

**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

**SUBMISSIONS OF THE APPLICANT,  
ONTARIO PLACE PROTECTORS**  
*Canada (Attorney General) v. Power, 2024 SCC 26*

July 22, 2024

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1. On July 19, 2024, during this hearing the Supreme Court released its decision in *Canada (Attorney General) v. Power* (“*Power*”). Amongst other things, the Supreme Court held:

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

[5] An absolute immunity fails to properly reconcile the constitutional principles that protect legislative autonomy, such as parliamentary sovereignty and parliamentary privilege, and the principles that require the government be held accountable for infringing *Charter* rights, such as constitutionality and the rule of law. Each of these principles constitutes an essential part of our constitutional law and they must all be respected to achieve an appropriate separation of powers. By shielding the government from liability in even the most egregious circumstances, absolute immunity would subvert the principles that demand government accountability. The necessary reconciliation of these principles demands that we affirm the limited immunity threshold recognized in *Mackin*.

[93] ... an absolute immunity does not accommodate the principles recognized in this Court’s jurisprudence on constitutional remedies. It leaves little room for the principles that underpin legislative accountability — including the broad and purposive approach to rights and remedial provisions in the *Charter*, as well as constitutionalism and the rule of law. All these principles militate against absolute immunity.<sup>1</sup>

2. The applicant respectfully submits these findings resolve both Issue #1 and Issue #2 in this proceeding. As the applicant has submitted here, in *Power* the Supreme Court repeatedly holds Crown immunity is not absolute. As this Court is fully aware ss. 17(2) of ROPA eliminates all claims for costs, compensation and damages (which themselves are remedies) and all other remedies.<sup>2</sup> This directly offends the Supreme Court’s findings regarding complete immunity.

3. While *Power* is a *Charter* case, as also noted above, the Supreme Court recognizes the availability of other types of claims – such as for acts of bad faith (which is expressly eliminated by ss. 17(2)) and abuse of power. In addition, *Power* makes no reference to other examples of Crown liability already referenced here, such as *Just* and *Imperial*, which remain good law.<sup>3</sup>

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<sup>1</sup> *Canada (Attorney General) v. Power*, [2024 SCC 26](#) at paras. 4, 5 and 93.

<sup>2</sup> [Rebuilding Ontario Place Act, 2023, S.O. 2023, c. 25, Sched. 21](#) s. 17.

<sup>3</sup> *Just v. British Columbia*, [1989] 2 S.C.R. 1228; *British Columbia v. Imperial Tobacco Canada Ltd.*, [2005 SCC 49](#).

4. Even for *Charter* claims, ss. 17(4) and its preserving of judicial review is no answer. *Power* affirms the Supreme Court’s decision in *Ward*, allowing for declaratory remedies and *Charter* damages.<sup>4</sup> However, *Ward* was not a judicial review application, but instead an action, which is eliminated by ss. 17(3) of ROPA.<sup>5</sup> As a result, it appears ss. 17(3) and (4) of ROPA should also be declared unconstitutional. This further appears to render the balance of s. 17 of ROPA either inoperative and/or moot. Consequently, the applicant respectfully requests this Court’s Order reflect this by declaring all of s. 17 to be of no force and effect.

5. The applicant further respectfully submits the foregoing clearly resolves the issues of standing and evidence raised by the respondents. It would be completely unjust to not grant standing in these circumstances, given the direct implications of the Supreme Court’s findings in *Power* on the result here, and the lack of any other available mechanism to bring these matters before the Court before further demolition is highly likely to occur at Ontario Place. The fact that Issues #1 and #2 can now be resolved based on the Supreme Court’s legal pronouncements and the direct conflict between its findings and s. 17 of ROPA, also affirms the applicant’s submissions that the current record and law already before this Honourable Court is sufficient.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 22<sup>nd</sup> DAY OF JULY, 2024.



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Eric K. Gillespie  
Of counsel for the Applicant

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<sup>4</sup> *Canada (Attorney General) v. Power*, [2024 SCC 26](#) at paras. 43 and 42.

<sup>5</sup> *Vancouver (City) v. Ward*, [2010 SCC 27](#) at para. 10. Constitutional matters cannot be addressed in the Divisional Court (where all judicial reviews must be heard) when brought under Rule 14, see for example *Hanif v. Ontario College of Pharmacists*, [\[2014\] O.J. No. 2137](#) (Div. Ct.) at para. 12(iv); *Ontario (Attorney General) v. Hanif*, [\[2013\] O.J. No. 5269](#) (Div. Ct.) at paras. 31-34. This in fact resulted in this proceeding being transferred to this Honourable Court. This proceeding itself engages ss. 17(2), (3) and (4) and is unlawful as it seeks remedies, but not through judicial review.

## SCHEDULE A

### Caselaw

1. *British Columbia v. Imperial Tobacco Canada Ltd.*, [2005 SCC 49](#)
2. *Canada (Attorney General) v. Power*, [2024 SCC 26](#)
3. *Hanif v. Ontario College of Pharmacists*, [\[2014\] O.J. No. 2137](#) (Div. Ct.)
4. *Just v. British Columbia*, [\[1989\] 2 S.C.R. 1228](#)
5. *Ontario (Attorney General) v. Hanif*, [\[2013\] O.J. No. 5269](#) (Div. Ct.)
6. *Vancouver (City) v. Ward*, [2010 SCC 27](#)

## 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**  
- **OF ONTARIO and ATTORNEY**  
**GENERAL OF ONTARIO**

Court File No.: CV-24-00719861-0000

Applicant

Respondents

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**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

Proceeding Commenced at Toronto

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**SUBMISSIONS OF THE APPLICANT,**  
**ONTARIO PLACE PROTECTORS**  
*Canada (Attorney General) v. Power, 2024 SCC 26*

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