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ONTARIO ENVIRONMENTAL PROTECTION ACT ANNOTATED Paula Lombardi Release No. 6, December 2024

This text clearly explains the intentions and effects of almost every section of the *Environmental Protection Act* (EPA), its regulations, and the *Environmental Bill of Rights, 1993*. Annotations of more than 3,000 reported and unreported cases with expert commentary and analysis are included. This text includes: all regulations made under the *Environmental Protection Act* (EPA) and the *Environmental Bill of Rights, 1993*; the purpose and effect of the EPA and the *Environmental Bill of Rights, 1993* and their place in the overall legislative scheme; the penalty for any infraction; a convenient catalogue of reported and unreported cases from both the courts and administrative tribunals; and a Table of Cases to facilitate research.

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What's New in this Update:

This release features updates to the case law and commentary in Chapters 4, 7, 14, 16, 19, 20, 21, 22, 25, 33, and Appendix N.

Highlights

In *25555 Ontario Inc. v. Ontario (Environment, Conservation and Parks)*, 2024 ONSC 4499 (Ont. S.C.J.), the applicants sought an order in the nature of *mandamus*, prohibition and *certiorari* pursuant to s. 140 of the *Provincial Offences Act*, R.S.O. 1990, c. P.33, quashing the decision of Regional Senior Justice of the Peace J.G. McMahon dated January 16, 2024 relating to Informations that alleged they, between February 7, 2017 and March 22, 2018, unlawfully attempted to damage and/or destroy the habitat of Mississauga snakes (Information # 22 198) contrary to s. 10(1)(a) of the *Endangered Species Act, 2007*, S.O. 2007, c. 6 as amended. The applicants submitted that the Justice of the Peace failed to exercise his jurisdiction and/or acted an excess of his jurisdiction with respect to their s. 11(b) application pursuant to the *Canadian Charter of Rights and Freedoms*. The court found that the Justice of the Peace did not fail to exercise his jurisdiction and nor did he exceed his jurisdiction by rendering his decision on the s. 11(b) Charter application prior to rendering a decision on the abuse of process application. The court found further that the applicants did not establish a basis for the claimed prerogative relief and declined jurisdiction to consider the issue of Charter relief. The applicant's Informations were scheduled to be tried together.

In *Ontario Place for All Inc. v. Ontario Ministry of Infrastructure*, 2024 ONSC 3327 (Ont. Div. Ct.), Ontario Place for All opposes the government's plan to redevelop a portion of the Ontario Place property called West Island. While the government intends to redevelop all of Ontario Place, an environmental assessment was completed only for a portion of the property, excluding the West Island. In its application for judicial review, Ontario Place for All alleges that the respondent ministries and Infrastructure Ontario were required to include West Island in the environmental assessment, as the redevelopment of the island includes adds spa facilities with private entities and will involve cutting down a substantial number of trees, leveling cultural heritage landscape and filling in portions of the lakefront. The respondent takes the position that the West Island redevelopment is a private undertaking and thus the *Environmental Assessment Act* ("EAA") does not apply. A week after notice of application was served, new legislation (*Rebuilding Ontario Place Act, 2023*, S.O. 2023, c. 25, Sched. 2 ("ROPA")) was passed. This legislation exempts the West Island from the EAA. The question before the court

is if it is plain and obvious the application cannot succeed in the face of ROPA. The court finds that it is plain and obvious that the application cannot succeed. The applicant relies on s. 9(3)(a) of ROPA, which provides that land is not exempt from the EAA if “an undertaking for which a notice of completion has been issue on or before July 4, 2023, under the Public Work Class Environmental Assessment”. The applicant pleads that the July 4, 2023, notice for Ontario Place included the West Island. The court disagrees as the applicant had not plead that the West Island formed a part of the same undertaking as Ontario Place. Further, the argument leads to an absurd interpretation as s. 9(2), which exempts all of Ontario Place from the EAA, has no purpose if s. 9(3)(a) applies to all to all of Ontario Place. The application is quashed and the court declines to hear the application to address the request for a declaration that the respondent’s actions prior to the passage of ROPA were unlawful.