Legal Analysis and Implications of Bill 5 "Protect Ontario by Unleashing our Economy Act, 2025"

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Prepared by
Kerrie Blaise, Founder and Legal Counsel
Legal Advocates for Nature's Defence (LAND)

LAND provides information and resources related to environmental law and advocacy. The following is not intended to be construed as legal advice.

Legal Advocate for Nature's Defence (LAND) is an environmental law non-profit dedicated to advancing access to justice in Northern Ontario, to protect nature and Indigenous rights. We are the only civil society organization based in Northern Ontario providing pro bono legal representation to individuals and communities most impacted by climate and environmental injustices.

By providing this legal analysis, LAND is not endorsing Bill 5, *Protect Ontario by Unleashing our Economy Act, 2025* (Bill 5) nor any provisions within the Schedules. To the contrary, LAND is requesting the immediate withdrawal of the bill, including Schedules 2 and 10, 3, 5, 7 and 9. Below are our more detailed reasons and recommendations which are intended for public, educational use and purposes. This briefing builds on our press release issued April 22, 2025.

While the province has provided 30 days, until **May 17**, **2025** to respond to the following Bill 5 related proposals on the Environmental Registry of Ontario (ERO), this timeframe is much too limited to enable meaningful review and feedback. As a result, this submission is limited to the areas LAND has identified as being most pressing and concerning to the public interest, the protection of nature, Indigenous and Treaty rights. LAND will also be continuing to provide review and analysis in subsequent work related in response to Bill 5 and the following ERO postings:

- Addressing Changes to the Eagle's Nest Mine Project - ERO No. 025-0396
- Protect Ontario by Unleashing Our Economy Act, 2025 - ERO No. 025-0416
- Proposed Amendments to the Ontario Heritage Act, Schedule 7 of the Protect Ontario by Unleashing our Economy Act, 2025 - ERO No. 025-0418
- Proposed interim changes to the Endangered Species Act, 2007 and a proposal for the Species Conservation Act, 2025 - ERO No. 025-0380
- Proposed amendments to the Mining Act 1990, Electricity Act 1998, and Ontario Energy Board Act 1998, to protect Ontario's Economy and Build a More Prosperous Ontario - ERO No. 025-0409
- Removing Environmental Assessment Requirements for the York1 Waste Disposal Site Project - ERO No. 025-0389
- Special Economic Zones Act, 2025- ERO No. 025-0391

DETAILED REVIEW OF THE BILL

Schedule 2, *Endangered Species Act, 2007* and Schedule 10, *Species Conservation Act, 2025*

Schedule 2 of Bill 5 proposes immediate amendments to the *Endangered Species Act* (ESA) and seeks to later repeal the ESA entirely, replacing it with the *Species Conservation Act,* found in Schedule 10 of the bill. The new approach relies on voluntary initiatives and discretionary, not mandatory, species protection and eliminates requirements to create recovery strategies for at-risk species, making it nearly impossible to track and mitigate threats to their survival.[1]

The province's regressive approach to species protection in Bill 5 adds to a history of vast and sweeping amendments from prior and passed bills that have exempted major extractive industries from the ESA's protective measures, delayed the classification of species on the Species At Risk in Ontario (SARO) List[2], broadened Ministerial decision-making powers absent a requirement to seek expert advice, and limited public, transparent information sharing.

LAND's objections to the Schedule 2 that are not remedied by the proposed new *Species Conservation Act* in Schedule 10 of Bill 5 include:

- **Substituting 'conservation' for 'recovery' throughout the Act[3] and removing the requirement for recovery strategies.[4]** Recovery is the process of restoring listed species and their ecosystems

[1] Environmental Registry of Ontario, "Proposed interim changes to the Endangered Species Act, 2007 and a proposal for the Species Conservation Act, 2025", ERO No: 025-0380.
[2] O. Reg. 230/08: SPECIES AT RISK IN ONTARIO LIST.
[3] Schedule 2, s 1(2), s 42.
[4] Schedule 2, s 2(7), s 14.

to the point where they no longer require protection.[5] Typically, a recovery strategy for a listed species requires the identification of threats to the species survival, what goals or objectives must be achieved for the species' recovery and how that goal would be achieved. Conservation, on the other hand, can be initiatives that could promote recovery, or allow more detailed understandings of what is needed to safeguard a species.

While the two are linked, by removing species recovery as a core purpose of the ESA, it removes the onus to ensure conservation initiatives and programs achieve the purpose of species recovery. By removing the need to have species recovery strategies, it also removes the ability to track species status and what actions, over what timeframe, are necessary to reverse or stop species decline.

To halt and reverse species extinction and biodiversity loss, in keeping with globally agreed to international protection targets for biodiversity,[6] and stabilize and improve species' status, the recovery of species must remain a purpose of the ESA and recovery strategies, mandatory.

- **Narrowing the definition of 'habitat'** so that protective measures are limited to[7]:
    - Animal species' dwelling places and areas "immediately around the dwelling place" that are essential for some stages of the species' life cycle, as opposed to the current definition that protects areas on which the species depends, directly or indirectly for all stages of the species' life cycle; and
    - Vascular plants species' 'critical root zone', as opposed to the current definition that protects areas on which the plant species (vascular or non-vascular) depends, directly or indirectly for all stages of the species' life cycle.

  Protective measures under the ESA must be able to maintain ecosystem functions and services on a scale sufficient to restore and sustain wildlife populations.

- **Introducing broad Ministerial decision-making** including in the appointments of members to the Committee on the Status of Species at Risk in Ontario (COSSARO),[8] the issuance of permits that allow activities otherwise prohibited (i.e. the killing of listed species)[9] and the removal of the opportunity to establish an advisory committee.[10]

  Giving the Minister such far reaching and discretionary decision-making authority politicizes decision-making, enmeshing political and partisan interests. Removing the independent,

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[5] *See for instance,* United StatesNational Oceanic and Atmospheric Administration, "Recovery of Species."
[6] Kunming-Montreal Global Biodiversity Framework, Target 4.
[7] Schedule 2, s 2(3).
[8] Schedule 2, s 4(1).
[9] Schedule 2, s 15.
[10] Schedule 2, s 38.

advisory committee also removes a 'check' on government accountability, to ensure decision-making is segregated from those with political or private interests.

- **Removing the requirement to create a list of species**, classified as extirpated, endangered, threatened or special concern and instead, making it optional.[11] This approach, which will automatically limit the applicability of protections for at-risk species, effectively nullifies the veracity of the province's claim that the proposed amendments will strengthen species protection.[12]

- **Removing the prohibition on 'harassing' a species.**[13] This proposed amendment is out of step with federal species at risk law that prohibits any person from killing, harming or harassing any listed species.[14] A prohibition on harassing a species is necessary if we are to limit human-wildlife interactions that could disrupt or interfere with a species' behaviour or life processes.

- **Permitting the violation of Treaty rights**, by removing protections of culturally important species and their habitats, such as sturgeons and boreal caribou.

- **Watering down enforcement powers,** including the removal of powers allowing enforcement officers to make 'stop orders' when a person is engaged in activities that would contravene the protections set out in the ESA, and instead granting the Minister power to issue a 'mitigation order' that would offset, rather than prevent, adverse impacts.[15]

- **Reducing government accountability** by removing requirements for reports, information and recovery strategies, tracking species protection and recovery, to be publicly available.[16]

LAND therefore recommends that Schedules 2 and 10 of Bill 5 be withdrawn.

Schedule 3, *Environmental Assessment Act*

Schedule 3 of Bill 5 terminates the comprehensive environmental assessment (EA) for the Eagle's Nest mine – a proposed mining project in Treaty 9 lands, part of the proposed Ring of Fire.[17] Wyloo Metals is the proponent for the project, which is among the largest of the mines proposed for the Ring of Fire.

[11] Schedule 2, s 8.
[12] Environmental Registry of Ontario, "Proposed interim changes to the Endangered Species Act, 2007 and a proposal for the Species Conservation Act, 2025", ERO No: 025-0380.
[13] Schedule 2, s 12(1).
[14] *Species at Risk Act*, s 32(1).
[15] Schedule 2, s 27.
[16] Schedule 2, s 39.
[17] Environmental Registry of Ontario, "Addressing Changes to the Eagle's Nest Mine Project", ERO No: 025-0396.

Removing the EA for this project - which provides a forward-looking assessment designed to help government decision makers, Indigenous authorities and rights holders, and members of the public understand the environmental and socioeconomic outcomes of proposed activities before moving ahead[18] - jeopardizes the health of the land, water and communities in the James Bay Lowlands of Northern Ontario. Dubbed the 'Ring of Fire' by industry, this region - where the Eagle's Nest mine is proposed - is home to one of the world's most vital carbon sinks and a place of profound cultural importance.

In 2011, the proponent of the Eagle's Nest mine (then Noront Resources), voluntarily entered into an agreement with the province to conduct an EA for the multi-metal underground mine, that has a projected life span of up to 20 years and an extraction rate of 3000 tonnes per day.[19] The EA would review the proposed mine which, as the proponent noted, would also require significant infrastructure needs, including a transportation corridor to link the mine site to provincial road networks further south, the construction of tailings facilities, overhead transmission lines, and diesel full power generating stations.

The unilateral termination of the EA in Schedule 3, read in tandem with other proposed amendments to mining law in Bill 5, indicates the government's clear intention to prioritize private, extractive industry interests over minimum procedural and environmental rights to be heard and have a say. The termination of this EA means the consideration of credible, comprehensive information regarding the environmental impacts, and the concerns of impacted and downstream First Nations and the public, will *not* be a prerequisite to the mine's development.

LAND strongly objects to Schedule 3 as it:

- **Removes the ability to ensure decisions made about the proposed Ring of Fire are made based on comprehensive, credible information** including that related to Indigenous, social and environmental values and interests impacted by the project proposal.

- **Deprives the public and Indigenous communities of basic procedural rights**, such as the right to be notified of participation opportunities or decisions, and to have opportunities to have a say and make submissions before any decision is made.

- **Fails to respect Indigenous peoples' rights**, including those recognized in the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP), that requires states like Ontario to consult and cooperate in good faith with Indigenous peoples in order to obtain their free, prior and informed consent before approving any projects that might affect their territories or resources.

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[18] *See for instance*: Environmental Planning and Assessment Caucus of the Canadian Environmental Network, "IAA 101: A Guide to Public Participation in Impact Assessment Act Processes" (2025).

[19] Ontario, Eagle's Nest Multi-Metal Mine

LAND therefore recommends that Schedule 3 of Bill 5 be withdrawn in full.

Schedule 5, *Mining Act*

Schedule 5 of Bill 5 amends the *Mining Act.* Under the guise of protecting the 'strategic national mineral supply chain,' the province is proposing a series of amendments that would remove the ability of the public to be aware of and track mining claims and projects. It also paves the way for decisions that prioritize economic interests *above* the protection of health, nature, and communities.

LAND's objections to the Schedule 5 of Bill 5 include:

- **Amending the purpose of the *Mining Act*** to primarily encourage mineral development "to a degree that is consistent with the protection of Ontario's economy". The current purpose - encouraging mineral development in a manner consistent with Indigenous rights, including the duty to consult, and minimizing impacts on public health and safety and the environment - will become secondary.

- **Vastly expanding Ministerial powers and accompanying discretion,** including the potential to:
    - Suspend the operation of some or all functioning of the Mining Lands Administration System (MLAS) - the online system for administering public lands for mining purposes and registering mining claims online – without meeting basic, minimum standards for procedural fairness when decisions are being made;[20]
    - Issue orders prohibiting the use of the MLAS, restricting use or terminating licences;[21] and
    - Expedite the applicant, review and decision-making processes for permits and authorizations for any designated project.[22]

- **Prioritizing economic interests over Indigenous rights and environmental health**, by failing to require that decisions be made and discretion exercised in a way that considers and respects Indigenous rights and upholds protection for nature and health. Despite Schedule 5 listing 'economic interests' as a factor that the Minister must considered in decision-making,[23] there is no express commitment to respect Indigenous rights nor uphold the principles set out in UNDRIP.

- **Eroding government accountability** by attempting to narrow judicial scrutiny through the extinguishment of numerous causes of action.[24]

[20] Schedule 5, s 3.
[21] Schedule 5, s 4.
[22] Schedule 5, s 7.
[23] Schedule 5, s 6(1).
[24] Schedule 5, s 10.

LAND therefore recommends that Schedule 5 of Bill 5 be withdrawn in full.

Schedule 7, *Ontario Heritage Act*

Schedule 7 of Bill 5 proposes several amendments to the *Ontario Heritage Act* that jeopardize the protection of Indigenous cultural heritage, including artifacts. If passed, Schedule 7 gives the provincial government largely unrestricted powers to access land, confiscate artifacts and archaeological resources, and approve development projects without conducting archaeological assessments (essentially permitting the destruction of lands with cultural heritage value). These amendments, rather than furthering Ontario's commitment to advance reconciliation with Indigenous peoples, risks perpetuating the Crown's legacy of invading Indigenous lands without consent, confiscating Indigenous artifacts, and destroying sacred sites, in violation of the *United Nations Declaration on the Rights of Indigenous Peoples* (*UNDRIP*).[25]

If passed, these amendments would allow Ontario to approve projects and developments without conducting an archaeological assessment, even if the land has a known or potential archaeological site. Archaeological assessments are frequently required for land development, environmental assessments, land use activities, and building infrastructure, to assess the property for the presence and cultural heritage value of archaeological resources and implement mitigation strategies to protect the site.[26]

LAND's objections to Schedule 7 include:

- **Giving Minister-directed inspectors essentially free access to any land**, or land under water to assess whether artifacts or archaeological sites exist.[27] Schedule 7 does not indicate that the assessment process will be developed in collaboration with Indigenous peoples, as required by *UNDRIP*.[28] By allowing government inspectors to invade Indigenous lands without consent and potentially disturb sacred or ceremonial sites, the province risks violating in internationally-recognized human rights, including:
    - The right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological sites and artefacts;
    - The right to manifest, practice, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to the use and control of their ceremonial objects; and
    - The right to maintain, control, protect and develop their cultural heritage.[29]

[25] See Articles 11, 12, 31 and 32(2) of the *United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)*
[26] Government of Ontario, Archaeological Assessments.
[27] Schedule 7, s 2.
[28] See Articles 12(2) and 32(1) of *UNDRIP*.
[29] See Articles 11, 12, 31 and 32(2) of *UNDRIP*.

- **Allowing the Minister to "take up and examine" any artifact for an undetermined period of time and put any artifact that is taken, under the authority of a licence or permit, in a public institution** to be held in trust for the people of Ontario or deposited with an Indigenous community.[30] This fails to advance reconciliation by allowing the Crown to perpetuate its legacy[31] of confiscating culturally important artifacts from Indigenous communities and, for example, putting them in a museum.

  Confiscating artifacts for an undetermined period of time and having the option to put them in a public institution also violates Indigenous peoples' right to access ceremonial objects. Further, Schedule 7 does not indicate that a process for returning ceremonial objects to Indigenous peoples will be developed in collaboration with them, as required by *UNDRIP*.[32]

- **Granting overly discretionary authority to the Lieutenant Governor in Council to exempt a property** from essentially any requirement set out under Part IV of the *Ontario Heritage Act* (or related instruments), which governs the conservation of resources of archaeological value. The amendments will allow the Lieutenant Governor in Council to exempt a property from requirements, including a requirement to conduct an archaeological assessment, if the Lieutenant Governor in Council is of the opinion that the exemption could potentially advance one or more provincial priorities:
  1) Transit
  2) Housing
  3) Health and Long-Term Care
  4) Other infrastructure
  5) Such other priorities as may be prescribed.[33]

  The broad nature of the listed provincial priorities, coupled with the 'catch-all' provision ("such other priorities as may be prescribed"), will make it very easy for the provincial government to justify the exemption of properties from Part IV of the *Ontario Heritage Act*, at the cost of conserving cultural heritage. This far reaching discretionary authority opens the door for government decision-making influenced by political or private interests.

- **Permitting the evasion of the constitutional duty to consult** by exempting properties from a requirement to conduct an archaeological assessment, as these assessments can often trigger the duty to consult if a known or potential sacred site is identified.

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[30] Schedule 7, s 4.
[31] See the Canadian Commission for UNESCO's report, Creating a New Reality: Repatriation, Reconciliation and Moving Forward (2020) at p 4 for a brief overview of Canada's history of confiscating artifacts as a tool for cultural genocide. See APTN News, Returning Indigenous artifacts part of reconciliation but still a struggle (2019).
[32] See Articles 11(2) and 12(2) of *UNDRIP*.
[33] Schedule 7, s 5.

- **Eroding government accountability** by extinguishing numerous causes of action, insulating the Crown from judicial scrutiny and further restricting the public's ability to hold the government responsible.[34]

LAND therefore recommends that Schedule 7 of Bill 5 be withdrawn in full.

Schedule 9, *Special Economic Zones Act, 2005*

Schedule 9 of Bill 5 introduces a new law called the *Special Economic Zones Act, 2025,* which gives the province broad powers to designate "special economic zones" (SEZs) within which "trusted proponents" or "designated projects" are exempt from the requirements of other provincial laws, regulations, including municipal laws and by-laws.[35]

LAND finds Schedule 9 to be deeply problematic as:

- **All of the details and criteria by which an "SEZ", "trusted proponent" or "designated project" could be assigned will be set out later, in yet-to-be developed regulations.** While the Environmental Registry posting for Schedule 9 of Bill 5 notes SEZs will apply to "vetted projects" and "trusted proponents", no criteria is specified as to how vetting and trust will be measured and decided, and what public participation methods - if any - would be made available. This opens the door for the government to make unilateral decisions about what projects and proponents should be exempt, without sufficient and public oversight, transparency and accountability.

- **Processes for notifying impacted communities, ensuring public engagement and consultation with Indigenous peoples have been upended, without any replacement or confirmation of substitute regime.** This could lead to the breach of constitutionally protected Indigenous rights, including the duty to consult, as well as public participation rights under the *Environmental Bill of Rights, 1993.*

Schedule 9 reflects Ontario's unrestrained and unabashed endorsement of private interests, namely mining proponents and projects, at the cost of any legal requirement to consider the interests of the public, communities, nature and health.

The open-ended discretionary regime proposed, where criteria is yet to be developed, creates an unpredictable path forward where there is no clarity as to how Indigenous peoples, their constitutional and Treaty rights will be respected and their voices heard. This is neither an honourable nor reconciliatory approach and particularly egregious given international recognition that Indigenous

[34] Schedule 7, s 5.
[35] Schedule 9, s 1, 2, 3, 4, and 5; Environmental Registry of Ontario, "Special Economic Zones Act, 2025," ERO No. 025-0391.

peoples, including those in Ontario, are already subject to breaches of human rights due to extractive resources projects.[36] This is also out of step with Ontario's Critical Minerals Strategy, which states that Ontario has "robust consultation processes for all mineral development opportunities and always respects Indigenous rights"[37].

No statutory scheme that attempts to further minimize, complicate or remove Indigenous peoples and their interests from decision-making ought to be supported by the government.

On this basis, LAND is calling for the immediate withdrawal of Schedule 9 in Bill 5.

[36] Extractive activities including mining continue to breach human rights, particularly the right to water of Indigenous Peoples, according to the United Nations Special Rapporteur on the human rights to safe drinking water and sanitation, Pedro Arrojo-Agudo, *see* United Nations Human Rights Special Procedures, "End of Mission Statement by the Special Rapporteur on the human rights to safe drinking water and sanitation, Mr Pedro Arrojo-Agudo at the conclusion of the country visit to Canada" (2024)

[37] Ontario's Critical Minerals Strategy: Unlocking Potential to Drive Economic Recovery and Prosperity, 2022-2027, at p 5.