

Form / Formule 2

RESPONSE

RÉPONSE

ONTARIO COURT OF JUSTICE
COUR DE JUSTICE DE L'ONTARIO

East / Est

Region / Région

(Rule 2.2, Criminal Rules of the Ontario Court of Justice)
(Règle 2.2, 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. NAME OF RESPONDENT

NOM DE LA PERSONNE INTIMÉE

Toronto-Dominion Bank (third party respondent on the O'Connor application)

2. CHECK ONE OF THE TWO BOXES BELOW

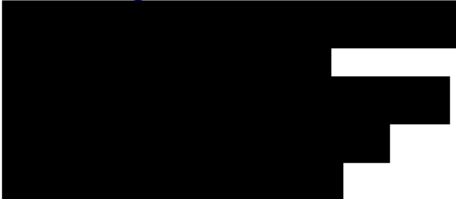
COCHEZ LA CASE QUI CONVIENT CI-DESSOUS

☐ 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 :

Andrew Matheson/Meaza Damte

McCarthy Tétrault LLP



3. CONCISE STATEMENT OF REASONS FOR RESPONDING

BRÈVE DÉCLARATION DES MOTIFS DE LA RÉPONSE

(Briefly state why you are opposing the Application. For example, "The Applicant has not provided any medical evidence about pending surgery"; "The Crown disclosure is complete"; or "The length of time is not unreasonable, the Applicant has acquiesced to any delay, and there has been no prejudice flowing from the time to trial.")

(Expliquez brièvement pourquoi vous vous opposez à la demande. Par exemple : « L'auteur de la demande n'a pas produit de preuve médicale au sujet de son intervention chirurgicale imminente. », « La Couronne a divulgué tous les documents qu'elle pouvait. », « Le temps écoulé n'est pas excessif. L'auteur de la demande a accepté n'importe quel retard et le temps écoulé jusqu'au procès ne lui a causé aucun préjudice. »)

See Schedule A attached

4. RESPONSE TO THE APPLICANT'S GROUNDS TO BE ARGUED IN SUPPORT OF APPLICATION (#6 on application)

RÉPONSE AUX MOTIFS DE L'AUTEUR DE LA DEMANDE QUI SERONT INVOQUÉS À L'APPUI DE LA DEMANDE (point 6 de la demande)

See Schedule A attached

5. DETAILED STATEMENT OF SPECIFIC FACTUAL BASIS FOR OPPOSING APPLICATION

DÉCLARATION DÉTAILLÉE DES FAITS PRÉCIS SUR LESQUELS SE FONDE L'OPPOSITION À LA DEMANDE

See Schedule A attached

**6. INDICATE BELOW OTHER MATERIALS OR EVIDENCE YOU WILL RELY ON IN RESPONSE TO THE APPLICATION
INDIQUEZ CI-DESSOUS D'AUTRES DOCUMENTS OU PREUVES QUE VOUS ALLEZ INVOQUER EN RÉPONSE
À 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)
- ☒ Other (Please specify)
Autre (Veuillez préciser)

The submissions of counsel

May 1, 2025

(Date)

Signature of Respondent or Legal Representative / Signature de l'intimé ou de son représentant juridique

To: **(Via Counsel): Evan Blackman; Ontario Crown Attorney; Royal Canadian Mountain Police**

À : (Name of Applicant or legal representative / Nom de l'auteur de la demande ou de son représentant juridique)

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

NOTE: Rule 2.2 requires that a response to an application be served on the applicant and on any other affected parties.

NOTA : La règle 2.2 exige qu'une réponse à une demande soit signifiée à l'auteur de la demande et aux autres parties concernées.

ONTARIO COURT OF JUSTICE

B E T W E E N :

HIS MAJESTY THE KING

Respondent

and

EVAN BLACKMAN

Applicant

SCHEDULE A to Form 2 (third party respondent on the O'Connor application)

3. Concise Statement of Reasons for Responding.

1. Evan Blackman (the “**Applicant**”) seeks “records, correspondence, and other documents that relate to the freezing of his bank accounts in February of 2020”¹ pursuant to his application for third party records in the custody of the Royal Canadian Mounted Police (“**RCMP**”) and the Toronto-Dominion Bank (“**TD Bank**”) to be heard May 1, 2025.
2. Like the RCMP, TD Bank takes no position as to whether Mr. Blackman has met his burden to establish the likely relevance of the documents sought to the criminal proceedings against him. If this Honourable Court finds the documents meet the likely relevant threshold, TD Bank submits that, to the extent that TD Bank or the RCMP have responsive documents, they should be redacted to remove personal identifying information of TD employees, third parties or law enforcement officers, or privileged information.

Response to the Applicant's Grounds to be Argued in Support of the Application

3. TD Bank agrees with the parties regarding the test governing third party records applications as articulated by the Supreme Court of Canada in *R v. O'Connor*: first, the

¹ Schedule A to Form 1 of the Applicant's O'Connor Application, para. 1.

accused must establish likely relevance in order for the Court to inspect any existing responsive records, then at the second stage, along with its inspection of the records, the Court weighs the positive and negative consequences of production to the parties, with a view to determining whether, and to what extent, such production should be ordered.² At the second stage, the Court should consider the following factors:

- (a) the extent to which the record is necessary for the accused to make full answer and defence;
 - (b) the probative value of the record in question;
 - (c) the nature and extent of the reasonable expectation of privacy vested in that record;
 - (d) whether production of the record would be premised upon any discriminatory belief or bias; and
 - (e) the potential prejudice to the complainant's dignity, privacy or security of the person that would be occasioned by production of the record in question.³
4. To the extent there is third party or privileged information in responsive documents, redactions are necessary to protect privacy and privilege. The Applicant is not entitled to such information, it is not required for the Applicant to make full answer and defence, and its redaction would not reduce the probative value of the records in question.

5. Detailed Statement of Specific Factual Basis for Opposing Application

5. To the extent that there are responsive TD Bank records relating to the *Emergency Economic Measures Order*, such records would contain contact information and other private information relating to persons other than the accused, such as third parties, TD employees and law enforcement officers. Any such information is not relevant to the *Charter* relief sought by the Applicant that is the foundation for his *O'Connor* motion. Moreover, it is information belonging to non-parties, the privacy of which must be protected.

² *R v O'Connor*, [1995] 4 SCR 411; *R v McNeil*, [2009] 1 SCR 66, at para. 7.

³ *R v O'Connor*, [1995] 4 SCR 411, at para. 31.

6. The above-described position would apply to records of the RCMP as well. TD Bank understands that the RCMP is not advancing any other reason for redactions, such as protecting law enforcement investigative techniques. Any redactions by TD Bank of its records would be guided accordingly; it will not redact on the ground of protecting law enforcement investigative techniques.
7. To the extent responsive records exist, TD Bank will have them available to the Court in a sealed package by the May 1st hearing date, in order that they may be inspected by the Court if it decides the first stage of the *O'Connor* test is met.
8. TD Bank requests the Court includes in any eventual order for production a direction that the production to the parties is for the use of the documents in relation to the within proceeding only and not for any other purpose. Such direction is consistent with the restrictions applicable to the use of *Stinchcombe* disclosure and undertakings deemed to apply in litigation generally.