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Ontario Place: Court is not forum for resolving political grievances

By **Stephen A. Thiele**

Law360 Canada (April 24, 2025, 1:15 PM EDT) -- Along Toronto's Lake Shore Boulevard, across from the Exhibition Place grounds, sits the iconic Ontario Place. Opened as an urban park in 1971, Ontario Place featured a Cinesphere with an IMAX cinema, several pavilions and other attractions. However, over time, the park became underutilized, and, in 2012, Ontario's then-Liberal government closed most of Ontario Place's attractions.

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In 2018, a new Progressive Conservative government envisioned reopening Ontario Place. The corporation that operated the theme park was dissolved, and a new board of directors was named to guide the landmark's future.

Scott Heaney: ISTOCKPHOTO.COM

Thereafter, Premier Doug Ford's government introduced and passed the *Rebuilding Ontario Place Act, 2023* (ROPA) to facilitate Ontario Place's redevelopment.

However, the decisions regarding Ontario Place's redevelopment, including a long-term lease to a spa as part of the plan, caused political controversy and caused individual residents and community groups to challenge the ROPA on the grounds that it violated s. 96 of the *Constitution Act, 1867* and that provisions exempting the redevelopment from statutory regulation, including the *Environmental Assessment Act*, the *Ontario Heritage Act*, and the City of Toronto's ability to regulate noise, constituted a breach of the doctrine of public trust.

The constitutional challenge was based on the argument that the ROPA restricted access to the courts, and thereby improperly ousted their jurisdiction.

In *Ontario Place Protectors v. Ontario*, 2024 ONSC 4194, a judge of the Ontario Superior Court of Justice dismissed this proceeding on the grounds that the applicant, Ontario Place Protectors, lacked standing to sue and, in the alternative, that the ROPA did not violate the Constitution and did not breach the doctrine of public trust.

In *Ontario Place Protectors v. Ontario*, 2025 ONCA 183, the Court of Appeal for Ontario reversed the Superior Court's decision on the issue of standing but upheld the alternative findings. The appellate court confirmed that the ROPA did not violate the Constitution or constitute a breach of public trust.

Moreover, the appellate court stated that "the court [was] not an alternative forum for resolving political grievances."

In general, public interest standing permits a litigant to commence and continue a proceeding where the litigant has a genuine interest in a proceeding, and the proceeding represents a reasonable means of litigating the issue. A leading case in this area of law is the Supreme Court of Canada case in *Canada (Attorney General) v. Downtown Eastside Sex Workers United Against Violence Society*, 2012 SCC 45.

The appellate court found that Ontario Place Protectors 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. The issues raised by Ontario Place Protectors were questions of law that did not result in the wasting of judicial resources, and Ontario Place Protectors was not viewed as a busybody litigant who was simply raising a marginal or redundant case.

Despite the victory on standing, the Court of Appeal rejected the Ontario Place Protectors' contention that the ROPA violated the core jurisdiction of the superior courts that was protected under s. 96 of the Constitution.

Contrary to the arguments raised by the appellant, the Court of Appeal found that the ROPA did not remove the court's ability to conduct judicial review in connection with the legislation.

The appellate court noted that s. 17(4) of the ROPA expressly preserved judicial review and that the ROPA did not prevent the superior courts from serving as courts of general jurisdiction.

Further, notwithstanding the Ontario Place Protectors' argument that some of the ROPA's provisions immunized the Crown against liability for the Ontario Place redevelopment, the Court of Appeal found that this was neither exceptional nor constitutionally objectionable.

The Court of Appeal reaffirmed the findings in *Poorkid Investments Inc. v. Ontario (Solicitor General)*, 2023 ONCA 172 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 doctrine of public trust, the Court of Appeal found many difficulties with the appellant's argument, including that the appellant offered no definition of the public trust doctrine.

Further, the Court of Appeal found that Canadian jurisprudence upon which the appellant relied did not support the contention that the doctrine had been adopted into Canadian law. Jurisprudence from American and Indian courts was also found by the Court of Appeal to be unhelpful.

While the Court of Appeal noted that 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 [as was contended by the appellant] that the Crown can be compelled to fulfill some form of *parens patriae* jurisdiction which would be defined by the court," which essentially the Ontario Place Protectors were advocating (see *La Rose v. Canada*, 2023 FCA 241 at para. 60).

Lastly, the Court of Appeal stated that even assuming that a public trust doctrine existed, the court was unable to reconcile how democratically enacted legislation could be said to breach the doctrine, or, as the appellant conceded, 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 where legislation does not breach the Constitution or a right under the *Charter of Rights and Freedoms*, courts will generally not interfere with pure public policy decisions made in regard to land owned by government. Public policy issues and economic

plans for government-owned lands are ballot-box issues.

Indeed, despite the plans for Ontario Place being heavily criticized by Ontario's New Democratic Party and Liberal Party in the February 2025 provincial election, Premier Doug Ford's plan for Ontario Place arguably received a strong vote of confidence as his party secured a third successive majority government.

Accordingly, the redevelopment of Ontario Place will continue to proceed.

Stephen A. Thiele is the director of legal research at Gardiner Roberts LLP. He primarily works closely with dispute resolution lawyers, providing advice, value-added analysis and opinions on a wide range of litigation matters. He is the co-author of A Practical Guide to the Law of Defamation *(2024: LexisNexis).*

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