October 22, 2026

Legislative Committee on Bill C-39
Sixth Floor, 131 Queen Street, House of Commons
Ottawa ON K1A 0A6
Sent via email: cc39@parl.gc.ca

Re: Brief to the House of Commons Legislative Committee on Bill C-39, *Building Canada Strong Act* from Legal Advocates for Nature's Defence

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Legal Advocates for Nature's Defence ("LAND") provides this brief to the Legislative Committee on Bill C-39 ("Committee"). This brief provides our legal analysis on Part 1 of Bill C-39, *Building Canada Act* ("Bill C-39") and our recommended ways forward. By providing this brief, LAND is not endorsing Bill C-39 nor any provisions within it. To the contrary, for the reasons expanded on in this brief, LAND is requesting the immediate withdrawal of Bill C-39 in its entirety.

Concerns and Recommendations

As a result of the rapid rate at which Bill C-39 is moving through the legislature and the critical lack of any engagement with Indigenous Nations and rights-holders in developing this omnibus bill, this brief is limited to the areas LAND has identified as being of most pressing and concerning to the public interest, the protection of nature, Indigenous and Treaty rights. As such, LAND retains the right to provide further comments. We ask that supporting information, as set out in our citations, be incorporated by reference.

Part 1 of Bill C-39, 'Build Canada Now', prioritizes the interests of industry over the inherent and constitutional rights of Indigenous peoples, government principles of transparency and accountability, and Canada's obligations to conserve biodiversity and take action against climate change. Part 1 operationalizes the proposals put forward by the federal government earlier this year in their Getting Major Projects Built in Canada Discussion Paper.[1] We strongly oppose Bill C-39's proposals to speed up federal project reviews and decision-making to advance development at the cost of constitutionally protected and internationally recognized Indigenous rights, the environment and our democracy. For the reasons detailed below, **LAND recommends that Part 1 of Bill C-39 be withdrawn in full.**

[1] See LAND's submission in response to the Getting Major Projects Built in Canada Discussion Paper [**Discussion Paper**].

1. Authorizing establishment of Regions of National Interest ("RONI")

Bill C-39 amends the *Building Canada Act* ("*BCA*") to expand its focus from advancing projects of national interest to advancing "projects that are in the national interest and projects of an eligible type within a region of national interest".[2] Bill C-39 also adds new sections to the *BCA*, describing the process through which Regions of National Interest ("RONI") can be created in areas that have undergone Regional Assessments ("RA").[3]

LAND's objections to the introduction of RONIs include:

a. Lack of information regarding the RONI designation process

The GiC will, by order, on the recommendation of the Minister of One Canadian Economy ("Minister of OCE"), designate a RONI if they are of the opinion that it is in the national interest, by adding information about the region and project eligibility criteria to Schedule 3 of the *BCA.*[4] We submit that the basic information requirements are altogether lacking, with no clear oversight or transparency mechanisms, as they give the GiC sweeping powers to decide the size of the RONI and what projects would be eligible.

Before designating a RONI, the GiC "may consider any factor that the [GiC] considers relevant". Bill C-39 sets out a few examples of relevant factors, most of which focus on economic benefits.[5] These factors contain vague, undefined terms, and are framed to only consider the positive impacts (e.g. the extent to which the project will provide economic benefits). In addition to this lack of clarity, the GiC would have highly discretionary powers to interpret each factor and decide which factors to consider. Further, there is no mention of Canada's environmental obligations, including biodiversity commitments, and only mentions the "interests" of Indigenous peoples (not their rights or Canada's obligations under the *United Nations Declaration on the Rights of Indigenous Peoples* ("*UNDRIP*")). Taken together, this approach fundamentally impairs a decision-making process which is transparent, intelligible and justified in the public interest.

b. Weakening the already insufficient process under the BCA

Once a RONI is designated, projects within it will follow a process similar to that of Projects of National Interest ("PONI") under the *BCA,* including the issuance of a 'deemed authorization document, which deems all determinations, findings, and opinions required for various environmental authorizations[6] to be made in favour of allowing the project to proceed.[7] This effectively predetermines and pre-authorizes key project decisions that would otherwise have to be independently assessed under federal laws, undermining independent oversight and further weakening environmental safeguards. Alarmingly, the critically deficient PONI process under the *BCA* is further weakened for RONIs. For instance:

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[2] Bill C-39, ss 94, 95 and 97 (amend the title, preamble, and purpose of the *BCA,* respectively).
[3] Bill C-39, s 103 adds new sections 8.2-8.7 to the *BCA.*
[4] Bill C-39, s 103 adds a new s 8.2(1) to the *BCA* that sets out the information that the GiC must add to Schedule 3: (a) the name of the region; (b) detailed description of the region, including the geographic area that it covers; (c) the types of projects that are eligible within the region and any criteria that must be met; and (d) the information that a proponent must provide to the Minister to establish that their project meets the criteria.
[5] Bill C-39, s 103 adds a new s 8.2(6)(a)-(e) to the *BCA* that lists the factors the GiC may consider.
[6] This applies to the federal approvals and permits specified under Schedule 2 of the *BCA,* including under the *IAA, Fisheries Act, Species At Risk Act* [***SARA***]*,* and the *Migratory Birds Convention Act.*
[7] Bill C-39, s 103 adds new sections 8.3 and 8.4 to the *BCA.*

- The Minister of OCE must simply be "satisfied" that Indigenous peoples have been consulted, but does not have "ensure that a process is established that allows for the active and meaningful participation of the affected Indigenous peoples and that a report of the consultation process and results is made available to the public within 60 days";[8]
- The Minister of OCE does not have to make publicly available the information and documents used to issue the 'deemed authorization document';[9]
- Before adding, amending or removing any conditions set out in the 'deemed authorization document', the Minister of OCE does not have to release important information to the public, such as what these conditions are, the risks of such conditions, what mitigation measures were implemented, reasons for why recommendations from other federal departments regarding the project were not accepted, and the full contents of the studies and impact assessments ("IA") conducted regarding the project;[10] and
- Before adding, amending or removing any conditions set out in the 'deemed authorization document', the Minister of OCE does not have to table a report in each House of Parliament containing the above-mentioned important information nor explain their decisions in establishing the conditions[11], thereby removing another accountability mechanism.

c. Rendering impact assessment and RA processes meaningless

LAND is particularly concerned that by pre-approving projects within the geographic scope of a RA, the IA and RA processes could be rendered effectively meaningless. In the context of the Ring of Fire RA, this would unravel years of input and review, and nullifying the critical recognition that there be a cumulative effects review proportional to the scale of the impacts on Indigenous rights, lands and waters.

The RA for the Ring of Fire area has been referred to as a "historic achievement" following "three years of persistent efforts by First Nations to secure the Government's agreement to a regional assessment that is co-led in partnership between First Nations and Canada."[12] The RA is meant to "advance its commitments to reconciliation through meaningful demonstration of respect for First Nations' inherent authority regarding the future of their territories and peoples, and their right to free, prior and informed consent," and is "an important step to building the experience, trust, and capacity needed on all sides to advance Nation-to-Nation relationships."[13] As stated in the Terms of Reference:

> In the face of changes that could impact this area and the surrounding sensitive region, this Regional Assessment is an effort to uphold First Nations' and the Government of Canada's responsibilities to make careful and informed decisions. First Nations and Canada undertake it knowing that, given the growing climate and biodiversity crises, these decisions will be globally significant.[14]

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[8] This is a requirement for PONIs under s 7(2.1) of the *BCA*.
[9] This is a requirement for PONIs under s 7(9) of the *BCA*.
[10] This is a requirement for PONIs under s 8.1(1)-(3) of the *BCA*.
[11] This is a requirement under s 8.1(4) of the *BCA*.
[12] Regional Assessment Working Group, "Terms of Reference for the Regional Assessment in the Ring of Fire Area" (20 January 2025), p 5 [**Terms of Reference**]. An overview of the process is depicted on page 13 of the Interim Report for the RA within the Ring of Fire Area (20 January 2026). Please note that this is not an endorsement of the "co-led" process - we maintain our position that the process ought to be Indigenous led.
[13] Terms of Reference (20 January 2025), p 5.
[14] Terms of Reference (20 January 2025), p 5.

Weaponizing the outcomes of the RA process to justify accelerated development in a RONI would fly in the face of reconciliation and reinforce the Crown's colonial legacy of overriding Indigenous rights, including the right to protect and conserve the environment.[15] The Crown must ensure that the Final Report of the Ring of Fire RA will not be used – by way of a RONI – to approve and fast-track development in the assessment area, which is within Treaty 9 territory. Rights-holders who have been actively engaged in the RA process since its inception[16], including our client the Friends of the Attawapiskat River, have been continuously assured that the RA would not excuse any Ring of Fire-related projects from individual IAs. The language in the Terms of Reference is unequivocal: RAs "[do] not replace the need for project-specific assessments".[17]

d. Failure to respect Indigenous jurisdiction

LAND submits that the increased threats to the proposed Ring of Fire area under Bill C-39 – specifically, accelerating development without Indigenous consent nor a comprehensive assessment of the social, environmental and human health effects – demonstrates the Crown's lack of respect for Indigenous jurisdiction over their lands and waters. Indigenous communities and organizations have been actively seeking to protect the Hudson-James Bay lowlands from mining development.[18] The inherent, Treaty and internationally recognized human rights of Indigenous peoples, including the right to protect and conserve their lands and waters, must be respected.

e. Federal-provincial cooperation to further fast-track approvals

LAND submits that the risks posed by the proposal to enable RONIs (previously termed Federal Economic Zones[19]) are exacerbated by the province of Ontario's introduction of Special Economic Zones ("SEZ") legislation by way of Bill 5, *Protect Ontario by Unleashing Our Economy Act, 2025* which similarly provides the Crown with unrestricted powers to decide where, and to whom, laws will or won't apply. The Discussion Paper stated that cooperation between federal and provincial governments is "essential to make [RONIs and SEZs] work effectively" and "would allow projects to be fast-tracked under both federal and provincial regimes".[20] We are extremely concerned that Bill C-39 will allow Canada and Ontario to effectively create an entirely lawless zone in the proposed Ring of Fire area by establishing both a RONI and SEZ, respectively.

f. Inadequate Indigenous consultation and public participation

LAND is gravely concerned by the lack of any real or meaningful consultation obligations that must be fulfilled before designating a RONI. Instead, the Minister of OCE must "be satisfied" that "adequate

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[15] *United Nations Declaration on the Rights of Indigenous Peoples,* Article 29(1).

[16] The Friends of the Attawapiskat River's continued opposition to resource extraction projects in the area where the Ring of Fire is proposed is documented on our Resources page, including submissions regarding provincial and federal impact assessments, policies and guidelines, laws and regulations, and the Regional Assessment.

[17] Terms of Reference (20 January 2025), p 17.

[18] For instance, see: the Mushkegowuk Council of Chiefs's resolution designating the Ring of Fire as a protected homeland, within which no development can take place without free, prior and informed consent (2025); the Friends of the Attawapiskat River's Declaration of Protection for Lands and Waters (2023); the Moratorium in the Ring of Fire to protect watersheds and Indigenous rights, issued by various Indigenous, environmental and civil society organizations (2021).

[19] RONIs were originally termed Federal Economic Zones ("FEZ") in the Discussion Paper, Proposal #5.

[20] Discussion Paper, Proposal #5.

consultations have been conducted" with Indigenous peoples whose rights may be adversely affected, either by way of the RA or by any other means.[21] We strongly oppose Bill C-39's proposed approach to consultation regarding RONI designations, for three main reasons:

1) **Relying on consultation that was conducted as part of the RA as proof of consultation for a RONI designation is unethical and illogical**. The purpose of a RA is to study the positive and negative impacts (including cumulative impacts) of past, current and future activities within a species region on Indigenous peoples and their rights, the environment, social conditions, the economy, and human health.[22] Contrastively, the purpose of a RONI is to urgently advance projects that support Canada's economy, sovereignty, and security. RAs and RONI designations are extremely different in their processes, purposes and outcomes – one is focused on information gathering and assessing cumulative social and environmental effects of potential development in a region, whereas the other is focused on choosing a geographic area within which projects will be "advanced through an accelerated process that enhances regulatory certainty and investor confidence"[23]. Co-opting the thoughts, concerns and perspectives shared during an RA will further fracture Crown-Indigenous relationships and violate Indigenous peoples' right to free, prior and informed consent.
2) **A RONI will encompass various projects, and consultation must be undertaken for each project, with each Indigenous community who may be affected**. This is necessary to uphold the constitutional duty to consult and the internationally and domestically recognized Indigenous right to free, prior and informed consent.
3) **There is no mention of public participation opportunities in the RONI designation process**, which goes against the principles of transparency, accountability and participation, which Canada has identified necessary to strengthen public trust in government and the health and effectiveness of our democracy.[24]

2. Transferring decision-making powers from the Impact Assessment Agency to industry-aligned regulators

Bill C-39 proposes to shift the responsibility for review and decision-making of certain projects from the Impact Assessment Agency of Canada ("Agency") to the Canadian Nuclear Safety Commission ("CNSC") and Canada Energy Regulator ("CER") – regulators that are known for their bias and lack of public trust.

The CNSC would be responsible for conducting IAs for nuclear and uranium projects.[25] The *IAA* would be amended to bring the CNSC under its purview, meaning that the responsibilities of the Agency under the *IAA* (i.e. to conduct an IA using a science-based, participatory process) would now be transferred to the CNSC for nuclear projects.[26]

Moreover, the CER would be responsible for reviews of international and interprovincial pipelines, transmission lines, and offshore renewable energy projects, which would no longer require an IAunder

[21] Bill C-39, s 103 (adds a new s 8.2(7) to the *BCA*).
[22] Agency, "Regional Assessments".
[23] Bill C-39, ss 95(2) and 97.
[24] Canada, "Government of Canada Trust and Transparency Strategy".
[25] Bill C-39, s 3(3).
[26] Bill C-39, s 46.

the *IAA*.[27] Instead, these projects would be unilaterally reviewed by the CER under their own process. Additionally, the CER will have the power to:

- Decide whether to authorize the construction and operation of a pipeline or power line requiring less than 300km of new right of way (pipelines and power lines that require more than 300km of new right of way will still require approval by the GiC);
- Order an approval or exemption from all or part of the approval process after a proponent applies for a pipeline (new or extension) that do not require more than 40km of new right of way; and
- Order an approval or exemption from all or part of the approval process after a proponent applies for a pipeline (new or extension) that requires more than 40km of new right of way if the CER believes it is in the public interest.[28]

LAND strongly opposes these amendments which would remove the responsibility of conducting IAs from the federal organization with the most expertise, namely the Agency. The Agency is tasked with administering the *IAA*, "to ensure the most complex projects in Canada, the ones with the post potential for serious adverse effects in federal jurisdiction, are assessed and designed in a way that protects the environment and Indigenous rights".[29] As LAND has repeatedly shared,[30] regulators like the CER and CNSC are ill-equipped to carry out all substantive requirements of the *IAA*, including an assessment of cumulative effects, alternatives, climate obligations, public participation, Indigenous rights impacts, and sustainability. Their technical expertise in licensing should not be confused with the broader expertise required for conducting an independent federal IA. Widely publicly criticized as lacking public trust, these regulators are also unlikely to adequately scrutinize the risks of energy and nuclear projects by virtue of being 'captured regulators' that advance the interests of the industry they are tasked with regulating, instead of the interests of the public.[31] Removing the requirement of an IA entirely for certain energy projects, and delegating the IA review from the Agency to the CNSC, undermines the role of the Agency and will undoubtedly reduce the quality of review.

3. Eroding Reconciliation, ignoring *UNDRIP, UNDA*

Under the *United Nations Declaration on the Rights of Indigenous Peoples Act* ("*UNDA*"), Canada is required to ensure that the laws of Canada are consistent with *UNDRIP.*[32] However, Bill C-39 makes no mention of *UNDRIP* or *UNDA. UNDRIP* is only mentioned once in the *BCA:* the government of Canada, per the preamble of the *BCA,* is committed to respecting the rights of indigenous peoples set out in *UNDRIP.* While this is a step ahead of Bill C-39, it is important to note that preambles are not legally binding (they are instead meant to help interpret and apply the legislation). The *BCA* does not mention

[27] Bill C039, s 8(2).
[28] Bill C-39, ss 128 and 137(1).
[29] Impact Assessment Agency of Canada, "Mandate of the Impact Assessment Agency of Canada" (last modified December 2 2025).
[30] See, for instance: LAND's submission in response to the Discussion Paper; LAND's Open Letter to the Major Projects Office opposing the fast-tracking of nuclear projects, which garnered the support of over 240 First Nations, organizations and individuals.
[31] See, for instance: CFA Institute Research and Policy Center, "Issue Brief: Regulatory Capture" (29 October 2019); Kerrie Blaise and Shawn-Patrick Stensil, "Small Modular Reactors in Canada: Eroding Public Oversight and Canada's Transition to Sustainable Development" (3 January 2020); M.V. Ramana and Kerrie Blaise, "Regulation vs promotion: Small modular nuclear reactors in Canada" (September 2024).
[32] *United Nations Declaration on the Rights of Indigenous Peoples Act,* SC 2021, c 14, s 5.

UNDA. Failure to mention *UNDRIP* or *UNDA* in Bill C-39 sends a message that upholding the rights and principles enshrined in *UNDRIP,* and domestically committed to via *UNDA,* including the principle of free, prior and informed consent, is not a priority for the federal government.

4. Limiting access to justice

Bill C-39 amends the *Federal Courts Act* to grant the Federal Court of Appeal ("FCA") – instead of the Federal Court ("FC") – exclusive jurisdiction to hear judicial reviews of the GiC's decisions under the *BCA* to designate PONIs and now RONIs.[33] This is concerning because it reduces opportunity for judicial oversight. Ordinarily, an application for judicial review would be heard by the FC, whose decision could then be appealed to the FCA and subsequently the Supreme Court of Canada ("SCC"). Under Bill C-39, however, these judicial reviews would be heard at first instance by the FCA, removing a level of appeal. The only other opportunity for further appeal would be to seek leave to the SCC, and there is no guarantee that leave would be granted. While one has the *right* to appeal a decision of the FC to the FCA, this is not the case for appeals to the SCC. Appealing to the SCC requires permission from the court, which is only granted for a few cases every year.

Additionally, Bill C-39 seeks to 'immunize' decisions to designate RONIs from judicial review, thereby removing a key pathway to seek justice through the court system. Bill C-39 requires that, within 30 days after an order is made under the *BCA* to designate a RONI, important details of the region to which the order relates must be published by the Minister of OCE on the public registry.[34] However, an application for judicial review in respect of a decision to designate a RONI would have to be made within 30 days.[35] This presents a conflict because, if the deadline to post the details of the decision matches the deadline to file for judicial review, it would be effectively impossible to challenge the decision as there would be insufficient time to understand the implications of the designation and identify grounds for review. There is no clarity as to whether the 30 day time period to file a judicial review would start on the day that the order is made or on the day that the details of the decision are posted publicly.

5. Amending, adding or removing conditions of authorization

Bill C-39 amends the *BCA* to expand the Minister of OCE's powers to add, adjust or remove conditions of approval for PONIs and RONIs set out in the 'deemed authorization document' and can now remove conditions of approval that were granted for a PONI before the project was designated as a PONI.[36]

Similarly, Bill C-39 amends the *IAA* to expand the relevant authorities' (i.e. Minister of the Environment, Climate Change and Nature ("Minister of ECCN"), GiC or CNSC) powers to adjust or remove conditions of approval set out in a decision statement, even if doing so will increase the significance of the adverse effects of the project, if they are of the opinion that it is in the "public interest".[37]

This is concerning because conditions of approval are put in place to prevent and mitigate harm, and are imposed after the risks of a project are assessed. Granting the federal government the power to

[33] Bill C-39, s 114.
[34] Bill C-39, s 103 (which adds a new s 8.2(10) to the *BCA*).
[35] *Federal Courts Act,* RSC 1985, c F-7, s 18.1(2).
[36] Bill C-39, ss 100, 101, 103.
[37] Bill C-39, ss 53(1) (which amends s 68(1) and (2) of the *IAA*) and 54 (which adds a new s 68.1 to the *IAA*).

retroactively amend or remove conditions of approval will allow for the removal of key safeguards that were imposed on a proponent to protect the environment, Indigenous rights and the rights of the public.

Additionally, Bill C-39 seeks to dilute the authority of the Minister of ECCN by requiring that IA decisions for projects with potentially significant adverse federal impacts be made *jointly* between the Minister of ECCN and a 'Designated Minister'.[38] The Designated Minister will, according to the Cabinet Directive on Bill C-39, be the "Minister responsible for the relevant sector"[39] (i.e. likely the Minister of Transport or the Minister of OCE, neither of whom have the mandate or expertise to engage in meaningful, comprehensive environmental decision-making).

6. Coordinating review processes to speed up approvals

For a designated project (i.e. project subject to an IA), Bill C-39 proposes to coordinate the IA process with other review processes for federal authorizations. The coordination of review processes will now be a cornerstone of the *IAA.*[40] Bill C-39 also introduces a one year decision-making window for projects under the authority of the Agency (i.e. all designated projects that are not under the CER's or CNSC's authority) and under the authority of the CER (i.e. pipelines, designated power lines, and offshore renewable energy projects).[41] This means that after all the information and studies have been submitted, the relevant authority will issue a decision statement within one year. Imposing such an accelerated timeline on federal review processes necessarily means that scientific rigour, public participation, and inclusion of Indigenous perspectives will be compromised.

Additionally, when issuing the decision statement, the Minister of ECCN can - at the same time - grant certain federal authorizations that are required for the project (rather than requiring separate permitting processes).[42] The authorizations eligible for this coordinated approach are listed in a **new Schedule 5 of the *IAA*,** and include authorizations to cause harm to waterways, wildlife and habitat.[43] The Bill does not specify whether all information requirements under these Acts must be met by the proponent before the authorizations can be issued. This coordinated approach grants the Minister of ECCN sweeping powers to authorize proponents to cause harm to waterways, wildlife and habitat – contrary to the purposes of these environmental laws.

Additionally, we are concerned about the impact this fast-tracked and coordinated approach will have on the constitutional duty to consult. The IA and other federal review processes for each project will trigger the duty to consult with many potentially impacted Indigenous communities. Every community must be afforded the time and capacity support needed to understand the potential impacts of each authorization and have their concerns heard and addressed before they can be in a position to grant

[38] Bill C-39, s 44.
[39] Ministry of One Canadian Economy, "Cabinet Directive: Bill C-39 Introduction".
[40] Per Bill C-39, ss 2, 4(1) and 88, coordinating review processes is added to the preamble, a new purpose of the IAA, and is an objective of the Agency under the *IAA.*
[41] Bill C-39, ss 2 and 118.
[42] Bill C-39, s 49.
[43] Bill C-39, s 43 adds a new Schedule 5 to the *IAA* which sets out the authorizations: kill fish and destroy their habitat under the *Fisheries Act*; Dispose of waste at sea under the *Canadian Environmental Protection Act* [***CEPA***]; harm species at risk and their habitat under *SARA;* exempt rivers, streams or waters from prohibitions against disposal of sawdust, stone and other rubbish into navigable waters, under *the Canadian Navigable Waters Act* [***CNWA***]; and interfere with navigation, such as by changing water flow, under the *CNWA.*

their free, prior and informed consent. Imposing a one year timeline on the duty to consult violates constitutionally protected Indigenous rights and does not advance reconciliation. The front-end approval process proposed under Bill C-39 is inherently incompatible with constitutional required duty to consult obligations, because it reduces access to information necessary to understand impacts to lands, waters and rights and challenge decisions in court.

7. Authorizing harm before IA is complete

Bill C-39 amends the *IAA* to allow project proponents to do things that may cause negative effects within federal jurisdiction, even before the IA for the project is complete. The GiC or the Minister of ECCN (jointly with the 'Designated Minister') can authorize harmful activities before the IA is complete, including authorizations under Schedule 5 of the *IAA*, if they decide it is in the "public interest".[44]

For nuclear and uranium projects, the CNSC can also authorize harmful activities before the IA is complete if they decide it is in the "public interest". The CNSC can also grant authorizations under Schedule 5 before the IA is complete in certain circumstances (i.e. if they determine it is necessary to complete the IA, although it is unclear under what circumstances conducting harmful activities would be necessary to complete an IA).[45]

Allowing the government to allow projects to begin certain harmful activities, before the IA is complete, goes against the precautionary principle, which requires the government to take measures to anticipate and *prevent* environmental degradation. The precautionary principle states that when an activity poses threats of serious or irreversible harm, a lack of full scientific certainty should not be used as a reason to postpone preventative actions to protect the environment.[46] An IA is a fundamental component of applying the precautionary principle, as it allows the government to assess the potential for harm *before* authorizing projects and activities. Canada is legally required, under both international and domestic law[47], to uphold this principle, including in the development and implementation of laws and policies.[48]

This approach also allows the government to weaponize the concept of "public interest" by granting them highly discretionary powers to make this decision, with no transparency or accountability mechanisms in place.

8. Prioritizing technical and economic feasibility over environmental protection

Bill C-39 amends various environmental laws to require that decision-makers, before establishing certain conditions or terms, must take into account whether those terms and conditions are technically, economically and practically feasible.[49] These amendments effectively dilute the protections that were intended under the environmental laws, by imposing a new balancing exercise on decision makers to weigh "technical, economic and practical feasibility" which are all undefined terms.

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[44] Bill C-39, s 5(1) and 49.
[45] Bill C-39, ss 5(1).
[46] Rio Declaration on Environment and Development, UN Conference on Environment and Development, UN Doc A/CONF 151/Rev 1 (1992), Principle 15.
[47] The precautionary principle is domestically enshrined in various environmental laws, including the *IAA* and *CEPA.*
[48] *114957 Canada Ltée (Spraytech, Société d'arrosage) v Hudson (Town),* 2001 SCC 40 at para 30.
[49] Bill C-39, ss 127 (amends the *Canadian Energy Regulator Act*); 159 (amends the *CNWA*); 167 (amends *CEPA*); 176 (amends *SARA)*; 183 (amends the *Fisheries Act*).

9. Weakening the Fisheries Act

Bill C-39 amends the *Fisheries Act* to create a new system where proponents will be allowed to pay a fee (which is often affordable for large proponents) to harm fish habitat, instead of the current system where proponents would have to 'offset' the harm they create by creating new habitat in the affected watershed. This new system introduces fish habitat offset credits that can be bought, sold or traded.[50] This necessarily shifts the focus of the fish habitat bank regime from avoiding, minimizing and offsetting harm to providing compensation for harm, with no clarity regarding how the fee will be calculated and how the Environmental Damages Fund will be used.

10. Making fast-tracking powers permanent

When the *BCA* was passed last year, it included an assurance – known as a 'sunset clause' – that the GiC's extraordinary and discretionary powers to designate PONIs would only last for five years. Sunset clauses are important for reducing executive overreach and preventing the sweeping powers conferred under the *BCA* from becoming permanent with no oversight from the legislature. However, Bill C-39 amends the *BCA* to remove this 'sunset clause', essentially granting the federal government unrestricted powers to designate PONIs (and now also RONIs), despite their significant social and environmental implications, with no temporal limits.[51]

About LAND

LAND is an environmental law non-profit dedicated to advancing access to justice in Northern Ontario, to protect nature and Indigenous rights. LAND offers expert public interest legal insight that is highly relevant to the Committee's deliberations, particularly where environmental protection, Indigenous rights, and public accountability intersect. As the only environmental law organization based in Northern Ontario providing pro bono legal services, LAND is uniquely positioned to advise on the implications of legislative and policy changes affecting some of Canada's most ecologically and culturally significant regions. Our work is grounded in years of legal advocacy, public legal education, and participation in law reform processes. The purpose of our brief is to ensure critical legal perspectives from the North are represented and that decisions reflect the rights of communities most impacted by environmental harm.

For the reasons detailed in this submission, LAND strongly recommends that Bill C-39 be withdrawn in full. Thank you for your consideration of our comments.

Respectfully submitted,



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[50] Bill C-39, ss 184-186 and 189.
[51] Bill C-39, ss 98(1), 100(4), 109, 110 and 111.