

**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)

**23-11401103**

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. NAME OF RESPONDENT  
NOM DE LA PERSONNE INTIMÉE**

**CHRISTOPHER BARBER**

**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 :*

**Diane Magas, 280 Metcalfe St., suite 201, Ottawa, Ontario , K2P 1R7  
diane@magaslaw.net**

**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**

**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)**

**1. Big Red is not offence related property;**

**2. In the alternative, the forfeiture of Big Red would be disproportionate with the crime Mr. Barber was convicted of (mischief) having regards to**

**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**

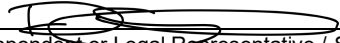
6. INDICATE BELOW OTHER MATERIALS OR EVIDENCE YOU WILL RELY ON IN RESPONSE TO THE APPLICATION  
INDIQUEZ CI-DESSOUS D'AUTRES DOCUMENTS OU PREUVES QUE VOUS ALLEZ INVOQUER EN RÉPONSE  
À LA DEMANDE

- ☒ 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)*

**evidence adduced at trial and at the stay application**

**September 24, 2025**

(Date)

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

To: **Tim Radcliffe and Siobhain Wetscher -161 Elgin Street, 3<sup>rd</sup> Floor, Ottawa, Ontario**

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

**tim.radcliffe@ontario.ca and siobhain.wetscher@ontario.ca**

(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-**

**CHRISTOPHER BARBER**

**Applicant**

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**CROWN'S FORFEITURE APPLICATION  
FORM 2 - SCHEDULE "A"**

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

1. On April 4, 2025, Mr. Barber was convicted of one count of mischief (as principal and as a party) relating to events between Feb 4, 2022, and Feb 17, 2022, having been found to be one of the leaders of a group of individuals that organized the protest known as the Freedom Convoy which took place at the City of Ottawa commencing on or about January 29, 2022.
2. Mr. Barber arrived at the City of Ottawa on January 29, 2022, to protest against the various governments covid19 mandates.
3. The Ottawa police services (OPS) led the protestors into the City and provided them maps

as to where to park, as well as directing vehicles where to park. Mr. Barber was told where to park Big Red on Wellington street by OPS members.

4. On Saturday February 5, 2025, Cst. Bach asked Mr. Barber to move Big Red out of Wellington. An exchange occurred between the two over several text messages, Mr. Barber indicating that there were safety issues in moving the truck on that day. Big Red was safely moved out of Wellington Street on February 8, 2022.
5. There is no evidence that Big Red returned to the downtown core after that date.
6. Mr. Barber discussed with Cst. Bach doing slow rolls and Cst. Bach advised Mr. Barber that slow rolls were a better way to protest.
7. Mr. Barber was arrested on February 17, 2022, and released on conditions on the evening of February 18, 2022.
8. Big Red was not seized by the police. Mr. Barber left with Big Red on February 19, 2022.

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

9. The Criminal code provides for forfeiture of offence related property in the following situations:

490.1 (1) **Subject to sections 490.3 to 490.41**, if a person is convicted, or discharged under section 730, 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 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 purpose of this paragraph.

Property related to other offences

(2) Subject to sections 490.3 to 490.41, 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 indictable offence under this Act or the Corruption of Foreign Public Officials Act of which a person is convicted or discharged, 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.

10. The Crown has indicated in Court at the last appearance that it is not proceeding under section 490.1(2), but rather and only under section 490.1(1).

11. It is Mr. Barber's position that in the particular circumstances of this case, Big Red is not "offence related property related to the commission of the offence".

12. It is Mr. Barber's position that he followed the instruction of the police as to where to park Big Red and that he moved Big Red at the request of the police when it was safely feasible for him to do so, as such Big Red was not used in the commission of the offence of mischief.

13. Furthermore, the slow rolls were discussed between Mr. Barber and Cst. Bach and Cst.

Bach approved of slow rolls as a better way to protest, as such the use of Big Red in the participation of slow rolls was not done in the commission of the offence of mischief.

14. In the event the Court finds that Big Red is offence related property that was used in the commission of the offence of mischief, the Court has the discretion to dismiss the forfeiture application as provided under section 490.41(3) of the criminal Code:

(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 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.

15. In exercising its discretion, the Court must consider the impact that an order of forfeiture would have and whether that impact would be disproportionate considering (1) the nature and gravity of the offence (2) the circumstances surrounding the commission of the offence (3) the criminal record of the person convicted of the offence.

### ***IMPACT THAT AN ORDER OF FORFEITURE***

16. The present case is similar to *R. v. Pendleton* in that the Crown was attempting to forfeit a farm tractor that was being used by the family to run the family farm. The accused in that case had been convicted of the offence of drive disqualified. With regards to the impact of the forfeiture, the Court found:

[15]           The item in question **is an essential component of the operation of this family farm and is relied upon by Mr. Pendleton, Sr. and his family in addition to the offender to perform all essential farming operations.** Since the

seizure of this equipment, this farming operation of the Pendleton family has sustained a serious economic detriment. **A forfeiture order of essential farming equipment will detrimentally affect, not just the offender, but the viability of this farm. I cannot agree that a punitive impact of forfeiture on a legitimate enterprise such as farming was the intention of Parliament as being necessary in the public interest.**

*R. v. Pendleton*, 2013 ONCJ 321 (CanLII), para. 15

17. The same can be said of the **impact of a forfeiture** order of Big Red, as it is an essential component of the operation of Mr. Barber's trucking business and is relied upon by Mr. Barber, his family as well as employees, to perform essential trucking operations of the business. A forfeiture order of essential trucking equipment will detrimentally affect, not just Mr. Barber, but the viability of this trucking business. The punitive impact of the forfeiture on a legitimate enterprise such as a trucking business was not the intention of Parliament as being necessary to the public interest.

#### ***NATURE AND GRAVITY OF THE OFFENCE***

18. Furthermore, the **nature and gravity of the offence**, although it had an impact on several citizens of Ottawa, the nature and gravity of the offence of mischief is not objectively at the serious end of offences in the criminal code.
19. In *R. v. Ballaudin*, the accused organized a motorcycle ride involving over 100 riders. Many engaged in stunt driving and the group caused several complete traffic stoppages on highways around Toronto. During those stoppages, some riders performed a number of stunts and risky maneuvers. The accused was found guilty of mischief for his role as a

principal and party to the traffic stoppages. The accused was found to be “the organizer, marshal and helmsman of ride”.

*R. v. Allaudin*, 2019 ONCJ 344 (CanLII), para. 1-4

20. The Court found that :

25. While the behaviour of the group of riders who rode dangerously can be said to have caused “mayhem”, **Mr. Allaudin’s conduct cannot be described in such dramatic terms.** He orchestrated and participated in a number of brief traffic stoppages during which riders performed stunts. While these interfered briefly with other motorists’ lawful use of the highways, no one was harmed and no property was damaged or lost. **Mr. Allaudin’s conduct lies toward the lower end of the range of gravity of criminal offending.**

*R. v. Allaudin*, supra, para. 25

### ***CIRCUMSTANCES OF THE OFFENCE***

21. Furthermore, the Court must consider **the circumstances of the offence.** In the present case, Mr. Barber’s actions were part of a protest, where individuals wanted to express disagreement with government action. Mr. Barber was told where to park Big Red and moved it out of the downtown core once he saw it was safe to do so. One must not forget that on February 13, 2022, the City had agreed to move trucks onto Wellington Street and that Inspector Lucas’ testified that parking on Wellington was the appropriate place for truckers to protest. Those are circumstances of the offence that the Court must take into account in the exercise of its discretion.

22. The Court must also consider that the conviction for mischief was in the context of a political protest. The Crown recognized the democratic rights to protest but argued, and



the Court agreed that it was the means of participating in that protest that constituted mischief.

23. In *R. v. Puddy*, the Court recognized the importance of political protests:

[43] At the time of his arrest the defendant was attending a political rally. One need look no further than the daily headlines respecting events in the Middle and Near East and North Africa to **recognize how vital political demonstrations are to the operation of a viable democracy and how important it is that, short of criminal conduct and true threats to public order, participants should be afforded broad latitude for expression of their political beliefs. Indeed, rights of expression, peaceful assembly and association are enshrined as “fundamental freedoms” under s. 2 of the Canadian Charter and Rights and Freedoms.**

[44] The zealous exercise of police arrest powers in the context of political demonstrations risks distorting the necessary if delicate balance between law enforcement concerns for public safety and order, on the one hand, and individual rights and freedoms, on the other. It further risks what one commentator has described as “the criminalization of dissent” (J. Esmonde, “The Policing of Dissent – The Use of Breach of the Peace Arrests at Political Demonstrations” (2002), 1 J.L. & Equality 246, at para. 72). Such criminalization may occur in three ways: First, by effectively granting a broad discretion to the police to decide themselves what constitutes a breach of the peace. In this regard, it is of more than passing interest that the Law Reform Commission of Canada (Working Paper 41) (Ottawa: Law Reform Commission of Canada, 1985, at 62) recommended the elimination of the arrest power afforded by s. 31 because it is premised on an “exceedingly vague” standard. Second, because those who fail to comply with police commands founded on overly broad interpretation of this discretion may nonetheless be charged with resisting arrest or obstructing the police. (Indeed, the defendant faced this very jeopardy until the Crown rightly invited that this charge be dismissed at the close of the Crown case.) And third, by metaphorically hijacking the message conveyed by those participating in demonstrations through the discrediting and delegitimation that accompanies mass arrests. None of this is to say that there are not occasions when forceful police action is warranted to maintain public order. However, **the calculus in each case must, to the degree possible, respect the rights and liberties of those engaged in political speech and assembly.**

[45] These themes – or at least the concerns for a balance that respects fundamental liberties – find some resonance in the Court of Appeal’s judgement in *Brown*. Although the focus there is on the common law power to arrest for apprehended breaches of the peace, Justice Doherty’s closing comments on the subject

eloquently reflect policy concerns that bear more generally on the policing of expressive activism that falls short of unambiguously criminal conduct (at para. 79):

The balance struck between common law police powers and individual liberties puts a premium on individual freedom and makes crime prevention and peacekeeping more difficult for the police. In some situations, the requirement that there must be a real risk of imminent harm before the police can interfere with individual rights will leave the police powerless to prevent crime. The efficacy of laws controlling the relationship between the police and the individual is not, however, measured only from the perspective of crime control and public safety. We want to be safe, but we need to be free. [Emphasis added.]

These considerations help inform the constitutional analysis that follows.

*R. v. Puddy*, 2011 ONCJ 399

24. The Ontario Court of Appeal has also recognized the importance of political protests in

*Hillier v. Ontario*:

[4] There has been much debate over the merits of governmental responses to the COVID-19 pandemic. This case is not about the merits of those responses. Nor is it about the merits of the limited exemption in the relevant restrictions on outdoor religious gatherings, which was addressed in *Trinity Bible Chapel*. The focus in this appeal is narrower. **It is on the effect of the gathering limits as they pertain to the right to peacefully assemble, which was not similarly accommodated.**

[5] Section 2(c) offers protection that is related to, but fundamentally distinct from, its companion subsections. The right of peaceful assembly, including political protest, is (in concert with other s. 2 rights) integral to a functioning democracy. The effect of the ban in this case was to stifle assembly aimed at expressing collective opposition to the ban itself.

...

[7] Despite these cautions, I conclude that the gathering limits at issue in this case were not demonstrably justified under s. 1 of the Charter. This case is materially different from *Trinity Bible Chapel*. First, this case concerns an absolute, rather than partial ban. Second, while Ontario tailored restrictions on religious gatherings to facilitate freedom of religion, no such tailoring was performed to facilitate the right to peacefully assemble. The evidence discloses that Ontario failed to consider the impact of the gathering limits on s. 2(c) of the Charter. **The pandemic posed significant challenges for Ontario, but the Constitution does not fade from view in times of crisis.**

...

[42] **As a form of peaceful assembly, political protests are given constitutional protection.** This is because s. 2(c)'s role in a constitutional democracy is to "validate the legitimacy and value of experiential, collective and public democracy" and political participation. In this case, the ban on assemblies for political protest imposed by the gathering limits was absolute. Peaceful assemblies were not permitted even in the small numbers allowed for gatherings for religious and similar purposes. No opportunity was provided, to restate the goods this fundamental freedom protects, for dissenters to attract attention, in a visible act of solidarity, to their opposition to the law by disrupting ordinary life in the hope that the protest would lead to a change in public policy; this freedom is surely elemental in a democracy. The presence of alternative forums for protest, such as social media or virtual gatherings, was not sufficient to render the absolute prohibition on gatherings constitutionally compliant.

*Hillier v. Ontario*, 2025 ONCA 259 (CanLII), paras 4, 5, 7, 42

25. These cases are not being referred to justify the actions of Mr. Barber, as he has been found guilty of mischief, but rather as part of the circumstances of the offence in the context of a political protest, that was found by the Court to have turned into a mischief. The mischief was in the context of a political protest. Mr. Barber, over and over, attempted to ensure that the protest was peaceful.

### ***CRIMINAL RECORD***

26. Finally, the Court must consider the criminal record of the offender. Mr. Barber has no criminal record.

### ***BALANCING OF FACTORS***

27. Considering all the factors and circumstances as well as the impact forfeiture would have, Mr. Barber has met his burden to show that forfeiture of Big Red would be disproportionate to the offence of mischief he was convicted of.

28. The Crown's forfeiture application should be dismissed.

29. Should the Court not be so satisfied, the Court must then turn to the third-party interests.

Mr. Barber will leave that argument to the third parties to make.