



Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

**DEMOCRACY WATCH, ENVIRONMENTAL DEFENCE CANADA,
WILDLANDS LEAGUE and FRIENDS OF THE EARTH CANADA**

Applicants

and

ATTORNEY GENERAL OF ONTARIO

Respondent

APPLICATION UNDER Rule 14.05 of the *Rules of Civil Procedure*, RRO 1990, Reg 194

NOTICE OF APPLICATION

TO THE RESPONDENTS

A LEGAL PROCEEDING HAS BEEN COMMENCED by the Applicants. The claim made by the Applicants appears on the following page.

THIS APPLICATION will come on for a hearing

- In writing
- In person
- By telephone conference
- By video conference

at the following location:

330 University Avenue, 8th Floor, Toronto ON M5G 1R7

on a day to be set by the registrar.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the *Rules of*

Civil Procedure, serve it on the Applicants' lawyer or, where the Applicants do not have a lawyer, serve it on the Applicants, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the Applicants' lawyer or, where the Applicants do not have a lawyer, serve it on the Applicants, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date _____ Issued by _____
Local Registrar

Address of Superior Court of Justice
court office: 330 University Avenue, 8th Floor
Toronto ON M5G 1R7

TO: **ATTORNEY GENERAL OF ONTARIO**
Crown Law Office - Civil
8th Floor, 720 Bay Street
Toronto, ON M7A 2S9

APPLICATION

THE APPLICANTS MAKE APPLICATION FOR:

1. Democracy Watch, Environmental Defence Canada, Wildlands League and Friends of the Earth Canada (together, the “Applicants”) make an application for the following relief:

- a) A declaration that the *Special Economic Zones Act, 2025* (“SEZA”) violates section 92 of the *Constitution Act, 1867* (“Constitution”) because it constitutes an abdication of the legislative function;
- b) A declaration that the SEZA violates Ontario’s constitutional architecture because it constitutes an abdication of the legislative function;
- c) A declaration under section 52 of the *Constitution Act, 1982* that the SEZA is of no force and effect;
- d) Standing for the Applicants as public interest litigants;
- e) The costs of this application; and
- f) Such further and other relief as counsel may advise and this Honourable Court may deem just.

THE GROUNDS FOR THE APPLICATION ARE:

Overview

2. Ontario’s *Special Economic Zones Act, 2025* allows the executive branch of government to disapply and amend the application of any Ontario law, regulation, instrument or municipal by-law, without articulating or requiring the executive to develop any criteria to guide the exercise of the discretion it enables, and without public notice or consultation.

3. This grant of power to the executive branch goes far beyond what Canadian courts have accepted as lawful delegation, abdicating the legislature’s role in violation of section 92 of the Constitution and Ontario’s constitutional architecture.

4. The concerns raised by Justice Côté in the *References re Greenhouse Gas Pollution Pricing Act* have come to pass: when an Act endows a select few with the power to disapply or amend *any* Ontario statute for any proponent or project, in any area of Ontario they chose in their discretion, there is no meaningful limitation on the executive's power and the legislative role is abdicated.

5. Devoid of a purpose other than to allow the executive to alter the application of duly passed laws, regulations made under the SEZA are evasive of judicial review.

6. The legislation is unconstitutional.

The Applicants

7. Democracy Watch is a not-for-profit organization that advocates for democratic reform, citizen participation in public affairs and ethical behaviour in government and business in Canada.

8. Environmental Defence Canada is an environmental charity that works nationwide to protect and preserve the natural environment for the benefit of all Canadians.

9. Wildlands League is a conservation charity that collaborates with communities, governments, First Nations, scientists and industry to tackle irresponsible development and protect nature.

10. Friends of the Earth Canada is a national charity that works to protect the planet and its people by fighting climate change, preserving biodiversity and advancing environmental justice through grassroots campaigns and legal action.

11. The Applicants bring this application in the public interest:

- a) None of the Applicants have any personal, proprietary or pecuniary interest in the outcome of this litigation, which raises serious justiciable issues: (i) whether the SEZA is unconstitutional because it violates section 92 of the Constitution; (ii) whether the SEZA is unconstitutional because it infringes Ontario's constitutional architecture; and (iii) how unwritten constitutional

principles, including parliamentary sovereignty, the separation of powers, the rule of law, and democracy and respect for minorities underscore the SEZA's incompatibility with the Constitution and the structure of constitutional democracy it prescribes.

- b) The Applicants have a genuine interest in the issues implicated by the SEZA and are thoroughly engaged with them, particularly with respect to democratic accountability and environmental consequences, which are matters of public interest affecting all Ontarians.
- c) This application is a reasonable and effective means of bringing these issues to court.

12. The Applicants meet the test for public interest standing.

The Special Economic Zones Act, 2025

13. Bill 5, the *Protect Ontario by Unleashing our Economy Act, 2025*, was introduced into the Ontario legislature on April 17, 2025. Its preamble stated that the government of Ontario was,

- “[p]rotecting Ontario from global economic uncertainty by unleashing our economy”;
- streamlining approval processes for critical minerals;
- accelerating permitting and approvals for projects such as mines, critical minerals and infrastructure, while “ensuring environmental protections for future generations”; and
- limiting foreign participation in the energy sector to keep Ontario’s energy supply safe.

14. Schedule 9 of Bill 5 was the SEZA.

15. The SEZA contains no purpose or preamble. Its provisions are set out in seven clauses.

16. Section 1 contains definitions.

17. Section 2 of the SEZA allows the Lieutenant Governor in Council (“LGIC”) to, “by regulation, designate an area of the Province as a special economic zone if the prescribed criteria are met”.
18. Section 3 permits the Minister of Economic Development, Job Creation and Trade (“Minister”) to, “by regulation, designate a person” or “a class of persons as trusted proponents if the prescribed criteria are met”.
19. Section 4 allows the Minister to, “by regulation, designate a project” or “a class of projects as designated projects if the prescribed criteria are met”.
20. Sections 2 to 4 permit, but do not require, the LGIC to “make regulations prescribing [the] criteria” referenced in each section.
21. Section 5 permits the LGIC to, “by regulation, exempt a trusted proponent or a designated project from requirements under provisions of an Act or of a regulation or other instrument under an Act”, including a municipal by-law, that would otherwise “apply in a special economic zone”.
22. Section 6 allows the LGIC to, “by regulation, modify the application of provisions of an Act or of a regulation or other instrument under an Act”, including a municipal by-law, that would otherwise apply “to a trusted proponent” or “to a designated project in a special economic zone”.
23. Sections 5 and 6 of the SEZA are “Henry VIII clauses”, that is, statutory provisions that permit the executive to make regulations that amend primary legislation.
24. Neither section 5 nor 6 contain any guidance as to how these grants of discretion to the executive branch are to be exercised, nor do they require the LGIC to make regulations providing such guidance.
25. Section 7 extinguishes causes of action arising against the Crown as a result of anything done in accordance with the SEZA or a regulation made under it.
26. The SEZA received Royal Assent on June 5, 2025.

27. O Reg 373/25: Criteria for Designations, prescribing criteria for the purposes of the SEZA, came into force on January 1, 2026 (“Criteria Regulation”).
28. Pursuant to that regulation, the criteria for designating a special economic zone, a trusted proponent or a designated project are almost entirely “in the opinion of” the Minister or the LGIC.
29. The Criteria Regulation sets out no objective parameters, external checks or public processes for designations in any of the three areas of special economic zones, trusted proponents or designated projects. In any event, the Criteria Regulation can be repealed at any time.
30. The powers granted in the SEZA, which are not meaningfully constrained by the Criteria Regulation, enable law-making by decree.

The Text and Structure of the *Constitution Act, 1867*

31. Not all grants of discretionary power to the executive branch are lawful. The Constitution protects certain core functions of the legislature, preventing the legislative branch from abdicating its role. Absent meaningful constraint, Henry VIII clauses, which endow the executive with legislative power to amend or effectively repeal primary laws, abdicate that role.
32. Such unconstrained power in the hands of the executive violates section 92 of the Constitution. It also fundamentally alters the respective nature and roles of the legislative and executive branches of government – a change that cannot be lawfully made absent an express constitutional amendment.

(i) *Unconstrained Grants of Legislative Power Violate Section 92*

33. Section 92 of the Constitution provides that “[i]n each Province the Legislature may exclusively make Laws in relation to Matters coming within” provincial jurisdiction. This provision not only assigns areas of legislative competence to the provinces, it explicitly assigns them to the legislative branch.

34. The language of section 92 makes clear that it is for the Legislature “exclusively” to make laws in relation to matters within provincial jurisdiction. That primary legislative authority includes the authority enact, amend and repeal statutes. Transferring such authority to the executive branch without constraint goes beyond seeking the assistance of subordinate agencies or delegating power to make subordinate rules and regulations; it vests in the executive branch a core function of the legislature.

35. Permitting the executive to amend or disapply laws without any meaningful constraint abdicates the legislative role, contravening section 92.

(ii) Unconstrained Grants of Legislative Power Violate the Internal Architecture of the Constitution

36. One of the primary features of the Constitution is its identification of the executive, the legislature and the judiciary as three separate constituent elements of the state, in each of Canada’s federal and provincial governments.

37. The internal architecture of the Constitution – its purposes, structure and historical context – articulates and maintains separate core functions for the executive and legislative branches that the Constitution enshrines and that are a pillar of our constitutional democracy.

38. Part V of the Constitution establishes the constitutional structure of Ontario’s provincial government. Internally, Part V distinguishes between the “Executive Power”, defined under sections 58 to 68, and the “Legislative Power”, defined under sections 69 to 70, 82 to 87 and 90. To promote responsible government in Ontario, including accountability of the executive branch to the legislature, these sections identify distinct branches of the state to exercise each of these powers.

39. According to section 65, the Executive Power refers to powers exercised by the Lieutenant Governor alone or with the advice and consent of Cabinet. The Executive Power may involve delegated authority to make administrative or subordinate decisions, “subject ... to be abolished or altered by” the Legislature of Ontario.

40. In comparison, the Legislative Power is exercised by the Legislature of Ontario, “consisting of the Lieutenant Governor and of One House, styled the Legislative Assembly of Ontario”, pursuant to section 69. The Lieutenant Governor’s constitutional role in the Legislature of Ontario is limited. The Lieutenant Governor summons the Legislative Assembly of Ontario under section 82, may dissolve it under section 85 and gives Royal Assent under section 90. It is the elected members of the Legislative Assembly of Ontario who are charged with using the Legislative Power to represent their electoral districts under section 70.

41. In essence, the Constitution envisions a house of democratically accountable representatives to exercise the Legislative Power for Ontario.

42. The Legislative Assembly of Ontario must conduct legislative affairs for the province each year. Pursuant to section 86, “[t]here shall be a Session of the Legislature of Ontario ... once at least in every Year, so that Twelve Months shall not intervene between the last Sitting of the Legislature in each Province in one Session and its first Sitting in the next Session”.

43. The Legislative Assembly of Ontario – not the executive branch – is assigned the responsibility to carry out the legislative process by the Constitution. The legislative process entails using the Legislative Power to enact, amend and repeal provincial statutes as needed to represent constituents.

44. Ontario’s constitutional structure also comprises provincial constitutional enactments: the *Legislative Assembly Act*, the *Representation Act* and the *Executive Council Act*. These laws underscore the distinct powers and functions of Ontario’s legislative and executive branches.

45. The *Legislative Assembly Act* outlines the composition and procedures for the Legislative Assembly of Ontario, which is elected by districts specified in the *Representation Act*. Section 4 codifies the requirement that the Legislative Assembly of Ontario hold yearly sessions.

46. The *Executive Council Act* governs the appointment of Cabinet members to receive certain executive powers and duties. Section 8, for example, speaks of “powers and duties that have been *assigned by law* to a minister of the Crown”. It does not confer freestanding authority on Cabinet members to legislate or redefine the scope of their own powers.

The SEZA Abdicates the Legislative Role, Violating the Constitution

47. The provisions of the SEZA are fundamentally different from the kinds of Henry VIII clauses that Canadian courts have found to be constitutional. The SEZA’s grant of power to the executive is unconstrained, amounting to an abdication of the Legislative Assembly of Ontario’s role.

48. The SEZA’s delegated powers are not rooted in, or limited by, their governing statute.

49. The SEZA unlocks *any* law across Ontario’s statute book, subjecting it to any type of modification or exemption by the executive branch. The SEZA does not delineate a list of statutes, regulations or instruments that may be modified. Nor does it limit the scope of permitted modifications. Its delegated powers allow the executive to rewrite or suspend laws, and the regulations, instruments and by-laws they authorize, for trusted proponents and projects as it chooses.

50. The SEZA does not articulate any policy objective or range of policy options that would circumscribe the scope of the delegation it permits.

51. There is no war, pandemic or other emergency that might justify the legislature delegating its authority to enact, amend and repeal statutes to the executive branch, whose proper role is to make subordinate laws, such as rules and regulations, circumscribed by the applicable governing statute. Even if a hypothetical emergency existed, the powers delegated by the SEZA are neither temporary nor tailored to respond to that emergency. They are indefinite and unbounded.

52. The power delegated by the SEZA is evasive of judicial review. Ordinarily the executive branch can be kept accountable for exercises of delegated power pursuant to

Henry VIII clauses since they can be judicially reviewed for their consistency with the enabling statute's purpose and with statutory provisions that constrain the exercise of executive discretion.

53. The SEZA contains no purpose or preamble, or limitations on the exercise of executive discretion against which a court could meaningfully review the lawfulness of the executive action it enables.

54. The SEZA's provisions do not limit the scope or content of the regulations that the Minister and the LGIC can enact. Nor do they require the creation of regulations. The Criteria Regulation itself leaves nearly all decisions on designation to the opinion of the Minister or the LGIC and can be repealed at any time.

55. The SEZA contains no relevant constraints for a court to find that a designation by regulation of a special economic zone, trusted proponent or designated project is an unreasonable exercise of the SEZA's grant of power. Subsection 7(5) preserves judicial review (while the balance of section 7 extinguishes all other causes of action), but the possibility of judicial review of regulations and decisions made under the SEZA is illusory.

56. A facial attack on the SEZA itself is the only option for meaningful judicial scrutiny of its legality.

57. In passing the SEZA, Ontario did not purport to follow the amendment procedures in sections 41 and 45 of *Constitution Act, 1982* that are required to alter the governing constitutional architecture. The SEZA also did not amend any of Ontario's *Legislative Assembly Act*, *Representation Act* or *Executive Council Act*.

Unwritten Constitutional Principles Support the Interpretation of Section 92 and the Constitution's Structure

58. The unwritten constitutional principles ("UCPs") of parliamentary sovereignty, the separation of powers, the rule of law, and democracy and respect for minorities underscore the incompatibility of the SEZA with section 92 of the Constitution and with its internal architecture.

59. To the extent that the Constitution is silent on the permissible bounds of a legislative grant of power to the executive, UCPs inform the interpretation of, and help fill any perceived gaps in, the written text.

a) Parliamentary Sovereignty

60. Parliamentary sovereignty contains both a positive and negative aspect. The positive aspect provides that Parliament or the legislature of each province has the right to make or unmake any law, subject to review for its constitutionality. The negative aspect is that no institution – including the executive – is competent to override the requirements of a constitutionally compliant statute.

61. The negative aspect of Parliamentary sovereignty ensures that the positive aspect is not unlimited: the right to make or unmake any law is subject to the legislature’s constitutional authority. Laws delegating power to the executive branch are permissible, but the executive’s regulation-making must remain subordinate to the legislature’s *exclusive* authority under the Constitution to enact, amend and repeal laws.

62. Executive action under the SEZA to amend or disapply the provisions of any other Ontario statute and the subordinate legislation it authorizes, untethered from any statutory purpose or principle, runs afoul of that constitutional limit.

b) Rule of Law

63. Enabling the executive to make unconstrained discretionary decisions that amend or suspend the application of laws, without public input or even knowledge, empowers law-making outside of the system of positive laws that the rule of law demands.

64. By using the SEZA to amend or effectively repeal legislation for certain proponents, projects and zones, the LGIC can engage in law-making that circumvents the prescribed procedure of three readings in the legislature and Royal Assent. The text of any statute that is amended by the executive is not found in the statute book, a failure of transparency and knowability of legal rules that is inimical to the rule of law.

65. Cabinet deliberations are shielded by a cloak of confidentiality to allow for frank discussion, while the legislature's law-making role is open to public input and scrutiny. When Cabinet is effectively allowed to make laws while maintaining its privilege of confidentiality, the transparency and accountability at the heart of the legislative process is eroded.

66. The SEZA's grant of power invites arbitrary state action that the structure of the Constitution aims to be a bulwark against.

c) Separation of Powers

67. The separation of powers in our constitutional order does not create watertight compartments, but it is nonetheless a purposeful structural division. The role of the legislature is to decide on and enunciate laws that articulate its policy objectives; the role of the executive is to administer and implement them. The Constitution reflects these core institutional competencies of each branch, preventing both the concentration of power in the executive from becoming too great and the abdication of the legislature's law-making function.

68. The SEZA's unbounded grant of power to the executive to amend or disapply any law collapses that separation of functions.

d) Democracy and Respect for Minorities

69. The principle of democracy underlies our Constitution and the structure of government it establishes. It is richer than a system of simple majority rule; it requires that law-making bodies continue to be representative of and accountable to citizens through an open and transparent legislative process.

70. Canada's democratic tradition includes an understanding that policy-making institutions derive their efficacy from open public discussion and scrutiny from a variety of perspectives. This process ensures respect for a diversity of beliefs and opinions, which facilitates the protection of minority groups and voices who can advocate for their interests in an open legislative process.

71. In contrast, due to Cabinet confidentiality and the absence of a mandated public process, diverse beliefs and opinions – particularly those of minority groups – can be excluded altogether from the executive’s consideration. The SEZA’s grant of power eliminates the participatory and public nature of Canada’s democratic system, and with it, the inclusion of and respect for minority voices.

Statutory Instruments Relied On

72. Bill 5, *Protect Ontario by Unleashing our Economy Act, 2025*, 1st Sess, 44th Leg, Ontario, 2025, Schedule 9 (assented to June 5, 2025), SO 2025, c 4;

73. *Constitution Act, 1867* (UK), 30 & 31 Vict, c 3, reprinted in RSC 1985, Appendix II, No 5;

74. *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11;

75. *Executive Council Act*, RSO 1990, c E.25;

76. *Legislative Assembly Act*, RSO 1990, c L.10;

77. O Reg 373/25: Criteria for Designations, made under the *Special Economic Zones Act, 2025*;

78. *Representation Act, 2015*, SO 2015, c 31, Schedule 1;

79. *Rules of Civil Procedure*, including r 14.05(3)(h);

80. *Special Economic Zones Act, 2025*, SO 2025, c 4, Schedule 9; and

81. Such further and other grounds as counsel may advise and this Honourable Court may permit.

THE DOCUMENTARY EVIDENCE THAT WILL BE USED:

82. The following documentary evidence will be used at the hearing of the application:

- a) The affidavits of representatives of the Applicants, to be affirmed; and
- b) Such other material and evidence as counsel may advise and this Honourable Court may permit.

March 31, 2026

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Court File No.

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