Court of Appeal File No.: COA-24-CV-0838
Court File No.: CV-24-00719861-0000

COURT OF APPEAL FOR ONTARIO

B E T W E E N :

ONTARIO PLACE PROTECTORS

Appellant

- and -

HIS MAJESTY THE KING IN RIGHT OF ONTARIO and ATTORNEY GENERAL FOR ONTARIO

Respondents

FACTUM OF THE APPELLANT

September 16, 2024

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Contents

PART I: THE APPELLANT, COURT & RESULT

1. The applicant/appellant Ontario Place Protectors ("OPP") is a corporation. The respondents represent the Province of Ontario (or the "Crown"). OPP brought an application in the Superior Court of Justice concerning the *Rebuilding Ontario Place Act, 2023*, S.O. 2023, c. 25, Sched. 21 ("ROPA"). The application was dismissed[1] (the "Decision"), without costs (the "Costs Decision").[2]

PART II: OVERVIEW

2. Section 17 of ROPA purports to exclude, amongst other things, most remedies that could be sought pursuant to Ontario law and numerous legislative protections developed over many decades. The appellant OPP respectfully submitted these provisions (1) are unconstitutional as they infringe on the core jurisdiction granted to Superior Courts under s. 96 of the *Constitution Act, 1867*, and (2) breach the doctrine of public trust. The Court below found that OPP did not have standing to bring the application, and in the event this conclusion was incorrect further considered the merits of the application.[3]

3. The appellant respectfully submits the Court below erred in three fundamental ways. First, the Court did not properly apply the test for public interest standing. Second, the Court did not correctly apply the law regarding the removal of s. 96 Superior Courts' core jurisdiction under ROPA. Third, the Court did not properly apply the law regarding the doctrine of public trust as it applies to ROPA.

4. For all of these reasons, the appellant respectfully submits this appeal should be allowed.

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[1] *Ontario Place Protectors v. HMK in Right of Ontario,* 2024 ONSC 4194.
[2] Appeal Book and Compendium of the Appellant, Tab C, *Ontario Place Protectors v. His Majesty the Queen in Right of Ontario* (Costs Decision).
[3] *Ontario Place Protectors v. HMK in Right of Ontario,* 2024 ONSC 4194 at para. 2.

PART III: FACTS

5. ROPA was tabled one week after a notice of application was served by Ontario Place for All ("OP4A") seeking to challenge *Environmental Assessment Act* work done at the site. ROPA was passed quickly, with a First Reading November 27, 2023, Second Reading and Third Reading December 5, 2023, and Royal Assent December 6, 2023. The respondents in that proceeding brought a motion to quash the application for judicial review, which was successful.[4] At the same time, the Divisional Court found OP4A to be a public interest litigant and awarded no costs.[5] In the OP4A case, the Divisional Court also specifically noted there was no challenge to the constitutionality of ROPA.[6] As a result, OPP proceeded with its application.

ROPA Section 17

6. Sections 9, 10 and 11 of ROPA exempt the Ontario Place lands from the *Environmental Assessment Act*, the *Ontario Heritage Act* and noise control by the City of Toronto subject to further provincial regulation, which has not been enacted.[7]

7. Subsection 17(1) of ROPA applies to "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

[4] *Ontario Place for All Inc. v.* Ontario (Ministry of Infrastructure), [2024] O.J. No. 1313 (Div. Ct.); *Ontario Place for All Inc. v. Ontario (Ministry of Infrastructure)*, [2024] O.J. No. 2597 (Div. Ct.).
[5] *Ontario Place for All Inc. v. Ontario (Ministry of Infrastructure)*, [2024] O.J. No. 2597 (Div. Ct.) at paras. 26 & 27.
[6] *Ontario Place for All Inc. v. Ontario (Ministry of Infrastructure),* [2024] O.J. No. 2597 (Div. Ct.) at para. 18.
[7] *Rebuilding Ontario Place Act,* 2023, S.O. 2023, c. 25, Sched. 21 at Sections 9, 10 and 11.

other conduct occurred before or after section 2 of Schedule 2 to the New Deal for Toronto Act, 2023 came into force."[8]

8. The balance of s. 17 of ROPA generally extinguishes causes of action, bars proceedings and denies any remedy under any statute… "available to any person in connection with anything referred to in subsection (1) against any person referred to in that subsection" with the purported exceptions of judicial review and s. 35 of the *Constitution Act, 1982* rights:

> **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.
>
> **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*.

[8] *Rebuilding Ontario Place Act,* 2023, S.O. 2023, c. 25, Sched. 21 at Section 17(1) and 17(2).

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.[9]

The Affidavit Evidence

9. The appellant filed the following affidavits in support of its application:

(i) Diane Chin – Architectural Conservancy of Ontario[10]

(ii) Elsa Lam – Editor – Canadian Architect Magazine[11]

(iii) Elizabeth Pagliacolo – Editor in Chief – Azure Magazine[12]

(iv) Ian Chodikoff – Architect, MArch, MAUD, OAA, FRAIC[13]

(v) Joël León – Executive Director – Toronto Society of Architects[14]

(vi) John Lorinc – Journalist[15]

(vii) Javier Ors Ausín – Program Manager – World Monuments Fund[16]

(viii) John Sewell – Former Mayor – City of Toronto[17]

(ix) Lynn Morrow – The Friends of the Golden Horseshoe[18]

(x) Mathieu Dormaels – President – ICOMOS Canada[19]

(xi) Norman Di Pasquale – Co-Chair – Ontario Place for All[20]

(xii) Patricia Kell – Executive Director – National Trust for Canada[21]

(xiii) Sandford Borins – Professor of Public Management Emeritus – U of T[22]

(xiv) Tony Morris – Conservation Policy and Campaigns Director – Ontario Nature[23]

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[9] *Rebuilding Ontario Place Act,* 2023, S.O. 2023, c. 25, Sched. 21 s. 17.
[10] Appeal Book and Compendium of the Appellant, Tab E, Tab 2, Diane Chin Affidavit at para. 1.
[11] Appeal Book and Compendium of the Appellant, Tab E, Tab 3, Elsa Lam Affidavit at para. 1.
[12] Appeal Book and Compendium of the Appellant, Tab E, Tab 4, Elizabth Pagliacolo Affidavit at para. 1.
[13] Appeal Book and Compendium of the Appellant, Tab E, Tab 5, Ian Chodikoff Affidavit at para. 1.
[14] Appeal Book and Compendium of the Appellant, Tab E, Tab 6, Joël León Affidavit at para. 1.
[15] Appeal Book and Compendium of the Appellant, Tab E, Tab 7, John Lorinc Affidavit at para. 1.
[16] Appeal Book and Compendium of the Appellant, Tab E, Tab 8, Javier Ors Ausín Affidavit at para. 1.
[17] Appeal Book and Compendium of the Appellant, Tab E, Tab 9, John Sewell Affidavit at para. 1.
[18] Appeal Book and Compendium of the Appellant, Tab E, Tab 10, Lynn Morrow Affidavit at para. 1.
[19] Appeal Book and Compendium of the Appellant, Tab E, Tab 11, Mathieu Dormaels Affidavit at para. 1.
[20] Appeal Book and Compendium of the Appellant, Tab E, Tab 12, Norman Di Pasquale Affidavit at para. 1.
[21] Appeal Book and Compendium of the Appellant, Tab E, Tab 13, Patricia Kell (unsworn) Affidavit at para. 1.
[22] Appeal Book and Compendium of the Appellant, Tab E, Tab 14, Sandford Borins Affidavit at para. 1.
[23] Appeal Book and Compendium of the Appellant, Tab E, Tab 15, Tony Morris Affidavit at para. 1.

(xv) Charles A. Birnbaum – President – The Cultural Landscape Foundation[24]

(xvi) Catherine Nasmith – Heritage Architect - Director of Ontario Place Protectors[25]

(xvii) Cynthia Wilkey – former Co-Chair for Ontario Place for All[26]

10. This evidence highlights the issues giving rise to the appellant's claim of public trust:

Heritage/Culture/Architecture

i. "Ontario Place is recognized as a Provincial Heritage Property of Provincial significance - the highest of all possible designations, given only to sites worthy of the utmost protection. Ontario Place has been internationally recognized as a globally significant example of 20th Century architecture and landscape design by organizations like The Cultural Landscape Foundation, Docomomo, the National Trust for Canada, and the World Monuments Fund, which in 2020 placed it on a level with the Notre Dame Cathedral and the Sacred Valley of the Incas." Diane Chin – Architectural Conservancy of Ontario[27]

ii. "Every two years World Monuments Fund identifies 25 heritage places from around the world which are at risk of loss or serious damage. We publish these 25 sites in a periodical called Watch and our website: www.wmf.org. In 2020, WMF identified Ontario Place as a highly significant monument of the 20th century and included it in the 2020 Watch to put the international spotlight on its important social and heritage values and its risk of disappearance. It is the sole Canadian site included in that list, which also included the Cathedral of Notre Dame in Paris, the Sacred Valley of the Incas in Peru, and Easter Island in Chile. We have only placed three Canadian sites on our Watch list over the more than 20 years of the Watch existence …. I believe the loss of Ontario Place would be a devastating loss not only to the Canadian people, but also to the international community." Javier Ors Ausín – Program Manager – World Monuments Fund[28]

iii. "Ontario Place is considered one of Canada's greatest post WWII cultural heritage landscape achievements and a precedent for innovation and urban renewal on our waterfronts. It is a designated property under the *Ontario Heritage Act* and has been recognized by the highest national and international heritage authorities including ICOMOS, the Cultural Landscape Foundation and the National Trust for Canada." Lynn Morrow – The Friends of the Golden Horseshoe[29]

iv. "Ontario Place is a major heritage site, a testimony of Toronto's development in the 20th century, which adds to its uniqueness, and as such deserve[s] the highest standard

[24] Appeal Book and Compendium of the Appellant, Tab F, Tab 5, Charles A. Birnbaum Affidavit at para. 1.
[25] Appeal Book and Compendium of the Appellant, Tab F, Tab 2, Catherine Nasmith Affidavit at para. 1.
[26] Appeal Book and Compendium of the Appellant, Tab F, Tab 3, Cynthia Wilkey Affidavit at para. 1.
[27] Appeal Book and Compendium of the Appellant, Tab E, Tab 2, Diane Chin Affidavit, Exhibit A, at pg. 11.
[28] Appeal Book and Compendium of the Appellant, Tab E, Tab 8, Javier Ors Ausin Affidavit, Exhibit A, at pg. 119.
[29] Appeal Book and Compendium of the Appellant, Tab E, Tab 10, Affidavit of Lynn Morrow, Exhibit A, at pg. 141.

of protection. Its architectural, cultural and social value are of great importance for the city, the province of Ontario and Canada." Mathieu Dormaels – President – ICOMOS Canada[30]

v. "The preservation and continued use of heritage places, including Ontario Place, provide economic, social, and environmental benefits to communities. They are places of gathering, self-definition and of shared memory. They contribute to our economy by encouraging tourism, creating green jobs and generating tax revenue. Heritage conservation reduces waste, cuts carbon, and builds climate resilience in communities. Heritage conservation is about meeting the needs of communities today, not just preserving something that existed in the past." Patricia Kell – Executive Director – National Trust for Canada[31]

Environmental

vi. "The significance of preserving parklands as an element of Ontario Place was voiced through various applications: the preservation of parks for family friendly public use; a nature haven within the city; habitat preservation for animals; ecology research and education; conservation activities; and an evergreen forest that echoes the landscape of Ontario." Joël León – Executive Director – Toronto Society of Architects[32]

vii. "Ontario Place contains an ecosystem that has evolved on the site over the last 50 years, which was an intentional outcome of the original landscape design. The west island in particular has roughly 800 trees which provide habitat for various fauna – including migratory birds – and significant shoreline with potential fish habitat. The lack of an environmental assessment has avoided the needed environmental analyses – including in relation to climate change impacts from the nature/size of the spa design." Lynn Morrow – The Friends of the Golden Horseshoe[33]

viii. "Ontario Place is an important stop over for migratory birds, providing critical green space in a heavily developed urban environment. It has become a natural retreat for a wide variety of wildlife, including beavers and mink. Community science data has documented over 170 species of birds, including 15 species listed as species at risk in Ontario. The proposed plans for the west island of Ontario Place would see over 850 mature trees cut down and all this sensitive habitat for numerous species destroyed." Tony Morris – Conservation Policy and Campaigns Director – Ontario Nature[34]

ix. "On the West Island of Ontario Place, a rare landscape has thrived for five decades. Every one of its trees, totalling 840 with over 600 mature trees, will be cut down. Michael Hough's landscape of lagoons and waterways will be filled in, destroying the aquatic and wildlife that has made its home there. Filling these lakes will allow for

[30] Appeal Book and Compendium of the Appellant, Tab E, Tab 11, Mathieu Domaels Affidavit, Exhibit A, at pg. 147.
[31] Appeal Book and Compendium of the Appellant, Tab E, Tab 13, Patricia Kell Affidavit, Exhibit A, at pg. 163.
[32] Appeal Book and Compendium of the Appellant, Tab E, Tab 6, Joël León Affidavit, Exhibit A, at pg. 68.
[33] Appeal Book and Compendium of the Appellant, Tab E, Tab 10, Lynn Morrow Affidavit, Exhibit A, at pg. 141.
[34] Appeal Book and Compendium of the Appellant, Tab E, Tab 15, Tony Morris Affidavit, Exhibit A, at pg. 180.

Therme to have 12 extra consolidated acres for its mega-spa, which will also require a multi-tier car garage costing the province over $400 million. Already underway, this demolition of a thriving natural habitat, a green public space, and a heritage landscape of great cultural significance is anathema to any progressive vision that our province should be espousing, one that should safeguard our environment and promote walkability, accessibility and public use of public land." Elizabeth Pagliacolo – Editor in Chief – Azure Magazine[35]

Noise

x. "Under ROPA, the 20,000-person venue (operated under a 95-year lease) would be exempt from municipal noise bylaws." Elsa Lam – Editor – Canadian Architect Magazine[36]

Public Consultation

xi. "In a process that has heretofore been characterized by disregard or outright disdain for public consultation and input, ROPA removes the redevelopment of Ontario Place from the consequences of all past, present, and future forms of public concern and scrutiny—representing a flattening blow to any sense of trust between the government and the public in this matter. Moreover, it sets a dangerous precedent that similar powers may be claimed, in the future, for any future provincially led redevelopment that attracts public discussion and debate" "There has been a lack of transparency and meaningful public consultation in key decisions concerning the site, and an appearance that the government is showing preferential treatment to private development interests over public interests … The introduction of Bill 154, which, among other things, exempts the Ontario Place redevelopment from going through design review panels and public consultations, seems to be a heavy-handed move intended, if not to entirely silence public discussion and debate, to allow the government to completely disregard public discussion and the scrutiny of everyone who is not directly part of the province's own redevelopment team. It prevents journalists, architectural experts, municipal authorities, planning experts, and the public at large from having any role whatsoever in the future for this major parcel of waterfront parkland" Elsa Lam – Editor – Canadian Architect Magazine[37]

xii. "Ontario Place is a cultural asset that belongs to all Ontarians and public consultation and engagement need to play a leading role in setting the direction for its future and ensuring it is representative and reflective of our province's diversity, ideals and dreams." Joël León – Executive Director – Toronto Society of Architects[38]

xiii. "Bill 154 also states that no legal action may be taken against the government or any of its members for anything done regarding Ontario Place. The Bill was approved in a

[35] Appeal Book and Compendium of the Appellant, Tab E, Tab 4, Elizabeth Pagliacolo Affidavit, Exhibit A, at pg. 32.
[36] Appeal Book and Compendium of the Appellant, Tab E, Tab 3, Elsa Lam Affidavit, Exhibit A, at pg. 22.
[37] Appeal Book and Compendium of the Appellant, Tab E, Tab 3, Elsa Lam Affidavit, Exhibit A, at pg. 18.
[38] Appeal Book and Compendium of the Appellant, Tab E, Tab 6, Joël León Affidavit, Exhibit A, at pg. 53.

single day without public hearings and without debate in the Legislative Assembly. The province can proceed in spite of any laws, exempting itself from any court oversight. Extraordinary." John Sewell – Former Mayor – City of Toronto[39]

Precedent

xiv. "By exempting Ontario Place from the protection of the Ontario Heritage Act, the Rebuilding Ontario Place Act not only threatens one of Canada's most important contributions to modern design, it threatens all provincially owned heritage properties." Diane Chin – Architectural Conservancy of Ontario[40]

xv. "By suspending Ontario Law that would ordinarily apply to Ontario Place, ROPA shockingly extinguishes the opportunity for Ontarians to hold our government accountable for its actions with respect to this very exceptional cultural heritage asset. Given the Government of Ontario's actions to date there are serious reasons to be concerned about the effect of ROPA on Ontario Place and as a precedent for abuse of legislative power." Norman Di Pasquale – Co-Chair – Ontario Place for All[41]

Public Trust

xvi. "If a government can break its own laws and then avoid any challenge to such actions by passing a new law saying the old one never applied, it makes those laws meaningless. It is our view that the manner in which the Ontario Government has proceeded with its Ontario Place scheme both before and specifically in the enactment of Bill 154 is unprecedented and has broken the public trust." Lynn Morrow – The Friends of the Golden Horseshoe[42]

11. The respondent raised numerous objections to this evidence, including that it contained improper opinion, was not properly sworn, and was irrelevant. The Court, however, stated:

> [10] In oral argument, the applicant submitted that the opinions contained in the affidavit materials are not there for the truth of their contents. Rather, the affidavits that express opinions are submitted to demonstrate that there is a high level of concern and public engagement about the legislation and the proposed development. It submits that the facts included in the materials, such as that the site has hundreds of trees and is of architectural and cultural significance, are not contentious.
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> [11] Given the way the challenge is framed, there is little that turns on the evidence. Despite the evidentiary frailties, I am prepared to accept that Ontario Place enjoys some renown, has

[39] Appeal Book and Compendium of the Appellant, Tab E, Tab 9, John Sewell Affidavit, Exhibit A, at pg. 132.
[40] Appeal Book and Compendium of the Appellant, Tab E, Tab 2, Daine Chin Affidavit, Exhibit A, at pg. 11.
[41] Appeal Book and Compendium of the Appellant, Tab E, Tab 12, Norman Di Pasquale Affidavit, Exhibit A, at pg. 152.
[42] Appeal Book and Compendium of the Appellant, Tab E, Tab 10, Lynn Morrow Affidavit, Exhibit A, at pg.138.

received awards and designations, and that there are people and groups who care deeply about its fate.[43]

PART IV: ISSUES AND LAW

STANDARDS OF REVIEW

12. The standards of review are well established. Errors of fact or mixed fact and law are reviewed on a standard of palpable and overriding error, or where discretion is exercised a clearly unreasonable result. Errors of law are reviewed on a standard of correctness.[44] An error of law may also be extricable from an error of mixed fact and law. Errors of law include findings of fact in the absence of evidence; errors with respect to the legal effect of the facts as found; assessing evidence based on an incorrect legal principle; or failing to consider all of the relevant evidence.[45] A failure to provide proper reasons is also an error of law.[46] Here, Issue #1 (Standing) is a discretionary decision reviewable on the general standards cited above; Issue #2 (s. 96) raises questions of law reviewable on a standard of correctness, and; Issue #3 (Public Trust) raises matters of mixed law and fact reviewable on the general standards set out above.

ISSUE #1: OPP MEETS THE TEST FOR STANDING

13. On the issue of standing, the Court held:

> [13] There is no evidence in the record that the applicant's private rights are at stake or that it is specially affected by the legislation it impugns. Therefore, it would have to seek public interest standing.
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> [14] This matter came on quickly. The applicant's record was served five days after the case conference, which itself occurred only three weeks before the hearing date. The respondent had no information about the evidence that would be submitted in relation to the applicant's standing until it received the application records on July 3, 2024. It therefore

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[43] *Ontario Place Protectors v. HMK in Right of Ontario,* 2024 ONSC 4194 at paras. 10-11.
[44] *Housen v. Nikolaisen*, 2002 SCC 33 (CanLII), [2002] 2 SCR 235 at paras. 27-33.
[45] *Chatsikiriakos v. Kilislian*, 2020 ONCA 378 at para. 18; *CAMPP Windsor Essex Residents Association v. Windsor (City),* 2020 ONSC 4612 (CanLII) at paras. 31-33.
[46] *Ontario College of Teachers v Bouragba,* 2019 ONCA 1028 (CanLII) at para. 36; *Baker v. Canada,* [1999] 2 S.C.R. 817 at paras 37-39 and 43; Sara Blake, *Administrative Law in Canada*; 6th ed. 2017, Lexis Nexis at p. 101, para 2.293.

argues it had no basis upon which to make inquiries, including no basis to ask whether the applicant was even a proper legal entity, until it received the record. The applicant states that it had no reason to believe standing was an issue until it received the respondent's factum on July 17, 2024.

[15] It is an applicant's obligation to make its case for standing: *Downtown Eastside Sex Workers United Against Violence Society v. Canada (Attorney General),* 2012 SCC 45, [2012] 2 S.C.R. 524, at para. 37. Even if a respondent does not raise the issue of standing, an applicant should expect that the court will raise the issue. Rule 14 creates a procedural mechanism for applications to be brought; it does not create free-standing substantive rights for individuals or organisations to commence litigation regarding legislation they find objectionable. I do not accept the applicant's submission that the entire purpose of the law of standing is to ensure access to justice. Indeed, the applicant concedes that not every person or party has standing to launch every imaginable claim or application. In the words of the Supreme Court of Canada in *Downtown Eastside*, at para. 1:

> The law of standing answers the question of who is entitled to bring a case to court for a decision. Of course it would be intolerable if everyone had standing to sue for everything, no matter how limited a personal stake they had in the matter. Limitations on standing are necessary in order to ensure that courts do not become hopelessly overburdened with marginal or redundant cases, to screen out the mere "busybody" litigant, to ensure that courts have the benefit of contending points of view of those most directly affected and to ensure that courts play their proper role within our democratic system of government …

[16] The law of standing is designed to balance access to courts with the preservation of judicial resources, and to ensure that proper parties are before the court to argue matters. It both facilitates and limits the granting of standing. If an applicant wishes to obtain public interest standing, it needs to demonstrate that it has a genuine interest in the matter at issue, that the application is a reasonable and effective means of bringing the case to court, and that the case raises a serious justiciable issue: *Downtown Eastside*, at para. 20.

[17] There are factors that militate in favour of granting standing and factors that militate in favour of limiting it. Giving effect to the principle of legality and ensuring access to justice are factors that favour granting standing. Factors that favour limiting standing are efficiently allocating scarce resources and screening out "busybody" litigants, ensuring the courts have before them contending points of view of those most directly affected, and ensuring the courts play their proper role within our democratic system: *British Columbia (Attorney General) v. Council of Canadians with Disabilities*, 2022 SCC 27, 470 D.L.R. (4th) 289, at paras. 29-30.

[18] I do not accept the applicant's argument that to require applicants to adduce evidence and make argument to satisfy the test for standing is an undue burden. It is the burden parties are required to fulfill if they wish to involve the courts in their disputes as a public interest litigant. I agree with Centa J. that public interest standing is not to be granted lightly by the courts: *Fair Change v. His Majesty the King in Right of Ontario*, 2024 ONSC 1895, 170 O.R. (3d) 561, at para. 26.

> [19] There is insufficient evidence in the record about the applicant to determine whether it has a genuine interest in the matter. The applicant asks the court to presume that it does, given the support it was able to garner in its affidavit materials. This is insufficient to meet the first branch of the test. However, even if I presume that this branch of the test is met, and further find that the matter before the court is justiciable, the applicant falters on the third branch of the test. This 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). This would enable the court to analyse the provision's impact within a proper factual matrix. It would provide the court with contending points of view of those most directly affected. The paucity of facts adversely affects the level of analysis the court is able to undertake, as I explain more fully below.
>
> [20] I would not grant the applicant public interest standing for this reason.[47]

14. Initially to clarify, with respect, the appellant did not submit that satisfying the test for standing is an undue burden.[48] The issues raised related to timing, notice and cost. Where a case may be decided on the issue of standing, it is not uncommon for standing to be addressed as a preliminary motion, or to at least be identified.[49] Had this occurred most of the time spent by the parties and Court would not have been expended. As it was, the respondents raised standing for the first time, and only briefly, in their factum less than 48 hours before the hearing of the application. All of the case law relied on by the Court was provided by the appellant. The respondents had also been aware of OPP since December 21, 2023, when OPP commenced this proceeding in the Divisional Court. The matter was then recommenced, on consent, and at the direction of the Honourable Justice Myers following a case conference on March 27, 2024. Between December 21, 2023, and July 17, 2024, for a period then of some 7 months the respondents did not pursue the issue of standing. It was only raised hours before the hearing.

15. As also noted in oral submissions, in the *Mohawk Council* case the same panel of the Court below found that both applicants and the Crown should be prepared to address the issue of standing

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[47] *Ontario Place Protectors v. HMK in Right of Ontario,* 2024 ONSC 4194 at paras. 13-20.
[48] *Ontario Place Protectors v. HMK in Right of Ontario,* 2024 ONSC 4194 at para. 18.
[49] *British Columbia (Attorney General) v. Council of Canadians with Disabilities,* 2022 SCC 27 (CanLII).

in a more timely way.[50] Counsel for the respondents in this matter were aware of the Court's decision, having also appeared as counsel in that matter, but proceeded in the same way as they had in *Mohawk Council*, notwithstanding the Court's decision there. The issue of standing will only be raised in these proceedings by the Crown, as by definition the Crown always has standing. The appellant respectfully submitted that allowing this same approach in this matter appears to approve of the Crown continuing in this way, which has been specifically spoken to directly by the Court below without effect. The previous direction of the Court below is not considered or addressed in the Decision.

16. From the caselaw that was cited by the Court, the following principles emerge regarding standing. The appellant respectfully submits it in fact meets all these criteria:

a. *It is the appellant's obligation to make its case for standing*;[51]

   The appellant respectfully agrees.

b. *Public interest standing is not to be granted lightly*;[52]

   The appellant respectfully agrees.

c. *Limitations on standing are necessary in order to ensure courts do not become hopelessly overburdened with marginal or redundant cases and efficiently allocate scarce resources*;[53]

   The appellant respectfully agrees. For the reasons set out below the appellant's application was not marginal, or redundant as no other case was or has been brought raising constitutional issues regarding Ontario Place and ROPA. The Court below also noted the case was brought quickly and was in fact scheduled, heard and determined in less than four (4) weeks.[54]

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[50] *Mohawk Council of Kahnawà:ke v. iGaming Ontario*, 2024 ONSC 2726 (CanLII) at paras. 17 to 23.
[51] *Downtown Eastside Sex Workers United Against Violence Society v. Canada (Attorney General)*, 2012 SCC 45, [2012] 2 S.C.R. 524 at para. 37.
[52] *Fair Change v. His Majesty the King in Right of Ontario*, 2024 ONSC 1895, 170 O.R. (3d) 561, at para. 26.
[53] *Downtown Eastside Sex Workers United Against Violence Society v. Canada (Attorney General)*, 2012 SCC 45, [2012] 2 S.C.R. 524 at para. 1; *British Columbia (Attorney General) v. Council of Canadians with Disabilities*, 2022 SCC 27, 470 D.L.R. (4th) 289, at paras. 29-30.
[54] *Ontario Place Protectors v. HMK in Right of Ontario,* 2024 ONSC 4194 at para. 14 and 21.

d. *To screen out mere "busybody" litigants*;[55]

The respondents did not submit, and the Court did not find that the appellant was a "busy body" litigant.

e. *The case raises a serious justiciable issue*;[56]

The case raised serious constitutional issues as well as the doctrine of public trust. The Court heard and adjudicated all of these issues.[57]

f. *To give effect to the principle of legality*;[58]

By definition constitutional issues such as s. 96 Superior Courts' jurisdiction raise questions of legality. As noted, no other party had or has raised these issues.

g. *The appellant needs to demonstrate it has a genuine interest in the matter at issue*;[59]

The Court below found the appellant had provided insufficient evidence of genuine interest. The Court did not accept that the affidavit evidence submitted by the appellant satisfied this branch of the test.[60] With respect, the Court did not reference any law to support this conclusion. Conversely, the Supreme Court has previously recognized that who a party represents is as important as the party themselves.[61] In this case, as noted, in a short period of time the appellant obtained the evidence from and support of numerous local, provincial, national and international entities, all of whom have direct interests in the matter.[62] As noted below, the Supreme Court has held this is sufficient to grant standing.

h. *To ensure courts have the benefit of contending points of view of those most directly affected*;[63]

Likewise, as a result of the appellant's evidence, the Court had before it contending points of view from more than a dozen local, provincial, national and international organizations. They expressed strong views regarding ROPA and Ontario Place on behalf of a large number and wide variety of directly affected constituencies, as the Court below expressly

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[55] *Downtown Eastside Sex Workers United Against Violence Society v. Canada (Attorney General)*, 2012 SCC 45, [2012] 2 S.C.R. 524 at para. 1.
[56] *Downtown Eastside Sex Workers United Against Violence Society v. Canada (Attorney General)*, 2012 SCC 45, [2012] 2 S.C.R. 524 at para. 20.
[57] *Ontario Place Protectors v. HMK in Right of Ontario,* 2024 ONSC 4194 at para. 21.
[58] *British Columbia (Attorney General) v. Council of Canadians with Disabilities*, 2022 SCC 27, 470 D.L.R. (4th) 289 at paras. 29-30.
[59] *Downtown Eastside Sex Workers United Against Violence Society v. Canada (Attorney General)*, 2012 SCC 45, [2012] 2 S.C.R. 524 at para. 20.
[60] *Ontario Place Protectors v. HMK in Right of Ontario,* 2024 ONSC 4194 at para. 19.
[61] *Downtown Eastside Sex Workers United Against Violence Society v. Canada (Attorney General)*, 2012 SCC 45, [2012] 2 S.C.R. 524 at para. 5.
[62] See Factum of the Appellant at para. 9.
[63] *Downtown Eastside Sex Workers United Against Violence Society v. Canada (Attorney General)*, 2012 SCC 45, [2012] 2 S.C.R. 524 at para. 1.

acknowledged, "who care deeply about its fate."[64]

i. *That the application is a reasonable and effective means of bringing the case to court*;[65]

Demolition work was already underway at Ontario Place. A voluntary stay was agreed to. However, the respondents and Court declined to extend the stay.[66] There was no other reasonable or effective way to bring the case to Court in a timely way other than by the appellant's application.

j. *To ensure access to justice*;[67]

With the application proceeding as it did, the constitutional and other issues raised were addressed. Without the application, none of them would have been. As a result, the application was the only way of ensuring access to justice in these circumstances.

17. The Supreme Court has stated, and has reversed lower Court decisions, on the basis that all of the factors relating to standing need to be weighed and balanced.[68] In this case, *all* of the factors weigh in favour of granting standing.

18. The Court below also stated: "(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)" and refers to a "factual vacuum" etc.[69] With respect, the OP4A case demonstrates the ineffectiveness of this approach. The Court below and parties all agreed that individual causes of action can be extinguished. This was the result, promptly and conclusively, in that case. Here, consistent with the approach of the Supreme Court, the appellant has filed the evidence of a directly affected party, that has already had its rights removed under ROPA (OP4A), as well as the evidence of many more affected parties. The Court below then had before it a party that had already lost its rights due to ROPA, together

[64] *Ontario Place Protectors v. HMK in Right of Ontario,* 2024 ONSC 4194 para. 11.
[65] *Downtown Eastside Sex Workers United Against Violence Society v. Canada (Attorney General)*, 2012 SCC 45, [2012] 2 S.C.R. 524 at para. 20.
[66] *Ontario Place Protectors v. HMK in Right of Ontario,* 2024 ONSC 4194 at paras. 58-59.
[67] *British Columbia (Attorney General) v. Council of Canadians with Disabilities*, 2022 SCC 27, 470 D.L.R. (4th) 289 at paras. 29-30.
[68] *British Columbia (Attorney General) v. Council of Canadians with Disabilities*, 2022 SCC 27, 470 D.L.R. (4th) 289 at para. 59.
[69] *Ontario Place Protectors v. HMK in Right of Ontario,* 2024 ONSC 4194 at paras. 19, 41, 42 and 43.

with a far more fulsome record than any individual party with a single cause of action could offer. This approach fully comports with the Supreme Court's direction on this issue:

> [66] First, a directly affected plaintiff is not vital to establish a "concrete and well-developed factual setting". Public interest litigants can establish such a setting by calling affected (or otherwise knowledgeable) non-plaintiff witnesses (see, e.g., *Carter v. Canada (Attorney General)*, 2015 SCC 5, [2015] 1 S.C.R. 331, at paras. 14-16, 22 and 110; *Canada (Attorney General) v. Bedford*, 2013 SCC 72, [2013] 3 S.C.R. 1101, at paras. 15 and 54; *Downtown Eastside*, at para. 74). As long as such a setting exists, a directly affected co-plaintiff or a suitable proxy is not required for a public interest litigant to be granted standing. If a directly affected co-plaintiff is not required, then would-be public interest litigants should not have to justify — or compensate for — the absence of one.[70]

19. However, the Court below did not consider this law or perspective.

20. The approach of the Court below also appears to be contrary to the central purpose of granting public interest standing, which was established many years ago specifically to allow important issues to be determined, whether or not they are raised by a party with a direct claim.[71]

21. Again with respect, this approach also overlooks the fact s. 96 Superior Court cases can and often are determined on the basis of legislative facts alone. For example, the issue of s. 96 jurisdiction was fully determined on this basis by the Supreme Court in *MacMillan Bloedel*.[72]

22. As observed above regarding the standard of review, s. 96 also raised questions of law reviewable on correctness, and by definition as "questions of law" are contrasted with "questions of fact" or "mixed fact and law." Further evidence was also not necessary, as demonstrated even in this case, as the Court in fact proceeded on the merits and made many substantive findings.

23. Consequently, with respect, for all of these reasons the Court's findings on standing were not reasonable in these circumstances and have resulted in palpable and overriding error. The appellant, therefore, respectfully submits standing should be granted.

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[70] *British Columbia (Attorney General) v. Council of Canadians with Disabilities*, 2022 SCC 27, 470 D.L.R. (4th) 289 at paras. 66-67.
[71] See as one of many examples *Thorson v. Attorney General of Canada*, 1974 CanLII 6 (SCC), [1975] 1 SCR 138.
[72] *MacMillan Bloedel Ltd. v. Simpson*, [1995] 4 SCR 725 at para. 28.

ISSUE #2: ROPA REMOVES s. 96 SUPERIOR COURT CORE JURISDICTION

24. The analysis the Court below undertook correctly identified the issues raised by the appellant regarding the removal of core jurisdiction granted under s. 96 to Superior Courts:

> [24] The applicant frames its argument that s. 17(2) of ROPA violates s. 96 of the *Constitution Act, 1867* as having two aspects. It argues that the provision is unconstitutional first by removing the superior court's jurisdiction to grant remedies under any Ontario statute, and second by removing all claims for costs, compensation, or damages relating to Ontario Place. It describes the first as an impermissible removal of authority from the courts, and the second as an impermissible removal of access to justice from the citizenry. I view these as two sides of the same argument and will consider them together.
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> …
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> [28] The parties agree on the parameters of the analysis. On one hand, the legislature has wide latitude to enact legislation, even draconian legislation, within permissible constitutional limits. The remedy for the public's disapproval of such laws lies at the ballot box. On the other hand, the legislature may not interfere impermissibly with the exercise of core jurisdiction by, for example, circumscribing it to the point of "maim[ing]" the superior courts in their very essence: *MacMillan Bloedel*, at para. 37; *Reference re Code of Civil Procedure (Que.),* art. 35; *Poorkid Investments* at paras. 27-28. The core jurisdiction of the court has been described as including review of the constitutional validity of laws, enforcing court orders, controlling the court's process, and its residual jurisdiction as a court of original general jurisdiction: *Reference re Code of Civil Procedure (Que.),* art. 35., at para. 68.
>
> [29] The parties also agree that removing the court's ability to undertake judicial review would be impermissible: *Crevier v. Quebec (Attorney General),* [1981] 2 S.C.R. 220. They disagree, however, on whether ROPA removes the right of judicial review.[73]

Judicial Review

25. The Supreme Court has recognized that judicial review of legislative action is central to the functioning of our legal system. As a result, at minimum, a legislature cannot insulate its decisions from judicial review. The Court below and parties here agreed.[74]

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[73] *Ontario Place Protectors v. HMK in Right of Ontario,* 2024 ONSC 4194 at paras. 24, 28 and 29.
[74] *Ontario Place Protectors v. HMK in Right of Ontario,* 2024 ONSC 4194 at para. 29.

26. However, s. 17 of ROPA eliminates virtually all provincial legislation, including granting remedies under the *Judicial Review Procedure Act* ("JRPA"), as well as controlling the processes necessary to properly adjudicate such matters under the *Rules of Civil Procedure*, the *Courts of Justice Act*, the Ontario *Evidence Act,* the *Public Inquiries Act, 2009*, the *Freedom of Information and Protection of Privacy Act* etc.

27. While ss. 17(4) of the ROPA appears to allow for judicial reviews, it does not exclude ss. 17(2). Consequently, all remedies under the JRPA are precluded, as are those under all Ontario procedural statutes. Had the legislature intended otherwise, it would have needed to use the language chosen in ss. 17(7), which states "(t)his section does not apply to a cause of action that arises from any aboriginal or treaty right that is recognized and affirmed by s. 35 of the *Constitution Act, 1982*." It did not do so.

28. The Court below appears to recognize these deficiencies in the drafting of ROPA, but finds based on the decisions in *Siemens* and *Bell ExpressVu* that the presumption of constitutionality and avoiding absurd results cures any deficiencies.[75] The *Siemens* decision was referred to for the first time by the respondent in oral submissions. The *Bell ExpressVu* was not referred to by the parties at any time and was raised for the first time by the Court below in its reasons. With respect, neither of these decisions stand for the proposition that clear deficiencies in legislation can be cured by these presumptions. The Supreme Court has held:

> I am not unmindful of the rule that if the words of an enactment so permit they shall be construed in accordance with the presumption which imputes to the legislature the intention of limiting the operation of its enactments to matters within its allotted sphere; but this rule does not permit the adoption of a forced construction at variance with the plain meaning of the words employed.[76]

[75] *Ontario Place Protectors v. HMK in Right of Ontario,* 2024 ONSC 4194 paras. 30-32.
[76] *Re The Farm Products Marketing Act*, 1957 CanLII 1 (SCC), [1957] SCR 198 at pp. 242-243.

29. This statement of the law applies directly to the present case. Subsection 17(2) is unambiguous. Consequently, the drafting of ROPA required to preserve rights related to s. 35 of the *Constitution Act, 1982* made an express exemption necessary. Again, while it could have been made, no such exemption was made in relation to judicial review and the JPRA rights established therein. All of the procedural controls established under provincial statutes are also removed. The appellant respectfully submits this directly impinges on the Superior Court's s. 96 jurisdiction.

30. The Court further opined because OP4A 's application for judicial review was permitted to proceed, this demonstrated there is no jurisdictional impediment to hearing such cases.[77] However, that case was dismissed pursuant to a motion to strike brought by the respondents in that matter, also representing the Crown.[78] ROPA excludes the Crown from its operation in such circumstances.[79] Therefore, the issues raised in this proceeding were not adjudicated, and the decision in that case also does not stand for the proposition stated by the Court below.

31. Consequently, on a plain and ordinary reading of the statute as a whole, absent an express exemption such as that used regarding s. 35 rights, ROPA appears to be unconstitutional. On this ground alone the appellant respectfully submits the appeal should be allowed.

Further Core Jurisdiction

32. The Court below also correctly recognized the application raised additional issues:

> [33] The remaining question is whether s. 17(2) offends s. 96 of the *Constitution Act, 1867* by removing all non-judicial review and non-constitutional proceedings that would have arisen from activities set out in s. 17(1).
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> [34] The applicant argues that the breadth of s. 17(2) is so sweeping that it removes the court's adjudicative function and the citizenry's access to remedies in an unprecedented and impermissible way. The respondent concedes that, while there might be legislative action that goes so far that it amounts to an impermissible interference with

[77] *Ontario Place Protectors v. HMK in Right of Ontario,* 2024 ONSC 4194 at para. 31.
[78] *Ontario Place for All Inc. v. Ontario (Ministry of Infrastructure), [2024] O.J. No. 2597* (Div. Ct.).
[79] *Rebuilding Ontario Place Act,* 2023, S.O. 2023, c. 25, Sched. 21 s. 17(9).

the court's core jurisdiction, the subsection in issue is "a long way" from that. It denies that there is anything improper about removing access to remedies.

[35] The applicant submits that the case of *Just v. British Columbia*, [1989] 2 S.C.R. 1228, stands for the broad proposition that it is impermissible to immunize the Crown from liability. I do not agree.

[36] *Just* considered the distinction between Crown immunity for matters of policy and Crown liability for operational matters. The legislation at issue in *Just* provided that the Crown is subject to all those liabilities to which it would be liable if it were a person. However, it was not subject in its capacity as a highway authority to any greater liability than that to which a municipal corporation is subject in that capacity. The Court read the legislation as placing "an obligation on the province to maintain its highways at least to the same extent that a municipality is obligated to repair its roads."

[37] The applicant relies on the following comment of the Court, at para. 16: "The early governmental immunity from tortious liability became intolerable". The Court made this comment in the course of explaining the historical evolution of proceedings against the Crown. It was not a broad pronouncement on whether the Crown could choose to immunize itself statutorily. Indeed, the decision acknowledges the possibility of statutory exemptions from liability several times: at paras. 12, 27, and 28. *Just* does not stand for the broad proposition that the Crown cannot statutorily exempt itself from liability.[80]

[38] The applicant urges the court to read s. 17(2) as being so broad that to give effect to it would be to shut down the superior court.

[39] I agree with the applicant that legislation cannot prevent general access to the superior courts without running afoul of s. 96. As the Supreme Court described in *Trial Lawyers Assn*., at para. 32:

> The historic task of the superior courts is to resolve disputes between individuals and decide questions of private and public law. Measures that prevent people from coming to the courts to have those issues resolved are at odds with this basic judicial function. The resolution of these disputes and resulting determination of issues of private and public law, viewed in the institutional context of the Canadian justice system, are central to what the superior courts do. Indeed, it is their very book of business. To prevent this business being done strikes at the core of the jurisdiction of the superior courts protected by s. 96 of the *Constitution Act, 1867*. [Emphasis added by appellant]

[40] However, ROPA does not remove general access to the courts or grant immunity to the Crown at large. Rather, it extinguishes specific causes of action and grants immunity in a single context. Given that there is no evidence that the applicant has or could have a legal cause of action or claim for compensation or other remedy, the analysis is necessarily general and abstract.

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[80] *Ontario Place Protectors v. HMK in Right of Ontario,* 2024 ONSC 4194 at paras. 39, 35-37.

> [41] I find the applicant's position vastly overstates the effect of the immunity provided in s. 17(2), at least in the factual vacuum in which this case is being argued. The legislature has decided that it wishes to develop Ontario Place. It has decided that it wishes to do so without exposing itself to causes of action. The legislature is free to enact immunity clauses and has done so not uncommonly, including in the following statutes: *Regulated Health Professions Act, 1991*, S.O. 1991, c. 18, s. 38; *Health Care Consent Act, 1996*, S.O. 1996, c. 2, Sched. A, s. 30; *Highway Traffic Act*, R.S.O. 1990, c. H.8, ss. 203-204(2); *Clean Water Act, 2006*, S.O. 2006, c. 22, s. 98; *Broader Public Sector Accountability Act, 2010*, S.O. 2010, c. 25, s. 22; *Crown Forest Sustainability Act, 1994*, S.O. 1994, c. 25, s. 41.2; *Mining Act*, R.S.O. 1990, c. M.14, s. 38.4.
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> [42] Such provisions do not *per se* improperly violate s. 96. Perhaps there are circumstances in which such a provision goes too far. However, no such circumstance is apparent in this application. At this stage, the applicant, who seeks to bring no action that is prohibited by s. 17(2), asks the court to declare theoretically in a vacuum that s. 17(2) goes too far. I find no basis for doing so on the record before me.[81]

33. Again, the appellant agrees it is open to governments to exclude remedies and damages etc. However, as with an individual applicant, the foregoing examples are of specific limitations imposed in relation to discreet legislative regimes. The clear difference here is that ss. 17(2) of ROPA eliminates remedies "in contract, restitution, tort, misfeasance, bad faith, trust or fiduciary obligation, any equitable remedy or any remedy under any statute" thereby excluding *all* remedies and liabilities *under every one of Ontario's more than 1,200 statutes and associated Regulations*. With respect, ROPA is completely unprecedented. Neither the respondents nor the Court below have provided any examples remotely similar to the scope and breadth of ss. 17(2) of ROPA. Furthermore, no one appears to have properly considered the full extent of the limits placed on Superior Courts' powers to grant remedies under ROPA.

34. The fact that ROPA only applies to Ontario Place, in the appellant's respectful submission, is clearly not a consideration. In *MacMillan Bloedel,* the removal of the Court's jurisdiction was limited to the provincial Youth Court in British Columbia. However, as has been noted many times, the loss of jurisdiction may begin in one way, but this sets the precedent for

[81] *Ontario Place Protectors v. HMK in Right of Ontario,* 2024 ONSC 4194 at paras. 33-34 and 40-42.

the removal of core jurisdiction in other ways that is completely constitutionally unacceptable. As very recently observed by this Honourable Court:

> [28] Thus, core jurisdiction is defining of the superior courts and must be guarded jealously. In *MacMillan Bloedel*, Lamer C.J. put the matter this highly: removal of any part of the core jurisdiction, he said, "emasculates the court, making it something other than a superior court": at para. 30.[82] [Emphasis added]

35. If ss. 17(2) of ROPA is constitutional, which it is submitted it clearly is not, the Decision (related at present only to Ontario Place) will set a clear precedent for future government action by Ontario, other provinces and federally.

36. One of the primary purposes of s. 96 is to provide a unified court system across Canada. Consequently, whenever a government wishes to construct for example a new highway, a hydroelectric project, open or expand a landfill or quarry or develop an airport or nuclear facility etc., Ontario's courts will have confirmed the ability to seek any remedy under any statute enacted by that government can be eliminated, virtually overnight. This wholesale elimination of the Superior Court's jurisdiction under s. 96 to grant *any* remedies under all of Ontario's law appears to be highly inconsistent with the core of what Superior Courts have always done.

37. With respect, the elimination of the Court's powers to grant remedies could also not have been broader. The more vast the removal of jurisdiction, the more likely the infringement violates s. 96.[83] Again, *all* jurisdiction to grant remedies under every Ontario statute (and every associated Regulation etc.) has been totally removed. There is also now nothing precluding the Crown in Ontario, or in any other Province, or the Federal Crown, from eliminating the Superior Court's jurisdiction (at minimum) from all further development it wishes to undertake. Development projects may also only be the commencement of the use of these powers.

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[82] *Poorkid Investments Inc. v. Ontario (Solicitor General),* 2023 ONCA 172 (CanLII) at. para. 28.
[83] *Reference re Code of Civil Procedure (Que.), art. 35*, 2021 SCC 27 at paras. 98 & 99.

38. With respect, the Decision cannot be viewed as "jealously guarding" the core jurisdiction of Superior Courts under s. 96. As found in *MacMillan Bloedel,* it constitutes the direct removal of a part of the Superior Court's core jurisdiction, thereby emasculating the Superior Courts to the greatest extent Ontario could possibly have done. With respect, the Decision of the Court below is clearly not correct and this provides further strong grounds for allowing the appeal.

Crown Immunity from Liability

39. The Supreme Court has also expressly stated that while provinces have the right to control the civil courts, "the province's powers under s. 92(14) must be exercised in a manner that is consistent with the right of individuals to bring their cases to the superior courts and have them resolved there."[84] [Emphasis added]

40. In interpreting the impact of ROPA s. 17 under s. 96, regard must also be had for underlying principles, including the rule of law:

> Judicial orders are one manifestation of the law with which the state and the individual must comply. The rule of law, however, does more than demand compliance with the law. To validate this demand, the law must provide individuals with meaningful access to independent courts with the power to enforce the law by granting appropriate and effective remedies to those individuals whose rights have been violated: *B.C.G.E.U. v. British Columbia (Attorney General), supra*, at pp. 228-29 S.C.R., pp. 298-99 C.C.C.; *Nelles v. Ontario*, [1989] 2 S.C.R. 170 at pp. 195-96, 60 D.L.R. (4th) 609; *Canadian Council of Churches v. Canada*, [1992] 1 S.C.R. 236 at p. 250, 88 D.L.R. (4th) 193; *Kourtessis v. Minister of National Revenue*, [1993] 2 S.C.R. 53 at pp. 90-91, 81 C.C.C. (3d) 286 at pp. 309-10, *per* La Forest J.; P. W. Hogg, *Constitutional Law of Canada*, 3rd ed. (Toronto: Carswell, 1992) at p. 1263. This court must give effect to both the compliance and the remedial components of the rule of law in determining whether the appellant is entitled to challenge the order of Kovacs J. at his trial. [Emphasis added]

41. As also recently observed by this Honourable Court, a screening mechanism for remedies, if conducted by Superior Court judges for claims against the Crown, is permissible:

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[84] *Trial Lawyers Association of British Columbia v. British Columbia (Attorney General)*, 2014 SCC 59 at para. 36, and more generally see paras. 19-39.

> [37] … Section 17 (of the *Crown Liability and Proceedings Act*) establishes a screening process - a procedure that allows the superior courts to screen out unmeritorious claims. The operation of the screening process is determined by the superior courts themselves: they determine whether or not a claim may proceed based on their interpretation and application of the criteria set out in s. 17. In other words, the superior courts continue to exercise their core jurisdiction - hearing and resolving disputes. [Emphasis added]

42. However, completely removing Superior Courts' ability to grant any remedy under any Ontario statute plainly removes the Superior Courts' ability to resolve disputes. Under ROPA, every possible remedy under all statutes is removed.

43. The basic rule of law encompasses three fundamental facets, "equality of all before the law, the creation and maintenance of an actual order of positive laws, and oversight of the exercise of public powers (*Reference re Manitoba Language Rights*, at pp. 748-51; *Imperial Tobacco*, at para. 58; *Cooper v. Canada (Human Rights Commission)*, [1996] 3 S.C.R. 854, at para. 16). Historically, the Superior Courts had primary responsibility for this task." [85]

44. The rule of law is used as an interpretive aid when considering s. 96, but cannot be used standing alone to invalidate a law.[86] It speaks to principles rather than the terms of legislation.[87] Similarly, s. 96 does not grant many other specific rights, such as the right to a fair trial or court process.[88] If citizens believe they are being treated unfairly or unjustly the remedy is through the electoral process.[89] The appellant is cognizant of these principles and this application was not based and does not turn on these issues.

45. However, one of the further core functions of any court is to adjudicate claims for costs, compensation and damages. When the *Constitution Act, 1982,* was first enacted, there was absolute

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[85] *Reference re Code of Civil Procedure (Que.), art. 35*, 2021 SCC 27at para. 47.
[86] *Poorkid Investments Inc. v. Ontario (Solicitor General),* 2023 ONCA 172 (CanLII) at para. 57; *Poorkid Investments Inc., et al. v. Solicitor General of Ontario Sylvia Jones, et al.,* 2023 CanLII 115642 (SCC).
[87] *British Columbia v. Imperial Tobacco Canada Ltd*., 2005 SCC 49 at para. 59.
[88] *British Columbia v. Imperial Tobacco Canada Ltd*., 2005 SCC 49 at paras. 63-77.
[89] *British Columbia v. Imperial Tobacco Canada Ltd*., 2005 SCC 49 at para. 66.

Crown immunity from liability. As noted above, there is also no doubt provinces can use their powers under s. 92(14) the *Constitution Act, 1982*, to restrict such claims for both private and public entities in many ways.[90]

46. This rationale has been used to preclude s. 96 findings related to certain types of claims being part of the core jurisdiction of Superior Courts.[91] However, as the Supreme Court has ruled on many occasions, the Constitution is a living document and is not "frozen" at the time of 1867.[92] As also recently observed "(i)n the *Just* decision, the Court noted that in modern times 'complete governmental immunity' has become 'intolerable'. In *Imperial Tobacco*, the Court emphasized again that 'exempting all government actions from liability would result in intolerable outcomes'."[93] These decisions of the Supreme Court reflect the current understanding that governments can and ought to be held accountable, at minimum, to some extent for their actions.

47. On July 19, 2024, during the hearing of this application the Supreme Court released its decision in *Canada (Attorney General) v. Power* ("*Power*"). The Supreme Court held:

> [4] … The state is not entitled to an absolute immunity from liability for damages when it enacts unconstitutional legislation that infringes *Charter* rights. Rather, as this Court held in *Mackin v. New Brunswick (Minister of Finance)*, 2002 SCC 13, [2002] 1 S.C.R. 405, the state enjoys a limited immunity in the exercise of its law-making power. Accordingly, damages may be awarded under s. 24(1) for the enactment of legislation that breaches a *Charter* right. However, the defence of immunity will be available to the state unless it is established that the law was

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[90] *Joseph v. Paramount Canada's Wonderland*, 2008 ONCA 469 at para. 13; *Frame v. Smith*, [1987] 2 SCR 99 at paras. 6 and 31; *Hernandez v. Palmer*, [1992] O.J. No. 2648 (Gen. Div.); *Weber v. Ontario Hydro*, [1995] 2 SCR 929 at paras. 36 and 76; *Workplace Safety and Insurance Act*, 1997, SO 1997, c 16, Sch A, ss. 26-31; *Libel and Slander Act*, RSO 1990, c L.12; *Occupiers' Liability Act*, RSO 1990, c O.2, s. 2.

[91] *Canada (Attorney General) v. Thouin*, 2017 SCC 46 at para. 23; *Babcock v. Canada (Attorney General)*, 2002 SCC 57, see also *R. v. Ahmad,* 2011 SCC 6; *Rudolph Wolff v. Canada*, 1990 1 SCR 695; *Proceedings Against the Crown Act*, 1962-63, SO 1962-63, c. 109; *Ontario v. Criminal Lawyers' Association of Ontario*, 2013 SCC 43 at para. 19, citing *MacMillan Bloedel Ltd. v. Simpson*, [1995] 4 SCR 725 at para. 30 and 38; *MacMillan Bloedel Ltd. v. Simpson*, [1995] 4 SCR 725 at para. 37; *B.C.G.E.U. v. British Columbia (Attorney General),* [1988] 2 SCR 214; *Trial Lawyers Association of British Columbia v. British Columbia (Attorney General)*, 2014 SCC 59.

[92] See for example *Reference re Code of Civil Procedure (Que.), art. 35*, 2021 SCC 27 paras. 53 and 89.

[93] *Leroux (Litigation guardian of) v. Ontario*, [2020] O.J. No. 1450 (SCJ) at para. 23, reversed on other grounds *Leroux (Litigation guardian of) v. Ontario*, [2021] O.J. No. 3545 (Div. Ct.) , *Leroux (Litigation guardian of) v. Ontario*, [2023] O.J. No. 2027 (CA), *Ontario v. Leroux (Litigation guardian of), [2023] S.C.C.A. No. 284*; citing from *Just v. British Columbia*, [1989] 2 S.C.R. 1228 at para. 16 and *British Columbia v. Imperial Tobacco Canada Ltd.*, 2005 SCC 49 at para. 76.

> clearly unconstitutional, or that its enactment was in bad faith or an abuse of power. This is a high threshold. But it is not insurmountable.[94] [Emphasis Added]

48. As the appellant has submitted here, in *Power* the Supreme Court holds Crown immunity is not absolute. Given that ss. 17(2) of ROPA eliminates all claims for costs, compensation and damages (which themselves are remedies) and all other remedies, this directly offends the Supreme Court's findings regarding total immunity. Regarding the *Power* decision, the Court below held:

> [44] The day this matter was argued, the Supreme Court of Canada released its decision in *Canada (Attorney General) v. Power*, 2024 SCC 26. The parties provided submissions in writing on the effect of *Power*. The applicant takes the position that *Power* resolves the matter in its favour. I do not agree. *Power* stands for the proposition that if legislation is found to be unconstitutional, the legislature does not enjoy absolute immunity and may be sued for *Charter* damages. It is not clear to me that, on its face, the wording of s. 17(2) would prohibit such litigation. That will be for a court to determine should such litigation arise. It does not assist the applicant here, where there is no underlying *Charter* claim.[95]

49. With respect, while *Power* is a *Charter* case, as noted the Supreme Court recognizes the availability of other types of claims – such as for acts of bad faith (which is expressly eliminated by ss. 17(2)) and abuses of power. Subsection 17(2) of ROPA seeks to completely immunize the Ontario government from all liability. This appears to again contravene one of the core functions of the Superior Court, as well as the basic principles of law in today's Canadian society as recognized by the Supreme Court. The appellant respectfully submits this also violates s. 96 of the *Constitution Act, 1982* and provides a further strong ground for allowing the appeal.

ISSUE #3: ROPA BREACHES THE DOCTRINE OF PUBLIC TRUST

50. Lastly, the appellant raised the issue of breach of public trust. The Court noted:

> [48] Those submissions rely heavily on statements made by the majority of the Supreme Court of Canada in *British Columbia v. Canadian Forest Products Ltd*., 2004 SCC 38, [2004] 2 S.C.R. 74. In that case, the appellant Canfor was largely responsible for a fire in an area in which logging occurred, adversely affecting the price at which the now fire-damaged timber

[94] *Canada (Attorney General) v. Power*, 2024 SCC 26 at paras. 4, 5 and 93.
[95] *Ontario Place Protectors v. HMK in Right of Ontario,* 2024 ONSC 4194 at para. 44.

could be sold. The Court considered whether the Crown was limited to suing in its capacity as an ordinary landowner, or whether it could also sue as a representative of the public to enforce the public interest in an unspoiled environment.

[49] In considering this question, the Court referred to caselaw from other jurisdictions, including the United States, and left open the possibility of the public trust arguments being made in an appropriate case. The case before it, however, had been framed by the pleadings and in the courts below as the Crown seeking remedies as a private landowner, not as a case about public trust. Therefore, the Court limited its decision to the basis on which the case had been framed and did not "embark on a consideration of these difficult issues" of public trust: at para. 82.

[50] The public trust doctrine has subsequently been rejected by the Federal Court and Federal Court of Appeal when raised directly: *Burns Bog Conservation Society v. Canada,* 2014 FCA 170, 464 N.R. 187; *La Rose v. Canada*, 2020 FC 1008, 477 C.R.R. (2d) 239, aff'd 2023 FCA 241.

[51] The applicant relies on comments of the courts in which municipalities have been referred to as trustees of the environment: *114957 Canada Ltée (Spraytech, Société d'arrosage) v. Hudson (Town)*, 2001 SCC 40, [2001] 2 S.C.R. 241, at para. 27.

[52] The applicant contends that applying the doctrine of public trust is an incremental extension of the law in Canada. The Ontario Place land is a discrete piece of property; it is not as vast or amorphous as air or water, so the concerns expressed by the Federal Courts need not apply. It has received cultural heritage awards and designations. It is publicly owned.

[53] The respondent notes that no Canadian court has ever declared a statute to be a breach of public trust. Further, the Supreme Court of Canada has held that the exercise of public law duties, legislatively or administratively, do not generally give rise to fiduciary relationships. The applicant has not demonstrated limited or special circumstances that would warrant a finding that the respondent stands in a trust-like legal relationship with it: Elder Advocates of Alberta Society v. Alberta, 2011 SCC 24, [2011] 2 S.C.R. 261, at para. 37.

[54] As noted above, the applicant takes no issue with s. 2 of ROPA, which places ownership and control of the land in the ministry. The applicant does not explain how the public trust would co-exist with that section.

[55] An additional hurdle faced by the applicant is the remedy it seeks. The applicant asks the court for a declaration that ss. 9, 10, 11, 12, and 17(2) are a breach of the public trust. The applicant concedes that the doctrine of public trust is not a constitutional doctrine, written or unwritten. Therefore, even if the doctrine exists in Canadian law, it provides no basis for striking down legislation: Toronto (City) v. Ontario (Attorney General), 2021 SCC 34, 462 D.L.R. (4th) 1. A declaration "in the air" that the provisions breach public trust, without any remedy of striking them down, serves no purpose. That is, even if there were a doctrine of public trust, which is far from certain, and even if the doctrine were to apply to

> Ontario Place, which is even less certain, there is nothing to be served by a declaration that the provisions in question are a breach of public trust. The court does not provide declarations that are "of merely academic importance and [have] no utility": Bryton Capital Corp. GP Ltd. v. CIM Bayview Creek Inc., 2023 ONCA 363, 8 C.B.R. (7th) 22, at para. 64.
>
> [56] I see no basis in fact or law to impose a trust on Ontario Place land. I see no basis upon which the impugned provisions of ROPA could be declared to breach the public trust.[96]

51. As acknowledged by the Court below, the Supreme Court of Canada has held that the doctrine of public trust may be recognized in an appropriate case, and other law supports this:

> [73] … In *Scarborough v. R.E.F. Homes Ltd.* (1979), 9 M.P.L.R. 255 (Ont. C.A.), Lacourcière J.A., in an oral decision, said at p. 257 that:
>
> > In our judgment, the municipality is, in a broad general sense, a trustee of the environment for the benefit of the residents in the area of the road allowance and, indeed, for the citizens of the community at large. [Emphasis added.]
>
> This expression was referred to, without elaboration, by L'Heureux-Dubé J. in *114957 Canada, supra*, at para. 27.
>
> [74] The notion that there are public rights in the environment that reside in the Crown has deep roots in the common law: see, e.g., J. C. Maguire, "Fashioning an Equitable Vision for Public Resource Protection and Development in Canada: The Public Trust Doctrine Revisited and Reconceptualized" (1997), 7 *J.E.L.P.* 1…
>
> …
>
> [79] The American law has also developed the notion that the states hold a "public trust". Thus, in *Illinois Central Railroad Co. v. Illinois*, 146 U.S. 387 (1892), the Supreme Court of the United States upheld Illinois' claim to have a land grant declared invalid. The State had granted to the railroad in fee simple all land extending out one mile from Lake Michigan's shoreline, including one mile of shoreline through Chicago's central business district. It was held that this land was impressed with a public trust. The State's title to this land was different in character from that which the State holds in lands intended for sale... . It is a title held in trust for the people of the State that they may enjoy the navigation of the waters, carry on commerce over them, and have liberty of fishing therein freed from the obstruction or interference of private parties. [p. 452] …[97]

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[96] *Ontario Place Protectors v. HMK in Right of Ontario,* 2024 ONSC 4194 at paras. 48-56.
[97] *British Columbia v Canadian Forest Products Ltd*, [2004] 2 SCR 74 at paras. 73, 74 and 79.

52. As also noted by the Court below, these issues related to public trust were not determined by the Supreme Court in *Canfor*. However, these principles form part of Canadian law. The principle of lands as public spaces has also been found in relation to public places such as airports and parks.[98]As is being requested in this case, the Supreme Court and this Honourable Court have also recognized trust relationships between government and the public in relation to the environment:

> … Kennedy J. correctly found (at pp. 230-31) that the Town Council, "faced with a situation involving health and the environment", "was addressing a need of their community." In this manner, the municipality is attempting to fulfill its role as what the Ontario Court of Appeal has called a "trustee of the environment" (*Scarborough v. R.E.F. Homes Ltd.* (1979), 9 M.P.L.R. 255, at p. 257).[99]

53. Similar legal principles have been applied in other common law jurisdictions such as the United States and in India.[100] These decisions arise from the same common law principles:

> Our legal system – based on English Common Law [sic] – includes the public trust doctrine as part of its jurisprudence. The State is the trustee of all natural resources which are by nature meant for public use and enjoyment. Public at large [sic] is the beneficiary of the sea-shore, running waters, airs, forests and ecologically fragile lands. The State as a trustee is under a legal duty to protect the natural resources.[101]

54. As observed by the Court below, there are also instances of public trusts not being applied in Canada. For example, where a party has sought to find a trust under a statute rather than pursuant to the common law.[102] However, in the case of *Burns Bog* cited by the Court below, even where the doctrine has not been applied, Canadian courts have recognized it may still be applied in the future: "(i)t is clear that in reaching his conclusion, the Judge carefully considered *Canfor*. He found that at best *Canfor* opens the door to the application of the public trust doctrine developed

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[98] *Committee for the Commonwealth of Canada v. Canada*, [1991] 1 S.C.R. 139 at paras. 154 & 155.
[99] *114957 Canada Ltée (Spraytech, Société d'arrosage) v. Hudson (Town),* [2001] 2 S.C.R. 241 at para. 27.
[100] See for example, *Gould v Greylock Reservation Commission* (1966), 350 Mass 410 (SJC); *MC Mehta v Kamal Nath* (1997), 1 SCC 388 (Indian SC).
[101] *MC Mehta v Kamal Nath* (1997), 1 SCC 388 (Indian SC).
[102] *Green v The Queen in right of the Province of Ontario et al,* [1973] 2 OR 396 (HCJ) at paras. 26-28.

in the United States in respect of land owned by the Crown (see *Canfor* at paragraphs 74-81). Here, as mentioned, the respondent does not own Burns Bog".[103] In this case, the fact that as the Court notes the Ontario Place lands are now held by the Crown, in fact supports the appellant's case.

55. In 2023, in the *La Rose* decision (also referenced by the Court below) the Federal Court of Appeal dismissed a claim related to "bodies of water, the air, and the permafrost" in Canada as "(t)he youth appellants' claim is not targeted to land owned by Canada."[104] In this case, the parcel of lands is very discreet (Ontario Place) and again as observed by the Court below is now owned by Ontario.[105] The Nova Scotia Court of Appeal also recently considered a public trust claim, ultimately dismissing it on the basis of mootness, which is also not an issue here.[106]

56. Consequently, the appellant respectfully submits that applying the doctrine of public trust to the Crown owned lands of Ontario Place is, in fact, an incremental extension of both the common law in Canada and other jurisdictions, and specifically of the law regarding the protection of the environment as already established by both the Supreme Court and this Honourable Court.

57. By removing the primary statutory protections developed over many decades for both the natural and built-form environments under the *Environmental Assessment Act,* the *Ontario Heritage Act* and noise by-laws, and by enacting s. 17 of ROPA which again eliminates all remedies under any Ontario statute and all types of financial claims including for acts of bad faith and misfeasance by the Ontario government or its agents, it appears clear the public trust in which these lands are being held has been breached. The appellant, therefore, further respectfully requests a declaration to this effect.

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[103] *Burns Bog Conservation Society v. Canada*, 2014 FCA 170, 464 N.R. 187 at para. 44.
[104] *Luciuk (Guardian ad litem of) v Canada*, [2023] FCJ No 2260 (CA) at paras. 53, 56, 61 & 62.
[105] Appeal Book and Compendium of the Appellant, Tab F, Tab 3, Affidavit of Cynthia Wilkey, Exhibit B.
[106] *Bancroft v. Nova Scotia (Lands and Forestry)*, 2022 NSCA 78 (CanLII) at para. 36.

58. The appellant's request for a declaration is also proper. As observed by the Supreme Court, declarations are legally binding, based on the very reasonable conclusion governments cannot intentionally contravene the law as declared by the Courts: "(t)hus, a public body or public official subject to a declaratory order is bound by that order and has a duty to comply with it."[107] The appellant respectfully submits this is then a completely appropriate request in this proceeding.

PART V: RELIEF REQUESTED

59. For all of the foregoing reasons, the appellant respectfully requests the Decision be set aside and this Honourable Court grant:

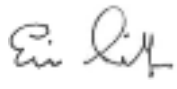
a. A declaration that (a) s. 17 of the *Rebuilding Ontario Place Act*, 2023, S.O. 2023, c. 25, Sched. 21 is of no force and effect as it breaches s. 96 of the *Constitution Act, 1867,* and (b) ss. 9, 10, 11 and 17 of ROPA are a breach of public trust;

b. If necessary, a stay and/or injunction prohibiting the respondents from further implementing ROPA;

c. The appellant's costs here and below on a substantial indemnity basis; and

d. Such further and other relief as counsel may advise and this Honourable Court may permit.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 16th DAY OF SEPTEMBER 2024.



Eric K. Gillespie
Of Counsel for the Appellant

[107] *Newfoundland and Labrador (Attorney General) v. Uashaunnuat (Innu of Uashat and of Mani-Utenam),* 2020 SCC 4 (CanLII), [2020] 1 SCR 15 at para. 248.

Court of Appeal File No.: COA-23-CV-1368

Court File No: CV-22-00680457-0000

COURT OF APPEAL FOR ONTARIO

B E T W E E N :

ONTARIO PLACE PROTECTORS

Appellant

- and -

HIS MAJESTY THE KING IN RIGHT OF ONTARIO and ATTORNEY GENERAL FOR ONTARIO

Respondents

CERTIFICATE RESPECTING TIME

The appellant, Ontario Place Protectors, estimate that a total of 2.5 hours is required for oral argument in this matter, excluding reply.

Eric K. Gillespie
Of Counsel for the Appellant

SCHEDULE "A"

1. *114957 Canada Ltée (Spraytech, Société d'arrosage) v. Hudson (Town),* [2001] 2 S.C.R. 241
2. *B.C.G.E.U. v. British Columbia (Attorney General),* [1988] 2 SCR 214
3. *Babcock v. Canada (Attorney General)*, 2002 SCC 57
4. *Baker v. Canada,* [1999] 2 S.C.R. 817
5. *Bancroft v. Nova Scotia (Lands and Forestry)*, 2022 NSCA 78 (CanLII)
6. *British Columbia v Canadian Forest Products Ltd*, [2004] 2 SCR 74
7. *British Columbia v. Imperial Tobacco Canada Ltd*., 2005 SCC 49
8. *British Columbia (Attorney General) v. Council of Canadians with Disabilities,* 2022 SCC 27 (CanLII)
9. *Burns Bog Conservation Society v. Canada*, 2014 FCA 170
10. *CAMPP Windsor Essex Residents Association v. Windsor (City),* 2020 ONSC 4612 (CanLII)
11. *Canada (Attorney General) v. Power*, 2024 SCC 26
12. *Canada (Attorney General) v. Thouin*, 2017 SCC 46
13. *Chatsikiriakos v. Kilislian*, 2020 ONCA 378
14. *Committee for the Commonwealth of Canada v. Canada*, [1991] 1 S.C.R. 139
15. *Downtown Eastside Sex Workers United Against Violence Society v. Canada (Attorney General)*, 2012 SCC 45, [2012] 2 S.C.R. 524
16. *Fair Change v. His Majesty the King in Right of Ontario*, 2024 ONSC 1895, 170 O.R. (3d) 561
17. *Frame v. Smith*, [1987] 2 SCR 99
18. *Gould v Greylock Reservation Commission* (1966), 350 Mass 410 (SJC)
19. *Green v The Queen in right of the Province of Ontario et al,* [1973] 2 OR 396 (HCJ)
20. *Hernandez v. Palmer*, [1992] O.J. No. 2648 (Gen. Div.)
21. *Housen v. Nikolaisen*, 2002 SCC 33 (CanLII), [2002] 2 SCR 235
22. *Joseph v. Paramount Canada's Wonderland*, 2008 ONCA 469
23. *Just v. British Columbia*, [1989] 2 S.C.R. 1228
24. *Leroux (Litigation guardian of) v. Ontario*, [2020] O.J. No. 1450 (SCJ)
25. *Leroux (Litigation guardian of) v. Ontario*, [2021] O.J. No. 3545 (Div. Ct.)
26. *Leroux (Litigation guardian of) v. Ontario*, [2023] O.J. No. 2027 (CA),
27. *Libel and Slander Act*, RSO 1990, c L.12
28. *Luciuk (Guardian ad litem of) v Canada*, [2023] FCJ No 2260 (CA)

29. *MacMillan Bloedel Ltd. v. Simpson*, [1995] 4 SCR 725
30. *MC Mehta v Kamal Nath* (1997), 1 SCC 388 (Indian SC).
31. *Mohawk Council of Kahnawà:ke v. iGaming Ontario*, 2024 ONSC 2726 (CanLII)
32. *Newfoundland and Labrador (Attorney General) v. Uashaunnuat (Innu of Uashat and of Mani-Utenam),* 2020 SCC 4 (CanLII), [2020] 1 SCR 15
33. *Occupiers' Liability Act*, RSO 1990, c O.2, s. 2
34. *Ontario v. Criminal Lawyers' Association of Ontario*, 2013 SCC 43
35. *Ontario v. Leroux (Litigation guardian of),* [2023] S.C.C.A. No. 284
36. *Ontario College of Teachers v Bouragba,* 2019 ONCA 1028 (CanLII)
37. *Ontario Place for All Inc. v.* Ontario (Ministry of Infrastructure), [2024] O.J. No. 1313 (Div. Ct.)
38. *Ontario Place for All Inc. v. Ontario (Ministry of Infrastructure)*, [2024] O.J. No. 2597 (Div. Ct.).
39. *Ontario Place Protectors v. HMK in Right of Ontario,* 2024 ONSC 4194
40. *Ontario Place Protectors v. His Majesty the Queen in Right of Ontario* (Costs Decision).
41. *Poorkid Investments Inc. v. Ontario (Solicitor General),* 2023 ONCA 172 (CanLII)
42. *Poorkid Investments Inc., et al. v. Solicitor General of Ontario Sylvia Jones, et al.,* 2023 CanLII 115642 (SCC)
43. *Proceedings Against the Crown Act*, 1962-63, SO 1962-63, c. 109;
44. *Thorson v. Attorney General of Canada*, 1974 CanLII 6 (SCC), [1975] 1 SCR 138
45. *Trial Lawyers Association of British Columbia v. British Columbia (Attorney General)*, 2014 SCC 59
46. *R. v. Ahmad,* 2011 SCC 6
47. *Reference re Code of Civil Procedure (Que.), art. 35*, 2021 SCC 27
48. *Re The Farm Products Marketing Act*, 1957 CanLII 1 (SCC), [1957] SCR 198
49. *Rudolph Wolff v. Canada*, 1990 1 SCR 695
50. *Weber v. Ontario Hydro*, [1995] 2 SCR 929
51. *Workplace Safety and Insurance Act*, 1997, SO 1997
52. Sara Blake, *Administrative Law in Canada*; 6th ed. 2017, Lexis Nexis at p. 101, para 2.293.

SCHEDULE "B"

REBUILDING ONTARIO PLACE ACT, 2023, S.O. 2023, C. 25, SCHED. 2

Interpretation

Definitions

1 In this Act,

"Corporation" means the Ontario Infrastructure and Lands Corporation; ("Société")

"Crown" means the Crown in right of Ontario; ("Couronne")

"Minister" means the Minister of Infrastructure or such other member of the Executive Council to whom responsibility for the administration of this Act is assigned or transferred under the *Executive Council Act*; ("ministre")

"Ontario Place Redevelopment Project" means,

(a) an enterprise or activity in respect of services, facilities, land or infrastructure of any nature or kind at the Ontario Place site,

(b) any prescribed enterprise or activity at the Ontario Place site, or

(c) a proposal, plan or program in respect of an enterprise or activity described in clause (a) or (b); ("projet de réaménagement de la Place de l'Ontario")

"Ontario Place site" means the prescribed land that is part of the land identified by the Property Identification Numbers set out in Schedule 2; ("site de la Place de l'Ontario")

"prescribed" means prescribed by the Minister under section 18; ("prescrit")

"regulations" means the regulations made under this Act; ("règlements")

"vested real property" means the land, interests, buildings, structures, fixtures, additions, alterations and improvements that are vested in the Crown under section 2. ("biens réels dévolus")

Vested Real Property

Land vested in the Crown

2 (1) Any land prescribed for the purposes of this subsection is vested in the Crown on the date prescribed in respect of the land and is under the Minister's control.

Buildings, structures etc. vested in the Crown

(2) If land is prescribed for the purpose of subsection (1), the following are also vested in the Crown on the date prescribed in respect of the land and are under the Minister's control:

1. All interests in the land.

2. All buildings and structures located on the land and all interests in those buildings and structures.
3. All fixtures and all interests in fixtures installed or placed in or used in connection with the land or the buildings or structures described in paragraph 2.
4. All additions, alterations and improvements and all interests in those additions, alterations and improvements made in connection with the land or the buildings or structures described in paragraph 2 or the fixtures described in paragraph 3.

Application

(3) Subsections (1) and (2) apply despite anything in any agreement, instrument, other Act or regulation, other than a regulation under this Act.

Ontario Place land

(4) Land prescribed for the purpose of subsection (1) must be within the land identified by the Property Identification Numbers set out in Schedule 1.

Exceptions etc.

(5) This section is subject to any prescribed exceptions, conditions, limitations or restrictions.

Restrictions on City re property

3 (1) No person or entity, including the City of Toronto, shall encumber, sell or otherwise dispose of,

(a) any land that is part of the land identified by the Property Identification Numbers set out in Schedule 1;

(b) any buildings or structures located on the land described in clause (a);

(c) any interests in the land described in clause (a) and any interests in the buildings or structures described in clause (b);

(d) any fixtures or any interests in fixtures installed or placed in or used in connection with the land described in clause (a) or the buildings or structures described in clause (b); or

(e) any additions, alterations and improvements or interests in those additions, alterations and improvements made in connection with the land described in clause (a), the buildings or structures described in clause (b) or the fixtures described in clause (d).

Deemed contravention, pre-Royal Assent

(2) The encumbrance, sale or disposal of any thing mentioned in subsection (1) by any person or entity, including the City of Toronto, after the day the *New Deal for Toronto Act, 2023* receives First Reading and before the day that Act receives Royal Assent is deemed to be a contravention of subsection (1).

Exceptions etc.

(3) This section is subject to any such exceptions, conditions, limitations or restrictions as may be set out in the regulations.

Note: On a day to be named by proclamation of the Lieutenant Governor, section 3 of the Act is repealed. (See: 2023, c. 25, Sched. 2, s. 22 (1))

Section Amendments with date in force (d/m/y)

Compensation

4 (1) If vested real property was under the ownership or control of the City of Toronto, or such other person or entity as may be specified in the regulations, immediately before the property was vested in the Crown, the Crown shall pay compensation in respect of the vested real property to the City of Toronto or to the specified person or entity, as applicable, in accordance with this Act and the regulations.

Same

(2) The compensation payable to the City of Toronto or to the specified person or entity, as applicable, shall be based on the market value of the property as set out in the reports mentioned in subsection (4) and such other amounts as may be set out in the regulations.

Costs deducted from compensation

(3) If any amount, such as costs, is recoverable under this Act by the Crown against the City of Toronto or any person or entity specified for the purposes of subsection (1), the compensation payable to the City, person or entity, as applicable, in respect of any vested real property may be reduced by that amount or by a portion of that amount.

Appraisal reports

(4) The Minister, or another entity as may be specified in this Act or the regulations, shall prepare the following reports in accordance with such requirements as may be set out in the regulations:

1. A report appraising the market value of vested real property that was under the ownership or control of the City of Toronto before the property was vested in the Crown under section 2.
2. In respect of each person or entity specified for the purposes of subsection (1), a report appraising the market value of vested real property under the ownership or control of the specified person or entity before the property was vested in the Crown under section 2.

Same

(5) A separate report shall be prepared under subsection (4) in respect of each regulation made for the purposes of subsection 2 (1) and each report shall contain,

(a) a list of the selling prices of comparable properties;

(b) an explanation of any reductions made under subsection (3); and

(c) such other information as may be required by the regulations.

Timing and methodologies for determining or valuing amounts

(6) The appraisal of market value under subsection (4) is subject to such rules as may be specified in the regulations respecting,

(a) dates or periods with respect to which the market value of vested real property shall be determined or valued;

(b) methodologies for determining or valuing any amount or thing related to appraising the market value of vested real property; and

(c) such other rules as may be set out in the regulations.

Provision of reports

(7) The Crown shall provide a copy of the relevant report to the City of Toronto and to each specified person or entity, as applicable, at the time compensation is paid.

Overpayment

(8) Any amount paid to the City of Toronto or to a specified person or entity under this section that exceeds the amount of compensation to which the City, person or entity is entitled under this section is a debt due to the Crown, and the Crown may recover the debt by action or by any other remedy or procedure available by law to the Crown for the collection of debts owed to the Crown.

Money appropriated by the Legislature

(9) The compensation payable under this section shall be paid for out of the money appropriated for the purpose by the Legislature.

Disputes

(10) Any dispute relating to this section shall be determined by binding arbitration under the *Arbitration Act, 1991*.

Market value

(11) In this section,

"market value" in respect of property means the amount that the property might be expected to realize, based on the existing condition and current use of the property, if sold in the open market by a willing seller to a willing buyer.

Planning Ontario Place Site

Amendment of official plan re Ontario Place site

5 (1) The Minister may, by order, amend an official plan under the *Planning Act* if the Minister is of the opinion that the plan is likely to adversely affect a matter of provincial interest within the meaning of that Act in respect of the Ontario Place site.

Effect of order

(2) The Minister's order has the same effect as an amendment to the plan adopted by the council and approved by the appropriate approval authority under the *Planning Act*.

Non-application of *Legislation Act, 2006*, Part III

(3) Part III (Regulations) of the *Legislation Act, 2006* does not apply to an order made under subsection (1).

Power of Minister re zoning and subdivision control, Ontario Place site

6 The Minister may, in respect of the Ontario Place site, by order under this Act, exercise any of the powers conferred upon the Minister of Municipal Affairs and Housing under section 47 of the *Planning Act*.

Non-application, provincial policy statements etc.

7 Despite any other Act, an order made under section 5 or 6 need not be consistent with any policy statement issued under subsection 3 (1) of the *Planning Act* and need not conform with any provincial plan in effect in the area in which the order applies.

Conflict

8 (1) In the event of conflict between an order made under section 23 of the *Planning Act* in respect of the Ontario Place site and an order made under section 5 of this Act, the order made under section 5 prevails.

(2) In the event of conflict between an order made under section 47 of the *Planning Act* in respect of the Ontario Place site and an order made under section 6 of this Act, the order made under section 6 prevails.

Environmental Assessment Exemptions

Environmental Assessment Act, exemptions re Ontario Place

9 (1) The following are exempt from the Environmental Assessment Act:

1. Any undertaking or Part II.3 project carried out at the site described in subsection (2).
2. Any undertaking or Part II.3 project that is not carried out at the site described in subsection (2), including any of the following, if the undertaking or Part II.3 project furthers the Ontario Place Redevelopment Project:

i. Establishing, changing or retiring water works or sewage works.

ii. Establishing, changing or retiring a highway, an access point associated with a highway or a parking facility or area.

iii. Acquiring or disposing of any land, buildings, structures, fixtures, additions, alterations or improvements, and any interests in such land, buildings, structures, fixtures, additions, alterations or improvements.

3. The vesting of any land, buildings, structures, fixtures, additions, alterations or improvements, and any interests in such land, buildings, structures, fixtures, additions, alterations or improvements under section 2 and any other undertakings or Part II.3 projects related to the vesting. 2023, c. 25, Sched. 2, s. 22 (2).

Site of undertakings or projects

(2) The site mentioned in subsection (1) is comprised of,

(a) the land identified by the Property Identification Numbers set out in Schedule 3; and

(b) prescribed land, if any, that is part of the land identified by the Property Identification Numbers set out in Schedule 1. 2023, c. 25, Sched. 2, s. 22 (2).

Non-application of exemption

(3) An exemption in subsection (1) does not apply in respect of,

(a) an undertaking for which a notice of completion has been issued on or before July 4, 2023 under the Public Work Class Environmental Assessment; or

(b) such other undertakings or Part II.3 projects as may be prescribed. 2023, c. 25, Sched. 2, s. 22 (2).

Changes to specified undertakings

(4) Any change to an undertaking described in clause (3) (a) is exempt from the *Environmental Assessment Act*. 2023, c. 25, Sched. 2, s. 22 (2).

Definitions

(5) In this section,

"highway" has the same meaning as under the *Highway Traffic Act*; ("voie publique")

"Part II.3 project" and "undertaking" have the same meanings as under the *Environmental Assessment Act*; ("projet visé par la partie II.3", "entreprise")

"Public Work Class Environmental Assessment" means the Class Environmental Assessment Process for Management Board Secretariat and Ontario Realty Corporation approved by the Lieutenant Governor in Council on April 28, 2004 under Order in Council 913/2004, as amended or renamed from time to time; ("Évaluation environnementale de portée générale pour les travaux publics")

"sewage works" has the same meaning as under the *Ontario Water Resources Act*; ("station d'épuration des eaux d'égout")

"water works" has the same meaning as under the *Ontario Water Resources Act*. ("station de purification de l'eau") 2023, c. 25, Sched. 2, s. 22 (2).

Note: On a day to be named by proclamation of the Lieutenant Governor, section 9 of the Act is repealed and the following substituted: (See: 2023, c. 25, Sched. 2, s. 22 (3))

Environmental Assessment Act, exemptions re Ontario Place

9 (1) The following are exempt from the *Environmental Assessment Act*:

1. Any undertaking, Part II.3 project or Part II.4 project carried out at the site described in subsection (2).

2. Any undertaking, Part II.3 project or Part II.4 project that is not carried out at the site described in subsection (2), including any of the following, if the undertaking, Part II.3 project or Part II.4 project furthers the Ontario Place Redevelopment Project:

    i. Establishing, changing or retiring water works or sewage works.

    ii. Establishing, changing or retiring a highway, an access point associated with a highway or a parking facility or area.

    iii. Acquiring or disposing of any land, buildings, structures, fixtures, additions, alterations or improvements, and any interests in such land, buildings, structures, fixtures, additions, alterations or improvements.

3. The vesting of any land, buildings, structures, fixtures, additions, alterations or improvements, and any interests in such land, buildings, structures, fixtures, additions, alterations or improvements under section 2 and any other undertakings, Part II.3 projects or Part II.4 projects related to the vesting.2023, c. 25, Sched. 2, s. 22 (3).

Site of undertakings or projects

(2) The site mentioned in subsection (1) is comprised of,

(a) the land identified by the Property Identification Numbers set out in Schedule 3; and

(b) prescribed land, if any, that is part of the land identified by the Property Identification Numbers set out in Schedule 1. 2023, c. 25, Sched. 2, s. 22 (3).

Non-application of exemption

(3) An exemption in subsection (1) does not apply in respect of,

(a) an undertaking or Part II.4 project for which a notice of completion has been issued on or before July 4, 2023 under the Public Work Class Environmental Assessment; or

(b) such other undertakings, Part II.3 projects or Part II.4 projects as may be prescribed. 2023, c. 25, Sched. 2, s. 22 (3).

Changes to specified undertakings

(4) Any change to an undertaking or Part II.4 project described in clause (3) (a) is exempt from the Environmental Assessment Act. 2023, c. 25, Sched. 2, s. 22 (3).

Definitions

(5) In this section,

"highway" has the same meaning as under the *Highway Traffic Act*; ("voie publique")

"Part II.3 project", "Part II.4 project" and "undertaking" have the same meanings as under the *Environmental Assessment Act*; ("projet visé par la partie II.3", "projet visé par la partie II.4", "entreprise")

"Public Work Class Environmental Assessment" means the Class Environmental Assessment Process for Management Board Secretariat and Ontario Realty Corporation approved by the Lieutenant Governor in Council on April 28, 2004 under Order in Council 913/2004, as amended or renamed from time to time; ("Évaluation environnementale de portée générale pour les travaux publics")

"sewage works" has the same meaning as under the *Ontario Water Resources Act*; ("station d'épuration des eaux d'égout")

"water works" has the same meaning as under the *Ontario Water Resources Act*. ("station de purification de l'eau") 2023, c. 25, Sched. 2, s. 22 (3).

Note: On a day to be named by proclamation of the Lieutenant Governor, section 9 of the Act is repealed and the following substituted: (See: 2023, c. 25, Sched. 2, s. 22 (4))

Environmental Assessment Act, exemptions re Ontario Place

9 (1) The following are exempt from the *Environmental Assessment Act*:

1. Any Part II.3 project or Part II.4 project carried out at the site described in subsection (2).
2. Any Part II.3 project or Part II.4 project that is not carried out at the site described in subsection (2), including any of the following, if the Part II.3 project or Part II.4 project furthers the Ontario Place Redevelopment Project:

    i. Establishing, changing or retiring water works or sewage works.

    ii. Establishing, changing or retiring a highway, an access point associated with a highway or a parking facility or area.

iii. Acquiring or disposing of any land, buildings, structures, fixtures, additions, alterations or improvements, and any interests in such land, buildings, structures, fixtures, additions, alterations or improvements.

3. The vesting of any land, buildings, structures, fixtures, additions, alterations or improvements, and any interests in such land, buildings, structures, fixtures, additions, alterations or improvements under section 2 and any related Part II.3 projects or Part II.4 projects. 2023, c. 25, Sched. 2, s. 22 (4).

Site of projects

(2) The site mentioned in subsection (1) is comprised of,

(a) the land identified by the Property Identification Numbers set out in Schedule 3; and

(b) prescribed land, if any, that is part of the land identified by the Property Identification Numbers set out in Schedule 1. 2023, c. 25, Sched. 2, s. 22 (4).

Non-application of exemption

(3) An exemption in subsection (1) does not apply in respect of,

(a) a Part II.4 project for which a notice of completion has been issued on or before July 4, 2023 under the Public Work Class Environmental Assessment; or

(b) such other Part II.3 projects or Part II.4 projects as may be prescribed. 2023, c. 25, Sched. 2, s. 22 (4).

Changes to specified projects

(4) Any change to a Part II.4 project described in clause (3) (a) is exempt from the *Environmental Assessment Act*. 2023, c. 25, Sched. 2, s. 22 (4).

Definitions

(5) In this section,

"highway" has the same meaning as under the *Highway Traffic Act*; ("voie publique")

"Part II.3 project" and "Part II.4 project" have the same meanings as under the *Environmental Assessment Act*; ("projet visé par la partie II.3", "projet visé par la partie II.4")

"Public Work Class Environmental Assessment" means the Class Environmental Assessment Process for Management Board Secretariat and Ontario Realty Corporation approved by the Lieutenant Governor in Council on April 28, 2004 under Order in Council 913/2004, as amended or renamed from time to time; ("Évaluation environnementale de portée générale pour les travaux publics")

"sewage works" has the same meaning as under the *Ontario Water Resources Act*; ("station d'épuration des eaux d'égout")

"water works" has the same meaning as under the *Ontario Water Resources Act*. ("station de purification de l'eau") 2023, c. 25, Sched. 2, s. 22 (4).

Section Amendments with date in force (d/m/y)

Non-Application of Ontario Heritage Act

Non-application of *Ontario Heritage Act*, re Ontario Place

10 (1) Despite subsection 68 (3) of the *Ontario Heritage Act*, and subject to any regulations made under subsection (2) of this section, the *Ontario Heritage Act* does not apply in respect of,

(a) the land identified by the Property Identification Numbers set out in Schedule 3; or

(b) any buildings or structures located on the land described in clause (a).

Regulations

(2) The Lieutenant Governor in Council may make regulations,

(a) specifying additional land, buildings or structures at the Ontario Place site to which the *Ontario Heritage Act* does not apply;

(b) specifying land, buildings or structures at the Ontario Place site to which the *Ontario Heritage Act* applies, which may include the Cinesphere and the five elevated, interconnected pavilions, known as the Pods.

Same

(3) For greater certainty, if a regulation made under clause (2) (b) specifies a building, structure or land to which the *Ontario Heritage Act* applies, the Act does not apply in respect of any other buildings, structures or land described in subsection (1) or specified in a regulation made under clause (2) (a).

Same

(4) Subsection (3) applies even if the transfer, use, development or modification of the other buildings, structures or land mentioned in that subsection would directly or indirectly affect the building, structure or land specified in the regulation made under clause (2) (b).

Limitations on City of Toronto Powers

Note: Section 11 comes into force on a day to be named by proclamation of the Lieutenant Governor.

Noise at Ontario Place

11 (1) Despite sections 7 and 8 of the *City of Toronto Act 2006*, the City of Toronto does not have the power to prohibit and regulate with respect to noise emitted from the Ontario Place site, except as otherwise authorized by regulation.

Regulations

(2) The Lieutenant Governor in Council may make regulations,

(a) authorizing the City of Toronto to prohibit and regulate with respect to noise emitted from the Ontario Place site; and

(b) governing the powers of the City of Toronto under clause (a).

Facilitate construction at the Ontario Place site, regulations

12 (1) If the Lieutenant Governor in Council considers that it is necessary or desirable to facilitate construction at the Ontario Place site, the Lieutenant Governor in Council may make regulations imposing limits and conditions on the power of the City of Toronto under the *City of Toronto Act, 2006*, or providing that the City cannot exercise the power in specified circumstances.

Same

(2) If a regulation under subsection (1) imposes limits or conditions on a power of the City of Toronto or provides that the City cannot exercise a power in specified circumstances, any by-law made by the City under the applicable power is inoperative to the extent of the limits, conditions or prohibition.

Municipal Service and Right of Way Access

Municipal service and right of way access

13 (1) This section applies if the Minister determines that the Corporation or any other prescribed person or entity requires any of the following for the purpose of furthering the Ontario Place Redevelopment Project:

1. Municipal service and right of way access in the form of the use, occupation, modification or temporary closure of a municipal highway, or a municipal right of way.
2. Municipal service and right of way access in the form of the use of, access to or modification of,

i. real property or an interest in real property that is under City of Toronto ownership or control,

ii. infrastructure that is under City of Toronto ownership or control, or

iii. municipal services related to the infrastructure mentioned in subparagraph ii.

Application

(2) For greater certainty, this section applies in respect of any municipal service and right of way access described in subsection (1) regardless of where the service or right of way is located, if the Minister determines that municipal service and right of way access is required for the purpose of furthering the Ontario Place Redevelopment Project.

Modification includes construction

(3) A reference in subsection (1) to the modification of a municipal service includes a reference to the removal of a municipal service and a reference to the construction of a municipal service

that does not exist on the date section 2 of Schedule 2 to the *New Deal for Toronto Act, 2023* comes into force.

Notice

(4) The Minister shall notify the City of Toronto and the Corporation or the person or entity prescribed for the purposes of subsection (1), as applicable, that any municipal service and right of way access described in that subsection is required by giving written notice stating,

(a) the particulars of the municipal service and right of way access that is required; and

(b) the date by which the municipal service and right of way access is required.

Negotiation

(5) After the City of Toronto and the Corporation or the person or entity prescribed for the purposes of subsection (1), as applicable, receive the notice, the City of Toronto and the Corporation or prescribed person or entity, as applicable, shall enter reasonably promptly into negotiations to agree on terms for the municipal service and right of way access.

If negotiation fails, Minister's order

(6) If, in the Minister's opinion, the City of Toronto and the Corporation or the person or entity prescribed for the purposes of subsection (1), as applicable, will not be able to agree on terms for the municipal service and right of way access even though the Corporation or the prescribed person or entity, as applicable, has made reasonable efforts to reach an agreement, the Minister may make a municipal service and right of way access order in accordance with subsections (7) and (8).

Before making order

(7) In developing a municipal service and right of way access order, the Minister,

(a) shall consult with the City of Toronto and the Corporation or the person or entity prescribed for the purposes of subsection (1), as applicable, in the manner that, in the Minister's opinion, is appropriate;

(b) may require the City of Toronto and the Corporation or the person or entity prescribed for the purposes of subsection (1), as applicable, to provide information that, in the Minister's opinion, the Minister requires to make the order; and

(c) may obtain technical or other advice on the development of the order.

Terms of order

(8) A municipal service and right of way access order may require the City of Toronto to provide the municipal service and right of way access set out in the order and may set terms governing the City of Toronto and the Corporation or the person or entity prescribed for the purposes of subsection (1), as applicable, in respect of the municipal service and right of way access, including terms respecting any of the following matters:

1. Implementation of adequate measures to mitigate the impact on the public of the municipal service and right of way access, which may include notification to the City of Toronto and the public of matters concerning the municipal service and right of way access.
2. Provision of resources and compensation to address the impact on the City of Toronto of the municipal service and right of way access.
3. Measures to address potential City of Toronto liability arising from the municipal service and right of way access.
4. Technical standards that must be met to support the municipal service and right of way access.
5. Dispute resolution.
6. Any other matters.

Revising or cancelling order

(9) If the Minister determines that it is necessary to do so, the Minister may revise or cancel the municipal service and right of way access order by giving the City of Toronto and the Corporation or the person or entity prescribed for the purposes of subsection (1), as applicable, written notice stating,

(a) the particulars of why the order needs to be revised or cancelled and, if revision is required, of the revision; and

(b) the date that the revision or cancellation is to take effect.

Negotiation, development and terms

(10) Subsections (5) to (8) apply, with necessary modifications, with respect to the revision or cancellation of the municipal service and right of way access order.

Money appropriated by the Legislature

(11) Any compensation payable under this section shall be paid for out of the money appropriated for the purpose by the Legislature.

Compliance with order

(12) The City of Toronto, the Corporation and any person or entity prescribed for the purposes of subsection (1) shall comply with a municipal service and right of way access order.

Enforcement

(13) A municipal service and right of way access order may be filed in the Superior Court of Justice and then may be enforced as if it were an order of that court.

Miscellaneous

Ministerial directives

14 (1) The Minister may issue directives in writing to the Corporation in respect of any matter under this Act.

Implementation

(2) The Corporation's board of directors shall ensure the directives to the Corporation are implemented promptly and efficiently.

Directive not a regulation

(3) A directive is not a regulation within the meaning of Part III (Regulations) of the *Legislation Act, 2006*.

Delegation to Infrastructure Ontario

15 The Minister may delegate the Minister's functions under subsections 4 (4) and 13 (1), (2) and (4) in whole or in part to the Corporation, subject to any conditions and restrictions set out in the delegation.

Serving a document

16 (1) Except as otherwise provided under this Act, a notice, order or document that is required or permitted to be given or provided to, or served on, a person or entity under this Act is sufficiently given, provided or served if it is,

(a) delivered directly to the person or entity;

(b) sent by registered mail to the person's or entity's last known address;

(c) sent by email to the person's or entity's last known email address; or

(d) given by any other prescribed means.

Deemed receipt

(2) Subject to subsection (3),

(a) a document sent under clause (1) (c) is deemed to have been received on the first business day after the day it was sent; and

(b) a document sent under clause (1) (d) is deemed to have been received on the day specified by the regulations.

Failure to receive document

(3) Subsection (2) does not apply if the person or entity establishes that they, acting in good faith, did not receive the document or received it on a later date because of a reason beyond their control, including absence, accident, disability or illness.

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.

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.

Regulations, Minister

18 The Minister may make regulations,

(a) respecting anything that is referred to in this Act as being prescribed;

(b) exempting any person or entity from a provision of this Act or the regulations, with or without conditions;

(c) defining any word or expression used in this Act that is not already defined and further defining any word or expression used in this Act that is already defined in this Act;

(d) requiring the City of Toronto or other specified person or entity to take specified actions with respect to vested real property;

(e) governing the recovery by the Crown of costs from the City of Toronto or other prescribed person or entity, including prescribing circumstances in which the Crown may recover costs, prescribing the costs that may be recovered, requiring the City of Toronto or other prescribed person or entity to pay such costs and authorizing the Crown to recover the prescribed costs in those prescribed circumstances;

(f) respecting whether an undertaking or Part II.3 project is in furtherance of the Ontario Place Redevelopment Project for the purposes of paragraph 2 of subsection 9 (1), which may include specifying undertakings or Part II.3 projects that further or do not further the Ontario Place Redevelopment Project or authorizing a person specified by the regulation to make a determination of whether undertakings or Part II.3 projects further the Ontario Place Redevelopment Project;

Note: On a day to be named by proclamation of the Lieutenant Governor, clause 18 (f) of the Act is repealed and the following substituted: (See: 2023, c. 25, Sched. 2, s. 22 (6))

(f) respecting whether an undertaking, Part II.3 project or Part II.4 project is in furtherance of the Ontario Place Redevelopment Project for the purposes of paragraph 2 of subsection 9 (1), which may include specifying undertakings, Part II.3 projects or Part II.4 projects that further or do not further the Ontario Place Redevelopment Project or authorizing a person specified by the regulation to make a determination of whether undertakings, Part II.3 projects or Part II.4 projects further the Ontario Place Redevelopment Project;

Note: On a day to be named by proclamation of the Lieutenant Governor, clause 18 (f) of the Act is repealed and the following substituted: (See: 2023, c. 25, Sched. 2, s. 22 (7))

(f) respecting whether a Part II.3 project or Part II.4 project is in furtherance of the Ontario Place Redevelopment Project for the purposes of paragraph 2 of subsection 9 (1), which may include specifying Part II.3 projects or Part II.4 projects that further or do not further the Ontario Place Redevelopment Project or authorizing a person specified by the regulation to make a determination of whether Part II.3 projects or Part II.4 projects further the Ontario Place Redevelopment Project;

(g) requiring the City of Toronto or a specified person or entity to provide information to the Minister or other prescribed person or entity that is relevant to the administration of this Act;

(h) providing for transitional matters which, in the opinion of the Minister, are necessary or desirable to,

(i) facilitate the implementation of this Act or any provision of this Act, including matters arising from the vesting of real property,

(ii) deal with problems or issues arising as a result of the enactment of this Act;

(i) providing for any other matters to carry out this Act, other than matters that may be the subject of regulations made under subsection 10 (2), 11 (2) or section 12 or 19. 2023, c. 25, Sched. 2, s. 18; 2023, c. 25, Sched. 2, s. 22 (5).

Section Amendments with date in force (d/m/y)

Regulations, Lieutenant Governor in Council

19 The Lieutenant Governor in Council may make regulations,

(a) if the Lieutenant Governor in Council is of the opinion that an agreement may interfere with the vesting of real property under this Act or the furthering of the Ontario Place Redevelopment Project, governing such agreements to the extent of the interference, including,

(i) deeming specified terms or conditions to be or not to be included in an agreement,

(ii) requiring the parties to an agreement to include specified terms or conditions in the agreement,

(iii) prohibiting an agreement from including specified terms or conditions;

(b) addressing the consequences of a contravention of or non-compliance with section 3, including,

(i) respecting measures that shall be taken by the City of Toronto, the Minister, the Corporation or any other person or entity in connection with the contravention or non-compliance,

(ii) governing the rights, powers and obligations of persons or entities who were directly or indirectly affected by the contravention or non-compliance,

(iii) governing the vesting of real property, including the registration on title, in connection with the contravention or non-compliance,

(iv) providing for exceptions, conditions, limitations or restrictions;

(c) governing compensation under section 4, including,

(i) specifying persons or entities for the purpose of subsection 4 (1),

(ii) governing amounts for the purposes of subsection 4 (2), including fixing the amounts, setting maximum or minimum amounts and specifying methods or techniques for determining amounts or maximum or minimum amounts,

(iii) specifying an entity and providing for requirements in respect of a report under subsection 4 (4),

(iv) respecting the rules that apply in appraising market value under subsection 4 (6),

(v) requiring the City of Toronto or a specified person or entity to receive payments of the amounts referred to in subclause (ii) or to participate in specified methods for receiving such payments;

(d) governing service for the purposes of section 16, which may include specifying a date for the purpose of clause 16 (2) (b).

Adoption of documents in regulations

20 (1) A regulation may adopt by reference, in whole or in part, with such changes as the maker of the regulation considers necessary, any document, including a code, formula, standard, protocol or procedure, and may require compliance with any document so adopted.

Rolling incorporation by reference

(2) The power to adopt by reference and require compliance with a document in subsection (1) includes the power to adopt a document as it may be amended from time to time.

Same

(3) The adoption by reference of an amendment to a document comes into effect upon publication of a notice of the amendment on the website mentioned in subsection (4).

Publication

(4) The Corporation shall publish documents adopted under subsection (1) and notices mentioned in subsection (3) on the Corporation's website and shall make them publicly available in any other manner the Corporation considers advisable.

Retroactivity, existing rights

21 If it so provides, a regulation is effective with respect to a period before it is filed and applies to rights in real property, contractual rights or other rights that existed at the time that the regulation was made.

22 OMITTED (PROVIDES FOR AMENDMENTS TO THIS ACT).

23, **24** OMITTED (AMENDS, REPEALS OR REVOKES OTHER LEGISLATION).

25 OMITTED (PROVIDES FOR COMING INTO FORCE OF PROVISIONS OF THIS ACT).

26 OMITTED (ENACTS SHORT TITLE OF THIS ACT).

SCHEDULE 1
LAND THAT CAN BE PRESCRIBED FOR THE PURPOSES OF SUBSECTIONS 2 (1) AND 9 (1)

1. Property Identification Number 21418-0100 (LT), being part Blocks A and M on Plan D1397 Toronto; part Water Lot in front of Plan Ordnance Reserve Toronto lying east of Water Lot at foot of Dufferin Street & South of Lake Shore Boulevard West, granted to The Toronto Harbour Commissioners by Dominion Government on June 5, 1934 by WF17942 as in WF55391 (Parcel 5) except 63R-1786 & 63R-2034 and as in OF24339 except WF55391; Subject to CA208787; City of Toronto.

2. Property Identification Number 21416-0099 (LT), being part Lots G and H on Plan D1411 Toronto; Lots J, K, L, M, N, O, P and Q on Plan D1411 Toronto; part Water Lot in front of Lots 33 and 34, Concession Broken Front Toronto; part Lots 12 to 25 on Plan 782 Parkdale; part Water Lot in front of Lot 31 Concession Broken Front Toronto; Water Lot in front of Lot 36 Concession Broken Front Toronto; part Water Lot in front of Dufferin Street Toronto; Hawthorne Terrace on Plan 549 Parkdale also known as Laburnam Avenue closed by WF35040; part Lots 9, 10 and 19 to 24 on Plan 549 Parkdale; part Lots 69, 70 and 94 on Plan 333 Parkdale; Dowling Avenue on Plan 333 Parkdale closed by WF35040; Water Lots 25 to 30 on Plan 549 Toronto; Jameson Avenue on Plan 370 Parkdale closed by WF43635; part Block J on Plan D1478 Toronto; part Water Lot in front of Lot 32 Concession Broken Front Toronto part also described as Water Lots 1A, 2A and 3A on Plan 1011 Toronto; part Lot 46 on Plan 443 Parkdale; Lots 52 to 59 on Plan 443 Parkdale; Dunn Avenue on Plan 443 Parkdale closed by WF35040; Dunn Avenue on Plan 443 Parkdale south of Block K on Plan D1478 Toronto; part Blocks H and K on Plan D1478 Toronto; part Lots 1 to 3 on Plan D1478 Toronto; part Lots 105 to 111 on Plan 613 Parkdale; Lots 112 to 114 on Plan 613 Parkdale; part Lots 15 and 16 W/S Jameson Avenue on Plan 370 Parkdale; part Lots 1 to 3 on Plan 1011 Toronto as in CA333154, CT452027 (part of Parcel 3), WF55391 (Parcels 2, 3, 4 and 5), WF15313, WF11641 (Parcel 1), WF6757, WF6717, OD12056 (Parcel 1), OF64044; except Part 9 on 63R-275 & Parts 1, 2 and 3 on 63R-265; Subject to CA208787, WF51758; Subject to an easement in gross over Parts 1, 2 and 3 on 64R-14276, Parts 1, 2 and 3 on 64R-14277, Part 1 on 64R-14278, Part 1 on 64R-14279 as in AT3917049; City of Toronto.

SCHEDULE 2
LAND THAT CAN BE PRESCRIBED AS THE ONTARIO PLACE SITE

1. Property Identification Number 21418-0100 (LT), being part Blocks A and M on Plan D1397 Toronto; part Water Lot in front of Plan Ordnance Reserve Toronto lying east of Water Lot at foot of Dufferin Street & South of Lake Shore Boulevard West, granted to The Toronto Harbour Commissioners by Dominion Government on June 5, 1934 by WF17942 as in WF55391 (Parcel 5) except 63R-1786 & 63R-2034 and as in OF24339 except WF55391; Subject to CA208787; City of Toronto.

2. Property Identification Number 21416-0099 (LT), being part Lots G and H on Plan D1411 Toronto; Lots J, K, L, M, N, O, P and Q on Plan D1411 Toronto; part Water Lot in front of Lots 33 and 34, Concession Broken Front Toronto; part Lots 12 to 25 on Plan 782 Parkdale; part Water Lot in front of Lot 31 Concession Broken Front Toronto; Water Lot in front of Lot 36 Concession Broken Front Toronto; part Water Lot in front of Dufferin Street Toronto; Hawthorne Terrace on Plan 549 Parkdale also known as Laburnam Avenue closed by WF35040; part Lots 9, 10 and 19 to 24 on Plan 549 Parkdale; part Lots 69, 70 and 94 on Plan 333 Parkdale; Dowling Avenue on Plan 333 Parkdale closed by WF35040;

Water Lots 25 to 30 on Plan 549 Toronto; Jameson Avenue on Plan 370 Parkdale closed by WF43635; part Block J on Plan D1478 Toronto; part Water Lot in front of Lot 32 Concession Broken Front Toronto part also described as Water Lots 1A, 2A and 3A on Plan 1011 Toronto; part Lot 46 on Plan 443 Parkdale; Lots 52 to 59 on Plan 443 Parkdale; Dunn Avenue on Plan 443 Parkdale closed by WF35040; Dunn Avenue on Plan 443 Parkdale south of Block K on Plan D1478 Toronto; part Blocks H and K on Plan D1478 Toronto; part Lots 1 to 3 on Plan D1478 Toronto; part Lots 105 to 111 on Plan 613 Parkdale; Lots 112 to 114 on Plan 613 Parkdale; part Lots 15 and 16 W/S Jameson Avenue on Plan 370 Parkdale; part Lots 1 to 3 on Plan 1011 Toronto as in CA333154, CT452027 (part of Parcel 3), WF55391 (Parcels 2, 3, 4 and 5), WF15313, WF11641 (Parcel 1), WF6757, WF6717, OD12056 (Parcel 1), OF64044; except Part 9 on 63R-275 & Parts 1, 2 and 3 on 63R-265; Subject to CA208787, WF51758; Subject to an easement in gross over Parts 1, 2 and 3 on 64R-14276, Parts 1, 2 and 3 on 64R-14277, Part 1 on 64R-14278, Part 1 on 64R-14279 as in AT3917049; City of Toronto.

3. Property Identification Number 21417-0001(LT), being Parcel Lot 31-1, Section CL3368, being part of the Bed of Lake Ontario in front of the Ordnance Reserve and Lot 31, Broken Front Concession CL3368, Toronto, designated as Part 1 on Reference Plan 66R-13434; City of Toronto.

4. Property Identification Number 21418-0099(LT), being part of the Water Lot in front of Plan Ordnance Reserve, Toronto, designated as Part 1 on Reference Plan 63R-1786 and Part 1 on Reference Plan 63R-2034; City of Toronto.

SCHEDULE 3
SPECIFIED LAND AT THE ONTARIO PLACE SITE

1. Property Identification Number 21417-0001(LT), being Parcel Lot 31-1, Section CL3368, being part of the Bed of Lake Ontario in front of the Ordnance Reserve and Lot 31, Broken Front Concession CL3368, Toronto, designated as Part 1 on Reference Plan 66R-13434; City of Toronto.

2. Property Identification Number 21418-0099(LT), being part of the Water Lot in front of Plan Ordnance Reserve, Toronto, designated as Part 1 on Reference Plan 63R-1786 and Part 1 on Reference Plan 63R-2034; City of Toronto.

Court of Appeal File No.: COA-24-CV-0838
Court File No.: CV-24-00719861-0000

ONTARIO PLACE PROTECTORS	**HIS MAJESTY THE KING IN RIGHT OF ONTARIO et al.**
Appellant	Respondents

COURT OF APPEAL FOR ONTARIO

Proceeding Commenced at Toronto

FACTUM OF THE APPELLANT

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