

ERO Comment - #025-0391 – *Special Economic Zones Act, 2025*

Attawapiskat First Nation Comment

Ontario is proposing to enact the *Special Economic Zones Act, 2025* (“**SEZA**”) which is meant to quickly advance strategically important economic activity and priority projects within designated zones. By building faster and more strategically, Ontario can protect its industries, mitigate the impact of trade disruptions, and ensure the long-term prosperity and security of the economy.

Attawapiskat First Nation (“Attawapiskat”) is extremely concerned with the proposal to enact SEZA. As drafted, SEZA appears to give the Ontario government the ability to create zones in the province which exempt proponents and projects from regulations and statutes which are crucial to the protection of our s.35(1) rights. Without those laws in place or with lower standards than the current legal requirements in place, there is a significant risk that our territory and species that we rely upon to practice our rights, will be eroded in an irreversible way. Attawapiskat has serious concerns about how SEZA could severely impact Attawapiskat’s rights, which are protected by the *Constitution Act, 1982*.

SEZA is very lacking in detail and does not put any limits on how it will be used and applied. SEZA also does not include criteria or factors for the designation of projects or proponents that will then enjoy potentially broad exemptions from existing laws and regulations or any restrictions on the size or locations of special economic zones

SEZA has the potential to remove protections that currently exist for Indigenous peoples, protections that are enshrined by the *Constitution Act, 1982*. It risks emptying the toolbox which the Government of Ontario will use to fulfill your duty to consult and accommodate us on proposals that may impact our s.35 rights. For example, without the requirements for certain permits and licences for activities in a certain zone or for a specific project or proponent, there is no ability to require protective terms or conditions and accommodation measures to the same that would seek to address concerns we raise about a proposal’s impacts to our rights. This erodes the meaningful ability for consultation to understand our concerns, and then crucially, for those concerns to be addressed. In fact, removal of requirements for certain permits and licences also removes the clear indications for when the duty to consult and accommodate is

VICTORIA OFFICE:

200 – 1022 Government Street
Victoria, BC V8W 1X7

Tel: 250-383-2356; Fax: 250-380-6560
woodwardandcompany.com

triggered. Instead of the duty clearly being triggered when the Crown is contemplating providing a proponent with certain authorizations, if the project or proponent enjoys exemptions under the SEZA, then the timing of when consultation is triggered becomes uncertain. There is a significant risk that the SEZA practically vacates any benefit to be gained from the duty to consult and accommodate Indigenous peoples, which the Government of Ontario must fulfill.

Attawapiskat asserts that the Government of Ontario must seek our free, prior, and informed consent when they are considering designating a special economic zone in our territory or when a given proposal or proponent is being considered for exemptions under the SEZA and intend to operate in our territory and impact our rights.

SEZA also provides Ontario with the ability to make unilateral decisions regarding development that does not include proper and sufficient public oversight, transparency and accountability.

Attawapiskat demands that it be fully consulted and engaged on the development of any new legislation, regulations, and policies that stands to impact our rights, especially something such as SEZA. Furthermore, decisions that impact Attawapiskat's constitutionally protected rights must have the free, prior and informed consent of Attawapiskat. SEZA is a prime example of this type of decision.

AFN asserts a right to continuing its way of life on its homeland territory. This right includes the right to decision-making governance authority over land ("jurisdiction"), including under water and natural resources on, in and from the land. This right is well known to Ontario and has been asserted in a claim against the Governments of Canada and Ontario by multiple Treaty 9 First Nations (Court File No CV-23-00701700-0000). In addition to the rights of jurisdiction and governance and a continued way of life, members of AFN also have, since time immemorial, and continue to, exercise many other constitutionally protected aboriginal rights including hunting, fishing, trapping and gathering.

Given the assertion of a right to jurisdiction, the duty to consult and accommodate must be carried out to at the absolute highest level, which means achieving the free prior and informed consent of AFN. As such, any development in AFN territory requires the free, prior and informed consent of AFN. Any engagement and consultation with AFN on potential developments should occur in accordance with the requirement to meet this standard. What the SEZA purports to do is remove oversight and protections from Crown government while insulating that same government from legal actions aimed at the resulting harms from the removal of oversight and protections. Additionally, the SEZA does not provide any opportunity for oversight and protections from Indigenous governments, in line with our inherent right to govern our territory and protect our people and our way of life. The entire SEZA scheme must be heavily curtailed by including

restrictions and conditions on the authority to create zones, persons, or projects that are exempt from laws. Additionally, the focus of setting any minimum standards for exempt zones, persons, or projects, should be standards that protect the section 35(1) rights of affected indigenous peoples.

The proposal to enact SEZA in an attempt to 'fast-track' development in Ontario would remove a critical opportunity for Ontario to properly consult with AFN, in line with UNDRIP, which Ontario must do, and further, to acquire the free, prior, and informed consent of AFN for development in our territory.