COURT OF APPEAL FOR ONTARIO

CITATION: Ontario Place Protectors v. Ontario, 2025 ONCA 183
DATE: 20250311
DOCKET: COA-24-CV-0838

Huscroft, Harvison Young and Zarnett JJ.A.

BETWEEN

Ontario Place Protectors

Applicant (Appellant)

and

His Majesty the King in Right of Ontario and Attorney General of Ontario

Respondents (Respondents)

Eric K. Gillespie, for the appellant

S. Zachary Green and Hera Evans, for the respondent Attorney General of Ontario

Jackie Esmonde, Sydney Lang and Clémence Thabet, for the intervener Ontario Place for All Coalition

Heard: January 16, 2025

On appeal from the order of Justice Lisa Brownstone of the Superior Court of Justice, dated July 26, 2024, with reasons reported at 2024 ONSC 4194.

Huscroft J.A.:

OVERVIEW

[1] Ontario Place is an urban park on the Lake Ontario waterfront that opened in 1971. It includes a Cinesphere with an IMAX cinema and several pavilions

suspended above the water. The Ontario government decided to redevelop it for use as a spa and waterpark, and to facilitate that redevelopment the Ontario Legislature passed the *Rebuilding Ontario Place Act, 2023*, S.O. 2023, c. 25, Sched. 2 ("*ROPA*"). *ROPA* exempts Ontario Place from existing statutory regulation including the *Environmental Assessment Act*, R.S.O. 1990, c. E.18, and the *Ontario Heritage Act*, R.S.O. 1990, c. O.18, as well as from the City of Toronto's authority to regulate noise. In addition, *ROPA* extinguishes causes of action against the Crown and its agents that might otherwise arise out of the redevelopment of Ontario Place, as well as related remedies. However, *ROPA* specifically preserves the ability to bring applications for judicial review.

[2] The appellant brought an application challenging the constitutionality of *ROPA*, arguing that it insulates state action from judicial scrutiny and so violates s. 96 of the *Constitution Act, 1867*. Additionally, the appellant argued that the exemptions from the *Environmental Assessment Act*, *Heritage Act*, and municipal noise regulations constitute a breach of public trust. The application judge denied the appellant public interest standing to pursue its application, and in the alternative ruled that its challenge to *ROPA* failed in any event.

[3] Although I conclude that the application judge erred in denying the appellant public interest standing, I agree that the constitutional challenge to *ROPA* fails. *ROPA* does not contravene s. 96 of the *Constitution Act, 1867*. As this court has

explained, s. 96 immunizes neither the substantive content of the law nor the procedure governing litigation: *Poorkid Investments Inc. v. Ontario (Solicitor General)*, 2023 ONCA 172, 479 D.L.R. (4th) 469. The establishment, amendment, or repeal of causes of action does not affect the superior courts' core jurisdiction and so does not infringe s. 96. Further, the appellant has failed to establish that a public trust doctrine exists in Canada, or that any such doctrine would be violated by *ROPA* in any event.

[4] There is no doubt that the government's decision to redevelop Ontario Place is strongly opposed by a number of concerned citizens and organizations. Political opposition to the plan has not moved the government and the appellant has turned to the court in an effort to stop it. But there is no basis for the court to do so. The court is not an alternative forum for resolving political grievances. The only legitimate question for the court is whether the impugned provisions of *ROPA* violate the law or the constitution.

[5] They do not, and the appeal must be dismissed.

BACKGROUND

[6] The appellant, Ontario Place Protectors, brought an application for judicial review but discontinued it in favour of an application in the Superior Court: *Ontario Place Protectors v. His Majesty the King*, 2024 ONSC 1826. The appellant then brought an urgent motion for an injunction. It agreed not to proceed with that

motion, opting instead for a one-day hearing on its application for a declaration that certain provisions of *ROPA* are of no force or effect.

[7] The appellant filed 17 documents from interested parties including journalists, architects, a former Toronto mayor, conservation organizations, an emeritus professor, and community groups, all of which expressed opposition to the redevelopment plan. These materials included letters, articles, and photographs, but no expert evidence. Although they were described by the appellant as affidavits, they were not sworn.

The legislation

[8] The focus of the application is s. 17 of *ROPA*. Section 17(1) of *ROPA* eliminates causes of action against the Crown and related entities; s. 17(2) precludes the award of costs, compensation, damages, and other remedies; s. 17(3) prohibits proceedings from being brought; and s. 17(4) preserves applications for judicial review. I set out s. 17 in full:

> **Extinguishment of causes of action**
>
> **17**(1) No cause of action arises against the Crown, the Corporation, any current or former member of the Executive Council or any current or former employee, officer or agent of or advisor to the Crown or the Corporation as a direct or indirect result of,
>
> (a) the enactment, amendment or repeal of any provision of this Act;

(b) the making, amendment or revocation of any provision of a regulation, order, directive, notice, report or other instrument under this Act;

(c) anything done or not done in accordance with this Act, or a regulation, order, directive, notice, report or other instrument under this Act;

(d) any modification, revocation, cessation or termination of rights in real property, contractual rights or other rights resulting from anything referred to in clauses (a) to (c); or

(e) any representation or other conduct that is related, directly or indirectly, to the actual or potential transfer of vested real property or any part thereof, whether the representation or other conduct occurred before or after section 2 of Schedule 2 to the *New Deal for Toronto Act, 2023* came into force.

No remedy

(2) Except as otherwise provided under section 4, in an order under section 13 or in a regulation under clause 19(c), if any, no costs, compensation or damages, including for loss of revenues or loss of profit, are owing or payable to any person and no remedy, including but not limited to a remedy in contract, restitution, tort, misfeasance, bad faith, trust or fiduciary obligation, any equitable remedy or any remedy under any statute, is available to any person in connection with anything referred to in subsection (1) against any person referred to in that subsection.

Proceedings barred

(3) No proceeding that is directly or indirectly based on or related to anything referred to in subsection (1) may be brought or maintained against any person referred to in that subsection.

Application

(4) Subsection (3) does not apply with respect to an application for judicial review, but does apply with respect to any other court, administrative or arbitral proceeding claiming any remedy or relief, including specific performance, injunction, declaratory relief or the

> enforcement of a judgment, order or award made outside Ontario. [Emphasis added.]
>
> **Retrospective effect**
>
> (5) Subsections (1) to (3) apply regardless of whether the cause of action on which a proceeding is purportedly based arose before, on or after the day this subsection came into force.
>
> **No costs awarded**
>
> (6) No costs shall be awarded against any person in respect of a proceeding that cannot be brought or maintained under subsection (3).
>
> **Aboriginal or treaty rights**
>
> (7) This section does not apply to a cause of action that arises from any aboriginal or treaty right that is recognized and affirmed by section 35 of the *Constitution Act, 1982*.
>
> **No expropriation or injurious affection**
>
> (8) Nothing referred to in subsection (1) constitutes an expropriation or injurious affection for the purposes of the *Expropriations Act* or otherwise at law.
>
> **Proceedings by Crown not prevented**
>
> (9) This section does not apply with respect to proceedings brought by the Crown.

The application judge's decision

[9] The application judge began by addressing the nature of the evidence before her and the appellant's standing to bring the application. She noted that the affidavits were unsworn and were replete with argument, assertions, and opinions criticizing the government's redevelopment plans. Among other things, the affidavits assert that the government's plans to redevelop Ontario Place are a

breach of the public trust, contraventions of natural justice and procedural fairness, and unconstitutional. The affidavits praise Ontario Place for its cultural and architectural heritage and lament the government's lack of public consultation in proceeding with *ROPA*.

[10] The application judge stated that little turned on the evidence. She noted counsel's submission that the opinions in the affidavits were not submitted for the truth of their contents but instead to demonstrate the level of public concern about *ROPA* and the proposed redevelopment. Accordingly, the application judge proceeded on the basis that Ontario Place "enjoys some renown, has received awards and designations, and that there are people and groups who care deeply about its fate".

[11] The application judge found that there was no evidence in the record that the appellant's private rights were at stake or that it was specially affected by *ROPA*. It followed that the appellant could bring the application only if it were granted public interest standing. The appellant bore the onus of establishing standing and was required to demonstrate a genuine interest in the matter, that its application was a reasonable and effective means of bringing the case to court, and that the application raised a serious and justiciable issue: *Downtown Eastside Sex Workers United Against Violence Society v. Canada (Attorney General)*, 2012 SCC 45, [2012] 2 S.C.R. 524.

[12] The application judge found that the appellant failed to establish it had a genuine interest in the matter. She added that even if it did, and the matter were justiciable, "[t]his challenge would better be brought to court by a party that wishes to assert a cause of action that is extinguished by s. 17(2) [of *ROPA*]" so that the court could analyze the law with a "proper factual matrix". Accordingly, the application judge concluded that the appellant should not be granted public interest standing.

[13] The application judge went on to consider the appellant's substantive challenge to the law in the alternative. She concluded that s. 17(4) preserves both judicial review applications and their associated remedies and so does not unconstitutionally bar judicial review. The application judge acknowledged that legislatures cannot prevent general access to the superior courts without breaching s. 96, but she concluded that extinguishing specific causes of action and establishing immunity does not impermissibly trench on the superior courts' s. 96 jurisdiction. She added that s. 17(2) does not prohibit an action against the Crown for *Charter* damages and so does not conflict with the Supreme Court's decision in *Canada (Attorney General) v. Power*, 2024 SCC 26, 494 D.L.R. (4th) 191. In any event, the appellant made no *Charter* claim.

[14] Finally, the application judge concluded that even if a public trust doctrine exists in Canadian law, which she described as "far from certain", and even if it

applied to Ontario Place, which she said was inconsistent with the ministry's ownership and control of Ontario Place, it could not be invoked to invalidate legislation in any event: *Toronto (City) v. Ontario (Attorney General)*, 2021 SCC 34, [2021] 2 S.C.R. 845. A declaration that *ROPA* was in breach of the public trust would be meaningless.

[15] The application judge went on to consider and reject the request that her order should be stayed or that an injunction should issue to stop activity at Ontario Place. She dismissed the application and in a subsequent decision rejected the Crown's request for costs. Although the manner in which the litigation was brought "border[ed] on being vexatious", the application judge accepted that the citizens involved had a good faith belief in the importance of the litigation and exercised her discretion not to award costs against the appellant.

DISCUSSION

[16] During oral argument, the appellant abandoned its request for a stay or an injunction. The remaining issues on appeal are:

1) whether the application judge erred in denying the appellant public interest standing;
2) whether s. 17 of *ROPA* violates s. 96 of the *Constitution Act, 1867*; and
3) whether s. 17 of *ROPA* breaches the public trust.

(1) The appellant should be granted public interest standing

[17] The appellant submits that the Crown did not pursue its opposition to standing in a timely way, raising it less than 48 hours before the hearing of its application. The suggestion is that a number of relevant matters may not have been considered as a result of the way in which the standing issue arose. The appellant argues that the application judge's denial of standing is contrary to the central purpose of public interest standing, which is to allow important issues to be determined regardless of whether they are raised by a party with a direct claim.

[18] The appellant brings a motion to introduce fresh evidence – a report of the provincial Auditor General concerning the redevelopment of Ontario Place – which raises a number of concerns about the manner in which decisions concerning the redevelopment were made. The appellant submits that this evidence was not available when the application was heard, and is relevant to the decision to grant public interest standing because it demonstrates that there is a class of individuals who could have claims against the government but for *ROPA*.

[19] The Crown's factum includes a single paragraph in which it asserts that the application judge made no error in law or principle in denying public interest standing. The Crown made no submissions on standing during the hearing of the appeal.

[20] I am satisfied that the application judge erred in refusing to grant public interest standing, regardless of the fresh evidence.

[21] Standing requirements serve the important purpose of preserving limited judicial resources. They allow the court to screen out marginal or redundant cases and busybody litigants, while ensuring that it receives the submissions necessary to resolve disputes. A more relaxed and flexible approach has evolved in the public law context where different concerns arise, including the need to ensure that the exercise of public authority is not shielded from judicial scrutiny.

[22] The criteria governing the grant of public interest standing were set out by the Supreme Court in *Downtown Eastside*. The court asks three questions:

> (i) whether the claimant has advanced a serious and justiciable issue,
>
> (ii) whether the claimant has a genuine interest in the issue, and
>
> (iii) whether, in light of all the circumstances, the proposed suit is a reasonable and effective means of bringing the issue before the courts.

[23] The problem with enumerating criteria is that they often come to be understood as boxes that must be ticked rather than simply relevant considerations. The Supreme Court warned against this approach in *Downtown Eastside*, at para. 36, emphasizing that the criteria were to be understood as “interrelated considerations to be weighed cumulatively, not

individually, and in light of their purposes" – purposes that include not only preserving limited judicial resources but also ensuring that government action can be subject to judicial scrutiny.

[24] The application judge applied two of the three criteria stringently, concluding that the appellant fell short of both the "genuine interest" and the "reasonable and effective means" criteria. She found that there was insufficient evidence in the record to determine whether the appellant has a genuine interest in the matter and that even if it did, the challenge "would better be brought to court by a party that wishes to assert a cause of action that is extinguished by s. 17(2) [of *ROPA*]". With respect, each of these conclusions is in error.

[25] First, there is no doubt that the appellant has a genuine interest in the litigation. The bar is not high. A genuine interest is concerned with whether a person "has a real stake in the proceedings or is engaged with the issues they raise": *Downtown Eastside*, at para. 43. The appellant is an organization that includes a wide range of citizens and community groups, all of whom are deeply concerned with the Ontario Place redevelopment. If the appellant does not have a genuine interest in challenging the constitutionality of *ROPA*, it is difficult to see how anyone would. Although the appellant does not have a claim that is affected by the immunity provisions in *ROPA*, those provisions are integral to the

redevelopment of Ontario Place and the appellant clearly has a genuine interest in that redevelopment.

[26] Second, the issue for the application judge was whether the application was *a* "reasonable and effective means to bring the challenge to court", not whether there was a *better* means of doing so. The issues raised in this application involve questions of law. Their resolution does not depend on evidence from someone who may be directly affected – someone whose cause of action was extinguished. Public interest standing was designed to liberalize the law, moving away from traditional requirements that limited the grant of standing. The application is a reasonable means of litigating the issues and the appellant's organization is fully capable of addressing the issues raised in the application.

[27] The appellant is not a mere busybody, nor could it be said that permitting its application to proceed would waste judicial resources. Indeed, given the manner in which the application unfolded, no judicial economy was realized as a result of the decision to deny public interest standing: the application judge went on to consider the substantive application and the entire matter is now before this court on appeal.

[28] In summary, the application judge erred in denying the appellant public interest standing. It follows that the appellant was entitled to have its application determined on the merits.

(2) Section 17 of *ROPA* does not violate s. 96 of the *Constitution Act, 1867*

The core jurisdiction of the superior courts

[29] The legal principles governing s. 96 of the *Constitution Act*, *1867* were discussed at length in *Poorkid* and it suffices to summarize them here.

[30] Section 96 establishes that the authority to appoint superior court judges belongs exclusively to the federal government. This authority has generated a body of doctrine designed to protect the special status of the superior courts by ensuring that their decision-making authority is not usurped, whether by transferring their core powers to inferior courts and administrative tribunals or removing them altogether.

[31] The “core jurisdiction” of the superior courts has always been understood as a narrow concept that includes “only critically important jurisdictions which are essential to the existence of a superior court of inherent jurisdiction”: *Reference re Amendments to the Residential Tenancies Act (N.S.)*, [1996] 1 S.C.R. 186, at para. 56. The Supreme Court re-emphasized the narrow character of the superior courts’ core jurisdiction in *Reference re Code of Civil Procedure (Que.), art. 35*, 2021 SCC 27, [2021] 2 S.C.R. 291. The majority explained that the core jurisdiction is concerned with the essential business of a superior court: “review of the legality and constitutional validity of laws, enforcement of its orders, control over its own

process, and its residual jurisdiction as a court of original general jurisdiction": at para. 68.

[32] The appellant argues that *ROPA* violates the core jurisdiction of the superior courts in two distinct ways: first, by denying judicial review remedies, and second, by removing the superior courts' ability to grant any remedies under any statute, effectively establishing absolute Crown immunity from liability. I will address each of these arguments in turn.

ROPA does not remove judicial review remedies

[33] Neither Parliament nor provincial legislatures can remove the court's ability to conduct judicial review, as the Supreme Court explained in *Crevier v. A.G. (Québec) et al.*, [1981] 2 S.C.R. 220, at pp. 236-37, and affirmed in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] 4 S.C.R. 653, at para. 24. But *ROPA* does not do so. The continued availability of judicial review is clear from a plain reading of its provisions.

[34] Section 17(3) of *ROPA* precludes various proceedings from being brought, but s. 17(4) exempts an "application for judicial review" from its operation. An "application for judicial review" is a concept established in the *Judicial Review Procedure Act*, R.S.O. 1990, c. J.1 *(*the "*JRPA*"*)*. That Act, which standardizes the procedure governing judicial review of administrative action, permits a single application to be brought for relief in the nature of the prerogative writs –

mandamus, prohibition, and *certiorari*, the forms of relief historically available to control the exercise of public authority. In addition, declarations and injunctions may be granted on an application for judicial review where the exercise of a "statutory power of decision" is concerned: *JRPA*, s. 2(1).

[35] The appellant argues that s. 17(4) of *ROPA* fails to preserve judicial review because it does not exclude s. 17(2), which precludes all remedies against the Crown arising out of any action taken in connection with *ROPA*. The appellant says that all remedies otherwise available under the *JRPA* are ousted, along with any other statutory remedies. According to the appellant, where the Legislature intended to preserve a remedy, it did so specifically, as for example with causes of action arising from aboriginal and treaty rights: *ROPA*, s. 17(7). The Legislature did not specifically preserve judicial review remedies and so must be taken to have ousted them.

[36] There is no merit to this argument.

[37] Section 17(4) preserves judicial review remedies because s. 17(2) expressly states that it does. Section 17(2) does not extinguish all remedies; it extinguishes remedies "[e]xcept as otherwise provided under section [17(4)]". Section 17(4) states that the broad preclusion of proceedings under s. 17(3) "does not apply with respect to an application for judicial review", without itself referring to s. 17(2). Thus, s. 17(4) exempts judicial review *proceedings* from the otherwise complete

bar on proceedings, and in conjunction with the terms of s. 17(2) exempts judicial review *remedies* from the otherwise complete bar on remedies. In this way, *ROPA* preserves applications for judicial review and the remedies contemplated by the *JRPA*.

ROPA does not remove the core jurisdiction of the courts

[38] The appellant accepts that it is open to the Legislature to exclude some remedies and damages but argues that s. 17(2) is different in kind – "completely unprecedented" – because it excludes all remedies and liabilities under *every* Ontario statute and regulation. The appellant submits that a line must be drawn between constitutionally permissible and impermissible exclusions of remedies and liabilities. Wherever the line is to be drawn, *ROPA* is necessarily on the wrong side of it because it removes *all* remedies and liabilities. The result, according to the appellant, is complete governmental immunity, something that the Supreme Court described as "intolerable" in *Just v. British Columbia*, [1989] 2 S.C.R. 1228, at p. 1239. Finally, the appellant argues that *Power* holds that Crown immunity is not absolute and that damages must be available under s. 24(1) of the *Charter*. Section 17(2) eliminates all damages and so directly offends that proposition.

[39] These arguments must be rejected.

[40] The fundamental error underlying the appellant's position arises out of a confusion between amending or abolishing a cause of action, which the Legislature

is free to do, and interfering in the adjudication of an action or the exercise of the court's inherent powers, which the constitution prohibits.

[41] This point was made plain in *Poorkid*. That case concerned legislation that established a screening mechanism that made it more difficult to sue the Crown in respect of misfeasance in public office or bad faith in the exercise of public duties or functions. Although that screening mechanism was a procedural provision rather than an immunity from suit, *Poorkid* made clear that s. 96 of the *Constitution Act, 1867* "immunizes neither the substantive content of the law nor the procedure governing litigation against legislative reform": at para. 48. The Legislature is free to establish, amend, or repeal causes of action in addition to establishing procedural requirements governing litigation unless doing so usurps the core jurisdiction of the superior courts – and *that* occurs only if the superior courts are prevented from serving as courts of inherent general jurisdiction: *Poorkid*, at para. 45.

[42] *ROPA* does not prevent the superior courts from serving as courts of general jurisdiction. It does not usurp their core adjudicative function. It does not transfer or remove any of their core functions. It simply immunizes the Crown against liability in respect of the Ontario Place redevelopment and removes the redevelopment from legislation to which it would otherwise be subject. This is neither exceptional nor constitutionally objectionable. Section 96 does not

preclude the Legislature from extinguishing a cause of action, whether legislative or common law, against the Crown or a private individual, nor does it preclude the establishment of a more comprehensive immunity.

[43] Nor does the Supreme Court's decision in *Just* preclude comprehensive Crown immunity. The Supreme Court's comment about Crown immunity from tortious liability having become "intolerable" referred to the reason for the passage of legislation establishing Crown liability. The court made similar comments in *Nelson (City) v. Marchi*, 2021 SCC 41, [2021] 3 S.C.R. 55, at para. 38, describing complete Crown immunity as "untenable". These comments cannot be read out of context. Neither *Just* nor *Marchi* limits the Legislature's authority to establish immunities.

[44] Finally, the Supreme Court's decision in *Power* is irrelevant to this case. *Power* is not a s. 96 case. *Power* concerns the limited circumstances in which the state may be liable for damages under s. 24(1) of the *Charter* for enacting legislation that violates the *Charter*. Section 17(2) of *ROPA* does not purport to immunize the Ontario government from liability for acts in breach of the constitution and could not do so in any event.

[45] In summary, *ROPA* immunizes the Crown from liability in respect of the Ontario Place redevelopment by extinguishing statutory and common law causes of action while preserving the availability of judicial review proceedings and

remedies. It does not interfere with the core jurisdiction of the superior courts and does not violate s. 96 of the *Constitution Act*, *1867*.

(3) The appellants have not established that a public trust doctrine exists in Canadian law or that it would apply in any event

[46] The appellant argues that *ROPA* breaches the public trust. To succeed in this argument, it must first establish that a public trust doctrine exists. Although the concept of a public trust is not unknown, no Canadian court has ever declared a statute to be in breach of the public trust.

[47] The difficulties with the appellant's submission are many. The appellant did not offer a definition of the public trust doctrine in its factum or in oral argument. The appellant acknowledges that the Supreme Court did not determine issues related to the public trust in *British Columbia v. Canada Forest Products Ltd*., 2004 SCC 38, [2004] 2 S.C.R. 74 ("*Canfor*"). Nevertheless, it asserts that public trust principles form part of Canadian law.

[48] According to the appellant, public trust principles have been applied by American and Indian courts. The intervener cites American decisions as well as decisions of Indian, Pakistani, and Kenyan courts to the same effect. There is no way for this court to assess the state of the law in the various jurisdictions based simply on these decisions, nor is it clear why decisions from these jurisdictions are relevant to the development of Canadian law in any event.

[49] Both the appellant and the intervener assert that the public trust concept is immanent in the law – rooted in the common law – but offer little in support of this assertion. They say that the Supreme Court's decision in *Canfor* left the door open to the application of the public trust doctrine, but that case concerned a claim for environmental compensation *by the Crown* against a private actor, not a claim against the Crown. Although Binnie J. observed that "[t]he notion that there are public rights in the environment … has deep roots in the common law", he stated clearly that those rights "reside in the Crown": *Canfor*, at para. 74. The same is true of the state's *parens patriae* jurisdiction.

[50] *Canfor* does no more than acknowledge that although there is no legal barrier to the Crown suing for environmental damage to public lands, there are important and novel policy questions that would have to be addressed. These include the Crown's potential liability for *inactivity* in the face of threats to the environment, as well as "the existence or non-existence of enforceable fiduciary duties owed to the public by the Crown in that regard". The Supreme Court concluded that *Canfor* was not a proper case for it to consider these issues.

[51] *Canfor* may not have precluded the development of a public trust doctrine, but it cannot be said to have encouraged the idea. In any event, the court appears to have presumed that the doctrine was limited to environmental matters – not buildings or cultural works.

[52] Developments since *Canfor* offer no support for a Canadian public trust doctrine. Indeed, two attempts to establish the doctrine have been struck out at the Federal Court of Appeal. In *Burns Bog Conservation Society v. Canada*, 2014 FCA 170, 464 N.R. 187, the court struck a claim seeking an order compelling the Crown to protect a peat bog and an injunction halting development based on a public trust or fiduciary duty. In *La Rose v. Canada*, 2023 FCA 241, 488 D.L.R. (4th) 340, the court struck out a statement of claim seeking remedies for Canada's failure to address climate change. Justice Rennie stated clearly that the Attorney General's capacity to represent the public interest, as described in *Canfor*, is not a substantive, enforceable obligation owed to the public at large. The public trust doctrine provides a conceptual explanation of the Crown's capacity to sue on behalf of the public, but "it is an entirely different proposition to say that the Crown can be compelled to fulfill some form of a *parens patriae* jurisdiction which would be defined by the court": *La Rose*, at para. 60. He went on to note the "host of conceptual problems" a trust-like obligation on the Crown would entail: at para. 61.

[53] The most that can be said for the appellant's position, then, is that a public trust doctrine – a doctrine of an unspecified nature and application – might one day be adopted into Canadian law. The appellant thinks that this is a normatively desirable outcome that should occur but offers no basis that would permit this court to accede to its submission.

[54] The intervener appears to put this issue on a quasi-constitutional plane, asserting that the public trust is a “fundamental norm of justice” rooted in the same values that underpin s. 7 of the *Charter*. According to the intervener, the right to a healthy environment exists in the constitution and the public trust is a means by which the public can require the government to comply with its fundamental responsibilities to protect natural resources, the environment, and cultural heritage. Finally, the intervener asserts that recognition of the public trust is consistent with Canada’s international obligations.

[55] These submissions fail to address a number of fundamental problems with the public trust concept. Is a public trust similar to a traditional trust? Does the doctrine depend on Crown ownership or does Crown ownership displace it? How and when does a public trust arise? Can it apply to “cultural heritage” or buildings, as opposed to natural resources or the environment? If Ontario Place is subject to a public trust, did the trust arise when it was built, or at some later date when it developed cultural value or significance? Neither the appellant nor the intervener could answer any of these basic questions.

[56] Finally, I note that the appellant seeks a declaration not that the *Crown* is in breach of the public trust but that *various provisions of ROPA* are – specifically, ss. 9, 10, 11, and 17. Even assuming that a public trust doctrine exists, I do not see how democratically enacted legislation could be said to breach it, nor do I see

the point of a declaration given that the doctrine has no constitutional force, as the appellant concedes.

[57] In summary, the appellant has not established that a public trust doctrine exists in Canadian law or that it would apply to *ROPA* if it did. There is no basis to issue the requested declaration.

DISPOSITION

[58] I would dismiss the motion to introduce fresh evidence and would dismiss the appeal.

[59] I see no reason why the Crown should be denied costs on a partial indemnity basis in accordance with the usual practice. Although the appellant succeeded in establishing public interest standing, it does not follow that it was entitled to pursue its appeal on a cost-free basis. That said, the grant of public interest standing is a relevant factor to consider in determining the appropriate quantum of costs: *Yaiguaje v. Chevron Corporation*, 2018 ONCA 472, 141 O.R. (3d) 1, leave to appeal refused, [2018] S.C.C.A. No. 255, at paras. 87-88.

[60] The Crown reduced its costs request to $25,000. I am satisfied this is reasonable in the circumstances, and it is less than the substantial indemnity costs the appellant requested in the event that it succeeded on the appeal. Accordingly,

I would award the Crown costs of $25,000, all inclusive, payable by the appellant.

No costs are awarded to, or against, the intervener.

Released: March 11, 2025 G.H.

Grant Huscroft J.A.

I agree. A. Harrison Young J.A.

I agree B. Bennett J.A.