

Federal Court



Cour fédérale

Ottawa, November 7, 2022 – The Honourable Justice Simon Fothergill of the Federal Court issued a decision today in file T-2218-22:

**IN THE MATTER OF THE HONOURABLE DOUG FORD, PREMIER
OF ONTARIO AND THE HONOURABLE SYLVIA JONES,
MINISTER OF HEALTH AND DEPUTY PREMIER v.
COMMISSIONER OF THE PUBLIC ORDER EMERGENCY
COMMISSION AND OTTAWA COALITION OF RESIDENTS AND
BUSINESSES**

Summary: The Honourable Doug Ford, Premier of Ontario and the Honourable Sylvia Jones, former Solicitor General and now Minister of Health and Deputy Premier in the Ontario Government [Applicants], brought an urgent motion to stay two summonses issued by the Commissioner of the Public Order Emergency Commission [Commission].

The Commission was established on April 25, 2022 pursuant to s 63(1) of the *Emergencies Act* and Part I of the *Inquiries Act* to inquire into the circumstances that led to the declaration of a public order emergency between February 14 and 23, 2022, and the measures taken to deal with the emergency.

The summonses were issued on October 24, 2022. The Applicants are scheduled to testify before the Commission on November 10, 2022.

The Applicants sought to challenge the summonses on the ground that the Ontario Legislative Assembly is currently in session, and as elected officials they benefit from the parliamentary privilege of testimonial immunity. They commenced an application for judicial review in which they alleged that the summonses were issued without jurisdiction, and should therefore be quashed. They also brought an urgent motion to stay the summonses until the application could be determined on its merits.

The Respondents took the position that the application of the parliamentary privilege of testimonial immunity to a commission of inquiry was not established in law. They argued that the privilege is not intended to be used to impede the course of justice, and is regularly waived.

The Court ruled that the summonses issued by the Commission to the Applicants are valid. However, so long as the Ontario Legislative Assembly remains in session, the Applicants may resist the summonses by asserting parliamentary privilege and the Commission cannot take steps to enforce their attendance and compel them to give evidence.

Parliamentary privilege protects the operation of the legislature from outside interference, where such interference would impede the fulfilment of its constitutional role. The decision to waive privilege falls within the exclusive jurisdiction of the legislature, which is ultimately accountable to the electorate and not the courts.

The Court therefore granted the motion in part.

A copy of the decision can be obtained via the Federal Court website: <https://decisions.fct-cf.gc.ca/fc-cf/decisions/en/item/522406/index.do> .

.