

Court is not forum for resolving political grievances (Ontario Place Protectors v. Ontario)

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This blog updates an earlier blog that I wrote on 16 August 2024 in connection with the Ontario Superior Court of Justice decision in *Ontario Place Protectors v. His Majesty the King in Right of Ontario*, 2024 ONSC 4194 (CanLII).

With the exception of reversing the Superior Court's decision on the issue of public interest standing, the Court of Appeal for Ontario in *Ontario Place Protectors v. Ontario*, 2025 ONCA 183 (CanLII) unanimously upheld the lower court's decision, which permits the province to redevelop Ontario Place.

Ontario Place is located on the waterfront in Toronto, and was opened as an urban park in 1971. Ontario Place featured a Cinesphere with an IMAX cinema, several pavilions and other attractions. However in 2012, Ontario's then provincial Liberal government closed most of the venues at Ontario Place because they were no longer profitable.

In 2018, the new provincial Conservative government under Premier Doug Ford envisioned re-opening Ontario Place to the public. The old Ontario Place Corporation was dissolved and a new board of directors was introduced as part of Premier Ford's plan.

Eventually, Premier Ford's government passed the *Rebuilding Ontario Place Act, 2023* (the "ROPA") to facilitate the redevelopment of Ontario Place. Among its provisions, the ROPA exempted Ontario Place from existing statutory regulation, including the *Environmental Assessment Act*, the *Ontario Heritage Act*, and the City of Toronto's ability to regulate noise. As well, the ROPA extinguished causes of action against the Crown and its agents, and related remedies. However, the ROPA did not extinguish the ability to bring applications for judicial review.

The appellant challenged the constitutionality of the ROPA on the grounds that its restrictions to court actions violated section 96 of the *Constitution Act, 1867* and its exemptions from certain laws constituted a breach of public trust. Although the Superior Court found that the appellant lacked standing to sue, it further found that the ROPA did not violate the Constitution and that it did not constitute a breach of public trust.

The Court of Appeal for Ontario reversed the Superior Court's decision on the issue of public interest standing but agreed that the ROPA did not violate the Constitution or constitute a breach of public trust. In the appellate court's view, "the court [was] not an alternative forum for resolving political grievances".

On the issue of public interest standing, the Court of Appeal, guided by the criteria set out by the Supreme Court of Canada in *Downtown Eastside Sex Workers United Against Violence Society v. Canada (Attorney General)*, 2012 SCC 45, determined that the appellant had a genuine interest in the litigation, and that their application was a reasonable means of litigating the issue.

The appellant essentially represented the views of interested parties, including journalists, architects, a former Toronto Mayor, conservation organizations, an emeritus professor and community groups who were opposed to the provincial government's plans for Ontario Place.

In the context of public interest standing, the underlying principles that apply to standing requirements are intended to preserve limited judicial resources and to allow the court to screen out marginal or redundant cases and busybody litigants.

In this case, the appellant was not a busybody litigant, and the appellant raised questions of law which would not waste judicial resources.

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However on the substantive issues, the Court of Appeal rejected the appellant's contention that the ROPA violated the core jurisdiction of the superior courts, which is protected under [section 96](#) of the *Constitution Act, 1867*. Although it has been held that neither Parliament nor provincial legislatures can remove the court's ability to conduct judicial review remedies, the ROPA did not actually do so.

The appellate court found that [section 17\(4\)](#) of ROPA expressly preserved judicial review and that the ROPA did not prevent the superior courts from serving as courts of general jurisdiction.

With respect to the latter finding, the ROPA simply immunized the Crown against liability for the Ontario Place redevelopment, which was neither exceptional nor constitutionally objectionable.

As determined in *Poorkid Investments Inc. v. Ontario (Solicitor General)*, 2023 ONCA 172, the Court of Appeal reaffirmed that a government is allowed to establish, amend, or repeal causes of action in addition to establishing procedural requirements governing litigation unless courts are prevented from serving as courts of inherent general jurisdiction.

With respect to the appellant's position that the ROPA breached the public interest, the Court of Appeal found many difficulties with the appellant's argument. The appellant failed to offer a definition of the public trust doctrine and the jurisprudence did not support a contention that the doctrine had been adopted into Canadian law.

While the appellant and an intervener submitted that public trust principles had been applied by American and Indian Courts, the Court of Appeal was unable to assess the state of the law in various jurisdictions simply based on cases presented to the court from those jurisdictions.

The Court of Appeal also noted that while the public trust doctrine provided a conceptual explanation of the Crown's capacity to sue on behalf of the public, it was "an entirely different proposition to say that Crown [could] be compelled to fulfill some form of *parens patriae* jurisdiction which would be defined by the court. (See *La Rose v. Canada*, 2023 FCA 241 at [paragraph 60](#)).

Lastly, the Court of Appeal stated that even assuming that a public trust doctrine existed, the court was unable to see how democratically enacted legislation could be said to breach it, or as conceded by the appellant, how the doctrine could be used to declare the ROPA of no force or effect when the doctrine had no constitutional force.

The key takeaway from this decision is that it reaffirms the reluctance of courts to interfere with government actions, particularly where there is no clear breach of the Constitution or the Charter of Rights and Freedoms. Although courts play an important role in acting as a check and balance on government action, the justice system is not to be used as a forum to prevent a government from implementing its economic vision for land under its ownership and control. The issues surrounding Ontario Place and its redevelopment are ballot box issues. As demonstrated by the re-election of Premier Ford to a third majority government in which his plan for Ontario Place was criticized by the opposition, the electorate soundly favoured, among other things, Premier Ford's plan. The redevelopment of Ontario Place will continue to proceed. A PDF version is available to download [here](#).

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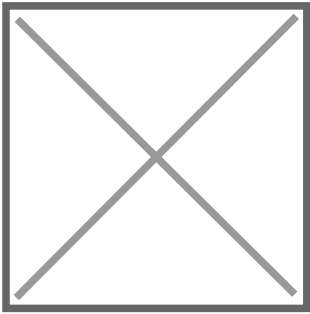
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