Friday, May 16, 2025

Government of Ontario
Legislative Building
Queen's Park
Toronto ON M7A 1A1

**RE: Proposed Legislative Amendments Associated with the *Protect Ontario by Unleashing our Economy Act, 2025***

I am writing to you on behalf of Matachewan First Nation to provide comments with regards to the proposed legislative amendments that are associated with the *Bill 5, the Protect Ontario by Unleashing our Economy Act, 2025.*

Matachewan First Nation is strongly opposed to the legislative changes associated with Bill 5 as they will significantly impact our Aboriginal and treaty rights. They threaten to remove essential procedural steps for regulating development and protections related to the environment, archaeology, and species at risk. They remove our ability to work cooperatively with proponents and government agencies under a strong legislative framework.

While Matachewan First Nation is open to responsible development and works frequently with developers and proponents, Bill 5 threatens to instead create uncontrolled and irresponsible development which will unjustifiably infringe and harm our ability to exercise our Aboriginal and treaty rights and further remove triggers for the Duty to Consult and Accommodate (“DTCA”) which we rely upon to protect those rights. It will introduce significant uncertainty in the regulatory system as Matachewan First Nation is forced to work without a reliable provincial partner to ensure the protection of our Traditional Territory.

In a time when we must work together to protect Ontario’s economy and the livelihoods of our people, these proposed developments instead threaten to create an adversarial system that will lead to further delays and lost projects.

*The Special Economic Zones Legislation Must Be Withdrawn*

The *Special Economic Zones Act* (“*SEZA”*)will grant Ontario virtually unlimited power to provide any proponent or business with the ability to conduct any activity it wants, in any area of the province the government chooses, without any regulatory oversight.[[1]](#footnote-1)

Matachewan First Nation is deeply concerned about the breadth of the proposed legislation. It allows Ontario to exempt any law without legislative oversight or a publicly transparent process. We will no longer be able to depend on the certainty associated with strong provincial laws when considering whether we will provide our consent for development. Instead, it opens the door that Cabinet may, in its sole discretion, remove essential protections that guarantee the continued exercise of our Aboriginal and treaty rights, such as:

* Ensuring that mining companies file, and then follow, acceptable closure plans that are essential for minimizing environmental impacts;
* Ensuring proponents follow the requirements of a Forest Management Plan; and
* Ensuring that there are decision-points related to development which require for First Nations to be consulted and accommodated for impacts to their Aboriginal and treaty rights.

While Ontario has claimed it will live up to its constitutional obligation to consult and accommodate our rights, the *SEZA* does not provide mechanisms for [First Nation] involvement when decisions are being made related to our territories. This is not consistent with Ontario’s constitutional obligations, and the Honour of the Crown. If *SEZA* passes into law, Matachewan First Nation may be left with no choice but to act swiftly, aggressively and proactively to ensure the protection of our territory when an exemption is passed that we do not agree with. It may create unnecessarily adversarial situations between First Nations, the Crown, and proponents.

*The Changes to Species at Risk Protections Will Be Disastrous*

Bill 5 proposes to replace the *Endangered Species Act* (“*ESA*”)with a new *Species Conservation Act* (“*SCA*”) and, in the interim, Bill 5 would amend the *ESA* to make many of the same changes planned for the *SCA*. The proposed changes gut the existing protections and will put many species at risk of disappearing entirely. We note that our Traditional Territory includes many different species which have been classified as Species at Risk. These species, with whom we have a close relationship, are essential to the exercise of our Aboriginal and treaty rights.

We have commented on some specific concerns with the proposed *ESA* and *SCA* proposals below.

1. The COSSARO’s Classifications Must Be Paramount: Under both the amended *ESA* and the *SCA*, Ontario is removing the existing requirement for any species identified by Committee on the Status of Species at Risk (COSSARO) to be added to the associated list of protected species. Instead the final decision related to protections will be made by Cabinet.

This is an unacceptable change that shifts essential decision-making away from an independent body – which incorporates Indigenous engagement and Indigenous Traditional Knowledge in its decision-making – to a political body that does not have any scientific or traditional knowledge regarding species and their habitats. It risks creating situations where our rights will be subject to the whims of governments who may be swayed by lobbying by industry groups.

1. The Definition of Habitat Must Not Be Reduced: The proposed changes to the definition of a habitat, which will now only protect *the immediate surroundings* of an animal’s den, nest, wintering or staging area, or a plant’s root zone, will have disastrous consequences. Such a limited habitat definition for at-risk animal and plant species is certain to result in their further decline in Ontario. Habitat for animals and plants must be defined *to ensure protection of the entire area that any member of the species requires to carry out its life processes*.
2. Protections Against Harassment of Species Must Be Maintained: We oppose the removal of protections against “harassment” of species from the *ESA* and the *SCA.* Your proposed changes will allow for proponents, especially during early exploration, to unreservedly impact areas in ways which will disrupt the normal behaviour of a species at risk. This change, combined with the narrow definition of habitat, will inevitably lead to several species disappearing from the territories of our member First Nations.
3. Ontario Must Not Move To A Registration-First System: Matachewan First Nation is also opposed to the proposed changes to the existing permitting process. Currently, the permitting process involves review by environmental experts and consultation with Matachewan First Nation. Under Bill 5, that process is replaced in nearly all cases by an online registration form that, once submitted, allows the project to proceed with no expert review and no obligation to consider less impactful alternatives.

By removing opportunities for the government to review plans and impose protective conditions, the proposed amendments will also eliminate opportunities for First Nations to be consulted and accommodated. This is a direct attack on our Aboriginal and treaty rights and is unconstitutional. We note that similar systems have been used in the mining context and have been challenged as unconstitutional because they try to circumvent the Crown’s duty to consult and accommodate.[[2]](#footnote-2)

*The Province Must Not Exempt Requirements Related to Archaeology*

Matachewan First Nation has several concerns in response to the proposed changes to the *Ontario Heritage Act* R.S.O 1990, specifically the proposed amendments concerning the mechanism to exempt parties from undertaking archaeological work, and the proposed immunity clause. These changes are proposed in Bill 5, under the *Protect Ontario by Unleashing Our Economy Act* have serious consequences for the history, identity, and culture of First Nation’s people.

The archaeological sites of Ontario represent the 13,000+ year history of the First Nations people. This antiquity is multiple times greater than the great pyramids of Egypt, and studying the past provides a renewed life to the people who were living in a time of megafauna such as the mammoth, mastodon, and giant beaver. To allow for lands to be exempt from archaeology silences the ancestors and robs the First Nations’ of their past.

The proposed *Act* espouses to protect Ontario from the threats coming from the United States of America, yet through the proposed changes it would seem to do little to protect Ontario and instead serves to increase the profits of the development community. Archaeological work in the province is not required for every project, and in the vast majority of instances the archaeological work is cost effective and completed well in advance of the timelines set out. It is difficult to understand how eliminating archaeological work will protect Ontario from the USA.

Instead of exempting archaeology and deciding whose history is worth investigating, why not look to other ways to improve the process such as, having the development community work with archaeologists to avoid areas of archaeological potential? Or, to reexamine the archaeological report review process? If the delays largely rest with the timelines of report review the responsibility lies with the government to property fund the ministry, not to dismantle the act.

Coupled with the proposed exemptions to archaeological work is the proposed immunity clause. Without understanding the details of this clause, it would seem to save blameless the government, and presumably the development community. In effect, if human remains are unearthed by the construction, and the project was exempted from the requirement to do archaeology, would there be no recourse for First Nation communities to regarding the disturbances and damage to their ancestors? In Nipigon last year, this very situation happened when Parks Canada failed to undertake archaeological work and human remains were spotted in the box of a dump truck. This is still causing delays and strained relationships. Would the development community not appreciate the archaeological work which seeks to identify ancestral resting places and ancient sites in advance of construction?

It is expected that proponents of this change will state that the exemption for archaeological work will only happen infrequently, but to even have a mechanism available is to have the ability to administratively erase the history of the First Nations people and puts the remains of the ancestors at risk.

It would serve the Province to recall that it was Progressive Conservative, Bill Davis who 50 years ago brought in the *Ontario Heritage Act*, while also increasing health care and education funding. If the Progressive Conservatives are indeed the party of traditional values, they should look to the actions of the Davis government. Premier Davis faced serious challenges in 1975 dealing with the energy crisis which began in 1973, and yet still had the courage and prescience to bring forward the Ontario Heritage Act, and other measures to build a strong Ontario in the face of adversity.

Matachewan First Nation urges you to remove the proposed exemption from Bill 5 and instead pursue other solutions. The power to neglect the history of the First Nations people should not be wielded by any government or developer. The erasure of history only leads to a weaker, fragmented society.

Concluding Remarks

We cannot properly exercise our responsibility alone and so we must work together with Ontario’s regulatory staff in order to carry out our responsibilities in the exploration and mining sector. Take away those processes, and the duty to consult doesn’t go away, but it will be significantly less reliable as a backstop to prevent adversarial relationships from developing between our First Nations and proponents and the Crown. The result is sadly predictable: consultation and accommodation will be done badly, or not at all, and the result will not be unleashing of the economy but battles in court and on the land and more delays

Ontario’s proposed amendments under Bill 5 are setting Ontario up for failure. By removing consultation triggers related to the environment, species at risk, and archaeology, you are creating uncertainty in how natural resource development will take place in Ontario. If Ontario is unwilling to ensure that our rights are protected, we will be forced to take additional actions ourselves.

Our constitutionally protected rights will always take precedence over any particular law or regulation. Ontario will always need to consult and accommodate, and to respect the spirit and intent of the Treaties. It is us and the lands and natural resources in our traditional territories who will bear the brunt of irresponsible development. Ontario must reconsider these changes and withdraw this bill in order to work with First Nations to find an acceptable path forward.

Yours truly,

<original signed by>

Chief Alex (Sonny) Batisse

Matachewan First Nation

Cc: Council, Matachewan First Nation

1. Bill 5, [*Protect Ontario by Unleashing our Economy Act*](https://www.ola.org/sites/default/files/node-files/bill/document/pdf/2025/2025-04/b005_e.pdf), 1st Sess, 44th Leg, Ontario, 2025, Schedule 9, ss 2, 3. [↑](#footnote-ref-1)
2. See for example *Gitxaala v British Columbia (Chief Gold Commissioner)*, 2023 BCSC 1680 at [paras 426](https://canlii.ca/t/k0cbd#par426)-430. [↑](#footnote-ref-2)