

- [4] The Attorney General of Ontario raised a preliminary issue, specifically whether the Divisional Court has jurisdiction to grant the declaratory relief requested in the application.
- [5] The Notice of Application for Judicial Review seeks a declaration that the licensing regime for temporary help agencies and recruiters violates ss. 6(2)(b), 7, 11, 15(1), 26, and 32(1)(b) of the *Charter*, ss. 1, 3, 5(1), 12, 13(1) and 16(1) of the *Code*, section 92 of the *Constitution Act*, and the rule of law, and are, therefore, of no force or effect.
- [6] The Divisional Court is a statutory court. It is a court of review. Its jurisdiction is limited to those matters conferred by statute.
- [7] The jurisdiction of the Divisional Court to grant declaratory relief in an application for judicial review is set out in paragraph 2 of s. 2(1) of the *Judicial Review Procedure Act* (“*JRPA*”). Subsection 2(1) provides:
- 2(1) On an application by way of originating notice, which may be styled “Notice of Application for Judicial Review”, the court may, despite any right of appeal, by order grant any relief that the applicant would be entitled to in any one or more of the following:
1. Proceedings by way of application for an order in the nature of mandamus, prohibition or certiorari.
2. Proceedings by way of an action for a declaration or for an injunction, or both, in relation to the exercise, refusal to exercise or proposed or purported exercise of a statutory power.
- [8] A statutory power is defined in s.1 of the *JRPA* to mean a power or right conferred by statute
- (a) to make any regulation, rule, by-law or order, or to give any other direction having force as subordinate legislation.
- (b) to exercise a statutory power of decision,
- (c) to require any person or party to do or to refrain from doing any act or thing that, but for such requirement, such person or party would not be required by law to do or to refrain from doing,
- (d) to do any act or thing that would, but for such power or right, be a breach of the legal rights of any person or party.
- [9] The jurisdiction of the Court was recently summarized by the Court of Appeal as follows:

The *Judicial Review Procedure Act* sets out this Court's jurisdiction over applications for judicial review. Subsection 2(1) of the Act gives the Court its powers to grant relief. ... Subsection 2(1)2 deals with declaratory relief, which is what the applicant primarily seeks on this application for judicial review. Specifically, subsection 2(1)2 gives the Court the authority to make a declaration in relation to the "exercise, refusal to exercise or proposed or purported exercise of a statutory power". This provision does not give the Court broad powers to make declarations about government action, including desired government action. Rather, this provision limits the Court's power to grant declaratory relief to circumstances where the government or public body has exercised, refuses to exercise or proposes to exercise a statutory power.

This means that there are at least two preconditions before the Divisional Court can grant a declaration on an application for judicial review. First, the declaratory relief sought must arise from a statutory power. Second, there must be an actual exercise, refusal to exercise or proposed exercise of that statutory power. In other words, the Divisional Court does not have jurisdiction to make declarations about abstract questions regarding government action or inaction.

See *Daneshvar v Her Majesty the Queen in Right of Ontario*, 2021 ONSC 3186 at paras 29-31.

- [10] The declaratory relief sought in the present case fails to satisfy both preconditions identified by the Court of Appeal above: It is not in relation to a statutory power; and it does not involve the exercise, refusal to exercise or proposed exercise of that statutory power.
- [11] The enactment of amendments to an Act is not an exercise of statutory power because it is not "a power or right conferred by or under a statute.". The applicant has not shown that the amendments to the *ESA* or the regulations constituted an exercise of "statutory power".
- [12] The Divisional Court will only have jurisdiction to grant declaratory relief on an application for judicial review in the context of a *Charter* challenge where the government action relates to the exercise, refusal to exercise or proposal to exercise a statutory authority: *Di Cienzo v. Attorney General of Ontario*, 2017 ONSC 1351, at paras. 19-22, citing *Falkiner v. Ontario Ministry of Community and Social services* (1996), 1996 CanLII 12495 (ON SCDC), 140 D.L.R. 115 (Ont. Div. Ct.).
- [13] The application as a whole challenges the entire regime of the licencing regime. The fact that regulations are implemented, is only incidental to the overall regime set out in the statute.

- [14] The addition of the *Charter* arguments does not give the Court broader authority. As stated by this court in *Apitipi Anicinapek Nation v. Ontario*, 2025 5033, para. 17, “the Divisional Court’s status as a Branch of the Superior Court does not transform its substantive jurisdiction to include the broad inherent jurisdiction of a Superior Court judge.”
- [15] Having considered all the submissions, I conclude that the relief sought by the applicant does not fall within the jurisdiction of this Court under s. 2(1) of the *JRPA*. That claim is properly addressed before the Superior Court, not in this application for judicial review.

Disposition:

- [16] The style of cause should be amended to reflect that the proper respondent is the Attorney General of Ontario, and not the Ministry of Labour.
- [17] The application shall be transferred to the Superior Court, including all records filed in the Divisional Court. There shall be no additional court filing fees for the filing of any documents in the Superior Court that have been filed in Divisional Court.
- [18] The parties shall contact the Court so that arrangements can be made for the prompt judicial case conference to address the process needed to move the application forward.
- [19] The applicant shall pay the respondent costs of \$1,500 inclusive, for the jurisdiction issue and for the wasted attendance today. The remaining costs relate to the substantive issues, that have been transferred to the Superior Court.

“Shore J.”
Justice S. Shore

I agree: “C. MacLeod R.S.J.”
Regional Senior Justice C. MacLeod

I agree: “Nightingale J.”
Justice R. Nightingale

Released: April 24, 2026

CITATION: Swinton v. The Attorney General of Ontario, 2026 ONSC 2421
DIVISIONAL COURT FILE NO.: DC-24-00000078-0000
DATE: 20260424

ONTARIO
SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT

MacLeod R.S.J., Nightingale and Shore JJ.

BETWEEN:

GLENN SWINTON

Applicant

– and –

THE ATTORNEY GENERAL OF ONTARIO

Respondent

REASONS FOR DECISION

Released: April 24, 2026