Canadian Environmental Law Association
EQUITY. JUSTICE. HEALTH.

SUBMISSIONS OF THE CANADIAN ENVIRONMENTAL LAW ASSOCIATION ON

BILL 5
Protect Ontario by Unleashing our Economy Act, 2025

PRESENTED TO THE MINISTRIES OF

ENERGY AND MINES
ENVIRONMENT, CONSERVATION AND PARKS
CITIZENSHIP AND MULTICULTURALISM
INFRASTRUCTURE
ECONOMIC DEVELOPMENT, JOB CREATION AND TRADE

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Canadian Environmental Law Association
T 416 960-2284 • 1-844-755-1420 • F 416 960-9392 • 55 University Avenue, Suite 1500 Toronto, Ontario M5J 2H7 • cela.ca

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I. OVERVIEW

On April 17, 2025, Bill 5, the *Protect Ontario by Unleashing our Economy Act, 2025*, was tabled for first reading in the Ontario Legislature by the Hon. Stephen Lecce, Minister of Energy and Mines. Second Reading debate on Bill 5 was completed on May 6, 2025, and the legislation has been referred to the Standing Committee on the Interior for consideration.

Bill 5 consists predominantly of ten schedules addressing amendments to two categories of laws. First, Bill 5 consists of amendments to laws that are designed to facilitate, if not accelerate, energy and infrastructure development, and mineral extraction, particularly, but not exclusively, in what one of the Bill's schedules describes as "special economic zones". Second, Bill 5 consists of environmental protection and assessment, endangered species, and heritage preservation laws that are to be amended so as not to impede the rapid implementation of energy and infrastructure development, and mineral extraction, particularly in such zones.

The primary rationale for these changes, as set out in the Bill 5 preamble, is the provincial government's declared intention to protect Ontario from global economic uncertainty due to recent events unfolding south of the border.

However, proposing a cure potentially worse than the disease is not the answer. Bill 5 will unleash significant problems by undermining procedural and substantive provisions of various environmental, species and heritage protection laws in a manner that will introduce material economic, environmental, social, and cultural uncertainty, as well as derogate from legal and constitutional rights of members of the Ontario public, including Indigenous peoples, who are particularly vulnerable to such actions. In short, the Ontario legislature should take care that special economic zones created under the authority of Bill 5 do not end up being little more than law-free sacrifice zones that severely impact the most vulnerable communities in Ontario society.

In the view of the Canadian Environmental Law Association "(CELA"), Bill 5 should not be considered in legislative and policy isolation as a one-time paradigm shift in response to a suddenly hostile neighbour. Instead, it should be viewed as an extension of a more than half-decade long continuum of problematic legislative approaches on the environment by Ontario.

Two lines of examination support CELA's concerns in this regard.

First, on April 15, 2025, the Ontario government delivered a Throne Speech that, among other things, outlined the province's intention to address "economic uncertainty" and "eliminate red tape" by restoring "sense and sanity to a labyrinth of rules and regulations that bring development in the province to a standstill." The Throne Speech also committed to further streamlining "the province's environmental assessment process and bring common-sense conservation principles to the role of Conservation Authorities and species-at-risk requirements."[1] Two days after the Throne Speech, Bill 5 was introduced in what is likely to be a series of sweeping statutory changes aimed

[1] *Ibid.*

at fulfilling Ontario's ill-conceived objective of reducing (or removing) important environmental safeguards.

Second, this is not the first time that the Ontario government has used economic claims as the basis for making regressive amendments to Ontario's environmental law framework. For example, the province's 2018 "open for business" law resulted in inappropriate rollbacks to the *Planning Act*, *Conservation Authorities Act*, *Endangered Species Act*, and other key statutes.[2] Similarly, economic concerns arising from the COVID pandemic were invoked by Ontario in 2020 as the rationale for narrowing the scope, content, and application of the *Environmental Assessment Act*.[3] Furthermore, exaggerated claims in 2022 regarding the perceived need for more development resulted in additional undermining of *Conservation Authorities Act* protections for wetlands, which are vital to protect the public from flooding and water pollution hazards, as well as the loss of third party appeal rights under the *Planning Act*.[4]

Accordingly, Bill 5 appears to be following the same approach in 2025, as reflected in the dubious assertion in the Bill 5 technical briefing that current environmental requirements are improperly blocking or delaying resource development and infrastructure projects in Ontario.[5] When introducing Bill 5 for First Reading, the Minister of Energy and Mines similarly contended -- without explanation or elaboration -- that the legislation "will cut red tape and streamline approvals for mining, infrastructure, and energy projects" and create a new 'one project, one process' model to cut government review timelines by 50% and establish special economic zones, while protecting our environment."[6]

The following CELA submissions examine each of the Bill 5 schedules.

Overall, it is CELA's submission that all of the Bill 5 schedules, with minor exceptions, should be withdrawn and not further considered by the Legislative Assembly of Ontario until they are substantially modified to ensure robust protection for the environment, human health, and vulnerable members of the Ontario public, including Indigenous peoples, who may otherwise be harmed by the amendments contained in the various schedules.

Below is a consolidation of CELA recommendations for the ten Bill 5 schedules:

II. CONSOLIDATED SUMMARY OF RECOMMENDATIONS

Schedules 1 and 6:

RECOMMENDATION 1: Section 3.2 of Schedule 1, and section 134 of Schedule 6 should be withdrawn.

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[2] *Making Ontario Open for Business Act, 2018*, S.O. 2018, c. 14 (Bill 47).
[3] *COVID-19 Economic Recovery Act, 2020*, S.O. 2020, c.18 (Bill 197).
[4] *More Homes Built Faster Act, 2022*, S.O. 2022, c. 21 (Bill 23).
[5] Ontario Ministry of Energy and Mines, *Protect Ontario by Unleashing Our Economy: Technical Briefing* (17 April 2025).
[6] Legislative Assembly of Ontario, 1st Sess., 44th Parl. *Hansard* No. 4 at 96 (17 April 2025) (statement of the Hon. S. Lecce, at first reading of Bill 5).

Schedule 2:

RECOMMENDATION 2: Schedule 2 of Bill 5 should be immediately withdrawn by the Ontario government. At the same time, the Ministry of the Environment, Conservation and Parks should establish an open and accessible process for developing appropriate *ESA* amendments[7] which help achieve the statute's current purposes:

> **(a) identify species at risk based on the best available scientific information, including information obtained from community knowledge and Indigenous traditional knowledge;**
> **(b) protect species that are at risk and their habitats and to promote the recovery of species that are at risk; and**
> **(c) promote stewardship activities to assist in the protection and recovery of species that are at risk.**

Schedule 3:

RECOMMENDATION 3: Schedule 3 should be withdrawn.

Schedule 4:

RECOMMENDATION 4: Schedule 4 should be withdrawn.

Schedule 5:

RECOMMENDATION 5: The purpose section in the *Mining Act* should be amended to state that mining in Ontario should be undertaken in a culturally, socially, environmentally, and economically sustainable and responsible manner.

RECOMMENDATION 6: The purpose section in the *Mining Act* should reflect a commitment to prevent impacts on public health and safety and the environment as opposed to simply minimizing them.

RECOMMENDATION 7. The purpose section in the *Mining Act* should reflect a commitment to rehabilitating mine sites.

RECOMMENDATION 8. The Minister should also consider potential impacts to public health, public safety, and the environment when making a decision whether to suspend some or all of the functions of the mining lands administration system.

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[7] See, for example, the statutory reforms proposed by CELA et al. on the 10th anniversary review of the *ESA*: 124710thYrReview-EndangeredSpeciesAct.pdf.

RECOMMENDATION 9: Risk assessments undertaken by the Ministry of the Solicitor General should be placed on the Environmental Registry of Ontario for public notice and comment.

RECOMMENDATION 10: The Minister's powers to issue orders under the new subsection 26.1(1) should be subject to notice and hearing.

RECOMMENDATION 11: The proposal to refund fees for failure to meet prescribed standards should be eliminated.

RECOMMENDATION 12: The Ministry should ensure that it has staff with the necessary technical expertise to assess plans regarding mines that pose a high risk to the environment.

RECOMMENDATION 13: The proposed subsection 185.1(1)-(6) providing Crown immunity for actions or inactions regarding the proposed amendments to the *Mining Act* should be withdrawn.

Schedule 7:

RECOMMENDATION 14: The government should revise Schedule 7 to make it explicitly preventive in protecting Indigenous heritage, including cultural, religious, and spiritual sites and practices failing which the government should withdraw Schedule 7.

Schedule 8:

RECOMMENDATION 15: Schedule 8 should be withdrawn.

Schedule 9:

RECOMMENDATION 16: Schedule 9 should be withdrawn.

Schedule 10:

RECOMMENDATION 17: The Ontario government should withdraw Schedule 10 of Bill 5. In the alternative, if Schedule 10 is enacted and proclaimed into force, then the *Species Conservation Act* should be prescribed as being fully subject to all parts of the *Environmental Bill of Rights*.

III. SCHEDULES 1 AND 6: AMENDMENTS TO THE ELECTRICITY ACT, 1998 AND THE ONTARIO ENERGY BOARD ACT, 1998

Comments on Bill 5, *Protect Ontario by Unleashing our Economy Act, 2025*
Schedule 1, Amendments to the *Electricity Act, 1998* and
Schedule 6, Amendments to the *Ontario Energy Board Act, 1998*
ERO No. 025-0409

by

Jacqueline Wilson, CELA Counsel

A. Summary of Key Limitation of Liability Provisions

Clause 1 of the Schedule 1 amendments to the *Electricity Act, 1998* would create a new section 3.2 that provides for the extinguishment of specified causes of action against the Crown, the Independent Electricity Systems Operator ("IESO"), Ontario Power Generation Inc. ("OPG") and other specified persons in connection with the amendments made to the Act, including for things done or not done in accordance with those amendments. It also provides for a bar on legal proceedings connected to those matters.

Similarly, clause 3 of the Schedule 6 amendments to the *Ontario Energy Board Act, 1998* would create a new section 134 that provides for the extinguishment of specified causes of action against the Crown and other specified persons in connection with the amendments made to the Act, including for things done or not done in accordance with those amendments. It also provides for a bar on legal proceedings connected to those matters.

B. Excessive Limitations on Liability in Schedules 1 and 6 Undermine Rule of Law

Schedule 1, section 3.2 and Schedule 6, section 134, propose limits on liability that are much too broad and should be withdrawn. They constitute a concerning attempt to shield the government from liability, including with respect to misfeasance, bad faith, breach of trust, or breach of fiduciary obligation.[8] Together with the proposed limits on liability contained in Schedule 9, the proposed *Special Economic Zones Act, 2025*, discussed below, they contribute to an unparalleled undermining of the rule of law. The proposed limits on liability are much broader than those currently included in the *Electricity Act, 1998*, S.O. 1998, c. 15, Sched. A ("*Electricity Act*") and *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, Sched. B ("*Ontario Energy Board Act*"), which focus on actions taken in "good faith".[9]

CELA also opposes attempts to limit liability for the IESO[10] and OPG[11], both of which are not Crown agents.[12]

C. Conclusion and Recommendation

No justification has been provided for the very broad language to limit Crown, IESO or OPG liability. Accordingly, CELA recommends withdrawing these provisions.

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[8] Bill 5, Schedule 1, s.3.2(3)
[9] See, e.g., *Ontario Energy Board Act, 1998*, s. 11.
[10] Bill 5, Schedule 1, s.3.2(1)
[11] Bill 5, Schedule 1, s.3.2(2)
[12] See, e.g., *Electricity Act, 1998*, s.8 (IESO, is not an agent of the Crown for any purpose, despite the *Crown Agency Act, 2014*).

RECOMMENDATION 1: Section 3.2 of Schedule 1, and section 134 of Schedule 6 should be withdrawn.

IV. SCHEDULE 2: AMENDMENTS TO THE ENDANGERED SPECIES ACT, 2007

Comments on Bill 5, *Protect Ontario by Unleashing our Economy Act, 2025*
Schedule 2, Amendments to *Endangered Species Act, 2007*
ERO No. 025-0380

by

Richard D. Lindgren, CELA Counsel

A. Background

When the *Endangered Species Act, 2007*[13] ("*ESA*") was first enacted and proclaimed into force, the law was widely regarded as an important and long-overdue improvement over the sparse *ESA* that had previously existed in Ontario since 1971.[14]

In recent years, however, successive provincial governments have made various amendments to the *ESA* (and other laws and regulations) which undermine Ontario's ability to effectively protect species at risk and their habitat.[15] These concerns have been repeatedly raised by CELA[16] and other environmental groups,[17] and they were subsequently verified by a comprehensive 2021 report[18] on the *ESA* by Ontario's Auditor General. This independent report made a number of critical findings and reached important conclusions in relation to all aspects of the current *ESA* regime:

> "Our audit found that the Environment Ministry is failing in its mandate to protect species at risk. Its actions have not been sufficient to improve the state of these species and their habitats. Figure 1 shows that since 2009, the first full year the Act was in effect, compared to 2020:
>
> - the total number of species at risk has risen by 22%;
> - annual approvals to harm species at risk have increased by 6,262%;
> - annual approvals for protection and recovery have increased by 59%;
> - annual stewardship funding has decreased by 10%; and

[13] Endangered Species Act, 2007, S.O. 2007, c. 6 | ontario.ca.
[14] See CELA's 2007 brief on the proposed *ESA*.
[15] Schedule 5 of Bill 108: Bill 108, More Homes, More Choice Act, 2019 - Legislative Assembly of Ontario.
[16] See 1279-CELA-SubmissionRe-Bill-108.pdf; Submission-from-CELA-ERO-No.-019-1620_June16_2020.pdf; and CELA-Comments-Species-Fund-ERO-019-2636.pdf.
[17] 1254-JointLetter-ESP.pdf.
[18] Value-for-Money Audit: Protecting and Recovering Species at Risk.

- the number of charges laid under the Act was zero in 2020.

The Environment Ministry does not have a long-term plan to improve the state of species at risk and there are no performance measures to evaluate the effectiveness of the species at risk program. Additionally, some species at risk may not be protected in the future, as the Act's classification criteria for species at risk was changed in 2019 and is now inconsistent with how species are assessed in other provinces across Canada. Moreover, forestry operations on Crown lands were exempted from the Act in 2020, resulting in some species actually losing habitat protections under the Act.

The committee that advises Ontario's Environment Minister on how to implement the Act is dominated by industry stakeholders, whose interests can be contrary to protecting species at risk and their habitats. Additionally, the Environment Ministry could not explain how six recent appointees were identified, screened and chosen for the independent science committee that classifies which species are at risk.

The Environment Ministry lacks guidance on when to say "no" to permit applications to harm species at risk and their habitats. No application to harm species or their habitats has ever been denied. In fact, most approvals are granted automatically by the Environment Ministry without review. There are also no inspections to ensure that companies and others abide by the conditions of their approvals. The cumulative effects of approvals to harm species at risk and other threats are not assessed by the Environment Ministry.

Because the province's goals are generally less ambitious than the recommendations made by independent scientists, its planned actions for the protection and recovery of species at risk are unlikely to improve their status. Few performance measures have been developed to gauge progress for any particular species, and progress is reviewed only once for each species as that is all that is required by the Act" (emphasis added, pages 2-3).

Unfortunately, the *ESA* amendments contained in Schedule 2 of Bill 5 do not address the serious issues raised to date by environmental organizations and the Auditor General about the current version of the legislation. On the contrary, Schedule 2 contains numerous amendments which, if enacted, will inappropriately narrow the scope of the *ESA* and significantly impair the law's overall effectiveness and enforceability, as described below. In our view, this is an unacceptable rollback, particularly since a recently released independent report has determined that additional species not previously assessed are in decline in Ontario and have been classified as endangered, threatened, or of special concern.[19]

B. Concerns With Schedule 2

1. Undermining the Protective Purpose of the ESA

Schedule 2 proposes to fundamentally alter the purpose of the *ESA* by inserting language that now expressly requires decision-makers to consider socio-economic factors when administering the

[19] 2024 Annual Report from the Committee on the Status of Species at Risk in Ontario (COSSARO) | ontario.ca.

legislation: "To provide for the protection and conservation of species while taking into account social and economic considerations including the need for sustainable economic growth in Ontario (emphasis added)." In CELA's view, this is a wholly inappropriate and highly objectionable deviation from the current three-part purpose of the *ESA* that correctly places the sole focus on protecting species at risk and their habitat:

> **1** The purposes of this Act are:
>
> 1. To identify species at risk based on the best available scientific information, including information obtained from community knowledge and aboriginal traditional knowledge.
> 2. To protect species that are at risk and their habitats, and to promote the recovery of species that are at risk.
> 3. To promote stewardship activities to assist in the protection and recovery of species that are at risk

In short, the *ESA* is not intended to serve as a catalyst for economic development but is instead aimed at securing the protection and recovery of species of flora and fauna in Ontario to ensure that they do not become extinct, extirpated, endangered, or threatened.

2. Excessively Narrow Definition of "Habitat"

Schedule 2 purports to amend or delete several definitions of words and phrases found within the *ESA*. Most notably, Schedule 2 intends to replace the current *ESA* definition of "habitat" with a more constrained definition that will improperly restrict the interpretation and application of the legislation:

> "habitat" means, subject to subsection (3),
> (a) in respect of an animal species,
> (i) a dwelling-place, such as a den, nest or other similar place, that is occupied or habitually occupied by one or more members of a species for the purposes of breeding, rearing, staging, wintering or hibernating, and
> (ii) the area immediately around a dwelling place described in subclause (i) that is essential for the purposes set out in that subclause.
> (b) in respect of a vascular plant species, the critical root zone surrounding a member of the species, and
> (c) in respect of all other species, an area on which any member of a species directly depends in order to carry on its life processes.

CELA submits that this new definition represents a clear step backward from the more expansive definition of "habitat" currently found in the ESA:

> "habitat" means,
>
> (a) with respect to a species of animal, plant or other organism for which a regulation made under clause 56 (1) (a) is in force, the area prescribed by that regulation as the habitat of the species, or

> (b) with respect to any other species of animal, plant or other organism, an area on which the species depends, directly or indirectly, to carry on its life processes, including life processes such as reproduction, rearing, hibernation, migration or feeding,
>
> and includes places in the area described in clause (a) or (b), whichever is applicable, that are used by members of the species as dens, nests, hibernacula or other residences.

In our view, a broad and purposive *ESA* definition of "habitat" is essential for the timely, efficient, and effective operation of the legislation, including: (a) the current prohibition against destroying habitat of species at risk (section 10); (b) the development of recovery strategies that address habitat needs (section 11); and (c) the making of Ministerial regulations prescribing habitat (section 56(1)(a)).

Unfortunately, by largely limiting "habitat" to residences actually or "habitually" occupied by animal species at risk, Schedule 2 of Bill 5 fundamentally fails to safeguard the other types of critical habitat needed for a species' full range of life cycle needs. In CELA's view, Schedule 2's excessively narrow definition of animal habitat is analogous to just protecting a house bedroom, but omitting any protection for other important areas (i.e. kitchen, living room, hallways, etc.). CELA's concerns about the new "habitat" definition are not addressed by the proposed transitional provisions in Schedule 2 which merely stipulate that the former definition still applies to pre-existing instruments issued under the *ESA*.

3. Inappropriate Delegation of Ministerial Powers and Duties

Schedule 2 proposes to confer the Minister with virtually unfettered discretion to delegate their *ESA* duties and powers to the Deputy Minister or "any other employee in the Ministry." To date, Ontario has failed or refused to provide any compelling administrative or environmental justification for the wholesale delegation of Ministerial duties and powers, including the broad regulation-making authority under the *ESA* (section 56). For the purposes of certainty, transparency, and accountability, CELA submits that the Minister's *ESA* duties and powers should remain firmly in the hands of the Minister.

4. Abolition of Automatic Listing of Species at Risk

Schedule 2 proposes several changes relating to the composition, mandate, and function of the Committee on the Status of Species at Risk in Ontario ("COSSARO"). The independent and expert COSSARO currently plays a key role under the *ESA* by reviewing population statuses, preparing annual reports, and determining which species should be added, uplisted, or downlisted within the Ontario List of Species at Risk.

However, Schedule 2 proposes to fundamentally alter the species listing process under the *ESA*. At present, if COSSARO determines that a particular species is at risk, then the species is automatically placed on the regulatory Ontario List of Species at Risk.[20] In CELA's view, this

[20] O. Reg. 230/08 SPECIES AT RISK IN ONTARIO LIST | ontario.ca. See also section 7 of the *ESA*.

long-standing approach has served as an appropriate and credible listing mechanism because COSSARO's determinations are based on science, not political or socio-economic considerations.

Alarmingly, new section 7 in Schedule 2 abruptly changes the automatic listing process by providing that the provincial Cabinet "may" (or may not) make regulations listing species that are classified by COSSARO as extirpated, endangered, threatened, or special concern species. Moreover, new section 7 expressly leaves it open to Cabinet to "deviate" from COSSARO recommendations. No statutory criteria or benchmarks are provided in the new section 7 to direct or structure the exercise of Cabinet's listing authority or ability to disregard COSSARO's recommendations.

In addition, Schedule 2 proposes to repeal Schedules 1 to 5 under the current *ESA*, which identified species that were initially listed in O.Reg.230/08. If Cabinet now revokes or amends a regulation to remove or downlist a species, then new section 7 specifies that previous *ESA* requirements imposed via regulations or instruments cease to have legal effect.

By making listing decisions discretionary – not automatic – and by leaving such decisions to politicians behind closed doors, CELA submits that Schedule 2 essentially rolls back the clock by decades and returns Ontario to the much-criticized discretionary listing process contained in the 1971 version of the *ESA*. There is also no guarantee that the species currently found on the Ontario List of Species at Risk will remain listed and protected under the *ESA*. CELA views this ill-advised regression as contrary to the public interest in safeguarding biodiversity and represents a disastrous setback if Ontario is serious about protecting species at risk and their habitat in the 21st century.

5. Inexplicable Omission from the ESA Prohibition

Aside from creating considerable uncertainty about which species will remain protected under amended *ESA*, Schedule 2 also proposes to change the current prohibition against taking, killing or harming a living member of a species at risk (section 9).

For example, Schedule 2 inexplicably removes the word "harass" from the list of prohibited actions. CELA submits that this word should remain in the prohibition since it captures activities which do not involve physical harm to an individual member of a listed species, but which may nevertheless be intrusive or detrimental to the member's ability to perform its life cycle needs (i.e., human activities which frighten, disrupt, or chase an area-sensitive species away from feeding, nesting or breeding locations).

On this point, CELA notes that "harass" is included in the general prohibition under the federal *Species at Risk Act* against killing, taking, or capturing an individual of a listed species at risk (section 32). Similarly, Ontario's *Fish and Wildlife Conservation Act* prohibits hunting (which is defined as including "harassing" wildlife) without a licence (sections 1 and 5-6). Accordingly, the Schedule 2 proposal to omit "harass" from section 9 of the *ESA* is not aligned with other statutes intended to safeguard wildlife.

6. Elimination of Recovery Strategies, Management Plans, and Progress Reports

Schedule 2 proposes to wholly delete – but not replace – sections 11 to 16.1 of the current *ESA*. Section 11 presently imposes important timing, content, and other obligations on the Minister to ensure that recovery strategies are developed for "each species that is listed on the Species at Risk in Ontario List as an endangered or threatened species." Section 12 imposes similar obligations upon the Minister to prepare management plans for species of concern. Section 12.1 requires publication of a governmental response statement to indicate the actions that Ontario intends to take in relation to the recovery strategy or management plan. Section 12.2 requires reports on the implementation of the government response statement to ensure "progress towards the protection and recovery of the species." Section 13 entrenches the ecosystem approach for developing recovery strategies and management plans, while sections 14 and 15 allow these documents to address more than one species at risk or to incorporate other existing plans. Sections 16 and 16.1 enable the Minister to enter into stewardship agreements and landscape agreements for the purpose of assisting in the protection or recovery of a species.

It should be noted that most of the above-noted sections were amended or enacted by the Ontario government in its controversial overhaul of the *ESA* in 2019. However, the environmental rationale for now repealing these updated sections has not been presented by the province to date. Taken together, sections 11 to 16.1 form an essential component of the current *ESA* regime, and it is unconscionable that Ontario is now proposing to completely withdraw from implementing recovery strategies and management plans. In CELA's view, listing an at-risk species under the amended *ESA* but committing to no governmental action to bring the species back from the brink is tantamount to admitting a critically ill patient to a hospital but administering no health care to ensure the patient's recovery.

7. Regressive Changes to ESA Permits

Despite repealing but not replacing the protective instruments described in sections 11 to 16.1, Schedule 2 generally recasts many of the problematic permitting provisions in section 17 which allow activities that are otherwise prohibited by sections 9 and 10 of the *ESA*. In particular, Schedule 2 proposes to replace section 17 with new provisions that make the permitting process even weaker and less effective or protective.

For example, section 17(2) of the current *ESA* imposes certain restrictions on the Minister's authority to issue permits, but Schedule 2 proposes to remove these safeguards in their entirety. Similarly, Schedule 2 deletes the current *ESA* power to impose species conservation charges as permit conditions and relieves the Minister of the current obligation to consider governmental responses to recovery strategies before issuing the permit. Schedule 2 also creates new provisions in relation to appeals to the Ontario Land Tribunal regarding decisions on permits and orders under the amended *ESA*. Incredibly, Schedule 2 further proposes that the section 9 and 10 prohibitions in the *ESA* remain inapplicable even if the permit holder does not comply with the terms and conditions of the permit.

In relation to *ESA* permitting, the above-noted Auditor General's 2021 report recommended that:

> "To minimize the harm to species at risk allowed by permit approvals under the *Endangered Species Act, 2007*, we recommend that the Ministry of the Environment, Conservation and Parks (Environment Ministry):
>
> • develop and implement guidance for Environment Ministry staff on when to deny approvals based on the needs of a species; and
> • ensure language used in proposed permits on the Environmental Registry clearly identifies expected impacts to species and their habitats" (page 42).

However, the Auditor General noted that in its response to this recommendation, the Ministry refused to develop and implement guidance for Ministry staff on when to deny approvals based on the needs of a species (page 42). In addition, Schedule 2's proposed dilution of section 17 does nothing to address the Auditor General's concerns about the rampant overuse of permitting powers under the *ESA*. To the contrary, Schedule 2 will continue or compound the very same problems identified by the Auditor General and will likely create new and equally intractable problems. Since Schedule 2 proposes to repeal the Minister's current authority to establish an advisory committee (section 48), it appears to CELA that this repeal will negate the possibility of soliciting multi-stakeholder advice on permitting difficulties that arise under the amended *ESA*.

8. Other Questionable ESA Amendments or Repeals

Schedule 2 proposes to repeal but not replace sections 18 to 20 of the *ESA*, which respectively deal with activities authorized under other statutes, agreements with aboriginal persons, and amendments or revocations of section 17 permits. Similarly, Schedule 2 lays down the groundwork for phasing out the payment of species conservation charges to the Species at Risk Conservation Trust, which itself will be eventually wound down and dissolved pursuant to Schedule 2 and the remaining balance of the Trust will be transferred to a new Species Conservation Account.

CELA does not necessarily object to the demise of the controversial "pay to slay" provisions enacted during the 2019 amendments to the *ESA*, but we remain gravely concerned about the adequacy of the watered-down permitting provisions for the purposes of protecting species at risk and their habitat. In addition, we have no objection in principle to the new inspection and enforcement provisions contained within Schedule 2, but we must question the long-term utility or practical implementation of these provisions if the *ESA* is slated to be repealed in its entirety.

9. The Proposed Repeal of the Amended ESA and Potential Federal Implications

CELA understands that the foregoing changes to the *ESA* are only intended to be interim measures since Schedule 10 of Bill 5 proposes the enactment of the *Species Conservation Act, 2025* to repeal and replace the amended *ESA*. For the reasons discussed below, this proposed new legislation represents an unacceptable rollback of Ontario's current framework for protecting species at risk and their habitat.

CELA further notes that section 34 of the federal *Species at Risk Act* ("*SARA*")[21] empowers the federal Environment Minister to issue orders that apply *SARA*'s species and habitat protections (i.e., sections 32 and 33) to non-federal lands in a province. The basis for such an order is a Ministerial determination that the laws of the province do not effectively protect the species or the residences of its individuals, or critical habitat requirements (sections 34(3), 61 and 80). For example, the federal Minister determined in 2023 that the laws of Quebec and Ontario do not effectively protect the critical habitat of boreal caribou and a *SARA* order was recommended by the Minister but was ultimately not pursued by the Government of Canada since collaborative measures were underway by the federal and provincial governments.[22]

In our view, Bill 5, if enacted, appears to invite the application of this federal safety net in Ontario on the grounds that Schedules 2 and 10 do not provide adequate protection of federally listed species at risk or their habitat. On this point, CELA notes that 236 (or 87%) of the species found on the Ontario List of Species at Risk are also listed under *SARA*. Given this substantial overlap, if Ontario wishes to avoid federal orders applying *SARA* within the province, then it is imperative that the *ESA* be improved and strengthened, rather than be systematically rolled back and/or repealed by the Bill 5 "reforms."

C. Recommendation

RECOMMENDATION 2: Schedule 2 of Bill 5 should be immediately withdrawn by the Ontario government. At the same time, the Ministry of the Environment, Conservation and Parks should establish an open and accessible process for developing appropriate *ESA* amendments[23] which help achieve the statute's current purposes:

> **(a) identify species at risk based on the best available scientific information, including information obtained from community knowledge and Indigenous traditional knowledge;**
> **(b) protect species that are at risk and their habitats and to promote the recovery of species that are at risk; and**
> **(c) promote stewardship activities to assist in the protection and recovery of species that are at risk.**

V. SCHEDULE 3: AMENDMENTS TO THE ENVIRONMENTAL ASSESSMENT ACT

Comments on Bill 5, *Protect Ontario by Unleashing our Economy Act, 2025*,

Schedule 3, Amendments to the *Environmental Assessment Act*
ERO Nos. 025-0396 and 025-0389

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[21] S-15.3.pdf.
[22] Statement: Government of Canada's approach to addressing the protection of critical habitat for boreal caribou in Quebec and Ontario - Canada.ca.
[23] See, for example, the statutory reforms proposed by CELA et al. on the 10th anniversary review of the *ESA*: 124710thYrReview-EndangeredSpeciesAct.pdf.

by

Richard D. Lindgren, CELA Counsel

A. Background

Schedule 3 of Bill 5 proposes amendments to the *Environmental Assessment Act* ("*EAA*") which are intended to exempt two environmentally significant projects which are currently subject to the *EAA*.

The first project is the proposed Eagle's Nest multi-metal mine in the Ring of Fire in northern Ontario. While mines are not generally subject to the *EAA*, the proponent nevertheless agreed in 2011 to have the *EAA* apply to the project. Terms of Reference ("TOR") to govern the preparation of the environmental assessment were approved by the province in 2015.[24] If enacted, however, Schedule 3 terminates the agreement and revokes the TOR approval, which means that the project is no longer subject to the *EAA*.

The second project is the waste disposal facility proposed by York 1 in Chatham-Kent. In 2024, this proposal was duly designated by O.Reg.284/24 under the *EAA* as a project to which the Act applies. CELA serves as counsel for a local residents' group that opposes the project for environmental and planning reasons, and it is our understanding that the proponent has not yet proposed the TOR for the environmental assessment. If enacted, however, Schedule 3 of Bill 5 revokes the designation regulation and wholly exempts the project from Part II.3 of the *EAA*.

B. Concerns

CELA strongly objects to Schedule 3 for several reasons. First, it is unclear why the Ontario government has opted to use special legislation to exempt both projects from the *EAA*. This is particularly true since the *EAA* already contains mechanisms for exempting projects if warranted in the public interest. In our view, neither project warrants an exemption from the *EAA*.

Second, the Ontario government has provided no compelling environmental rationale or persuasive evidence to justify the proposed project exemptions from the *EAA*. For example, the province's technical briefing[25] that accompanied Bill 5 simply claims that the Ontario government is removing environmental assessment requirements for the Eagle's Nest project because they are "outdated" in light of changes in the scope of the project. No case-specific information or explanation is provided in the technical briefing to indicate precisely how the environmental assessment requirements are "outdated" or why the proponent and/or Ontario government declined to simply update the TOR or approve a new TOR. It may well be that for financial, technical or other reasons, the proponent declined to advance or complete the environmental assessment over the past decade, but its inordinate delay should not be rewarded in 2025 with a complete exemption from the *EAA*.

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[24] Eagle's Nest Multi-Metal Mine | ontario.ca.
[25] The Protect Ontario through Free Trade within Canada Act, 2025.

Third, the technical briefing further claims that the York 1 project is being exempted from the *EAA* because of "continued threats of border interruptions and tariffs." In CELA's view, the possibility of border closures that constrain Ontario waste exports has been omnipresent for decades, and speculation about what may (or may not) happen in the future does not provide a credible policy basis for exempting the York 1 proposal from the *EAA*. Moreover, if border-related conjecture is the basis for exempting the York 1 proposal, then CELA is concerned that the York 1 exemption will serve as a precedent for other landfill proponents to also request exemptions from the *EAA*, although large landfills are expressly subject to the *EAA* under O.Reg.50/24 (Part II.3 Projects – Designations and Exemptions). If the provincial government is genuinely concerned about border closures related to waste, then it should focus its attention on enhancing and strengthening 3R initiatives (reduce, reuse, recycle) throughout Ontario rather than fast-tracking waste disposal sites under the *EAA*.

Fourth, CELA submits that exempting the two projects is inconsistent with the public interest purpose of the *EAA*, which is to ensure the protection, conservation and wise management of the environment for the betterment of all Ontarians. In our view, unconditionally exempting environmentally significant projects located in sensitive areas is antithetical to, and clearly undermines, the broad societal goals of the *EAA*.

Fifth, it is beyond dispute that environmental assessment is not "red tape" that should be waived or dispensed with by the Ontario government for political or economic expediency. To the contrary, the *EAA* process is intended to be robust, participatory, and evidence-based, and it is tailor-made to identify, evaluate, and mitigate or prevent the environmental risks associated with these two projects.

Sixth, the substantive requirements of the *EAA* are not duplicated in other environmental approvals that may be applicable to the two projects. For example, only the *EAA* requires an examination of the need/purpose of the project, alternatives to the project, alternative methods of carrying out the project, and impacts of the project on the social, economic and built environments. In short, these fundamental environmental planning matters are not required to be addressed under the *Mining Act* for the Eagle's Nest project or Part V of the *Environmental Protection Act* for the York 1 project.

Seventh, neither project is currently subject to the impact assessment process under the federal *Impact Assessment Act* ("*IAA*"). For example, it is our understanding that the proposed capacity of the Eagle's Nest project is just below the prescribed threshold in the *IAA* Project List Regulation (SOR/2019-285) that would trigger an impact assessment. Similarly, the York 1 proposal is not caught by any of the prescribed project categories under the *IAA* Project List Regulation. Therefore, exempting the projects from the *EAA* effectively means that these projects may not be subject to <u>any</u> environmental assessment requirements.

C. Recommendation

Arising from the foregoing, CELA calls upon the provincial government to withdraw Schedule 3 of Bill 5 to ensure that the *EAA* continues to fully apply to both projects.

Accordingly, CELA recommends that:

RECOMMENDATION 3: Schedule 3 should be withdrawn.

VI. SCHEDULE 4: AMENDMENTS TO THE ENVIRONMENTAL PROTECTION ACT

Comments on Bill 5, *Protect Ontario by Unleashing our Economy Act, 2025*, Schedule 4, Amendments to the *Environmental Protection Act*

by

Ramani Nadarajah, CELA Counsel

A. Summary of Schedule 4 Provisions

Schedule 4 amends the *Environmental Protection Act* to revoke a document that was signed by the Minister under the Act for the purpose of establishing fees with respect to the Environmental Activity and Sector Registry (EASR) program. Schedule 4 also provides that the Minister may refund such fees in circumstances where a registration has been removed from the Registry under the Act.

B. Background: EASR – A Problematic Program

The EASR program is an online registry program that allows companies to self-register their activities and comply with regulatory requirements as opposed to obtaining an environmental compliance approval. Companies are required to pay a fee for registering an activity under the EASR program.

CELA has previously expressed concerns to the Ministry of Environment Conservation and Parks (MECP) about its decision to implement the EASR program.[26] CELA noted that the MECP's approvals program was a key mechanism through which the Ministry undertook a proactive, up-front assessment to ensure that business operations do not cause harm to Ontario's environment.[27] CELA noted that the EASR program would remove the technical site-specific review conducted by MECP's staff to identify unacceptable or problematic applications for environmental compliance approval.[28] It also prevents the MECP staff from taking proactive steps to require changes to project design or construction to avoid or minimize adverse effects.[29]

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[26] See Ramani Nadarajah, Maureen Carter Whitney and Dr. Elaine MacDonald, *Modernizing Environmental Approvals*, (April 16, 2010) online: DRAFT
[27] *Ibid* at 6.
[28] *Ibid* at 7.
[29] *Ibid*.

CELA also urged the MECP to implement an effective compliance strategy if it decided to implement the EASR regime in Ontario. In particular, CELA recommended that the MECP develop a compliance and enforcement strategy for industries subject to EASR to ensure compliance with regulatory requirements and assess industry-wide compliance.[30]

C. EASR – A Problematic Program Made Worse by Schedule 4 Amendments

The proposal in Schedule 4 to remove fees will eliminate revenue for the EASR program. The purpose of the fees was to help the province recover costs and operate the EASR program and encourage compliance with the EASR requirements. This included costs: (1) for program and IT development; (2) for ongoing program support to conduct research and analysis needed to determine whether there are additional activities and sectors suitable for the registry; (3) to develop eligibility requirements for those activities and sectors; and (4) to ensure compliance with EASR requirements. The Commissioner of the Environment has noted that the fees collected from the EASR regime have helped MECP recover its costs for running the program.[31]

We are concerned that the revocation of the fees will eliminate an important source of government revenue to ensure compliance with the EASR program. This, in turn, will preclude the MECP from being able to effectively implement the EASR program and ensure businesses comply with Ontario's environmental laws.

The Commissioner of the Environment's 2017 Annual Report found a high level of non-compliance by some sectors in the EASR regime. For example, in 2015/2016, the MECP inspected 106 facilities in the automotive refinishing sector and found that 83 of them were potentially non-compliant.[32] The Commissioner stated that "[t]he high rate of non-compliance initially identified by the MOECC – and the encouraging results of the MOECC's compliance actions – reinforce the importance of maintaining a strong compliance and enforcement strategy to ensure that EASR-sector facilities follow the rules, and, consequently, that the environment is being protected".[33]

D. Conclusion and Recommendation

The proposal to eliminate fees for the EASR program is extremely ill advised given that fees have helped the MECP operate the EASR program.

RECOMMENDATION 4: Schedule 4 should be withdrawn.

VII. SCHEDULE 5: AMENDMENTS TO THE MINING ACT

Comments on Bill 5, *Protect Ontario by Unleashing our Economy Act, 2025*,
Schedule 5, Amendments to the *Mining Act*
ERO No. 025-0409

[30] *Ibid* at 19.
[31] Environmental Commissioner of Ontario, *2017 Annual Report, Good Choices, Bad Choices*, (October 2017), online: Good Choices, Bad Choices. Environmental Rights and Environmental Protection in Ontario at 86.
[32] *Ibid* at 84.
[33] *Ibid*.

by

Ramani Nadarajah, CELA Counsel

A. Background

Schedule 5 of Bill 5 proposes significant amendments to the *Mining Act*. These amendments, if enacted, would: (1) change the purpose of the Act; (2) significantly enhance the power of the Minister of Energy and Mines (Minister) to regulate mining operations; (3) streamline and provide service delivery commitments for the mining permitting process; and (4) establish a broad Crown immunity clause for any actions or inactions regarding the proposed amendments.

B. Purpose Section

Section 2 of the *Mining Act* would be amended to set out that the Act's purpose is to encourage prospecting, registration of mining claims and exploration for the development of mineral resources to a degree that is consistent with the protection of Ontario's economy and in a manner that is consistent with the recognition and affirmation of the existing Aboriginal and treaty rights in Section 35 of the *Constitution Act, 1982*, including the duty to consult, and to minimize the impact of these activities on public health and safety and the environment.

The proposed amendment to the purpose section does not adequately reflect the adverse environmental, social, and economic impacts of mining. Although a mining project can provide short-term economic benefits for a few years, it can leave long term environmental liabilities and health and social impacts.

Mining operations can cause extremely serious adverse impacts to the environment, including water pollution, soil and vegetation contamination, loss of wildlife and biodiversity. Acid-mine drainage is considered to be the most significant environmental liability issue for the Canadian mining industry and is estimated at two to five billion dollars.[34] Tailings, which are the waste by-products from mining operations, are another major source of long-term environmental liability. The failure of a tailings dam can cause the release of enormous amounts of toxic materials into the environment and result in very significant remediation costs. If the mining company abandons a site or goes bankrupt, the remediation costs can be passed onto taxpayers.

Since 2002, it is estimated that Canada's federal, provincial and territorial governments spent approximately one billion dollars on abandoned mine sites and to prevent new ones.[35] Between 1999 and 2008, the Ontario government spent approximately $88 million to rehabilitate abandoned mine sites.[36] Some mine sites can potentially require monitoring and other measures for hundreds of years or in perpetuity. A report by the Canadian Environmental Assessment Agency regarding

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[34] Ontario Nature, Mining in Ontario: A Deeper Look, online: mining-in-ontario-web.pdf at p.13.
[35] *Ibid* at p. 11.
[36] *Ibid.*

uranium tailings in Elliot Lakes, for instance, recommended an adequate containment system be supported in perpetuity, given the permanent nature of the hazards posed by the tailings.[37]

Given these factors, the purpose section should be redrafted to reflect that mining in Ontario should be undertaken in a culturally, socially, economically, and environmentally sustainable and responsible manner. Furthermore, the wording in the purpose section should also reflect a commitment to prevent adverse impacts as opposed to simply minimizing them.

Abandoned mine sites and inadequate mine site remediation can also pose serious threats to the environment and public health and safety. The Environmental Commissioner's 2015 Annual Report, for example, noted that there were 4,400 abandoned mines on both Crown and privately held sites, of which 362 are high-risk sites.[38] The report determined that the Ministry does not have a current estimate of the total cost of, or a long-term plan for, rehabilitating these sites, which may pose a risk to public health and safety and the environment.[39] The Environmental Commissioner also noted that the financial assurance retained by the Ministry may not reflect actual costs to close out mines.[40] (Financial assurances are required under the *Mining Act* to ensure that there are sufficient funds available for the mine closure if a mining company is unable to meet its closure plan obligations.)

Furthermore, many mines that ceased operating prior to 1991 were not closed in accordance with current regulatory requirements. According to the Environmental Commissioner, "[t]his has left mine hazards on the land that could now pose risks to public health and safety and the environment. These hazards can be physical, such as shafts, trenches, and buildings, or environmental, such as acid rock drainage, metal leaching and tailing dams…"[41] The Environmental Commissioner observed that the "[r]ehabilitation of these sites can range from just closing small mine shafts to rehabilitating major chemical contamination, which could cost millions of dollars.[42]

The province needs to address the long-standing legacy issues from mining operations that pose a risk to the health and safety of Ontarians and the environment. At a minimum, the purpose section of the *Mining Ac*t should include a commitment to address the urgent need to rehabilitate mine sites to protect public health and safety and the environment.

RECOMMENDATION 5: The purpose section in the *Mining Act* should be amended to state that mining in Ontario should be undertaken in a culturally, socially, environmentally, and economically sustainable and responsible manner.

RECOMMENDATION 6: The purpose section in the *Mining Act* should reflect a commitment to prevent impacts on public health and safety and the environment as opposed to simply minimizing them.

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[37] *Ibid* at p. 12.
[38] Environmental Commissioner of Ontario, 2015 Annual Report, Mines and Minerals Program, online: 3.11: Mines and Minerals Program at 444.
[39] *Ibid.*
[40] *Ibid.*
[41] *Ibid* at 438.
[42] *Ibid.*

RECOMMENDATION 7. The purpose section in the *Mining Act* should reflect a commitment to rehabilitating mine sites.

C. Minister's Power to Order Suspension of the Mining Lands Administration System

Section 4.1 of the *Mining Act* will be amended to provide the Minister with the power to make an order suspending the operation of some or all of the functions of the mining lands administration system, if the Minister considers it desirable for the protection of the strategic national mineral supply chain.

A new subsection 4.1(9) would be added to require the Minister to consider any risk assessment provided by the Ministry of Solicitor General, the economic interests of Ontario, and any prescribed factors, before making such an order. The requirement for a risk assessment also applies to other decisions by the Minister, including the decision to issue certain orders (see proposed amendment 26.1(2)) or to deny the issuance of a lease. (See proposed amendment 81(1.2))

CELA supports the Minister also having the authority to make an order suspending the operation of some or all of the functions of the mining lands administration system. However, the Minister's decision in this regard should be informed by any potential impacts to public health, public safety, and the environment, as opposed to only the economic interests of Ontario.

Furthermore, CELA recommends that the Ministry of the Solicitor General's risk assessments be subject to public notice and comment on the Environmental Registry of Ontario to ensure public transparency and input into the decision-making process. This will also ensure that risk assessments undertaken by the Ministry of the Solicitor General are based on a complete and accurate understanding of all relevant information. It will also promote informed decision-making and reduce the potential for errors. Furthermore, ensuring public notice and comment also affords greater legitimacy for the Minister's decisions regarding the mining lands administration system.

RECOMMENDATION 8. The Minister should also consider potential impacts to public health, public safety, and the environment when making a decision whether to suspend some or all of the functions of the mining lands administration system.

RECOMMENDATION 9: Risk assessments undertaken by the Ministry of the Solicitor General should be placed on the Environmental Registry of Ontario for public notice and comment.

D. Enhanced Ministerial Powers to Issue Orders Without Notice or Hearing

The proposed amendment significantly expands the Minister's powers over mining activities and mine operators in Ontario. A new subsection 26.1(1) would be added to allow the Minister the authority to make the following orders:

- an order to suspend, restrict or terminate the account of a mining lands administration system user;

- an order to prohibit a person from registering as a user on the mining lands administration system;
- an order to prohibit a person from obtaining a prospector's license;
- and an order to terminate a prospector's license.

The Minister is not required to provide public notice or a hearing before exercising the above powers. The *Statutory Powers and Procedures Act* ("*SPPA*") will not apply either. The *SPPA* is key legislation that sets out minimum rules of natural justice that govern proceedings before administrative tribunals. These include the right to notice of a hearing and the right to either an oral, written or electronic hearing.[43]

While CELA supports measures to effectively regulate mining activities in Ontario, we are concerned that the duty of fairness will not apply to these proposed enhanced ministerial powers. It is a fundamental principle of the Canadian justice system that statutory delegates making decisions that affect the rights, interests, or privileges of individuals have a duty to act fairly. This involves providing an individual with notice of the facts on which the decision will be based and an opportunity to respond to these allegations. These measures are necessary to prevent the Minister from making arbitrary and unfair decisions.

Significantly, a new subsection 26.1(5) would preclude anyone from seeking compensation or any other remedy or relief for any suspension, restriction, prohibition, or termination as a result of the Minister's actions.

RECOMMENDATION 10: The Minister's powers to issue orders under the new subsection 26.1(1) should be subject to notice and hearing.

E. Mine Authorization and Delivery Teams

The *Mining Act* will be amended to add a new section 153.0.1 that would provide the Minister with authority to establish mine authorization and permitting delivery teams for projects designated by the Minister. In addition, new subsections 153.1.1(6)-(9) would provide the Cabinet with regulation-making authority to set service standards for reviewing permits or authorizations and refund fees if service standards are not met.

While CELA supports an expeditious and efficient permitting process for mining operations, we are concerned that the proposed amendments do not recognize the trade-offs between expediting the permitting process and the need for a thorough and rigorous review of mining operations. A research study in British Columbia found that government regulations are not, in fact, the cause for delays in mine development. Instead, delays in mine project development were due primarily to economic factors such as commodity prices.[44]

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[43] *Statutory Powers and Procedures Act*, R.S.O. 1990, c.S.22, ss.6(1)-(5).

[44] FACETS, Does regulation delay mines? A timeline and economic benefit audit of British Columbia Mines, (11 December 2024), online: Does regulation delay mines? A timeline and economic benefit audit of British Columbia mines

CELA is concerned that fixating on speeding up permitting process will come at the expense of a rigorous and comprehensive review of proposed mine development in Ontario. As noted above, mining projects are very complex and can have significant adverse impacts on the environment and the health and safety of Ontarians. The Environmental Commissioner, for example, has previously commented on the lack of adequate technical expertise in the provincial government to adequately assess mining operations, saying that:

> "Ministry staff who review mine-closure plans lack the technical expertise to assess plans regarding mines that pose high risks to the environment. Staff can pass these cases on to the Ministry's rehabilitation specialists for review, but we noted the Ministry has no guidelines for when the specialists should be consulted. Our review of a sample of closure plans found that some high-risk threats were not forwarded to the specialists, even though such reviews may have been warranted".[45]

We are also concerned that the refund of fees for failure to meet prescribed service standards may place undue pressure on Ministry staff to simply engage in a rubber-stamping exercise of applications for permits or other authorizations. CELA recommends that the Ministry should instead focus its efforts on addressing the current deficiencies with the mine permitting regime. This includes ensuring that staff have the necessary technical expertise to undertake a comprehensive and rigorous review of all permits and authorizations, particularly for mines that pose high risks to the environment.

RECOMMENDATION 11: The proposal to refund fees for failure to meet prescribed standards should be eliminated.

RECOMMENDATION 12: The Ministry should ensure that it has staff with the necessary technical expertise to assess plans regarding mines that pose a high risk to the environment.

F. Crown Immunity

A new subsection 185.1 will be added to provide broad Crown immunity in relation to any action or inaction regarding the proposed amendments to the *Mining Act*. CELA does not support the inclusion of a Crown immunity clause for reasons that are set out in more detail in our analysis regarding Bill 5, Schedule 9, *Special Economic Zones Act, 2025*. These include the underlying principles which inform the rule of law to ensure that the same legal rules that apply to private individuals also apply to government and public officials.

RECOMMENDATION 13: The proposed subsection 185.1(1)-(6) providing Crown immunity for actions or inactions regarding the proposed amendments to the *Mining Act* should be withdrawn.

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[45] Environmental Commissioner of Ontario, 2015 Annual Report, Mines and Minerals Program, online: 3.11: Mines and Minerals Program at 444.

G. Consolidated Recommendations

RECOMMENDATION 5: The purpose section in the *Mining Act* should be amended to state that mining in Ontario should be undertaken in a culturally, socially, environmentally, and economically sustainable and responsible manner.

RECOMMENDATION 6: The purpose section in the *Mining Act* should reflect a commitment to prevent impacts on public health and safety and the environment as opposed to simply minimizing them.

RECOMMENDATION 7. The purpose section in the *Mining Act* should reflect a commitment to rehabilitating mine sites.

RECOMMENDATION 8. The Minister should also consider potential impacts to public health, public safety, and the environment when making a decision whether to suspend some or all of the functions of the mining lands administration system.

RECOMMENDATION 9: Risk assessments undertaken by the Ministry of the Solicitor General should be placed on the Environmental Registry of Ontario for public notice and comment.

RECOMMENDATION 10: The Minister's powers to issue orders under the new subsection 26.1(1) should be subject to notice and hearing.

RECOMMENDATION 11: The proposal to refund fees for failure to meet prescribed standards should be eliminated.

RECOMMENDATION 12: The Ministry should ensure that it has staff with the necessary technical expertise to assess plans regarding mines that pose a high risk to the environment.

RECOMMENDATION 13: The proposed subsection 185.1(1)-(6) providing Crown immunity for actions or inactions regarding the proposed amendments to the *Mining Act* should be deleted.

VIII. SCHEDULE 7: AMENDMENTS TO THE ONTARIO HERITAGE ACT

Comments on Bill 5, *Protect Ontario by Unleashing our Economy Act, 2025*,
Schedule 7, Amendments to the *Ontario Heritage Act*
ERO No. 025-0418

by

Joseph F. Castrilli, CELA Counsel,

A. Overview

Clause 2 of Schedule 7 repeals the current sections 51.2 and 51.3 of the *Ontario Heritage Act* and substitutes requirements modifying inspection and reporting powers under these sections so that, upon ministerial order, inspections may be done for the purpose of assessing whether any artifacts or archaeological sites are on any land, or land under water, in the province. Where they are found, have been removed, or altered, the inspector must report this to the Minister and to the licensee, or to a person who owns the land.

Clause 3 of Schedule 7 adds a new section 61.1 to the *Ontario Heritage Act* authorizing the Minister to make assessment orders directing that no person alter or remove an artifact or any other physical evidence of past human use or activity until a licensee under Part VI of the Act has completed archaeological fieldwork and reported that there is no further cultural heritage value or interest in the site.

Clause 4 of Schedule 7 repeals and replaces section 66 of the *Ontario Heritage Act* with requirements authorizing the Minister to direct that artifacts that have been taken under the authority of a licence or permit be deposited in a public institution to be held in trust for the Ontario public or deposited with an Indigenous community. Clause 4 also amends Section 66 to authorize that seized artifacts and materials in an archaeological collection may be deposited in a public institution, or with an Indigenous community. The amendments also authorize persons who are directed to seize these artifacts to enter premises during business hours, but not dwellings. The Minister is further authorized to direct inspectors or investigators under the Act to seize artifacts or archaeological material during an inspection or investigation and to direct the seizure of artifacts or material in an archaeological collection that were seized in an investigation and subsequently released after a conviction.

Clause 5 of Schedule 7 adds a new section 66.1 that allows the provincial cabinet to exempt property from any requirement in Part VI of the Act, or in related regulations, or exempt it from a requirement to conduct an archaeological assessment under provisions of any other Act or regulation, or instrument under any other Act, subject to certain exceptions. These exemptions may only be granted if the provincial cabinet is of the opinion that the exemption could potentially advance specified provincial priorities, such as housing, infrastructure, or other priorities to be prescribed. Clause 5 of Schedule 7 also adds a new section 66.2, which extinguishes various causes of action, remedies, and proceedings connected to sections 66.1 and 66.2.

Clause 6 of Schedule 7 establishes a new Part VI.1 authorizing investigations under the Act. The Minister is given the power to appoint investigators who may obtain a search warrant and conduct investigations for the purpose of investigating offences or potential offences committed under the *Ontario Heritage Act*, including under exigent circumstances. Clause 6 also authorizes investigators to issue mandatory production orders for documents or data that may provide evidence of an offence.

Clause 7 of Schedule 7 repeals and replaces section 68.3 of the Act with authorities that specify that certain instruments, including regulations and orders made by the provincial cabinet, do not entitle persons to compensation.

Clause 8 of Schedule 7 creates a new section 69.1 that establishes a new two-year limitation period for the prosecution of offences under the *Ontario Heritage Act*. Clause 8 also creates a new section 69.2, which authorizes court orders to prevent, eliminate or ameliorate damage connected to the commission of an offence.

B. Schedule 7 is Reactive Where a Preventive Approach to Heritage Protection is Needed

Schedule 7, if enacted, would establish several new or expanded enforcement measures, in respect of heritage protection, including inspections, assessment orders (as well as exemption from such orders where exemption would advance provincial priorities), search and seizure provisions, investigations, and related authorities. By themselves, such provisions, with some exceptions, look to be on their face appropriate additions to enforcement of heritage protection in the province.

However, understood in the broader context of Bill 5, these measures are predominantly reactive in nature. Consequently, they are fundamentally inadequate in comparison to a preventive approach, which is what is needed to protect cultural heritage values and interests, including those of Indigenous communities.

CELA says this for several reasons. First, the preamble to Bill 5 states in part that the government seeks to:

- Protect Ontario from global economic uncertainty by unleashing our economy;

- Unlock the potential of Ontario's critical minerals by streamlining approval processes for mining and critical infrastructure projects to achieve outcomes that fuel the economy while also creating jobs and protecting the strategic national mineral supply chain for the benefit of the people of Ontario and Canada; and

- Support the acceleration of provincial permitting and approvals for projects so Ontario can build mines and infrastructure faster, while ensuring environmental protection for future generations.

Unleashing the economy, unlocking access to critical minerals, and accelerating the issuance of permits and approvals for mining and infrastructure, are the true purposes of Bill 5. These purposes are what Bill 5 prioritizes, not preventive protection of heritage values and interests.

Second, the one ostensibly preventive provision in Schedule 7, respecting assessment orders, can be disregarded by the government where an exemption from such an order is viewed by the Ontario cabinet as advancing provincial priorities like mining and infrastructure establishment. So, overall, what the Schedule 7 amendments do not advance is preventive protection of heritage values and interests, including, and perhaps particularly, those of Indigenous communities.

Third, the lack of preventive measures in Schedule 7 of the *Ontario Heritage Act* might be of less concern if other statutes, such as the *Environmental Assessment Act* ("*EAA*"), which identifies "cultural conditions" as part of its definition of the environment (s. 1(1) of that Act), and contains

preventive provisions, had not been so whittled down by the provincial government over the years to the point where it is a mere shadow of what a robust environmental assessment regime should look like. Indeed, for all intents and purposes, the *EAA* has not had a meaningful role to play in respect of the mining sector in Ontario for a very long time.

Fourth, there are also a variety of preventive approaches that should have been, but were not, incorporated into Schedule 7 to protect Indigenous community cultural heritage values and interests, particularly as these are the most likely to be interfered with by mining and infrastructure development. These preventive approaches include, but are not limited to, amending the *Ontario Heritage Act* to:

- Define cultural heritage resources to reflect Indigenous worldviews, including defining sites, cultural places, objects, trees, ground, heritage practices, etc., and what desecration or disturbance includes, and what actions constitute destroying or impairing cultural or sacred sites;

- Ensure Indigenous involvement in archaeological assessments;

- Ensure First Nations have sufficient time to review each instrument (i.e., permit, licence, or approval), with the applicable period for review to be decided in consultation with First Nations, and with adequate funding resources from proponents to assist in such reviews;

- Ensure instruments require the consent and signature of impacted First Nations and the provincial government, and should not be approved without the free, prior, and informed consent of First Nations, consistent with article 32 of the *United Nations Declaration on the Rights of Indigenous Peoples* ("*UNDRIP*");[46]

- Prioritize the importance of preserving, protecting, and maintaining cultural heritage resources and places for present and future generations;

- Codify the principle of "minimal impairment" or "least possible alteration, damage, or loss" of cultural heritage resources;

- Create protected area zones, which would also have the effect of protecting not just "sites" or "artifacts" but the land areas between or around cultural heritage resources or places;

[46] Article 32 of the *United Nations Declaration on the Rights of Indigenous Peoples* ("*UNDRIP*"), A/RES/61/295, adopted by the United Nations General Assembly (13 September 2007) states that: (1) Indigenous peoples have the right to determine and develop priorities for development or use of their lands or territories and other resources; (2) states must consult and cooperate in good faith with concerned Indigenous peoples in order to obtain their free and informed consent to the approval of any project affecting their lands or territories, particularly in connection with development, utilization or exploitation of mineral, water or other resources; and (3) states shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures must be taken to mitigate adverse environmental, economic, social, cultural, or spiritual impact.

- Provide for joint decision-making and enabling authority for First Nations to deal with land and resources in their traditional territories, including through development and implementation of Indigenous cultural heritage management plans; and

- Align with the standards and principles of *UNDRIP*.

C. Conclusions and Recommendations

By themselves, clauses 3 to 8 of Schedule 7 represent primarily a reactive approach to heritage protection. What is required, but lacking, in Schedule 7 is a robust preventive approach, particularly with respect to protection of Indigenous community cultural heritage values and interests. Consequently, it is premature for the Legislative Assembly of Ontario to consider the enactment of Schedule 7 of Bill 5. In the absence of amending Schedule 7 along the lines recommended by CELA, set out above, the schedule should not be proceeded with at all.

Accordingly, CELA recommends that:

RECOMMENDATION 14: The government should revise Schedule 7 to make it explicitly preventive in protecting Indigenous heritage, including cultural, religious, and spiritual sites and practices in the ways set out above failing which the government should withdraw Schedule 7.

IX. SCHEDULE 8: AMENDMENTS TO THE REBUILDING ONTARIO PLACE ACT, 2023

Comments on Bill 5, *Protect Ontario by Unleashing our Economy Act, 2025*,
Schedule 8, Amendments to *Rebuilding Ontario Place Act, 2023*
ERO No. 025-0416

by

Joseph F. Castrilli, CELA Counsel,

A. Overview

The explanatory note to Bill 5 describes Schedule 8 in the following terms:

> "The Schedule amends the *Rebuilding Ontario Place Act, 2023* to provide that Part II of the *Environmental Bill of Rights, 1993* ["*EBR*"] does not apply to a proposal to issue, amend or revoke an instrument related to the Ontario Place Redevelopment Project or any enterprise or activity that furthers the Project".

Clause 1 of Schedule 8 states more particularly that pursuant to a new section 9.1 to the Ontario Place law that Part II of the *EBR* would not apply to instruments in respect of any "enterprise or activity that furthers the Ontario Place Redevelopment Project that is not at the Ontario Place site".

Clause 2 of Schedule 8 would authorize the appointment of a person by regulation "to make a determination of whether enterprises or activities further the Ontario Place Redevelopment Project".

B. Implications of Schedule 8

There are two aspects of the Schedule 8 amendments to the *Rebuilding Ontario Place Act, 2023* that are problematic: (1) the rationale for excluding Part II of the *EBR* from applying to any instrument relating to Ontario Place, including in respect of enterprises or activities not at the Ontario Place site; and (2) the criteria to be applied for appointing persons referred to in clause 2, as well as the criteria such persons are to apply in making a determination of whether an enterprise or activity "furthers" the Ontario Place project.

1. Excluding Part II of the *EBR* Undermines Ontario Law on Public Participation

The Part II public participation regime has been described as the heart of the *EBR*. Excluding its application means that the public: (1) will not receive notice of, or have the opportunity to comment on, proposals for instruments that may otherwise cause significant environmental effects; and (2) will not be entitled to seek leave to appeal to the Ontario Land Tribunal the decisions of ministries, such as the Ministry of the Environment, Conservation and Parks ("MECP"), or the Ministry of Natural Resources ("MNR"), to issue instruments potentially having such effects. The Ontario Place project is located at a key land / water interface on Lake Ontario so potential MECP/MNR instruments include, but are not limited to: (1) permits to take water ("PTTW") under the *Ontario Water Resources Act* ("*OWRA*"); (2) environmental compliance approvals ("ECA") for discharges of contaminants to air, land, or water under the *Environmental Protection Act* ("*EPA*"); (3) permits under the *Endangered Species Act* ("*ESA*") allowing interference with species or their habitat that would otherwise be prohibited; and (4) certain permits and licences under the *Aggregate Resources Act* ("*ARA*") for the extraction of aggregate for construction or other purposes. Each of these instruments is classified under *EBR* regulations as instruments that attract the right of members of the public to seek leave to appeal their issuance. Furthermore, providing comment on a proposal for an instrument is one of the key conditions precedent for a member of the public meeting the standing requirements for bringing a leave to appeal application under the *EBR*. In short, these authorities were enacted three decades ago to establish the public's right as a matter of law to involvement in the administrative decision-making process of environmental protection. There are many examples in the intervening 30 years where these provisions have demonstrated their importance in protecting public environmental resources as well as human health from the issuance of premature or meritless instruments. The most recent example of this is *Grassy Narrows First Nation v. Director, Ministry of the Environment, Conservation and Parks*, (OLT – 25 – 000006) (10 March 2025), where the Ontario Land Tribunal granted an applicant First Nation leave to appeal the issuance of a PTTW after finding that: (1) it appeared that there is good reason to believe that no reasonable person could have made the decision to approve the permit; and (2) the decision to issue the permit could result in significant harm to the environment.

In the face of the important purposes served by *EBR* Part II, there is nothing in Bill 5 or Schedule 8 that demonstrates why Part II of the *EBR* should be cast aside in connection with instruments to

facilitate Ontario Place redevelopment, any more than it made sense to not apply the *EBR* to the *Rebuilding Ontario Place Act, 2023* when it was still a bill; a decision that attracted adverse comment from the office of the Auditor General of Ontario in its 2024 audit report:

> "The [*Rebuilding Ontario Place Act, 2023*] exempts the Province from EBR consultation requirements. This meant that MOI [Ministry of Infrastructure] did not have to consult the public under the EBR or consider the public's feedback before the [*Rebuilding Ontario Place Act, 2023*] was passed, even though MOI expected the Act to have environmentally significant implications. The Act gives the Minister of Infrastructure the power to make decisions under the *Planning Act* that could go against provincial policies aimed at protecting the natural environment, and that would not otherwise be permitted" (Auditor General of Ontario, *Ontario Place Redevelopment*, Annual Report 2024, page 82).

These findings of the Auditor General make clear why eviscerating opportunities for public involvement by excluding the application of Part II of the *EBR* to instruments respecting Ontario Place redevelopment is a recipe for unacceptable environmental results contrary to the public interest.

On this ground alone, Schedule 8 should be withdrawn and not further considered by the Legislative Assembly of Ontario.

2. Lack of Criteria in Schedule 8

There is a lack of criteria in clause 2 of Schedule 8 regarding the qualifications of persons appointed, the process respecting their appointment, as well as the criteria such persons are to apply in deciding whether an enterprise or activity "furthers" the Ontario Place project. This type of vagueness, which is also found in other Bill 5 schedules, is particularly problematic in Schedule 8 because of the environmental implications it carries for instruments associated with enterprises and activities that will not be subject to either notice and comment, or leave to appeal opportunities, as noted above.

C. Conclusions and Recommendations

By themselves, the problems with clause 2 speak to a provision that is premature for the Legislative Assembly of Ontario to consider enactment of as part of Schedule 8. However, in conjunction with the extremely serious problems with clause 1, the combined effect is a schedule that should not proceed at all.

Accordingly, CELA recommends that:

RECOMMENDATION 15: Schedule 8 should be withdrawn.

X. SCHEDULE 9: SPECIAL ECONOMIC ZONES ACT, 2025

Comments on Bill 5, *Protect Ontario by Unleashing our Economy Act, 2025*,

Schedule 9, Proposed *Special Economic Zones Act, 2025*
ERO No. 025-0391

by

Jacqueline Wilson, CELA Counsel

A. Summary of Schedule 9 Provisions

Section 2 of Schedule 9 authorizes the Lieutenant Governor in Council to make regulations designating special economic zones and the Minister is authorized under sections 3-4 to make regulations designating trusted proponents and projects.

Under section 5 the Lieutenant Governor in Council is authorized to make regulations exempting a trusted proponent or designated project from requirements under an Act, regulation or other instrument under an Act, including by-laws of a municipality or local board, as those requirements would apply in a special economic zone.

Under section 6 the Lieutenant Governor in Council is also authorized to make regulations modifying the application of provisions of an Act, regulation or other instrument under an Act, including by-laws of a municipality or local board, as those provisions would apply with respect to a trusted proponent or designated project in a special economic zone.

Under section 7 certain causes of action are extinguished.

B. Overview of Concerns

The core constitutional principle of the rule of law requires that legislation cannot seek to provide the government with untrammeled discretion. Yet, the terms of the proposed legislation are vague and do not delineate any limits on the discretionary power of the Lieutenant Governor in Council or Minister to exempt or modify any legal requirements for any special economic zone, any "trusted" proponents, class of trusted proponents, project or class of projects, all of which are not yet defined.

Broad attempts to shield the government from civil liability, including for decisions made in bad faith, should be withdrawn.

1. The Rule of Law is a Constitutional Principle

The principle of constitutionalism and the rule of law "lie at the root of our system of government".[47]

[47] *Reference re Secession of Quebec*, 1998 CanLII 793 (SCC), [1998] 2 SCR 217 at para 70.

The rule of law as a principle encapsulates at least three concepts. First, that the law is supreme over officials of the government as well as private individuals, and thereby preclusive of the influence of arbitrary power. Second, the rule of law requires the creation and maintenance of an actual order of positive laws which preserves and embodies the more general principle of normative order.[48] Third, the exercise of all public power must find its ultimate source in a legal rule.[49]

In *Roncarelli v Duplessis,* 1959 CanLII 50 (SCC), the Supreme Court of Canada held that in public regulation, there is no such thing as absolute or untrammeled "discretion". No legislation can be taken to contemplate unlimited arbitrary power exercisable for any purpose, however capricious or irrelevant, regardless of the nature or purpose of the statute. Discretion necessarily implies good faith in discharging a public duty.[50]

Contrary to the rule of law, Schedule 9 seeks to provide untrammeled discretion to the provincial Lieutenant Governor in Council and the Minister to designate special economic zones, trusted proponents, a class of persons as trusted proponents, designated projects or a class of projects as designated projects, without any legislated criteria or boundaries.[51] Instead, sections 2(2), 3(3) and 4(3) provide untrammeled discretion to the Lieutenant Governor in Council to establish criteria to define these terms by regulation.

Likewise, sections 5 and 6 seek to provide untrammeled discretion to exempt or modify any legislative, regulatory, other instrument, municipal by-law or municipal instrument from applying to a trusted proponent or designated project within a special economic zone.[52]

Without any detail about what legislative, regulatory or other requirements will apply to projects or proponents moving forward, Schedule 9 raises serious concerns about whether the health and safety of people and the environment will be protected.

CELA recommends withdrawing this schedule in its entirety.

2. Indigenous Rights Under Section 35 of the *Constitution Act, 1982* and *UNDRIP*

Schedule 9 conspicuously does not mention Indigenous legal rights, including: (1) the inherent right to self-determination; (2) section 35 constitutional protections for "Aboriginal and treaty rights"[53]; or (3) the standards and principles of *UNDRIP*.[54] Likewise, a key principle entrenched in several *UNDRIP* provisions is the requirement for governments to obtain the free, prior, and informed consent of Indigenous communities before approving or undertaking activities that may adversely affect Indigenous lands or resources.

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[48] *Reference re Manitoba Language Rights*, [1985] S.C.J. No. 36, [1985] 1 SCR 721 at paras 59-60.
[49] *Reference re Secession of Quebec*, 1998 CanLII 793 (SCC), [1998] 2 SCR 217 at para 71.
[50] *Roncarelli v Duplessis,* 1959 CanLII 50 (SCC) at p 140.
[51] Bill 5, *Protect Ontario by Unleashing our Economy Act, 2025,* Schedule 9, ss. 2, 3, 4.
[52] Bill 5, *Protect Ontario by Unleashing our Economy Act, 2025,* Schedule 9, ss. 5 and 6.
[53] *Constitution Act, 1982,* Schedule B to the *Canada Act, 1982,* 1982 c 11 (UK), s 35.
[54] *United Nations Declaration on the Rights of Indigenous Peoples* ("*UNDRIP*"), A/RES/61/295, adopted by the United Nations General Assembly (13 September 2007).

Schedule 9 does not include any non-derogation clause, which itself is insufficient to safeguard Indigenous rights, lands and interests.

In the context of legislation which seeks to provide untrammelled discretion to the provincial government to exempt any special economic zone from any law, regulation, instrument, municipal by-law or municipal instrument, and the strong potential for severe adverse impacts on Indigenous communities, CELA recommends that Schedule 9 be withdrawn. However, if Ontario Schedule 9 is proceeded with it should be amended to explicitly entrench *UNDRIP*, including the principle of free, prior and informed consent. Also, CELA notes that section 35 of the *Constitution Act, 1982* will continue to apply and must be respected by the government in any decisions made under this Act.

3. Concerning Limits to Municipal Legal Authority

Subsection 5(2) and subsection 6(2) of Schedule 9 allow for the Lieutenant Governor in Council, by regulation, to exempt or modify requirements for trusted proponents or designated projects within a special economic zone from compliance with any municipal by-law or municipal instrument.[55]

Broad statutory authority enables a municipality to govern its affairs as it considers appropriate and to enhance its ability to respond to municipal issues.[56] Schedule 9 seeks to provide the province with untrammeled discretion to exempt or modify municipal by-laws and municipal instruments from any trusted proponents or designated projects within special economic zones, raising additional concerns about whether the health and safety of persons and the environment will be protected.

4. Limits on Civil Liability Are Too Broad

Section 7 of Schedule 9 seeks to provide broad limits on civil liability, including with respect to "bad faith" or a breach of trust or fiduciary obligation.[57]

In 1989, the Ontario Law Reform Commission conducted a comprehensive review of the *Proceedings Against the Crown Act*, and reported to the Attorney General of Ontario that such legislation should create more (not less) Crown liability for the following reasons:

> In our view, the present law governing liability of the Crown, insofar as it still provides privileges and immunities not enjoyed by ordinary persons, is opposed to popular and widely-held conceptions of government. We share a deeply-held notion that the government and its officials ought to be subject to the same legal rules as private individuals and, in particular, should be accountable to injured citizens for unauthorized action. This is a notion that lies at the heart of the "rule of Law" and of "constitutionalism"

[55] Bill 5, Schedule 9, ss. 5(2), 6(2).
[56] *Municipal Act, 2001*, SO 2001, c 25, s.8.
[57] Bill 5, Schedule 9, s 7.

> as those concepts have been conventionally understood in the common law world. An important, if not central, aspect of this concept is the fact that the application of ordinary principles of law to government is placed in the hands of the ordinary courts. The courts are perceived to be independent of government and therefore capable of being relied upon to award an appropriate remedy to a person who has been injured by illegal government action (emphasis added).[58]

Similarly, the Ontario Law Reform Commission report concluded:

> [A]t this point we think it is important to indicate that, as a matter of general principle, we believe that the Crown should be subject to the same law as any other person, and that any exception to this general rule must be clearly justified. Accordingly, our general and central recommendation is that the privileges of the Crown in respect of civil liabilities and civil proceedings should be abolished, and the Crown and its servants and agents should be subject to all the civil liabilities and rules of procedure that are applicable to other persons who are of full age and capacity…. However, we wish to emphasize that this recommendation is intended to apply with respect to all causes of action, including tort, contract, restitution and breach of trust (emphasis added).[59]

The proposed Schedule 9 limitations on Crown liability are heading in the wrong legal and policy direction, by adding special immunities for the Crown to use untrammeled discretion, including in instances of bad faith.

C. Conclusion and Recommendation

CELA is strongly opposed to the proposed legislation, which does not respect the rule of law and which seeks to provide untrammeled discretion to government to exempt or modify the application of any law, regulation, instrument, municipal by-law or municipal instrument in special economic zones.

CELA is also strongly opposed to attempts to prohibit virtually all types of civil claims against the Crown for acts or omissions that directly harm Ontarians, including instances of bad faith. This attempt to limit liability is unnecessary and unduly impairs access to justice in Ontario.

Accordingly, CELA recommends that:

RECOMMENDATION 16: Schedule 9 should be withdrawn.

XI. SCHEDULE 10: SPECIES CONSERVATION ACT, 2025

Comments on Bill 5, *Protect Ontario by Unleashing our Economy Act, 2025*, Schedule 10, Proposed *Species Conservation Act, 2025*

[58] Ontario Law Reform Commission, Report on the Liability of the Crown (Toronto: OLRC, 1989) at 2-3
[59] *Ibid*, at 6

ERO No. 025-0380

by

Richard D. Lindgren, CELA Counsel

A. Overview of Schedule 10 Provisions

Schedule 10 of Bill 5 proposes the enactment of the new *Species Conservation Act* ("*SCA*"). As discussed above in relation to Schedule 2, the *SCA* is intended to repeal and replace the *ESA* and serve as the province's primary line of defence for species at risk and their habitat (section 68, *SCA*). All existing regulations under the *ESA* will also be revoked if Schedule 10 is enacted (section 69, *SCA*).

At first glance, it appears that the *SCA* proposes to import many of the key features of the *ESA* (e.g., MECP administration, COSSARO classification, regulatory listing of species at risk, permitting process, inspection/enforcement provisions, etc.). To the extent that the *SCA* incorporates much of the same legislative architecture as the amended *ESA*, CELA reiterates and adopts the above-noted concerns raised about Schedule 2 (e.g., inappropriate delegation of Ministerial powers and duties, abolition of automatic listing of species at risk, regressive changes to permitting, loss of multi-stakeholder advisory committee, etc.). However, for reasons outlined below, a close examination of the *SCA* reveals that its statutory regime is even weaker and more problematic than the current or amended *ESA*.

B. Concerns With Schedule 10

1. Unacceptable and Inconsistent Statement of Purpose

Schedule 10 proposes that the current preamble in the *ESA* should not be replicated in the *SCA*, which does not contain a preamble at all. As a matter of law, preambles confer no enforceable duties or powers but they nevertheless serve as useful aids to statutory interpretation. In addition, preamble recitals typically provide the policy-based justification for the statute and offer important insight on the issues, concerns, or problems that the legislature intends to address by enacting the statute.

For example, the current *ESA* preamble refers to various significant matters, including the need for biodiversity conservation, the alarming species losses caused by human activities, and the precautionary principle entrenched in the United Nations Convention on Biological Diversity. In contrast, the *SCA* contains no preamble and is completely silent on these key matters.

Schedule 10 goes on to propose that the purpose of the *SCA* should be framed as follows:

> **1** The purposes of this Act are,

> (a) to identify species at risk based on the best available scientific information, including information obtained from community knowledge and Indigenous traditional knowledge; and
> (b) to provide for the protection and conservation of species while taking into account social and economic considerations, including the need for sustainable economic growth in Ontario.

In CELA's view, both parts of this stated purpose are unacceptable. For example, section 1(a) merely commits to the "identification" of species at risk, but makes no reference to the equally compelling need for the Ontario government to actually take steps to protect their habitat and to ensure the recovery of such species. On this point, CELA notes that these key objectives are built into the purpose[60] of the current *ESA*, but they are conspicuously absent from section 1(a) of the *SCA*.

CELA acknowledges that the opening clause of section 1(b) of the *SCA* vaguely refers to the "protection and conservation of species," but it does not indicate if this refers to all wildlife species or just species at risk. If the former, it is unclear how the *SCA* will interact with other wildlife management statutes such as the *Fish and Wildlife Conservation Act* or the wildlife/habitat/natural heritage policies set out the Provincial Policy Statement 2024 issued under the *Planning Act*. If the latter, then CELA notes that section 1(b) similarly lacks any express reference to habitat protection and recovery measures.

More fundamentally, the opening clause in section 1(b) is undoubtedly diluted or undermined by the phrases which follow it and appear to place legislative priority on socio-economic considerations (i.e., the alleged need for "economic growth") rather than protection and conservation of species. The juxtaposition of protection/conservation commitments and socio-economic considerations in section 1(b) is internally inconsistent and will likely prove intractable in practice as decision-makers struggle to implement both competing elements of section 1(b) when administering the *SCA*.

As a matter of statutory interpretation, legislative statements of purpose are important because when confronted with ambiguous provisions which are reasonably capable of more than one meaning, courts typically try to select the meaning that best achieves the stated purpose of the legislation. In relation to the *SCA*, judicial interpretation of its statutory provisions will likely prove to be exceptionally difficult since the two disparate parts of the purpose statement are fundamentally at odds with each other. Moreover, there is a risk that the socio-economic aspect of the development-driven purpose in section 1(b) will be given primacy over the protective element of section 1(a).

On this point, CELA submits that protecting species at risk cannot be "traded off" or "balanced" against the perceived need for more economic growth across Ontario. In our view, protecting species at risk is the higher priority and it should effectively constrain economic development and resource extraction, rather have development or resource extraction constrain species protection.

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[60] *ESA*, section 1, paras 2 and 3.

In short, Ontarians can enjoy economic prosperity without driving species to extinction or destroying or reducing the diverse habitats required by species at risk.

2. Problematic Definition of "Habitat" under the SCA

The *SCA* proposes to bring forward the same problematic definition of "habitat" from the *ESA* if it is amended by Schedule 2 of Bill 5. However, as discussed above in relation to Schedule 2, the proposed *SCA/ESA* definition of "habitat" is excessively narrow, omits other types of habitat needed by animal species in addition to "residences," reduces the scope and effectiveness of the legislation, and represents an unjustifiable rollback of the existing definition of "habitat" under the current *ESA*.

Schedule 10 then provides a further gloss on the new definition of "habitat" by specifying that "for greater certainty, the definition of 'habitat' in subsection (1) does not include an area where the species formerly occurred or has the potential to be reintroduced unless existing members of the species depend on that area to carry on their life processes" (section 1(2) of *SCA*). This provision is modelled on an existing provision in the current *ESA*, but it undoubtedly provides a further (and needless) restriction on the interpretation and application of "habitat" for the purposes of *SCA* implementation.

3. Ineffective Non-Derogation Clause

Schedule 10 proposes that the *SCA* should include the following non-derogation clause:

> **3** For greater certainty, nothing in this Act shall be construed so as to abrogate or derogate from the protection provided for the existing Aboriginal or treaty rights of the Aboriginal peoples of Canada as recognized and affirmed in section 35 of the *Constitution Act, 1982*.

A similar non-derogation clause exists in section 46 of the current *ESA* as well as other provincial statutes.[61] However, CELA submits that this sparse (if not "boilerplate") provision will do little or nothing to actually safeguard Indigenous rights, lands, and interests during the decision-making under, and the on-the-ground implementation of, the *SCA*.[62]

This concern is based on CELA's experience in representing First Nations in courts or before tribunals in cases where Crown representatives have issued environmental licences, permits, or approvals for projects or activities which cause direct, indirect and cumulative effects upon First Nations and the exercise of their constitutionally protected rights. This casework includes the provincial issuance of permits under section 17 of the current *ESA* in relation to species and habitat relied upon by our clients for the exercise of Aboriginal/treaty rights (e.g., hunting, trapping, etc.) as well as for their sense of self and identity, culture, wellbeing, health, and economy.

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[61] See, for example, the *Clean Water Act, 2006* (section 82), *Crown Forest Sustainability Act, 1994* (section 6), *Great Lakes Protection Act, 2015* (section 2), and *Provincial Parks and Conservation Reserves Act, 2006* (section 4).

[62] CELA has the same concern about other schedules in Bill 5 that, if enacted, may adversely affect Indigenous rights, lands, and interests (i.e., Schedule 9).

CELA has a number of concerns about the *SCA*'s non-derogation clause. First, while this clause refers to existing Aboriginal/treaty rights, Indigenous communities in Ontario also have inherent right to self-determination and law-making powers that are ancillary to self-determination. Such inherent rights are recognized in international instruments including *UNDRIP*, to which Canada is a signatory. However, the *SCA* conspicuously lacks any reference to, or adoption of, *UNDRIP*, and similarly fails to recognize the inherent right of Indigenous communities to self-determination. In our view, one option for incorporating *UNDRIP* under the *SCA* would be to entrench it in the provision that currently specifies that the Crown is bound by the Act (section 7 of *SCA*). As a matter of law, it is open to the Legislative Assembly to adopt *UNDRIP* by cross-reference in the *SCA* (and other provincial laws), and doing so would undoubtedly assist in protecting constitutionally protected Indigenous rights and advancing the reconciliation agenda in Ontario.

Second, a key principle entrenched in several *UNDRIP* articles is the requirement for governments to obtain the free, prior, and informed consent ("FPIC") of Indigenous communities before approving or undertaking activities that may adversely affect Indigenous lands or resources. For example, Article 32 of *UNDRIP* provides that:

> 1. Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.
> 2. States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.
> 3. States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.

However, the *SCA* does not codify (or even mention) the FPIC principle when decisions are being made under the legislation that may adversely affect Indigenous communities (e.g., approval of harmful "permit activities", as discussed below). In our view, this is an egregious omission from the *SCA*, particularly since destructive activities that may be permissible under the *SCA* (e.g., habitat loss or degradation within traditional use lands outside of reserves) may adversely impact Indigenous interests. In fact, the only references to the word "Indigenous" in the *SCA* are in relation to traditional knowledge, not Indigenous rights, lands or interests (sections 1, 9(3)(b) and 11(2) of *SCA*).

Third, Canadian jurisprudence under section 35 of the *Constitution Act, 1982* firmly establishes that the Crown's duty to consult, accommodate, and obtain consent is triggered when the Crown has knowledge, real or constructive, of the potential existence of an Aboriginal/treaty right and contemplates conduct that might adversely affect it. The degree of consultation required depends on the strength of the Indigenous claim and the seriousness of the potential impact on the rights. Consent is required at the high end of the consultation spectrum when the strength of the

Indigenous claim and/or the seriousness of the potential impact are high.[63] However, the Crown's duty to consult, accommodate, and obtain consent is not discussed or even mentioned in the *SCA*.

For the foregoing reasons, CELA concurs with the serious concerns raised by Indigenous communities and organizations about the potentially deleterious impacts of the *SCA* (and other schedules in Bill 5) on Indigenous rights, lands, and interests in Ontario.[64]

4. Unjustified Non-Application of the SCA to Migratory Birds and Aquatic Species

Schedule 10 proposes that the *SCA* and its regulation will generally not apply to migratory birds and certain aquatic species:

> **4** Unless otherwise provided in this Act or the regulations, this Act and the regulations do not apply with respect to the following species, if the species is listed as extirpated, endangered or threatened on the List of Wildlife Species at Risk under the *Species at Risk Act* (Canada):
> 1. Species of birds protected by the *Migratory Birds Convention Act, 1994* (Canada).
> 2. Aquatic species as defined in subsection 2(1) of the *Species at Risk Act* (Canada).

No such provision exists with the current *ESA*, which means that migratory birds and aquatic species found on the Ontario List of Species at Risk generally receive the benefit of the *ESA* if they (or their habitat) are present in the province.

However, the Ontario has presented no evidence-based reasoning to rationalize its attempt to oust so-called "federal species" from the coverage of the *SCA*. In our opinion, from a division-of-powers perspective, there is no constitutional impediment for the same species to concurrently receive protection under both the *ESA* and *SARA*, provided there is no operative conflict between the two statutes (in which case the doctrine of paramountcy means that the federal law prevails over the provincial law to the extent of the inconsistency). This species-related concurrency is analogous to having the same body of water protected by federal laws (i.e., *Fisheries Act*) and provincial laws (i.e., *Ontario Water Resources Act*) which have been validly enacted under the governments' respective heads of power under sections 91 and 92 of the *Constitution Act, 1867*.

5. Restricted COSSARO Role and Permissive Species Listing Authority

Similar to Schedule 2 of Bill 5, Schedule 10 proposes to retain COSSARO in the *SCA* regime but effectively limits its role to gathering information, classifying species, and otherwise providing reports and advice to the Minister (sections 9 to 13 of *SCA*). However, it is ultimately up to Cabinet ministers to decide which species (if any) actually get added to, uplisted/downlisted, or removed from the regulatory Protected Species in Ontario List (section 14 of *SCA*). On this point, the *SCA* expressly gives Cabinet permissive authority to "deviate" from COSSARO classifications without

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[63] *Haida Nation v. British Columbia (Minister of Forests)*, 2004 SCC 73 at paras 35 and 44-45; *Rio Tinto Alcan Inc v. Carrier Sekani Tribal Council*, 2010 SCC 43 at para 31.

[64] See, for example, First Nations rights cannot be 'unleashed,' say First Nations Leadership following province's proposed development legislation - Chiefs of Ontario, and Indigenous leaders call on Ford to halt mining bill, consult - The Trillium.

providing any reasons or explanation (section 14(2) of *SCA*). In addition, there is no express deadline or timeframe in section 14 for Cabinet to make (or amend) the listing regulation, which creates more uncertainty about which (and when) species will be listed under the *SCA*.

For the reasons described above in relation to Schedule 2, CELA submits that giving Cabinet virtually unfettered discretion over listing decisions under the *SCA* is an unjustifiable rollback from the current *ESA*. The automatic listing process under the current *ESA* is widely regarded by civil society as a long-standing strength of the current law. Accordingly, the *SCA*'s meagre stipulation that Cabinet "may" make a listing regulation for extirpated, endangered, or threatened species represents an unacceptable and unaccountable substitute for the current listing process.

In addition, there is considerable uncertainty about which specific species will be listed under the new *SCA* regime. It is noteworthy that when the current *ESA* was enacted in 2007, it contained several schedules that provided the starting point for the listing of species at risk under the legislation. In contrast, the *SCA* provides no schedules identifying the species under consideration for inclusion in (or exclusion from) the new regulation.

CELA further notes that unlike Schedule 4 in O. Reg.230/07 under the *ESA*, the new *SCA* listing regulation (if made) will not list species of special concern. Moreover, the *SCA* does not make it mandatory for the government to develop management plans for such species (which is currently required by section 12 of the current *ESA*). This represents another lamentable rollback of current safeguards in the *ESA* for species that may become threatened or endangered.

6. Removal of Traditional Prohibitions Against Harm and Habitat Destruction

The current *ESA* contains two general prohibitions which arguably serve as the centrepiece of the legislation: (a) the section 9 prohibition which, among other things, provides that no person shall "kill, harm, harass, capture or take a living member of a species that is listed on the Species at Risk in Ontario List as an extirpated, endangered or threatened species"; and (b) the section 10 prohibition which provides that "no person shall damage or destroy the habitat" of an endangered, threatened, or certain extirpated species.

Alarmingly, these two broad prohibitions are not being carried forward into the *SCA*. Instead, Schedule 10 proposes two new (and much narrower) prohibitions: (a) the section 15 prohibition that "no person shall engage in an activity that is likely to result in a species no longer living in the wild in Ontario"; and (b) the section 16 prohibition that no person shall engage in a "registerable activity" or "permit activity" unless they are duly registered or obtain a *SCA* permit as may be applicable. In CELA's view, both of these new prohibitions are objectionable in principle and unworkable in practice, especially considering the number of exceptions to the section 16 prohibition (section 16(3) of *SCA*).

First, the section 15 prohibition contains no reference to killing or harming individual members of a species at risk or destroying or damage their habitat, which constitutes the greatest threat to such species. Instead, section 15 seems directed at protecting species from becoming extirpated in Ontario. While this may be a laudable objective, the vague wording of section 15 may render it virtually unenforceable. Unlike section 9 of the *ESA*, this new prohibition is not aimed at individual

members of the species but is instead targeting unspecified activities that "likely" pose a population-level threat to the species as a whole. However, in cases involving individual takings of species members or localized habitat harm, it may be exceptionally difficult to prove, beyond a reasonable doubt, that the defendant's alleged misconduct will likely cause the entire Ontario population to suddenly become extirpated. For this reason alone, CELA concludes that this *SCA* prohibition is inadequate and ineffective, and it represents an unjustifiable rollback from sections 9 and 10 of the current *ESA*.

Second, the only species that are facing extirpation (or extinction) in Ontario are, by *SCA* definition, species that are classified and actually listed as endangered (see section 11 of *SCA*). Accordingly, the section 15 prohibition does not provide any meaningful protection for threatened species or species of special concern, or their respective habitats.

Third, the section 16 prohibition regarding "registrable activity" and "permit activity" presents its own set of interpretive difficulties and intractable problems. For example, there is currently no identification in the *SCA* of precisely which activities (or sectors) will be "registrable," what the applicable standards or requirements will be applicable, or which site-specific types of harm to species at risk will be permissible (and where) upon merely self-registering with the MECP. However, the *SCA* provides the following definition of "section 16 activity", which means that individuals and corporations may be free to undertake the following harmful conduct as long as they first obtain a permit or "register" with the MECP on the new Registry (sections 17and 18 of *SCA*):

> "section 16 activity" means,
> (a) any activity that results or is likely to result in,
> (i) the killing, harming, capturing or taking of a member of a species that is listed on the Protected Species in Ontario List, or
> (ii) damage to or destruction of the habitat of a species that is listed on the Protected Species in Ontario List,
> (b) possessing, transporting, collecting, buying, selling, leasing, trading or offering to buy, sell, lease or trade,
> (i) a living or dead member of a species that is listed on the Protected Species in Ontario List, or
> (ii) anything derived from a living or dead member of a species referred to in subclause (i), or
> (c) selling, leasing, trading or offering to sell, lease or trade anything that a person represents to be a thing described in subclause (b) (i) or (ii).

Given the wide scope and deleterious nature of these permissible section 16 activities, CELA strongly objects to the ill-conceived "permit-by-rule" approach embedded in the *SCA*. In our view, the province-wide implementation of this risk-laden approach is not consistent with conserving biodiversity and ensuring the recovery of species at risk. To the contrary, this *laissez-faire* approach is likely to result to result in more – not less – species being pushed to the brink of extirpation or extinction. In short, activities that are currently subject to the section 9 and 10 prohibitions in the *ESA* will be allowed to occur under the *SCA* pursuant to the proposed

registration system. CELA submits that this approach is contrary to the public interest and must be discontinued and disavowed by the Ontario government.

Fourth, the *SCA*'s proposed self-registration system is reminiscent of the MECP's questionable Environmental Activity and Sector Registry System ("EASR") used under the *Environmental Protection Act* and *Ontario Water Resources Act*. Over the years, CELA and other environmental groups[65] have raised numerous concerns about the EASR which are directly relevant to the *SCA*'s proposed registration system, such as: (a) registration is not a prescribed instrument under the *EBR*, which means there are no mandatory public notice, comment, or third-party appeal opportunities if registration is applied for by individuals or corporations and granted by the MECP; (b) there are well-founded concerns about the MECP's willingness or institutional ability to conduct frequent proactive inspections to determine registrants' compliance with applicable requirements; (c) allowing numerous registrations without any rigorous upfront analysis raises concerns about assessing the cumulative impacts of registered activities; and (d) relying upon registration and setting generic standards means the Ministry is generally depriving itself of the legal ability to impose appropriate terms/conditions which are tailored to meet site-specific circumstances or local concerns arising from particular activities. The 2024 *EBR* report by the Auditor General of Ontario raised similar concerns about the MECP's proposed expansion of the EASR program.[66] In our view, these key concerns are not satisfactorily addressed by the Minister's unfettered administrative discretion under the *SCA* to issue (or not issue) "mitigation orders" to registrants (or permit holders) engaged in section 16 activities (section 36 of *SCA*), or to issue (or not issue) "habitat protection orders" (section 37 of *SCA*). CELA further notes that both types of orders are subject to appeals by orderees to the Ontario Land Tribunal (section 42 of *SCA*).

Fifth, similar concerns exist in relation to "permit activities" (sections 16(2) and 20 to 22 of *SCA*) which are also not identified with precision under the *SCA* because they must be prescribed by regulations which do not exist at the present time. Similarly, permit applications must be prepared and submitted in accordance with prescribed conditions, and may be subject to unknown regulatory requirements, which again have not yet been promulgated by the province. On this point, it would have been helpful for public review and comment purposes if the Ontario government released draft regulations to accompany the proposed *SCA* so that interested persons can better understand the intended implementation of the new regime. Given the potentially broad reach of the *SCA* registration system, it is unknown at this time which specific activities (if any) that may be prescribed in order to require permits under the *SCA*. In any event, CELA reiterates and adopts its above-noted Schedule 2 concerns regarding the overuse of species-at-risk permitting.

Sixth, aside from the above-noted registration and permitting provisions, the *SCA* omits several important instruments that currently exist in the *ESA*. For example, the *SCA* does not place any enforceable duty on the Ontario government to develop recovery strategies, government response documents, and progress reports for listed species at risk. Similarly, the *SCA* makes no provision for the stewardship agreements and landscape agreements that are available under the current *ESA*. As discussed above, the *SCA* also fails to require the Ontario government to prepare management

[65] CELA submission - with endorsements - permit-by-rule expanding and streamlining proposal - 30October2023.pdf.
[66] Operation of the Environmental Bill of Rights, 1993, pages 29-30.

plans for species of special concern to ensure that they do not become threatened, which is currently required under the *ESA*. In the absence of these important statutory obligations, the *SCA* can only be viewed as fundamentally flawed and wholly unacceptable.

7. Erroneous Inclusion of "Mistake of Law" Defence

Section 23 of the *SCA* proposes to include the existing *ESA* prohibition (section 49 of *ESA*) against species-related activities that are contrary to laws of other jurisdictions. However, since "jurisdiction" is undefined under the *SCA*, it is unclear whether this provision refers to laws passed by the federal government, provincial or territorial governments, or Indigenous governing bodies.

More importantly, CELA is concerned that section 23(4) attempts to codify "mistake of law" as a defence to charges under this section if the defendant "honestly and reasonably believed that the law of the other jurisdiction" did not prohibit their alleged conduct. In Canada, it is well-established that ignorance of the law is not a valid excuse for contravening the law, but may be considered as a mitigating factor during sentencing. This principle was affirmed in 2018 by the Supreme Court of Canada[67] as follows:

> [64] A mistake of law is a legal concept with rigorous requirements. In my view, it occurs only where a person has an honest but mistaken belief in the legality of his or her actions. Although it is not a defence to a criminal charge (s. 19 of the *Criminal Code*; *R. v. Forster*, 1992 CanLII 118 (SCC), [1992] 1 S.C.R. 339, at p. 346), mistake of law can nevertheless be used as a mitigating factor in sentencing (see *R. v. Pontes*, 1995 CanLII 61 (SCC), [1995] 3 S.C.R. 44, at para. 87; *R. v. MacDonald*, 2014 SCC 3, [2014] 1 S.C.R. 37, at para. 61; *Kenny's Outlines of Criminal Law* (19th ed. 1966), by J. W. Cecil Turner, at pp. 61-62). This is because offenders who honestly but mistakenly believe in the lawfulness of their actions are *less* morally blameworthy than offenders who — in committing the same offence — are unsure about the lawfulness of their actions, or know that their actions are unlawful.
>
> [65] Confusion or uncertainty as to the lawfulness of one's actions does not, in my view, meet the legal requirements for mistake of law. However, such confusion may still be relevant to the sentencing analysis depending on the facts of the particular case. Its mitigating effect, if any, will necessarily be less than in a situation where there is a true mistake of law (emphasis added).

In light of this ruling, CELA submits that the *SCA* should not recognize "mistake of law" as an affirmative defence to charges under section 23.

C. Recommendation

Arising from the foregoing, CELA recommends that:

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[67] *R v Suter*, 2018 SCC 34.

RECOMMENDATION 17: The Ontario government should withdraw Schedule 10 of Bill 5. In the alternative, if Schedule 10 is enacted and proclaimed into force, then the *Species Conservation Act* should be prescribed as being fully subject to all parts of the *Environmental Bill of Rights*.

XII. CONCLUSIONS

Bill 5 will unleash significant problems by undermining procedural and substantive provisions of various environmental, species, and heritage protection laws in a manner that will introduce material economic, environmental, social, and cultural uncertainty, as well as derogate from the legal and constitutional rights of members of the Ontario public, including Indigenous peoples, particularly vulnerable to such actions. In short, the Ontario legislature should take care that special economic zones created under the authority of Bill 5 do not end up being little more than law-free sacrifice zones that severely impact the most vulnerable in Ontario society.

Overall, it is CELA's submission that all of the Bill 5 schedules, with minor exceptions, should be withdrawn and not further considered by the Legislative Assembly of Ontario until they are substantially modified to ensure robust protection for the environment, human health, and vulnerable members of the Ontario public, including Indigenous peoples, who may otherwise be harmed by the amendments contained in the various schedules.

The particular recommendations for each schedule are consolidated in Part II of these submissions and also appear throughout the document.