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Bill 140, *Building Ontario Faster Act*, 2026

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Preamble

- Analysis and commentary by TMHC
  - Over 20 years of heritage management experience
  - First hand experience with Duty to Consult processes
  - Actively advocated regarding problems in current heritage framework
- This is not a legal opinion.
- Focused on Schedule 17 relating to the *Ontario Heritage Act* (*OHA*)

Summary of Major Changes to the *OHA*

- Archaeological licensing ending;
- New registrations and authorizations process:
  - *FBCSA* activities exempted, Part VI designated properties included
- New and updated orders;
- New small-scale exemptions;
- Electronic systems requirement;
- New and updated penalties;
- New Minister regulation powers; and
- Non-derogation clause.

Heritage Framework Transformation: Proposed Amendments to the Ontario Heritage Act, Schedule 17 of the Building Ontario Faster Act, 2026

https://ero.ontario.ca/notice/026-1090

End of Archaeological Licensing

OUT

- **Archaeological licensing system**
  (e.g., professional, avocational, field directors)



IN

- **"qualified persons"**
- **"former licensees"**

Unknowns of Qualified Persons

- Unclear if "qualified persons" will be tiered the same way as licenses were;
- Unknown if additional categories can be added such as:
  - Indigenous territorial endorsements;
  - Regional tickets; and
  - Permitted types of sites or activities; and
- Unclear how terms referencing archaeological licenses in other Acts and policies will made consistent with new "qualified persons" term.

Registrations and Authorizations

OUT

- **Project Information Forms (PIFs)**



IN

- **Registrations**
  - **Stages 1-3**
- **Authorizations**
  - **Stage 4**

Registrations

- Requirement determined through prescribed screening process:
  - Provincial archaeological potential map suggested;
- Exploratory archaeology (e.g., Stages 1-3);
- Can be submitted by proponents;
- Needs MCM confirmation and requires certain conditions; and
- No explicit Indigenous engagement requirement in legislation:
  - Possibility for requirement in regulation.

Authorizations

- Requirement derived from registration or previous recommendations;
  - Certain projects will always be authorizations (e.g., marine archaeology, Part VI designated property);
- Advanced archaeology (e.g., Stage 4, marine, etc.);
- Unclear who can submit;
- Needs MCM approval and requires conditions; and
- No explicit Indigenous engagement requirement in legislation:
  - Possibility for requirement in regulation and acknowledgement of DTC in ERO posting.

Unknowns of Registrations and Authorizations

- Unclear fate of PIF circulation agreements with Indigenous rightsholders;
- Unclear how Standard and Guidelines for Consultant Archaeologist, bulletins, etc. will apply, if at all;
- Unclear how proponents will be made aware of the new process;
- Unknown how straightforward MCM's involvement will be; and
- Unknown how Indigenous rightsholders will be consulted.

Other Changes

- New and updated orders;
  - New: Compliance, conservation, and cost recovery;
- New small-scale exemptions;
  - Residential permits (e.g., fences, decks, etc.) with no archaeological sites;
- Electronic systems requirement;
  - New forms, submissions, PastPort, etc.;
  - Hopefully expanded access;
- New and updated penalties;
  - Administrative penalties and public non-compliance list;
  - Increased fines; and
- New Minister regulation powers.

Non-derogation Clause

Existing Aboriginal and treaty rights

- 3.1 For greater certainty, nothing in this Act shall be construed so as to abrogate or derogate from the protection provided for the existing Aboriginal and treaty rights of the Aboriginal peoples of Canada as recognized and affirmed in section 35 of the Constitution Act, 1982.

Learn more:

- https://www.canada.ca/en/department-justice/news/2024/11/s-13-royal-assent-upholding-section-35-rights-through-a-non-derogation-clause-in-the-federal-interpretation-act.html
- https://cbr.cba.org/index.php/cbr/article/view/5112



Bill 140 Shortcomings

- Much left to unknown regulations and policies;
- Absence of explicit Indigenous engagement clause or powers;
- Negative effect on other legislation and policies (e.g., licensed archaeologist term);
- Risk for abuse of new punitive measures; and
- Confusion about small-scale exemptions.

Bill 140 Opportunities

- Non-derogation clause's recognition of Indigenous rights related to heritage management;
- Exemption of *FBCSA* activities (e.g., burial site investigations) from automatic MCM oversight;
- Electronic systems if designed and deployed effectively; and
- Registration and authorization process resolving current report review, engagement, and other issues.

Committee Meeting:

https://www.ola.org/en/legislative-business/committees/interior/parliament-44/notice-hearings/2026-nov-17-notice-hearings-standing-committee-interior

Written Submission Deadline: November 17, 2026

ERO Posting:

https://ero.ontario.ca/notice/026-1090

Comment Deadline: November 26, 2026

Other Issues/Thoughts/Points to Raise?