

Groups celebrate major win for public participation in court case related to Bradford Bypass

Issue Date: April 25, 2023 @ 9:00 a.m. ET

Case challenged decision to deny a request for a federal impact assessment of the project

Bradford, Ontario, Traditional territories of the Wendake-Nionwentsio, Anishinabewaki, Haudenosaunee, and the Mississaugas of the Credit First Nation — Environmental and community groups are celebrating a big win for public participation in a court case related to the Bradford Bypass, a controversial proposed highway in Ontario.

In a recently released ruling, the Federal Court found that the federal Minister of Environment and Climate Change Steven Guilbeault's decision to deny a requested federal impact assessment for the project pursuant to the Impact Assessment Act was unreasonable. The Court found that, despite the importance of public participation under the Act, the Minister did not explain how, or whether, he had considered key arguments and information included in the request.

Rescue Lake Simcoe Coalition, Ontario Nature, Forbid Roads Over Green Spaces, Environmental Defence, Wilderness Committee, Wildlands League, and Earthroots were represented by lawyers from Ecojustice in the lawsuit.

Concerned groups first requested the Minister designate the embattled highway project for a federal impact assessment in February 2021. That request was denied. Three community groups made a second request in November 2021. The second request highlighted changes to Ontario's regulatory regime, mistakes in the Minister's first assessment, and mounting public concern that the project could proceed without its long-term environmental impacts being studied.

Minister Guilbeault denied the second request, citing no "material change" to the project. The groups challenged this decision in court, stating that the Minister's decision not to designate the highway for assessment undermined the federal government's stated commitments to scientific integrity and meaningful public participation in the assessment of major infrastructure projects.

The court's decision helps rectify what the groups feared would be a dangerous precedent for federal decision making. The groups say the federal government can and must act as a backstop to ensure projects that may have federal environmental effects, like greenhouse gas emissions, undergo meaningful environmental scrutiny before they are allowed to proceed.

Community groups have been at the forefront of the fight to ensure that the environmental and health impacts of the Bradford Bypass are adequately assessed. This decision opens the door for groups to submit a subsequent request that the project be designated for a federal impact assessment. Forbid Roads Over Green Spaces and Rescue Lake Simcoe Coalition, supported by member residents of the Georgina Island First Nations community, have submitted a request to the Environmental Commissioner to explore requirements under the *Fisheries Act* to consider impacts of the project on marine ecosystems in Lake Simcoe.

Bill Foster, Chair, Forbid Roads Over Green Spaces said:

"We are delighted the judge agreed with us that the Minister apparently treated our request for

designation in a perfunctory manner. 'In my view, the Decision does not meet the threshold for transparency, intelligibility and justification and is unreasonable as a result.' said Justice Angela Furlanetto, of the Federal Court.

"This has been a decades-long fight to sound the alarm on the harms this proposed highway will bring. We're pleased the Federal Court has agreed that the Minister should be listening to these concerns."

Claire Malcolmson, Executive Director, Rescue Lake Simcoe Coalition said:

"Given the Federal Environment Commissioner's most recent report, criticizing the government for failing to meet tree planting and carbon reduction targets, we again submit that building an eight-lane highway through forests and wetlands contributes to the problems Canada is trying to wrestle with."

Ian Miron, lawyer, Ecojustice said:

"The *Impact Assessment Act* includes a mechanism for members of the public to request a federal impact assessment when provincial governments fail to adequately scrutinize the potential long-term environmental, community, and health impacts of large development programs.

"The court's decision in this case helps ensure that this important safety valve remains a meaningful way to give local communities a say in decision making on major infrastructure projects. It also helps ensure that potentially harmful projects won't fall through the cracks and be allowed to proceed without their impacts fully understood and mitigated."

Tim Gray, executive director, Environmental Defence said:

"The Ontario government is attacking forests, farms and wetlands and rolling back procedural and legal protections for species at risk, climate change, environmental assessment and other areas of shared jurisdiction with the federal government. As a result, more than ever before, Ontarians need a federal government that acts on its responsibilities to properly review mega highway projects like the Bradford Bypass. This court decision makes it clear that the Ontario government rollbacks to environmental protection must be considered by the federal government when it is deciding whether to require federal impact assessment review."

Caroline Schultz, executive director, Ontario Nature said:

"In an era of unprecedented and accelerating biodiversity loss, the government must carefully assess the potential negative impacts of large projects, like highways, before granting permissions to proceed. In the case of the Bradford Bypass, we're talking about a freeway that would bisect the provincially significant Holland Marsh, cross several watercourses and damage or destroy the habitat of numerous species at risk. We need full information on the risks. Thankfully, the court's decision supports such evidence-based decision-making."

Janet Sumner, Executive Director, Wildlands League said:

"Wildlands League applauds the decision by the Federal Court. Premier Ford is decimating the legal and natural landscape of Ontario with reckless decisions: development on the Greenbelt, undercutting Conservation Authorities and removing protections on vital ecosystems. The Bradford Bypass will needlessly destroy even more nature and threaten water, wildlife and communities downstream to Lake

Simcoe and beyond. This decision shows that when Ontario threatens life support systems essential to Canadians, the Federal government can and should step in.”

About

[Ecojustice](#) uses the power of the law to defend nature, combat climate change, and fight for a healthy environment. Its strategic, public interest lawsuits and advocacy lead to precedent-setting court decisions and law and policy that deliver lasting solutions to Canada’s most urgent environmental problems. As Canada’s largest environmental law charity, Ecojustice operates offices in Vancouver, Calgary, Toronto, Ottawa, and Halifax.

[Ontario Nature](#) protects wild species and wild spaces through conservation, education and public engagement. Ontario Nature is a charitable organization representing more than 30,000 members and supporters, and 150 member groups across Ontario.

[Environmental Defence](#) is a leading Canadian environmental advocacy organization that works with government, industry and individuals to defend clean water, a safe climate and healthy communities.

[The Rescue Lake Simcoe Coalition](#) is a lake-wide member-based organization, representing 29 groups in the Lake Simcoe watershed, that provides leadership and inspires people to take action to protect Lake Simcoe.

[Wildlands League](#) is one of Canada’s pre-eminent conservation organizations. We collaborate with communities, governments, First Nations, scientists and progressive industry to protect nature and find solutions that work for all. Our mission is to make sure at least half of the country is protected forever for all our kids, for climate and for the planet.

[Earthroots](#) is a grassroots environmental organization dedicated to the protection of Ontario’s wilderness, wildlife and watersheds, through research, education and action. Earthroots acts on behalf of its supporters across Canada and empowers thousands of people each year to advocate for better environmental protection.

[Forbid Roads Over Green Spaces](#) is a local organization comprised of residents who will likely be affected by the Bradford Bypass. We were founded in 1993 in response to an Ontario Ministry of Transportation public meeting where they announced the commencement of an EA Study for the proposed Bradford Bypass. We have actively monitored and participated in all EA study processes for this highway challenging its need and justification at every possible step. It is our position, that while there may be a need for some highway to connect highways 400 with 404, this highly environmentally sensitive corridor is a totally inappropriate location. This is why we sought a federal impact assessment. Approval of this highway is based on 30-year-old information. We are seeking a brand-new study, based on current, rather than obsolete, information and travel requirements.