CITATION: Conacher et al. v. Ontario (Attorney General), 2026 ONSC 2426
COURT FILE NO.: CV-26-94811
DATE: 20260424

2026 ONSC 2426 (CanLII)

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Duff Conacher and Democracy Watch

AND: Governor In Council of Ontario and Attorney General of Ontario

BEFORE: Mr Justice J.A. Ramsay

COUNSEL: Wade Poziomka; Joanne Gurasci, Nick Papageorge, Justyna Zukowski for the moving parties; Robin Basu for the Attorney General

HEARD: April 23, 2026 at Hamilton by videoconference

ENDORSEMENT

[1] The moving parties ask *ex parte* for an interim injunction, taking effect immediately and remaining in effect for a period of ten days suspending the coming into force of subsections 28(1) and 29(2) in Schedule 7 of Bill 97, *Plan to Protect Ontario Act (Budget Measures), 2026*, and restraining the Governor in Council of Ontario and Attorney General of Ontario from undertaking any actions that would destroy any records that are covered by the provisions of subsections 28(1) and 29(2) of Bill 97.

[2] The notice of motion was received this afternoon. Sweeny RSJ directed that the Attorney General be served and arranged for a hearing before me at 5 pm. Given the urgency claimed by the applicant my reasons will be brief. The Attorney General could not respond on such short notice until part way through the hearing so I consider the motion to be *ex parte*.

[3] The moving parties named the Governor in Council. Correctly, she is the Lieutenant Governor in Council. She is not properly a party. The application when filed should named the Attorney General or His Majesty the King in right of Ontario. The premier should be represented if he is to be ordered to produce call logs in his personal possession, as opposed to the possession of the government.

[4] November 29, 2024 an adjudicator ruled that that Premier Ford's cellphone call logs are in the control of the Cabinet office and, therefore, Premier Ford is required to disclose the requested records under the *Freedom of Information and Protection of Privacy Act* ("the Act"). The Divisional Court dismissed judicial review on December 29, 2025: *Ontario*

(AG) v. Ontario (Information and Privacy Commissioner). An application for leave to appeal to the Court of Appeal is outstanding.

[5] The government introduced bill 97 on March 26, 2026. The bill amends the Act with the effect of overturning the adjudicator's decision and exempting the records in question from disclosure. The bill has passed third reading and is awaiting the royal assent, perhaps tonight. The relevant part of the bill will come into force immediately.

[6] The moving parties intend to apply for a declaration that the legislation is constitutionally invalid. They say that s.2b of the Charter includes a right to access documents where access is necessary to permit meaningful discussion on a matter of public importance, or in other words where access is necessary to meaningful public debate on the conduct of government institutions. If the bill comes into force, the respondents will have the right to destroy the documents in question, thus causing irreparable harm.

[7] The test is well known. The moving party must show an arguable case, irreparable harm and the balance of convenience: *RJR-McDonald Inc. v. Canada (AG),* [1994] 1 SCR 311.

[8] Section 2 of the Charter reads:

> Everyone has the following fundamental freedoms:
>
> (a) freedom of conscience and religion;
>
> (b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;
>
> (c) freedom of peaceful assembly; and
>
> (d) freedom of association.

[9] In summary the Supreme Court of Canada has said that to demonstrate that there is expressive content in accessing these documents, a claimant must establish that the denial of access effectively precludes meaningful public discussion on matters of public interest. If this necessity is established, a prima facie case for production is made out, but the claimant must go on to show that there are no countervailing considerations inconsistent with production. A claim for production may be defeated, for example, if the documents are protected by a privilege, as privileges are recognized as appropriate derogations from the scope of protection offered by s. 2(b) of the Charter. It may also be that a particular government function is incompatible with access to certain documents, and these documents may remain exempt from disclosure because it would impact the proper functioning of affected institutions. If the claim survives this second step, then the claimant establishes that s. 2(b) is engaged, and the only remaining question is whether the government action infringes that protection: *Ontario (Public Safety and Security) v. Criminal Lawyers' Association*, 2010 SCC 23.

2026 ONSC 2426 (CanLII)

[10] That case had to do with the open courts concept. The police exonerated police misconduct without giving reasons. The Supreme Court upheld the statutory exemption from producing the information.

[11] We have not gone so far along the road to government by unelected judges that I would presume that the legislation is invalid on so thin an argument. There is no arguable case for the moving parties.

[12] The applicants will not be irreparably harmed. First it is speculative to say that the records will be destroyed. Second it is speculative to say that there might be anything useful in them, the loss of which would cause harm. Finally, the protocols established under the *Archives and Record Keeping Act, 2006* would prevent the loss. And the cell phone provider may well have copies anyway.

[13] The balance of convenience favours the government. It is presumed to be acting in good faith. Interim injunctions are not lightly granted against legislation. I have even more reluctance to grant an injunction against a bill that is not even law yet. The sovereign legislature will not be able to govern effectively if its laws are routinely prevented from coming into force until a court hearing can be accomplished.

[14] The motion is dismissed.

[15] This motion was ill-conceived, irregular and unnecessary. It should have been brought on reasonable notice so that a proper response could be made. There was no urgency. It is only through Mr Basu's exemplary competence that I had the benefit of a cogent argument from the responding side. The moving party will pay costs to the Attorney General fixed at $1,500 payable within 31 days.

J.A. Ramsay J.

Date: 20260424

2026 ONSC 2426 (CanLII)