

SCHEDULE A

SW ONTARIO ENERGY HUB & LAMBTON NUCLEAR PROJECT

PROJECT RISK, LEGAL TRIGGERS, GOVERNANCE AUTHORITY & UNDRIP COMPLIANCE

Purpose and Use

Note: This analysis applies Indigenous legal principles outlined in ERO submissions concerning Indigenous law foundations and governance authority.

This Schedule provides statutory and international law analysis supporting the ERO submission. For foundational Indigenous law (chi-naakenigewin, wampum governance, 1844 rejection of Doctrine of Discovery, and unceded territorial status), see accompanying ERO Comment.

This Schedule is submitted for two concurrent purposes:

As supporting legal analysis accompanying submissions to the Environmental Registry of Ontario (ERO); and

As part of the evidentiary record for anticipated judicial review proceedings.

The analysis is confined to statutory compliance, constitutional obligation, and international legal consistency, and does not rely on policy preference or speculative harm.

Executive Summary — Schedule A

Legal Deficiencies in SW Ontario Energy Hub Approvals

This Schedule identifies material legal deficiencies in the Environmental Registry of Ontario review process for projects within the **Southwest Ontario Energy Hub**, beginning with the **York1 Dresden Waste Facility** and extending to related energy, transmission, waste, and proposed nuclear initiatives within the same watershed and regulatory framework.

The analysis is confined to **statutory compliance, constitutional obligation, and international legal consistency**. It identifies systemic gaps in the evidentiary record that constrain lawful decision-making and render approvals vulnerable to judicial review.

Binding Legal Obligations

Decision-makers exercising statutory discretion under Ontario environmental and energy legislation are legally required to assess whether proposed activities can proceed in a manner consistent with:

- **Section 35 of the Constitution Act, 1982;**
- Canada's commitments under the **United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)**, as affirmed through **Bill C-15**; and
- Meaningful consideration of **cumulative environmental effects** in an already burdened region.

These obligations are not discretionary policy considerations. They are **legal constraints** governing the reasonableness and jurisdictional validity of regulatory approvals.

Cumulative Effects and Foreseeability

The concentration of landfill development, petrochemical activity, energy generation, transmission infrastructure, and proposed nuclear facilities within a shared watershed and airshed gives rise to **reasonably foreseeable cumulative impacts** on air, water, land, and human health.

Sequential approvals — beginning with waste disposal projects such as York1 — absent an integrated cumulative effects assessment risk **systemic interference with the continued exercise of Indigenous rights**, including rights relating to clean water, fisheries, cultural practices, and governance. Fragmented project-by-project review undermines the ability of decision-makers to assess consistency with the **honour of the Crown**, the duty to consult, and where applicable, the requirement to obtain **free, prior, and informed consent**.

Material Deficiencies in the Public Record

The current public record contains substantive gaps that preclude lawful approval, including:

- No evidence of **free, prior, and informed consent** obtained through legitimate Indigenous governance authorities with capacity to bind collective or hereditary rights holders;
- Absence of documentation demonstrating **community consent to land cession**, where lands have twice been voted against cession under Indigenous legal orders;
- No comprehensive **cumulative effects assessment** addressing combined impacts within the affected watershed and airshed;
- No documented **UNDRIP consistency analysis** demonstrating alignment with obligations under Bill C-15;
- Inadequate consideration of **transboundary water obligations** under international agreements; and
- Insufficient **baseline environmental and water quality data** across Energy Hub-related projects.

These deficiencies are not technical or procedural. They are **substantive failures** that prevent informed balancing of statutory objectives against constitutional and international legal constraints.

Legal Consequences

Regulatory approvals issued on an incomplete or misleading evidentiary foundation risk constituting **reviewable errors of law and jurisdiction**. Decisions reached in the absence of the above elements may fail to meet the **administrative law standard of reasonableness**, rendering them vulnerable to challenge before domestic courts and relevant international accountability mechanisms.

I. PROJECT RISK & LEGAL TRIGGER MATRIX

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Project / Initiative	Environmental Risk	Water / Aquifer Risk	Indigenous Rights Trigger	Federal / International Trigger	Primary Legal Vulnerability
Chatham-Kent Municipality Dresden Industrial Rezoning (unnamed project)	Pre-emptive rezoning; 35 undisclosed abandoned oil/gas wells; proximity to buried bomb disposal site	Atop federally protected aquifer; flood zone and wetland	FPIC FAILURES; UNDRIP Violations	IAAC; federally designated vulnerable aquifer	Pre-approval rezoning for unnamed project enables IAAC by-pass; undisclosed hazards
York1 Dresden Waste Facility	Landfill leachate; floodplain siting	Kettle Point Aquifer contamination	Aboriginal water rights; unceded territory	IJC – transboundary aquifer	Bill 5 fraudulent purpose; EA removal
Riverside Generating Station (Atura/OPG)	Air & cumulative industrial pollution	St. Clair River boundary waters	Section 35 consultation failure	IJC; Boundary Waters Treaty	IAAC assessment bypass

Project / Initiative	Environmental Risk	Water / Aquifer Risk	Indigenous Rights Trigger	Federal / International Trigger	Primary Legal Vulnerability
Hydro One St. Clair Transmission Line	Wetlands; corridor fragmentation	85+ water crossings	Treaty water crossings	IJC; GLWQA	Priority designation abuse
Boralex Tilbury Battery Storage	Farmland conversion; fire risk	Stormwater / subsurface impacts	FPIC failure; Band Council ≠ rights holders	Fisheries Act potential	Regulatory shopping
St. Clair Region Conservation Authority	Wetland alteration; floodplain development	St. Clair River & tributary ecosystems	Section 35 consultation failure	IJC; Boundary Waters Treaty	Regulatory capture; jurisdictional conflict
Conservation Authority Consolidation	Eliminates oversight	Multiple aquifer systems	Section 35; FPIC failure	IJC; cumulative impacts	ERO 025-1257
Proposed Lambton Nuclear Facility (incl. SMR, waste, thermal discharge)	Radiological release; thermal loading; accident risk	St. Clair River & Great Lakes system	FPIC failure; Treaty water rights; spiritual water relationship	UNDRIP (Arts. 10, 25, 29, 32); Boundary Waters Treaty; GLWQA	Unlawful approval absent consent; cumulative impacts

II. CORPORATE ELDERS & STRATEGIC CORRUPTION

When corporations or the Crown engage individual Indigenous persons, including those described as “elders,” who are hired, compensated, or otherwise financially connected to

project proponents, this does not satisfy the Crown's duty to consult. Such practices constitute strategic corruption designed to create the appearance of Indigenous support while systematically excluding actual decision-making authorities. Such practices constitute strategic corruption designed to create the appearance of Indigenous support while systematically excluding actual decision-making authorities.

A. Why Corporate Elders Do Not Satisfy Consultation

- Consultation must occur through legitimate representative institutions.
- Individuals cannot consent to impacts on collective rights.
- Financial inducements undermine independence and invalidate consent.

B. Legitimate Governance Authority – Walpole Island

Legitimate authority rests with the Sovereign Grandmothers of the Hereditary Line, who are accountable to community law (chi naakenegewin) and the people, not to corporate or Crown funding structures.

C. Strategic Pattern of Corruption

- Hiring elders mirrors equity stake inducements.
- Both tactics manufacture consent.
- Both divide communities and bypass Indigenous law.

D. Supporting Case Law

Haida Nation v. British Columbia (2004 SCC 73)

Sambaa K'e Dene Band v. Duncan, 2012 FC 204

Keewatin v. Ontario, 2013 ONSC 5178

West Moberly First Nations v. British Columbia, 2020 BCCA 138

Yahey v. British Columbia, 2021 BCSC 1287

III. LEGITIMATE GOVERNANCE AUTHORITY

Legitimate authority rests with the Sovereign Grandmothers of the Hereditary Line, accountable to community law (chi naakenegewin), not to corporate or Crown funding structures.

For the purposes of UNDRIP Article 32(2) and Section 35 consultation, engagement with Band Councils or individuals lacking authority to bind collective or hereditary rights holders does not constitute lawful consultation or consent.

IV. ERO DECISION-MAKER OBLIGATIONS

Decision-makers reviewing these projects through the Environmental Registry of Ontario are legally required to consider whether the proposed activities:

- Are consistent with **Section 35 of the Constitution Act, 1982**;
- Can be carried out in a manner consistent with **UNDRIP**, as affirmed by **Bill C-15**;
- Adequately assess **cumulative environmental effects** in an already overburdened region.

Failure to consider these matters renders any resulting approval vulnerable to **judicial review for unreasonableness and legal error**.

V. UNDRIP AS BINDING LAW IN CANADA

A. Legal Status

UNDRIP is affirmed through **Bill C-15 (2021)** as a framework for interpreting and applying Canadian law. Decision-makers must demonstrate UNDRIP consistency when exercising statutory discretion.

B. UNDRIP ARTICLES ENGAGED

Article 10 – Forced Removal

Environmental degradation rendering lands or waters unsafe constitutes constructive displacement, even absent physical relocation.

Article 29(2) – Hazardous Materials

Radioactive effluent, nuclear waste, and contaminated cooling water constitute hazardous materials requiring FPIC.

Article 32(2) – Resource Development

Consultation must occur through Indigenous peoples' **own representative institutions**, not hand-selected individuals.

Article 25 – Spiritual Relationship with Waters

The St. Clair River is a living cultural and spiritual entity; interference engages protected rights.

VI. FREE, PRIOR AND INFORMED CONSENT (FPIC)

FPIC must be **free, prior, informed, and determinative**. Based on the public record, there is **no evidence of valid FPIC** obtained for any project listed in this Schedule, including the Lambton nuclear proposal.

VII. TREATY & CONSTITUTIONAL VIOLATIONS

Historic treaties governing the region protect access to clean water, fisheries, and cultural survival. Section 35 affirms these rights. Approvals absent FPIC undermine the **honour of the Crown**.

VIII. FEDERAL & INTERNATIONAL STATUTORY TRIGGER

- **Impact Assessment Act** – designated nuclear projects; cumulative effects mandatory
 - **CEPA** – radioactive substances; precautionary principle
 - **Fisheries Act** – deleterious substances prohibition
 - **Species at Risk Act** – aquatic habitat protection
 - **Boundary Waters Treaty** – transboundary pollution
 - **Great Lakes Water Quality Agreement** – toxic loading limits
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IX. CUMULATIVE IMPACTS

The projects identified in this Schedule must not be assessed in isolation. The concentration of petrochemical, energy generation, waste management, transmission, and proposed nuclear activities within the same geographic and watershed region raises serious concerns regarding **cumulative environmental, health, and rights-based impacts**.

Where regulatory decision-making permits successive projects to proceed without an integrated assessment of combined effects on air, water, land, and human health, such approvals risk **systemic interference with the continued exercise of Indigenous rights**, including rights to

safe drinking water, fisheries, cultural practices, and governance. These impacts are **reasonably foreseeable** and increase in severity when layered upon existing environmental burdens.

International human rights bodies have repeatedly identified patterns whereby Indigenous communities experience **disproportionate exposure to environmental risk** arising from regulatory fragmentation, exemptions, or weakened oversight. The circumstances documented here are **consistent with those patterns**, warranting heightened scrutiny under domestic equality principles, Section 35 of the Constitution Act, 1982, and Canada's international human rights obligations.

The absence of a comprehensive cumulative effects assessment further undermines the ability of decision-makers to determine whether proposed activities can proceed in a manner consistent with:

- the **honour of the Crown**;
- the duty to consult and, where required, obtain **free, prior, and informed consent**; and
- Canada's commitments under **UNDRIP**, as affirmed by Bill C-15.

Failure to address cumulative impacts does not merely represent a technical deficiency. It raises a substantive legal concern regarding whether ongoing regulatory approvals may contribute to conditions that **incrementally erode the practical ability of Indigenous peoples to maintain their relationship with land, water, and community**, thereby engaging domestic and international accountability mechanisms.

X. DEFICIENCIES IN THE PUBLIC RECORD

The public record presently available through regulatory processes contains significant gaps that materially constrain lawful decision-making. These deficiencies are not merely procedural; they directly affect the ability of decision-makers to assess compliance with **constitutional, statutory, and international legal obligations**.

Specifically, the record lacks:

- **Evidence of free, prior, and informed consent (FPIC)** obtained through legitimate Indigenous governance authorities with the capacity to bind collective or hereditary rights holders;
- **Documented evidence of community consent to land cession in Enniskillen**, where the community has twice voted against ceding lands, constituting an express rejection under **chi-naakenegewin** and relevant Indigenous legal orders;
- A **comprehensive cumulative effects assessment** addressing the combined environmental, health, and cultural impacts of existing, approved, and proposed projects within the affected watershed and airshed;
- A documented **UNDRIP consistency analysis**, demonstrating how statutory discretion has been exercised in alignment with Canada's commitments under **Bill C-15**;

- Analysis of **transboundary water obligations**, including potential impacts on boundary waters governed by international agreements;
- **Adequate baseline environmental and water quality testing** across all Energy Hub–related projects, sufficient to support reasoned conclusions regarding incremental and cumulative risk.

Where such deficiencies persist, regulatory approvals risk being grounded in an **incomplete or misleading evidentiary foundation**, undermining their defensibility in law. Decisions reached in the absence of these core elements may fail to meet the **standard of reasonableness under administrative law**, as they preclude informed balancing of statutory objectives against constitutional protections and international legal constraints.

Further, the absence of these materials limits **transparency and accountability**, impairing the ability of affected rights holders to meaningfully participate in regulatory processes and to seek effective remedies where legal obligations are not met. In this context, continued reliance on an incomplete record raises concerns regarding **state responsibility for preventable rights impacts**, warranting careful reconsideration before any approvals are granted.

Absent correction of these deficiencies, resulting approvals are **not reasonable in law**.

XI. AVAILABLE LEGAL FORA

- Federal Court of Canada
- Ontario Superior Court
- International Joint Commission
- UN Special Rapporteur on the Rights of Indigenous Peoples

XII. JUDICIAL REVIEW RELEVANCE

Failure to address the issues in this Schedule constitutes **reviewable errors of law and jurisdiction**.
