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Bill 5: Ontario's Proposed Approach to Accelerating Major Projects

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In response to current global economic uncertainty, the Ontario government recently tabled Bill 5, *Protect Ontario by Unleashing our Economy Act, 2025*. Bill 5 aims to streamline and accelerate the approval processes for major mining and infrastructure projects in Ontario while also introducing new powers to protect the "strategic national mineral supply chain". By building faster, the Ontario government hopes to improve Ontario's competitiveness and mitigate the impact of current global trade disruptions. Consultation on the Environmental Registry of Ontario closes on May 17, 2025. Bill 5 has also been referred to the Standing Committee on the Interior, which will hold public hearings on May 22 and 26, 2025, with written submissions accepted until May 26, 2025.

Key Amendments Proposed in Bill 5

- **Create designated special economic zones.** The *Special Economic Zones Act, 2025* would authorize regulations designating special economic zones of strategic interest for Ontario's economy. Within these zones, trusted proponents and projects designated by regulation would be subject to streamlined permitting requirements and may be exempt from certain regulatory requirements, including otherwise applicable municipal bylaws. Ontario's goal is to designate the first special economic zone by September 2025. This plan to use special economic zones to accelerate projects of strategic economic interest is echoed by British Columbia's proposed *Infrastructure Projects Act*, tabled on May 1, 2025, which aims to streamline the permitting and approvals process for provincially significant projects, to be designated by regulation. British Columbia has confirmed that the development of regulations under the proposed legislation will be undertaken in consultation with First Nations, and Premier Eby has stated that only projects with First Nations' consent and ownership in British Columbia will be considered for designation as provincially significant. No such consideration is currently proposed for the designation of Ontario's projects of strategic economic interest.
- **Implement a "one project, one process" regime.** A new "one project, one process" approach would be created under Ontario's *Mining Act* to streamline permitting processes for designated mining projects, including by establishing (i) a mine authorization and permitting delivery team to work with proponents to prepare integrated permitting plans; and (ii) binding service standards for all provincial government ministries to reduce provincial government review time by 50 percent. These new service standards would not apply to environmental assessments (EAs) carried out under Ontario's *Environmental Assessment Act* (EAA), or the time required for Ontario (or the proponent) to undertake consultations with Indigenous groups regarding proposed mining projects. Without addressing the considerable time commitments associated with EAs and Indigenous consultations, Bill 5, on its own, is unlikely to substantially expedite the development of designated mining projects.
- **Enact New Species Conservation Act.** Ontario's *Endangered Species Act, 2007* would be immediately amended to accelerate project timelines and later replaced with a new *Species Conservation Act, 2025* (SCA). Under the SCA, nearly all proponents would be authorized to begin development as soon as they have completed their online registration, provided that they follow the applicable regulatory requirements. These requirements would be posted on the Environmental Registry of Ontario for comment and are expected to come into force in early 2026. The SCA would also (i) narrow the definition of protected habitat and remove "harass" from the list of prohibited activities; (ii) expressly not apply to federally protected aquatic species or migratory birds; and (iii) provide new discretion to Ontario to add to, or require reconsideration of, species on the Species at Risk in Ontario list.

- **Discretionary Powers to Protect the Strategic National Mineral Supply Chain.** New discretionary order powers would be created under Ontario's *Mining Act*, allowing orders to be issued – where desirable to protect the strategic national mineral supply chain – to (i) restrict the registration or transfer of mining claims; (ii) with the approval of the Lieutenant Governor in Council, deny a lease, cancel or revoke unpatented mining claims or a licence of occupation; (iii) terminate a lease of any mining lands or mining rights; or (iv) suspend or restrict an existing account of Ontario's mining lands administration system or prohibit a person from registering as a user of the system. In making such an order, Ontario's Minister of Energy and Mines would be required to consider any risk assessment provided by the Ministry of the Solicitor General, the economic interests of Ontario and any other prescribed factors. These powers could potentially be used where concerns arise relating to foreign ownership or participation in the mining sector (notably certain foreign investments in the mining sector in Canada are potentially subject to net benefit or national security reviews under the federal Investment Canada Act). Various amendments to Ontario's *Electricity Act, 1998* and the *Ontario Energy Board Act, 1998* are also proposed and are aimed at potentially limiting foreign involvement in Ontario's electricity sector, including by establishing country of origin requirements in electricity procurement contracts.

Enhanced Cooperative Federalism?

Ontario's push to fast-track major projects is consistent with Prime Minister Carney's recent commitments to (i) establish "One Window" project decisions through a Major Federal Project Office to render final federal decisions on a two-year timeline; and (ii) move forward with a "One Project, One Review" approach by signing cooperation and substitution agreements under the federal *Impact Assessment Act* (IAA) to allow the federal government to recognize provincial, territorial and Indigenous-led assessments.

In practice, the goal of one project, one review has been difficult to achieve in Canada. Although the IAA (and its predecessors) allowed for cooperation and substitution, British Columbia is the only province that has used a substituted process; cooperative/coordinated assessment practices in Canada have not achieved this long-stated goal. Instead, federal and provincial assessments have largely occurred in parallel, with varying levels of cooperation depending on the provincial jurisdiction. For the mining sector, this has meant slow, duplicative and complex provincial and federal processes for assessing and permitting new mines.

To address these underlying issues, Ontario recently called for the repeal of the IAA. Instead, the federal government has signalled that it would work *under* the existing IAA to increasingly recognize EA processes of other jurisdictions. This proposed approach is consistent with the Supreme Court of Canada's guidance in *Reference re Impact Assessment Act*, which underscores the need for enhanced cooperative federalism with respect to EA processes. However, without allocating adequate funding to provincial and federal regulators, and implementing a culture of urgency, it remains to be seen whether the IAA's existing screening, cooperation and substitution powers, addressed below, can meaningfully accelerate federal impact assessment.

- **Screening decisions (IAA, section 16).** Section 16 was amended in 2024 to address the Supreme Court of Canada's guidance. Under the amended section 16, the federal government cannot require an impact assessment under the IAA *unless* it is satisfied that the project may cause non-negligible adverse federal effects (e.g., adverse effects on fish and fish habitat, aquatic species at risk, migratory birds, transboundary water and marine pollution, impacts on Indigenous peoples). This amendment is intended to focus the screening decision on areas of federal jurisdiction.

  In making this screening decision, the federal government must take into account several prescribed factors, including a new factor considering whether another federal or provincial process would address the project's potential adverse federal effects (IAA, section 16(2)(f.1)). This new factor could conceivably support a screening decision that a federal impact assessment is *not* required for a new mine.

  That said, unlike in British Columbia and Québec, mining projects in Ontario are not automatically subject to a comprehensive EA under provincial legislation. Instead, Ontario's comprehensive EA projects are generally limited to large waste, electricity and waterfront project types. This means that unless a mining proponent voluntarily agrees to a comprehensive EA under the EAA, Ontario's EA process often applies to only parts of a mine's infrastructure through class EAs (such as for roads, transmission lines,

Crown land dispositions), but not to the mining project *as a whole*. This piecemeal assessment approach may make it more challenging for the federal government to make a screening decision that Ontario's *existing* EAA process would address a proposed mine's adverse federal effects.

- **Cooperation (IAA, section 21).** The IAA requires that the federal government offer to consult and develop a cooperation plan that describes how it will cooperate with a province on a specific project (e.g., share information and analysis, participate in joint working groups, coordinate guidance to proponents). These plans are intended to reduce duplication, increase efficiency and certainty, and draw on the best available expertise. To date, cooperative impact assessment, on its own, has not meaningfully addressed the underlying issue of delay. Unless the federal government intends to rely more heavily on its delegation powers (IAA, section 29), which would permit the delegation of any part of the impact assessment to another jurisdiction, it is unlikely that the federal government's current approach to cooperation would result in a more timely federal impact assessment system.
- **Substitution (IAA, section 31).** Under the IAA, the federal government can also substitute a federal impact assessment process, in whole or in part, with a provincial EA process when the requirements of the IAA could be met by the provincial process. Consistent with the Supreme Court of Canada's guidance, this is intended to facilitate a more harmonized process and for the best-placed jurisdiction to undertake aspects of the assessment. Final decision-making remains with each jurisdiction. See, for example, the proposed Eskay Creek Mine, where British Columbia is gathering the information needed to inform a federal decision on a mining project under the IAA.

  If the federal government proposes to use its substitution powers to recognize Ontario assessments, project-by-project substitution agreements may be needed in the mining context in Ontario to ensure that the substituted process appropriately considers adverse federal effects and fulfills the Crown's duty to consult, and where appropriate accommodate, Indigenous peoples. This is particularly important given the Prime Minister's recent commitment to advancing reconciliation and the federal implementation of the *United Nations Declaration on the Rights of Indigenous Peoples*. For a streamlined EA process to be successful for all stakeholders, including proponents and investors, meaningful Indigenous engagement will be essential to mitigate project risk and provide greater certainty.

Conclusion

By introducing special economic zones, streamlining permitting and species conservation processes, and enhancing provincial authority over resource development, Bill 5 seeks to improve Ontario's overall competitiveness in the face of global trade disruption. However, the extent to which this legislative framework will achieve its desired outcome will likely depend on effective federal-provincial cooperation, meaningful engagement with Indigenous stakeholders and the balancing of economic growth with environmental and social responsibilities. At the same time, it remains to be seen whether and in what circumstances Ontario may utilize new powers to protect the strategic national mineral supply chain or limit foreign participation in the mining and energy sectors.

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