SCHEDULE 1

Legal Precedent and Statutory Reference

Attached to Community Member ERO Submission
Bill 5: Protect Ontario by Unleashing our Economy Act, 2025
Bkejwanong Territory — Walpole Island First Nation

The following cases, statutes, and international instruments form the legal foundation of this community submission. They are provided as a reference for decision-makers reviewing this ERO comment. This list is not exhaustive. The full evidentiary record, including formal submissions from the Sovereign Grandmothers of the Hereditary Line, is filed concurrently.

1. DUTY TO CONSULT AND ACCOMMODATE

Haida Nation v. British Columbia (Minister of Forests), 2004 SCC 73

Established the Crown's duty to consult and accommodate Indigenous peoples before making decisions that may adversely affect their rights. Confirmed that the duty to consult cannot be delegated to third parties including municipalities or project proponents — only specific procedural steps may be delegated, and the Crown must supervise those steps.

Mikisew Cree First Nation v. Canada (Minister of Canadian Heritage), 2005 SCC 69

Affirmed that the duty to consult applies to decisions affecting Treaty rights. Confirmed that the Crown must engage in a meaningful, two-way dialogue — not merely notify — and must be prepared to make changes based on Indigenous input.

Tsleil-Waututh Nation v. Canada (Attorney General), 2018 FCA 153

Confirmed that the duty to consult requires ongoing, substantive dialogue throughout a project's life — not a one-time process. Established that cumulative impacts on Aboriginal and Treaty rights must be assessed as part of the consultation process.

Clyde River (Hamlet) v. Petroleum Geo-Services Inc., 2017 SCC 40

Confirmed that an environmental assessment process cannot by itself satisfy the Crown's duty to consult. Substantive consultation with rights-holders through their own representative institutions is required independently of regulatory review.

Taku River Tlingit First Nation v. British Columbia, 2004 SCC 74

Confirmed that the honour of the Crown requires that consultation be conducted in good faith and with the intention of substantially addressing First Nations concerns — not merely going through the motions of a process.

2. CUMULATIVE IMPACTS AS TREATY BREACH

Yahey v. British Columbia, 2021 BCSC 1287

Landmark decision finding that the cumulative impact of industrial development within a First Nation's territory constituted a breach of treaty rights, even where individual projects had each been approved. Established that cumulative effects on the ability to exercise treaty rights must be assessed

collectively, not project by project. Directly applicable to the sequential approvals of the Southwest Ontario Energy Hub within Bkejwanong Territory.

3. CONSTITUTIONAL FRAMEWORK — FEDERAL PARAMOUNTCY

Constitution Act, 1867 — Sections 91(24) and 92

Section 91(24) places Indians and Lands reserved for Indians under exclusive federal jurisdiction. Section 92 grants provinces authority over local and private matters including municipal institutions under s. 92(8). Provincial powers under section 92 cannot be exercised in ways that infringe on federally protected Aboriginal and Treaty Rights. Municipalities derive their authority from provincial delegation under section 92(8) — they have no independent constitutional status and carry no independent treaty obligations.

Constitution Act, 1982 — Section 35

Guarantees existing Aboriginal and Treaty Rights of the Aboriginal peoples of Canada. These rights cannot be extinguished or overridden by provincial legislation. Bill 5, as a provincial statute, cannot diminish or remove the duty to consult arising from section 35 or the honour of the Crown.

Delgamuukw v. British Columbia, [1997] 3 SCR 1010

Affirmed that Aboriginal title and rights are constitutionally protected and that the Crown must justify any infringement of those rights — including showing that consultation occurred and that the infringement is as minimal as possible.

Tsilhqot'in Nation v. British Columbia, 2014 SCC 44

Confirmed that Indigenous peoples hold Aboriginal title to unceded lands and that neither the federal nor provincial Crown can override that title without meeting a high constitutional standard including consultation, consent, and justification.

4. HONOUR OF THE CROWN AND FIDUCIARY DUTY

Manitoba Metis Federation Inc. v. Canada (Attorney General), 2013 SCC 14

Confirmed that the honour of the Crown is a foundational constitutional principle that requires the Crown to act with integrity in all dealings with Indigenous peoples. Sharp dealing — including using procedural mechanisms to avoid substantive obligations — is inconsistent with the honour of the Crown.

Beckman v. Little Salmon/Carmacks First Nation, 2010 SCC 53

Affirmed that elements of the duty to consult flow from the honour of the Crown in all circumstances involving Indigenous peoples, and that the Crown must approach its obligations with the intention of genuinely addressing Indigenous concerns.

5. INTERNATIONAL LAW — UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES

United Nations Declaration on the Rights of Indigenous Peoples Act (Bill C-15), S.C. 2021, c. 14

Canada affirmed UNDRIP as binding interpretive law in 2021. Decision-makers exercising statutory discretion are required to demonstrate alignment with Canada's UNDRIP commitments. Key Articles engaged by Bill 5: Article 10 (no forcible removal without consent), Article 18 (participation through chosen representatives), Article 19 (consultation before legislative measures), Article 25 (spiritual relationship with lands and waters), Article 29(2) (no hazardous materials on Indigenous lands without consent), Article 32(2) (consent before project approvals affecting territories).

6. ENVIRONMENTAL ASSESSMENT AND SPECIES AT RISK

Dene Tha' First Nation v. Canada (Minister of Environment), [2007] 1 CNLR 1

Confirmed that if an environmental assessment is relied upon to satisfy aspects of the duty to consult, First Nations must be provided full and transparent involvement in both planning and implementation of the assessment — not merely notified of results.

West Moberly First Nations v. British Columbia (Chief Inspector of Mines), 2010 BCSC 359

Established that where accommodation measures are directed by First Nations, the Crown must report back to those First Nations on how their concerns have been addressed. Silence or inaction following consultation is not sufficient.

7. BOUNDARY WATERS AND INTERNATIONAL OBLIGATIONS

Boundary Waters Treaty, 1909 — Canada and United States

Governs the use and pollution of boundary waters including Lake St. Clair and the St. Clair River — waters that receive the Thames River system downstream of Bkejwanong Territory. Article IV prohibits pollution of boundary waters to the injury of health or property on either side. The International Joint Commission was established to prevent and resolve disputes. Provincial Environmental Compliance Approvals cannot authorize discharge that places Canada in breach of this Treaty.

Great Lakes Water Quality Agreement — Canada and United States

Commits both countries to preventing degradation of the Great Lakes Basin ecosystem including Lake St. Clair. Approvals authorizing industrial discharge into the Thames River system must be assessed for consistency with these binational commitments before they can be lawfully issued.
