

Environmental Registry of Ontario Submission
Bill 5 *Protect Ontario by Unleashing Our Economy Act* 2025

Friday May 16th, 2024

This submission is in response to the Ontario government's introduction of Bill 5, the *Protect Ontario by Unleashing Our Economy Act* which has recently passed Second Reading.

Shared Path Consultation Initiative (Shared Path) is a charitable not-for-profit organization which works towards a future in which Indigenous voices, obligations, and rights form a sustained and integral part of Ontario's planning system. Shared Path addresses the challenges and opportunities that emerge where land use change and First Nations and Treaty Rights intersect, and facilitates relationship-building opportunities for First Nations and local governments, institutions, and organizations. We strive towards an Ontario where harmony is restored between Indigenous and non-Indigenous peoples in accordance with the Calls to Action of the Final Report of the Truth and Reconciliation Commission of Canada.

The Shared Path calls upon the Government of Ontario to repeal Bill 5 as it does not acknowledge First Nations and Treaty rights. This includes the Crown's Duty to Consult and Accommodate and the principle of Free, Prior and Informed Consent (FPIC) outlined in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). Further, we support the Chiefs of Ontario's call to undertake a full consultation process with Ontario First Nations prior to proceeding with this legislation which include exemptions for First Nations laws within the Act.

Economic development is not adversarial to Treaty relationships, as stated in Section 35 of the Constitution. Common ground and common interests including First Nations prosperity in Ontario, is possible. For the economy to thrive, First Nations rights and interests, including environmental stewardship need to be taken into consideration.

However, Bill 5 advances economic development by disregarding due process in accordance with Duty to Consult and Accommodate and the environment. For example, Schedule 9 of the Bill, the Special Economic Zones Act, 2025 (the “SEZA”) lacks critical definition and explicit oversight mechanisms or ways and means in which First Nations will be able to either participate in, or raise concerns about, decision-making; leaving the Premier and cabinet with unprecedented control over the province, including the ability to exempt individuals and corporations from provincial and municipal laws. This leads to a weakening of democratic accountability and environmental integrity while bypassing consultation with First Nations. For the economy to grow, a process is needed to ensure First Nations rights and interests are not put at risk. See: (Saugeen First Nation and Chippewas of Nawash Unceded First Nation v Ontario Ministry of Natural Resources and Forestry and T & P Hayes Ltd., 2017).

Bill 5 also significantly deregulates environmental protections, fast-tracks critical resource extraction, and exempts the need for archaeological assessments which trigger consultation with First Nations. The cumulative impacts are significant, including lack of consideration for totemic species, medicinal species, and subsistence species inhibits cultural practices which infringes upon First Nations rights.

In Ontario, there are 46 treaties that have been signed with the Crown and 133 First Nations. The Duty to Consult and Accommodate, under Section 35 of the Canadian Constitution, is law in Canada. Throughout decades of asserting First Nations rights in Canada, many examples of crises come to mind within and around Ontario's borders: the Oka Crisis, Ipperwash Crisis, Caledonia Land Dispute, Anicinabe Park Occupation, and mercury contamination in Grassy Narrows, etc.. The Shared Path asserts that Bill 5 continues to pursue an adversarial approach to its constitutional responsibilities, which is not in the spirit of reconciliation.

Constitutional responsibilities to First Nations will always take precedence over any particular law or regulation. Ontario will always need to consult and accommodate, and to respect the spirit and intent of the Treaties. If the province fails, legal experts warn that legal action will be pursued in the courts. The Shared Path can refer to many examples of such legal cases that have continued to advance and strengthen First Nations rights in the courts. It is our position that if enacted as is, Bill 5 would set reconciliation back and may result in expensive delays in the courts as well as further division between Indigenous and Non-Indigenous Peoples rather than uniting us for a thriving Ontario.

Thank you for considering the changes needed to ensure inclusive planning for all communities in Ontario.

Sincerely,

Carolyn King, C.M.

President and Board Chair, The Shared Path Consultation Initiative