

Federal Court



Cour fédérale

Date: 20240123

Docket: T-382-22

Citation: 2024 FC 32

Ottawa, Ontario, January 23, 2024

PRESENT: The Honourable Mr. Justice Mosley

BETWEEN:

**JEREMIAH JOST, EDWARD CORNELL,
VINCENT GIRCYS AND HAROLD RISTAU**

Applicants

and

**GOVERNOR IN COUNCIL, HIS MAJESTY
IN RIGHT OF CANADA, ATTORNEY
GENERAL OF CANADA, AND MINISTER
OF PUBLIC SAFETY AND EMERGENCY
PREPAREDNESS**

Respondents

JUDGMENT

UPON an Application for Judicial Review pursuant to section 18.1 of the *Federal Courts Act*, RSC 1985, c. F-7 in respect of the *Proclamation Declaring a Public Order Emergency*, SOR/2022-20 (*Proclamation*), made pursuant to s. 17(1) of the *Emergencies Act*, RSC 1985, c 22 (4th Supp.) (the “*Act*”) and regulations made pursuant to s. 19(1) of the *Act*: the *Emergency*

Measures Regulations, P.C. 2022-107, SOR/2022-21 (*Regulations*), and the *Emergency Economic Measures Order*, P.C. 2022-108, SOR/2022-22 (*Order*);

AND UPON the motion of the Respondent to strike the application for judicial review on the grounds that it was moot as the *Proclamation* had been revoked and the associated *Regulations* and *Order* had been terminated by operation of law and that the Applicants, save for Messrs. Cornell and Gyrcis, lacked standing to challenge the *Proclamation*, *Regulations* and *Order* as they were not directly affected by them within the meaning of subsection 18.1(1) of the *Federal Courts Act*;

AND UPON considering the material filed by the parties and hearing the oral arguments of Counsel at a hearing in the City of Ottawa, Ontario on April 3-5, 2023;

AND UPON determining that Messrs. Jost and Ristau lack standing to start the application for judicial review;

AND UPON determining that Messrs. Cornell and Gyrcys do have direct standing to start the application for judicial review as persons affected by the decision to invoke the *Proclamation*.

AND UPON determining that while the application is moot, the Court should exercise its discretion to hear it;

AND UPON determining that the decision to issue the *Proclamation* and the associated *Regulations* and *Order* was unreasonable and *ultra vires* the *Act*;

AND UPON determining that the *Regulations* infringed section 2(b) of the *Canadian Charter of Rights and Freedoms Part I of the Constitution Act, 1982 adopted as Schedule B to the Canada Act 1982, 1982, c. 11 (U.K.) (Charter)* and that the *Order* infringed section 8 of the *Charter* and that neither infringement was justified under section 1 of the *Charter*;

AND UPON considering that the Applicants, Messrs. Cornell and Gyrcis, requested costs in their Notice of Application and having succeeded on key elements.

THIS COURT ORDERS that:

1. The Respondent's motion for an order striking the application for judicial review is granted in part and the Court exercises its discretion to determine the matter notwithstanding that it is moot in view of the revocation of the *Proclamation* and termination of the associated *Regulations* and *Order*;
2. The Applicants Jeremiah Jost and Harold Ristau lack standing and their applications for judicial review are dismissed;
3. The Applicants, Edward Cornell and Vincent Gyrcys, have direct standing and their applications are granted in part;

4. It is declared that the decision to issue the *Proclamation* and the associated *Regulations* and *Order* was unreasonable and *ultra vires* the *Emergencies Act*;
5. It is declared that the *Regulations* infringed section 2 (b) of the *Charter* and declared that the *Order* infringed section 8 of the *Charter* and that neither infringement was justified under section 1;
6. The Applicants, Edward Cornell and Vincent Gircys, are awarded costs of the hearing;
7. The Respondent and Messrs. Cornell and Gircys may make a joint submission on a reasonable cost award for the hearing, including disbursements; and
8. In the absence of an agreement as to costs, the parties have thirty days from the date of the receipt of this judgment to submit written representations, not exceeding five pages in length, for the Court to determine an appropriate award.

"Richard G. Mosley"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-382-22

STYLE OF CAUSE: JEREMIAH JOST, EDWARD CORNELL, VINCENT GIRCYS AND HAROLD RISTAU v GOVERNOR IN COUNCIL, HIS MAJESTY IN RIGHT OF CANADA, ATTORNEY GENERAL OF CANADA, AND MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

PLACE OF HEARING: OTTAWA, ONTARIO

DATE OF HEARING: APRIL 3-5, 2023

JUDGMENT: MOSLEY J.

DATED: JANUARY 23, 2024

APPEARANCES:

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FOR THE APPLICANTS

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