MISSISSAUGAS OF THE NEW CREDIT FIRST NATION
DEPARTMENT OF
CONSULTATION AND ACCOMMODATION

January 18, 2019

Michael Helfinger
Intergovernmental Policy Coordination Unit
900 Bay Street, Hearst Block
7th Floor
Toronto ON M6H 4L1
Canada

Dear Mr. Helfinger:

Re: ERO Notice #013-4293, Bill 66

I am writing as the Director of the Department of Consultation and Accommodation (DOCA), for the Mississaugas of the Credit First Nation (MCFN), to provide our comments and grave concerns with respect to Schedule 10 of Bill 66, *Restoring Ontario's Competitiveness Act, 2018*.

The Mississaugas of the Credit First Nation were not consulted prior to the introduction of this legislation. Nor am I aware of any First Nation that was consulted regarding the proposed "Open-for-Business" bylaw (OFB bylaw) in Schedule 10 of Bill 66.

The effect of an OFB bylaw is that individual projects, if they meet the prescribed criteria, will be effectively exempt from the bulk of land-use planning and environmental legislation in Ontario.

These legislative mechanisms, while rarely sufficient by themselves, are a useful and necessary tool to ensure the Crown fulfills its obligations to consult and accommodate First Nations where the Crown contemplates conduct that could negatively impact existing or asserted s. 35 rights under the *Constitution*.

The proposed legislation will effectively prevent meaningful consultation and accommodation with First Nations where an OFB bylaw is passed because there will no longer be any mechanism that will allow the Crown to address potential impacts on rights.

OFB bylaws will, among many other things, eliminate the requirement to comply with the provincial policy statement (PPS). This includes a variety of provisions which require municipalities to behave in a way that is consistent with the Crown's duty to consult and accommodate First Nations, including by engaging and partnering with First Nations in land-use planning decisions.

The lack of a requirement for notice to impacted First Nations prior to the passing of the bylaw, and the fact that the "prescribed criteria" as proposed do not include any reference to the requirement to consult and accommodate First Nations makes it difficult to see how the Act could be consistent with the constitutional requirements of s. 35.

What mechanism will ensure that our cultural heritage resources will be protected for, instance, if there are no longer provisions requiring an assessment of archaeological potential for a development because the Cultural Heritage and Archaeology provisions of the PPS no longer apply?

It is simply not open to the government to create a legislative regime which effectively opts-out of the duty to consult and accommodate. The Supreme Court of Canada in *Carrier Sekani* explicitly forbid such behaviour by the Crown.

This legislation is deeply flawed and may be unconstitutional. If the government plans on introducing some other legislative mechanism that would allow the Crown to fulfill its duty to consult and accommodate in the face of Bill 66 then that should be included as part of the Bill itself.

Yours truly,

Mark LaForme
Director
Mississaugas of the Credit
Department of Consultation and Accommodation

cc:

Chief Stacey LaForme, Mississaugas of the Credit First Nation
Fawn Sault, Consultation Manager, MCFN-DOCA
Caron Smith, Environmental and Regulatory Advisor, MCFN-DOCA
Hon. Steve Clark, Minister of Municipal Affairs and Housing
Hon. Greg Rickford, Minister of Indigenous Affairs
Hon. Michael Tibollo, Minister for Tourism, Culture, and Sport
Hon. Rod Phillips, Minster for Environment, Conservation and Parks
Premier Doug Ford