

**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

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**SUBMISSIONS OF THE RESPONDENTS**  
*Canada (Attorney General) v Power, 2024 SCC 26*

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July 23, 2024

**ATTORNEY GENERAL OF ONTARIO**  
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His Majesty the King in right of Ontario and the  
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1. Ontario submits that the Supreme Court's decision in *Canada (Attorney General) v. Power*, 2024 SCC 26 has no application or relevance to this case.
2. In *Power*, the Supreme Court reaffirmed its earlier conclusion in *Mackin v. New Brunswick (Minister of Finance)*, 2002 SCC 13 that "damages may be awarded under s. 24(1) for the enactment of legislation that breaches a *Charter* right": see *Power* at [para. 4](#). This is not a new development in the law of the *Charter*, and in any event it has no application here, where neither the Applicant nor anyone else alleges that the *Rebuilding Ontario Place Act, 2023*, [SO 2023, c 25, Sch 2](#) breaches any *Charter* right. *Power* does not say anything about the Legislature's ability to repeal or modify statutory causes of action.
3. Nothing in *Power* rectifies the shortcomings in the Applicant's evidence or the deficiencies in its claim for standing. In particular, the Applicant has no standing to claim any remedy, including damages, under s. 24(1) of the *Charter*.
4. Even if the Applicant could meet the test for public interest standing, which is denied, the Divisional Court has held that public interest litigants cannot claim a remedy under s. 24(1) of the *Charter*: *Canadian Snowbirds Association Inc. v. Attorney General of Ontario*, 2020 ONSC 5652 at [paras 76-77](#). This is because a remedy under s. 24(1) of the *Charter* is only available to a person whose *Charter* rights "have been infringed or denied." The Applicant is not such a person.
5. In a proceeding where a plaintiff with standing to do so sought a remedy of damages under s. 24(1) of the *Charter* in relation to an infringement of their *Charter* rights caused by the enactment of the *Rebuilding Ontario Place Act, 2023*, the Court would assess whether s. 17(2) of the Act by its terms applied to preclude such an award. A court in this position would consider the evidence, the submissions of the parties, the nature of the *Charter* infringement, and the applicable case law, including the Court of Appeal for Ontario's decision in *Prete v. Ontario*

(Attorney-General), [1993 CanLII 3386 \(ON CA\)](#) holding that “[h]aving found that immunity is not available under the *Proceedings Against the Crown Act* from a claim for *Charter* remedy, it therefore follows that in my opinion s. 11 of the *Public Authorities Protection Act* should be read as not applying to relief claimed under s. 24(1) of the *Charter*.” The Court would consider whether *Charter* damages were a just and appropriate remedy, whether s. 17(2) of the *Rebuilding Ontario Place Act, 2023* should be interpreted as precluding such a constitutional remedy, and whether the provision should be read down if it did.

6. None of this has happened in this case. The Applicant has not alleged or established any *Charter* infringement. It has not pleaded that s. 17(2) of the Act is of no force and effect because it is inconsistent with s. 24(1) of the *Charter*. Nor has the Applicant alleged or established that any remedy under s. 24(1) should be ordered, that *Charter* damages are a just and appropriate remedy for the infringement, or that s. 17(2) should be interpreted or applied to preclude such damages.

7. This entire application proceeds in a factual and legal vacuum. The Applicant seeks what amounts to an advisory opinion from the Court about the hypothetical future effect of s. 17(2) on an unidentified future *Charter* claimant seeking unspecified *Charter* damages for an unknown violation of *Charter* rights. The Court should decline the Applicant’s request. As the Divisional Court has recently held, “we consider the use of judicial resources to hear what is, effectively, a ‘private reference’ is not appropriate”: *Regional Municipality of York v. Ontario (Minister of the Environment, Conservation and Parks)*, 2023 ONSC 5708 at [para 28](#).

8. Ontario submits that the application should be dismissed with costs.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

July 23, 2024

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S. Zachary Green and  
Hera Evans

Of counsel for the Respondents

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