



Proposed Regulations to the *Special Economic Zones Act, 2025*, and the *Ontario Heritage Act*

Submitted to: Ministry of Economic Development,
Job Creation and Trade & Ministry of
Citizenship and Multiculturalism

Submitted by: Ontario Bar Association

Date: November 14, 2025





Table of Contents

Introduction.....	3
Ontario Bar Association.....	3
Comments & Recommendations.....	4
Special Economic Zones Proposed Criteria	4
General Comment.....	4
The Honour of the Crown and Section 35 Rights.....	5
Rule of Law	6
Proposed Project Criteria.....	7
Proposed Proponent Criteria.....	8
Proposed Zone Criteria.....	9
Ontario Heritage Act	9



Introduction

The OBA appreciates the opportunity to provide feedback on the proposed regulations for Special Economic Zones under the *Special Economic Zones Act, 2025*, and proposed regulations to the archaeological exemption criteria under the *Ontario Heritage Act*.

Ontario Bar Association

Established in 1907, the OBA is the largest and most diverse volunteer lawyer association in Ontario, with close to 16,000 members, practicing in every area of law in every region of the province. Each year, through the work of our 40 practice sections, the OBA provides advice to assist legislators and other key decision-makers in the interests of both the profession and the public and we deliver over 325 in-person and online professional development programs to an audience of over 20,000 lawyers, judges, students, and professors.

This submission was prepared and reviewed by members of the OBA's Aboriginal Law, Business Law, Municipal Law, and Environmental Law sections. Members of these sections include barristers and solicitors in public and private practice in large, medium, and small firms, and in-house counsel across every region in Ontario. These members have extensive experience with municipal and regulatory processes of projects and section 35 Aboriginal and Treaty rights.



Comments & Recommendations

Special Economic Zones Proposed Criteria

General Comment

The proposed criteria for projects, proponents, and zones are too high-level and lack specificity. Some examples of this include:

Proposed Project Criteria – includes considerations like the benefit to communities within the zone and in the broader area, whether there are plans that address strategy, finance and communications, and whether a project will leverage the resources of local businesses.

Proposed Proponent Criteria – includes considerations like demonstrating a history of working successfully with Indigenous communities, and reputable compliance records.

Proposed Zone Criteria – includes considerations like containing strategic economic activities.

While all the above considerations are important, more information is needed. What will be considered a benefit to communities and what threshold is required to meet those criteria? Are negative impacts considered and weighed against potential benefits? What strategy, finance and communication plans will meet the threshold and what information, level of detail, or guarantees are required? What will rise to the level of strategic economic activities?

There is also a lack of detail regarding process. What is the process for applying to be considered for an SEZ? What is the review process and who makes the determination? Currently, the proposed regulations simply make this a Ministerial decision. Clear processes are needed, and an independent and non-political group should be providing recommendations to the Minister in a transparent way. Decisions and an explanation of why certain criteria were found to be met or not met should be provided to the public.



Clearly defined criteria and processes will bring certainty and allow lawyers to better advise clients with respect to SEZs.

The Honour of the Crown and Section 35 Rights

The honour of the Crown is a foundational legal principle in Canada and it is always at stake when engaging with Indigenous communities. It mandates that the government and its agencies act with integrity, fairness and in good faith when dealing with Indigenous communities. It is through this legal principle that other specific legal obligations arise, including the Duty to Consult and Accommodate (“**DtCA**”), and implementation of the United Nations declaration on the Rights of Indigenous Peoples.¹

It is important to recognize that section 35 Aboriginal and Treaty rights are guaranteed by the Constitution and cannot be waived or limited by the provincial government. Any infringement of a section 35 right must be justified. One of the steps in justification is consultation with the impacted Indigenous Community. It is also critical to note that, despite the requirement for proposed proponents to have engagement plans in place to work with Indigenous communities, that the DtCA, ultimately rests with the Crown.²

Section 35 rights should be front ended in this process through meaningful engagement with impacted or potentially impacted Indigenous communities, and community benefit agreements should be sought. In many cases the DtCA is triggered by a permitting or application process or necessity for approval and suspending these requirements could complicate the process and lead to project delays. The creation of an SEZ could be considered Crown action which triggers the DtCA, and other actions may require ongoing consultations. While the legislative process itself is not subject to the DtCA, any act which

¹ UNDRIP has been given the force of Canadian law through the *United Nations Declaration on the Rights of Indigenous Peoples Act*, S.C. 2021, c. 14 [“UNDA”].

² *Clyde River (Hamlet) v. Petroleum Geo-Services*, 2017 SCC 40; *Chippewas of the Thames First Nation v. Enbridge Pipelines*, 2017 SCC 41; *First Nation of Nacho Nyak Dun v. Yukon*, 2017 SCC 58 and *Ktunaxa Nation v. British Columbia*, 2017 SCC 54.



comes out of that must be justified. It would be advisable to include a requirement to proactively consult on an act that would normally require a permit, application, or other step that typically triggers a DtCA in the normal case, even if suspended for the particular SEZ.

Rule of Law

The Rule of Law requires that governments be accountable and answerable for their actions, that the law applies to everyone equally, that laws be public and clear, and that rights are protected. By allowing specific projects, proponents, and zones to suspend or modify laws of general application on a case-by-case basis, the Rule of Law is implicated.

Furthermore, by extinguishing causes of action, barring remedies and proceedings, and not constituting any actions taken as expropriation or injurious affection, there is little recourse available. There should be clear and meaningful routes to appeal and review decisions to ensure procedural fairness and transparency in decisions.

Given Bill 5 has already received Royal Assent, the regulations should ensure the responsible use of powers through: minimal impairment (use of the powers should be limited to the minimum necessary to meet the objectives); clear benefit (a clear and achievable benefit should be identifiable); and a demonstrated responsibility of proponents (proponents should have a strong record of compliance and be able to identify and be required to adhere to high internal standards for compliance on an ongoing basis). Where possible, a requirement to adhere to demonstrated standards, which should generally meet requirements that would otherwise be ensured through regular processes (i.e. permitting) should be included in the regulations to make breaches privately actionable as negligent exercise of statutory authority.



Proposed Project Criteria

As stated above, the proposed criteria are very general and high-level. The criteria could apply to anything from massive provincial or international scale projects to localized projects within a community. Consideration should be given to including a *de minimis* type standard to focus on significant projects. This would align with the policy objective of SEZ projects to have significant and long-term economic benefits for Ontario. It would also ensure the Ministry is not overwhelmed with applications or requests that do not achieve the desired outcomes or align with the policy intent of the legislation.

When assessing the impact of a zone or project, potential downsides should be considered in addition to potential benefits. The criteria appear to take a utilitarian lens for assessing projects – the good of the majority outweighing the rights or detriments of the minority. Local communities where an SEZ is granted would likely bear the brunt of any negative repercussions of suspending or modifying laws including environmental impacts, impacts to local land-use planning, municipal revenues, infrastructure, and more. For example, if the *Planning Act* is suspended and properties are subdivided or reconfigured or allowed to be used for purposes that may impact sensitive land uses or features that don't align with local plans and needs, it could have long-term impacts far beyond the project scope. If municipal by-laws are suspended and superseded, what happens to future planning necessary for the community?

Furthermore, provisions included in the Act state that any actions taken would not be considered expropriation. Local property owners could see their property value decline, or in extreme cases, seized. Without compensation for expropriation, that could result in extreme unfairness and unpredictability. Short-term and long-term impacts, both positive and negative, must be part of the equation.

To provide necessary transparency, the decisions and rationale should be made public.



Proposed Proponent Criteria

Proposed proponent criteria include assessing the proponent's history of working successfully with Indigenous communities, and having reputable compliance records on health and safety, the environment, finances, employment, and regulations. These are all important considerations, but they become complicated when determining how to actually make that determination. Corporate structures can be complex and may be used to limit liability or insulate potential proponents from previous instances of non-compliance. Would the assessment include looking at the officers and directors of a corporation to review compliance records that could be missed if simply looking at the current corporation's compliance record? When considering a municipality as a proponent, would changes in leadership at council be considered, or would the municipalities complete historic record be analyzed? Furthermore, how would joint ventures be considered in this context?

It is inadvisable to pick a standard timeframe to assess historic compliance records. The relevant time period will change depending on the proponent. It should be a case-by-case determination with the Minister's decision being public as to the timeframe considered for a specific SEZ application, as well as the reasons why that timeframe was appropriate.

Compliance record reviews should not be limited to Ontario. Depending on the entity, compliance records of all projects, regardless of location, should be considered. Proponents should be required to proactively disclose all relevant information, including any previous actual or alleged non-compliance by proponents, or affiliated/shared control entities. To encourage full disclosure, protections should be in place to allow for review of confidential matters in a manner that will allow for full disclosure to the Minister while protecting the interests of potentially affected third parties. Proponents should be prepared to demonstrate internal standards that will meet or exceed standards normally enforced through permitting and regulation and agree to be bound by those standards through regulation, in the nature of a statutory duty. The government should also undertake its own



due diligence in looking for relevant information independently to ensure the veracity of the disclosures on an ongoing basis.

Lastly, there is no proposed timeframe regarding the length of a trusted proponent designation. The draft language suggests that a proponent must be tied to a project for a specific SEZ, but would that proponent remain designated for future projects? If that is the case, the trusted proponent designation should be reviewable on a predictable basis, whether it is after a project is completed, after a certain number of years, or otherwise.

Proposed Zone Criteria

The proposed zone criteria says that a zone is “a single area of the province” where activities are taking place or being proposed that are or will be “economically significant or strategically important to the Ontario economy”. What constitutes “economically significant” or “strategically important” activities is not specified. Predictable standards and thresholds are needed.

We support the proposed inclusion of a requirement that the zone be “no larger than necessary” to achieve the intended goals of the SEZ. Without this, we could foresee zones for large projects like the Ring of Fire encompassing most of northern Ontario, rather than only including the area absolutely necessary for the intended project.

Ontario Heritage Act

The exemption provisions under ss. 66.1 and 66.2 are concerning and raise the possibility of negative consequences to Indigenous communities. Section 66.1 allows certain projects to be exempted from regulations including archaeological assessments. The exemption applies to projects if the project could potentially advance specified provincial priorities. This exemption focuses on key projects but does not focus on the importance of physical area.



The section 66.2 exemption explicitly extinguishes causes of action against the Crown providing no legal recourse to Indigenous communities whose rights may be unjustifiably infringed. However, it is not possible to exempt the Crown from constitutional obligations, making this susceptible to a court challenge.

Section 61.1 assessment orders appear to be a proactive step to protect culturally significant sites, however, it does not require any input or consultation with Indigenous communities, regardless if they are directly impacted. This goes against the OCAP³ principles and takes the ownership and control of the site and determination of its significance out of the Indigenous communities' hands. The determination of a significant cultural site may be left to that value interpretation, further marginalizing the role of the indigenous communities.

Finally, the changes to the *OHA* were determined without sufficient input from Indigenous communities. This approach is contrary to the requirement of the DtCA and FPIC⁴ as they will impact section 35 rights, as well as self-determination and governance. Amendments to the *OHA* which have a real possibility to infringe constitutionally protected rights without consultation are unlikely to be justified. It is critical to maintain Ontario's progress toward reconciliation and to uphold the honour of the Crown.

The OBA would be pleased to discuss this further and answer any questions that you may have.

³ Ownership, Control, Access, and Possession.

⁴ Free, Prior, and Informed Consent.