CITATION: The Canadian Transit Company v. Canada (Attorney General), 2025 ONSC 6061
COURT FILE NO.: CV-12-00446428-0000
DATE: 20251027

ONTARIO SUPERIOR COURT OF JUSTICE

RE: The Canadian Transit Company, Plaintiff (Responding Party)

-and-

Attorney General of Canada, Defendant (Moving Party)

BEFORE: Robert Centa J.

COUNSEL: Sheila Block, Nicole Mantini, Emily Sherkey, Ronke Akinyemi, and Alexandra Lawrence, for the plaintiff (responding party)

William C. McDowell, Andrea Wheeler, Zachary Rosen, and Amy Goudge, for the defendant (moving party)

HEARD: September 9, 10, and 11, 2025

ENDORSEMENT

1. Introduction

[1] The Ambassador Bridge is a large suspension bridge across the Detroit River that connects Windsor, Ontario, to Detroit, Michigan. Since it opened in 1929, the Ambassador Bridge has provided an important link between Canada and the United States of America and has facilitated the passage of individuals and goods between the countries. Today, more than 25% of the trade between Canada and the United States passes over the Ambassador Bridge.

[2] The plaintiff, the Canadian Transit Company, is a Michigan-based company that owns and operates the Canadian half of the Ambassador Bridge. CTC was created in 1921 by an Act of Parliament.[1] The CTC Act bestowed a number of powers on the company and permitted it to build the bridge and then charge tolls to persons using the bridge. Today, CTC is owned by an American company, the Detroit International Bridge Company, which itself owns and operates the American half of the bridge.

[3] In 2008, after lengthy consultations and extensive assessments, the Government of Canada received a recommendation to build a new bridge across the Detroit River. In 2012,

[1] *Act to Incorporate the Canadian Transit Company*, S.C. 1921, c. 57. The *CTC Act* was amended on two occasions: *An Act respecting the Canadian Transit Company*, S.C., 1922, c. 56; *An Act to respecting the Canadian Transit Company*, S.C. 1927, c. 81.

Parliament passed the *Bridge to Strengthen Trade Act*, which provided statutory authority for the new bridge, which will be known as the Gordie Howe International Bridge.[2] The new bridge is currently under construction and is expected to open later in 2025. The Ambassador Bridge and the Gordie Howe Bridge stand about three kilometres from each other.

[4] In 2012, CTC sued the defendant, the Attorney General of Canada, in respect of the decision to build the Gordie Howe Bridge. CTC has amended its statement of claim in 2013 and again in 2020. Distilled to its essence, CTC seeks the following relief:

a. declarations that Canada:

i. granted CTC a perpetual and exclusive right to own, operate and collect tolls from a viable international border crossing in the vicinity of the Ambassador Bridge; and

ii. a declaration that Canada is infringing CTC's rights by building the Gordie Howe Bridge that will undermine the viability of the Ambassador Bridge;

b. in the alternative,

i. a declaration that CTC is entitled to compensation for the infringement and *de facto* expropriation of its rights; and

ii. compensation for nuisance, trespass to land including interference with property rights, breach of contract, or negligent misrepresentation.

[5] Canada brings this motion for summary judgment pursuant to Rule 20.[3] Summary judgment is an important tool for enhancing access to justice where it provides a fair process that results in a just adjudication of disputes.[4] Used properly, it can achieve proportionate, timely, and cost-effective adjudication.[5]

[6] Canada submits that CTC's claim to a perpetual and exclusive right to own, operate and collect tolls from a viable international border crossing does not raise a genuine issue requiring a trial and that the action should be dismissed in its entirety. CTC relies on the CTC Act and a variety of other documents and agreements in support of its claimed rights. I do not find it necessary to consider anything except the CTC Act. Respectfully, none of the 1909 *Boundary Waters Treaty Act*, the Sharp Policy, the 1990 Settlement Agreement, the 1992 Settlement Agreement provide any meaningful support to CTC's position on this motion.

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[2] *Bridge To Strengthen Trade Act*, S.C. 2012, c. 31, s. 179.
[3] Rule 20, *Rules of Civil Procedure*, R.R.O. 1990, Reg 194.
[4] *Hryniak v. Mauldin*, 2014 SCC 7, [2014] 1 S.C.R. 87, at paras. 4-7.
[5] The Court of Appeal for Ontario described the correct approach on a motion for summary judgment under Rule 20 in *Royal Bank of Canada v. 1643937 Ontario Inc*., 2021 ONCA 98, 154 O.R. (3d) 561, at para. 24.

[7] Canada submits that when the principles of statutory interpretation are applied to the CTC Act, it is clear that none of the text, context, or purpose of the CTC Act "requires or suggests that Parliament intended to provide CTC with a monopoly in the form of a 'perpetual and exclusive right to own and operate a border crossing in the vicinity of the Ambassador Bridge." Canada submits that CTC cannot make out its claim that Canada granted the right claimed by CTC and that, therefore, all of CTC's requests for declaratory and monetary relief must fail. Put differently, Canada submits that "it is plain and obvious" that the CTC Act did not expressly grant CTC a perpetual and exclusive right to own, operate, and collect tolls from a viable border crossing.[6]

[8] For the reasons that follow, I dismiss Canada's motion. In my view, whether the CTC Act granted implicit rights of exclusivity to CTC because it took on the burden of operating the Ambassador Bridge in exchange for the right to collect tolls is a genuine issue requiring a trial.

[9] Before I explain why I dismiss Canada's motion for summary judgment, it will be helpful to set out the provisions of the CTC Act.

2. The CTC Act

[10] In 1921, Parliament passed *An Act to incorporate the Canadian Transit Company*.[7] The CTC Act incorporated the company and declared its works and undertakings to be for the general advantage of Canada.[8] The CTC Act was subsequently amended on two occasions, but those amendments are not relevant to the issues raised on this motion.[9]

[11] Among other powers, the CTC Act permitted the company to construct a bridge across the Detroit River, to expropriate any land necessary to complete its works and undertakings, and to charge tolls to vehicles and people crossing the bridge. Section 8 provided, in part, as follows:

> 8. Subject to the provisions of *The Railway Act, 1919*, and of the *Navigable Waters' Protection Act*, the Company may, —
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> > (a) construct, maintain and operate a railway and general traffic bridge across the Detroit river from some convenient point, at or near Windsor in the province of Ontario, to the opposite side of the river in the state of Michigan, and may lay, maintain and use tracks on the said bridge for the passage of steam, electric or other locomotive engines, railway trains, and rolling stock, with all necessary

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[6] Canada's Factum, para. 3.
[7] *Act to Incorporate the Canadian Transit Company*, S.C. 1921, c. 57.
[8] CTC Act, s. 2.
[9] *An Act respecting the Canadian Transit Company*, S.C. 1922, c. 56; *An Act to respecting the Canadian Transit Company*, S.C. 1927, c. 81.

> approaches, terminal facilities, machinery and appurtenances required for the said bridge;
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> …
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> (f) expropriate and take an easement in, over, under or through any lands without the necessity of acquiring a title in fee simple thereto;
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> …
>
> (i) charge tolls for the passage of locomotives, engines, railway trains and rolling stock, and for pedestrians, carriages, cars; vehicles and general traffic over the said bridge, approaches, railways and terminal property or for the use thereof or any part thereof;

[12] The CTC Act placed constraints on the powers it granted to the company. Section 11 required the Governor in Council to approve the design and location of the bridge. Section 13 authorized the directors of the company to fix and regulate the tolls and rates to be charged, subject to the prior approval of the Board of Railway Commissioners for Canada. Sections 9 and 10 prohibited the company from commencing construction until the Congress of the United States and the local Canadian municipalities consented to the bridge.

[13] The bridge was to be privately financed. Section 15 authorized the company to borrow funds for the completion of the bridge and to mortgage "its property, assets, rents and revenues, present and future" to secure payment of the borrowed amounts.

[14] Section 14 permitted the company to amalgamate with other companies to complete the bridge, including conveying or leasing its property to other companies. Notably, the list of property permitted to be transferred included "the franchise…and other property to it belonging." Section 14 provided as follows:

> 14. The Company may unite with any company or companies incorporated under the laws of Canada or of the state of Michigan or of the United States, or any state with other thereof, in building, working, managing, maintaining and using the said bridge, terminals and approaches, and may make agreements with any such company or companies respecting the construction, maintenance, management and use of the said bridge and its appurtenances, and acquiring the approaches and lands therefor in Michigan as well as in Canada, and may, subject to the provisions of sections one hundred and fifty-one, one hundred and fifty-two and one hundred and fifty-three of *The Railway Act, 1919*, make arrangements with any such company or companies for conveying or leasing the said bridge to such company or companies in whole or in part, or any

> rights or powers acquired by it, as also the franchise, surveys, plans, works, plant, machinery and other property to it belonging, or for an amalgamation with any such company on such terms and conditions as are agreed upon and subject to such restrictions as the directors deem fit. [Emphasis added.]

3. Principles of statutory interpretation

[15] The parties do not disagree meaningfully on the relevant principles of statutory interpretation. The meaning of a statutory provision is determined by reference to its text, context and purpose.[10] The words of the statute must be interpreted in their entire context and in their grammatical and ordinary sense, harmoniously with the scheme of the act, its object, and the intention of Parliament.[11] Statutory interpretation is focused on Parliament's intent at the time of the enactment and courts are to give effect to that intent.[12]

[16] It is not necessary to address text, context, and purpose separately or in a formulaic way, since those elements are often closely related or interdependent.[13] Plain meaning alone is not determinative and a statutory interpretation analysis is incomplete without considering the context, purpose, and relevant legislative norms.[14] Just as the text must be considered in light of the context and object, the object of the legislation and provision must be considered with close attention to the text, which remains the anchor of the interpretative exercise.[15] The prime directive in statutory interpretation is that

> after taking into account all relevant and admissible considerations, the court must adopt an interpretation that is appropriate. An appropriate interpretation is one that can be justified in terms of (a) its plausibility, that is, its compliance with the legislative text; (b) its efficacy, that is, its promotion of legislative intent; and (c) its acceptability, that is, the outcome complies with accepted legal norms; it is reasonable and just.[16]

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[10] *Telus Communications Inc. v. Federation of Canadian Municipalities*, 2025 SCC 15, 502 D.L.R. (4th) 59, at para. 30; *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27, at para. 21; *R. v. Basque*, 2023 SCC 18, 482 D.L.R. (4th) 203, at para. 63; *Auer v. Auer*, 2024 SCC 36, 497 D.L.R. (4th) 381, at para. 64; *Piekut v. Canada (National Revenue)*, 2025 SCC 13, 502 D.L.R. (4th) 1, at para. 42.

[11] *Rizzo*, at para. 21; *Piekut*, at para. 42; *R. v. Kim*, 2025 ONCA 478, 450 C.C.C. (3d) 441, at para. 31; *R. v. Kloubakov*, 2025 SCC 25, 505 D.L.R. (4th) 197, at para. 61.

[12] *Telus*, at para. 32.

[13] *Piekut*, at para. 43.

[14] *Piekut*, at para. 45; *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] 4 S.C.R. 653, at para. 118.

[15] *Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Directrice de la protection de la jeunesse du CISSS A*, 2024 SCC 43, 498 D.L.R. (4th) 316, at para. 24.

[16] Ruth Sullivan, *The Construction of Statutes*, 7th ed. (LexisNexis Canada Inc., 2022), at § 2.01[4]; *Piekut*, at para. 49.

[17] Statutory interpretation requires attending not only to the ends the legislature sought to achieve, but the specific means the legislature chose to achieve that purpose.[17]

[18] When interpreting the text of the Act, the court must look first to the grammatical and ordinary meaning of the words used.[18] The grammatical and ordinary meaning of a statutory provision is the natural meaning that appears when one reads the provision from beginning to end.[19] Dictionary definitions are not determinative but can provide a useful place to start when considering the ordinary meaning of a statutory provision.[20]

4. Canada's motion for summary judgment to dismiss the action is dismissed

[19] Canada has not demonstrated that there is no genuine issue requiring a trial on the merits of its defence. The record before me does not enable me to make the necessary findings of fact and law with any certainty. In these circumstances, it would be neither fair nor just to determine this case summarily.

[20] I will first address CTC's submission that Canada has not put its best foot forward and that the motion should be dismissed on this basis. I accept that all parties are required to put their best foot forward on a motion for summary judgment. They are not permitted to sit back and suggest that they would call additional evidence at trial.[21] The court proceeds on the basis that the parties have advanced their best case and that the record contains all the evidence that would be led at trial. However, I do not accept CTC's submission that Canada's motion for summary judgment should be dismissed for non-compliance with this requirement.

[21] First, the documents identified by CTC as missing do not appear to be very significant. The parties assembled a massive record and referred to only a small portion of it in their submissions before me. I do not see any basis to conclude that Canada did not put its best evidentiary foot forward or that it is disentitled to seek summary judgment because there may still be further documents to be identified or located.

[22] Second, I do not accept CTC's submission that Canada did not put its best foot forward because it did not refer to certain legal authorities that CTC believes to be important.[22] In my view, the best foot forward principle relates to evidence filed on the motion, not legal arguments. This motion for summary judgment is not like a motion brought without notice

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[17] *Kim*, at para. 32; *CISSS A*, at para. 24.
[18] *Telus*, at para. 39.
[19] *Canadian Pacific Air Lines Ltd. v. Canadian Air Line Pilots Assn*., [1993] 3 S.C.R. 724, at p. 735; *Rogers Communications Inc. v. Voltage Pictures, LLC*, 2018 SCC 38, [2018] 2 S.C.R. 643, at para. 28; *Pepa v. Canada (Citizenship and Immigration)*, 2025 SCC 21, 504 D.L.R. (4th) 1, at para. 89.
[20] *Telus*, at para. 43; *R. v. Khill*, 2021 SCC 37, [2021] 2 S.C.R. 948, at para. 84.
[21] *Prism Resources Inc. v. Detour Gold Corporation*, 2022 ONCA 326, 162 O.R. (3d) 200, at para. 4; *Ntakos Estate v. Ntakos*, 2022 ONCA 301, 75 E.T.R. (4th) 167, at para. 38; *Salvatore v. Tommasini*, 2021 ONCA 691, at para. 17; and *Miaskowski v. Persaud*, 2015 ONSC 1654, 51 R.P.R. (5th) 234, at para. 62, rev'd on other grounds, 2015 ONCA 758, 393 D.L.R. (4th) 237.
[22] CTC Factum, para. 54 and 55.

where the moving party is under an obligation to inform the court of any points of law known to it that favoured the other side.[23]

[23] However, I dismiss Canada's motion for summary judgment because I reject Canada's submission that "a straight-forward exercise of contractual and statutory interpretation makes clear" that CTC does not hold a perpetual and exclusive right to own and operate a viable international border crossing in the vicinity of the Ambassador bridge.[24] It is not, as Canada submits, "plain and obvious that [the CTC Act does not] expressly grant" this right to CTC.[25] Considering the text, context and purpose of the CTC Act, I disagree with Canada's submission. The nature and scope of the rights that Parliament gave to CTC should be determined at trial, not on this motion for summary judgment.

A. Text of the CTC Act

[24] Canada submits that there is no genuine issue requiring a trial because the text of the CTC Act plainly does not grant CTC a perpetual and exclusive right to own and operate a viable international border crossing in the vicinity of the Ambassador Bridge.

[25] Canada acknowledges, as it must, that s. 14 of the CTC Act uses the word "franchise" to describe the property that the CTC may possess. Canada submits that it is clear that the word franchise should be given "its ordinary meaning of 'an authorization granted by a government or company to an individual or group enabling them to carry out specified commercial activities.'" While dictionary meanings like the one offered by Canada can be helpful at times, as I will explain below, there is a rich body of common law that informs meaning of the word used by Parliament. While Parliament may redefine the meaning of a common law term, it will retain its common law meaning unless Parliament signals its intention to redefine the term.[26] In my view, the choice of the word franchise suggests that Parliament intended a more specific legal meaning of the word.

[26] In addition, Canada submits that the CTC Act did not itself grant an express exclusive franchise to the CTC, it only recognized the possibility that it could receive a franchise in the future.

[27] Statutory interpretation, however, cannot be founded on the wording of the legislation alone because words take their meaning from their context, which includes both the immediate context of the surrounding words, the entire scheme of the Act, and the applicable background legal rules and concepts.[27] In this case, one of the important contextual factors is the state of the common law at the time Parliament enacted the CTC Act. When this context is considered, there is a genuine issue for trial regarding the scope

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[23] *United States v. Friedland*, [1996] O.J. No. 4399 (Gen. Div.), at paras. 27-28.
[24] Canada Factum, para. 1.
[25] Canada Factum, para. 3.
[26] *Kosicki v. Toronto (City)*, 2025 SCC 28, 507 D.L.R. (4th) 1, at para. 28.
[27] *Piekut*, at para. 44; , *R. v. Wilson*, 2025 SCC 32, at para. 132, per Jamal J. (dissenting); *Bell ExpressVu Limited Partnership v. Rex*, 2002 SCC 42, [2002] 2 S.C.R. 559, at para. 27; *Pepa*, at para. 91.

and nature of the rights that Parliament granted to CTC despite the absence of an express grant of exclusivity.

B. Context of the Act

[28] With respect to the context of the CTC Act, Canada submits that "the broader context of the legislation does not suggest or require that CTC be given any rights beyond those expressly articulated in the statute." I disagree. As I will explain, the common law of franchises and toll bridges raises a genuine issue requiring a trial over the nature and scope of the rights Parliament granted to the company in the CTC Act.

[29] There is no dispute that the Crown is subject to the common law.[28] While validly enacted legislation prevails over the common law, it is presumed that Parliament respects and does not intend to interfere with the common law in the absence of a clear provision to that effect.[29] The court cannot presume that Parliament intended to displace the common law where legislation is silent.[30] This shields the common law from unclear or inadvertent encroachment by the legislature.[31] The applicable common law context for the CTC Act also requires a consideration of the royal prerogative.

[30] The royal prerogative means "the powers and privileges accorded by the common law to the Crown."[32] The Crown's prerogative powers are "normally described as a branch of the common law because it is the decisions of the courts that have determined its existence and extent."[33] The extent of the Crown's authority under the royal prerogative is confined to executive governmental powers and can be limited or abolished by statute.[34] Legislation is paramount over the common law, including the royal prerogative.

[31] One prerogative right of the Crown is the right to collect tolls from bridges and ferries.[35] This is an aspect of the Crown's right to "hold and confer peculiar lucrative powers and franchises."[36] Attached to the Crown, these rights are called prerogatives but once delegated to a subject, they are called a franchise. Absent a grant of franchise from the

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[28] Patrick J. Monahan, Wade K. Wright & Erika Chamberlain, *Hogg's Liability of the Crown*, 5th ed. (Toronto: Thomson Reuters, 2025), at §15.1, citing *Eastern Trust Co. v. MacKenzie, Mann & Co.*, [1915] A.C. 750 (U.K. J.C.P.C.), at p. 759.
[29] *Kosicki*, at para. 73; *Basque*, at para. 40;; *R. v. Grant*, 2016 ONCA 639, 342 C.C.C. (3d) 514, at para. 34; *Gonder v. Gonder Estate*, 2010 ONCA 172, 259 O.A.C. 295, at para. 40*;*.
[30] *Basque*, at para. 49; *Heritage Capital Corp. v. Equitable Trust Co.*, 2016 SCC 19, [2016] 1 S.C.R. 306, at para. 36.
[31] *Heritage Capital Corp.*, at paras. 29-31.
[32] *Ross River Dena Council Band v. Canada*, 2002 SCC 54, [2002] 2 S.C.R. 816, at para. 54.
[33] Monahan, Wright & Chamberlain, at §1.5(b); *Case of Proclamations* (1611), 12 Co. Rep. 74, 77 E.R. 1352 (E.W. K.B.).
[34] *Ross River*, at para. 54.
[35] Paul Lordon, *Crown Law* (Toronto: Butterworths, 1991), at p. 105; *Wolfe Island (Township) v. Ontario (Ministry of Environment)* (1995), 23 O.R. (3d) 737 (C.A.), 125 D.L.R. (4th) 266, at p. 745.
[36] Joseph Chitty, *A Treatise on the Law of the Prerogatives of the Crown and the Relative Duties and Rights of the Subject* (London: Joseph Butterworth and Son, 1820), at p. 118.

Crown or the legislature, a person cannot build a bridge and charge tolls to persons wishing to use the bridge to continue their journey on a public highway.[37]

[32] Therefore, a franchise may be defined to be a royal privilege or branch of the royal prerogative in the hands of a subject, by grant of the Crown.[38] A franchise is considered to be a right coupled with the duty to meet the needs of the public.[39] Examples of franchises include the right to operate and take a toll at bridges, wharves, and ferries. More recently, the term franchise has included the bundle of rights and privileges conferred by a legislature (with Royal Assent) on a person.[40]

[33] Recall that s. 14 of the CTC Act permitted the company to amalgamate with other companies to complete the bridge, including conveying or leasing its property to other companies. The list of property permitted to be transferred included "the franchise…and other property to it belonging." Franchises can only be granted through royal prerogative (grant of the Crown) or the legislature. In the CTC Act, Parliament expressly contemplated that the property belonging to the CTC could include "the franchise."

[34] As noted above, Canada submits that the CTC Act did not itself grant an exclusive franchise to the CTC, it only recognized the possibility that it could receive a franchise in the future. To assess this submission, I will now consider what rights the common law has ascribed to a franchise.

[35] The Court of Appeal for Ontario held that a "ferry" is, at common law, a toll franchise granted by the Crown.[41] The fourth edition of Halsbury's Laws of England stated that "the right to charge tolls is usually incident to a ferry, and right of ferry is primarily a toll franchise."[42] Given its ancient roots, jurists have frequently described the bundle of rights conferred by the Crown when it grants a toll franchise. One of the rights in the bundle is the right to exclusivity. It is understood that the Crown cannot diminish or destroy a franchise once conferred and vested by granting the same identical franchise to a second person because that would prejudice the former grant.[43] The Court of Appeal for Ontario relied on the following description found in a 1901 decision of the English Court of Appeal:

> The right to a ferry has, however, been frequently considered; its general nature is thus explained by Sir M. Hale at the beginning of Cap. II. of his treatise De Jure Maris (Smart Moore's History of the Foreshore, p. 372): --

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[37] *Hammerton v. Dysart (Earl)*, [1916] A.C. 57 (H.L.), at p. 78, per Lord Parker of Waddington.
[38] Chitty, at pp. 118-119.
[39] Daniel Greenberg, *Jowitt's Dictionary of English Law*, 6th ed. (London: Sweet & Maxwell, 2024) sub. verbo "franchise".
[40] *Berlin (Town) v. Berlin & Waterloo Street Railway* (1910), 42 S.C.R. 581; *New Brunswick Power Co. v. Maritime Transit Ltd.*, [1937] 4 D.L.R. 376 (N.B.S.C.A.D.), 47 C.R.C. 135, at p. 396, per Harrison J.
[41] *Wolfe Island*, at p. 744.
[42] *Wolfe Island*, at p. 744, citing *Halsbury's Laws of England*, 4th ed., vol. 21, at p. 644, para. 978.
[43] Chitty, at p. 119.

> The King by an ancient right of prerogative hath had a certain interest in many fresh rivers, even where the sea doth not flow or reflow, as well as in salt or arms of the sea; and those are these which follow: --
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> First, a right of franchise or privilege, that no man may set up a common ferry for all passengers, without a prescription time out of mind, or a charter from the King. He may make a ferry for his own use or the use of his family, but not for the common use of all the King's subjects passing that way; because it doth in consequence tend to a common charge, and is become a thing of publick interest and use, and every man for his passage pays a toll, which is a common charge, and every ferry ought to be under a publick regulation; viz. that it give attendance at due times, keep a boat in due order, and take but reasonable toll; for if he fails in these, he is fineable.[44]

[36] A franchise is a property right, an incorporeal hereditament, which authorizes the owner the right to do something, but also to prevent all other persons from interfering with its exercise.[45] Interference with that property right may be a private nuisance that may give rise to damages.[46] The courts noted that the determination in any particular case "is mainly one of fact."[47]

[37] The person holding the toll franchise is under a legal duty to maintain the ferry or bridge for the public benefit.[48] This public duty is the obligation that justifies the grant of exclusivity to the franchise holder.[49] Lord Parker of Waddington explained that the public burden on the franchise holder justified the grant of immunity of damage by competition this way:

> So much is clear, but why does the ownership of a ferry confer a right to immunity from damage by competition, whereas the ownership of a mill does not? The answer is given by Newton C.J. in the same case. The right of the ferryman involves an obligation to keep up the services of the ferry for the benefit of the public, but the right of the mill owner involves no such obligation. The ferry man has undertaken a public burden in consideration of the Crown's grant

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[44] *Wolfe Island*, at p. 744, citing *Simpson v. Attorney General*, [1901] 2 Ch. 671 (C.A.), at pp. 717-18, rev'd [1904] A.C. 476, 74 L.J. Ch. 1 (H.L.).
[45] *New Brunswick Power*, at p. 396; Greenberg, sub. verbo "franchise"; *Hammerton*, at p. 67, per Viscount Haldane.
[46] *New Brunswick Power*, at p. 396; *Blisset v. Hart* (1744), Willes 508, 125 E.R. 1293, Willes, 508, at p. 512; *Hammerton*, at p. 67, per Viscount Haldane, at p. 84, per Lord Parker of Waddington, p. 103, per Lord Sumner.
[47] *Hammerton*, at p. 117, per Lord Parmoor, at p. 86, per Lord Parker of Waddington.
[48] *Hammerton*, at p. 68, per Viscount Haldane, at p. 102, per Lord Sumner.
[49] *Hammerton*, at p. 68, per Viscount Haldane, at pp. 78-79, per Lord Parker of Waddington.

> of the right to take tolls, and he would have a legitimate grievance if the public, while enjoying the benefit of the obligation, were allowed to destroy the consideration for which it was undertaken. This ground of distinction between the franchise ferry tolls and the mill has always been recognized....[50]

[38] Lord Sumner adopted the dissent from an 1837 case that explained that even where the Crown did not describe the ferry as an exclusive franchise, the common law would construe that franchise as exclusive in the sense that the franchise should not be damaged by a second franchise that takes away a substantial part of the original franchise's traffic:

> The authorities are abundant to establish, that the King cannot make any second grant which shall prejudice the profits of the former grant. And why not? Because the grant imposes public burdens on the grantee, and subjects him to public charges, and the profits constitute his only means of remuneration; and the Crown shall not be at liberty directly to impair, much less to destroy the whole value and object of its grant. …. When the Crown grants a ferry from A. to B. without using any words which import it to be an exclusive ferry, why is it …. that by the common law the grant is construed to be exclusive of all other ferries between the same places, or termini; at least, if such ferries are so near that they are injurious to the first ferry, and tend to a direct diminution of its receipts? Plainly, it must be because, from the nature of such a franchise, it can have no permanent value, unless it is exclusive; and the circumstance that during the existence of the grant, the grantee has public burdens imposed upon him, raises the implication that nothing shall be done to the prejudice of it, while it is a subsisting franchise.[51]

[39] The difficulty with Canada's submission that the CTC Act did not grant any exclusive rights to CTC is that *Hammerton* and many other cases have inferred rights, including the right of exclusivity, into the grant of a franchise even where the right at issue (for example, exclusivity) is not mentioned.

[40] Indeed, as *Hammerton* held, even where the Crown did not describe the ferry as an exclusive franchise, the common law would construe that franchise as exclusive in the sense that the franchise should not be damaged by a second franchise that takes away a substantial part of the original franchise's traffic. So, I do not think that the absence of an express grant of an exclusive franchise in the text of the CTC Act determines the issue in Canada's favour. If the context of the legislation is found to be the recognition of the burdens of construction, maintenance, and operation accepted by CTC in exchange for the

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[50] *Hammerton*, at p. 85, per Lord Parker of Waddington.
[51] *Hammerton*, at p. 104, per Lord Sumner, citing *Proprietors of Charles River Bridge v. Proprietors of Warren Bridge*, 36 U.S. (11 Pet.) 420 at p. 618 (1837).

right to collect tolls, then that context may well support a finding that Canada conferred rights beyond those found in the explicit text of the CTC Act.

[41] The CTC Act must be read in context of the common law of franchises, which I have discussed above. Although many of the ideas discussed in those cases strike contemporary readers as archaic, they are deeply rooted in the fabric of the common law. Moreover, Parliament enacted the CTC Act much closer in time to those cases. The House of Lords decided the great case of *Hammerton* only six years before Parliament enacted the CTC Act. The Supreme Court of Canada decided *Berlin* only five years before that. Parliament is presumed to know the common law at the time it enacted the CTC Act.[52] Parliament is presumed to know the legal context in which it legislates.[53] Absent clear legislative intention to the contrary, a statute should not be interpreted as substantially changing the common law.[54] If Parliament had intended to change or oust the common law, it needed to do so expressly and that it did not do.[55]

C. Purpose of the Act

[42] Canada submits that the purpose of the CTC Act is not furthered by recognizing a perpetual and exclusive right for CTC to own and operate a viable international border crossing in the vicinity of the Ambassador Bridge. Canada submits that the purpose of the CTC Act was to provide the opportunity for CTC to construct and operate the Ambassador Bridge.

[43] However, in light of the legal principles discussed above, it is also plausible that that the purpose of the CTC Act was that the "public may have assured to it the perpetual convenience" of the Ambassador Bridge, which was built with private resources and to avoid the "grave risk" of a greater inconvenience to the public if the viability of Ambassador Bridge is extinguished.[56]

D. Conclusion

[44] I find that Canada has not met its onus to demonstrate that there is no genuine issue requiring a trial. In my view, it would not be appropriate to determine summarily the complex and novel question of whether Canada granted an exclusive toll bridge franchise to CTC through the CTC Act. I decline to determine this significant question of law absent a trial because I do not think it would be fair or just to do so on the factual record before me.[57] The summary judgment process will not allow me to achieve a fair and just result.

[45] CTC did not seek boomerang summary judgment. For greater certainty, in dismissing Canada's motion for summary judgment, I am not exercising the power under rule 20.04(4)

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[52] *Kosicki*, at para. 43.
[53] *R. v. D.L.W.*, 2016 SCC 22, [2016] 1 S.C.R. 402, at para. 20.
[54] *Basque*, at para. 49; *Wilson*, at para. 155
[55] *D.L.W.*, at para. 20; *R. v. Summers*, 2014 SCC 26, [2014] 1 S.C.R. 575, at paras. 55-56.
[56] *Hammerton*, at pp. 103-4, per Lord Sumner.
[57] *Romano v. D'Onofrio et al.* (2005), 77 O.R. (3d) 583, at paras. 7-9 (C.A.); *Baglow v. Smith*, 2012 ONCA 407, 110 O.R. (3d) 481, at paras. 29-30; *Aronowicz v. Emtwo Properties Inc.*, 2010 ONCA 96, 98 O.R. (3d) 641, at para. 71.

to make a binding determination of law. I am merely determining that the proper interpretation of the CTC Act, including the delineation of rights held by CTC under the CTC Act and at common law, should be determined at trial. My reasons for decision explain why I have concluded that there is a genuine issue for trial. I am not making a final, binding determination of law that disposes of a substantive right of one of the parties or that is intended to be binding on the parties at trial.[58]

[46] If the parties are not able to resolve costs of this motion, CTC may email its costs submission of no more than three double-spaced pages to my judicial assistant on or before November 4, 2025. Canada may deliver its responding submission of no more than three double-spaced pages on or before November 12, 2025. No reply submissions are to be delivered without leave.

Robert Centa J.

Date: October 27, 2025

[58] *Skunk v. Ketash*, 2016 ONCA 841, 135 O.R. (3d) 180, at paras. 58-62.