



ACADEMIC

Engaging and coordinating with Indigenous Peoples: Examining Section 1.2.2 of the 2020 Provincial Policy Statement

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In 2020, the government of Ontario updated the Provincial Policy Statement (PPS).¹ The update included new and revised language pertaining to planning and Indigenous Peoples. As members of the Planning With Indigenous Peoples Research Group at Queen's University in Kingston, Ontario, the authors conducted a content analysis of changes to Indigenous-related language of the 2020 PPS. Our findings suggest that the new and revised language generally strengthened Indigenous-related policy directives (e.g., from "should" to "shall"), as well as amplified (i.e., increased policy directives scope) or specified their scope (i.e., provided instruction or tied a directive to another PPS section/other legislation).

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The most significant change was revised language in section 1.2.2, mandating that "Planning authorities shall engage with Indigenous communities and coordinate on land use planning matters."¹ This is an important shift in language that requires greater municipal effort to engage and coordinate with Indigenous Peoples who reside within municipal boundaries, and with Indigenous communities whose traditional territories municipalities occupy.

Yet, when we reviewed academic literature from 2015 to 2020 that examined Canadian municipal Indigenous engagement and

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coordination practices,²⁻⁸ we found that current approaches were generally considered ineffective.^{4-6,8} In terms of engagement, the most frequent municipal engagement/consultation strategy was Indigenous advisory committees.^{5-7,9} It was noted, however, that municipal engagement efforts, such as advisory committees, rely disproportionately on only a few Indigenous actors, placing a burden on these people to represent a diversity of opinions from a wide array of Indigenous Peoples.⁷

Another finding was that the use of conventional public engagement techniques, such as open houses and town halls, unsuccessfully attracted Indigenous Peoples.^{4,8} The City of Saskatoon, however, used a gathering-style event after several attempts at more conventional engagement techniques had failed.⁴ The gathering-style event was deemed to be a more culturally appropriate approach and gained greater Indigenous participation. Despite this, there was general consensus amongst authors that current engagement and consultation practices are not helpful and do not affirm building nation-to-nation relations,^{4-6,8} something that several Indigenous scholars, activists, and allies have been calling for.⁹⁻¹¹

Two articles examined municipal-First Nation inter-governmental coordination.^{2,3} One study briefly discussed municipal-Indigenous coordination in British Columbia and noted that differences in jurisdiction made relationships difficult to navigate.³ Another study examined the joint management of port lands between the City of Cornwall and the Akwesasne Mohawk, concluding that mutually beneficial components of the management agreement were successfully implemented but aspects of the agreement with no clear mutual benefit remained unimplemented.² This suggests that identifying benefits for all parties could assist with coordination efforts.

Finally, one article analyzed municipal (Crown) duty to consult.⁷ The Crown duty to consult is a constitutional obligation, flowing from section 35 of the *Constitution Act, 1982*, which requires the Crown (federal/provincial governments and some crown corporations) to consult with Aboriginal Peoples about proposed Crown activities that may negatively affect existing or potential Aboriginal rights.⁷ The Supreme Court of British Columbia ruled that municipal governments are not the Crown and, therefore, have no constitutional obligation to duty to consult.⁸ The expanding scope of municipal powers leaves the door open for constitutional limits, such as duty to consult.⁷

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We believe that policy documents, like the PPS and section 1.2.2, demonstrate – and tacitly acknowledge – that municipal governments have broad powers to make decisions on matters that may interface with existing or potentially existing Aboriginal and treaty rights and that it is likely only a matter of time before the courts rule in favour of constitutional limits to that power.

Furthermore, the new language in section 1.2.2 could be slowly inching towards a policy-based duty to consult, if not a constitutionally mandated one.

In closing, we make the following policy recommendations for provincial-level planners and decision makers to consider.

Provide increased funding and appropriate resourcing for engagement and relationship-building between municipalities, First Nation, Inuit, and Métis governments. With enough resources, new, innovative, and culturally appropriate forms of engagement and coordination can be forged.

Mandate a municipal duty to consult which will provide greater clarity for municipalities, First Nations governments/communities, and development proponents. In any case, municipalities do not need to wait for a mandated duty to consult; they are free to do this practice at any time.

Heed the calls of Indigenous Peoples for a nation-to-nation relationship and invite Indigenous communities to directly partake as equal co-creators in future PPS updates. 

¹Ministry of Municipal Affairs and Housing (2020). Provincial Policy Statement, 2020, Under the *Planning Act*. Queen’s Printer for Ontario. Retrieved from <https://www.ontario.ca/page/provincial-policy-statement-2020#section-1>

²Alcantara, C., & Kalman, I. (2019). Diversifying Methodologies: A Haudenosaunee/Settler Approach for Measuring Indigenous-Local Intergovernmental Success. *Canadian Journal of Political Science*, 52(1), 21-38. doi:<http://dx.doi.org/10.1017/S0008423918000409>

³Curry, D. (2018). Multi-Level Governance in British Columbia: Local Perspectives on Shifting Relations and Structures. *BC Studies*, 198, 10-128.

⁴Fawcett, R. B., Walker, R., & Greene, J. (2015). Indigenizing city planning processes in Saskatoon, Canada. *Canadian Journal of Urban Research*, 24(2), 158-175.

⁵Heritz, J. (2016). Municipal-Aboriginal advisory committees in four Canadian cities: 1999-2014. *Canadian Public Administration*, 59(1), 134-152. doi:<http://dx.doi.org/10.1111/capa.12158>

⁶Heritz, J. (2018). From self-determination to service delivery: Assessing Indigenous inclusion in municipal governance in Canada. *Canadian Public Administration-Administration Publique Du Canada*, 61(4), 596-615. doi:10.1111/capa.12277

⁷Hoehn, F., & Stevens, M. (2018). Local Governments and the Crown’s Duty to Consult. *Alberta Law Review*, 55(4), 971-1008. doi:10.29173/alr2483

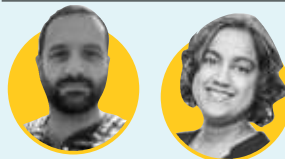
⁸Nejad, S., Walker, R., Macdougall, B., Belanger, Y., & Newhouse, D. (2019). “This is an Indigenous city; why don’t we see it?” Indigenous urbanism and spatial production in Winnipeg. *Canadian Geographer-Geographe Canadien*, 63(3), 413-424. doi:10.1111/cag.12

⁹King, H., & Pasternak, S. (2018). Canada’s Emerging Indigenous Rights Framework: A Critical Analysis. Yellowhead Institute. Retrieved from <https://yellowheadinstitute.org/wp-content/uploads/2018/06/yi-rights-report-june-2018-final-5.4.pdf>

¹⁰Palmater, P. (2018). Restoring the Place of Indigenous Peoples in the GTHA. Institute on Municipal Finance and Governance. Retrieved from <https://munkschool.utoronto.ca/imfg/research/bold-ideas/restoring-the-place-of-indigenous-peoples-in-the-gtha/>

¹¹Viswanathan, L. (2019). All our Relations: A Future for Planning. *Plan Canada*, 59(1), 215-219.

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