



Submissions on Ontario Bill 5, Schedule 9 *Special Economic Zones Act, 2025*

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Canadian Civil Liberties Association (CCLA)

The Canadian Civil Liberties Association (the “**CCLA**”) is a national, non-profit, non-partisan and non-governmental organization founded in 1964 with a mandate to defend and foster the civil liberties, human rights, and democratic freedoms of all people across Canada. Key aspects of our mission include defending the rule of law and democratic principles, fighting against government overreach, and advocating for government accountability. The CCLA makes these submissions to the Standing Committee on the Interior (the “**Committee**”) to highlight its deep concerns with the current drafting of Bill 5, Schedule 9 – *Special Economic Zones Act, 2025* (“**Schedule 9**”).

Overview

Schedule 9 enables the Minister of Economic Development, Job Creation and Trade (the “**Minister**”) to hand pick “trusted proponents”¹ and “designated projects”² that may be exempted from having to comply with any provincial and municipal laws³ within “special economic zones”.⁴ Since these three terms are not defined in Schedule 9 and are left to the Lieutenant Governor in Council (the “**Cabinet**”)’s discretion,⁵ the Cabinet has unilateral authority to assign meaning to them now and in the future without consulting the legislature.

This alarming move enables the provincial executive to circumvent the legislature’s role and to unilaterally abandon existing legal safeguards that protect the people of Ontario, including Indigenous people and other vulnerable communities such as workers and people living in poverty.

Giving the Cabinet and the Minister such extraordinary powers should be the democratic exception, not the norm. This type of power should only be introduced and invoked in the most exceptional circumstances—such as wars and pandemics. Even then, the exercise of these powers should be subject to stringent checks and balances. Schedule 9 fails on all counts. The CCLA urges members of provincial parliament to vote against setting this dangerous precedent in law.

Impact of Schedule 9

1. Schedule 9 undermines the democratic dialogue

The separation of powers between the legislative, executive and judicial branches of government is key to our democratic process. The legislature and judiciary play crucial roles in holding the executive – the government of the day – accountable and in restricting the arbitrary exercise of government power. A functioning democracy requires a continuous process of discussion between the three branches of government.⁶

¹ Bill 5, Schedule 9, *Special Economic Zones Act, 2025*, ss. 3(1) and (2) [**Schedule 9**].

² *Ibid.*, ss. 4(1) and (2).

³ *Ibid.*, s. 5.

⁴ *Ibid.*, ss. 2(1) and (2).

⁵ *Ibid.*, ss. 2(2), 3(3), 4(3).

⁶ *Reference Re Secession of Quebec*, [1998] 2 SCR 217, para. 68.

When the executive tables a bill, the legislature, together with civil society and members of the public, engage in a democratic dialogue with the executive by weighing in on the content of the bill. In order for democratic dialogue to function effectively, the executive must draft proposed legislation such that it is detailed enough for the legislature and civil society to meaningfully engage with its substance and impact.

While the Bill has been advertised as a “one project, one process” approval model meant to accelerate development in specific places such as the Ring of Fire,⁷ the actual text of the Bill tells a different story. As mentioned, Schedule 9 introduces three new concepts that are not defined in the Bill: “special economic zones”; “trusted proponents”; and “designated projects”. The absence of definition gives Cabinet unfettered discretion in assigning these terms any possible meaning(s) in the future, thereby preventing meaningful democratic dialogue and accountability.

2. Schedule 9 invites the Cabinet to establish ‘lawless zones’ without meaningful democratic oversight

The rule of law has historically been recognized as a principle which restricts the arbitrary exercise of government power by insisting that the executive branch exercise its power in accordance with statutory authority.⁸ Schedule 9 broadly empowers the provincial government to circumvent laws passed by the legislature by allowing the Minister to exempt “trusted proponents” and “designated projects” from complying with any provincial and municipal laws within “special economic zones”.⁹

In practice, Schedule 9 enables the Cabinet and the Minister to create lawless zones where the provincial executive – instead of the legislature – has the final say. The existence of these lawless zones could have significant ramifications.

First, Cabinet could hand pick corporations and exempt them from compliance with important statutes, including environmental laws, labour laws, health and safety laws, local planning laws, municipal zoning bylaws, and even privacy laws. Second, the breadth of discretion that Schedule 9 would confer on the government of the day also creates conditions whereby vulnerable communities in Ontario, including Indigenous people, workers and people living in poverty, could face disproportionate consequences.

More specifically, Schedule 9 could be used to suppress rights around unpaid labour, the right to refuse unsafe work, and protections against child labour. Schedule 9 could also be used to allow corporations conducting mining operations to by-pass important environmental regulations and

⁷ Ontario, Legislative Assembly, Official Report of Debates (Hansard), 44th Parliament, 1st Session, No 8 (5 May 2025) at 309, online: Legislative Assembly of Ontario (*Hansard*).

⁸ *Roncarelli v. Duplessis*, [1959] SCR 121.

⁹ Schedule 9, s. 5.

laws and the infrastructure acts, which could be disastrous for communities residing nearby, including Indigenous communities.¹⁰

3. Schedule 9 normalizes extraordinary powers

The Government of Ontario relies on “global economic uncertainty”¹¹ in an attempt to justify the broad, unfettered and extraordinary powers introduced by Schedule 9. While acute and significant crises – wars and pandemics among them – might justify the temporary use of exceptional emergency powers, a vague, undefined and unlimited “global economic uncertainty” is not akin to these circumstances.

For instance, the federal *Emergencies Act* defines a “national emergency” warranting the use of exceptional emergency powers as constituting “an urgent and critical situation of a temporary nature” which creates a situation that either (1) “seriously endangers the lives, health or safety of Canadians and is of such proportions or nature as to exceed the capacity or authority of a province to deal with it”, or (2) “seriously threatens the ability of the Government to preserve the sovereignty, security and territorial integrity of Canada.” Moreover, a national emergency can only be found to exist if the situation “cannot be effectively dealt with under any other law of Canada.”¹² This definition does not include economic harm or disruption, nor should it.

For another example, Ontario’s *Emergency Management and Civil Protection Act* defines “emergency” as “a situation or an impending situation that constitutes a danger of major proportions that could result in serious harm to persons or substantial damage to property and that is caused by the forces of nature, a disease or other health risk, an accident or an act whether intentional or otherwise.”¹³ These definitions are not analogous to current economic uncertainty such that the exceptional emergency powers that Schedule 9 would vest in the provincial executive could be justified.

Even in situations where exceptional powers would be appropriate, their invocation and exercise should be subject to checks and balances, including (1) clearly defined and exigent statutory thresholds, (2) temporal limits, and (3) some level of democratic oversight, including periodic review by the legislature to justify the executive’s continued use of such powers.¹⁴ These accountability mechanisms answer the public’s need for transparency about how extraordinary powers are being used. These safeguards also ensure that the use of the powers continues to be justifiable, proportionate, and lawful.

¹⁰ *Hansard*, *supra* note 7 at 345.

¹¹ Schedule 9, Preamble.

¹² *Emergencies Act*, R.S.C., 1985, c. 22 (4th Supp.), s. 3.

¹³ *Emergency Management and Civil Protection Act*, R.S.O. 1990, s. 1.

¹⁴ See the federal Department of Justice’s explanation of *Canada’s Emergencies Act* here: [Canada’s Emergencies Act - Canada.ca](https://www.justice.gc.ca/eng/act-c/act-c22/act-c22.html).

4. Schedule 9 limits the Crown's liability and accountability

The Crown's absolute immunity embodied by the maxim 'The King can do no wrong' has long been set aside in favor of modern principles recognizing the rule of law as a check on the acts of government officials.¹⁵ As such, modern legislation now exposes the federal and provincial Crowns to liability in tort, in addition to well-established contractual liability.¹⁶

Unfortunately, Section 7 of Schedule 9 extinguishes many causes of action that people would ordinarily have against the state. For instance, Section 7 immunizes the Crown and municipalities, as contractual parties, from liability for any breach of contract arising from anything done or not done in accordance with Schedule 9 or a regulation under Schedule 9. Section 7 also immunizes the Crown and municipalities from liability in tort arising from the enactment and implementation of Schedule 9.¹⁷

While Section 7 does not purport to oust judicial review or constitutional challenges and remedies, Ontarians should still be concerned whenever their government seeks to shield itself from financial liability and accountability. Section 7 risks depriving ordinary people of much-needed compensation against the backdrop of the very economic uncertainty that the provincial government seeks to improve through this proposed legislation.

Recommendation

Schedule 9 is a wholly inadequate way to tackle any current economic uncertainty in Ontario.

Any legislation addressing the economic concerns of Ontarians should respect the basic constitutional principles on which our democratic society depends. The arbitrary exercise of government power to circumvent foundational legal protections and democratic oversight should not be normalized, especially in the absence of stringent checks and balances.

The CCLA urges the provincial parliament to vote against Schedule 9.

¹⁵ *Laurentide Motels Ltd. v. Beauport (City)*, [1989] 1 SCR 705, p. 787.

¹⁶ See Ontario's *Crown Liability and Proceedings Act*, SO 2019, c 7, Sch 17.

¹⁷ Bill 5, Schedule 9, s. 7 (1)-(5).