

2020 Ontario Provincial Policy Statement (PPS) at a Glance Implications for Indigenous-Municipal Relations

The Ontario Provincial Policy Statement (PPS) was updated in 2020. A content analysis,¹ as well as a thematic analysis² were conducted to understand the general nature of the changes made in the 2020 update and how this related to Indigenous peoples and the role of Ontario's municipalities. Guided by the results, a modified rapid review^{3,4} of recent academic literature (i.e., 2015 to July 2020) was also conducted and focused on municipal consultation and engagement practices with Indigenous peoples and municipal roles with respect to Duty to Consult.

How 2014 and 2020 PPS versions were compared and analysed:

Four types of content changes were identified when comparing the 2014 and 2020 versions of the PPS; these were: text added, deleted, moved, or word(s) changed.

The changes were then categorized thematically as either practical (e.g., an updated name of a ministry) or political (i.e., changes rooted in ideology). For political changes, every addition, deletion, move, or word(s) changed, translated to strengthening or weakening PPS directives, or amplifying or specifying the scope of PPS directives.

Political changes were further grouped into four themes:

- Process-oriented
- Development and land use
- Environmental planning
- Relationships, culture, wellbeing.

In general, the 2020 PPS update strengthened directives in all identified themes. More instructions and policy directives were added, while policy language shifted to demand greater compliance.

Changes made to the 2020 PPS in relation to Indigenous peoples are summarized in Table 1. Key changes were found in the thematic category of Relationships, culture, and wellbeing. The changes strengthened policy directives, as well as amplified or specified the scope of policy directives. The most significant change was the language shift to mandate relationship-building and coordination between municipalities and Indigenous communities on land use planning matters.

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Table 1: Changes made to the PPS in relation to Indigenous peoples, 2014-2020*

2014 PPS	2020 PPS	Effect	Comments
<p>Preamble: Ontario's rich cultural diversity is one of its distinctive and defining features. The Provincial Policy Statement reflects Ontario's diversity, which includes the histories and cultures of Aboriginal peoples, and is based on good land use planning principles that apply in communities across Ontario. The Province recognizes the importance of consulting with Aboriginal communities on planning matters that may affect their rights and interests.</p>	<p>Preamble: The Province's rich cultural diversity is one of its distinctive and defining features. Indigenous communities have a unique relationship with the land and its resources, which continues to shape the history and economy of the Province today. Ontario recognizes the unique role Indigenous communities have in land use planning and development, and the contribution of Indigenous communities' perspectives and traditional knowledge to land use planning decisions. The Province recognizes the importance of consulting with Aboriginal communities on planning matters that may affect their section 35 Aboriginal or treaty rights. Planning authorities are encouraged to build constructive, cooperative relationships through meaningful engagement with Indigenous communities to facilitate knowledge-sharing in land use planning processes and inform decision-making.</p>	<p>↑ (()) 📄</p>	<ul style="list-style-type: none"> • The new text added acknowledged Indigenous peoples' unique relationship to the land & recognized that Indigenous communities have an important role to play in contemporary land use planning. • Section 35 of the <i>Constitution Act, 1982</i>⁵ was reiterated, affirming the rights articulated therewithin at both the provincial & municipal level. • The inclusion of such language could strengthen arguments for municipal Duty to Consult, the legal principal that requires federal & Provincial governments & other government entities to consult & accommodate with Indigenous peoples when their rights may be negatively affected by Crown actions.
<p>1.2.2 Planning authorities are encouraged to coordinate planning matters with Aboriginal communities.</p>	<p>1.2.2 Planning authorities shall engage with Indigenous communities and coordinate on land use planning matters.</p>	<p>↑</p>	<ul style="list-style-type: none"> • Policy language was substantial, strengthening by shifting from "are encouraged" to "shall engage". • Guidance from the Province about how & when to engage is likely needed.
<p>2.6.5 Planning authorities shall consider the interests of Aboriginal communities in conserving cultural heritage and archaeological resources.</p>	<p>2.6.5 Planning authorities shall engage with Indigenous communities and consider their interests when identifying, protecting and managing cultural heritage and archaeological resources.</p>	<p>↑</p>	<ul style="list-style-type: none"> • The shift to "shall engage" strengthened the directive. • Clarification may be needed as practitioners & decisionmakers could interpret the directive as mandated engagement but only suggested consideration of Indigenous interests.

*Emphasis original & denotes defined terms in Section 6, Definitions, of the PPS; **Legend:** ↑ , strengthened; (()) , amplified; 📄 , specified. Icons from icons8.com.

Table 1 continued: Changes made to the PPS in relation to Indigenous peoples, 2014-2020*

2014 PPS	2020 PPS	Effect	Comments
<p>4.14 The Province, in consultation with municipalities, other public bodies and stakeholders shall identify performance indicators for measuring the effectiveness of some or all of the policies. The Province shall monitor their implementation, including reviewing performance indicators concurrent with any review of this Provincial Policy Statement.</p>	<p>4.8 The Province, in consultation with municipalities, Indigenous communities, other public bodies and stakeholders shall identify performance indicators for measuring the effectiveness of some or all of the policies. The Province shall monitor their implementation, including reviewing performance indicators concurrent with any review of this Provincial Policy Statement.</p>	<p>((-))</p>	<ul style="list-style-type: none"> • The new text specifically placed Indigenous communities as: 1) separate from municipalities & other public bodies, & 2) not stakeholder groups • This emphasized Indigenous communities as distinct actors with unique evaluation policy interests, which may have a direct impact on future policy or PPS updates.
<p>Built heritage resource: means a building, structure, monument, installation or any manufactured remnant that contributes to a property's cultural heritage value or interest as identified by a community, including an Aboriginal community. Built heritage resources are generally located on property that has been designated under Parts IV or V of the <i>Ontario Heritage Act</i>, or included on local, provincial and/or federal registers.</p>	<p>Built heritage resource: means a building, structure, monument, installation or any manufactured or constructed part or remnant that contributes to a property's cultural heritage value or interest as identified by a community, including an Indigenous community. <i>Built heritage resources</i> are located on property that may be designated under Parts IV or V of the <i>Ontario Heritage Act</i>, or that may be included on local, provincial, federal and/or international registers.</p>	<p>↑</p>	<ul style="list-style-type: none"> • The added text “that may be”, opened both definitions to more generous interpretations, while potentially providing greater leverage for Indigenous communities to more effectively protect resources & landscapes significant to communities, but are outside the boundaries of reserve lands.
<p>Cultural heritage landscape: means a defined geographical area that may have been modified by human activity and is identified as having cultural heritage value or interest by a community, including an Aboriginal community. The area may involve features such as structures, spaces, archaeological sites or natural elements that are valued together for their interrelationship, meaning or association. Examples may include, but are not limited to, heritage conservation districts designated under the <i>Ontario Heritage Act</i>, villages, parks, gardens, battlefields, mainstreets and neighbourhoods, cemeteries, trailways, viewsheds, natural areas and industrial complexes of heritage significance; and areas recognized by federal or international designation authorities (e.g. a National Historic Site or District designation, or a UNESCO World Heritage Site).</p>	<p>Cultural heritage landscape: means a defined geographical area that may have been modified by human activity and is identified as having cultural heritage value or interest by a community, including an Indigenous community. The area may include features such as buildings, structures, spaces, views, archaeological sites or natural elements that are valued together for their interrelationship, meaning or association. Cultural heritage landscapes may be properties that have been determined to have cultural heritage value or interest under the <i>Ontario Heritage Act</i>, or have been included on federal and/or international registers, and/or protected through official plan, zoning by-law, or other land use planning mechanisms.</p>	<p>↑</p>	

*Emphasis original & denotes defined terms in Section 6, Definitions, of the PPS; **Legend:** ↑, strengthened; ((-)), amplified; 📄, specified. Icons from icons8.com.

Implications of changes to the 2020 Ontario PPS for Indigenous-municipal relations

Results of a modified rapid literature review

The modified rapid literature review examined publications from 2015 to July 2020, regarding Indigenous-specific municipal-level consultation and engagement practices, and roles for Canadian municipalities in Duty to Consult. The review showed that municipal efforts to engage Indigenous peoples are urban focused, and that these efforts, by in large, are failing. Continuing an exploration of what constitutes as meaningful consultation at the municipal level when engaging in cross-cultural communication, as well as the application of an approach to nation-to-nation relationship building for Indigenous-municipal relations, may lead to more impactful and relevant engagement and consultation practices. The modified rapid review of the literature yielded seven qualitative studies.⁶⁻¹² Most of the studies focused on urban contexts.^{5-8,11} One study was conducted at a national level¹⁰ and one study dealt strictly with federal law.¹¹

Engagement and consultation practices

- The most frequent engagement/consultation strategy was Indigenous advisory committees.^{8-10,12}
- The use of traditional public engagement approaches in planning, such as open houses and town halls was described and noted as ineffective in engaging Indigenous peoples.^{8,12}
- The City of Saskatoon used a Gathering-style event that garnered greater Indigenous participation in the process, which is attributed to the potential for it being more culturally appropriate, if not relevant.⁸
- There was agreement in the literature, that most current approaches fell far short of being effective engagement, or consultation, and were not building nation-to-nation relations.^{8-10,12}
- One author¹⁰ critiqued that municipal engagement efforts rely disproportionately on a few Indigenous actors and are overshadowed by service delivery policies as opposed to affirming Indigenous self-determination.

Inter-governmental cooperation and coordination

- One study concluded that the implementation of an inter-governmental agreement between the City of Cornwall and the Akwesasne Mohawk community was partially successful, as both parties collaborated to achieve mutually beneficial policy outcomes, including joint-governance institutions.⁶ Some policy objectives were not implemented
- One study⁷ that briefly examined inter-governmental coordination between Skeena-Queen Charlotte Regional District and Haida communities determined that Indigenous-municipal relationships could be difficult to navigate due to differences in jurisdiction (i.e., municipalities as “creatures of the province”, while reserves fall under federal jurisdiction). What this will mean for jurisdictions in Ontario deserves more study.

Municipal Duty to Consult

- One study¹² argued for a municipal Duty to Consult, asserting that municipalities can be interpreted as agents or vehicles for the Crown because Canadian courts have ruled for a generous interpretation of the Crown (extending the concept to include entities such as Crown Corporations) and because they must comply with the *Charter of Rights and Freedoms*.⁵ As such, they are bound to a Duty to Consult.

Additional Comments

As the 2020 Ontario Provincial Policy Statement is implemented by Ontario municipalities, it will be crucial to explore the different ways that municipalities and diverse First Nations, Metis, and Inuit peoples interpret the document as it relates to their respective and/or mutual issues and planning priorities. With the lack of provincial guidance materials that explore how relationship building and mutual understanding among Indigenous and non-Indigenous peoples can be fostered in light of the PPS, and the ongoing debate of how municipalities are responsible to the Duty to Consult, the onus remains on municipal planners and Indigenous community leaders to bring clarity of focus on how they will build relationships – both in terms of when, who, and how to engage in daily interactions, formal consultations, and in project-specific work. It is likely that this can only really be achieved through open, honest, and transparent relationship building fostered over time, and through, not just “business” exchanges, but other forms of relationship building and cultural exchange.

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