

## Ontario Place ruling raises ‘some very grave concerns,’ lawyer says

By **Ian Burns**

Law360 Canada (March 17, 2025, 4:17 PM EDT) -- Ontario’s highest court has ruled against an advocacy group that launched a constitutional challenge of the provincial government’s redevelopment of Ontario Place, and a lawyer involved in the litigation is saying that the decision leaves businesses across the province — and country — vulnerable.

An organization calling itself Ontario Place Protectors was challenging legislation that facilitated the development of a spa and water park at the long-dormant site on the shores of Lake Ontario. The *Rebuilding Ontario Place Act* (ROPA) exempts the project from several existing statutory obligations, including the provincial *Environmental Assessment Act* and *Ontario Heritage Act*, as well as City of Toronto bylaws on regulating noise. The legislation also extinguishes causes of action against the Crown and its agents for things arising from the redevelopment of the site but preserves the ability to bring applications for judicial review.

Ontario Place Protectors said ROPA insulated state action from judicial scrutiny and thus violates s. 96 of the *Constitution Act, 1867*. It also argued the exemptions to statutory obligations in the legislation were a breach of public trust. An application judge denied Ontario Place Protectors public interest standing to pursue its application, while also ruling against its challenges to the ROPA legislation, which led to the appeal.

And Ontario Court of Appeal Justice Grant Huscroft has now delivered a mixed ruling for Ontario Place Protectors. He determined that the application judge was wrong in denying Ontario Place Protectors public interest standing — but agreed that the constitutional challenge to ROPA should fail.

“ROPA does not contravene s. 96 of the *Constitution Act, 1867*. As this court has explained, s. 96 immunizes neither the substantive content of the law nor the procedure governing litigation,” he wrote, pointing to the decision in *Poorkid Investments Inc. v. Ontario (Solicitor General)*, 2023 ONCA 172. “The establishment, amendment, or repeal of causes of action does not affect the superior courts’ core jurisdiction and so does not infringe s. 96.”

Justice Huscroft also ruled that Ontario Place Protectors had failed to establish that a public trust doctrine exists in Canada, or that any such doctrine would be violated by ROPA. Although the concept of public trust is not unknown, Justice Huscroft wrote no Canadian court has ever declared a statute to be in breach of it.

“The most that can be said for the appellant’s position... is that a public trust doctrine — a doctrine of an unspecified nature and application — might one day be adopted into Canadian law,” he wrote. “The appellant thinks that this is a normatively desirable outcome that should occur but offers no basis that would permit this court to accede to its submission.”

There is “no doubt” the province’s decision to redevelop Ontario Place is strongly opposed by many concerned citizens and organizations, Justice Huscroft wrote.

“Political opposition to the plan has not moved the government and the appellant has turned to the court in an effort to stop it. But there is no basis for the court to do so,” he wrote. “The court is not an alternative forum for resolving political grievances. The only legitimate question for the court is whether the impugned provisions of ROPA violate the law or the constitution. They do not, and the appeal must be dismissed.”

Justice Huscroft was joined by Justices Alison Harvison Young and Benjamin Zarnett in his ruling (*Ontario Place Protectors v. Ontario*, 2025 ONCA 183).

Ontario Place Protectors counsel Eric Gillespie said he was pleased the court recognized his client's public interest standing, which he said will have an effect going forward.



Ontario Place Protectors counsel Eric Gillespie

"If the previous decision had gone forward, it would mean that anybody who wanted to challenge government action would have to show they were directly impacted — and that's not always the case," he said. "So, the Court of Appeal has — at least in many people's view — restored the general understanding of public interest, which says you have to have a genuine interest, not a direct interest, in a matter."

But Gillespie said the decision also means the court has "essentially agreed" that the province can create immunity from liability for the Ontario Place redevelopment — something that will create significant issues right across Canada.

"From the standpoint of public interest, this raises some very grave concerns — if you can do this at Ontario Place, why can't you do it for the next airport, why can't you do it for the next set of highways?" he said. "It means for anyone dealing with any level of government, provincially, federally, even municipally, if that government chooses to pass similar legislation, the Court of Appeal has said that's acceptable — and that leaves every business exposed."

Jackie Esmonde of Cavalluzzo LLP, who represented intervener Ontario Place for All Coalition, said it was disappointing the court did not recognize the public trust doctrine but noted it left the door open to develop it in future cases.

"The public trust doctrine has been recognized in other jurisdictions as a valuable tool for ensuring governments can be held accountable when they fail to protect public resources for the public good," she said. "These concepts are becoming all the more essential in the face of existential threats posed by climate change."

The speed by which the Ontario government passed legislation that allows it to avoid accountability should "concern us all," said Esmonde.

"The Ontario Place redevelopment is only one example," she said. "The interveners will continue their fight for Ontario Place, including conservation of its rare and internationally recognized cultural

heritage and natural resources.”

Gillespie said his client is “very carefully” reviewing the decision and will likely turn its mind to the possibility of seeking leave to appeal.

“The case does appear to raise issues of national concern, because it affects the public and business right across Canada,” he said.

Jack Fazzari, press secretary for Attorney General Doug Downey, said in an email the province is “pleased with the decision.”

“As this matter is within the appeal period, it would be inappropriate to comment,” he said.

*If you have any information, story ideas or news tips for Law360 Canada, please contact Ian Burns at [Ian.Burns@lexisnexis.ca](mailto:Ian.Burns@lexisnexis.ca) or call 905-415-5906.*