament's intent to exclude this factor in relation to all other forms of property.

45. The Court of Appeal in *Neault* and in this case held that the mandatory consideration of this factor under s. 490.41(4) did not preclude a court from considering this with respect to other types of property. Indeed, as above, even if *Craig* is rigidly adhered to, consideration of whether the property is held by a criminal organization (para. 57, *per* Abella, J.) or of "the criminal opportunity that continued possession of property furnishes to the offender or to other complicit persons" (para. 81, *per* McLachlin, C.J. and Rothstein, J.) logically, fairly and realistically entails consideration of whether the property is used by members of the offender's family to satisfy their basic needs.

46. As stated by Vézina, J.A. in *Neault:*

> Certes l'alinéa ci-dessus fait obligation au juge de « prendre en compte » (shall also consider) l'effet sur un membre de la famille, mais toute considération de cette nature est-elle pour autant interdite par l'alinéa précédent? J'en doute. Le second facteur peut englober beaucoup d'aspects comme le fait voir *Craig*. S'il est permis de tenir compte, pour supputer l'usage futur du bien, qu'un contrevenant est membre d'un gang ou est en lien avec le crime organisé, ne peut-

> on à l'opposé tenir compte qu'il est pourvoyeur de famille et lié à un employeur honnête? (para. 62; emphasis added)

47. Moreover, it must not be forgotten that the unfair, routine impoverishment of offenders and of the innocent members of their families formed part of the considerations that lead to the abolition of forfeiture's historical antecedents in the first place:

> Arguments favouring the abolition of forfeiture were not new. In the mid-seventeenth century, forfeiture was seen as a form of double jeopardy, punishing both the offender and the offender's family. The latter were then exposed to poverty and would be forced into crime in order to obtain the necessaries of life. The fact that forfeited money went to the Crown instead of innocent victims was another complaint. Creditors were disadvantaged, there being no estate to sue for debt. Moreover, the property of those who had been falsely convicted and executed was never returned to the family. It was also observed that there was no relationship between the rate of crime and the existence or otherwise of forfeiture sanctions. (Arie Freiberg and Richard Fox, "*Fighting Crime with Forfeiture: Lessons from History",* 6. Aust. J. Legal Hist 1 (2000), p. 42).

48. Common law forfeiture was in fact abolished in the United Kingdom in 1870.

PART IV: SUBMISSIONS REGARDING COSTS

49. The BCCLA seeks no order as to costs, and asks that no costs be awarded against it.

PART V: ORDER SOUGHT

50. The BCCLA takes no position as to the disposition of the appeal. The BCCLA requests permission to present oral argument at the hearing of the appeal, up to a maximum of 10 minutes.

ALL OF WHICH IS RESPECTFULLY SUBMITTED, this 21st day of November, 2012.

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PART VI: TABLE OF AUTHORITIES

PART VII: STATUTORY PROVISIONS

Criminal Code (R.S.C., 1985, c. C-46)	*Code criminel* (L.R.C. (1985), ch. C-46)
490.1 (1) Subject to sections 490.3 to 490.41, if a person is convicted of an indictable offence under this Act or the *Corruption of Foreign Public Officials Act* and, on application of the Attorney General, the court is satisfied, on a balance of probabilities, that any property is offence-related property and that the offence was committed in relation to that property, the court shall	**490.1 (1)** Sous réserve des articles 490.3 à 490.41 et sur demande du procureur général, le tribunal qui déclare une personne coupable d'un acte criminel prévu par la présente loi ou par la *Loi sur la corruption d'agents publics étrangers* et qui est convaincu, selon la prépondérance des probabilités, que des biens infractionnels sont liés à la perpétration de cet acte criminel ordonne que les biens infractionnels soient confisqués au profit :
(a) where 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 and disposed of by the Attorney General or Solicitor General of that province in accordance with the law; and	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 ont été menées par ce dernier ou en son nom, pour que le procureur général ou le solliciteur général de la province en dispose en conformité avec la loi;
(b) in any other case, order that the property be forfeited to Her Majesty in right of Canada and disposed of by the member of the Queen's Privy Council for Canada that may be designated for the purpose of this paragraph in accordance with the law.	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 en conformité avec la loi, dans tout autre cas.
(1.1) [Repealed, 2001, c. 41, s. 130]	**(1.1)** [Abrogé, 2001, ch. 41, art. 130]
(2) Subject to sections 490.3 to 490.41, if the evidence does not establish to the satisfaction of the court that the indictable offence under this Act or the *Corruption of Foreign Public Officials Act* of which a person has been convicted was committed in relation to property in respect of which an order of forfeiture would otherwise be made under subsection (1) but the court is satisfied, beyond a reasonable doubt, that the property is offence-related property, the court may make an order of forfeiture under subsection (1) in relation to that property.	**(2)** Sous réserve des articles 490.3 à 490.41, le tribunal peut rendre l'ordonnance de confiscation prévue au paragraphe (1) à l'égard de biens dont il n'est pas convaincu qu'ils sont liés à l'acte criminel prévu par la présente loi ou par la *Loi sur la corruption d'agents publics étrangers* et pour lequel la personne a été condamnée, à la condition toutefois d'être convaincu, hors de tout doute raisonnable, qu'il s'agit de biens infractionnels.

(2.1) An order may be issued under this section in respect of property situated outside Canada, with any modifications that the circumstances require.	**(2.1)** Les ordonnances visées au présent article peuvent être rendues à l'égard de biens situés à l'étranger, avec les adaptations nécessaires.
(3) A person who has been convicted of an indictable offence under this Act or the *Corruption of Foreign Public Officials Act*, or the Attorney General, may appeal to the court of appeal from an order or a failure to make an order under subsection (1) as if the appeal were an appeal against the sentence imposed on the person in respect of the offence.	**(3)** La personne qui a été reconnue coupable d'un acte criminel prévu par la présente loi ou par la *Loi sur la corruption d'agents publics étrangers* peut, de même que le procureur général, interjeter appel devant la cour d'appel de l'ordonnance rendue en application du paragraphe (1) ou de la décision du tribunal de ne pas rendre une telle ordonnance, comme s'il s'agissait d'un appel interjeté à l'encontre de la peine infligée à la personne relativement à l'infraction.
490.41 (1) If all or part of offence-related property that would otherwise be forfeited under subsection 490.1(1) or 490.2(2) is a dwelling-house, before making an order of forfeiture, a court shall require that notice in accordance with subsection (2) be given to, and may hear, any person who resides in the dwelling-house and is a member of the immediate family of the person charged with or convicted of the indictable offence under this Act or the Corruption of Foreign Public Officials Act in relation to which the property would be forfeited.	**490.41 (1)** Avant de rendre une ordonnance de confiscation de biens infractionnels — composés en tout ou en partie d'une maison d'habitation — confiscables en vertu des paragraphes 490.1(1) ou 490.2(2), le tribunal exige qu'un avis soit donné conformément au paragraphe (2) à toute personne qui habite la maison et qui est membre de la famille immédiate de la personne accusée ou reconnue coupable d'un acte criminel prévu par la présente loi ou par la Loi sur la corruption d'agents publics étrangers et lié à la confiscation des biens; le tribunal peut aussi entendre un tel membre de la famille.
(2) A notice shall (a) be given or served in the manner that the court directs or that may be specified in the rules of the court;	**(2)** L'avis : a) est donné ou signifié selon les modalités précisées par le tribunal ou prévues par les règles de celui-ci;
(b) be of any duration that the court considers reasonable or that may be specified in the rules of the court; and	b) est donné dans le délai que le tribunal estime raisonnable ou que fixent les règles de celui-ci;
(c) set out the offence charged and a description of the property.	c) mentionne l'infraction à l'origine de l'accusation et comporte une description des biens.
(3) Subject to an order made under subsection 490.4(3), if a court is satisfied that the impact of an order of forfeiture made under subsection 490.1(1) or 490.2(2) would be disproportionate to the nature and gravity of the offence, the circumstances	**(3)** Sous réserve d'une ordonnance rendue en vertu du paragraphe 490.4(3), le tribunal peut ne pas ordonner la confiscation de tout ou partie de biens infractionnels confiscables en vertu des paragraphes 490.1(1) ou 490.2(2) et annuler toute

surrounding the commission of the offence and the criminal record, if any, of the person charged with or convicted of the offence, as the case may be, it may decide not to order the forfeiture of the property or part of the property and may revoke any restraint order made in respect of that property or part.	ordonnance de blocage à l'égard de tout ou partie des biens, s'il est convaincu que la confiscation serait démesurée par rapport à la nature et à la gravité de l'infraction, aux circonstances de sa perpétration et, s'il y a lieu, au casier judiciaire de la personne accusée ou reconnue coupable de l'infraction, selon le cas.
(4) Where all or part of the property that would otherwise be forfeited under subsection 490.1(1) or 490.2(2) is a dwelling-house, when making a decision under subsection (3), the court shall also consider	**(4)** Dans le cas où les biens confiscables en vertu des paragraphes 490.1(1) ou 490.2(2) sont composés d'une maison d'habitation en tout ou en partie, le tribunal, pour rendre sa décision au titre du paragraphe (3), prend aussi en compte les facteurs suivants :
(a) the impact of an order of forfeiture on any member of the immediate family of the person charged with or convicted of the offence, if the dwelling-house was the member's principal residence at the time the charge was laid and continues to be the member's principal residence; and	a) l'effet qu'aurait la confiscation à l'égard d'un membre de la famille immédiate de la personne accusée ou reconnue coupable de l'infraction, si la maison était la résidence principale de ce membre avant que l'accusation soit portée et elle continue de l'être par la suite;
(b) whether the member referred to in paragraph (a) appears innocent of any complicity in the offence or of any collusion in relation to the offence.	b) le fait que le membre de la famille visé à l'alinéa a) semble innocent ou non de toute complicité ou collusion à l'égard de l'infraction.

Controlled Drugs and Substances Act (S.C. 1996, c. 19)	*Loi réglementant certaines drogues et autres substances* (L.C. 1996, ch. 19)
19.1 (1) Where all or part of offence-related property that would otherwise be forfeited under subsection 16(1) or 17(2) is a dwelling-house, before making an order of forfeiture, a court shall require notice in accordance with subsection (2) to be given to, and may hear, any person who resides in the dwelling-house and is a member of the immediate family of the person charged with or convicted of the indictable offence under this Act in relation to which the property would be forfeited.	**19.1 (1)** Avant de rendre une ordonnance de confiscation de biens infractionnels — composés d'une maison d'habitation en tout ou en partie — confiscables en vertu des paragraphes 16(1) ou 17(2), le tribunal exige que soit donné un avis conformément au paragraphe (2) à toute personne qui est membre de la famille immédiate de la personne accusée ou reconnue coupable d'un acte criminel prévu à la présente loi et lié à la confiscation des biens et qui habite la maison; le tribunal peut aussi entendre un tel membre.
(2) A notice shall	**(2)** L'avis :
(a) be given or served in the manner that the court	a) est donné ou signifié selon les modalités

directs or that may be specified in the rules of the court;	précisées par le tribunal ou prévues par les règles de celui-ci;
(b) be of any duration that the court considers reasonable or that may be specified in the rules of the court; and	b) est donné dans le délai que le tribunal estime raisonnable ou que fixent les règles de celui-ci;
(c) set out the offence charged and a description of the property.	c) mentionne l'infraction à l'origine de l'accusation et comporte une description des biens.
(3) Subject to an order made under subsection 19(3), if a court is satisfied that the impact of an order of forfeiture made under subsection 16(1) or 17(2) in respect of real property would be disproportionate to the nature and gravity of the offence, the circumstances surrounding the commission of the offence and the criminal record, if any, of the person charged with or convicted of the offence, as the case may be, it may decide not to order the forfeiture of the property or part of the property and may revoke any restraint order made in respect of that property or part.	**(3)** Sous réserve d'une ordonnance rendue en vertu du paragraphe 19(3), le tribunal peut ne pas ordonner la confiscation de tout ou partie de biens immeubles confiscables en vertu des paragraphes 16(1) ou 17(2) et annuler toute ordonnance de blocage à l'égard de tout ou partie des biens, s'il est convaincu que la confiscation serait démesurée par rapport à la nature et à la gravité de l'infraction, aux circonstances de sa perpétration et, s'il y a lieu, au casier judiciaire de la personne accusée ou reconnue coupable de l'infraction, selon le cas.
(4) Where all or part of the property that would otherwise be forfeited under subsection 16(1) or 17(2) is a dwelling-house, when making a decision under subsection (3), the court shall also consider	**(4)** Dans le cas où les biens confiscables en vertu des paragraphes 16(1) ou 17(2) sont composés d'une maison d'habitation en tout ou en partie, le tribunal, pour rendre sa décision au titre du paragraphe (3), prend aussi en compte les facteurs suivants :
(a) the impact of an order of forfeiture on any member of the immediate family of the person charged with or convicted of the offence, if the dwelling-house was the member's principal residence at the time the charge was laid and continues to be the member's principal residence; and	a) l'effet qu'aurait la confiscation à l'égard d'un membre de la famille immédiate de la personne accusée ou reconnue coupable de l'infraction, si la maison était la résidence principale de ce membre avant que l'accusation soit portée et elle continue de l'être par la suite;
(b) whether the member referred to in paragraph (a) appears innocent of any complicity in the offence or of any collusion in relation to the offence.	b) le fait que le membre de la famille visé à l'alinéa a) semble innocent ou non de toute complicité ou collusion à l'égard de l'infraction.