SCC File No. 41805

IN THE SUPREME COURT OF CANADA

(ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO)

B E T W E E N :

ONTARIO PLACE PROTECTORS

Appellant

- and -

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

Respondents

- and -

ATTORNEY GENERAL OF ALBERTA, ATTORNEY GENERAL OF SASKATCHEWAN, ATTORNEY GENERAL OF BRITISH COLUMBIA, ATTORNEY GENERAL OF QUÉBEC, ATTORNEY GENERAL OF YUKON, ATTORNEY GENERAL OF CANADA

Interveners

FACTUM OF THE RESPONDENTS, HIS MAJESTY THE KING IN RIGHT OF ONTARIO and ATTORNEY GENERAL OF ONTARIO

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PART I: OVERVIEW AND STATEMENT OF FACTS

1. The Ontario government has assessed that it is in the public interest to revitalize Ontario Place, a provincially-owned park and event venue. The Ontario Place redevelopment aims to restore this underused provincial asset to a world class destination for people of all ages to enjoy.[1]

2. To facilitate the redevelopment, the Legislature enacted the *Rebuilding Ontario Place Act, 2023* ["*ROPA*" or "the Act"].[2] *ROPA* provides a statutory framework for the government's policy decision to rebuild Ontario Place.

3. Large public projects inevitably generate a diversity of opinions and perspectives, some of which are in opposition to policies of the government of the day. In exercising their constitutional jurisdiction over property and civil rights, provincial Legislatures may determine that public law remedies, including judicial review and constitutional remedies, are the most appropriate and effective mechanisms to ensure judicial oversight over the constitutionality and legality of government action. Doing so ensures that important public works are not delayed, or even derailed entirely, by litigation of indeterminate duration or impact based on private law causes of action.

4. This appeal concerns the civil immunity provisions contained in s. 17 of *ROPA*. The Appellant, a corporation representing a group of citizens who are opposed to the Ontario Place redevelopment, alleges that s. 17 of *ROPA* is unconstitutional because it is inconsistent with s. 96 of the *Constitution Act, 1867* and the novel doctrine of public trust, which it now describes as an unwritten constitutional principle.

5. The Respondents, His Majesty the King in Right of Ontario and the Attorney General of Ontario ["Ontario"], submit that this appeal should be dismissed with costs.

6. The immunity provided by s. 17 of *ROPA* does not go as far as the Appellant alleges. *ROPA* does not make Ontario Place a lawless zone. Rather, s. 17 immunizes the Crown and its servants and agents from civil causes of action arising from the five discrete matters identified in s. 17(1): law-making functions, both primary and delegated; regulation of the prescribed lands under

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[1] Ontario, Legislative Assembly, *Official Report of Debates (Hansard)*, 43rd Parl, 1st Sess (29 November 2023) (K. Surma) at 1320.
[2] *Rebuilding Ontario Place Act, 2023*, S.O. 2023, c. 25, Sched. 2 ["*ROPA*"].

provincial statutes; limits on municipal powers; and the transfer of property rights by statute. As a result, Ontario cannot be sued at common law, in equity or under a statutory cause of action for matters such as: the enactment of *ROPA* (s. 17(1)(a)), the enactment of a Minister's regulation under s. 18 of *ROPA* (s. 17(1)(b)), the making of a municipal service and right of way access order under s. 13 of *ROPA* (s. 17(1)(c)), the transfer of vested property (s. 17(1)(d)), or any representation regarding the actual or potential transfer of the vested property (s. 17(1)(e)).

7. Section 17 is not inconsistent with s. 96 of the *Constitution Act, 1867*. *ROPA* does not remove any of the core jurisdiction of the superior court as set out in this Court's leading s. 96 cases. As the courts below correctly held:

a) Section 17 of *ROPA* "does not preclude an application for judicial review;"[3]

b) Section 17 of "*ROPA* does not purport to immunize the Ontario government from liability for acts in breach of the constitution and could not do so in any event;"[4]

c) *ROPA* "does not prevent the superior courts from serving as courts of general jurisdiction;"[5]

d) Nothing in the Act transfers any essential functions from a superior court;[6] and

e) The Act "does not usurp" the court's "core adjudicative function"[7] and "does not remove general access to the courts."[8]

8. What s. 17 does is change the *substance* of the law that the superior court must apply in respect of five discrete matters concerning Ontario Place listed in s. 17(1). Such changes to the substantive law, to be interpreted and applied by superior courts in particular cases, do not usurp the judicial role. This Court has long held that the Legislature may validly establish, amend or

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[3] *Ontario Place Protectors v. HMK in Right of Ontario*, 2024 ONSC 4194 at para. 32 ["*Ontario Place Protectors (ONSC)*"].
[4] *Ontario Place Protectors v. Ontario*, 2025 ONCA 183 at para. 44 ["*Ontario Place Protectors (ONCA)*"].
[5] *Ontario Place Protectors (ONCA)* at para. 42.
[6] *Ontario Place Protectors (ONCA)* at para. 42.
[7] *Ontario Place Protectors (ONCA)* at para. 42.
[8] *Ontario Place Protectors (ONSC)* at para. 40.

repeal causes of action, including extinguishing common law and equitable causes of action and removing property rights.

9. The Appellant's challenge is further undermined by its failure to show that it or anyone else has actually been affected by the impugned provisions. In this case, there is no evidence that anyone has a tenable legal claim that has been or would be extinguished by s. 17(1) of *ROPA*. As this very proceeding shows, *ROPA* does not preclude citizens from accessing the superior courts and seeking to hold government to account. The appeal on s. 96 grounds should be dismissed.

10. Nor should this Court declare that s. 17 is invalid because of "the doctrine of public trust." The novel doctrine articulated by the Appellant is not an unwritten constitutional principle, and even if such a doctrine existed in law, which is denied, there is no evidence in the record that could warrant applying this far-reaching new doctrine to Ontario Place. The appeal should be dismissed.

A. The challenged statute

11. *ROPA* is about the ownership and regulation of certain lands at Ontario Place. More specifically, the Act provides for the following:

a) the vesting of specified real property in the Crown and the payment of compensation in respect of that property (ss. 2-4);

b) the authority of the Minister to exercise certain powers under the *Planning Act* in respect of the Ontario Place site (ss. 5-8);

c) the exemption of undertakings carried out at the Ontario Place site or to further the Ontario Place Redevelopment Project from the application of the *Environmental Assessment Act* (s. 9);

d) the exemption of specified lands, buildings and structures at the Ontario Place site from the application of the *Ontario Heritage Act* (s. 10);

e) limitations on the City of Toronto's powers to prohibit and regulate noise emitted from the Ontario Place site, and the power to make regulations imposing further limits and conditions on the City of Toronto's powers for the purpose of furthering the

redevelopment project (ss. 11-12);

f) the authority of the Minister to make orders relating to municipal service and right of way access and the power of the Minister to issue directives and delegate functions to the Ontario Infrastructure and Lands Corporation (ss. 13-15); and

g) certain civil immunities, as set out more fully below at paras. 13-19 (s. 17).

12. *ROPA* does not authorize, require, or provide for construction activities or particular steps in the redevelopment project or how the redevelopment must proceed. It does not specify the ultimate uses of or operations at the Ontario Place site. Rather, in its purpose and effect, *ROPA* provides a statutory underpinning for the rebuilding of Ontario Place. The civil immunities provided for in the Act must be understood in this context.

13. Subsections 17(1) to (4) of *ROPA* provide as follows:

> **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.[9]

14. The purpose and effect of these provisions is to provide the Crown and its servants and agents with statutory immunity from civil liability in respect of the matters addressed in *ROPA*. Except as provided by or under the Act, no compensation or remedy is available in relation to any of these five extinguished causes of action.

15. *ROPA* does not purport to extinguish all causes of action or remove all remedies related to Ontario Place. The five discrete matters for which civil immunity is provided in s. 17(1)(a) to (e) are those which arise as a direct or indirect result of: primary law-making (the enactment, amendment or repeal of the Act); delegated law-making (e.g. regulations or other legal instruments made under the authority of the Act); anything done or not done in accordance with the Act or its subordinate instruments; the modification or termination of common law rights such as property and contractual rights, but only to the extent that such rights result from the Act or its subordinate instruments; and any representations or conduct related to the actual or potential transfer of the vested property.

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[9] *ROPA*, s. 17(1)-(4).

16. *ROPA* is focused on the vesting of rights to specified lands in the Crown and on enabling the provincial regulation of specified lands at Ontario Place. The civil immunities in s. 17 are similarly focused on what is actually done by and under the Act. For example, s. 17(1)(d) immunizes the Crown from any claim for compensation as a result of the transfer of ownership of specified lands from the City of Toronto to the province, except as provided for under s. 4 of the Act. In addition, under s. 17(1)(c), Crown actors are also immunized from claims arising from the making of a municipal service and right of way access order made under s.13 of *ROPA*.

17. However, nothing in the text of the Act or in the record in this case suggests that *ROPA* would preclude claims arising from matters not addressed in the Act. For example, *ROPA* says nothing about operational issues such as the maintenance of public walkways, or how any of the event spaces at the future Ontario Place site should be operated, or about the payment of subcontractors engaged by Crown agents to conduct work on the redevelopment project. This means that causes of action arising from such matters – tort claims in negligence or occupier's liability arising from a slip and fall on a public path or at an event space, or contract claims relating to payment of contractors, or statutory protections or remedies for workers – are not extinguished and associated remedies and proceedings are not barred.

18. Section 17 specifically preserves the availability of an application for judicial review.[10] As the Ontario courts correctly noted below, nothing in the Act precludes judicial review of executive conduct on administrative law grounds, including the making of a regulation or a Minister's order or the exercise of any statutory power under the Act. In this proceeding, there is no challenge to the lawfulness of any executive action or subordinate legislation. The Appellant's only challenge is to the statute itself.

19. Nothing in the Act prevents a court from reviewing the constitutional validity of the Act or anything done under it, as this very proceeding demonstrates. As the Court of Appeal for Ontario correctly held, "Section 17(2) of *ROPA* does not purport to immunize the Ontario government from liability for acts in breach of the constitution and could not do so in any event."[11]

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[10] *ROPA*, s. 17(4).
[11] *Ontario Place Protectors (ONCA)* at para. 44.

B. The conduct of the litigation

20. The Appellant commenced its lawsuit as an application for judicial review in Divisional Court on December 8, 2023. It discontinued its application in April 2024.[12]

21. The Appellant then re-commenced its application in the Superior Court of Justice on May 7, 2024. It took no steps to advance its application until June 24, 2024, when it brought an urgent motion for an injunction. Instead of proceeding with the motion for an injunction, the parties agreed to an urgent one-day hearing of the application itself.[13]

22. The Appellant relied on a number of affidavits, none of which was from an expert witness or complied with the laws or rules relating to expert evidence.[14] Instead of testifying as to any material facts within the affiants' knowledge, the affidavits attached unsworn letters of support for the Appellant and its lawsuit, as well as some inadmissible media articles.[15] Some of the affidavits also attached photographs[16] that were uncredited, undated, and not authenticated by any affiant.[17] None of the affiants adopted the unsworn attachments as their sworn evidence.[18] As the application judge noted, the contents of these attachments were "replete with opinions which are generally inadmissible other than by way of properly qualified, properly tendered expert evidence, which this evidence was not."[19]

23. The Appellant has no claim that falls within the scope of s. 17. There is no evidence and no reason to believe that the Appellant has or could have a legal cause of action or a claim for compensation or a remedy in relation to anything referred to in s. 17(1).[20] The application judge

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[12] *Ontario Place Protectors v His Majesty the King*, 2024 ONSC 1826 (Div. Ct.).
[13] *Ontario Place Protectors (ONSC)* at para. 57; *Ontario Place Protectors (ONCA)* at para. 6.
[14] *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, see e.g. Rules 39.01(7) and 53.03(2.1).
[15] Record of the Appellant ["AR"], Tabs 21-34.
[16] See e.g. Affidavit of Catherine Nasmith affirmed July 9, 2024 at para. 2 and Exhibit A, AR, Tab 36, pp. 334 and 335.
[17] *R. v. Andalib-Goortani*, 2014 ONSC 4690 at paras. 28-34.
[18] *Ontario Place Protectors (ONSC)* at paras. 7-9; *Ontario Place Protectors (ONCA)*, at para. 7.
[19] *Ontario Place Protectors (ONSC)* at para. 9. See also *R. v. Daou*, 2021 ONCA 380 at paras. 69-70; *Glasjam Investments Ltd. v. Freedman*, 2014 ONSC 3878 at para. 35; *China Yantai Friction Co. Ltd. v. Novalex Inc.*, 2023 ONSC 3424 at paras. 5-7 and 25-26; *Her Majesty the Queen in Right of Ontario v. Canadian Broadcasting Corporation*, 2019 ONSC 1079 at para. 32.
[20] *Ontario Place Protectors (ONSC)* at para. 40.

was correct to hold that "There is no evidence in the record that the applicant's private rights are at stake or that it is specially affected by the legislation it impugns."[21] Nor is there any evidence about any other person's legal rights being engaged by the statute. There is no evidence, for example, that any person has or could have any claim that has been extinguished by s. 17(1) of *ROPA*, and no evidence of any actual or anticipated court proceeding to which s. 17 has applied or would apply. The Appellant's record presents neither adjudicative facts nor legislative facts.[22]

24. On July 26, 2024, the application judge dismissed the application and declined to grant the injunction sought. In particular, the application judge held that the Appellant had no standing;[23] that the Appellant had not demonstrated that s. 17(2) of *ROPA* was unconstitutional;[24] that there was no basis in fact or law to impose a trust on Ontario Place land;[25] and that there was no legal basis to order an injunction against the Crown.[26]

25. In her costs endorsement of September 9, 2024, the application judge stated at para. 7:

> The manner in which this litigation was brought borders on being vexatious. However, I accept that the group of citizens had a good-faith belief in the public importance of the litigation. Without condoning the manner in which the litigation was brought, and without suggesting that a good-faith belief is generally sufficient to avoid a costs award, I exercise my discretion in this case not to award costs against the applicant.[27]

26. On March 11, 2025, the Court of Appeal for Ontario dismissed the Appellant's appeal with costs:

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[21] *Ontario Place Protectors (ONSC)* at para. 13.
[22] *MacKay v. Manitoba*, [1989] 2 S.C.R. 357 at 362-363; *Danson v. Ontario (Attorney General)*, [1990] 2 S.C.R. 1086 at 1101; *Ernst v. Alberta Energy Regulator*, 2017 SCC 1 at para. 22.
[23] *Ontario Place Protectors (ONSC)* at para. 19.
[24] *Ontario Place Protectors (ONSC)* at para. 45.
[25] *Ontario Place Protectors (ONSC)* at para. 56.
[26] *Ontario Place Protectors (ONSC)* at paras. 60-61.
[27] *Ontario Place Protectors v. HMK in Right of Ontario*, Costs Decision of Brownstone J. dated September 9, 2024, at para. 7, AR, Tab 4, p. 18.

> There is no doubt that the government's decision to redevelop Ontario Place is strongly opposed by a number of concerned citizens and organizations. Political opposition to the plan has not moved the government and the appellant has turned to the court in an effort to stop it. But there is no basis for the court to do so. The court is not an alternative forum for resolving political grievances. The only legitimate question for the court is whether the impugned provisions of *ROPA* violate the law or the constitution.
>
> They do not, and the appeal must be dismissed.[28]

27. On January 8, 2026, this Court granted the Appellant leave to appeal.[29]

PART II: POSITION ON THE APPELLANT'S QUESTIONS

28. The Appellant has stated the following questions:

> Question #1 – Whether s. 17 of the *ROPA* is constitutionally invalid because it trenches on the core jurisdiction of Superior Courts under s. 96 of the Constitution Act, 1867; and
>
> Question #2 – Whether the doctrine of public trust exists and applies so as to invalidate s. 17 of the *ROPA*.

29. Ontario submits that both questions should be answered in the negative. Nothing in *ROPA* trenches on the core jurisdiction of superior courts protected by s. 96 of the *Constitution Act, 1867*. Nor can the purported "doctrine of public trust" apply to invalidate a statutory provision.

PART III: STATEMENT OF ARGUMENT

A. No inconsistency with s. 96 of the *Constitution Act, 1867*

30. Section 17 of *ROPA* is not inconsistent with s. 96 of the *Constitution Act, 1867*. It does not limit the power of a superior court to review the legality and constitutional validity of laws, to enforce its orders, or to control its own process. Nor does the provision limit the superior court's residual jurisdiction as a court of original general jurisdiction. Section 17 does not preclude applications for judicial review and does not purport to prevent a superior court from granting any

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[28] *Ontario Place Protectors (ONCA)* at paras. 3-5.
[29] *Ontario Place Protectors v. His Majesty the King in Right of Ontario and Attorney General of Ontario*, 2026 CanLII 257 (SCC).

constitutional remedy. The protected core of superior court jurisdiction recognized in cases such as *Trial Lawyers* and the *Article 35 Reference* is not affected at all by the impugned provision.[30]

31. The real effect of s. 17 is to extinguish certain specified civil causes of action against certain specified persons and to foreclose common law, equitable and statutory remedies for these extinguished causes of action. As the Ontario courts correctly noted below, nothing in s. 96 of the *Constitution Act, 1867* prevents the Legislature from extinguishing particular causes of action.

i) The Legislature may validly extinguish causes of action

32. The power of the Legislature to extinguish causes of action is well-established. A cause of action "is a chose in action and therefore, by nature, a type of personal property."[31] Such property interests are not protected by the Canadian Constitution against legislative recission.[32] This Court and appellate courts across Canada have long confirmed that the Legislature has the constitutional power to enact statutes that extinguish causes of action, terminate agreements and obligations, and divest persons of property rights. In *Authorson*, this Court held unanimously that:

> The governmental expropriation of property without compensation is discouraged by our common law tradition, but it is allowed when Parliament uses clear and unambiguous language to do so.[33]

33. This Court in *Authorson* reviewed the applicable cases going back a hundred years, including the famous dictum from *Florence Mining* that "If it be that the plaintiffs acquired any rights, which I am far from finding, the Legislature had the power to take them away. The prohibition, 'Thou shalt not steal,' has no legal force upon the sovereign body. And there would

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[30] *Trial Lawyers Association of British Columbia v. British Columbia (Attorney General)*, 2014 SCC 59 at para. 32 ["*Trial Lawyers*"]; *Reference re Code of Civil Procedure (Que.), art. 35*, 2021 SCC 27 at para. 68 ["*Article 35 Reference*"].
[31] *Hernandez v. Palmer*, [1992] O.J. No. 2648, 1992 CanLII 15587 at para. 112; *Calgary (City) v. Budge*, 1991 ABCA 3 at para. 11.
[32] Patrick J. Monahan, Wade Wright & Erika Chamberlain, *Hogg's Liability of the Crown*, 5th ed (Toronto: Thomson Reuters, 2024) at 11.3(a), pp. 392-393, Book of Authorities of the Respondent ["RBoA"], Tab 7, p.18
[33] *Authorson v. Canada (Attorney General)*, 2003 SCC 39 at para. 14 ["*Authorson*"].

be no necessity for compensation to be given."[34] Following this review of the authorities, this Court concluded in *Authorson* that it was "undisputed, as it continues to be today, that Parliament had the right to expropriate property if it made its intention clear."[35]

34. Similarly, in *Wells v. Newfoundland*, this Court held:

> While the legislature may have the extraordinary power of passing a law to specifically deny compensation to an aggrieved individual with whom it has broken an agreement, clear and explicit statutory language would be required to extinguish existing rights previously conferred on that party.[36]

35. Appellate courts across Canada have consistently applied this settled rule. The Manitoba Court of Appeal recently reviewed the appellate jurisprudence and concluded:

> The Supreme Court of Canada has affirmed the principle of parliamentary supremacy on many occasions, including situations where the Legislature alters the rights or obligations of litigants in both pending or concluded court disputes. The Supreme Court has indicated that a legislature may validly pass a law which extinguishes its obligations with an individual if it is clear in its language.[37]

36. In *Clitheroe*, the Court of Appeal for Ontario affirmed the Ontario Superior Court of Justice's holding that the Legislature:

> …can do as it pleases in terms of divesting a person of rights, either prospectively or retrospectively, subject only to the safeguards guaranteed to that person under the *Charter* and provided also that if a government takes away a person's vested property rights, it can do so only in legislation expressed in the clearest and most unambiguous terms.[38]

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[34] *Florence Mining Co. v. Cobalt Lake Mining Co.*, (1909), 18 O.L.R. 275, at p. 279, 1908 CarswellOnt 398 at para. 16, RBoA, Tab 1, p.4, aff'd [1911] 2 A.C. 412 (P.C.), RBoA, Tab 2, p.5; *Authorson*, at para. 53.
[35] *Authorson* at paras. 52-56.
[36] *Wells v. Newfoundland*, [1999] 3 S.C.R. 199 at para. 41.
[37] *5185603 Manitoba Ltd et al v Government of Manitoba et al*, 2023 MBCA 47 at para. 39.
[38] *Clitheroe v. Hydro One Inc.*, 2010 ONCA 458 at para. 1, aff'g 2009 CanLII 33029 (ON SC) at paras. 31-33, leave to appeal to the SCC denied 2010 CanLII 77127 (SCC); see also *Régie des rentes du Québec v. Canada Bread Company Ltd.*, 2013 SCC 46 at paras. 26-28.

37. Nothing in s. 96 of the *Constitution Act, 1867* changes this long-established principle. As the Court of Appeal for Ontario held in *Poorkid*, "s. 96 immunizes neither the substantive content of the law nor the procedure governing litigation against legislative reform: the Legislature may establish, amend, or repeal causes of action."[39] In the appeal below, the Court of Appeal was correct to hold that "Section 96 does not preclude the Legislature from extinguishing a cause of action, whether legislative or common law, against the Crown or a private individual, nor does it preclude the establishment of a more comprehensive immunity."[40]

38. Section 96 has been interpreted by this Court as "guaranteeing a nucleus to the superior courts" of core jurisdiction:

> If a province or the federal government could, by statute, confer the essential functions of the superior courts on another court, the role of the superior courts as the cornerstone of the judicial system would evidently be eroded and the system's unitary nature would, in turn, be undermined.[41]

39. Nothing in *ROPA* transfers any "essential functions" from a superior court or removes anything from the "core jurisdiction" of superior courts. Core jurisdiction includes only those "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."[42] These defining features enable a superior court "to fulfil itself as a court of law" and are derived not from legislation, but "from the very nature of the court as a superior court of law."[43]

40. The core is "a very narrow one which includes only 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."[44] This core includes the most essential portions of superior courts' inherent jurisdiction and inherent powers, namely, review of the legality and constitutional validity of laws, enforcement of its orders, control over its own process, and its

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[39] *Poorkid Investments Inc. v. Ontario (Solicitor General)*, 2023 ONCA 172 at para. 48.
[40] *Ontario Place Protectors (ONCA)* at para. 42.
[41] *Article 35 Reference* at para. 41.
[42] *Reference re Amendments to the Residential Tenancies Act (N.S.)*, [1996] 1 S.C.R. 186 at para. 56, per Lamer C.J. ["*Reference re Residential Tenancies Act (N.S.)*"].
[43] *Article 35 Reference* at para. 65.
[44] *Ontario v. Criminal Lawyers' Association of Ontario*, 2013 SCC 43 at para. 19 ["*Criminal Lawyers' Association*"].

residual jurisdiction as a court of original general jurisdiction.[45] None of these core features of superior court jurisdiction are affected by *ROPA*.

41. The fact that s. 96 protects the core jurisdiction of the superior courts does not and cannot mean that particular causes of action can never be extinguished by statute. Statutes that create immunity from civil actions are common,[46] as the application judge noted.[47] If the statutory extinguishment of a cause of action amounted to an interference with s. 96, then limitation periods,[48] the abolition of common law torts[49] or their modification by statute,[50] the elimination of the right to sue in workers' compensation regimes,[51] no-fault insurance schemes,[52] and the exclusive jurisdiction of labour arbitrators where a collective agreement is in place[53] would all equally interfere with the core jurisdiction of the superior court.

42. The Appellant asserts that the challenged provision is "virtually unprecedented" and argues that "What distinguishes s. 17 from prior cases is its sheer scope."[54] Both statements are incorrect. Many immunity provisions in Ontario statutes, some of which predate *ROPA* by decades, use equivalent language in extinguishing causes of action, foreclosing remedies, and barring proceedings. These statutes use language that is substantially identical to that found in s. 17 of *ROPA*: they all extinguish specified causes of action (including the enactment or repeal of any statutory provision or delegated instrument and anything done or not done in accordance with them), provide that no costs, compensation, damages or remedies are available to any person in

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[45] *Reference re Residential Tenancies Act (N.S.)* at para. 56, per Lamer C.J.; *Article 35 Reference* at para. 68.
[46] See e.g. *Regulated Health Professions Act, 1991*, S.O. 1991, c. 18, s. 38; *Health Care Consent Act, 1996*, S.O. 1996, c. 2, Sched. A, s. 30; *Highway Traffic Act*, R.S.O. 1990, c. H.8, ss. 204(1)-(2); *Clean Water Act, 2006*, S.O. 2006, c. 22, s. 98; *Broader Public Sector Accountability Act, 2010*, S.O. 2010, c. 25, s. 22; *Crown Forest Sustainability Act, 1994*, S.O. 1994, c. 25, s. 41.2; *Mining Act*, R.S.O. 1990, c. M-14, s. 38.4.
[47] *Ontario Place Protectors (ONSC)* at para. 41.
[48] *Joseph v. Paramount Canada's Wonderland*, 2008 ONCA 469 at para. 13.
[49] *Frame v. Smith*, [1987] 2 S.C.R. 99, 1987 CanLII 74 (SCC) at paras. 6 and 31.
[50] See e.g. *Negligence Act*, R.S.O. 1990, c. N.1; *Occupiers' Liability Act*, R.S.O. 1990, c. O.2, s. 2.
[51] *Workplace Safety and Insurance Act, 1997*, S.O. 1997, c. 16, Sched. A, ss. 26-31.
[52] *Hernandez v. Palmer*, [1992] O.J. No. 2648, 1992 CanLII 15587.
[53] *Weber v. Ontario Hydro*, [1995] 2 S.C.R 929 at paras. 36 and 76.
[54] Appellant's factum at paras. 53-54.

connection with the extinguished causes of action, and bar proceedings.[55] Many of these statutes do not expressly permit applications for judicial review, and none of them expressly permits claims for *Charter* damages – although, as the Court of Appeal held below, none of these statutes "purport to immunize the Ontario government from liability for acts in breach of the constitution and could not do so in any event."[56] On the Appellant's argument, all of these statutes and many others like them in other provinces[57] must be invalid.

43. Of course the superior courts must be free to hear and determine disputes according to law. But that does not mean and never has meant that the Legislature cannot change the law which courts must apply in determining disputes, including by modifying or precluding civil causes of action. In *Imperial Tobacco*, this Court unanimously rejected the argument that judicial

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[55] *Health Insurance Act*, R.S.O. 1990, c. H.6, s. 39.1(1)-(3); *Justices of the Peace Act*, R.S.O. 1990, c. J.4, s. 2.3(4)-(6); *Ministry of Training, Colleges and Universities Act*, R.S.O. 1990, c. M.19, s. 7.2(5)-(7); *Niagara Escarpment Planning and Development Act*, R.S.O. 1990, c. N.2, s. 30(1)-(3); *Ontario Place Corporation Act*, R.S.O. 1990, c. O.34, s. 9.1(8)-(9); *Personal Property Security Act*, R.S.O. 1990, c. P.10, s. 74.2(1)-(3); *Pension Benefits Act*, R.S.O. 1990, c. P.8, s. 81.0.2(17)-(19); *Planning Act*, R.S.O. 1990, c. P.13, ss. 47(20)-(22), 70.9(5)-(7); *Teachers' Pension Act*, R.S.O. 1990, c. T.1, s. 10(8)-(10); *Electricity Act, 1998*, S.O. 1998, c. 15, Sched. A, s. 3.2(1)-(3); *Condominium Act, 1998*, S.O. 1998, c. 19, s. 1.17(1)-(3); *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, Sched. B, ss. 133(1)-(3), 134(1)-(3); *Technical Standards and Safety Act, 2000*, S.O. 2000, c. 16, s. 3.17(1)-(3.2); *Oak Ridges Moraine Conservation Act, 2001*, S.O. 2001, c. 31, s. 20(1)-(3); *Oak Ridges Moraine Protection Act, 2001*, S.O. 2001, c. 3, s. 9(1)-(3); *Places to Grow Act, 2005*, S.O. 2005, c. 13, s. 15(1)-(3); *Metrolinx Act, 2006*, S.O. 2006, c. 16, s. 51(1)-(3); *Ontario Municipal Employees Retirement Systems Act, 2006*, S.O. 2006, c. 2, s. 36(1)-(3); *Lake Simcoe Protection Act, 2008*, S.O. 2008, c. 23, s. 23(1)-(3); *Ontario Labour Mobility Act, 2009*, S.O. 2009, c. 24, s. 27.1(1)-(3); *Far North Act, 2010*, S.O. 2010, c. 18, s. 19(1)-(4); *Retirement Homes Act, 2010*, S.O. 2010, c. 11, s. 30(1)-(1.2); *Broader Public Sector Executive Compensation Act, 2014*, S.O. 2014, c. 13, Sched. 1, s. 20(1)-(3); *Great Lakes Protection Act, 2015*, S.O. 2015, c. 24, s. 36(1)-(3); *Cap and Trade Cancellation Act, 2018*, S.O. 2018, c. 13, s. 10(1)-(3); *Fairness in Procurement Act, 2018*, S.O. 2018, c. 4, s. 4(1)-(4); *White Pines Wind Project Termination Act, 2018*, S.O. 2018, c. 10, Sched. 2, s. 5(1)-(3); *Combative Sports Act, 2019*, S.O. 2019, c. 7, Sched. 9, s. 45(1)-(2); *Connecting Care Act, 2019*, S.O. 2019, c. 5, Sched. 1, s. 46(1)-(3); *Supply Chain Management Act (Government, Broader Public Sector and Health Sector Entities)*, S.O. 2019, c. 15, Sched. 37, s. 16(1)-(3).

[56] *Ontario Place Protectors (ONCA)* at para. 44.

[57] See e.g. *Municipal Government Act*, R.S.A. 2000, c. M-26, ss. 708.19-708.21; *The Liquor, Gaming and Cannabis Control Act*, C.C.S.M., c. L153, s. 155; *Public Sector Lobbyists Act*, S.N.S. 2011, c. 43, s. 9(1)-(3); *The Taxpayers' Fairness (CPR) Act*, S.S. 2022, c. 42, s. 4(1)-(6).

independence and the rule of law were compromised by a statute that "prescribes rules different from those developed at common law":

> The primary role of the judiciary is to interpret and apply the law, whether procedural or substantive, to the cases brought before it. It is to hear and weigh, in accordance with the law, evidence that is relevant to the legal issues confronted by it, and to award to the parties before it the available remedies. […]
>
> It follows that the judiciary's role is not, as the appellants seem to submit, to apply only the law of which it approves. Nor is it to decide cases with a view simply to what the judiciary (rather than the law) deems fair or pertinent. Nor is it to second-guess the law reform undertaken by legislators, whether that reform consists of a new cause of action or procedural rules to govern it. Within the boundaries of the Constitution, legislatures can set the law as they see fit. "The wisdom and value of legislative decisions are subject only to review by the electorate": *Wells v. Newfoundland*, 1999 CanLII 657 (SCC), [1999] 3 S.C.R. 199, at para. 59.
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> In essence, the appellants' arguments misapprehend the nature and scope of the courts' adjudicative role protected from interference by the Constitution's guarantee of judicial independence. To accept their position on that adjudicative role would be to recognize a constitutional guarantee not of judicial independence, but of judicial governance.[58]

44. The Appellant's arguments based on s. 96 and the rule of law are really a repackaging of the arguments based on judicial independence and the rule of law that were rejected unanimously in *Imperial Tobacco*. As with the statute considered in *Imperial Tobacco*, under *ROPA* s. 17 the superior court "retains at all times its adjudicative role and the ability to exercise that role without interference."[59] This Court in *Imperial Tobacco* reaffirmed its holding in *Authorson* and concluded that "The fact that defendants might regard that law…as unjust, or the procedural rules it prescribes as unprecedented, does not render their trial unfair."[60]

45. In any claim to which s. 17 might apply, the superior court can review the facts and apply those facts to the law, interpret the scope of the immunity provided by statute, and determine

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[58] *British Columbia v. Imperial Tobacco Canada Ltd.*, 2005 SCC 49 at paras. 50-55 ["*Imperial Tobacco*"].
[59] *Imperial Tobacco* at para. 55.
[60] *Imperial Tobacco* at paras. 75-76.

judicially whether a pleaded cause of action falls within or outside of that statutory immunity.[61] Of course, in this proceeding there is no such claim. As the application judge correctly noted, "Given that there is no evidence that the applicant has or could have a legal cause of action or claim for compensation or other remedy, the analysis is necessarily general and abstract."[62]

46. Nothing in *ROPA* prevents a superior court from discharging its function "to hear and weigh, in accordance with the law, evidence that is relevant to the legal issues confronted by it, and to award to the parties before it the available remedies."[63] The Appellant's real complaint is that the Legislature has changed the substance of the law that the superior court must apply, including the "available remedies" at law that a court can award. As *Authorson*, *Imperial Tobacco* and similar decisions all make clear, such changes in the law are permitted by our Constitution.

ii) *Trial Lawyers* and the *Article 35 Reference* do not assist the Appellant

47. The Appellant relies on both *Trial Lawyers* and the *Article 35 Reference*, but neither of those decisions deals with the extinguishment of civil causes of action or the transfer or recission of property rights by statute. Section 17 of *ROPA* neither prevents access to the superior court nor transfers exclusive jurisdiction over any claims from a superior court to a parallel or shadow court.

48. The issue in *Trial Lawyers* was the validity of hearing fees that applied to all matters set down for civil trial in the British Columbia superior courts. The fees were so high that they effectively prevented persons of ordinary means from bringing public and private law matters to trial, no matter how well-founded in law their claims were. This Court held that "The historic task of the superior courts is to resolve disputes between individuals and decide questions of private and public law" and that the hearing fees interfered with this historic task.[64]

49. This Court's statement that the task of the superior courts is to "resolve disputes between individuals and decide questions of private and public law" and that deciding such questions is the superior court's "very book of business" cannot be read to mean that every legal dispute between individuals or question of private and public law falls within the protected core and is therefore

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[61] Compare *Minotar Holdings Inc. v. Ontario*, 2025 ONSC 1791 at para. 58.
[62] *Ontario Place Protectors ONSC* at para. 40.
[63] *Imperial Tobacco* at para. 50.
[64] *Trial Lawyers* at para. 32.

immune from substantive legislative repeal or modification. Such a reading would be inconsistent with this Court's frequent cautions that a "proper characterization [of the subject matter] for s. 96 purposes must be narrow and consider the nature of the dispute."[65] It would also be inconsistent with the many decisions that have held that matters such as labour relations disputes,[66] landlord and tenant disputes,[67] youth criminal law,[68] Crown privilege[69] and automobile insurance disputes[70] do not fall within the protected jurisdiction of s. 96 courts. These are all "disputes between individuals" or "questions of private and public law", but that does not mean that they fall within the "very narrow" core of inherent jurisdiction protected by s. 96.

50. The main thrust of *Trial Lawyers* is that legislatures cannot bar access to the superior courts so as to "prevent some individuals from having their private and public law disputes resolved by the courts of superior jurisdiction."[71] As this Court explained in the *Article 35 Reference*, the effect of the hearing fees was that:

> …the superior court was deprived of its ability to hear, as the court of original general jurisdiction, disputes that involved individuals who were neither poor nor rich and over which no other court had jurisdiction. Such individuals fell through the cracks in the judicial system; their disputes could no longer be resolved by the law, which jeopardized the maintenance of an actual order of positive laws and thus the rule of law.[72]

51. This reasoning has no application to ROPA. Nothing in s. 17 of ROPA prevents access to the superior courts or means that disputes can no longer be resolved by the law. It is the superior court that will interpret and apply s. 17. This will include determining whether or not a pleaded claim falls inside or outside of the scope of the statutory immunity and disposing of the claim in accordance with the law.

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[65] *R. v. Ahmad*, 2011 SCC 6 at para. 63 ["*Ahmad*"]; *MacMillan Bloedel Ltd. v. Simpson*, [1995] 4 S.C.R. 725 at para. 25 ["*MacMillan Bloedel*"].
[66] *Labour Relations Board of Saskatchewan v. John East Iron Works, Ltd.*, [1948] 4 D.L.R. 673 134 (UK JCPC), at 676-677 and 681-682.
[67] *Reference re Residential Tenancies Act (N.S.)* at para. 35.
[68] *Reference Re Young Offenders Act (P.E.I.)*, [1991] 1 S.C.R 252 at 265-268.
[69] *Babcock v. Canada (Attorney General)*, 2002 SCC 57, [2002] 3 S.C.R. 3 at para. 60 ["*Babcock*"]; *Ahmad* at paras. 63-64.
[70] *Campisi v. Ontario*, 2017 ONSC 2884 at paras. 47-49.
[71] *Trial Lawyers* at para. 35.
[72] *Article 35 Reference* at para. 69.

52. "Access to the superior court" means just that – the ability of parties to bring themselves before the court for a decision in accordance with the applicable law. Access to the court does not constitutionalize the substantive content of any particular common law, equitable or statutory cause of action so as to make it immune from legislative amendment or repeal. To hold otherwise would be to constitutionalize property rights under the guise of protecting access to the courts.

53. Section 17 of ROPA states the substantive law that superior courts must apply in carrying out their historic task of resolving disputes according to law. In that respect, it is no different from the statutes considered in *Authorson* or *Imperial Tobacco*. Such changes in the law do not prevent government from being held to account under the law – particularly since judicial review and constitutional remedies are not affected – and do not imperil the rule of law.

54. The Appellant also relies on the *Article 35 Reference* to argue that "the greater the removal of jurisdiction, the more likely the removal violates s. 96."[73] This argument takes that decision out of context. The *Article 35 Reference* concerned the transfer of wide areas of private law matters from s. 96 courts to provincially-appointed courts. This Court held that "a general jurisdiction over private law matters must be accompanied by a subject-matter jurisdiction that is broad enough to preserve the superior courts' role in providing jurisprudential guidance on private law", which requires "significant — though not necessarily predominant — involvement in the resolution of disputes falling under the most fundamental branches of private law, such as property law, the law of succession and the law of obligations."[74]

55. The concern was that "vast areas of contract, tort and criminal jurisdiction [not] be transferred to shadow courts with impunity, thus destroying the compromise of the Fathers of Confederation and the intended effect of s. 96."[75] It was in that context that this Court observed:

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[73] Appellant's factum at para. 53.
[74] *Article 35 Reference* at para. 86.
[75] *Article 35 Reference* at para. 96.

> Whether a grant of jurisdiction is vast or limited is a question of degree. For example, jurisdiction over civil disputes is more vast than jurisdiction over contract law, which is in turn more vast than jurisdiction over employment contracts, which is more vast than jurisdiction over individual contracts of employment, which, finally, is more vast than jurisdiction over unjust dismissals. The more vast the granted jurisdiction is, the more likely it is that the provincial court will resemble a superior court of general jurisdiction.[76]

56. This reasoning has no application to this case. *ROPA* does not transfer any jurisdiction from the superior court to any other tribunal. It does not displace the role of superior courts "in providing jurisprudential guidance on private law" or of ensuring "the maintenance and coherent development of an actual order of positive laws, as well as to ensure stability and predictability in private law relationships." Indeed, it is the superior court and no other court that must interpret and apply s. 17 of *ROPA* at first instance to determine whether or not it precludes a given action. What s. 17 does is establish the *substance* of the law that the superior court must apply in respect of the five discrete matters under the Act listed in s. 17(1). Such statutory changes to the substance of the law to be applied by superior courts do not amount to a "maiming" of the judicial role.

57. The core jurisdiction of the superior court includes its ability, as a court of inherent general jurisdiction, to grant a remedy for any extant legal right if no other tribunal has been validly granted that jurisdiction. This means that where the law creates a right and does not specify the court that can enforce that right, the superior court can enforce that right because it is a court of general jurisdiction. But this does not mean, and has never meant, that the Legislature cannot alter or repeal a right previously conferred by common law, equity or statute. Under our separation of powers, "in a constitutional democracy such as ours it is the legislature and not the courts which has the major responsibility for law reform,"[77] including deciding whether and to what extent certain

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[76] *Article 35 Reference* at para. 98.
[77] *Ahluwalia v. Ahluwalia*, 2026 SCC 16 at para. 68, quoting with approval *R. v. Salituro*, [1991] 3 S.C.R. 654 at 670.

common law, equitable or statutory claims should be precluded by civil immunity in the public interest.

iii) *ROPA* does not prevent judicial review or constitutional remedies

58. In the courts below, the Appellant argued that s. 17(2) was unconstitutional because it precluded remedies on judicial review.[78] The courts below rejected this argument. As the application judge correctly noted, the absurd result of the Appellant's interpretation is that "an application for judicial review could be commenced, but no remedy would be available."[79] An interpretation that would render the words of the statute either meaningless or absurd should be rejected.[80] The application judge was also correct to note that s. 17(2) was not argued or found by the Divisional Court to preclude judicial review in an earlier application for judicial review.[81]

59. If there were any ambiguity on this point, the application judge was correct to hold that "In the alternative, if there is statutory ambiguity, it is a well-established principle that legislation should be read in a manner consistent with the constitution."[82] The Appellant's approach is to give the statute an overly-wide interpretation and then to argue that it should be struck down because it goes too far. The correct rule of statutory interpretation is exactly the opposite: "if the text of the legislation is capable of bearing a meaning that is constitutionally valid, then the courts will give it that meaning."[83]

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[78] *Ontario Place Protectors (ONSC)* at para. 30; *Ontario Place Protectors (ONCA)* at para. 32.
[79] *Ontario Place Protectors (ONCA)* at para. 30.
[80] *Ontario Place Protectors (ONCA)* at para. 32.
[81] *Ontario Place Protectors v. (ONCA)* at para. 31.
[82] *Ontario Place Protectors (ONSC)* at para. 31, quoting *Siemens v. Manitoba (Attorney General)*, 2003 SCC 3 at para. 33.
[83] *Desgagnés Transport Inc. v. Wärtsilä Canada Inc.*, 2019 SCC 58 at para. 28; *R. v. Sharpe*, 2001 SCC 2 at para. 33: "If a legislative provision can be read both in a way that is constitutional and in a way that is not, the former reading should be adopted." See also Ruth Sullivan, *The Construction of Statutes*, 7th ed (LexisNexis Canada Inc, 2022) § 16.01, RBoA, Tab 14, p.46: "It is presumed that the legislature intends to comply with any and all limits on its jurisdiction. If legislation is open to an interpretation which would render it valid, the courts prefer that validating interpretation."; *Reference re Impact Assessment Act*, 2023 SCC 23, at para. 72.

60. In this Court, the Appellant now appears to accept that, by necessary implication, s. 17 does not bar judicial review or preclude any remedies on judicial review.[84] This concession is correct, and ought to dispose of the main thrust of the Appellant's s. 96 challenge.

61. No-one disputes that the core jurisdiction of superior courts includes "review of the legality and constitutional validity of laws."[85] This very proceeding demonstrates that *ROPA* is not immune from constitutional review by the superior courts.[86] Moreover, the legality and constitutional validity of executive action taken pursuant to *ROPA*, including delegated laws and orders made under *ROPA*, remains subject to judicial review. Contrary to paras. 66-78 of the Appellant's factum, historical public law remedies remain available under *ROPA.* A party with standing to do so may seek relief in the nature of *mandamus*, prohibition, and *certiorari* against any public body acting under *ROPA*, and may also seek a declaration or injunction (or both) in relation to the exercise, refusal to exercise or proposed or purported exercise of a statutory power granted by *ROPA*.[87] The "*Dyson* declaration," providing "access to the Courts for any of His Majesty's subjects who have any real cause of complaint against the exercise of statutory powers by Government departments and Government officials,"[88] remains available under *JRPA* s. 2(1)2.

62. As the application judge correctly held, remedies on judicial review are "neither equitable nor statutory remedies; they are a separate category of public law remedy and therefore not precluded by s. 17(2)."[89] Their very purpose is "to supervise persons and bodies that derive their powers from statute in their performance of functions of a public or governmental nature."[90] *ROPA* does not purport to interfere with the superior court's "oversight of the exercise of public powers"

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[84] Appellant's factum at paras. 42 and 45.
[85] *Article 35 Reference* at para. 68.
[86] Compare *Alberta Teachers Association v. Alberta (Attorney General)*, 2026 ABKB 190, at para. 48; *A.G. Can. v. Law Society of B.C.*, [1982] 2 S.C.R. 307 at 326; *Thorson v. Attorney General of Canada*, [1975] 1 S.C.R 138 at 151.
[87] *Judicial Review Procedure Act*, R.S.O. 1990, c. J.1, s. 2 ["*JRPA*"].
[88] *Dyson v. Attorney-General*, [1911] 1 K.B. 410 (C.A.) at 423, Appellant's Book of Authorities, Vol. 1, Tab 5, p. 52; Appellant's factum at paras. 69-71.
[89] *Ontario Place Protectors (ONSC)* at para. 31; see also *Ontario Council of Hospital Unions v. Ontario (Health and Long-Term Care)*, (2007), 84 OR (3d) 699 (Div Ct), 2007 CanLII 2659 (Div Ct) at paras. 33-36.
[90] *Setia v. Appleby College*, 2013 ONCA 753 at paras. 20-21; *Sabados v. Canadian Slovak League*, 1982 CanLII 2251 (ON SCDC).

or its "power to review exercises of public power for legality and to ensure that citizens are protected from arbitrary government action."[91] In this proceeding, no exercise of public power by the executive is alleged to be illegal or arbitrary, and no remedy is sought in relation to the exercise of any statutory power.

63. The Appellant also relies on this Court's decision in *Power*, holding that "damages may be awarded under [*Charter*] s. 24(1) for the enactment of legislation that breaches a *Charter* right" where the statute is "clearly unconstitutional" or "its enactment was in bad faith or an abuse of power."[92] *Power* confirms that a claim for *Charter* damages is "not a private law action in the nature of a tort claim" but a "distinct" public law action and a "unique public law remedy" that "should not be assimilated to the principles of private law remedies."[93] The courts below rejected this reliance on *Power*, noting that "there is no underlying *Charter* claim" in this case.[94]

64. The Court of Appeal was correct to hold that "Section 17(2) of *ROPA* does not purport to immunize the Ontario government from liability for acts in breach of the constitution and could not do so in any event."[95] For her part, the application judge correctly noted that it "is not clear to me that, on its face, the wording of s. 17(2) would prohibit such litigation. That will be for a court to determine should such litigation arise."[96] The Appellant argues that the "plain words" of s. 17 preclude a claim for *Charter* damages, but this entirely hypothetical argument ignores the basic rule that "plain meaning alone is not determinative and a statutory interpretation analysis is incomplete without considering the context, purpose and relevant legal norms."[97]

65. The Appellant's arguments about *Charter* damages are not just academic and hypothetical but fanciful. *ROPA* creates no offences, imposes no punishments, authorizes no searches, and has no impact on the liberty of the subject. It does not allocate any benefits, impose any penalties, or

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[91] *Article 35 Reference* at paras. 47 and 51; *R. v. Varennes*, 2025 SCC 22 at para. 62.
[92] *Canada (Attorney General) v. Power*, 2024 SCC 26 ["*Power*"]; Appellant's factum at para. 50.
[93] *Power* at paras. 36 and 85.
[94] *Ontario Place Protectors (ONSC)* at para. 44; *Ontario Place Protectors (ONCA)* at para. 44.
[95] *Ontario Place Protectors (ONCA)* at para. 44.
[96] *Ontario Place Protectors (ONSC)* at para. 44.
[97] *Piekut v. Canada (National Revenue)*, 2025 SCC 13 at para. 45; *R. v. Alex*, 2017 SCC 37 at paras. 31-32. See also the authorities cited at footnote 83 above.

draw any distinctions among individuals on protected grounds. In short, *ROPA* does not impact anyone's *Charter*-protected interests. There is no air of reality to the Appellant's suggestion that *ROPA* could approach the "high threshold" of a law that is clearly unconstitutional, in bad faith, or an abuse of power such that *Charter* damages could be a just and appropriate remedy.

iv) Crown liability in tort is a creature of statute

66. The liability of the Crown in tort is a creation of statutes that were enacted long after Confederation. In 1963, the *Proceedings Against the Crown Act* ["*PACA*"] created a statutory cause of action in tort against the Crown in right of Ontario making it vicariously liable for the actions of Crown employees and agents.[98] This Court and eminent authorities agree that provincial superior courts had no jurisdiction to entertain claims against the Crown in tort until this jurisdiction was granted by statute in the twentieth century:

> Indeed, at the time of Confederation, no court had any jurisdiction regarding actions against the Sovereign.[99]
>
> Historically, a number of Crown prerogatives had a significant impact on the civil liability of the Crown: most importantly, the immunity from being impleaded in court without consent and immunity from tort even where it had consented to jurisdiction, but also immunities from discovery, costs, and court-ordered interest, even where it was a plaintiff.[100]
>
> The United Kingdom did not act to impose general tortious liability on the Crown until 1947; nor did any of the Canadian provinces act until after the United Kingdom had done so; nor did the federal Parliament, except for the provisions of the *Exchequer Court Act* that has been discussed.[101]

67. At common law today, the Crown retains its historic immunity from liability in tort. For example, the Crown is only liable in tort to the extent permitted by and subject to the exceptions,

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[98] *Proceedings Against the Crown Act, 1962-63*, S.O. 1962-63, c. 109, RBoA, Tab 13, p.37.
[99] *Babcock* at para. 60. See also *R. v. McFarlane*, (1882) 7 S.C.R. 216 at 238-240; *Rudolph Wolff & Co. v. Canada*, [1990] 1 S.C.R. 695 at 699-700 ["*Rudolph Wolff*"].
[100] Gareth Morley & Kathryn McGoldrick, *Government Liability: Law and Practice* (Toronto: Thomson Reuters) (Release No. 1, June 2026), §1.14, RBoA, Tab 3, p.8.
[101] Patrick J. Monahan, Wade Wright & Erika Chamberlain, *Hogg's Liability of the Crown*, 5th ed (Toronto: Thomson Reuters, 2024) at 6.1(c), p. 162, RBoA, Tab 8, p.24.

defences and limits contained in Crown liability statutes, the scope of which the Legislature is free to change:

> Under the common law and in the absence of some statutory authority, no process may be issued against the Crown (Her Majesty) in any of the sovereign's courts.[102]
>
> It is important to note that the old Crown prerogative immunities continue to exist, where they have not been modified by the Crown proceeding statutes.[103]
>
> Today, Crown immunity still exists at the federal level in the context of civil proceedings, but only within the limits set in the [*Crown Liability and Proceedings Act*] and the *Federal Courts* Act, R.S.C. 1985, c. F-7, the scope of which Parliament remains free to change.[104]
>
> The impugned sections of the *Federal Court Act* were enacted in 1970. They made provision for the bringing of such actions exclusively in the Federal Court rather than the provincial superior courts. The impugned provisions do not seek to limit or restrict rights in any way, rather they confer rights which did not exist at common law and designate the court in which these rights may be exercised.[105]

68. This Court in the *Article 35 Reference* clarified that "Unlike the *Residential Tenancies* test, the core jurisdiction analysis is not primarily historical in nature."[106] What is protected by the core is "the very essence of the superior courts," and that very essence is "not limited to what the superior courts exercised exclusively at the time of Confederation."[107] But if actions in tort against the provincial Crown did not exist at law in Ontario until 1963 (and even today, the Crown remains immune from direct liability in tort), it can hardly be said that modifying or repealing such statutory

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[102] Paul M. Perell & John W. Morden, *The Law of Civil Procedure in Ontario*, 5th ed. (Toronto: Lexis Nexis, 2024), §4.12 (footnotes omitted), RBoA, Tab 9, p.25.
[103] Gareth Morley & Kathryn McGoldrick, *Government Liability: Law and Practice* (Toronto: Thomson Reuters) (Release No. 1, June 2026), §1.20, RBoA, Tab 6, p.14.
[104] *Canada (Attorney General) v. Thouin*, 2017 SCC 46 at para. 23.
[105] *Rudolph Wolff* at 699-700.
[106] *Article 35 Reference* at para. 67.
[107] *Article 35 Reference* at para. 67.

causes of action would destroy the superior court's "essential character"[108] or impair a jurisdiction "essential to the existence of a superior court."[109]

69. Crown liability in tort is a creation of post-Confederation statute, and it follows that Crown liability in tort may be modified or abrogated by post-Confederation statute without contravening s. 96 of the *Constitution Act, 1867* or requiring a constitutional amendment. This Court held in *Trial Lawyers* that "The historic task of the superior courts is to resolve disputes between individuals and decide questions of private and public law."[110] But the "historic task of superior courts" has never included holding the Crown liable in tort outside of the rules prescribed by statute. For most of the history of Canadian superior courts, they did not hear tort cases against the Crown at all.

70. While the Crown was and is immune in tort at common law, the Crown could consent to be sued in contract and property by granting a petition of right.[111] The fact that the Crown had to consent to be sued in contract and property while remaining immune in tort demonstrates that common law actions against the Crown are not part of the superior courts' core jurisdiction.

71. In *Babcock*, this Court rejected the argument that compelling Cabinet confidences was a part of the core jurisdiction protected by s. 96, noting that "In Canada, superior courts operated since pre-Confederation without the power to compel Cabinet confidences. Indeed, at the time of Confederation, no court had any jurisdiction regarding actions against the Sovereign."[112] The same reasoning applies here.

72. The Appellant relies on this Court's comment in *Just* that the "early governmental immunity from tortious liability became intolerable."[113] This reliance is misplaced. This observation in *Just* was describing the historical circumstances that "led to the enactment of legislation which in general imposed liability on the Crown for its acts as though it were a

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[108] *Criminal Lawyers' Association* at para. 19, citing *MacMillan Bloedel* at paras. 30 and 38.
[109] *Criminal Lawyers' Association* at para. 19.
[110] *Trial Lawyers* at para. 32.
[111] Appellant's factum at paras. 72-74. See also The Honourable Justice Malcolm Rowe and Manish Oza, "Tort Claims Against Public Authorities" (2022) 60:1 Alta L Rev 1 at 5, 2022 CanLIIDocs 3231
[112] *Babcock* at para. 60; see also *Ahmad* at paras. 63-64.
[113] *Just v. British Columbia*, [1989] 2 S.C.R. 1228 at 1239.

person"[114] because total governmental immunity from tort had "became intolerable" as a matter of policy. As the courts below recognized,[115] *Just* does not stand for the proposition that the Legislature cannot validly enact statutes that immunize the Crown from liability. In any event, s. 17 of *ROPA* does not purport to return the law of Crown liability generally to that which prevailed in the early 20th century. Its focus is narrow and targeted.

v) Access to statutory remedies is not protected by s. 96

73. The Appellant also contends that s. 17(2) is invalid because it precludes the granting of "any remedy under any statute." This argument must be rejected. Section 96 of the *Constitution Act, 1867* does not entrench the availability of statutory remedies as a matter of core jurisdiction. To the contrary, this Court has held that the core jurisdiction of superior courts is "derived not from legislation, but from the very nature of the court as a superior court of law."[116]

74. It can hardly be invalid for the Legislature to exempt a provincially-owned property from the application of other provincial statutes or to enact by statute an immunity from other provincial statutes. The Legislature is the body that created the *Ontario Heritage Act*, the *Environmental Assessment Act*, the *Planning Act* and the other provincial statutes referred to in *ROPA*, and so of course the Legislature is competent to exempt its own properties or projects from those provincial Acts. The same Legislature that imposes provincial requirements can also relieve against those provincial requirements. The Legislature could, if it wished, repeal these provincial statutes completely without violating s. 96 of the *Constitution Act, 1867*.

75. Indeed, as the Court of Appeal for Ontario has held, "If there is no constitutional obligation to enact [the legislation at issue] in the first place, I think that it is implicit, as far as the requirements of the constitution are concerned, that the legislature is free to return the state of the statute book to what it was before [the impugned legislation]."[117] As Morgan J. of the Ontario

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[114] *Just v. British Columbia*, [1989] 2 S.C.R. 1228 at 1239.
[115] *Ontario Place Protectors (ONSC)* at paras. 35-37 and 44; *Ontario Place Protectors (ONCA)* at para. 43.
[116] *Article 35 Reference* at para. 65, internal quotes omitted.
[117] *Flora v. Ontario Health Insurance Plan*, 2008 ONCA 538 at para. 104.

Superior Court of Justice has aptly noted, "The prior piece of legislation cannot form a constitutional baseline for all further revisions and amendments to the legislative policy."[118]

76. To the contrary, "it is fundamental to our system of government that a government is not bound by the undertakings of its predecessor."[119] Parliamentary sovereignty "prevents a legislative body from binding itself as to the substance of its future legislation."[120] Given that the Legislature can validly amend or repeal its own statutes, it cannot be the case that s. 96 precludes the Legislature from exempting the Ontario Place site from the application of provincial statutes or precluding remedies under other provincial statutes.

vi) *ROPA* is consistent with the rule of law

77. The Appellant's invocation of the rule of law to support its challenge is also misplaced. This Court has held that the rule of law is not a basis for invalidating legislation because of its content.[121] It is consistent with the rule of law that the Legislature should publicly and openly change the law when it determines that it is in the public interest to do so.

78. While the rule of law is a "fundamental postulate" of Canada's constitutional structure, it is "not an invitation to trivialize or supplant the Constitution's written terms. Nor is it a tool by which to avoid legislative initiatives of which one is not in favour. On the contrary, it requires that courts give effect to the Constitution's text, and apply, by whatever its terms, legislation that conforms to that text."[122]

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[118] *Barbra Schlifer Commemorative Clinic v. Canada*, 2014 ONSC 5140 at para. 45. See also *Quebec (Attorney General) v. Alliance du personnel professionnel et technique de la santé et des services sociaux*, 2018 SCC 17 at para. 33.
[119] *Reference re Canada Assistance Plan (B.C.)*, [1991] 2 S.C.R. 525 at 559.
[120] *Reference re Pan-Canadian Securities Regulation*, 2018 SCC 48 at para. 63.
[121] *Imperial Tobacco* at paras. 63-77; *Toronto (City) v. Ontario (Attorney General)*, 2021 SCC 34 at para. 63 ["*Toronto (City)*"].
[122] *Imperial Tobacco* at para. 67. See also *Toronto (City)* at paras. 49-63; The Honourable Justice Malcolm Rowe and Manish Oza, "Structural Analysis and the Canadian Constitution" (2023) 101:1 Can Bar Rev 205 at 221, 2023 CanLIIDocs 1150.

79. The text of the Constitution expressly assigns to the Legislature of Ontario the power to legislate in relation to property and civil rights in the province and matters of a merely local or private nature. *ROPA* conforms to the text of the Constitution, including s. 96 of the *Constitution Act, 1867*. While the rule of law may be used as an interpretive tool when determining the meaning of a statute, it cannot be invoked on its own as a basis for finding the statute invalid. On the contrary, the rule of law requires the courts to give effect to the law enacted by the elected Legislature on which the Constitution has conferred exclusive legislative jurisdiction.[123]

80. In conclusion, and contrary to para. 79 of the Appellant's factum, upon applying a contextual multi-factor analysis, s. 17 of *ROPA* is not inconsistent with s. 96 of the *Constitution Act, 1867* or the rule of law because:

- It does not invade the core jurisdiction of superior courts;
- It does not prevent constitutional review of laws or government action;
- It does not preclude an application for judicial review remedies, including an application for a "*Dyson* declaration" in relation to the exercise of any statutory power;
- The Legislature may extinguish civil causes of action and property rights under our Constitution;
- The extinguished causes of action in this case are restricted to five discrete matters relating to the law-making and regulatory functions of government and the vesting of property; and
- The Legislature may, by statute, exempt its own properties and projects from the application of other provincial statutes.

[123] *Imperial Tobacco Canada Ltd.*, 2005 SCC 49 at para. 66.

B. The purported "doctrine of public trust" is no basis to invalidate the statute

81. In the courts below, the Appellant conceded "that the doctrine of public trust is not a constitutional doctrine, written or unwritten."[124] In this Court, the Appellant asserts for the first time that the public trust is actually an "unwritten constitutional principle" giving rise to "a trust obligation that has constitutional status and cannot be abrogated by ordinary statute."[125] The courts below did not consider this argument. It is an abuse of process for the Appellant to raise it now.

82. This Court's discretion to consider constitutional issues that were not raised in the courts below is "narrow and should be exercised sparingly."[126] "The burden is on the appellant to persuade the Court that, in light of all of the circumstances, it should exercise its discretion to hear and decide the issue. There is no assumption of an absence of prejudice. The Court's discretion to hear and decide new issues should only be exercised exceptionally and never unless the challenger shows that doing so causes no prejudice to the parties."[127] The Appellant has not attempted to meet this burden and cannot explain why it raises this novel constitutional issue now for the first time.

83. In any event, the Appellant's public trust arguments should be rejected on their merits. The "public trust doctrine" is not an unwritten constitutional principle, and there is no basis in fact or evidence to apply any such doctrine to Ontario Place. Moreover, as this Court has recently held, "unwritten constitutional principles cannot serve as bases for invalidating legislation."[128]

84. Unwritten constitutional principles are the norms that "infuse our Constitution" and are "foundational" to it, without which "it would be impossible to conceive of our constitutional structure."[129] These principles "dictate major elements of the architecture of the Constitution itself and are as such its lifeblood."[130]

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[124] *Ontario Place Protectors (ONSC)* at para. 55; *Ontario Place Protectors (ONCA)* at para. 56.
[125] Appellant's factum at para. 106.
[126] *Guindon v. Canada*, 2015 SCC 41 at para. 5 ["*Guindon*"].
[127] *Guindon* at para. 23.
[128] *Toronto (City)* at para. 63.
[129] *Toronto (City)* at para. 49; *Reference re Secession of Quebec*, [1998] 2 S.C.R. 217 at paras. 50-51 ["*Secession Reference*"].
[130] *Secession Reference* at para. 51.

85. It cannot plausibly be maintained that the "public trust doctrine" as articulated by the Appellant is so foundational to our constitutional order that it would be impossible to conceive of our Constitution without it. No Canadian court has ever held that the Crown holds its property in an "inalienable" trust for "the public at large, including future generations."[131] To the contrary, the settled law of many decades is that the Crown has the same "right to own property and the rights incident to the ownership of property" as any natural person, and that "[a]bsent legislation to the contrary, the Crown is entitled to exercise these natural person powers with the same freedom from court interference as any other person."[132] In relation to their property, "the provinces enjoy the same powers of disposition and management as a private proprietor."[133]

86. There is no support in Canadian case law for the doctrine articulated by the Appellants. In *Elder Advocates*, this Court held unanimously that "No fiduciary duty is owed to the public as a whole, and generally an individual determination is required to establish that the fiduciary duty is owed to a particular person or group."[134] This Court upheld the striking out of the pleading on the basis that it was plain and obvious that no such duty existed.

87. In *La Rose*, the Federal Court of Appeal recently affirmed the striking of a claim based on breach of public trust, finding that the claim did not raise a reasonable cause of action. The motion judge struck the claim, holding that "the public trust doctrine is a concept that Canadian Courts have consistently failed to recognize. It does not exist in Canadian law."[135] The Federal Court of Appeal upheld the motion judge, holding that the law does not "support a claim that Canada has an affirmative, trust-like duty to protect public resources in the way that the youth appellants desire, no matter how sound their objectives or how genuine their motives. The principles that

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[131] Appellant's factum at para. 83.
[132] Gareth Morley & Kathryn McGoldrick, *Government Liability: Law and Practice* (Toronto: Thomson Reuters) (Release No. 1, June 2026), §1.11, RBoA, Tab 4, p.10, *Attorney General of Quebec v Labrecque*, [1980] 2 S.C.R. 1057 at 1082.
[133] Peter Hogg and Wade Wright, *Constitutional Law of Canada*, 5th ed (Thomson Reuters, 2026) (Release No. 1, April 2026), §30:16, RBoA, Tab 12, p.35, *Boniferro Mill Works ULC v. Ontario*, 2009 ONCA 75 at para. 31; *Steam Whistle Brewing Inc v. Alberta Gaming and Liquor Commission*, 2019 ABCA 468 at paras. 67-68.
[134] *Alberta v. Elder Advocates of Alberta Society*, 2011 SCC 24 at para. 50; see also para. 37.
[135] *La Rose v. Canada*, 2020 FC 1008, at para. 93.

inform when trust-like duties may be imposed on the Crown are narrow. The public trust claim was therefore properly struck."[136]

88. The Nova Scotia Court of Appeal also recently declined to pronounce on the existence of a public trust doctrine, holding that to do so "would be importing an ill-defined concept largely unknown to our law, of uncertain ambit and application, in a factual vacuum owing to the absence of an existing controversy."[137]

89. These summary dismissals by some of Canada's senior appellate courts are simply incompatible with the assertion that the public trust doctrine is as "foundational" to our Constitution as the principles of federalism or democracy or judicial independence. Indeed, the Appellant's own concessions in the courts below that the public trust "is not a constitutional doctrine, written or unwritten" belies the assertion that "it would be impossible to conceive of our constitutional structure"[138] without it.

90. The Appellant relies heavily on this Court's decision in *Canfor*,[139] but that decision did not recognize the existence of a Canadian doctrine of public trust, let alone one with the features advanced by the Appellant: a trust that is owed to "the public at large, including future generations", that is inalienable and irrevocable even by statute, and that is actionable against the Crown at the suit of any person, including a corporation such as the Appellant.

91. In *Canfor*, Binnie J. (writing for the Court) noted that "American law has also developed the notion that the states hold a 'public trust'" but did not rely on that American "notion" in deciding the case and did not incorporate it into Canadian law. Indeed, the Court declined to decide "novel policy questions" including "the existence or non-existence of enforceable fiduciary duties owed to the public by the Crown," noting that it was "not a proper appeal for the Court to embark

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[136] *La Rose v. Canada*, 2023 FCA 241 at para. 62. See also *Burns Bog Conservation Society v. Canada*, 2014 FCA 170, in which the Federal Court of Appeal upheld the striking of a claim seeking an order compelling the Crown to protect a peat bog and an injunction halting development based on a public trust or fiduciary duty.

[137] *Bancroft v. Nova Scotia (Lands and Forestry)*, 2022 NSCA 78 at paras. 32-36.

[138] *Toronto (City)* at para. 49; *Secession Reference* at paras. 50-51.

[139] *British Columbia v. Canadian Forest Products Ltd.*, 2004 SCC 38 ["*Canfor*"].

on a consideration of these difficult issues."[140] The Court's conclusion in *Canfor*, that "Of course it is perfectly open to the Crown to assert its private law rights as a property owner",[141] is incompatible with the nature of the public trust doctrine advanced by the Appellant.

92. In any event, whatever the dubious merits of a "public trust" claim in relation to the Crown, the purported doctrine of public trust can have no application to an Act of the Legislature. In enacting a statute such as *ROPA*, the Legislature does not hold anything in trust for anyone. No Canadian court has ever declared that a statute was contrary to the "public trust."

93. To the contrary, this Court held in *Ermineskin* that "when the Crown is a fiduciary, Parliament may legislate in ways that constrain or eliminate the Crown's fiduciary duties."[142] As this Court's decision in *Authorson* demonstrates, even a valid and admitted trust claim against the Crown can be extinguished by statute.[143] It would be anomalous if the Constitution permitted Parliament to take "a property claim from a vulnerable group, in disregard of the Crown's fiduciary duty to disabled veterans"[144] but prohibited a Legislature from extinguishing a purely hypothetical trust claim arising from the Crown's efforts to rebuild a provincially-owned park.

94. This is no "gap" in the text of the Constitution that could be filled by the public trust doctrine. The constitutional foundation for *ROPA* is s. 92(5) of the *Constitution Act, 1867*, which gives the Legislature power to make laws in relation to "the management and sale of the public lands belonging to the Province"; s. 92(13), which gives the Legislature power to make laws in relation to "property and civil rights in the province"; and s. 92(16), which gives the Legislature the power to make laws in relation to matters of a merely local or private nature.[145] It is uncontestable

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[140] *Canfor* at paras. 81-82. The "non-existence of enforceable fiduciary duties owed to the public by the Crown" was subsequently addressed in *Alberta v. Elder Advocates of Alberta Society*, 2011 SCC 24 at para. 50.

[141] *Canfor* at para. 82.

[142] *Ermineskin Indian Band and Nation v. Canada*, 2009 SCC 9 at para. 79.

[143] *Authorson* at para. 8.

[144] *Authorson* at para. 15.

[145] The provisions of *ROPA* relating to municipal powers, such as ss. 11 and 13, are also grounded in the provincial power to make laws in relation to "municipal institutions in the province" pursuant to s. 92(8) of the *Constitution Act, 1867*.

that laws relating to property and land use planning in the province fall within these plenary heads of power.[146] As Hogg and Wright noted,

> The creation of property rights, their transfer and their general characteristics are within property and civil rights in the province. Thus, the law of real and personal property and all its various derivatives, such as landlord and tenant, trusts and wills, succession on intestacy, conveyancing, and land use planning, are within provincial power.[147]

95. Section 2 of *ROPA*, which is unchallenged in this proceeding, expressly provides that prescribed land at Ontario Place and all of its fixtures, buildings, structures, additions and improvements are "vested in the Crown" and "under the Minister's control."[148] This legislative grant of exclusive Crown ownership and control site is incompatible with the imposition of a trust. As the application judge noted, the Appellant has no explanation for "how the public trust would co-exist with that section."[149]

96. Nor is the "public trust doctrine" useful as an aid to interpret s. 96 of the *Constitution Act, 1867*. The Appellant's argument here is circular, because it assumes the very thing it must prove, namely that the public trust doctrine is part of the core jurisdiction of the superior courts. Even if one were to go as far as the Federal Court of Appeal did in *La Rose* in observing "that a public trust doctrine may some day be recognized in Canadian courts," that is a long way from concluding that it should be counted among the "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."[150] The fact that no Canadian court has ever declared the Crown or a statute to be in breach of the public trust is a powerful indicator that the power to do so is not one of the "defining features" that enables a superior court "to fulfil itself as a court of law."[151]

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[146] See e.g. *Quebec (Attorney General) v Canadian Owners and Pilots Association*, 2010 SCC 39 at para. 22.
[147] Peter Hogg and Wade Wright, *Constitutional Law of Canada*, 5th ed. (Thomson Reuters, 2026) (Release No. 1, April 2026), §21:17, RBoA, Tab 10, p. 27.
[148] *ROPA*, s. 2.
[149] *Ontario Place Protectors (ONSC)* at para. 54.
[150] *Criminal Lawyers' Association* at para. 19.
[151] *Article 35 Reference* at para. 65.

97. Of course it is true, as the Nova Scotia Court of Appeal observed in *Bancroft*, that "it is commonplace that public property is held for public benefit."[152] No-one denies this basic principle of good government, which is as applicable to Ontario Place as it is to any other publicly-owned properties or to the monies held in the consolidated revenue fund. But in our Westminster system, it is not the purported "public trust doctrine" but rather the well-established constitutional principle of democracy that safeguards the management and use of public property by the Crown.[153]

98. While the Executive of the day has the power to manage public property in the same manner as a private person, subject to statute and any applicable common law rule, the Executive is always accountable to the elected Legislature for such management. When, as is invariably the case, some citizens object to the Executive's management of certain public properties, our democracy affords them their recourse at the ballot box: "Democratic institutions are meant to let us all share in the responsibility for these difficult choices."[154]

99. Disputes over the wise use of public property are hardly uncommon: as Professor Hogg would have pointed out, "these are the issues upon which elections are won and lost."[155] It would diminish the constitutional principle of democracy and the *Charter*-protected right to vote if the management of public property by elected governments were made subject to judicial control under the vague and nebulous rubric of "public trust." As the Court of Appeal aptly noted in the decision appealed from, "The court is not an alternative forum for resolving political grievances."[156]

100. Even apart from these legal difficulties with the Appellant's public trust arguments, there is no basis in the facts or evidence that could support a finding that the Crown holds Ontario Place in trust. The application judge was correct to hold that "I see no basis in fact or law to impose a trust on Ontario Place land."[157]

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[152] *Bancroft v. Nova Scotia (Lands and Forestry)*, 2022 NSCA 78 at para. 34.
[153] *La Rose v. Canada*, 2023 FCA 241 at paras. 26 and 61.
[154] *Irwin Toy Ltd. v. Quebec (Attorney General)*, [1989] 1 S.C.R. 927 at 993.
[155] Peter Hogg and Wade Wright, *Constitutional Law of Canada*, 5th ed. (Thomson Reuters, 2026) (Release No. 1, April 2026), §47:12, RBoA, Tab 11, p.31.
[156] *Ontario Place Protectors ONCA* at para. 4; see also *Imperial Tobacco* at paras. 50-54.
[157] *Ontario Place Protectors ONSC* at para. 56.

101. In the courts below, "the applicant submitted that the opinions contained in the affidavit materials are not there for the truth of their contents."[158] It seems that this concession has been abandoned on the Appellant's second appeal. Now, in this Court, the Appellant asserts as a straightforward matter of fact that Ontario Place is "internationally recognized as a landmark of twentieth-century architecture and landscape design, and a critical urban green space for migratory birds and species at risk,"[159] and claims that it should be counted among those public resources that have "been held for common public use from time immemorial" or are "of exceptional and irreplaceable significance to public welfare, whether environmental, ecological, cultural, or architectural" or are "integral to the shared identity or collective memory of the community across generations" or that "its impairment or alienation would deprive the public of benefits that cannot be recovered or compensated in any meaningful sense."[160]

102. As in *MacKay v. Manitoba*, in this case there is "not one particle of evidence put before the Court" to support any of these claims.[161] The Appellant's asserted facts and opinions are "of particular importance to the argument and yet there is no factual basis put forward to support it."[162]

103. The application judge reached the limits of judicial notice in concluding that "Despite the evidentiary frailties, I am prepared to accept that Ontario Place enjoys some renown, has received awards and designations, and that there are people and groups who care deeply about its fate."[163] This is the only finding of fact about Ontario Place made by the trier of fact in this proceeding. It is plainly insufficient to ground the Appellant's assertion that Ontario Place is "exactly the kind of resource for which the doctrine [of public trust] was designed,"[164] even assuming the doctrine advanced by the Appellants exists at all in Canadian law.

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[158] *Ontario Place Protectors ONSC* at para. 10.
[159] Appellant's factum at para. 82.
[160] Appellant's factum at para. 83.
[161] *MacKay v. Manitoba*, [1989] 2 S.C.R. 357 at 363 ["*MacKay*"].
[162] *MacKay* at 364.
[163] *Ontario Place Protectors (ONSC)* at para. 11.
[164] Appellant's factum at para. 82.

C. No case for an injunction or a "stay" has been established

104. The Appellant's factum seeks the following relief: "If necessary, a stay and/or injunction prohibiting the respondents from further implementing the *ROPA*."[165] No argument or evidence is presented in support of this request.

105. Section 22 of the *Crown Liability and Proceedings Act, 2019* provides, consistent with the common law rule,[166] that no injunction lies against the Crown.[167] While injunctions are sometimes sought against the Crown on *Charter* s. 24(1) grounds,[168] there is no *Charter* claim raised in this case and no basis for this Appellant to seek any *Charter* remedy. As the application judge noted, nothing in the record of this proceeding could justify departing from this well-established Crown immunity.[169] Nor are there any proceedings to be stayed, apart from the Appellant's own appeal.

106. Moreover, none of the declaratory relief sought by the Appellant, even if granted, would have the effect of stopping any activity at Ontario Place.[170] This is because the legal authority for the Crown's rebuilding activities at Ontario Place does not arise from s. 17 of *ROPA*.[171]

107. In any event, none of the steps of the test for injunctive relief has been satisfied. There is no serious issue to be tried. Nor is there any evidence of irreparable harm. As the application judge correctly noted, the only statutory provision impugned in this proceeding is a civil immunity clause that prohibits the granting of damages or other remedies.[172] If a party with a tenable claim for a remedy were somehow successful in challenging s. 17 of *ROPA*, the result would be that they would be free to seek their remedy in court – exactly the opposite of "irreparable harm." Finally, the balance of convenience does not favour the injunction sought. This Court has held that "only

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[165] Appellant's factum at para. 113(c).
[166] Gareth Morley & Kathryn McGoldrick, *Government Liability: Law and Practice* (Toronto: Thomson Reuters) (Release No. 1, June 2026), §12.23, RBoA, Tab 5, p.12.
[167] *Crown Liability and Proceedings Act, 2019*, S.O. 2019, c. 7, Sched. 17, s. 22.
[168] See e.g. *Doucet-Boudreau v. Nova Scotia (Minister of Education)*, 2003 SCC 62 at para. 70.
[169] *Ontario Place Protectors (ONSC)*at para. 59.
[170] *Ontario Place Protectors (ONSC)* at para. 61.
[171] *Ontario Place Protectors (ONSC)* at para. 54.
[172] *Ontario Place Protectors (ONSC)* at para. 61.

in clear cases will interlocutory injunctions against the enforcement of a law on grounds of alleged unconstitutionality succeed."[173] This is not such a clear case.

PART IV: COSTS

108. Ontario seeks its costs of this appeal and of the application for leave to appeal.

PART V: ORDER SOUGHT

109. Ontario requests that this appeal be dismissed with costs.

PART VI: CASE SENSITIVITY

110. There are no sealing orders or publication bans in place and this appeal does not involve any confidentiality concerns.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 28th DAY OF MAY, 2026

ATTORNEY GENERAL OF ONTARIO
Per: S. Zachary Green and Hera Evans

[173] *Harper v. Canada (Attorney General)*, 2000 SCC 57 at para. 9.

PART VII: TABLE OF AUTHORITIES

	Jurisprudence	Cited in paragraph(s)
1.	*5185603 Manitoba Ltd et al v Government of Manitoba et al*, 2023 MBCA 47	35
2.	*A.G. Can. v. Law Society of B.C.*, [1982] 2 S.C.R. 307	61
3.	*Ahluwalia v. Ahluwalia*, 2026 SCC 16	57
4.	*Alberta v. Elder Advocates of Alberta Society*, 2011 SCC 24	86, 91
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