

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(Divisional Court)**

B E T W E E N:

**ONTARIO PLACE FOR ALL INC.**

Applicant



and

**ONTARIO MINISTRY OF INFRASTRUCTURE,  
INFRASTRUCTURE ONTARIO and  
ONTARIO MINISTRY OF TOURISM, CULTURE AND SPORT**

Respondents

**NOTICE OF APPLICATION TO DIVISIONAL COURT FOR JUDICIAL REVIEW**

TO THE RESPONDENT

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicant. The claim made by the applicant appears on the following page.

THIS APPLICATION for judicial review will come on for a hearing before the Divisional Court on a date to be fixed by the registrar by the method of hearing requested by the applicant, unless the court orders otherwise. The applicant requests that this application be heard (*choose one of the following*)

- In person
- By telephone conference
- By video conference

at a time and place to be determined by the court.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the Rules of Civil Procedure, serve it on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the office of the Divisional Court, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the office of the Divisional Court within thirty days after service on you of the applicant's application record, or at least four days before the hearing, whichever is earlier.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN TO IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

*TAKE NOTICE: THIS APPLICATION WILL AUTOMATICALLY BE DISMISSED* if it has not been set down for hearing or terminated by any means within five years after the notice of application was filed with the court, unless otherwise ordered by the court.

Date November 16, 2023 Issued by \_\_\_\_\_  
Local Registrar

Address of  
court office:

TO: Ontario Ministry of Infrastructure  
777 Bay Street, 5<sup>th</sup> Floor  
Toronto, ON M5G 2C8

TO: Infrastructure Ontario  
Suite 2000, 1 Dundas Street West  
Toronto, ON M5G 1Z3

TO: Ontario Ministry of Tourism, Culture and Sport  
6<sup>th</sup> Floor, 438 University Avenue  
Toronto, ON M5G 2K8

AND TO: Attorney General of Ontario  
Crown Law Office – Civil  
720 Bay Street, 8th Floor  
Toronto, Ontario M7A 2S9

## APPLICATION

### 1. THE APPLICANT MAKES APPLICATION FOR:

- a. Judicial review of the decision of the respondents to not include the redevelopment of Ontario Place's West Island (defined below) in the Category C Public Work Class Environmental Assessment of the Ontario Place redevelopment pursuant to the *Environmental Assessment Act*, RSO 1990, c E.18 (the "Decision").
- b. An order requiring the respondents to produce the Lease and any other contractual arrangements with Therme, along with any business case for the Spa and the West Island Redevelopment (all capitalized terms defined below).
- c. If necessary, leave to bring this application before a Judge of the Superior Court of Justice (or a single Judge of the Divisional Court) on the basis of urgency, pursuant to section 6(2) of the *Judicial Review Procedure Act*, R.S.O. 1990, c.J.1.
- d. If necessary, an extension of the time for making this application for judicial review pursuant to section 5(2) of the *Judicial Review Procedure Act*, R.S.O. 1990, c.J.1.
- e. An order of *mandamus* requiring the respondents to conduct a Category C Public Work Class Environmental Assessment pursuant to the *Environmental Assessment Act*, RSO 1990, c E.18 of the entire Ontario Place Redevelopment Project that includes the redevelopment of Ontario Place's West Island (all capitalized terms defined below).

- f. An interim and interlocutory injunction prohibiting the respondents from destroying, cutting, damaging, or otherwise taking, directing, or enabling any action resulting in harm to any tree or trees located on Ontario Place's West Island, and/or otherwise harming or interfering with the landscape of the West Island, or directing or permitting any other person to do so, until such time as a Category C Public Work Class Environmental Assessment of the entire Ontario Place Redevelopment Project that includes the redevelopment of Ontario Place's West Island (all capitalized terms defined below) is completed pursuant to the *Environmental Assessment Act*, RSO 1990, c E.18.

## **2. THE GROUNDS FOR THE APPLICATION ARE:**

### **Overview**

- a. The respondents intend to redevelop the West Island of Ontario Place, which involves, in part, building a massive glass Spa. In doing so, they intend to destroy the West Island of Ontario Place by cutting down 840 trees, levelling the historic heritage landscape, and filling in portions of the lakefront. They intend to complete the development of the West Island without submitting those activities to an Environmental Assessment that is being conducted respecting other parts of Ontario Place, based on the false assertion that it is a private undertaking - not a public undertaking. In making this assertion, however, they are keeping secret the contractual arrangements that would disclose the project's true nature.
- b. None of this should be permitted. The respondents should be required to produce the documents disclosing the true nature of the project to permit this court to

judicially review the Decision and require the Environmental Assessment to take place. The respondents should be enjoined from destroying the Ontario Place West Island in the meantime.

**Parties**

c. The applicant Ontario Place for All Inc. (“OP4A”) is a not-for-profit corporation, incorporated on April 24, 2023, with by-laws adopted June 14, 2023.

d. OP4A is a grassroots citizen-led entity with over 30,000 active supporters. Its purposes, as set out in its articles of incorporation, are:

(1) To promote and advocate for: free and accessible public access to Ontario Place for the benefit of residents and visitors to Toronto; opportunities to acknowledge and promote the waterfront’s indigenous heritage; conservation of the cultural heritage value of Ontario Place as a unique example of late 20th Century modernist design; protection and enhancement of the natural environment and ecosystems within and around Ontario Place; and the potential for integration with the revitalization of Exhibition Place.

(2) To carry out any other activities to promote Ontario Place as a vital component of Toronto’s waterfront public park system.

e. Ontario Place is a 63-hectare (28-hectare land, 35-hectare water) property located at 955 Lake Shore Boulevard West in the City of Toronto, on the shore of Lake Ontario.

f. The Government of Ontario, specifically the respondent Ministry of Infrastructure (“MOI”), is the owner of the majority of Ontario Place. The City of Toronto owns a sliver of Ontario Place, as set out in the figure below, and MOI owns the remainder:



- g. The respondent Infrastructure Ontario (“IO”) is an agency of the Government of Ontario under the purview of the MOI. IO is responsible for facilitating and directing the redevelopment of Ontario Place mandated by the MOI and more generally the Government of Ontario.
- h. The respondent Ministry of Tourism, Culture and Sport has also been involved in the redevelopment of Ontario Place undertaken by the Government of Ontario.

**Background: Ontario Place and the Redevelopment of the West Island**

- i. Under Part III.1 of the *Ontario Heritage Act*, R.S.O. 1990, c. O.18 (“*Ontario Heritage Act*”), the Minister of Tourism, Culture and Sport, in consultation with ministries and affected public bodies, is authorized to prepare Standards and Guidelines for Conservation of Provincial Heritage Properties (the “Standards and Guidelines”).
- j. The Standards and Guidelines require all ministries and public bodies that have been prescribed by regulation to identify, protect and care for provincial heritage

properties they own and manage, and “are mandatory for ministries and prescribed public bodies and have the authority of a Management Board of Cabinet directive.”

- k. In 2013, the Government of Ontario recognized the cultural heritage value of Ontario Place by identifying it as a Provincial Heritage Property of Provincial Significance under Part III.1 of the *Ontario Heritage Act*. As part of this process, a Statement of Cultural Heritage Value was approved by the Deputy Minister of Tourism, Culture and Sport on November 29, 2013. The Statement of Cultural Heritage Value accurately described Ontario Place in pertinent part as follows:

Ontario Place is located off the shore of Lake Ontario on Toronto’s western waterfront. The 63 hectare land and water lot property (28 hectares land, 35 hectares water) is located directly south of Exhibition Place. The site consists of two artificially-made islands linked to the waterfront via a network of structures (entry plazas, pedestrian bridges and pathways) and the public entry gates from the waterfront trail. The core area features the iconic Cinesphere and Pavilion, as well as the crystalline forms of three village clusters set within the prominent naturalized landscape, canals, lagoons and a centrally-located marina. The property boundary extends 330 metres west and 25 metres east from the edges of the islands into Lake Ontario, north to Lake Shore Boulevard and south to the end of the marina breakwater.

Ontario Place was listed in 1994 by the International Committee for Documentation and Conservation of Buildings of the Modern Movement (DOCOMOMO International) on its inventory of significant international works of the Modern Movement.

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Ontario Place featured innovative new landforms and structures built on Toronto’s waterfront, reshaping the relationship between the urban landscape and Lake Ontario. Ontario Place, a cultural heritage landscape, remains a rare and intact Modernist expression of integrated architecture, engineering and landscape that honours and incorporates the natural setting of Lake Ontario. It was a remarkable and ambitious achievement of late twentieth century architecture, and holds an enduring influence in Toronto, the province and internationally.

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Ontario Place is a cultural heritage landscape of provincial significance.

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The site in its entirety —integrating innovative approaches to planning, landscape, architecture, engineering and educational programming —represents a bold visionary statement of its time realized at a scale and quality that earned international recognition and admiration.

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Ontario Place is a rare surviving example of a designed cultural heritage landscape within the international modernist movement of the late twentieth century. The site created a uniquely integrated environment for entertainment, education and recreation.

The core area of Ontario Place (see map) remains relatively intact and embodies the modernist design vision of interconnected geometries. This is demonstrated in the megastructure forms of both the Cinesphere and pods with their interconnecting walkways, as well as the more modest crystalline modular forms of the three village clusters, designed as gathering places for visitors. These structures are set against an ecological landscape of naturalized landforms, a range of water features, including canals, lagoons and a marina, offering various intimate and compelling views within its designed space.

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There exist a number of contextual and design attributes on the site that individually and collectively contribute to the provincial cultural heritage value of Ontario Place. The historical values are woven throughout the site and landscape, and expressed in the attributes described below.

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The following attributes are located in the core area of Ontario Place and represent the innovative and iconic elements of the site as reflected in the structures, the integration of the architecture with the landscape and the water features:

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- A public entrance with a connection to two west bridges and the presence of Ontario Place branding/wayfinding signage. Designed localized microclimates, using landscaping, trees and indigenous plant materials.
- The walkways, trails, lagoons and the two west bridges (linking to the west island and the Pavilion) that connect discrete activity areas throughout the site and encourage a pedestrian experience.

I. Ontario Place remains a Provincial Heritage Property of Provincial Significance.

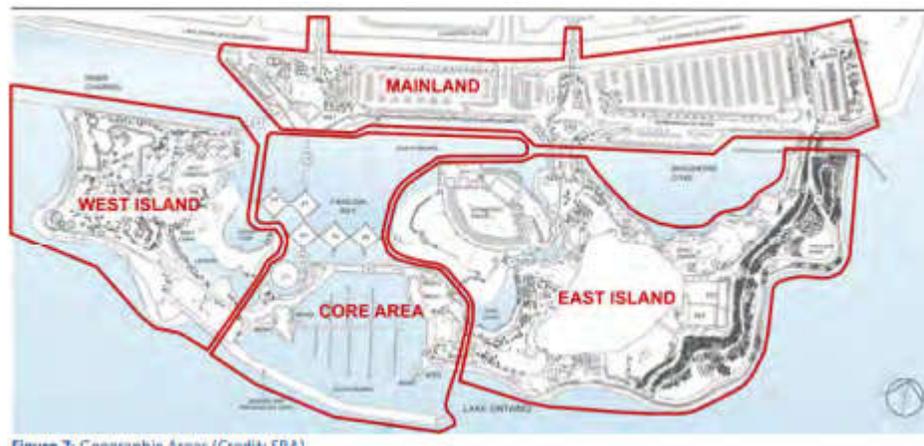
m. The Standards and Guidelines required a document be created respecting Ontario Place, called a Strategic Conservation Plan, “detailing how the property will be conserved in accordance with these Standards and Guidelines.” In its Strategic Conservation Plan for Ontario Place dated November 24, 2022 (the “Strategic Conservation Plan”), the MOI repeated all the statements in the Statement of Cultural Heritage Value set out in the preceding paragraph, and further accurately described Ontario Place as, among other things:

Ontario Place, located at 955 Lakeshore Avenue along the shores of Lake Ontario, opened amongst much fanfare by Premier William G Davis in May of 1971 and was touted as a place that was “as unique as the province that created it” An engineering feat, this urban waterfront park was a designed landscape meant to capture the imaginations of citizens in its blend of modern design set against the backdrop of both the lake and the park-like setting of the manufactured islands to produce an integrated environment for recreation, education, and entertainment.

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As a ‘rare surviving example of a designed cultural heritage landscape with in the international modernist movement of the late twentieth century’ the heritage attributes capture the buildings designed by Eberhard Seidler [sic] and the landscape designed by Michael Hough.

- n. In the Strategic Conservation Plan, the MOI divided Ontario Place into four areas: West Island, Core Area, East Island and Mainland, as set out in the figure below:



- o. This application is primarily, but not exclusively, concerned with Ontario Place’s West Island (the “West Island”), as demarcated in the figure above.
- p. Among other things, the Standards and Guidelines also require, with respect to properties on the provincial list of Heritage Properties (including Ontario Place), that “Ministries and prescribed public bodies shall”:

E.1. Where the use of a provincial heritage property is significant or of long standing, and the property has cultural value or interest because of that use, apply best efforts to continuing that use.

E.2. When an existing use of a provincial heritage property ends, or the property is no longer fully used, or any part of the property becomes surplus to the needs of the occupant, apply best efforts to arrange for an alternate use of the property that requires minimal or no change to its heritage attributes (adaptive reuse).

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F.2. If a provincial heritage property is to leave provincial control, use best efforts to the extent possible in law to ensure the ongoing, legally binding protection of the property's cultural heritage value (such as designation under Part IV of the Act, heritage conservation easement, etc.) in any sale or other disposal agreement. The level of protection should be appropriate to the cultural heritage value of the property.

- q. Despite the Government of Ontario's own statements about the value of Ontario Place as built and as it exists today, it decided to engage in a comprehensive redevelopment of the entire Ontario Place site (the "Ontario Place Redevelopment Project").
- r. The Ontario Place Redevelopment Project consists of, among other things:
  - i. A Public Realm Master Plan for the free and continuous publicly accessible lands, which includes portions of the East Island, Core Area and Mainland;
  - ii. Retention and re-adaptive use of some of the heritage buildings at Ontario Place, including the Pods and Cinesphere;
  - iii. A five-level underground parking structure with more than 2,000 spaces and a surface parking lot with 600 spaces;
  - iv. A building facility on the mainland to host a much reduced Ontario Science Centre; and
  - v. Shoreline stabilization works for the entire site.

- s. In addition to the above, as part of the Ontario Place Redevelopment Project, the Government of Ontario has decided to redevelop the West Island (the “West Island Redevelopment”). The West Island Redevelopment will include the construction of a gigantic spa facility that will occupy the majority of the West Island as it exists today (the “Spa”).
- t. Therme Canada | Ontario Place and Therme Group (together, “Therme”) are the private entities involved in the West Island Redevelopment and Spa. Therme is a foreign owned, Austria-based company, with its only connection to Ontario Place being the West Island Redevelopment and the Spa. Therme Canada | Ontario Place only exists for the purpose of the West Island Redevelopment and the Spa.
- u. According to the revised development application IO submitted to the City of Toronto on or about September 14, 2023, which is currently still pending before the City of Toronto (the “Development Application”), the West Island Redevelopment will consist of:
- Construction of the Spa, which includes:
    - 61,342 square metre gross floor area Spa building(s) on the West Island reaching heights of 36-41 metres (equivalent of up to 12 storeys);
    - Private outdoor space including pools and landscape around the outside of the Spa building(s);

- 3.4 acres of “public realm” roof space, which includes rooftop parkland and trails on top of the Spa building(s) that will be publicly accessible, and integrated and managed cohesively with the publicly accessible areas across the Ontario Place site by the Government of Ontario (as described more fully below);
- A 22,000 square metre reception and administration building on the mainland with direct connection to the proposed underground parking lot;
- A large multipurpose bridge connecting the West Island to a Spa reception area on the mainland, which includes publicly accessible areas on the east side and top of the bridge;
- 12.5 acres of publicly accessible space at grade, which includes parkland, a beach, boardwalks and cycling trails. This publicly accessible space will also be integrated and managed cohesively with the publicly accessible areas across the Ontario Place site by the Government of Ontario (as described more fully below). The majority of this publicly accessible space will exist as a result of lake-filling (see below); and
- A 12+ acre extension of the footprint of the West Island through 36,000 square metres of lake-filling above water and 25,500 square metres of lake-filling below water.



- x. Ontario Place, including the West Island, which has the largest number of mature trees of the four demarcated areas within Ontario Place, is a Confirmed Landbird Migratory Stopover Area (sites with a high diversity of species as well as high numbers of migratory birds) and multiple areas are flagged with protected nests, including species at risk. It is also identified as a potential waterbird stopover and staging area and is a confirmed habitat for Special Concern and Rare Wildlife Species.
- y. The massive glass Spa is a serious potential hazard for birds, especially during the migration periods.
- z. Given the current climate change emergency, the West Island Redevelopment and the Spa, as serviced by the massive underground parking garage, also raises significant carbon impact questions and concerns that an environmental assessment would explore, and for which there has been no consideration.

**The Environmental Assessment Act, its Application in this Case, and Government Secrecy Over the Spa Undertaking**

aa. Environmental assessment is a planning tool and decision-making process. This process requires proponents to take into account the potential effects of their activities on the environment (including the natural, social, cultural, economic and built environments), and consult a variety of stakeholders to identify and resolve issues of concern before making an informed decision about how and if projects subject to the EAA may proceed. Effective public consultation is an integral component of an environmental assessment.

- bb. The MOI and IO are conducting a Category C Public Work Class Environmental Assessment (“PW Class EA”) of certain components of the Ontario Place Redevelopment Project pursuant to the *Environmental Assessment Act*, RSO 1990, c E.18 (“EAA”), but have not included the redevelopment of the West Island in the Category C PW Class EA (the “Current EA”).
- cc. Section 2 of the EAA states that the purpose of the EAA “is the betterment of the people of the whole or any part of Ontario by providing for the protection, conservation and wise management in Ontario of the environment”.
- dd. Section 3 of the EAA sets out when an environmental assessment must be conducted under the EAA. Section 3 states:
- 3** This Act applies to,
- (a) enterprises or activities or proposals, plans or programs in respect of enterprises or activities by or on behalf of Her Majesty in right of Ontario or by a public body or public bodies or by a municipality or municipalities;
- ee. The MOI and IO purport to not include the West Island Redevelopment in the Current EA on the basis that the redevelopment of the West Island is a private undertaking by Therme to which the EAA does not apply, whereas it does apply to areas of Ontario Place designed, constructed, operated and maintained by the Province.
- ff. However, the MOI, IO, the Minister of Infrastructure and the Premier of Ontario, have all adamantly refused to disclose any of the contractual arrangements with Therme. They assert that a 95-year lease has been entered into that leases the West Island to Therme in its entirety (the “Lease”) but refuse to produce the Lease

or any other contractual arrangements or the business case for the Spa, all the while picking and choosing which purported details of the Lease they disclose to the public from time to time.

gg. The MOI, IO, the Minister of Infrastructure and the Premier of Ontario, have intentionally kept the public in the dark as to the contractual and business arrangements the Government of Ontario has with Therme, including but not limited to the Lease, so as to forestall any legal action a citizen, citizen's group, or other entity might take to challenge their assertion that the West Island Redevelopment is an undertaking to which the EAA does not apply (along with, more generally, preventing the additional mobilization of public opposition to the destruction of Ontario Place in favour of benefitting private interests). The true nature of the West Island Redevelopment and the relationship of the Government of Ontario to it, remains a closely guarded secret.

hh. A member of OP4A made requests to IO and MOI under the *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31 requesting, among other things, production of the Lease and "any agreements ancillary to the lease agreement with Therme, including but not limited to any agreements with respect to site modification, development preparation and servicing and provision of additional supports including additional parking." IO denied access to the records sought and MOI never provided a decision. Appeals to the Ontario Information and Privacy Commissioner are still pending.

ii. The mischief resulting from maintaining secrecy over the Lease and other contractual arrangements with Therme was recently made apparent at an in-person City of Toronto consultation on September 7, 2023. At that consultation IO announced for the first time that the 3.4 acres of “public realm” space on the roof of the Spa building, along with the approximate 12.5 acres of “public realm” areas of the West Island Redevelopment, would be overseen, operated, managed and maintained through a future version of the Ontario Place Corporation (a Government of Ontario agency) rather than by Therme, and would look and feel like all the other public space at Ontario Place.

jj. A week after the City of Toronto consultation, the covering letter to the revised Development Application dated September 14, 2023 submitted to the City of Toronto included the following description of two of the “key changes” to the revised Development Application:

2. Extend the landscape up over the building:

o Making much of the Therme roof public, to be managed cohesively with the public realm across the site and with Trillium Park

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5. Create more waterfront programming and open space

o Adding opportunities for food and beverage, washrooms, ceremony and play throughout the public realm

o Adding more than 4 acres of additional public realm to the West Island, for a total public realm area that is 15% larger than the current site area

kk. Despite the secrecy maintained over the nature of the arrangements between the Government of Ontario and Therme, what is known is that various Government of Ontario entities:

- i. Own the majority of Ontario Place, and have expressed interest in acquiring the City-owned land and water as part of the redevelopment;
- ii. Established the vision for the redevelopment of the entirety of Ontario Place site, including the West Island, are orchestrating, publicizing, and leading the Ontario Place Redevelopment Project;
- iii. Are carrying out site-servicing work for the Spa on the West Island, and are preparing the West Island for redevelopment, including cutting down trees;
- iv. Submitted the Development Application to the City of Toronto for Official Plan Amendment and Zoning By-Law Amendment, and are leading that process;
- v. Are apparently going to be responsible for maintaining and programming the “green roof” on the Spa for the entire 95-year duration of the Lease, along with the other approximately 12.5 acres of publicly accessible area of the West Island, with revenues from the Spa being used to fund the creation and maintenance of those spaces (which include parkland, a beach, and boardwalks and cycling trails);

- vi. Are responsible for building and maintaining the underground and surface parking lots, which it is building for, and will be directly accessible from, the Spa and the West Island generally;
  - vii. Have directed Metrolinx to run a shuttle bus service between the Exhibition Place transit stations and the front door of the Spa;
  - viii. As described fully below, on October 24, 2023, sought judicial review of the application of the federal *Impact Assessment Act*, S.C 2019, c.28, s.1, including as it applies to the Spa and parking garage portion of the Ontario Place Redevelopment Project.
- II. It is also believed that the Lease and other contractual arrangements with Therme, along with the business case, contain terms making it clear the West Island Redevelopment, including the Spa, is not a private undertaking but is rather an enterprise or activity or proposal, plan or program in respect of an enterprise or activity by on behalf of the Government of Ontario.
- mm. In colloquial terms, MOI, IO, the Government of Ontario, and the Premier, are “driving the bus” respecting the West Island Redevelopment in most or all material respects. Characterizing the West Island Redevelopment as a private undertaking by Therme to which the EAA does not apply, while at the same time cloaking the contractual arrangements and business case which disclose the true nature of the undertaking in secrecy, was and is an “end run” to delay and avoid scrutiny under the EAA, including by way of a judicial review application like this one.

nn. In short, the West Island Redevelopment, including the Spa, is an enterprise or activity or proposal, plan or program in respect of an enterprise or activity by the MOI and/or IO.

oo. In addition, or alternatively, Therme is acting as an agent of the Government of Ontario and is carrying out the redevelopment of the West Island on behalf of the Government of Ontario.

pp. In addition, or alternatively, the redevelopment of the West Island into some other type of facility should the Spa turn out to be unfeasible, fail, or some other yet unknown events occur, is an enterprise or activity or proposal, plan or program in respect of an enterprise or activity by on behalf of the MOI and/or IO. It is anticipated that this potential outcome is contemplated by the Lease and other contractual arrangements with Therme, along with the business case.

qq. Although the EAA applies to the West Island Redevelopment, including the Spa, the MOI and/or IO have failed to perform their mandatory duty under the EAA by not including the activities involved in the West Island Redevelopment from the Current EA.

rr. The Ministry of Infrastructure PW Class EA states that undertakings are to be assessed as a whole and not piecemealed. Therefore, to abide by the EAA, the Government of Ontario must conduct a full Category C PW Class EA pursuant to the EAA that includes the West Island Redevelopment.

ss. On October 6, 2023, OP4A demanded in writing that MOI and IO abide by their mandatory obligations under the EAA and include the redevelopment of the West Island in a Category C PW Class EA. As of the date of this application, no response has been received.

tt. The record before this court pertaining to the Decision is not complete without production of the Lease and any other contractual arrangements with Therme, along with any business case for the Spa and the West Island Redevelopment.

**West Island Tree and Landscape Destruction Injunction**

uu. OP4A seeks an interim and interlocutory injunction prohibiting the respondents from destroying, cutting, damaging, or otherwise taking, directing, or enabling any action resulting in harm to any tree or trees located on the West Island, or otherwise harming or interfering with the landscape of the West Island, or directing or permitting any other person to do so, until such time as a full Category C PW Class EA of the Ontario Place Redevelopment Project that includes the West Island Redevelopment is completed pursuant to the EAA.

vv. There is a serious issue to be tried as to whether an order of *mandamus* should be made requiring the respondents to conduct a full Category C PW Class EA pursuant to the EAA, which includes the West Island Redevelopment.

ww. On September 14, 2023, the Minister of Infrastructure announced the submission of the Development Application to the City of Toronto and that:

Construction activities are also beginning this fall to upgrade the site's existing infrastructure, such as water, electrical and gas services, and progress continues to be

made on repairing the exteriors of the Cinesphere and pods. We also recognize the historic significance of the Japanese Canadian Temple Bell and will ensure it is safely relocated from its current location on the West Island to a new location on the redeveloped Ontario Place site.

As part of this next phase of work, the site will be carefully prepared for construction, which will include the removal of a significant amount of trees and vegetation across the site.

xx. In late September 2023, IO/MOI removed the Japanese Canadian Temple Bell from Ontario Place, and an RFP for tree removal subcontracting was issued for Ontario Place with a bid closing date of October 6, 2023. As of the filing of this notice of application, fences have gone up around the site, preparations are being made, and tree removal appears imminent.

yy. On September 17, 2023, OP4A submitted a request to the federal Minister of the Environment and Climate Change for designation of the West Island Redevelopment and parking garage portion of the Ontario Place Redevelopment Project under subsection 9(1) of the *Impact Assessment Act*, S.C 2019, c.28, s.1 (“IAA”). If designated, the Government of Ontario and/or Therme may be prohibited from destroying the trees on the West Island and/or may need to mitigate the impact of tree removal, among other things.

zz. On September 28, 2023, the Impact Assessment Agency of Canada responded to OP4A, acknowledging its September 17, 2023 request for designation of the West Island Redevelopment and parking garage portions of the Ontario Place Redevelopment Project under the IAA. As stated in this letter, it is expected that the Minister will respond, with reasons, to OP4A’s request, by December 27, 2023, in accordance with subsection 9(4) of the IAA.

aaa. On October 24, 2023, Ontario's Attorney General announced that Ontario had applied for judicial review respecting the federal government's application of the IAA, including as it pertains to Ontario Place, implicitly emphasizing the importance of the Spa and parking garage portion of the Ontario Place Redevelopment Project to the Government of Ontario, and acknowledging that application of the IAA would prevent those portions of the Ontario Place Redevelopment Project from going ahead.

bbb. The Government of Ontario filed two applications for judicial review with the Federal Court to this effect, one of which pertains to Ontario Place and OP4A's request for designation of the Spa and parking garage portions of the Ontario Place Redevelopment Project, further emphasizing that the redevelopment is being done by or on behalf of the province and the intertwined nature of each component.

ccc. The Development Application to the City of Toronto submitted by IO is also pending. The normal process for a development application to the City of Toronto is that the entire application, including any permits sought for tree cutting, must be considered and approved before significant changes can be made to the land that is the subject of the application.

ddd. In the Strategic Conservation Plan, the MOI committed, among other things, to "ensure removal of trees is undertaken in compliance with the City of Toronto's Tree by-law". Despite this commitment, which was made in accordance with the Standards and Guidelines that apply to Ontario Place and are binding on the MOI and IO, the MOI and IO are proceeding with tree removal.

eee. On November 3, 2023, Ontario's Office of the Auditor General announced it is conducting a value for money audit of the Ontario Place Redevelopment Project, which is understood to include the Spa, the West Island Redevelopment, and the move of the Ontario Science Centre.

fff. If the MOI and/or IO are required, as a result of this application, to conduct a Category C PW Class EA that includes the West Island Redevelopment (including the Spa) then they will not be permitted to cut or otherwise destroy the trees and/or landscape on the West Island until that environmental assessment is concluded and permits their destruction. On the other hand, if the MOI and/or IO cut or otherwise destroy the West Island trees and/or landscape, then the "facts on the ground" will have pre-determined and rendered the requested Category C PW Class EA moot, as will be the Auditor General's audit, federal consideration of OP4A's requested designation under the IAA, and a significant part of the Development Application to the City of Toronto.

ggg. Many of the West Island trees have been growing for 50 years. Once mature trees are gone, they are gone. The harm to the trees, the landscape, vegetation, and aquatic habitat, to Ontario Place, to OP4A, to OP4A's 30,000 supporters, and to the general public that uses Ontario Place and the West Island specifically (more than 2,900,000 visitors to Ontario Place in 2022), would be irreparable and devastating.

hhh. By contrast, IO and MOI will suffer no prejudice or harm whatsoever, whether irreparable or financial, if enjoined from destroying the trees, landscape,

vegetation and aquatic habitat located on and around the West Island until such time as the full Category C PW Class EA of Ontario Place is completed pursuant to the EAA, during which time the Development Application process with the City of Toronto and the federal IAA process will also have been completed. In particular, IO/MOI:

(1) are not businesses seeking to turn a profit that will be impacted by any delay in destroying the West Island trees; and

(2) have kept secret the Lease along with any other contractual documents with Therme and the business case for the Spa, all of which would disclose the true nature and terms of their relationship with Therme, and so they cannot demonstrate that any delay to the West Island redevelopment resulting from temporarily not being permitted to destroy all the trees thereon would cause any prejudice, damage or harm whatsoever to them.

iii. The balance of convenience therefore weighs heavily in favour of issuing the injunction sought by OP4A.

**3. THE FOLLOWING DOCUMENTARY EVIDENCE WILL BE USED AT THE HEARING OF THE APPLICATION:**

- a. The affidavit of Norman Di Pasquale, President of OP4A, and exhibits thereto;
- b. Such other and further evidence as counsel may advise and the court permit.

November 9, 2023

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Lawyers for the Applicant

Court File No.

**ONTARIO PLACE FOR ALL INC.**

-and-

**ONTARIO MINISTRY OF INFRASTRUCTURE,  
INFRASTRUCTURE ONTARIO and  
ONTARIO MINISTRY OF TOURISM, CULTURE AND  
SPORT**

Applicant

Respondents

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(Divisional Court)**

PROCEEDING COMMENCED AT  
TORONTO

**NOTICE OF APPLICATION TO DIVISIONAL COURT  
FOR JUDICIAL REVIEW**

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