Written Submission to the

STANDING COMMITTEE ON THE INTERIOR

Regarding

Bill 140, *Building Ontario Faster Act, 2026*

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Sent via email: **sci@ola.org**

November 6, 2026

Re: Legal Analysis and Implications of Bill 140, *Building Ontario Faster Act,* from Legal Advocates for Nature's Defence

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Legal Advocates for Nature's Defence ("LAND") provides this written brief to the Standing Committee on the Interior ("Committee") in follow-up to our request to appear as a witness,[1] submitted on October 29, 2026. This brief provides our legal analysis of Schedule 7 (amendments to the *Environmental Assessment Act* ("*EAA*")), Schedule 8 (amendments to the *Environmental Bill of Rights, 1993* ("*EBR*")), Schedule 9 (amendments to the *Environmental Protection Act* ("*EPA*") and Schedule 17 (amendments to the *Ontario Heritage Act* ("*OHA*")) of Bill 140, *Building Ontario Faster Act* ("Bill 140") and our recommended ways forward.

By providing this submission, LAND is not endorsing Bill 140 nor any provisions within its Schedules or the accompanying proposals posted on the Environmental Registry of Ontario ("ERO").[2] To the contrary, for the reasons explained in detail in this submission, LAND is requesting the immediate withdrawal of Bill 140, including Schedules 7, 8, 9 and 17.

[1] Application ID: 211221.
[2] Bill 140, the *Proposed Building Ontario Faster Act, 2026* (ERO No. 026-1114); Proposed amendments to the *Environmental Bill of Rights, 1993* and related amendments to the *Environmental Protection Act* (ERO No. 026-1109); Amendments to the *Resource Recovery and Circular Economy Act, 2016* and the Blue Box Regulation (ERO No. 026-1058); Proposed actions to address landfill capacity (ERO No. 026-1056); Renewable Energy Approval: Proposed Amendments to Recognize the Biogenic Portion of Municipal Solid Waste (ERO No. 026-0595); Heritage Framework Transformation: Proposed Amendments to the *Ontario Heritage Act*, Schedule 17 of the *Building Ontario Faster Act, 2026* (ERO No. 026-1090); Proposed Planning Act Changes (Schedule 19 of Bill 140, the *Building Ontario Faster Act, 2026*) (ERO No. 026-1048); *Building Highway 69 Faster Act, 2026* (ERO No. 026-1076).

I. About LAND

LAND is an environmental law non-profit dedicated to advancing access to justice in Northern Ontario, to protect nature and Indigenous rights. As the only environmental law organization based in Northern Ontario providing pro bono legal services to Indigenous and remote northern communities, LAND is uniquely positioned to advise on the implications of legislative and policy changes affecting some of the province's most ecologically and culturally significant regions.

LAND offers expert public interest legal insight that is highly relevant to the Standing Committee's deliberations, particularly where environmental protection, Indigenous rights, and public accountability intersect. LAND was founded by Kerrie Blaise, an experienced environmental lawyer with a recognized track record of advancing access to justice, representing Indigenous communities, non-profits, and grassroots leaders before courts and tribunals across Canada on precedent-setting cases. Our work is grounded in years of legal advocacy, public legal education, and participation in law reform processes.

In addition to these written submissions, LAND's appearance before the Committee would ensure critical legal perspectives from the North[3] are represented and that decisions reflect the rights of communities and Indigenous peoples who stand to be most impacted by environmental harm.

II. Preliminary request

Our first request to the Committee is that they remind the legislature that, as a bill of profound environmental significance, Bill 140 – and specifically Schedules 8 and 17 – is subject to the *EBR* and the consultation and legislative processes must therefore uphold the environmental rights of the people of Ontario. We urge the Committee to remind the relevant Ministers[4] that, in order to comply with the purposes of the *EBR*:

[3] LAND is counsel to the Friends of the Attawapiskat River, Okiniwak Indigenous Youth Movement, and Here We Stand Indigenous Youth Movement, Indigenous grassroots advocacy groups from Treaty 9.
[4] Including but not limited to: Hon. Todd J. McCarthy, Minister of the Environment, Conservation and Parks; Hon. Graham McGregor, Minister of Citizenship and Multiculturalism; Hon, Rob Flack, Minister of Municipal Affairs and Housing; and Hon. Prabmeet Singh, Minister of Transportation.

1) All Bill 140-related proposals that have been posted to the ERO ought to remain open for public comment for at least 60 days. This is a critical first step if the public is to have time to be aware of the proposals, fully review and evaluate their content, and prepare and submit feedback;[5]

2) Government representatives must facilitate public outreach and participation by hosting in-community engagement sessions, particularly as Bill 140 will disproportionately impact certain communities, such as First Nation communities in Northern Ontario. The *EBR* sets out *minimum* levels of public participation that must be met,[6] and we encourage the province to exceed these levels, in alignment with the spirit and intent of the *EBR*; and

3) The decision notices posted to the ERO regarding the above-mentioned Bill 10 proposals must include a complete and accurate description of the effects of public comments on decisions and outcomes.[7]

Further, we request that the Committee not move Bill 140 to Third Reading until *after* the public comment periods have closed and the Ministers have had sufficient time to consider public comments, provide feedback and propose amendments to the Bill. Such an approach would align with the intent of the *EBR* to ensure that public comments are meaningfully considered and not simply collected as a 'check-box exercise'. When decisions are made before the comment periods close, "the value of public input is diminished, and there is a risk of undermining the public's confidence in the *EBR* as a tool for public participation."[8]

Additionally, we remind the Committee that the Crown's ultimate purpose is reconciliation, and how it chooses to engage Indigenous peoples is a test of Ontario's commitment to advancing reconciliation in a manner consistent with the Truth and Reconciliation Commission's Calls to Action and the National Inquiry into Missing and Murdered Indigenous Women and Girls' Calls for Justice.[9] Both recognize the

[5] Bill 140 related proposals meet the criteria for public comment periods to be extended, as per section 17(2) of the *EBR* and the Ontario Auditor General's 2023 Report on the Operation of the *EBR* at p 17, because the proposals have a high level of public interest, are very complex and interrelated with other proposals, and have potential for significant, province-wide environmental implications, thus requiring that more time be given to the public to be aware of the proposals, fully review and evaluate their content, and prepare and submit feedback.
[6] *EBR* at s 3(1).
[7] Ontario Auditor General's 2024 Report on the Operation of the *EBR* at p 35.
[8] Ontario Auditor General's 2025 Report on the Operation of the *EBR* at p 14 [**OAG 2025 Report**].
[9] Truth and Reconciliation Commission of Canada, *Truth and Reconciliation Commission of Canada: Calls to Action* (Winnipeg: TRC, 2015) at 4, Call to Action 43; National Inquiry into Missing and Murdered Indigenous Women and Girls, *Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls*, vol 1a (Vancouver: Privy Council Office, 2019) at 72

United Nations Declaration on the Rights of Indigenous Peoples ("UNDRIP") as a framework for reconciliation and the importance of Indigenous peoples' full and meaningful participation in decisions affecting their rights, cultures, and territories.[10] Yet, Ontario's approach to Bill 140 reflects an impoverished vision of reconciliation, particularly in its failure to include Indigenous grassroots voices and youth from the outset, beginning with the development of the bill and continuing throughout the legislative process, despite their express attempts to participate.[11]

The proposals for Bill 140 neither set out an engagement process that is genuinely aimed at listening to the concerns of community members, including the Indigenous grassroots, nor set out a process for how concerns will be respected and accommodated.[12] Meaningful engagement that upholds Constitutionally protected Indigenous rights requires more than public notice and an opportunity to submit comments. Effectively excluding these Indigenous voices from decisions that directly affect their lands, waters, cultural heritage, and responsibilities to future generations undermines the very purpose of reconciliation. We implore the Committee to call for a legislative process that respects and enables Indigenous peoples' participation.

III. Summary of Concerns and Recommendations

Bill 140 builds on the dangerous and sweeping reforms brought on by Bill 5, *Protect Ontario By Unleashing Our Economy Act, 2025*, and, if passed, will create the context to infringe Indigenous rights, undermine democratic rights, insulate the government from public and judicial scrutiny, and jeopardize Indigenous cultural sovereignty.

LAND's input on Bill 140 can be summarized into the following priority areas of concern:

[10] *United Nations Declaration on the Rights of Indigenous Peoples*, Article 19 [***UNDRIP***].
[11] *See for example,* objections raised by Indigenous grassroots groups the Friends of the Attawapiskat River, Okiniwak Indigenous Youth Movement, and Here We Stand Indigenous Youth Movement; Legal Advocates for Nature's Defence, "Indigenous Grassroots Youth Leaders and Legal Experts Condemn Bill 140's Attack on Indigenous Culture, Responsibilities to Protect the Land and Water" (2 November 2026)
[12] *Eabametoong First Nation v Minister of Northern Development and Mines,* 2018 ONSC 4316 at para 92, citing *Haida Nation v British Columbia (Minister of Forests),* 2004 SCC 73 at para 43.

- **Lack of Indigenous collaboration and consultation:** Bill 140 has not been developed in collaboration with those who stand to be directly affected, including northern Indigenous communities, contrary to the principles set out in *UNDRIP*[13] and the Honour of the Crown.[14]

- **Reduced Public Participation and Accountability (Schedule 8):** Bill 140 strips the *Environmental Bill of Rights* of its core provisions intended to protect Indigenous communities' and the public's right to know about and participate in environmentally significant decisions and ensure these decisions are guided by environmental values and made in an open, transparent and accountable manner.

- **Threats to Indigenous Cultural Sovereignty (Schedule 17):** Bill 140 builds on the harmful reforms to the *Ontario Heritage Act* precipitated by Bill 5, by further jeopardizing Indigenous cultural sovereignty, eliminating expert-led, rigorous archaeological assessments, and granting the province sweeping powers to allow the destruction of irreplaceable cultural heritage.

- **Increased Environmental Injustice (Schedule 7)**: Bill 140 repeals the requirement for large landfill projects to require municipal support under the *Environmental Assessment Act*, thereby undermining municipal autonomy and perpetuating environmental racism and injustice against marginalized communities.

- **Restricted Access to Justice (Schedule 9):** Bill 140 repeals the public's right to appeal certain approvals pursuant to the *Environmental Protection Act* on the grounds that they cause harm to the environment, thereby limiting access to justice.

Detailed analysis of these areas of concern follows, and we ask that supporting information, as set out in our citations, be incorporated by reference.

IV. Detailed Review of Bill 140 - Concerns and Recommendations

As a result of the rapid rate at which Bill 140 is moving through the legislature and the critical lack of any engagement with Indigenous nations in developing this omnibus bill, this submission is limited to the

[13] For instance, *UNDRIP,* Article 19.
[14] The honour of the Crown exists in the exercise of legislative authority and cannot be undermined or extinguished by the legislature's assertion of parliamentary sovereignty (*Mikisew Cree First Nation v Canada,* 2018 SCC 40 at para 55).

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.

A. Schedule 8, proposed amendments to the *Environmental Bill of Rights, 1993*

Schedule 8 of Bill 140 removes various meaningful and impactful mechanisms provided by the *EBR* that are intended to ensure environmentally significant decisions are made transparently and in consultation with the public. Schedule 8 will reduce Indigenous communities' and the public's ability to track, understand and respond to proposals, limit avenues for legal recourse, remove requirements for decisions to be guided by environmental values, and insulate the province from public and judicial scrutiny.

LAND's objections to Schedule 8 include:

1. The province is removing the public's access to and reliance on the Environmental Registry of Ontario to be informed and have a say

The *EBR* recognizes that the public should have the means to ensure that the protection, conservation and restoration of the environment is achieved in an effective, timely, open and fair manner.[15] Indeed, providing public rights to protect the environment was a key ethos in the creation of the *EBR* and the *ERO,* a means to facilitate an open, participatory process in environmental decision-making.

The purpose of the ERO is to "provide a means of giving information about the environment to the public", including proposals, decisions, events, actions, and other things done under the *EBR*.[16] The ERO is a tool to consult with the public on the provincial government's environmentally significant decisions. The public can expect that proposals will be posted on the ERO, and they will be able to track the status of proposals and submit comments.[17] In that sense, the ERO is effectively a one-stop shop for accessing information about environmentally significant decisions. Under Bill 140, the public will no longer be able to rely on the ERO as a comprehensive source of information, because many proposed policies, acts and regulations will no longer have to be posted on the ERO.

[15] *EBR,* preamble.
[16] *EBR,* s 6(1)-(2).
[17] Canadian Environmental Law Association, "Fact Sheet: Environmental Registry of Ontario" (August 2026).

As stated by the Auditor General of Ontario's 2025 Annual Report on the Operation of the *EBR,* "[when] the *EBR* operates effectively, it supports meaningful public participation in, and transparency and accountability for, the government's environmentally significant decisions."[18]

Public participation acts as a vital safeguard for transparency and government accountability by ensuring the public has the right to be informed and have an opportunity to raise their concerns. As stated by former Environment Commissioner, Eva Ligeti, in her Special Report to the Legislative Assembly of Ontario:

> The public wants a role in decision-making in all areas of public policy, including environmental matters. The drafters of the *Environmental Bill of Rights* recognized this and saw the need for a uniform, predictable process for public involvement. By including the public early in the decision-making process, the government can benefit from more complete information and avoid costly environmental mistakes.[19]

2. Restoring the environment is no longer a purpose of the EBR

Previously, one of the purposes of the *EBR* was "to protect, conserve and, where reasonable, restore the integrity of the environment by the means provided in this Act." Under Bill 140, this purpose is "to protect and conserve the integrity of the environment by the means provided in this Act".[20] Restoration is essential to mitigating climate change, halting biodiversity loss, ensuring food security and the ability for Indigenous peoples to exercise their rights.[21] Removing restoration as a purpose of the Act further dilutes the province's responsibility to ensure the long-term health of the ecosystems that sustain us.

3. Decisions do not have to be guided by environmental values

Ministers are required to create Statements of Environmental Values ("SEV") that explain how they intend to uphold the purposes of the Act when making environmentally significant decisions. [22] The public has the right to participate in the development and/or amendment of the SEV. The Ministers are required to "take every reasonable step to ensure that the ministry statement of environmental values is

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[18] OAG 2025 Report at p 1.
[19] Eva Ligeti, Environmental Commissioner of Ontario, "Ontario Regulation 482/95 and the Environmental Bill of Rights - A Special Report to the Legislative Assembly of Ontario" (17 January 1996) at p 8 [**Ligeti**].
[20] Bill 140, Schedule 8, s 1(1).
[21] United Nations Environment Programme, "Why Restoration is Necessary" (August 2021).
[22] Ontario, "Statements of Environmental Values".

considered whenever decisions that might significantly affect the environment are made in the ministry".[23] All of these requirements are repealed by Bill 140, meaning that there are no transparent guiding principles to make sure environmental protection is at the heart of decision-making.[24]

Without any requirement to consider environmental factors and demonstrate consistency between the decision and the SEV, each Minister will "by necessity tend to focus on other priorities which may seem more urgent." The resulting decisions will ignore and undervalue important environmental considerations, and "[in] the long run, the people of Ontario and the environment will suffer."[25]

4. Public comment opportunities for policies, acts and regulations posing impacts to the environment are significantly reduced

Currently, the public has the right to comment on proposed policies, acts and regulations that may have significant environmental impacts (unless the policy or law is primarily financial or administrative in nature).[26] However, under Bill 140, these proposed policies, acts and regulations will no longer have to be posted on the ERO for public comment if they are also required to be posted on the Ontario Regulatory Registry ("ORR").[27]

While these proposed policies, acts and regulations are supposed to be posted on the ORR, this is not a statutory requirement (i.e. not part of any law). Instead, it is required under a Cabinet Directive, which could technically be amended at any time.[28] Additionally, there are no requirements – even under the Cabinet Directive – to publish the environmentally focused impacts of the proposals. Posting on the ORR is therefore optional, and there is no guarantee that the ORR will contain the same amount of information. There is also no clear, statutory requirement (as there is under the *EBR*) for the Ministries to consider public comments as part of their decision-making.

The ORR is not a sufficient substitute for the ERO. For instance, the proposed changes to the *EBR* are currently open for comment on the ERO (ERO No. 026-1109), and the proposal provides plain language

[23] Ministry of the Environment and Climate Change, "Statement of Environmental Values: Ministry of the Environment and Climate Change".
[24] Bill 140, Schedule 8, s 2.
[25] Ligeti at p 7.
[26] These are proposed policies, acts and regulations that are governed by the *Modernizing Ontario for People and Businesses Act, 2020.*
[27] Bill 140, Schedule 8, ss 3(2) & 4(2).
[28] Ontario, "Burden Reduction Directive".

summaries of the changes being proposed. Bill 140 is also posted on the ORR (ORR No. 26-MRTR001), but does not expand on the proposed changes to the same degree.

This proposal will deter public participation by reducing access to information, creating confusing participation processes and expecting members of the public to participate in the technical legislative process when bills are introduced, with no explicit requirement that their comments be considered in decision-making. There is already a lack of public awareness and education about the *EBR,* which inhibits the public's ability to effectively participate in decision-making,[29] and this will be further compounded if public comment opportunities are fragmented between various forums as proposed by Bill 140. This will increase difficulties for Indigenous communities to track provincial proposals and potential impacts on their inherent and Treaty rights.

Additionally, exempting proposals from *EBR* consultation requirements is inconsistent with the *EBR's* purposes of enabling public participation in, and increasing accountability for, the government's environmental decision-making.[30] As stated by the former Environment Commissioner, Eva Ligeti, in her Special Report to the Legislative Assembly of Ontario:

> The best way – perhaps the only way – to provide far-sighted and predictable environmental policies is to encourage broad public participation before decisions are finalized, to ensure that all important factors are considered, and "to do it right the first time". The public notice requirements of the Environmental Bill of Rights encourage public input into environmental decision-making. They are essential to sound policy development, particularly when difficult decisions must be made.[31]

This has been consistently reiterated by the Auditor General of Ontario, including in their 2025 Annual Report on the Operation of the EBR:

> When members of the public contribute to environmental decision-making, their input can improve the quality of decisions and outcomes for the environment by providing information and perspectives that can help decision-makers minimize environmental risk. Public participation

[29] OAG 2025 Report at p 23.
[30] OAG 2025 Report at p 16.
[31] Ligeti at p 9.

can also lead to greater transparency for government decision-making, greater public awareness of issues and acceptance of decisions, and better implementation of decisions.[32]

5. *Public accountability mechanisms are repealed, threatening access to justice and legal recourse*

Various provisions in the *EBR* that promote accountability and advance access to justice are threatened by Bill 140. For instance, the following provisions are slated to be repealed:

- To fulfil the purposes of the Act, the Act currently is meant to provide "increased access to the courts by residents of Ontario for the protection of the environment". This provision is repealed by Bill 140, meaning that access to justice is no longer central to the *EBR*.[33]
- The public has the right to seek leave to appeal a decision whether or not to approve a proposal that may harm the environment (specifically Class I and II instruments). This right is repealed by Bill 140.[34]
- The public has the right to:
    - Apply for a review of an existing Act, regulation, policy or instrument if they believe that repealing/amending/revoking it is necessary to protect the environment;
    - Apply for an investigation if they believe that an Act, regulation, policy or instrument has been violated; and
    - Initiate or participate in a legal action against someone (individual, corporation, government, etc.) who has violated (or will violate) a law/regulation/instrument that caused (or will cause) significant harm to the environment (if successful, such a legal action would potentially result in the defendant having to restore the environment).

  These rights are repealed under Bill 140.[35] Ontario claims that these provisions are "unique and seldom-used,"[36] but in just 2025, Ontarians used the *EBR* to challenge four ministry decisions about environmentally significant permits and approvals that they would not otherwise have had the right to challenge.[37]

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[32] OAG 2025 Report at p 16.
[33] Bill 140, Schedule 8, s 1(2).
[34] Bill 140, Schedule 8, s 10.
[35] Bill 140, Schedule 8, s 13.
[36] ERO No. 026-1109.
[37] OAG 2025 Report at p 3.

- The public has the right to sue the government for failing to meet the requirements under Part II of the *EBR,* which is focused on Public Participation in Government Decision-Making. While this right is not repealed by Bill 140, it is effectively unusable given that so much of Part II is repealed by Bill 140.[38]

The aforementioned tools under the *EBR* to challenge decisions are used to achieve better environmental outcomes, and this has been recognized by the Auditor General of Ontario in their 2025 Annual Report on the Operation of the *EBR.* For instance:

- The Ministry of the Environment took action in response to two applications for investigation, including ordering a mining company to prevent water contamination originating from its tailings facility;[39]
- A First Nation successfully obtained leave to appeal the issuance of a water-taking permit for a mining company, using an appeal right that would not exist without the *EBR;*[40] and
- Prescribed ministries have twice been found by the Divisional Court to have contravened the *EBR* by failing to consult Ontarians about environmentally significant decisions.[41]

Removing key mechanisms that advance access to justice and promote transparent, accountable government decision-making will further insulate the government from public and judicial scrutiny.

6. Many of these changes will apply retroactively

Most of the proposed changes under Schedule 8 will take effect if/when Bill 140 becomes law. However, if Bill 140 passes, the repeal of provisions related to civil actions, applications for review and investigation, third-party leave to appeal under the EBR and third-party appeals would be retroactive to the date the Bill was introduced (i.e. October 27, 2026).[42] This means that decisions being made between October 27th and whenever Bill 140 becomes law will be indisputable, despite their potential to cause significant harm to the environment.

LAND therefore recommends that Schedule 8 be withdrawn in full.

[38] Bill 140, Schedule 8, s 15(2).
[39] OAG 2025 Report at p 8.
[40] OAG 2025 Report at p 8.
[41] OAG 2025 Report at p 4.
[42] ERO No. 026-1109.

B. Schedule 17, proposed amendments to the *Ontario Heritage Act*

Schedule 17 proposes several amendments to the *Ontario Heritage Act* that jeopardize the protection of Indigenous cultural heritage, including artifacts. If passed, Schedule 17 gives the provincial government largely unrestricted powers to, for instance:

- Introduce a registration system whereby proponents would only have to "register" before conducting "restricted activities" (i.e. archaeological assessments, access land, alter archaeological sites, remove artifacts and archaeological resources) for the purposes of exploratory archaeology;
- Authorize yet-to-be-defined "qualified persons" to conduct "restricted activities" (i.e. archaeological assessments, access land, alter archaeological sites, remove artifacts and archaeological resources for the purposes of advanced archaeology); and
- Exempt projects from having to undergo archaeological assessments (essentially permitting the destruction of lands with cultural heritage value).
- Introduce new terms, such as "qualified person" and "prescribed process", that will only be expanded on through future regulations, and make it easier for projects to move ahead without Indigenous consent or being subject to rigorous assessment by experts.

These amendments, rather than furthering Ontario's commitment to advance reconciliation with Indigenous peoples, risk perpetuating the Crown's legacy of invading Indigenous lands without consent, confiscating Indigenous artifacts, and destroying sacred sites, in violation of the *UNDRIP*.[43]

LAND has actively engaged with the proposals to amend the *Ontario Heritage Act* by way of Bill 5*,* including by submitting the following comments, which we ask be incorporated by reference:[44]

- Response to Proposed Amendments to the *Ontario Heritage Act,* Schedule 7 of the P*rotect Ontario by Unleashing our Economy Act, 2025* (ERO No. 025-0418)

[43] See Articles 11, 12, 31 and 32(2) of *UNDRIP*.

[44] Note on Bill 5: Bill 5 put forth amendments to the *OHA* that would allow the Minister to exempt a property from Part VI of the *OHA* (including the requirement to conduct an archaeological assessment, which is one of the key ways by which cultural heritage is protected). To operationalize these amendments, Ontario released a draft Archaeological Exemption Criteria Regulation. However, these amendments and regulations are still not in force (*OHA* states that sections 66.1 (exemption for properties) and 66.2 (extinguishment of causes of action) would come into force "On a day to be named by order of the Lieutenant Governor in Council"). It remains unclear whether Bill 140, if passed, would render these amendments and regulations in force, or whether the amendments and regulations precipitated by Bill 5 are no longer needed, given that Bill 140 effectively implements those changes.

- Joint Response to Proposed Regulation Under the *Ontario Heritage Act* - Archaeology Exemption Criteria (ERO No. 025-1081)
- Joint Response to Proposed Heritage Framework Transformation (ERO No. 026-0216)

LAND's objections to Schedule 17 include:

1. ***Allowing the province to determine who is qualified to do archaeological work marks a departure from a science-based, impartial process***

Under Bill 140, archaeological work that only licensees could do (i.e. people who meet specific educational and professional requirements) can now be done by a "qualified person."[45] "Qualified person" means a person who meets the qualifications and any other criteria prescribed by the Minister for the purposes of this definition.[46] "Qualified person" will be defined in the future by way of regulations, along with their code of conduct and requirements.[47] A "qualified person" will, under Bill 140, be able to carry out "restricted activities", which include:

- Conducting an archaeological assessment
- Knowing that the site is a marine or other archaeological site, alter the site or its protective buffer or remove an artifact or any other physical evidence of past human use or activity from the site
- Engage in certain activities in a prescribed marine archaeological site (i.e. dive or operate within 500 meters of the site)

Currently, there are strict requirements around who can do archaeological work, as set out in regulations under the *OHA*.[48] For example, a professional licence is required for someone (i.e. a consultant archaeologist) to be able to carry out archaeological fieldwork, monitor/survey/explore/assess and excavate archaeological sites, recover artifacts, and provide technical advice to proponents. Requirements for a professional licence include a master's degree in an area of archaeology, successful completion of a thesis or research project, good standing with an archaeological organization, and significant work experience.[49]

[45] Bill 140, Schedule 17, s 6(5)-(6), (9).
[46] Bill 140, Schedule 17, s 1(4).
[47] Bill 140, Schedule 17, s 27(2).
[48] O Reg 8/06: Licenses under Part VI of the Act - Excluding Marine Archaeological Sites.
[49] O Reg 8/06, ss 6-7.

The amendments in Bill 140 allow the government to unilaterally decide, through a future regulation, who is "qualified" to undertake archaeological work,[50] thereby politicizing decision-making. With no assurances that people undertaking archaeological work will possess the requisite qualifications and experience, these amendments demonstrate a departure from evidence-based, rigorous processes.

2. Allowing archaeological work to proceed through yet-to-be-determined processes risks causing irreparable harm to culturally significant sites

Sections 4 and 5 of Schedule 17 effectively permit anyone who the Minister deems fit, based on Minister-determined criteria and processes their own criteria, to undertake archaeological work and usurp the role of archaeology experts.

a) A registration-based approach for exploratory archaeology lacks preventative oversight

A "qualified person" can undertake "restricted activities" for the purposes of exploratory archaeology simply by registering the activity. The "prescribed process" for registration will be confirmed in future regulations. The only requirements for registration provided under Bill 140 are that, before engaging in "restricted activities" for the purposes of exploratory archaeology, the "qualified person" has determined, "in accordance with the prescribed process", that "the property exhibits archaeological potential", and there is "no known archaeological site of further cultural heritage value or interest on the property".[51] There is no definition of archaeological potential, and there is no clarity regarding how the person would make these determinations.

There are four stages to an archaeological assessment. Exploratory archaeology, according to the government, is "roughly equivalent to Stage 1-3 of archaeological assessment in the current licensing system".[52] Stages 1-3 are:

[50] As per Bill 140, Schedule 17, ss 48(1) & (3), qualified persons can undertake "restricted activities", which include conducting an archaeological assessment, altering marine or other archaeological site or its protective buffer or remove an artifact or any other physical evidence of past human use or activity from the site, and engaging in certain activities in a prescribed marine archaeological site (i.e. dive or operate within 500 meters of the site).
[51] Bill 140, Schedule 17, ss 4-5.
[52] ERO No. 026-1090.

1) **Background study and optional property inspection:** The consultant archaeologist reviews the geographic, land use, and historical information for the project (all lands that are part of the development proposal) and the relevant surrounding area through a background study.

2) **Property assessment:** The consultant archaeologist conducts a general survey of the whole property to identify all archaeological resources that may be present. The survey consists of walking a ploughed field looking for artifacts lying on the surface of the ground or test pitting unploughable areas (e.g., forested areas, woodlots, old pasture) at regular intervals and screening the soil for artifacts. Special conditions, such as brownfield properties or deeply buried archaeological resources, may require alternative strategies. If archaeological sites are identified, Stage 3 assessment is required.

3) **Site-specific assessment:** This stage focuses on the archaeological sites recommended for further assessment after Stage 2. Stage 3 includes mapping the surface extent of each archaeological site and excavating a number of test units and/or test trenches. The goal of this stage is to accurately determine the spatial extent of the archaeological sites, to more completely evaluate their cultural heritage value or interest and, where necessary, to make recommendations for conducting Stage 4 strategies to mitigate development impacts. For some archaeological sites, no further work may be recommended at the end of Stage 3. For those archaeological sites where it is recommended that Stage 4 is necessary, the process of formulating the appropriate mitigation strategy will require reviewing potential strategies with the client and may also require engaging Aboriginal and local communities.[53]

Under Bill 140, a "qualified person" can carry out Stages 1-3 just by registering the activity (i.e. no authorization is required and no consultation is required).

These amendments will move from a precautionary, permit-based approach to an irresponsible registration-based approach. There is no clarity around the registration process, including what information must be provided, how Indigenous communities and the public will be notified and be able to participate and how Indigenous communities will be consulted *before* any work begins. Being able to register "restricted activities", including archaeological assessments, with no clear oversight mechanisms, will effectively allow "qualified persons" to access and disturb land without Indigenous consent, and

[53] Ministry of Tourism and Culture, "Standards and Guidelines for Consultant Archeologists" (2011).

simply let the government know.

Additionally, as Stages 1-3 of the archaeological assessment process cover the majority of substantive study of a site, it means the majority of the assessment will be done without transparency or oversight, assurances that the person undertaking the assessment will have the requisite credentials and experience and clarity regarding information disclosure and consultation requirements with Indigenous communities. Again, there is no clarity around who a "qualified person" is, or whether the requirements will differ for exploratory and advanced archaeology.

Archaeological assessments are frequently required for land development, environmental assessments, land use activities, and building infrastructure, to assess the property for the presence of cultural heritage values, including archaeological resources, and to implement mitigation strategies to protect these values at the site.[54] Archaeological assessments are essential to conserving archaeological artifacts and sites which hold cultural heritage and spiritual value. Moving forward with development without first completing an archaeological assessment means Indigenous sacred sites and ceremonial objects are at risk of remaining unidentified, creating the very real potential that such places and artifacts will be jeopardized, disturbed or destroyed.

b) Authorization is only required for the final stages of archaeological assessment, after sites may have already been disturbed

The Minister can authorize "restricted activities" for the purposes of advanced archaeology through an undetermined "prescribed process".[55] Advanced archaeology is, according to the government, "the equivalent of Stage 4 archaeological assessment in the current licensing system".[56] Stage 4 (i.e. mitigation of development impacts) includes implementing long-term protection strategies for archaeological sites to be impacted by the project. If protection of the site is not a viable option, the consultant archaeologist conducts an archaeological excavation to document the site and remove the artifacts before construction begins.[57]

[54] Government of Ontario, Archaeological Assessments.
[55] Bill 140, Schedule 17, s 5.
[56] ERO No. 026-1090.
[57] Ministry of Tourism and Culture, "Standards and Guidelines for Consultant Archeologists" (2011).

It is extremely concerning that only Stage 4 of the process is considered "advanced archaeology", given that the bulk of the assessment has occurred before this stage.

The Minister, after receiving the application for authorization, will consider whether the proposed conduct could adversely affect established or credibly asserted Aboriginal or treaty rights.[58] However, there is neither clarity around whether and how Indigenous communities will be aware of authorization applications, meaning they may not have the information, nor the opportunity to know that their rights stand to be impacted.

3. Certain projects are entirely exempt from having to conduct an archaeological assessment, threatening the protection of irreplaceable cultural heritage

Bill 140 introduces a new section 66.0.1, which automatically exempts a person from having to conduct an archaeological assessment (as required under any Act except for the *Funeral, Burial and Cremation Services Act* or its regulations) if certain criteria are met. The person must notify the Minister of the exemption. Criteria include:

- "Prescribed process" must be completed and must indicate that the property exhibits archaeological potential and there is no known archaeological site on the property, and the property meets specific criteria (residential property or type of property prescribed by the Minister; the project is to construct a fence/deck/paved driveway or another undertaking prescribed by the Minister; undertaking satisfies any requirements prescribed by the Minister); or
- "Prescribed process" must be completed and must indicate that the property exhibits insufficient archaeological potential to warrant an assessment.[59]

"Prescribed process" will be defined in the future by way of regulations. Importantly, for the purposes of these exemptions, *any person* can complete the "prescribed process" and notify the Minister of the exemption – there are no requirements for this process to be conducted by an expert such as a consultant archaeologist, or even by a "qualified person".

[58] ERO No. 026-1090. It is important to note that this consultation requirement is only stated in the ERO posting and not explicitly in Bill 140.
[59] Bill 140, Schedule 17, s 20(1)-(2).

As we indicated earlier, archaeological assessments are frequently required for land development, environmental assessments, land use activities, and building infrastructure, and are one of the few means available to assess the property for the presence and cultural heritage value of archaeological resources and implement mitigation strategies to protect the site.[60] We are very concerned about Bill 140's sweeping exemption, as it is not possible to know if there are archaeological sites at a property or if the property exhibits insufficient archaeological potential without first conducting an archaeological assessment. These amendments follow the same pattern throughout Schedule 17 of assigning the government powers to irresponsibly authorize the destruction of cultural heritage and sacred sites on the basis of proposed processes that are yet to be determined.

4. Applicants' rights are prioritized above those of the public and Indigenous communities

If an applicant's application for authorization to undertake advanced archaeology is refused, the applicant has the right to appeal this decision to the Ontario Land Tribunal.[61] There are no such appeal mechanisms for members of the public or Indigenous communities who oppose such an authorization. This creates a deeply inequitable process, wherein private rights are prioritized over rights to maintain, revitalize and protect culture, tradition and historical sites.

5. Weakened protections for properties of archaeological or historical significance

Currently, the Minister can designate a property to be of archaeological or historical significance after consulting with the Ontario Heritage Trust,[62] whose mandate is to identify, preserve, protect and promote the value of built, cultural and natural heritage across the province.[63] After a property is designated, no one can excavate or alter the property or remove artifacts without applying for a permit.[64]

Now, pursuant to Bill 140, sites can be designated if the Minister "is of the opinion that a property that contains an archaeological site requires protection and should be designated as a significant site", with no requirement to consult the Ontario Heritage Trust.[65]

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[60] Government of Ontario, Archaeological Assessments.
[61] Bill 140, Schedule 17, s 5.
[62] *OHA,* s 52.
[63] Ontario Heritage Trust, "Our Mandate and Governance".
[64] *OHA,* s 56.
[65] Bill 140, Schedule 17, 2 8(1).

This means that designation is subject to the Minister's opinion on whether a property – even a property that contains an archaeological site – requires protection, and whether that site should be designated. This further consolidates power in the hands of the Minister, with no oversight. Additionally, there is no clarity around how the Constitutional duty to consult will be upheld during the designation process, or how Indigenous communities can notify the government of a sacred site and trigger a designation process.

6. Failure to respect Indigenous cultural sovereignty

In general, Schedule 17 does not provide any quality assurance or guarantee of adequate oversight to ensure that archaeological resources are not harmed, destroyed, or missed altogether in the course of developing a site. By exempting properties from archaeological assessment, and allowing "qualified persons" to undertake "restricted activities" through a "prescribed process" (all of which are not yet defined), either by way of registration or authorization, the province risks violating internationally recognized human rights, including:

- The right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological sites and artifacts;
- The right to manifest, practice, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to the use and control of their ceremonial objects; and
- The right to maintain, control, protect and develop their cultural heritage.[66]

Additionally, removing and diluting requirements for archaeological assessments is the province's attempt to evade constitutional obligations to consult Indigenous peoples (risking infringement of rights), because it is often archaeological assessments themselves that trigger the duty to consult, when artifacts or sacred sites are identified. As stated by the Chiefs of Ontario, most Indigenous ancestral burial sites are not already recorded or 'known', because the primary means of discovering these sites is through archaeological assessments.[67]

[66] See Articles 11, 12, 31 and 32(2) of *UNDRIP*.
[67] Chiefs of Ontario's Written Submission to the Standing Committee on the Interior regarding Bill 5, *Protect Ontario by Unleashing Our Economy Act* (May 26, 2025).

Exempting properties from the very processes that would trigger the duty to consult does not demonstrate a commitment to act honourably. This is supported by Canadian jurisprudence, for instance:

- In *Mikisew Cree First Nation v Canada (Governor General in Council),* 2018 SCC 41, the Supreme Court of Canada stated that "it may not be consistent with s. 35 [of the *Constitution Act, 1982*] to legislate in a way that effectively removes future Crown conduct which would otherwise trigger the duty to consult."[68]
- In *Ross River Dena Council v Yukon,* 2012 YKCA 15, the Yukon Court of Appeal stated that "[s]tatutory regimes that do not allow for consultation and fail to provide any other equally effective means to acknowledge and accommodate Aboriginal claims are defective and cannot be allowed to subsist."[69]

LAND therefore recommends that Schedule 17 be withdrawn in full.

C. Schedule 7, proposed amendments to the *Environmental Assessment Act*

Schedule 7 of Bill 140 seeks to repeal section 17.5 of the *EAA,* which requires proponents of large landfill projects to obtain written support from municipalities in which the landfills are proposed.[70] This provision was added to the *EAA* in 2020 for the following reasons, according to the province:

> We recognize the importance of autonomy in local decision-making and believe that new large landfills should be located in communities that are supportive. We require municipal support for new large landfills, ensuring that the municipalities most directly impacted have input on a new landfill undertaking.[71]

Repealing this requirement demonstrates a further consolidation of provincial authority that undermines municipal autonomy. Further, this amendment risks perpetuating environmental racism and injustice, as environmentally hazardous sites, including landfills, are and will be disproportionately located in areas

[68] *Mikisew Cree First Nation v Canada (Governor General in Council),* 2018 SCC 41 at para 46.
[69] *Ross River Dena Council v Yukon,* 2012 YKCA 15 at para 37.
[70] Bill 140, Schedule 7, s 2.
[71] Ontario, "Waste Management: Establishing and Operating Landfills".

primarily inhabited by Indigenous, racialized and low-income communities, who lack political power and continue to be excluded from decision-making processes.[72]

LAND therefore recommends that Schedule 7 be withdrawn in full.

D. Schedule 9, proposed amendments to the *Environmental Protection Act*

Currently, members of the public can appeal the issuance of Renewable Energy Approvals ("REA") to the Ontario Land Tribunal for a public hearing and decision on whether to uphold, vary or revoke the REA. A REA can be appealed on the grounds that it will cause serious harm to human health or serious and irreversible harm to plant life, animal life, or the natural environment.[73] Schedule 9 proposes to repeal this right of appeal,[74] thereby limiting access to justice and further insulating the province from judicial scrutiny.

LAND therefore recommends that Schedule 9 be withdrawn in full.

V. Conclusion

Bill 140 poses profound and irreversible consequences to the protection of Indigenous and environmental rights and will serve to impede access to justice. At this critical juncture, we ask that the Committee reject Bill 140, including Schedules 7, 8, 9 and 17. A bill that promises to decrease access to information, public scrutiny and recognition of foundational Indigenous rights is not in anyone's best interest. We thank you for your consideration of our comments and reiterate our interest in appearing as a witness before the Committee. Please do not hesitate to reach out if you have any questions or would like to discuss this matter further.

[72] Jose Domingo, "The burden of waste: Environmental justice, health risks and socioeconomic disparities near waste management facilities" (1 September 2026); *National Strategy Respecting Environmental Racism and Environmental Justice Act,* SC 2024, c 11, preamble.
[73] *Environmental Protection Act,* RSO 1990, c E19, s 142.1.
[74] Bill 140, Schedule 9, ss 2-6.

Sincerely,



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