

Court File No. COA-24-CV-0838

**COURT OF APPEAL FOR ONTARIO**

B E T W E E N:

**ONTARIO PLACE PROTECTORS**

Appellant

and

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

Respondents

**FACTUM OF THE INTERVENOR**

December 16, 2024

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## PART I - OVERVIEW

1. The Intervenor is a coalition of non-profit organizations committed to the protection of the environment, cultural heritage and democratic good government, and includes Democracy Watch, Ontario Place for All, Toronto Field Naturalists, and National Trust for Canada.
2. The Coalition intervenes on the public trust doctrine issue. The public trust establishes that certain natural and cultural heritage resources are so important that the government should protect them for the public's common access, use and enjoyment.<sup>1</sup>
3. The public trust doctrine and public environmental rights have been recognized in Canada. The public trust has roots in equity and common, constitutional, natural and international law.<sup>2</sup> Should the doctrine apply to Ontario Place, the *Rebuilding Ontario Place Act, 2023* (“ROPA”)<sup>3</sup> denies the public the ability to enforce the public trust.

## PART II - SUMMARY OF FACTS

4. Ontario Place is a designated provincial heritage property of provincial significance and an iconic part of Toronto's waterfront accessible to the public.<sup>4</sup> It provides a critical green space for wildlife, including migratory birds and species at risk.<sup>5</sup> Ontario Place's influential, futuristic architectural design is internationally recognized as an important cultural asset.<sup>6</sup>

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<sup>1</sup> *British Columbia v. Canadian Forest Products Ltd.*, [2004 SCC 38](#), [“Canfor”], Intervenor's Book of Authorities [“BOA”], Vol 1, Tab 1 [“T1”], para. 74. See also: Andrew B. Gage, [Public Environmental Rights: A New Paradigm for Environmental Law](#) (2007), BOA Vol 4, T33.

<sup>2</sup> Erin Ryan, [The Public Trust Doctrine, Property, and Society](#), Handbook of Property, Law, and Society (2002), pp. 3-4, BOA Vol 4, T35.

<sup>3</sup> *Rebuilding Ontario Place Act, 2023, S.O. 2023, c. 25, Sched. 2.*

<sup>4</sup> Affidavit of Diane Chin, Exhibit A, Appeal Book and Compendium [“ABC”], T2, pp. 40-41; Affidavit of Lynn Morrow, Exhibit A, ABC, T10, p. 168.

<sup>5</sup> Affidavit of Tony Morris, Exhibit A, ABC, T15, p. 210.

<sup>6</sup> Affidavit of Mathieu Dormaels, Exhibit A, ABC, T11, p. 177; Affidavit of Javier Ors Ausín, Exhibit A, ABC, T8, paras. 6, pp. 9-10; Affidavit of Patricia Kell, Exhibit A, ABC, T13, p. 192.

5. Organizations have expressed significant concern about Ontario's redevelopment plans for Ontario Place, including privatization, loss of public space, destruction of the natural environment and cultural heritage landscape, and the lack of meaningful public consultation.<sup>7</sup> Ontario is proceeding with redevelopment.

6. *ROPA* limits otherwise applicable public consultation processes and the public's ability to initiate proceedings against the Crown regarding activities undertaken in accordance with *ROPA*. A judicial review application brought by Ontario Place for All challenging the decision not to require an environmental assessment was struck as a direct result of *ROPA*.<sup>8</sup>

### **PART III - POSITION ON ISSUES**

7. The Intervenor makes submissions solely on the public trust doctrine.

### **PART IV - ARGUMENT**

#### **A. International jurisdictions have recognized the doctrine**

8. Foreign jurisprudence is useful as a comparator for the development of Canadian law. Although not binding, foreign jurisprudence is "relevant and persuasive."<sup>9</sup>

9. Many international jurisdictions have recognized the doctrine which limits government actions and gives the public access to lands and resources for their common use and enjoyment.<sup>10</sup>

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<sup>7</sup> Affidavit of Joël León, Exhibit A, ABC, T6, p. 76; Affidavit of Norman Di Pasquale, Exhibit A, ABC, T12, p. 183.

<sup>8</sup> *Ontario Place for All Inc. v. Ontario Ministry of Infrastructure*, [2024 ONSC 3327](#), BOA Vol 1, T2, para 18.

<sup>9</sup> *Quebec (Attorney General) v. 9147-0732 Québec inc.*, [2020 SCC 32](#), BOA Vol 1, T3, paras. 98-104. See also: *R. v. Kirkpatrick*, [2022 SCC 33](#), BOA Vol 1, T4, para. 251.

<sup>10</sup> See Michael Blumm and Rachel Guthrie, [Internationalizing the Public Trust Doctrine](#), UC Davis Law Review, Vol. 44 (2012) ["Blumm and Guthrie"], BOA Vol 4, T34.

10. In the leading U.S. Supreme Court case, the Court affirmed that the state holds title to the lands under navigable waters in trust for the public.<sup>11</sup> The public trust has since evolved in the United States. Some states have broadened the doctrine to include the protection of the state's natural resources, natural beauty and esthetic values, and historically or culturally significant places.<sup>12</sup>

11. In India, the doctrine is broadly applied to all natural resources, including shorelands, ecologically fragile lands, and parklands.<sup>13</sup> Indian courts confirm that the public trust doctrine was inherited from English law, with its source in both natural and constitutional law, including in a constitutional guarantee of life and liberty.<sup>14</sup> Courts in Pakistan and Kenya have similarly grounded the public trust in this guarantee.<sup>15</sup>

## **B. The doctrine is developing incrementally in Canada**

12. Canadian courts have long recognized public rights to natural resources,<sup>16</sup> including the possibility of trust relationships between the public and the government in relation to the

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<sup>11</sup> *Illinois Central Railroad Co. v. Illinois*, [146 U.S. 387 \(1892\) \(United States\)](#) [*"Illinois Central"*], BOA Vol 1, T5.

<sup>12</sup> [Constitution of the State of Hawaii](#), Article XI, s. 1 and Article IX, s. 7; [Constitution of the Commonwealth of Pennsylvania](#), Article I, s. 27; *Pennsylvania Environmental Defense Foundation v. Commonwealth*, [No. 609 M.D. 2019 \(2021\)](#), p. 3, BOA Vol 1, T6; *National Audubon Society v. Superior Court* (1983), [189 Cal.Rptr. 346; 658 P.2d 709](#), BOA Vol 1, T7.

<sup>13</sup> *M.C. Mehta v. Kamal Nath*, [\(1997\) 1 SCC 388 \(1996\) \(India\)](#) [*"M.C. Mehta"*], BOA Vol 1, T8; *M.I. Builders Private Ltd. v. Radhey Shayam Sahu*, [\(1999\) 6 SCC 464 \(India\)](#) [*"M.I. Builders"*], BOA Vol 2, T9; [Blumm and Guthrie](#), pp. 2-23, BOA Vol 4, T34.

<sup>14</sup> [M.C. Mehta](#), BOA Vol 1, T8; [M.I. Builders](#), BOA Vol 2, T9.

<sup>15</sup> *Waweru v. Republic* (1994) 46 PLD (SC) 102 (1992) (Pakistan) in [Blumm and Guthrie](#), pp. 25-26, BOA Vol 4, T34; *Zia v. Wapda*, [\(1994\) 46 PLD \(SC\) 693 \(Pakistan\)](#), BOA Vol 2, T10, paras. 12, 14.

<sup>16</sup> *Attorney General v. Harrison*, [\(1866\) 12 Gr. 466 \(Ct. Ch. Upper Can.\)](#), BOA Vol 2, T11; *Rhodes v. Perusse*, [\[1908\] 41 SCR 264](#), BOA Vol 2, T12.

environment.<sup>17</sup> Elected governments “own places [like parks] for the citizens’ benefit and use, unlike a private owner.”<sup>18</sup>

13. The notion that there are public rights in the environment that reside in the Crown has deep roots in the common law.<sup>19</sup> The Supreme Court in *Canfor* left the door open for the development of these rights in future cases, including the Crown’s potential liability for inaction on environmental issues and the existence of enforceable fiduciary duties owed to the public.<sup>20</sup>

14. In *Burns Bog*, the Federal Court of Appeal confirmed that *Canfor* “opens the door” to the application of the doctrine in respect of land owned by the Crown.<sup>21</sup> The Prince Edward Island Superior Court found that the public “ought to be able to bring a claim against the government for a failure to properly protect the public interest.”<sup>22</sup>

15. While the Federal Court of Appeal in *La Rose* held that a public trust claim was properly struck, the Court accepted that the doctrine “may some day be recognized by Canadian courts.”<sup>23</sup>

16. There are also provinces and territories in Canada that have explicitly adopted the concept of the public trust doctrine in environmental legislation.<sup>24</sup>

### C. The sources of the doctrine in Canada

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<sup>17</sup> *Scarborough v. R.E.F. Homes Ltd.* (1979) 9 M.P.L.R. 255, BOA Vol 2, T13.

<sup>18</sup> *Committee for the Commonwealth of Canada v. Canada*, 1991 CarswellNat 1094, BOA Vol 2, T14, para. 14.

<sup>19</sup> *Canfor*, BOA Vol 1, T1, [para. 74.](#)

<sup>20</sup> *Canfor*, BOA Vol 1, T1, [para. 81.](#)

<sup>21</sup> *Burns Bog Conservation Society v. Canada*, 2014 FCA 170 [“*Burns Bog*”], BOA Vol 2, T15, [para. 44.](#)

<sup>22</sup> *Prince Edward Island v. Canada (Attorney General)*, 2005 PESCTD 57, BOA Vol 2, T16, para. 37.

<sup>23</sup> *La Rose v. Canada*, 2023 FCA 241, BOA Vol 2, T17, [para. 62.](#)

<sup>24</sup> *Yukon Environmental Act*, Preamble, s. 38; *Quebec Act to Affirm the Collective Nature of Water Resources and Provide for Increased Water Resource Protection*, ss. 1, 5, 6.

17. With roots in the Justinian Code, the principles of *jus publicum* were incorporated into early English law.<sup>25</sup> Many jurisdictions trace the public trust doctrine back to the British common law<sup>26</sup> which Canada similarly inherited.<sup>27</sup>

18. The Constitution includes underlying unwritten constitutional principles that “inform and sustain the constitutional text.”<sup>28</sup> These principles are the fundamental norms of justice so basic that they form part of the legal structure of governance.<sup>29</sup>

19. The public trust is just such a fundamental norm of justice which has found expression in Canadian jurisprudence in several ways.

20. First, the legitimacy of democratic state power comes from an implicit contract between the state and its citizens.<sup>30</sup> The right to life is inherent to this social contract, including that states “should avoid killing” their citizens indirectly by “degradation of the environment.”<sup>31</sup>

21. Second, the right to a healthy environment is itself a fundamental value.<sup>32</sup> Legal measures to protect the environment are of “superordinate importance.”<sup>33</sup> The government holds

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<sup>25</sup> Ryan, pp. 3-4, BOA Vol 4, T35.

<sup>26</sup> Ryan, p. 4, BOA Vol 4, T35; *M.I. Builders*, BOA Vol 2, T9.

<sup>27</sup> *Constitution Act, 1867*, Preamble; *Trial Lawyers Association of British Columbia v. British Columbia*, [2014 SCC 59](#), BOA Vol 2, T18, para. 48; *Quebec v Canada*, [\[1978\] SCJ No 84](#), BOA Vol 2, T19, [para. 29](#); *Bow Valley Husky (Bermuda) Ltd v. Saint John Shipbuilding Ltd*, [\[1997\] SCJ No 111](#), BOA Vol 2, T20, [para. 90](#).

<sup>28</sup> *Reference re Secession of Quebec*, [1998 CanLII 793 \(SCC\)](#) [“*Quebec Reference*”], BOA Vol 2, T21, [para. 49](#).

See also *Canada v. Power*, 2024 SCC 26, BOA Vol 3, T22, para. [265](#).

<sup>29</sup> The Right Honourable Beverley McLachlin, *Unwritten Constitutional Principles* (2005) [“*McLachlin Remarks*”], BOA Vol 5, T37 ; *Quebec Reference*, BOA Vol 2, T21, [para. 54](#).

<sup>30</sup> *Sauvé v. Canada*, [2002 SCC 68](#), BOA Vol 3, T23, [paras. 31, 115](#).

<sup>31</sup> *McLachlin Remarks*, BOA Vol 5, T37.

<sup>32</sup> *Ontario v. Canadian Pacific Ltd.*, [1995 CanLII 112 \(SCC\)](#), BOA Vol 3, T24, [para. 55](#); *Canfor*, BOA Vol 1, T1, [para. 7](#).

<sup>33</sup> *R. v. Hydro-Québec*, [1997 CanLII 318 \(SCC\)](#), BOA Vol 3, T25, [para. 85](#).



natural resources essential for a healthy environment in trust, which is critical to support our basic quality of life and a functioning democracy.

22. Thirdly, the public trust is rooted in the same fundamental values that ground section 7 of the *Canadian Charter of Rights and Freedoms*: the right to life, liberty and security of the person. The right to a healthy environment is a prerequisite to the enjoyment of these rights.

23. The right to a healthy environment exists in the Constitution. The public trust is the mechanism by which the public can require the government to comply with its fundamental responsibility to protect certain natural resources and environment and cultural heritage.

#### **D. Recognition of the doctrine is consistent with international law and principles**

24. Canadian courts have used international law as a tool to assist in interpreting domestic law.<sup>34</sup> Interpretations of Canadian law that are consistent with international law are preferred.<sup>35</sup>

25. The recognition of the public trust is consistent with Canada's international obligations. International law recognizes the right to a clean, healthy and sustainable environment<sup>36</sup> and principles of sustainable development and intergenerational equity.<sup>37</sup>

26. Canada's international commitments support the development of the common and constitutional law to recognize an enforceable public trust doctrine.<sup>38</sup>

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<sup>34</sup> *Baker v. Canada*, [1999 CanLII 699 \(SCC\)](#) [*"Baker"*], BOA Vol 3, T26, [paras. 69-71](#).

<sup>35</sup> *Baker*, BOA Vol 3, T26, para. 70; *R. v. Keegstra*, [1990 CanLII 24 \(SCC\)](#), BOA, T27; *114957 Canada Ltée v. Hudson*, [2001 SCC 40](#), BOA Vol 4, T28, [paras. 31-32](#).

<sup>36</sup> [GA Resolution 217 A](#), art. 25; [UN Sustainable Development Goals](#), BOA Vol 5, T36; [UNHRC Resolution \(A/HRC/RES/48/13\)](#); [GA Resolution \(A/RES/76/300\)](#).

<sup>37</sup> [UNFCCC, No. 30822](#), art. 3; [Convention on Biological Diversity](#), art. 2; [UNESCO World Heritage Convention](#), art. 4; UN Brundtland Commission, [Report of the World Commission on Environment and Development](#) (1987), BOA Vol 5, T39, para. 27; [UN Agenda for Sustainable Development](#), SDG 15.

**E. A declaration recognizing the public trust doctrine would be useful**

27. The public trust doctrine applies to publicly owned lands, including those owned and controlled by the Crown. It is not a barrier that Ontario Place lands were vested in the Crown.

28. A declaration may be appropriate where the court has jurisdiction, the dispute is real, and the parties have a genuine interest.<sup>39</sup> A declaration must have practical utility.<sup>40</sup>

29. *ROPA* created broad exemptions to public engagement, oversight, and accountability for Ontario's redevelopment of Ontario Place, exempting it from environmental and heritage assessment processes essential for compliance with the public trust doctrine.

30. Section 17 of *ROPA* extinguishes all causes of action against the Crown, including the right to bring a legal proceeding to enforce the public trust and the right to a remedy in trust or fiduciary obligation.

31. The exemptions undermine the public's ability to ensure that Ontario Place is redeveloped in accordance with the public trust.

32. These legislative effects are relevant to this Court's consideration of whether *ROPA* removes the core jurisdictions granted to the Superior Courts under section 96 of the *Constitution Act, 1867*. The declaration sought by Ontario Place Protectors would elaborate on the full scope of the impact of *ROPA*'s limitation on tools for achieving government accountability.

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<sup>38</sup> As do Ontario's own standards. See, for example: Ministry of Heritage, Sport, Tourism and Culture Industries' [Standards & Guidelines for Conservation of Provincial Heritage Properties](#) (2010), BOA Vol 5, T38.

<sup>39</sup> *S.A. v. Metro Vancouver Housing Corp.*, [2019 SCC 4](#), BOA Vol 4, T29, [para. 60](#).

<sup>40</sup> *Solosky v. The Queen*, [1979 CanLII 9 \(SCC\)](#), BOA Vol 4, T30; *Daniels v. Canada*, [2016 SCC 12](#), BOA Vol 4, T31, [para. 12](#).

33. In the alternative, if this Court determines that it need not decide whether to recognize the public trust doctrine, the door should be left open for determination in an appropriate case.

**PART V - ORDER REQUESTED**

34. The Intervenor takes no position on the Order requested.

35. Pursuant to this Court's order granting leave to intervene, the Coalition seeks no costs nor may costs be awarded against it.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 16th day of December, 2024.



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**CERTIFICATE**

I estimate that 15 minutes will be needed for the intervenor's oral argument. The factum complies with the Order of The Honourable Justice Huscroft dated December 10, 2024. There are 2,299 words in Parts I to V.

The person signing this certificate is satisfied as to the authenticity of every authority listed in Schedule "A".

DATED AT Toronto, Ontario this 16th day of December, 2024.



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**SCHEDULE “A”**

**LIST OF AUTHORITIES**

1. *British Columbia v. Canadian Forest Products Ltd.*, [2004 SCC 38](#),
2. *Ontario Place for All Inc. v. Ontario Ministry of Infrastructure*, [2024 ONSC 3327](#)
3. *Quebec (Attorney General) v. 9147-0732 Québec inc.*, [2020 SCC 32](#)
4. *R. v. Kirkpatrick*, [2022 SCC 33](#)
5. *Illinois Central Railroad Co. v. Illinois*, [146 U.S. 387 \(1892\)](#) (United States)
6. *Pennsylvania Environmental Defense Foundation v. Commonwealth*, [No. 609 M.D. 2019 \(2021\)](#) (United States)
7. *National Audubon Society v. Superior Court* (1983) 33 Cal.3d 419, [189 Cal.Rptr. 346; 658 P.2d 709](#) (United States)
8. *M.C. Mehta v. Kamal Nath*, [\(1997\) 1 SCC 388 \(1996\)](#) (India)
9. *M.I. Builders Private Ltd. v. Radhey Shayam Sahu*, [\(1999\) 6 SCC 464](#) (India)
10. *Zia v. Wapda*, [\(1994\) 46 PLD \(SC\) 693](#) (Pakistan)
11. *Attorney General v. Harrison*, [\(1866\) 12 Gr. 466 \(Ct. Ch. Upper Can.\)](#)
12. *Rhodes v. Perusse*, [\[1908\] 41 SCR 264](#)
13. *Scarborough v. R.E.F. Homes Ltd.* [\(1979\) 9 M.P.L.R. 255](#)
14. *Committee for the Commonwealth of Canada v. Canada*, [1991 CarswellNat 1094](#)
15. *Burns Bog Conservation Society v. Canada*, [2014 FCA 170](#)
16. *Prince Edward Island v. Canada (Attorney General)*, [2005 PESCTD 57](#)

17. *La Rose v. Canada*, [2023 FCA 241](#)
18. *Trial Lawyers Association of British Columbia v. British Columbia (Attorney General)*, [2014 SCC 59](#)
19. *Quebec (Attorney General) v Canada (Attorney General)*, [\[1978\] SCJ No 84](#)
20. *Bow Valley Husky (Bermuda) Ltd v. Saint John Shipbuilding Ltd*, [\[1997\] SCJ No 111](#)
21. *Reference re Secession of Quebec*, [1998 CanLII 793 \(SCC\)](#)
22. *Canada (Attorney General) v. Power*, 2024 SCC 26
23. *Sauvé v. Canada (Chief Electoral Officer)*, [2002 SCC 68](#)
24. *Ontario v. Canadian Pacific Ltd.*, [1995 CanLII 112 \(SCC\)](#)
25. *R. v. Hydro-Québec*, [1997 CanLII 318 \(SCC\)](#)
26. *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999 CanLII 699 \(SCC\)](#)
27. *R. v. Keegstra*, [1990 CanLII 24 \(SCC\)](#)
28. *114957 Canada Ltée (Spraytech, Société d'arrosage) v. Hudson (Town)*, [2001 SCC 40](#)
29. *S.A. v. Metro Vancouver Housing Corp.*, [2019 SCC 4](#)
30. *Solosky v. The Queen*, [1979 CanLII 9 \(SCC\)](#)
31. *Daniels v. Canada (Indian Affairs and Northern Development)*, [2016 SCC 12](#)
32. *Ontario Place Protectors v. HMK in Right of Ontario*, [2024 ONSC 4194](#)
33. Andrew B. Gage, [Public Environmental Rights: A New Paradigm for Environmental Law?](#), Environmental Law Conference, 2007, BOA T#33
34. Michael Blumm and Rachel Guthrie, [Internationalizing the Public Trust Doctrine: Natural Law and Constitutional and Statutory Approaches to Fulfilling to Saxion Vision](#), UC Davis Law Review, Vol. 44, 2012, BOA, T#34

35. Erin Ryan, [\*The Public Trust Doctrine, Property, and Society\*](#), Handbook of Property, Law, and Society (Graham, Davis & Godden, eds.), (2002), pp. 3-4, BOA, T#35
36. Office of the Auditor General of Canada, [The United Nations' Sustainable Development Goals](#), BOA, T#36
37. Beverley McLachlin, [\*Unwritten Constitutional Principles: What is Going On? Remarks of the Right Honourable Beverley McLachlin, P.C. Chief Justice of Canada\*](#), given at the 2005 Lord Cooke Lecture in Wellington, New Zealand, December 1, 2005, BOA, T#37
38. Ministry of Heritage, Sport, Tourism and Culture Industries' [Standards & Guidelines for Conservation of Provincial Heritage Properties](#) (2010), BOA, T#38
39. United Nations' Brundtland Commission, [\*Report of the World Commission on Environment and Development: Our Common Future\*](#) (1987), BOA, T#39



**SCHEDULE “B”**

**TEXT OF STATUTES, REGULATIONS & BY-LAWS**

**SCHEDULE “B”**

**TEXT OF STATUTES, REGULATIONS & BY-LAWS**

1. [Rebuilding Ontario Place Act](#), 2023, S.O. 2023, c. 25, Sched. 2.

**Schedule 2**

**LAND THAT CAN BE PRESCRIBED AS THE ONTARIO PLACE SITE**

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

2. Property Identification Number 21416-0099 (LT), being part Lots G and H on Plan D1411 Toronto; Lots J, K, L, M, N, O, P and Q on Plan D1411 Toronto; part Water Lot in front of Lots 33 and 34, Concession Broken Front Toronto; part Lots 12 to 25 on Plan 782 Parkdale; part Water Lot in front of Lot 31 Concession Broken Front Toronto; Water Lot in front of Lot 36 Concession Broken Front Toronto; part Water Lot in front of Dufferin Street Toronto; Hawthorne Terrace on Plan 549 Parkdale also known as Laburnam Avenue closed by WF35040; part Lots 9, 10 and 19 to 24 on Plan 549 Parkdale; part Lots 69, 70 and 94 on Plan 333 Parkdale; Dowling Avenue on Plan 333 Parkdale closed by WF35040; Water Lots 25 to 30 on Plan 549 Toronto; Jameson Avenue on Plan 370 Parkdale closed by WF43635; part Block J on Plan D1478 Toronto; part Water Lot in front of Lot 32 Concession Broken Front Toronto part also described as Water Lots 1A, 2A and 3A on Plan 1011 Toronto; part Lot 46 on Plan 443 Parkdale; Lots 52 to 59 on Plan 443 Parkdale; Dunn Avenue on Plan 443 Parkdale closed by WF35040; Dunn Avenue on Plan 443 Parkdale south of Block K on Plan D1478 Toronto; part

Blocks H and K on Plan D1478 Toronto; part Lots 1 to 3 on Plan D1478 Toronto; part Lots 105 to 111 on Plan 613 Parkdale; Lots 112 to 114 on Plan 613 Parkdale; part Lots 15 and 16 W/S Jameson Avenue on Plan 370 Parkdale; part Lots 1 to 3 on Plan 1011 Toronto as in CA333154, CT452027 (part of Parcel 3), WF55391 (Parcels 2, 3, 4 and 5), WF15313, WF11641 (Parcel 1), WF6757, WF6717, OD12056 (Parcel 1), OF64044; except Part 9 on 63R-275 & Parts 1, 2 and 3 on 63R-265; Subject to CA208787, WF51758; Subject to an easement in gross over Parts 1, 2 and 3 on 64R-14276, Parts 1, 2 and 3 on 64R-14277, Part 1 on 64R-14278, Part 1 on 64R-14279 as in AT3917049; City of Toronto.

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

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

2. [Constitution of the State of Hawaii](#), Article XI, s. 1.

## [ARTICLE XI](#)

Conservation, Control And Development Of Resources

Note: This article was redesignated from “Article X Conservation and Development of Resources” to be “Article XI Conservation, Control and Development of Resources” by Const Con 1978 and election Nov 7, 1978. The former Article XI now appears as Article XII.

### CONSERVATION AND DEVELOPMENT OF RESOURCES

[Section 1.](#) For the benefit of present and future generations, the State and its political subdivisions shall conserve and protect Hawaii’s natural beauty and all natural resources, including land, water, air, minerals and energy sources, and shall promote the development and

utilization of these resources in a manner consistent with their conservation and in furtherance of the self-sufficiency of the State.

All public natural resources are held in trust by the State for the benefit of the people. [Add Const Con 1978 and election Nov 7, 1978]

Note: A proposal of the 1978 Constitutional Convention deleted the former section 1 of the old Article X, which read: “Section 1. The legislature shall promote the conservation, development and utilization of agricultural resources, and fish, mineral, forest, water, land, game and other natural resources.” This deletion appears to be one of the unspecified changes submitted for ratification under Question 34. On whether any of the changes submitted under Question 34 was in fact approved by the electorate, see *Kahalekai v. Doi*, 60 H. 324, 590 P.2d 543, excerpted in the note preceding the Preamble to the Constitution.

3. [Constitution of the State of Hawaii](#), Article IX, s. 7.

## [ARTICLE IX](#)

Public Health And Welfare

PUBLIC SIGHTLINESS AND GOOD ORDER

[Section 7.](#) The State shall have the power to conserve and develop objects and places of historic or cultural interest and provide for public sightliness and physical good order. For these purposes private property shall be subject to reasonable regulation. [Ren and am Const Con 1978 and election Nov 7, 1978]

4. [Constitution of the Commonwealth of Pennsylvania](#), Article I, s. 27.

[Const. Art. 1, § 27](#)

§ 27. Natural resources and the public estate

[Currentness](#)

The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment. Pennsylvania's public natural resources are the common property of all the people, including generations yet to come. As trustee of these resources, the Commonwealth shall conserve and maintain them for the benefit of all the people.

Credits

Adopted May 18, 1971.

5. **Yukon [Environment Act](#), RSY 2002, c 76, Preamble, s. 38**

**[Preamble](#)**

Recognizing that the way of life of the people of the Yukon is founded on an economic, cultural, aesthetic and spiritual relationship with the environment and that this relationship is dependent on respect for and protection of the resources of the Yukon;

Recognizing that the resources of the Yukon are the common heritage of the people of the Yukon including generations yet to come;

Recognizing that long-term economic prosperity is dependent on wise management of the environment;

Recognizing that a healthful environment is indispensable to human life and health;

Recognizing that every individual in the Yukon has the right to a healthful environment;

Recognizing that the global ecosystem is an indivisible whole of which the Yukon environment is an integral part;

Recognizing that the Government of the Yukon is the trustee of the public trust and is therefore responsible for the protection of the collective interest of the people of the Yukon in the quality of the natural environment;

Recognizing that all persons should be responsible for the environmental consequences of their actions;

Recognizing that comprehensive, integrated, and open decision-making processes are essential to the efficient and fair discharge of the environmental responsibilities of the Government of the Yukon;

and Recognizing that the Government of the Yukon has expressed its commitment to economic progress and environmental conservation in the Yukon Economic Strategy and the Yukon Conservation Strategy.

### **Section 38. Public trust**

- (1) The Government of the Yukon is the trustee of the public trust.
- (2) The Government of the Yukon shall, subject to this Act or a schedule 1 enactment, conserve the natural environment in accordance with the public trust.

6. Quebec **Act to Affirm the Collective Nature of Water Resources and Provide for Increased Water Resource Protection**, c-6.2, ss. 1, 5, 6

### **SECTION 1**

**1.** Being of vital interest, surface water and groundwater, in their natural state, are resources that are part of the common heritage of the Quebec nation .

As stated in Article 913 of the Civil Code, their use is common to all and they cannot be appropriated, except under the conditions defined by this article.

### **SECTION 5**

**5.** Every person has a duty, under the conditions defined by law, to prevent or at least limit the damage the person may cause to water resources and to thus join in the effort to protect water resources.

## SECTION 6

**6.** Every person must repair the damage the person causes to water resources, under the conditions defined by law.

7. [Constitution Act, 1867, 30 & 31 Vict, c 3](#)

### PREAMBLE

30 & 31 Victoria, c. 3 (U.K.)

An Act for the Union of Canada, Nova Scotia, and New Brunswick, and the Government thereof; and for Purposes connected therewith

*(29th March 1867)*

WHEREAS the Provinces of Canada, Nova Scotia, and New Brunswick have expressed their Desire to be federally united into One Dominion under the Crown of the United Kingdom of Great Britain and Ireland, with a Constitution similar in Principle to that of the United Kingdom:

And whereas such a Union would conduce to the Welfare of the Provinces and promote the Interests of the British Empire:

And whereas on the Establishment of the Union by Authority of Parliament it is expedient, not only that the Constitution of the Legislative Authority in the Dominion be provided for, but also that the Nature of the Executive Government therein be declared:

And whereas it is expedient that Provision be made for the eventual Admission into the Union of other Parts of British North America he coming into force of this subsection shall, subject to this Act, hold his place in the Senate until he attains the age of seventy-five years.

8. *Universal Declaration of Human Rights*, [General Assembly Resolution 217 A](#), 10 December 1948, art. 25

### Article 25

1. Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.
  2. Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.
9. [Universal Declaration of Human Rights \(1948\): 30 Articles - 30 Documents: Exhibit for the 75th Anniversary](#)
  10. [United Nations Human Rights Council Resolution \(A/HRC/RES/48/13\)](#), 48<sup>th</sup> session, 13 September to 11 October 2021
  11. [General Assembly Resolution \(A/RES/76/300\)](#), 76<sup>th</sup> session, 28 July 2022
  12. [United Nations Framework Convention on Climate Change, No. 30822](#), New York, 9 May 1992, art. 3

### Article 3

#### PRINCIPLES

In their actions to achieve the objective of the Convention and to implement its provisions, the Parties shall be guided, inter alia, by the following:

1. The Parties should protect the climate system for the benefit of present and future generations of humankind, on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities. Accordingly, the developed country Parties should take the lead in combating climate change and the adverse effects thereof.

2. The specific needs and special circumstances of developing country Parties, especially those that are particularly vulnerable to the adverse effects of climate change, and of those Parties, especially developing country Parties, that would have to bear a disproportionate or abnormal burden under the Convention, should be given full consideration.

3. The Parties should take precautionary measures to anticipate, prevent or minimize the causes of climate change and mitigate its adverse effects. Where there are threats of serious or irreversible damage, lack of full scientific certainty should not be used as a reason for postponing such measures, taking into account that policies and measures to deal with climate change should be cost-effective so as to ensure global benefits at the lowest possible cost. To achieve this, such policies and measures should take into account different socio-economic contexts, be comprehensive, cover all relevant sources, sinks and reservoirs of greenhouse gases and adaptation, and comprise all economic sectors. Efforts to address climate change may be carried out cooperatively by interested Parties.

4. The Parties have a right to, and should, promote sustainable development. Policies and measures to protect the climate system against human-induced change should be appropriate for the specific conditions of each Party and should be integrated with national development programmes, taking into account that economic development is essential for adopting measures to address climate change.

5. The Parties should cooperate to promote a supportive and open international economic system that would lead to sustainable economic growth and development in all Parties, particularly developing country Parties, thus enabling them better to address the problems of climate change. Measures taken to combat climate change, including unilateral ones, should not constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade.

13. [United Nations Environment Programme's Convention on Biological Diversity](#),  
Montreal, 22 May 1992, art. 2

[Article 2](#)

[...]



“Sustainable use” means the use of components of biological diversity in a way and at a rate that does not lead to the long-term decline of biological diversity, thereby maintaining its potential to meet the needs and aspirations of present and future generations.

[...]

14. [United Nations Educational, Scientific and Cultural Organization \(“UNESCO”\) World Heritage Convention, Paris, 16 November 1972, art. 4](#)

#### [Article 4](#)

Each State Party to this Convention recognizes that the duty of ensuring the identification, protection, conservation, presentation and transmission to future generations of the cultural and natural heritage referred to in Articles 1 and 2 and situated on its territory, belongs primarily to that State. It will do all it can to this end, to the utmost of its own resources and, where appropriate, with any international assistance and co-operation, in particular, financial, artistic, scientific and technical, which it may be able to obtain.

15. [United Nations Agenda for Sustainable Development, SDG 15](#)

**ONTARIO PLACE PROTECTORS**  
Appellant

-and- **HIS MAJESTY THE KING IN RIGHT OF ONTARIO et al.**  
Respondents

Court File No. COA-24-CV-0838

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**COURT OF APPEAL FOR ONTARIO**

PROCEEDING COMMENCED AT  
TORONTO

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**FACTUM OF THE INTERVENOR**

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