

Form / Formule 1
APPLICATION
DEMANDE

ONTARIO COURT OF JUSTICE
COUR DE JUSTICE DE L'ONTARIO

East / Est

Region / Région

(Rule 2.1, Criminal Rules of the Ontario Court of Justice)
(Règle 2.1, Règles de procédure en matière criminelle de la Cour de justice de l'Ontario)

22- R15545

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

BETWEEN: / ENTRE

HIS MAJESTY THE KING / SA MAJESTÉ LE ROI

- and / et -

CHRISTOPHER BARBER

(defendant(s) / défendeur(s))

**1. APPLICATION HEARING DATE AND LOCATION
DATE ET LIEU DE L'AUDIENCE SUR LA DEMANDE**

Application hearing date: **to be determined**
Date de l'audience sur la demande
Time **10:00AM**
Heure
Courtroom number: **7**
Numéro de la salle d'audience
Court address: **161 Elgin Street, Ottawa, Ontario**
Adresse de la Cour

**2. LIST CHARGES
LISTE DES ACCUSATIONS**

Charge Information / Renseignements sur les accusations			
Description of Charge Description de l'accusation	Sect. No. Article n°	Next Court Date Prochaine date d'audience	Type of Appearance (e.g. trial date, set date, pre-trial meeting, etc.) Type de comparution (p. ex., date de procès, établissement d'une date, conférence préparatoire au procès, etc.)
Counsel the breach of a Court order	464(a)	April 16, 2025	TBST
Mischief	430(3)	April 16, 2025	TBST

**3. NAME OF APPLICANT
NOM DE L'AUTEUR DE LA DEMANDE**

Christopher Barber

**4. CHECK ONE OF THE TWO BOXES BELOW:
COCHEZ LA CASE QUI CONVIENT CI-DESSOUS**

I am appearing in person. My address, fax or email for service is as follows:
Je comparais en personne. Mon adresse, mon numéro de télécopieur ou mon adresse électronique aux fins de signification sont les suivants :

I have a legal representative who will be appearing. The address, fax or email for service of my legal representative is as follows:
J'ai un représentant juridique qui sera présent. L'adresse, le numéro de télécopieur ou l'adresse électronique de mon représentant juridique aux fins de signification sont les suivants :

**Diane Magas, 280 Metcalfe Street, Suite 201, Ottawa, ON, K2P 1R7,
diane@magaslaw.net, tel: 613-563-1005**

5. **CONCISE STATEMENT OF THE SUBJECT OF APPLICATION**
BRÈVE DÉCLARATION DE L'OBJET DE LA DEMANDE

(Briefly state why you are bringing the Application. For example, "This is an application for an order adjourning the trial"; "This is an application for an order requiring the Crown to disclose specified documents"; or "This is an application for an order staying the charge for delay.")

(Expliquez brièvement pourquoi vous déposez la demande. Par exemple : « Il s'agit d'une demande d'ordonnance d'ajournement du procès. », « Il s'agit d'une demande d'ordonnance exigeant de la Couronne qu'elle divulgue les documents précisés. », ou « Il s'agit d'une demande d'ordonnance d'annulation de l'accusation pour cause de retard. »)

1. A stay of proceedings;

6. **GROUND(S) TO BE ARGUED IN SUPPORT OF THE APPLICATION**
MOTIFS QUI SERONT INVOQUÉS À L'APPUI DE LA DEMANDE

(Briefly list the grounds you rely on in support of this Application. For example, "I require an adjournment because I am scheduled to have a medical operation the day the trial is scheduled to start"; "The disclosure provided by the Crown does not include the police notes taken at the scene"; or "There has been unreasonable delay since the laying of the charge that has caused me prejudice.")

(Énumérez brièvement les motifs que vous invoquez à l'appui de la demande. Par exemple : « J'ai besoin d'un ajournement parce que je dois subir une intervention médicale le jour prévu pour le début du procès. », « Les documents divulgués par la Couronne ne contiennent pas les notes de la police prises sur les lieux. » ou « Un retard excessif a suivi le dépôt des accusations qui m'a causé un préjudice. »)

See attached Schedule "A"

7. **DETAILED STATEMENT OF THE SPECIFIC FACTUAL BASIS FOR THE APPLICATION**
DÉCLARATION DÉTAILLÉE DES FAITS PRÉCIS SUR LESQUELS SE FONDE LA DEMANDE

See attached Schedule "A"

8. **INDICATE BELOW OTHER MATERIALS OR EVIDENCE YOU WILL RELY ON IN THE APPLICATION**
INDIQUEZ CI-DESSOUS D'AUTRES DOCUMENTS OU PREUVES QUE VOUS ALLEZ INVOQUER DANS LA DEMANDE

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

Christopher Barber

- Other (Please specify)
Autre (Veuillez préciser)

April 15, 2025

(Date)


Signature of Applicant or Legal Representative / Signature de l'auteur de la demande ou de son représentant juridique

To: **Siobhain Wetscher and Tim Radcliffe**

À : (Name of Respondent or legal representative / Nom de l'intimé ou de son représentant juridique)

161 Elgin Street, 3rd Floor, Ottawa, Ontario, K2P 2K1

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

NOTE: Rule 2.1 requires that the application be served on all opposing parties and on any other affected parties.
NOTA : La règle 2.1 exige que la demande soit signifiée à toutes les parties adverses et aux autres parties concernées.

ONTARIO COURT OF JUSTICE

B E T W E E N:

HIS MAJESTY THE KING

Respondent

-and-

CHRISTOPHER BARBER

Applicant

FORM 1 APPLICATION- SCHEDULE "A"

PART 1: DETAILED STATEMENT OF THE FACTUAL BASIS FOR THE APPLICATION:

1. On April 4, 2025, the Applicant was found guilty of mischief and counselling to breach a court order in relations to the "freedom convoy" protest.
2. Inspector Russell Lucas, the operations support Inspector for the Ottawa Police Services (OPS) and the incident commander during the protest testified that the OPS was aware of the protest in advance of the arrival of the protestors in January 2022 and that he assigned various people for purposes of public order plans, traffic plans, tactical plans and overarching plans.¹ The OPS had a team of police liaison officers (PLT) assigned to the protest, as usually is the case with all protests and special events in the City of Ottawa.²

¹ Transcript of evidence of Russell Lucas, September 6, 2023, p.2 (p.5pdf), p.6-7 (p.9-10pdf)

² Transcript of evidence of Russell Lucas, September 6, 2023, p.8 (p.11pdf)

3. Inspector Lucas explained that he approved and endorsed the plan for the staging areas and that the plans were sent up the chain of command. The traffic plan included parking trucks and other vehicles on Wellington Street, as well as the Ottawa River Parkway, George-Etienne Parkway, Sir John A McDonald Parkway, a small segment of Queen Elizabeth Drive and the Coventry Jetfrom baseball stadium.³ These locations had been discussed with partners such as the NCC and other stake holders and were viewed as having minimal impact on the local population because they were not residential for the most part.⁴
4. Inspector Lucas was aware that truckers were provided exact routes to the staging areas, being directed where to exit, where to turn and where to go to various staging areas, including being directed to park on Wellington Street.⁵ Trucks parking on Wellington Street was something Inspector Lucas felt, at the time of the protest and still at the time of testifying at the trial, was the best way to mitigate the impact on the core of the City.⁶
5. PLT officers and truckers were provided maps as to where to park, which included parking on Wellington Street.⁷
6. The Applicant will testify that he was directed by police officers to park his truck (Big Red) on Wellington Street.
7. On Saturday February 5, 2022, Officer Bach told the Applicant that the trucks should move from Wellington Street, the Applicant told her he could not get out on that day and he

³ Transcript of evidence of Russell Lucas, September 6, 2023, p.17-20 (p.20-23 pdf)

⁴ Transcript of evidence of Russell Lucas, September 6, 2023, p. 20-21 (p.23-24 pdf)

⁵ Transcript of evidence of Russell Lucas, September 6, 2023, p.42-44, 91 (p.45-47, 94 pdf)

⁶ Transcript of evidence of Russell Lucas, September 6, 2023, p.44, 94 (p.47, 97 pdf)

⁷ Transcript of evidence of Nicole Bach, November 20, 2023, p.19-20 (p.23-24 pdf); Exhibit 127

would try on the Monday. He did get Big Red out of Wellington Street on February 8, 2024, and into a farmer's field in Embrun Ontario at exit 88.

8. The Orders of Justice MacLean of the Superior court from February 7 (Exhibit 122A) and 16, 2022 (Exhibit 122B) for injunctive relief, included the following terms:

THIS COURT ORDERS that, provided the terms of this Order are complied with, the Defendants and other persons remain at liberty to engage in a peaceful, lawful and safe protest.⁸

9. The Applicant will testify that he was represented by counsel Keith Wilson at the hearing of the injunction on both February 7 and 16, 2022 and that he was advised by his counsel after both hearings that the Judge confirmed that they could continue to protest as long as they continued to protest peacefully and safely.
10. The Applicant was also advised by his lawyer that there were exceptions to the air horns injunction and the air horns could be used in situations mandated by legislation or in situations of emergency.
11. The Applicant was also advised by his lawyer that the Judge repeatedly said during the hearing of February 7, 2022 that if there was a breach of the terms of the Order this amounted to civil contempt and not a criminal offence.
12. It is important to the context of the protest that on February 16, 2022, one day after the invocation of the *Emergency Act*, that Justice McLean maintained in his order the protestors' right to engage in peaceful, lawful and safe protest. That was again reiterated to the Applicant by his counsel after the hearing of February 16, 2022.

⁸ Exhibit # 122A and 122B - Injunctions from February 7 and 16, 2022

13. Inspector Lucas testified that he supported the right to protest of the people that were demonstrating.⁹ He added that on February 15, 2022, enforcement action was required so that the footprint did not spread onto other parts of the outlying neighbourhood and to set parameters. Inspector Lucas specified that such enforcement action could be in the form of issuing traffic tickets, enforcing parking regulations, working with the fire department if there were burn barrels etc. However, Inspector Lucas did not speak of enforcement action in terms of removing protestors at that stage in the protest.¹⁰

PART 2: GROUNDS TO BE ARGUED IN SUPPORT OF THE APPLICATION

14. After conviction, an Accused can bring an Application for a stay of proceeding on the basis of “officially induced error of law”. Indeed, Justice Lamer in *R. v. Jorgensen* stated:

36 In summary, officially induced error of law functions as an excuse rather than a full defence. **It can only be raised after the Crown has proven all elements of the offence...**
37 **As this excuse does not affect a determination of culpability, it is procedurally similar to entrapment. Both function as excuses rather than justifications in that they concede the wrongfulness of the action but assert that under the circumstances it should not be attributed to the actor.** (See *R. v. Mack*, 1988 CanLII 24 (SCC), [1988] 2 S.C.R. 903, at pp. 944-45.) As in the case of entrapment, the accused has done nothing to entitle him to an acquittal, but the state has done something which disentitles it to a conviction (*Mack*, at p. 975). **Like entrapment, the successful application of an officially induced error of law argument will lead to a judicial stay of proceedings rather than an acquittal.** Consequently, as a stay can only be entered in the clearest of cases, an officially induced error of law argument will only be successful in the clearest of cases.¹¹

15. The Ontario Court of Appeal acknowledged that there are five elements to the defense of officially induced error of law:

⁹ Transcript of evidence of Russell Lucas, September 6, 2023, p.84 (p.87 pdf)

¹⁰ Transcript of evidence of Russell Lucas, September 6, 2023, p.99 (p.101 pdf)

¹¹ *R. v. Jorgensen*, 1995 CanLII 85 (SCC), para. 36-37

- (1) the accused must have considered the legal consequences of its actions and sought legal advice;
- (2) the legal advice obtained must have been given by an appropriate official;
- (3) the legal advice was erroneous;
- (4) the persons receiving the advice relied on it;
- (5) the reliance was reasonable.¹²

16. The burden is on the accused to satisfy the court on a balance of probabilities.¹³

The Applicant considered the legal consequences of his actions and sought legal advice

17. In the present case, the Applicant considered the consequences of his involvement in the protest, sought the advice of police officers, lawyers and politicians as well as former premiers of provinces. In addition, the Applicant retained the services of counsel and obtained an Order allowing him and others to continue to protest lawfully, peacefully and safely.

The legal advice obtained was given by an appropriate official

18. In the present case there were multiple levels of advice obtained including from police officers, the Mayor's office, as well as from a Judge of the Superior Court of Justice.

The legal advice was erroneous

19. That factor does not need to be proven by the accused. In proving the elements of the offence, the Crown will have established the correct law from which the existence of error

¹² *Maitland Valley Conservation Authority v. Cranbrook Swine Inc.*, 2003 Canlii 41182, para. 52

¹³ *R. v. Jorgensen*, supra, para. 38; *Durham (Regional Municipality) v. D. Crupi & Sons Ltd.*, 2015 ONCJ 488, para 44, 47

can be deduced.¹⁴ This court having found the Applicant guilty of mischief and counselling the breach of a court order, this factor has been established.

The Applicant's reliance was reasonable

20. Justice Lamer stated in this regard:

33 Once an accused has established that he sought advice from an appropriate official, he must demonstrate that the advice was reasonable in the circumstances. In most instances, this criterion will not be difficult to meet. **As an individual relying on advice has less knowledge of the law than the official in question, the individual must not be required to assess reasonableness at a high threshold.** It is sufficient, therefore, to say that **if an appropriate official is consulted, the advice obtained will be presumed to be reasonable unless it appears on its face to be utterly unreasonable.**

21. In *R. v. May*, the Accused was charged with selling films that contained child pornography.

In 2006 a shipment of film had been intercepted by the police and the Accused was brought in for a meeting at the police station. The accused attended with his lawyer. During the meeting the police officer advised the Accused that 5 of these films were not child pornography and returned them to him. In 2011, the Accused was arrested for selling amongst other films, those 5 films. The trial judge stayed the charges against the accused in relation to those 5 films on the basis of officially induced error even though it was the police that called for the meeting and not the accused that sought the advice from the police.¹⁵ The Court found that:

[98] Mr. Way considered whether his conduct in making and selling the films might be illegal and **sought advice from counsel. He also attended a meeting with a police officer from the child exploitation unit.**

[99] In so doing, he considered the legal consequences of his actions.¹⁶

¹⁴ *R. v. Jergensen*, supra, para. 34

¹⁵ *R. v. Way*, 2015 ONSC 3080, paras. 31, 37-41, 87-90, 110-112

¹⁶ *R. v. Way*, supra, paras 98-99

22. In the present case, as the Applicant sought advice from police officers, lawyers and a Judge of the Superior Court, the advice obtained can be presumed to be reasonable.

23. As the Court said in *R. v. Way*:

[89] Reasonable reliance on wrong legal advice will not negative culpability, but the State has done something which disentitles it to a conviction...

in those circumstances a stay ought to be entered

24. In the present case, the Applicant has met his burden of proving an officially induced error for which a stay of proceeding ought to be entered with respect to both offences that he was found guilty as he sought advice from lawyers, police officers, and a Superior Court Judge on the legality of the protest he was involved in.