

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

ONTARIO PLACE PROTECTORS

Applicant

- and -

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

Respondents

**FACTUM OF THE APPLICANT,
ONTARIO PLACE PROTECTORS**

July 15, 2024

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PART I – OVERVIEW

1. On December 6, 2023, the *Rebuilding Ontario Place Act, 2023*, S.O. 2023, c. 25, Sched. 21¹ ("ROPA") received Royal Assent. Section 17 of ROPA purports to exclude, amongst many other things, most remedies that could be sought pursuant to Ontario law and numerous legislative protections developed over many decades. The applicant Ontario Place Protectors ("OPP") respectfully submits these provisions (1) are unconstitutional as they infringe on the core jurisdiction of the Superior Court, and (2) breach the doctrine of public trust. For these reasons the applicant respectfully submits s.17(2) of ROPA should be declared unconstitutional and sections 9, 10, 11 and 17(2) of ROPA should be found to be a breach of public trust.

PART II – FACTS

2. 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.² At the same time, the Divisional Court found OP4A to be a public interest litigant and awarded no costs.³ In the OP4A case, the Divisional Court also specifically noted there was no challenge to the constitutionality of ROPA.⁴ As a result, OPP is now proceeding with its application.

¹ [Rebuilding Ontario Place Act, 2023, S.O. 2023, c. 25, Sched. 21.](#)

² *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.).

³ *Ontario Place for All Inc. v. Ontario (Ministry of Infrastructure)*, [\[2024\] O.J. No. 2597](#) (Div. Ct.) at paras. 26 & 27.

⁴ *Ontario Place for All Inc. v. Ontario (Ministry of Infrastructure)*, [\[2024\] O.J. No. 2597](#) (Div. Ct.) at para. 18.

Section 17 of ROPA

3. 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.⁵

4. 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 other conduct occurred before or after section 2 of Schedule 2 to the New Deal for Toronto Act, 2023 came into force.”⁶

5. 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.

⁵ [Rebuilding Ontario Place Act, 2023, S.O. 2023, c. 25, Sched. 21](#) at Sections 9, 10 and 11.

⁶ [Rebuilding Ontario Place Act, 2023, S.O. 2023, c. 25, Sched. 21](#) at Section 17(1) and 17(2).

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.⁷

The Applicant's Affidavit Evidence

6. The applicant has filed the following affidavits in support of its application:

- (i) Diane Chin – Architectural Conservancy of Ontario⁸
- (ii) Elsa Lam – Editor – Canadian Architect Magazine⁹
- (iii) Elizabeth Pagliacolo – Editor in Chief – Azure Magazine¹⁰

⁷ [Rebuilding Ontario Place Act, 2023, S.O. 2023, c. 25, Sched. 21](#) s. 17.

⁸ Application Record of the Applicant, Tab 2, Affidavit of Diane Chin affirmed July 3, 2024, at para. 1.

⁹ Application Record of the Applicant, Tab 3, Affidavit of Elsa Lam affirmed July 2, 2024, at para. 1.

¹⁰ Application Record of the Applicant, Tab 4, Affidavit of Elizabeth Pagliacolo affirmed July 3, 2024, at para. 1.

- (iv) Ian Chodikoff – Architect, MArch, MAUD, OAA, FRAIC¹¹
- (v) Joël León – Executive Director – Toronto Society of Architects¹²
- (vi) John Lorinc – Journalist¹³
- (vii) Javier Ors Ausín – Program Manager – World Monuments Fund¹⁴
- (viii) John Sewell – Former Mayor – City of Toronto¹⁵
- (ix) Lynn Morrow – The Friends of the Golden Horseshoe¹⁶
- (x) Mathieu Dormaels – President – ICOMOS Canada¹⁷
- (xi) Norman Di Pasquale – Co-Chair – Ontario Place for All¹⁸
- (xii) Patricia Kell – Executive Director – National Trust for Canada¹⁹
- (xiii) Sandford Borins – Professor of Public Management Emeritus – University of Toronto²⁰
- (xiv) Tony Morris – Conservation Policy and Campaigns Director – Ontario Nature²¹
- (xv) Charles A. Birnbaum – President – The Cultural Landscape Foundation²²
- (xvi) Catherine Nasmith – Heritage Architect - Director of Ontario Place Protectors²³
- (xvii) Cynthia Wilkey – former Co-Chair for Ontario Place for All ²⁴

¹¹ Application Record of the Applicant, Tab 5, Affidavit of Ian Chodikoff affirmed July 2, 2024, at para. 1.

¹² Application Record of the Applicant, Tab 6, Affidavit of Joël León affirmed July 2, 2024, at para. 1.

¹³ Application Record of the Applicant, Tab 7, Affidavit of John Lorinc affirmed July 2, 2024, at para. 1.

¹⁴ Application Record of the Applicant, Tab 8, Affidavit of Javier Ors Ausín affirmed July 2, 2024, at para. 1.

¹⁵ Application Record of the Applicant, Tab 9, Affidavit of John Sewell affirmed July 2, 2024, at para. 1.

¹⁶ Application Record of the Applicant, Tab 10, Affidavit of Lynn Morrow affirmed July 3, 2024, at para. 1.

¹⁷ Application Record of the Applicant, Tab 11, Affidavit of Mathieu Dormaels affirmed July 4, 2024, at para. 1.

¹⁸ Application Record of the Applicant, Tab 12, Affidavit of Norman Di Pasquale affirmed July 2, 2024, at para. 1.

¹⁹ Application Record of the Applicant, Tab 13, Affidavit of Patricia Kell (unsworn) at para. 1.

²⁰ Application Record of the Applicant, Tab 14 Affidavit of Sandford Borins affirmed July 2, 2024, at para. 1.

²¹ Application Record of the Applicant, Tab 15, Affidavit of Tony Morris affirmed July 3, 2024, at para. 1.

²² Amended Supplementary Application Record of the Applicant, Tab 5, Affidavit of Charles A. Birnbaum affirmed July 2, 2024, at para. 1.

²³ Amended Supplementary Application Record of the Applicant, Tab 2, Affidavit of Catherine Nasmith affirmed July 9, 2024, at para. 1.

²⁴ Amended Supplementary Application Record of the Applicant, Tab 3, Affidavit of Cynthia Wilkey affirmed July 8, 2024, at para. 1.

7. This evidence highlights the issues giving rise to the applicant'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 Ontario²⁵
- 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 Fund²⁶
- 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 Horseshoe²⁷
- 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 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 Canada²⁸

²⁵ Application Record of the Applicant, Tab 2, Affidavit of Diane Chin, Exhibit A, at pg. 11.

²⁶ Application Record of the Applicant, Tab 8, Affidavit of Javier Ors Ausin, Exhibit A, at pg. 119.

²⁷ Application Record of the Applicant, Tab 10, Affidavit of Lynn Morrow, Exhibit A, at pg. 141.

²⁸ Application Record of the Applicant, Tab 11, Affidavit of Mathieu Domaels, Exhibit A, at pg. 147.

- 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 Canada²⁹

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 Architects³⁰
- 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 Horseshoe³¹
- 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 Nature³²
- 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 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

²⁹ Application Record of the Applicant, Tab 13, Affidavit of Patricia Kell, Exhibit A, at pg. 163.

³⁰ Application Record of the Applicant, Tab 6, Affidavit of Joel Leon, Exhibit A, at pg. 68.

³¹ Application Record of the Applicant, Tab 10, Affidavit of Lynn Morrow, Exhibit A, at pg. 141.

³² Application Record of the Applicant, Tab 15, Affidavit of Tony Morris, Exhibit A, at pg. 180.

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 Magazine³³

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 Magazine³⁴

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 Magazine³⁵
- 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 Architects³⁶
- 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 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 Toronto³⁷

³³ Application Record of the Applicant, Tab 4, Affidavit of Elizabeth Pagliacolo, Exhibit A, at pg. 32.

³⁴ Application Record of the Applicant, Tab 3, Affidavit of Elsa Lam, Exhibit A, at pg. 22.

³⁵ Application Record of the Applicant, Tab 3, Affidavit of Elsa Lam, Exhibit A, at pg. 18.

³⁶ Application Record of the Applicant, Tab 6, Affidavit of Joël León, Exhibit A, at pg. 53.

³⁷ Application Record of the Applicant, Tab 9, Affidavit of John Sewell, Exhibit A, at pg. 132.

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 Ontario³⁸
- 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 All³⁹

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 Horseshoe⁴⁰

8. The respondents have not cross-examined the applicant’s evidence. The respondents have not filed any evidence. The evidence of the applicant is uncontradicted.

PART III – ISSUES AND LAW

- 9. The applicant respectfully submits this application raises the following issues:
 - i. Issue #1: Does ROPA violate section 96 of the *Constitution Act, 1982* by removing any remedy (except s. 35 rights) under any statute related to the Ontario Place lands?
 - ii. Issue #2: Does ROPA violate section 96 of the *Constitution Act, 1982* by removing all claims for costs, compensation or damages related to the Ontario Place lands?

³⁸ Application Record of the Applicant, Tab 2, Affidavit of Daine Chin, Exhibit A, at pg. 11.

³⁹ Application Record of the Applicant, Tab 12, Affidavit of Norman Di Pasquale, Exhibit A, at pg. 152.

⁴⁰ Application Record of the Applicant, Tab 10, Affidavit of Lynn Morrow, Exhibit A, at pg.138.

iii. Issue #3: Does ROPA breach the doctrine of public trust in relation to the Ontario Place lands?

iv. Issue #4: Should the stay on further demolition at Ontario Place be extended?

Section 96 Challenges

10. To begin, the importance of s. 96 of the *Constitution Act, 1982* and role of superior courts have consistently been recognized by the Supreme Court of Canada. These ensure uniformity of justice in Canada and uphold the rule of law:⁴¹

[41] The superior courts recognized by s. 96 "have always occupied a position of prime importance in the constitutional pattern of this country" (*Law Society of British Columbia*, at p. 327; see also *Windsor*, at para. 32). Although s. 96 may on its face appear to relate solely to the federal government's power to appoint judges, it has been interpreted by this Court as guaranteeing a nucleus to the superior courts (*Sobeys Stores Ltd. v. Yeomans and Labour Standards Tribunal (N.S.)*, [1989] 1 S.C.R. 238, at p. 264; *Canada (Human Rights Commission) v. Canadian Liberty Net*, [1998] 1 S.C.R. 626, at para. 27; see also *Tomko*, at p. 120).⁴²

11. Regarding the rule of law there are 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."⁴³

12. The rule of law is used as an interpretive aid when considering s. 96, but cannot be used standing alone to invalidate a law.⁴⁴ It speaks to principles rather than the terms of legislation.⁴⁵

Similarly, s. 96 does not grant many other specific rights, such as the right to a fair trial or court

⁴¹ *Reference re Code of Civil Procedure (Que.)*, art. 35, [2021 SCC 27](#) at paras. 41-52.

⁴² *Reference re Code of Civil Procedure (Que.)*, art. 35, [2021 SCC 27](#) at para. 41.

⁴³ *Reference re Code of Civil Procedure (Que.)*, art. 35, [2021 SCC 27](#) at para. 47.

⁴⁴ *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 \(SCC\)](#).

⁴⁵ *British Columbia v. Imperial Tobacco Canada Ltd.*, [2005 SCC 49](#) at para. 59.

process.⁴⁶ If citizens believe they are being treated unfairly or unjustly the remedy is through the electoral process.⁴⁷ The applicant is cognizant of these principles and this application is not based and does not turn on these issues.

13. At the same time, the Supreme Court has consistently applied s. 96 to limit the exercise of legislative powers, both federal and provincial, in three primary ways. First, by restricting parallel functions being addressed by superior courts and other entities.⁴⁸ Second, by preventing the removal of “core jurisdiction” from superior courts.⁴⁹ Third, by striking down legislation that limits access to superior courts either physically or by financial limitation, etc.⁵⁰

Core Jurisdiction Under s. 96

14. This application concerns the second of these powers i.e. the removal of the superior court’s core jurisdiction. The Supreme Court has regularly recognized that judicial review of legislative action is central to the functioning of our legal system. As a result, a legislature cannot insulate its decisions from judicial review.⁵¹ Regarding the transfer or removal of core powers the Supreme Court has held:

[64] Until *MacMillan Bloedel*, this Court's decisions protected the superior courts' role by limiting grants of their historical jurisdiction. In *MacMillan Bloedel*, the Court applied the three-step *Residential Tenancies* test to an exclusive grant to youth courts of the power to punish young persons for *ex facie* contempt of court -- a power that was traditionally exercised by superior courts. The application of that test was seen as deficient because it did not prevent the removal of this significant power from the superior courts. This Court thought it was necessary to interpret the nucleus of the superior courts as also protecting their core jurisdiction (*Sobeys*, at p. 264). Otherwise, there was a risk that gaps in the *Residential Tenancies* test would undermine the role of superior courts either by allowing the creation of

⁴⁶ *British Columbia v. Imperial Tobacco Canada Ltd.*, [2005 SCC 49](#) at paras. 63-77.

⁴⁷ *British Columbia v. Imperial Tobacco Canada Ltd.*, [2005 SCC 49](#) at para. 66.

⁴⁸ See for example *Reference re Residential Tenancies Act (Ontario)*, [\[1981\] 1 SCR 714](#); *Sobeys Stores Ltd. v. Yeomans and Labour Standards Tribunal (NS)*, [\[1989\] 1 SCR 238](#).

⁴⁹ See for example *Reference re Code of Civil Procedure (Que.)*, art. 35, [2021 SCC 27](#).

⁵⁰ See for example *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](#).

⁵¹ See for example *Crevier v. A.G. (Québec) et al.*, [1981 CanLII 30 \(SCC\)](#) at page 234.

parallel courts with certain powers essential to the superior courts' role or by allowing the defining features of superior courts to be removed.

[65] To preserve the essence of the superior courts, this Court therefore added a second test to the analysis of constitutionality under s. 96. It held that when the core jurisdiction of superior courts is affected, courts must ask whether the legislation has the effect of removing any of the attributes of the superior courts' core jurisdiction (*MacMillan Bloedel*, at paras. 18 and 27). Core jurisdiction includes "critically important jurisdictions which are essential to the existence of a superior court of inherent jurisdiction and to the preservation of its foundational role within our legal system" (*Reference re Residential Tenancies Act (N.S.)*, at para. 56, per Lamer C.J., concurring). These defining features enable a superior court "to fulfil itself as a court of law" (*MacMillan Bloedel*, at paras. 30, 35 and 38 (emphasis deleted), quoting I. H. Jacob, "The Inherent Jurisdiction of the Court" (1970), 23 *Current Legal Problems* 23, at p. 27). Their "inherent" nature is attributable to the fact that they are derived not from legislation, but "from the very nature of the court as a superior court of law" (para. 30, quoting Jacob, at p. 27). If such an attribute is removed, the measure is unconstitutional.

...

[68] The content of the core jurisdiction includes the inherent jurisdiction and inherent powers of a superior court recognized in *MacMillan Bloedel*: namely, review of the legality and constitutional validity of laws, enforcement of its orders, control over its own process, and its residual jurisdiction as a court of original general jurisdiction. [Emphasis added]⁵²

15. The Supreme Court has also expressly stated that while provinces have the right to control 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."⁵³ [Emphasis added]

16. As the Ontario Court of Appeal has also recently held:

[27] In *MacMillan Bloedel Ltd. v. Simpson*, [1995] 4 S.C.R. 725, the Supreme Court added that while adjudicative authority can, in some circumstances, be established outside the context of the superior courts, on no account can the inherent or core jurisdiction of the superior courts be transferred exclusively to another court or removed. Lamer C.J., writing for a majority of the Court, acknowledged that the core jurisdiction concept was difficult to define, but said that it is of "paramount importance" to the existence of the superior courts. He endorsed a broad conception set out by I.H. Jacob in "The Inherent Jurisdiction of the Court" (1970), 23 *Curr. Legal Probs.* 23, in which Jacob described the power of superior courts to maintain their authority and prevent their process from being obstructed as "intrinsic" and the "very life-blood" and "very essence" of superior courts. "Without such a power", Jacob wrote:

⁵² *Reference re Code of Civil Procedure (Que.)*, art. 35, [2021 SCC 27](#) at paras. 64, 65 and 68.

⁵³ *Trial Lawyers Association of British Columbia v. British Columbia (Attorney General)*, [2014 SCC 59 \(CanLII\)](#) at para. 36, and more generally see paras. 19-39.

"the court would have form but would lack substance. The jurisdiction which is inherent in a superior court of law is that which enables it to fulfil itself as a court of law": at p. 27.

[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. 30.⁵⁴ [Emphasis added]

17. ROPA appears to have violated these principles in two fundamental ways.

Issue #1: Does ROPA violate section 96 of the *Constitution Act, 1982* by removing any remedy (except s. 35 rights) under any statute related to the Ontario Place lands?

18. Subsection 17(2) of ROPA appears to directly infringe s. 96 by removing the superior court's jurisdiction to grant remedies of any kind under any Ontario statute. This appears to directly interfere with a core jurisdiction of the court. As noted, the Supreme Court has held:

[15] The superior courts have a core or inherent jurisdiction which is integral to their operations. The jurisdiction which forms this core cannot be removed from the superior courts by either level of government, without amending the Constitution. Without this core jurisdiction, s. 96 could not be said either to ensure uniformity in the judicial system throughout the country or to protect the independence of the judiciary. Furthermore, the power of superior courts to fully control their own process is, in our system where the superior court of general jurisdiction is central, essential to the maintenance of the rule of law itself. I discuss the contents and contours of the core jurisdiction below.

[37] Commenting on the constitutional jurisprudence regarding courts, Cromwell, *supra*, concludes (at p. 1032):

Thus, through generous interpretation of the constitutional provisions governing appointment and independence of provincial superior court judges and a restrictive reading of the constitutional limits of jurisdiction on the Federal Court, the primacy of the provincial superior courts in constitutional judicial review has been maintained. The basic proposition is that the Canadian conception of constitutional judicial review is deeply committed to the supervisory role of the provincial superior courts, that is, the general jurisdiction trial courts in each province.

In the constitutional arrangements passed on to us by the British and recognized by the preamble to the Constitution Act, 1867, the provincial superior courts are the foundation of the rule of law itself. Governance by rule of law requires a judicial system that can ensure its orders are enforced and its process respected. In Canada, the provincial superior court is

⁵⁴ *Poorkid Investments Inc. v. Ontario (Solicitor General)*, [2023 ONCA 172 \(CanLII\)](#) at paras. 27& 28; *Poorkid Investments Inc., et al. v. Solicitor General of Ontario Sylvia Jones, et al.*, [2023 CanLII 115642 \(SCC\)](#).

the only court of general jurisdiction and as such is the centre of the judicial system. None of our statutory courts has the same core jurisdiction as the superior court and therefore none is as crucial to the rule of law. To remove the power to punish contempt *ex facie* by youths would maim the institution which is at the heart of our judicial system. Destroying part of the core jurisdiction would be tantamount to abolishing the superior courts of general jurisdiction, which is impermissible without constitutional amendment.

[38] The core jurisdiction of the provincial superior courts comprises those powers which are essential to the administration of justice and the maintenance of the rule of law. It is unnecessary in this case to enumerate the precise powers which compose inherent jurisdiction, as the power to punish for contempt *ex facie* is obviously within that jurisdiction. ...⁵⁵

19. *MacMillan Bloedel* (quoted above) denied the Federal government the ability to direct matters of contempt to Youth Courts. Just as with the power to address contempt, the power to grant remedies is also clearly just as integral to the operation of any superior court. In addition, the vaster the removal of jurisdiction, the more likely the infringement violates s. 96.⁵⁶ Here, ss. 17(2) of ROPA completely eliminates the power to grant any remedy under any statute.

20. In interpreting this impact 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.⁵⁷ [Emphasis added]

⁵⁵ *MacMillan Bloedel Ltd. v. Simpson*, [1995] 4 SCR 725 at paras. 15, 37 and 38.

⁵⁶ *Reference re Code of Civil Procedure (Que.)*, art. 35, 2021 SCC 27 at paras. 98 & 99.

⁵⁷ *R. v. Domm*, 1996 CanLII 1331 (ON CA) at para. 12.

21. As also recently observed by the Ontario Court of Appeal, a screening mechanism for controlling remedies, if conducted by superior court judges for claims against the Crown, is permissible:

[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.⁵⁸ [Emphasis added]

22. However, completely removing the court's ability to grant *any* remedy under any Ontario statute plainly impinges on the superior court's ability to resolve disputes. The Supreme Court has permitted limits on superior courts powers to provide remedies, for example by limiting inquiries into Cabinet confidences under the *Canada Evidence Act*. But on the basis the limit "does not, in and of itself, impede a court's power to remedy abuses of process."⁵⁹ Under ROPA exactly the opposite is true. Every possible remedy under any statute is removed.

23. This includes the ability of the superior court (including the Superior Court of Justice and the Divisional Court, another superior court) to grant remedies under the *Courts of Justice Act*, the Rules of Civil Procedure, the *Ontario Evidence Act*, the *Public Inquiries Act* and the *Freedom of Information Protection of Privacy Act* to name only a few, as all of these are Ontario statutes or Regulations made under them.

24. This prohibition would also include granting any remedies under the *Judicial Review Procedure Act* ("JRPA"). While ss. 17(4) of the ROPA permits judicial reviews it does not exclude ss. 17(2). Consequently, all remedies under the JRPA are precluded. Had the legislature intended otherwise, it would have needed to use the language chosen in ss. 17(7), which states

⁵⁸ *Poorkid Investments Inc. v. Ontario (Solicitor General)*, [2023 ONCA 172 \(CanLII\)](#) at para. 37; *Poorkid Investments Inc., et al. v. Solicitor General of Ontario Sylvia Jones, et al.*, [2023 CanLII 115642 \(SCC\)](#)

⁵⁹ *Babcock v. Canada (Attorney General)*, [2002 SCC 57](#) at para. 60.

“(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 section 35 of the *Constitution Act, 1982*.” It did not do so.

25. The foregoing are only examples of the breadth of ss. 17(2). It does not appear to have been considered in relation to Ontario’s more than 1,200 statutes and associated regulations. With respect, ROPA is unprecedented, and the respondents have not provided any analysis of the extent of the limits placed on the superior courts’ powers to grant remedies under all of the statutes and subordinate legislation eliminated by ROPA.

26. If ss. 17(2) is found to be constitutional, which it is submitted it clearly is not, this decision will also set a precedent for future government action by Ontario, other provinces and federally. Again, one of the purposes of s. 96 is to provide a unified court system across the country. Consequently, whenever a government wishes for example, to construct a new highway, hydroelectric project, open or expand a landfill or quarry or develop an airport or nuclear facility etc., the courts will have confirmed that 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 appears to be highly inconsistent with the core of what superior courts have always done, which clearly includes providing remedies.

27. Finally, it should be noted that none of these restrictions apply to the government of Ontario, as ss. 17(9) makes the provisions of ROPA inapplicable to the Crown. For all these reasons, the applicant respectfully submits ss. 17(2) is not constitutional and should be declared of no force and effect.

Issue #2: Does ROPA violate section 96 of the *Constitution Act, 1982* by removing all claims for costs, compensation or damages related to the Ontario Place lands?

28. One of the further core functions of any court is to adjudicate claims for costs, compensation and damages. In addition, it must be remembered that when the *Constitution Act*,

1982, was first enacted, there was absolute Crown immunity from liability. 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.⁶⁰

29. 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.⁶¹ However, as the Supreme Court has ruled on many occasions the Constitution is a living document and is not “frozen” at the time of 1867.⁶² As recently observed by this Honourable Court “(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’.”⁶³ These decisions of the Supreme Court reflect the current understanding that governments can and ought to be held accountable for their actions.

30. At the same time, ss. 17(2) of ROPA appears to attempt to completely immunize the Ontario government from any liability by removing any ability of any decision-maker, including all superior courts, to adjudicate claims for costs, compensation or damages. This appears to again contravene one of the core functions of the superior court, as well as the basic principles of

⁶⁰ *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](#).

⁶¹ *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](#).

⁶² See for example *Reference re Code of Civil Procedure (Que.)*, art. 35, [2021 SCC 27](#) paras. 53 and 89.

⁶³ *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.

law in today's Canadian society as recognized by the Supreme Court and this Honorable Court. The applicant respectfully submits this also breaches s. 96 of the *Constitution Act, 1982*.

Issue #3: Does ROPA breach the doctrine of public trust in relation to Ontario Place?

31. The doctrine of public trust has also been recognized in law by the Supreme Court:

[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. Indeed, the notion of "public rights" existed in Roman law:

By the law of nature these things are common to mankind -- the air, running water, the sea

(T. C. Sandars, *The Institutes of Justinian* (1876), Book II, Title I, at p. 158)

[75] A similar notion persisted in European legal systems. According to the French *Civil Code*, art. 538, there was common property in navigable rivers and streams, beaches, ports, and harbours. A similar set of ideas was put forward by H. de Bracton in his treatise on English law in the mid-13th century (*Bracton on the Laws and Customs of England* (1968), vol. 2, at pp. 39-40):

By natural law these are common to all: running water, air, the sea and the shores of the sea No one therefore is forbidden access to the seashore

All rivers and ports are public, so that the right to fish therein is common to all persons. The use of river banks, as of the river itself, is also public by the *jus gentium*

[76] By legal convention, ownership of such public rights was vested in the Crown, as too did authority to enforce public rights of use. According to de Bracton, *supra*, at pp. 166-67:

(It is the lord king) himself who has ordinary jurisdiction and power over all who are within his realm... . He also has, in preference to all others in his realm, privileges by virtue of the *jus gentium*. (By the *jus gentium*) things are his ... which by natural law ought to be common to all Those concerned with jurisdiction and the peace ... belong to no one save the crown alone and the royal dignity, nor can they be separated from the crown, since they constitute the crown.

Since the time of de Bracton it has been the case that public rights and jurisdiction over these cannot be separated from the Crown. This notion of the Crown as holder of inalienable "public rights" in the environment and certain common resources was accompanied by the procedural right of the Attorney General to sue for their protection representing the Crown as *parens patriae*. This is an important jurisdiction that should not be attenuated by a narrow judicial construction.

[77] As stated, in the United States the *CERCLA* statute provides legislative authority for government actions in relation to the "public interest", including environmental damage, but this is not the only basis upon which claims in relation to the environment can be advanced by governments at the state and federal levels.

[78] Under the common law in that country, it has long been accepted that the state has a common law *parens patriae* jurisdiction to represent the collective interests of the public. This jurisdiction has historically been successfully exercised in relation to environmental claims involving injunctive relief against interstate public nuisances: see, e.g., *North Dakota v. Minnesota*, 263 U.S. 365 (1923), at p. 374; *Missouri v. Illinois*, 180 U.S. 208 (1901); *Kansas v. Colorado*, 206 U.S. 46 (1907); *Georgia v. Tennessee Copper Co.*, 206 U.S. 230 (1907); and *New York v. New Jersey*, 256 U.S. 296 (1921). In *Tennessee Copper*, Holmes J. held for the Supreme Court of the United States, at p. 237, that, "the State has an interest independent of and behind the titles of its citizens, in all the earth and air within its domain" (emphasis added).

[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]

The deed to the railway was therefore set aside.

[80] The *parens patriae* and "public trust" doctrines have led in the United States to successful claims for monetary compensation. Thus in *New Jersey, Department of Environmental Protection v. Jersey Central Power and Light Co.*, 336 A.2d 750 (N.J. Super. Ct. App. Div. 1975), the State sued a power plant operator for a fish kill in tidal waters caused by negligent pumping that caused a temperature variation in the fish habitat. The State sought compensatory damages for the harm to public resources. The court concluded that the State had the "right and the fiduciary duty to seek damages for the destruction of wildlife which are part of the public trust" in "compensation for any diminution in that [public] trust corpus" (p. 759), noting that:

It seems to us that absent some special interest in some private citizen, it is questionable whether anyone but the State can be considered the proper party to sue for recovery of damages to the environment.

See also *State of Washington, Department of Fisheries v. Gillette*, 621 P.2d 764 (Wash. Ct. App. 1980), and *State of California, Department of Fish and Game v. S.S. Bournemouth*, 307 F.Supp. 922 (C.D. Cal. 1969). The potential availability of damages in *parens patriae* and "public trust" environmental actions has also been affirmed in *State of Maine v. M/V Tamano*, 357 F.Supp. 1097 (D. Me. 1973), and *State of Maryland, Department of Natural Resources v. Amerada Hess Corp.*, 350 F.Supp. 1060 (D. Md. 1972). These were all cases decided under the common law, not *CERCLA*.

[81] It seems to me there is no legal barrier to the Crown suing for compensation as well as injunctive relief in a proper case on account of public nuisance, or negligence causing environmental damage to public lands, and perhaps other torts such as trespass, but there are clearly important and novel policy questions raised by such actions. These include the Crown's potential liability for *inactivity* in the face of threats to the environment, the existence or non-existence of enforceable fiduciary duties owed to the public by the Crown in that regard, the limits to the role and function and remedies available to governments taking action on account of activity harmful to public enjoyment of public resources, and the spectre of imposing on private interests an indeterminate liability for an indeterminate amount of money for ecological or environmental damage.

[82] This is not a proper appeal for the Court to embark on a consideration of these difficult issues. ...⁶⁴

32. As noted, these issues related to public trusts were not determined by the Supreme Court at that time. However, these principles form part of Canadian law. The principle of lands as public spaces have also been found in relation to public places such as airports and parks.⁶⁵As

⁶⁴ *British Columbia v Canadian Forest Products Ltd*, [2004] 2 SCR 74 at paras. 73 to 82.

⁶⁵ *Committee for the Commonwealth of Canada v. Canada*, [1991] 1 S.C.R. 139 at paras. 154 & 155.

is being requested in this case, the Supreme Court and Ontario Court of Appeal have also both 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).⁶⁶

33. Similar legal principles have been applied in numerous other jurisdictions. For example, as also noted above in the United States and in India.⁶⁷ 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.⁶⁸

34. 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.⁶⁹ But 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 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”. In 2023, the Federal Court of Appeal (still recognizing that many issues arise when a public trust is being considered) dismissed a claim related to “bodies of water, the air, and the permafrost” in

⁶⁶ 114957 *Canada Ltée (Spraytech, Société d'arrosage) v. Hudson (Town)*, [2001] 2 S.C.R. 241 at para. 27.

⁶⁷ See for example, *Gould v Greylock Reservation Commission* (1966), 350 Mass 410 (SJC); *MC Mehta v Kamal Nath* (1997), 1 SCC 388 (Indian SC).

⁶⁸ *MC Mehta v Kamal Nath* (1997), 1 SCC 388 (Indian SC).

⁶⁹ *Green v The Queen in right of the Province of Ontario et al*, [1973] 2 OR 396 (HJC) at paras. 26-28.

Canada as “(t)he youth appellants' claim is not targeted to land owned by Canada.”⁷⁰ In this case, the parcel of lands is very discreet (Ontario Place) and is owned by Ontario.⁷¹ 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.⁷²

35. Consequently, the applicant respectfully submits that applying the doctrine of public trust to the Crown owned lands of Ontario Place is 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 the Ontario Court of Appeal.

36. With respect, 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 plain and obvious the public trust in which these lands are being held has been breached. The applicant, therefore, further respectfully requests a declaration to this effect.

Issue #4: Should the stay on further demolition at Ontario Place be extended?

37. In the fall of 2023, demolition at Ontario Place began including the removal of trees.⁷³ On consent further demolition has been stayed pending the hearing of this application.⁷⁴ The applicant respectfully requests that the current stay be continued.

⁷⁰ *Luciuk (Guardian ad litem of) v Canada*, [2023] FCJ No 2260 (CA) at paras. 53, 56, 61 & 62.

⁷¹ Amended Supplementary Application Record of the Applicant, Tab 3, Affidavit of Cynthia Wilkey, Exhibit B.

⁷² *Bancroft v. Nova Scotia (Lands and Forestry)*, 2022 NSCA 78 (CanLII) at para. 36.

⁷³ Amended Supplementary Application Record of the Applicant, Tab 4, Affidavit of Catherine Naismith affirmed June 24, 2024.

⁷⁴ Second Supplementary Application Record of the Applicant, Tab 1, Endorsement of Justice Callaghan dated July 10, 2024.

38. There are clearly serious issues relating to constitutional matters being tried. Courts have also consistently held the destruction of natural resources (here including trees and habitat) constitutes irreparable harm.⁷⁵ There is evidence that further removal of trees is being planned.⁷⁶ Large portions of Ontario Place have been closed since 2012, and redevelopment considerations began in 2019.⁷⁷ As noted, the government has also filed no evidence on this application. There is then no evidence of any contractual obligations or urgency etc. The balance of convenience and justice of the case clearly suggests its subject matter not be rendered moot prior to adjudication. This approach is consistent with recent case law from the Divisional Court and Ontario Court of Appeal.⁷⁸ For these reasons the applicant respectfully submits the *status quo* should be continued.

⁷⁵ *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994 CanLII 117 \(SCC\)](#) at para. 59.

⁷⁶ Amended Supplementary Application Record of the Applicant, Tab 2, Affidavit of Catherine Naismith affirmed July 9, 2024.

⁷⁷ Application Record of the Applicant, Tab 6, Affidavit of Joël León, Exhibit A at pg. 58.

⁷⁸ *Windrift Adventures Inc. v. Chief Animal Welfare Inspector*, [2022 ONSC 5282](#) (Div. Ct.); *Windrift Adventures Inc. et al. v Chief Animal Welfare Inspector*, [2023 ONSC 3164 \(CanLII\)](#) (Div. Ct.) and *Windrift Adventures Inc. v. Ontario (Animal Case Review Board)*, [2023 ONCA 690 \(CanLII\)](#).

PART IV – RELIEF SOUGHT

39. A declaration that (a) ss. 17(2) of the *Rebuilding Ontario Place Act, 2023*, S.O. 2023, c. 25, Sched. 21 ("ROPA") is of no force and effect as it breaches section 96 of the *Constitution Act, 1982*, and (b) ss. 9, 10, 11 and 17(2) of ROPA should be declared a breach of public trust.

40. A continuation of the existing stay until five (5) business days following the release of this Honourable Court's decision in this application;

41. Costs of this application in an amount to be fixed by this Honourable Court; and

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

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 15th DAY OF JULY, 2024.



Eric K. Gillespie
Of counsel for the Applicant

SCHEDULE A

Caselaw

1. *114957 Canada Ltée (Spraytech, Société d'arrosage) v. Hudson (Town)*, [\[2001\] 2 S.C.R. 241](#)
2. *Babcock v. Canada (Attorney General)*, [2002 SCC 57](#)
3. *Bancroft v. Nova Scotia (Lands and Forestry)*, [2022 NSCA 78 \(CanLII\)](#)
4. *B.C.G.E.U. v. British Columbia (Attorney General)*, [\[1988\] 2 SCR 214](#)
5. *British Columbia v Canadian Forest Products Ltd.*, [\[2004\] 2 SCR 74](#)
6. *British Columbia v. Imperial Tobacco Canada Ltd.*, [2005 SCC 49](#)
7. *Canada (Attorney General) v. Thouin*, [2017 SCC 46](#)
8. *Committee for the Commonwealth of Canada v. Canada*, [\[1991\] 1 S.C.R. 139](#)
9. *Crevier v. A.G. (Québec) et al.*, [1981 CanLII 30 \(SCC\)](#)
10. *Frame v. Smith*, [\[1987\] 2 SCR 99](#)
11. *Green v The Queen in right of the Province of Ontario et al.*, [\[1973\] 2 OR 396 \(H CJ\)](#)
12. *Gould v Greylock Reservation Commission* (1966), [350 Mass 410 \(SJC\)](#)
13. *Hernandez v. Palmer*, [\[1992\] O.J. No. 2648 \(Gen. Div.\)](#)
14. *Joseph v. Paramount Canada's Wonderland*, [2008 ONCA 469](#)
15. *Just v. British Columbia*, [\[1989\] 2 S.C.R. 1228](#)
16. *Leroux (Litigation guardian of) v. Ontario*, [\[2020\] O.J. No. 1450 \(SCJ\)](#)
17. *Leroux (Litigation guardian of) v. Ontario*, [\[2021\] O.J. No. 3545 \(Div. Ct.\)](#)
18. *Leroux (Litigation guardian of) v. Ontario*, [\[2023\] O.J. No. 2027 \(CA\)](#)
19. *Luciuk (Guardian ad litem of) v Canada*, [\[2023\] FCJ No 2260 \(CA\)](#)
20. *MacMillan Bloedel Ltd. v. Simpson*, [\[1995\] 4 SCR 725](#)
21. *MC Mehta v Kamal Nath* (1997), [1 SCC 388 \(Indian SC\)](#)
22. *Ontario v. Criminal Lawyers' Association of Ontario*, [2013 SCC 43](#)
23. *Ontario v. Leroux (Litigation guardian of)*, [\[2023\] S.C.C.A. No. 284](#)
24. *Ontario Place for All Inc. v. Ontario (Ministry of Infrastructure)*, [\[2024\] O.J. No. 1313 \(Div. Ct.\)](#)
25. *Ontario Place for All Inc. v. Ontario (Ministry of Infrastructure)*, [\[2024\] O.J. No. 2597 \(Div. Ct.\)](#)
26. *Poorkid Investments Inc. v. Ontario (Solicitor General)*, [2023 ONCA 172 \(CanLII\)](#)
27. *Poorkid Investments Inc., et al. v. Solicitor General of Ontario Sylvia Jones, et al.*, [2023 CanLII 115642 \(SCC\)](#)
28. *R. v. Ahmad*, [2011 SCC 6](#)

29. *R. v. Domm*, 1996 CanLII 1331 (ON CA)
30. *Reference re Code of Civil Procedure (Que.)*, art. 35, 2021 SCC 27
31. *Reference re Residential Tenancies Act (Ontario)*, [1981] 1 SCR 714
32. *RJR-MacDonald Inc. v. Canada (Attorney General)*, 1994 CanLII 117 (SCC)
33. *Rudolph Wolff v. Canada*, 1990 1 SCR 695
34. *Scarborough v. R.E.F. Homes Ltd.* (1979), 9 M.P.L.R. 255 (Ont. C.A.)
35. *Sobeys Stores Ltd. v. Yeomans and Labour Standards Tribunal (NS)*, [1989] 1 SCR 238
36. *Trial Lawyers Association of British Columbia v. British Columbia (Attorney General)*, 2014 SCC 59
37. *Weber v. Ontario Hydro*, [1995] 2 SCR 929
38. *Windrift Adventures Inc. et al. v Chief Animal Welfare Inspector*, 2023 ONSC 3164 (CanLII)
(Div. Ct.)
39. *Windrift Adventures Inc. v. Ontario (Animal Case Review Board)*, 2023 ONCA 690 (CanLII)
(Div. Ct.)
40. *Windrift Adventures Inc. v. Chief Animal Welfare Inspector*, 2022 ONSC 5282

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.
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ONTARIO PLACE PROTECTORS - and **HIS MAJESTY THE KING IN RIGHT** Court File No.: CV-24-00719861-0000
- **OF ONTARIO and ATTORNEY**
GENERAL OF ONTARIO

Applicant

Respondents

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding Commenced at Toronto

**FACTUM OF THE APPLICANT,
ONTARIO PLACE PROTECTORS**

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