

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-A8288

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 -

Evan Blackman

(defendant(s) / défendeur(s))

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

Application hearing date: May 1, 2025
Date de l'audience sur la demande
Time 10:00 am
Heure
Courtroom number: 08
Numéro de la salle d'audience
Court address: 161 Elgin Street, Ottawa ON K2P 2K1
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.)
Mischief (2X)	430(1)(c) &(d)	May 1, 2025	O'Connor Application
Obstruct Police	129(a)	May 1, 2025	O'Connor Application

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

Evan Blackman

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 :

Christopher Fleury
Charter Advocates Canada



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. »)

See Schedule A attached

6. GROUNDS 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 Schedule A attached

7. DETAILED STATEMENT OF THE SPECIFIC FACTUAL BASIS FOR THE APPLICATION

DÉCLARATION DÉTAILLÉE DES FAITS PRÉCIS SUR LESQUELS SE FONDE LA DEMANDE

See Schedule A attached

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)

Evan Blackman

☒ Case law or legislation (Relevant passages should be indicated on materials. Well-known precedents do not need to be filed. Only materials that will be referred to in submissions to the Court should be filed.)
Jurisprudence ou lois. (Les passages pertinents doivent être indiqués dans les documents. Les arrêts bien connus ne doivent pas être déposés. Il ne faut déposer que les documents qui seront mentionnés dans les observations au tribunal.)

☐ Agreed statement of facts
Exposé conjoint des faits

☐ Oral testimony (List witnesses to be called at hearing of application)
Témoignage oral (Liste des témoins qui seront appelés à témoigner à l'audience sur la demande)

☒ Other (Please specify)
Autre (Veuillez préciser)

The submissions of counsel

February 4, 2025

(Date)

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

To: **Ottawa Crown Attorney's Office; Jackie Stott; Denis Beaudoin**

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

[Redacted address information]

(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:

HER MAJESTY THE QUEEN

Respondent

and

EVAN BLACKMAN

Applicant

SCHEDULE A to Form 1 (O'Connor Application)

5. Concise Statement of the Subject of the Application

1. This is an application for third party records in the custody of the Royal Canadian Mounted Police (RCMP) and the Toronto-Dominion Bank (TD Bank). The Applicant seeks records, correspondence, and other documents that relate to the freezing of his bank accounts in or about February of 2020.
2. The Applicant, Evan Blackman, is charged with the *Criminal Code* offences of mischief and obstructing police. Mr. Blackman was arrested on February 18, 2022, during a police enforcement action aimed at removing protestors and vehicles from downtown Ottawa.
3. On February 14, 2022, prior to the enforcement action, the Government of Canada declared a public order emergency pursuant to the *Emergencies Act*¹ and passed the *Emergency Economic Measures Order (EEMO)*². Among other things, the *EEMO* required banks to freeze the bank accounts of peaceful protestors without due process and without legal recourse.

¹ *Emergencies Act*, RSC 1985, c 22 (4th Supp), <<https://canlii.ca/t/55hf0>>.

² *Emergency Economic Measures Order*, SOR/2022-22, <<https://canlii.ca/t/55cf2>>.

4. On February 18, 2022, immediately following his release from custody, the Applicant discovered that his bank accounts with TD Bank had been frozen. He was stranded in Ottawa 420 kilometres from his home, without access to funds.
5. As part of his legal defence the Applicant will bring an Application for a stay of proceedings pursuant to section 24(1) of the *Charter* alleging that the freezing of his bank accounts under the *EEMO* was an unreasonable search and seizure. In support of this Application, the Applicant seeks production of the following records.
 1. Any and all correspondence between TD Bank and the RCMP which pertains to Mr. Blackman and the *EEMO*.
 2. Any and all information and/ or documentation which confirms the accounts that were frozen, how long they were frozen, and why exactly they were frozen.
 3. Any disclosures that were made to the RCMP pursuant to section 5 of the *EEMO*.
 4. Any records sent by the RCMP to TD Bank that purport to show that Mr. Blackman was a designated person engaged in activity prohibited by section 2-5 of the *EEMO*.

7. Detailed Statement of the Specific Factual Basis for the Application

6. Beginning around January 28, 2022, vehicles and persons from all over Canada began to arrive in downtown Ottawa with the purpose of protesting federal and provincial government's legislative responses to the COVID19 pandemic. The vehicles included tractor trailer style trucks and other commercial vehicles. The protest became known to participants and the public alike as the "Freedom Convoy".
7. On February 14, 2022, the Government of Canada declared a "public order emergency" pursuant to the *Emergencies Act*. One aspect of the Federal Government's legislative response to the so-called emergency was the *EEMO*.

8. Under the *EEMO* Canada's financial institutions, including TD Bank had an obligation to "cease dealings" with any "designate person". Ceasing dealings means ceasing to (a) deal in any property, (b) facilitating any financial transaction, (c) make property or funds available, or (d) provide financial services, to any designated person.³
9. A designated person is defined as any individual engaging in any activity prohibited by sections 2 to 5 of the *Emergency Measures Regulations*. Most relevant to this Application, a person participating "in a public assembly that may reasonably be expected to lead to a breach of the peace" will be a designated person.⁴
10. Further obligations of Canada's banks under the *EEMO* include:
 1. the duty to "determine on a continuing basis whether they are in possession or control of property that is owned, held or controlled by or on behalf of a designated person" (section 3);
 2. the obligation to register with FINTRAC if they are in "possession or control of property that is owned, held or controlled by or on behalf of a designated person" (section 4);
 3. the duty to disclose "without delay" to the RCMP or to the Director of CSIS, the "existence of property in their possession or control that they have reason to believe is owned, held or controlled by or on behalf of a designated person" (section 5);⁵
11. The *EEMO* contains no provisions allowing the "designated person" to appeal the decision to "cease dealing" with them. Further, the *EEMO* contains a statutory immunity provision for all financial institutions required to comply with the Order.⁶

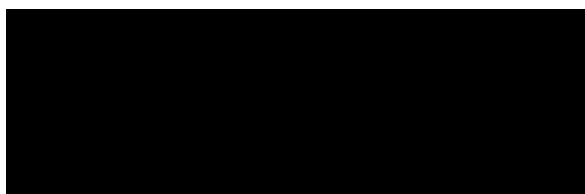
³ *Ibid* at section 2.

⁴ *Emergency Measures Regulations*, SOR/2022-21 at section 2(1), <<https://canlii.ca/t/55cf1>>.

⁵ *Supra* note 2 at sections 3-5.

⁶ *Ibid* at section 7.

12. The Applicant arrived in Ottawa on or about February 17, 2023. Mr. Blackman did not support the “Freedom Convoy” in any material sense. He did not donate any money to the fundraisers. He had no role in the Freedom Convoy at all, prior to February 17, and particularly not a leadership role. His primary purpose in being in Ottawa was to protest what he believes to be the Federal Government’s unlawful use of the *Emergencies Act*.
13. On February 18, 2022, a police enforcement action was undertaken to remove all vehicles and protestors from a defined perimeter within downtown Ottawa. At approximately 12:15 the Applicant was part of a group of protestors who faced a line of police dressed in riot gear. The police line moved forward in one coordinated motion. Mr. Blackman was pulled through the police line and placed on the ground with his hands behind his back. He did not resist. He was placed under arrest by Sgt. J. Riopel.
14. Mr. Blackman was held in custody for approximately 6-7 hours. Eventually he was presented with a Form 10 Undertaking which he signed at 17:56. He was subsequently driven to a local Tim Horton’s and released at some time during the evening of February 18. The precise time of release does not appear to be available in the evidence.
15. Following Mr. Blackman’s release from custody, he immediately realized that he was not able to obtain funds from his bank accounts. Mr. Blackman banks exclusively with TD Bank and has three accounts. The bank accounts at issue are as follows:



16. The Applicant phoned TD Bank to inquire as to why he was unable to access his funds. He was informed by a representative of TD Bank that his accounts were frozen pursuant to the *Emergencies Act*, and that there was nothing they could do.
17. The Applicant's counsel has subsequently learned that the RCMP remained in communication with financial institutions regarding persons, vehicles, and companies "suspected of involvement in the illegal protest" in order to "assist financial institutions with their obligations under the [EEMO]".⁷
18. Financial service providers began unfreezing accounts and credit cards/lines of credit on February 21 due to updated information provided by the RCMP.⁸
19. The Applicant does not have an independent recollection of when his accounts were unfrozen.
20. As of February 23, 2022, "enforcement action under the EEMO has culminated in the freezing of 246 financial products; the disclosure of 57 entities, which includes individuals and owners or drivers of vehicles involved in the blockades; 253 Bitcoin wallet addresses shared with virtual currency exchangers".⁹
21. It is the Applicant's intention to bring an application for a stay of proceedings under section 24(1) of the *Charter* as a result of the Federal Government's actions in freezing his bank accounts. It will be the Applicant's position that the EEMO created a statutory search and seizure regime that violates section 8 of the *Charter*.
22. Mr. Blackman, by way of his legal counsel, has already made a request to TD Bank for the relevant records. To date, the no records have been disclosed.

⁷ Parliamentary Committee Notes, *Minister's Appearance Before the Standing Committee on Public Safety and National Security (SECU) February 25, 2022*, <https://www.publicsafety.gc.ca/cnt/trnsprnc/brfng-mtrls/prlmntry-bndrs/20220625/05-en.aspx#>

⁸ *Ibid.*

⁹ *Ibid.*

23. The Respondent Denis Beaudoin is a Superintendent for the Royal Canadian Mounted Police and the Director of Financial Crime, Federal Policing Criminal Operations. Mr. Beaudoin was responsible for overseeing the use of the economic measures put in place under the *Emergencies Act*. He developed the process used by the RCMP for verifying and sharing information with financial institutions.¹⁰

24. The Respondent Jackie Stott is the branch manager at TD Bank's location at 295 King Street in Midland Ontario. This branch is the Applicant's usual place of banking.

6. Grounds to be Argued in Support of the Application

25. The sole issue in this Application is the disclosure of third-party records in the custody of the RCMP and TD Bank.

26. A third-party records application, often referred to as an "O'Connor Application"¹¹, is a two-stage process:

1. First the applicant must satisfy the Court that the record is likely relevant to the proceedings against the accused. If so, the Court will order the production solely for the Court's inspection.
2. Second, the Court must then determine, after inspection, what portions of the documents are to be produced for the defence and his counsel.¹²

27. Relevance with respect to the first step is "a reasonable possibility that the information may assist the accused in the exercise of the right to make full answer

¹⁰ *Affidavit of Denis Beaudoin, Canadian Frontline Nurses et al v AG*, <https://ccla.org/wp-content/uploads/2022/05/Affidavit-of-Denis-Beaudoin-sworn-April-4-2022.pdf>

¹¹ *R v O'Connor*, 1995 CanLII 51 (SCC), [1995] 4 SCR 411, <<https://canlii.ca/t/1frdh>>

¹² *O'Connor*, *ibid*; *R v McNeil*, 2009 SCC 3 (CanLII), [2009] 1 SCR 66, at para 27, <<https://canlii.ca/t/2254d>>.

and defence, including the ability to meet the Crown's case, raise a defence, or otherwise consider the conduct of the defence.”¹³

28. A third party includes Crown entities other than the prosecuting authority and so would be subject to an *O'Connor* application.¹⁴

29. The first stage determines whether materials *should* be provided to the court for review. At this stage the burden is upon the Applicant, but the standard should *not* be treated as particularly onerous.¹⁵

30. In the second *O'Connor* stage the court assesses the records on the basis of the likely relevance standard.

31. The Applicant seeks records in the custody of the RCMP and TD Bank that speak to the freezing of his bank accounts. These records are required by the Applicant to make full answer and defence to his criminal charges and specifically to litigate the breach of his section 8 *Charter* rights and to bring an application for a stay on that basis.

32. Given the statutory regime under the *EEMO*, described above, it is virtually certain that the RCMP and TD Bank have records and correspondence which are relevant to the Applicant's anticipated *Charter* application. The Applicant submits that the records sought would respond to the following factual uncertainties:

1. How and why his bank accounts were frozen.
2. What evidence was presented by the RCMP prior to the Applicant's bank account being frozen?
3. When was the account unfrozen?

¹³ *R v Sandhu*, 2020 ABQB 459 (CanLII), at para 33 <<https://canlii.ca/t/j94nx>>; *R v Gubbins*, 2018 SCC 44 (CanLII), [2018] 3 SCR 35, at para 23, <<https://canlii.ca/t/hvqb7>>.

¹⁴ *McNeil*, *supra* note 12 at para 13.

¹⁵ *R v Mills*, 1999 CanLII 637 (SCC), [1999] 3 SCR 668, at para 46 <<https://canlii.ca/t/1fqkl>>.

4. What were the balances in the respective accounts when frozen?
5. What information led to the unfreezing of the accounts.

33. Such further and other grounds as the Applicant may advise and this Honourable Court may permit.