

# Examining Indigenous-Related Changes in Ontario's 2020 Provincial Policy Statement: A Content Analysis and Modified Rapid Review of the Literature

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# Planning with Indigenous Peoples (PWIP) Research Group

## About PWIP

The Planning With Indigenous Peoples (PWIP) Research Group at Queen's University is dedicated to conducting research about policy and planning with First Nations. Our objective is to enhance Indigenous-municipal relationships in the context of land use planning in the cities and regions encompassing First Nations' lands in Southern Ontario.

For more information, visit: <https://www.queensu.ca/pwip>

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# Examining Indigenous-Related Changes in Ontario's 2020 Provincial Policy Statement: A Content Analysis and Modified Rapid Review of the Literature

## Abstract

In 2020, the Ontario Provincial Policy Statement (PPS), a document assembling planning-related policy/legislation into a unified vision, was updated with new/revised language pertaining to Indigenous peoples. A content and thematic analysis of this language revealed that Indigenous-related policy directives were strengthened, while also amplified or specified in scope. A significant change was language mandating municipal relationship-building and land use planning coordination with Indigenous communities. To contextualize these findings, a rapid literature review regarding Canadian municipal-Indigenous engagement and municipal duty to consult was conducted that showed an urban-focus in municipal engagement with Indigenous peoples that generally failed. Policy recommendations are: 1) Mandate municipal duty to consult in the PPS; 2) Provide funding and resourcing for engagement and relationship-building; and 3) Heed Indigenous calls for nation-to-nation relations.

*Keywords:* planning with Indigenous peoples, duty to consult; Indigenous engagement; land use planning; Canada

### Introduction

In Canada, the Government of Ontario employs a unique approach to providing a framework for general uniformity in land use planning across the entirety of the province through its Provincial Policy Statement (PPS). The PPS, produced by the Ministry of Municipal Affairs and Housing (MMAH), consolidates an array of planning policies and legislation. It is intended to communicate policy direction to Provincial ministries and departments, municipalities, developers, Indigenous communities, and relevant stakeholders (MMAH, 2020a). It is a sweeping document that addresses primarily land use and infrastructure planning/management arenas, including water and sewer, housing, rural and agricultural development, environmental and resource protection, economic development, and transportation. Since most land use planning decisions are made at the municipal level, the PPS is primarily enacted by municipal decision-makers through official plans and municipal planning processes, which are required to conform to the statement (MMAH, 2020a). Given that, in Canada, municipal authority flows from the Provincial government, the PPS plays a significant role in qualifying the kinds of conversations that municipal-level planning practitioners and decision makers can initiate with Indigenous communities in Ontario (McLeod et al. 2014; McLeod et al, 2015; McLeod et al. 2017; Viswanathan et al., 2013).

### The PPS in Relation to Indigenous Peoples in Ontario

Indigenous scholars and community members have asserted that the way towards a more effective and just planning with and for Indigenous peoples is by centring Indigenous law and land use planning practices that emanate from the community exclusively, or in conjunction with western Eurocentric planning approaches (King, 2010; 2013a; 2016; King and Pasternak, 2018; Palmater 2018). Despite these calls, in Ontario, high-level policy formation continues to be driven by the Province but is increasingly using more Indigenous-inclusive language. Research carried out by the Planning With Indigenous Peoples (PWIP) Research Group, a group of Indigenous and non-Indigenous researchers in Canada from Queen's University, University of Waterloo, Walpole Island First Nation, and the Mississaugas of the New Credit First Nation, have analysed the integration of Indigenous-inclusive language in Ontario policy documents, including the PPS. These works demonstrated that, in general, policy documents in Ontario are moving towards more clearly incorporating the interest of Indigenous communities in the province, but that this does not

necessarily equate to meaningful engagement with Indigenous communities (McLeod et al, 2014; McLeod et al, 2015; McLeod et al. 2017; Viswanathan et al., 2013; Viswanathan, 2019). Crucially, Indigenous-inclusive language is not a stand-in for Indigenous-led or nation-to-nation policy co-creation.

The PPS is a prime illustration of a policy document that has shifted towards using Indigenous-inclusive language. In 2014, MMAH updated the earlier 2005 version of the PPS. With this update, MMAH included new language recognizing Indigenous peoples. For example, in Part IV, a “Vision for Ontario’s Land Use Planning System” (MMAH, 2014, p. 4), the PPS stated:

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.

Additionally, the Province laid out a new directive that “Planning authorities are encouraged to coordinate planning matters with Aboriginal communities” (MMAH, 2014, p. 12). Thus, for the first time, planners in the province were urged, albeit lightly, to build meaningful and productive planning relationships with Indigenous people and communities. Importantly, this new language included direct reference to rights enshrined in section 35 of the *Canadian Constitution Act, 1982*:

This Provincial Policy Statement shall be implemented in a manner that is consistent with the recognition and affirmation of existing Aboriginal and treaty rights in section 35 of the *Constitution Act, 1982*. (MMAH, 2014, p. 33)

As Viswanathan et al. (2013) argued, this important recognition may have laid crucial groundwork for new, potentially productive and mutually beneficial relationships with Indigenous communities that are rooted in Aboriginal and treaty rights.

While Indigenous-inclusive policy language in the PPS is a key step towards better planning with Indigenous peoples, there are shortcomings in the document. For example, while the 2014 changes to the PPS recognized the importance of consultation with Aboriginal people and encouraged coordination, there was no guidance from the Province regarding the nature of the consultation, the degree of coordination, how these were to be implemented, or additional funding to initiate these efforts (Fraser et al, 2015; Fraser et al. 2017). This is especially perplexing in the context of invoking

section 35, which obligates the Crown to minimum standards of consultation when Aboriginal and treaty rights may be infringed upon by a decision taken by the Crown (Hoehn and Stevens, 2018), including funding for the consultation process. Further complicating the matter is that, at present, however, Canadian law does not clearly state if municipalities form a part of the Crown or representatives of the Crown, like the federal and provincial governments or some crown corporations (Hoehn and Stevens, 2018). Leaving provincial directives for municipal coordination and consultation with Aboriginal peoples in an ambiguous state.

Another potentially problematic aspect of the 2014 Indigenous-related changes is the PPS's primary concern with land use planning. More specifically, the 2014 Indigenous-inclusive language almost solely advanced the interests of land-based Indigenous communities. Those Indigenous peoples without formal recognition from the Canadian government, without section 35 rights, without reserve lands and/or a formally recognized governance structure were mostly precluded from the scope of the PPS. This was a significant gap in the policy as Indigenous peoples have been the fastest urbanizing demographic in Canada in recent years (Statistics Canada, 2017) and the historical legacies of Canada's *Indian Act, 1985* have also deprived many Indigenous peoples of rights within their communities and territories.

Finally, there may be other challenges for (or from) planners and decision makers with respect to implementing the new directives for engagement with Indigenous communities. For example, prior to the addition of Indigenous-inclusive language in the 2014 PPS, municipalities were always free to build relationships with Indigenous residents or neighbouring communities. Yet, given that, by virtue of the *Indian Act, 1985*, the asserted legal jurisdiction of affairs related to Indigenous peoples is purported to fall within the sphere of the Crown, represented by the federal government, municipal planners have been (and continue to be) unaware or uninterested in local Indigenous communities or unsure of how to build a relationship with Indigenous peoples living within municipal boundaries and/or adjacent areas (MacCallum Fraser and Viswanathan, 2013; Porter, 2010; Viswanathan, 2019). Furthermore, as is sadly the case with most non-Indigenous Canadians, non-Indigenous planners are frequently ignorant to Crown-Indigenous relations and the rights of Indigenous peoples accorded by Aboriginal and treaty rights flowing from section 35 of the *Constitution Act, 1982* and other legislation (Fraser et al. 2014), making the implementation of the PPS in accordance with Aboriginal and treaty

rights difficult, at best. These types of issues have likely been further compounded by the aforementioned lack of support and guidance from the Province on such matters (MacCallum Fraser and Viswanathan, 2013).

In 2020, MMAH once again revised the Provincial Policy Statement, prompting questions regarding what changes were made to Indigenous-inclusive language, if any new Indigenous-relevant language had been added if, and how the abovementioned issues were addressed. Accordingly, this study examined all the changes made to the PPS in 2014 and 2020. The objectives of this study were:

- 1) To identify and analyse changes made to the 2014 and 2020 PPS, paying particular attention to the 2020 update and changes related to municipal-Indigenous relations.
- 2) Based on the findings of Objective 1, conduct a modified rapid review of academic literature from the past five years to ground the findings of the content analysis.

## Methods

In order to meet these objectives, we conducted a content and thematic analysis of the changes made to the 2014 and 2020 PPS, followed by a modified rapid review of recent literature published since 2015.

### Content and Thematic Analysis

A content analysis (Saldaña & Omasta, 2018) was conducted to identify and understand the nature of every change made to the 2014 and 2020 PPS. This was a multi-step process. First, text from the PPSs were compared using the “compare documents” function in Word, starting by comparing the 2005 PPS to the 2014 PPS and then the 2014 PPS to the 2020 PPS. The “compare documents” function identified the differences between each version of the PPS, and each difference corresponded to a change made between the versions.

Next, the text of each PPS version was imported into an Excel spreadsheet. Once formatted, the results of the Word comparisons were used to identify the text changes in the Excel spreadsheet, after which, the change was coded. Each change was coded twice. The first round of coding showed manifest content, or content that is readily observable and does not rely on coder interpretation. The



second round of coding identified latent content, or the content that is interpreted by the coder (Saldaña & Omasta, 2018). The manifest codes were created by describing the observable characteristics about the changes made to each PPS (e.g., text added or deleted), whereas the latent codes were created using an iterative process to describe the nature of the change(s) that occurred as interpreted by the coder. Example latent codes include “acknowledgment,” “flexibility,” and “Rural/Agricultural development.” The first author conducted the coding process, and the second and third authors verified the codes.

After the coding was complete, the first author carried out a thematic analysis (Braun and Clarke, 2006). The thematic analysis grouped similar codes into broader categories and produced four main themes. The second author was consulted when the themes were being finalized. Finally, individual indigenous-related changes were examined one-by-one to understand how they related to the content and thematic analyses.

### Modified Rapid Literature Review

Through discussion between authors reflecting on the findings of the PPS content and thematic analyses, it was determined that a modified rapid review of the most recent literature from 2015 to 2020 regarding municipal consultation with Indigenous people would be helpful in providing further context the 2020 PPS. A rapid review of the literature is a tool that can be used by academics and decision makers when advancing evidence-based policy and decisions (Grant and Booth, 2009; Tricco et al., 2016). At present, there is no standardized way to conduct a rapid review (Tricco et al., 2016). Generally speaking, however, a rapid review can apply the same or similar search and evidence appraisal techniques used in systematic reviews, yet the process is limited in strategic ways in order to decrease turnaround time. Additionally, rapid reviews can be conducted by one reviewer, whereas a systematic review requires two reviewers, at minimum (Grant and Booth, 2009; Tricco et al., 2016). For this review, the process was limited in two ways: first, we limited our search to within the last five years; and second, by not employing a formal evaluation tool to assess the strength of evidence used to support arguments in the selected studies, such as GRADE-CERQual (Lewin et al., 2018) or other evidence assessment tools used in some arenas of the social science and biomedical research.

### *Search strategy*

Search terms focused on the concepts related to municipal duty to consult and Indigenous land use planning. Examples of search terms included “cities”, “town\*”, “Municipal\*”, “Indigenous”, “First Nation\*”, “duty to consult”, “Accommoda\*”.

Three databases were searched: Urban Planning @ ProQuest (UPPQ); Web of Science (WoS; note: results were limited to the Web of Science category “Regional Urban Planning”); and GEOBASE (Geo). Recent studies published in a peer-reviewed journal between January 2015 to June 2020, written in English or French, and that used qualitative, quantitative, or mixed-methods, were included. After the searches were completed, it was decided that the studies that did not focus on Canada would be excluded. Appendix B details the search strategy, including a list of search terms.

### *Study selection and data extraction*

The team used a study selection process using the online systematic review management portal [covidence.org](https://www.covidence.org) and followed the Preferred Reporting Items for Systematic reviews and Meta-Analyses guidelines (PRISMA; Moher, Liberati, Tetzlaff and Altman, 2009). The first author screened and selected the included studies. After removing seventeen duplicates, 369 possible studies were rapid screened based on their title and abstract. Studies that were obviously unrelated were removed. A secondary screening of seventeen studies involved skimming the article to determine inclusion. A further ten studies were eliminated during the secondary screening. In the end, seven studies were selected to be reviewed (Alcantara and Kalman, 2019; Curry, 2018; Fawcett, Walker, and Greene, 2015; Heritz, 2016; Heritz, 2018; Hoehn and Stevens, 2018; Nejad et al., 2019). Figure 1 shows a PRISMA flow diagram which provides an overview of the study selection process.

Finally, the selected studies were summarized in a data extraction table in Excel. Data extracted included: author(s) name, year of publication, location of study, study purpose/research question(s), manuscript type/study design, and relevant results.

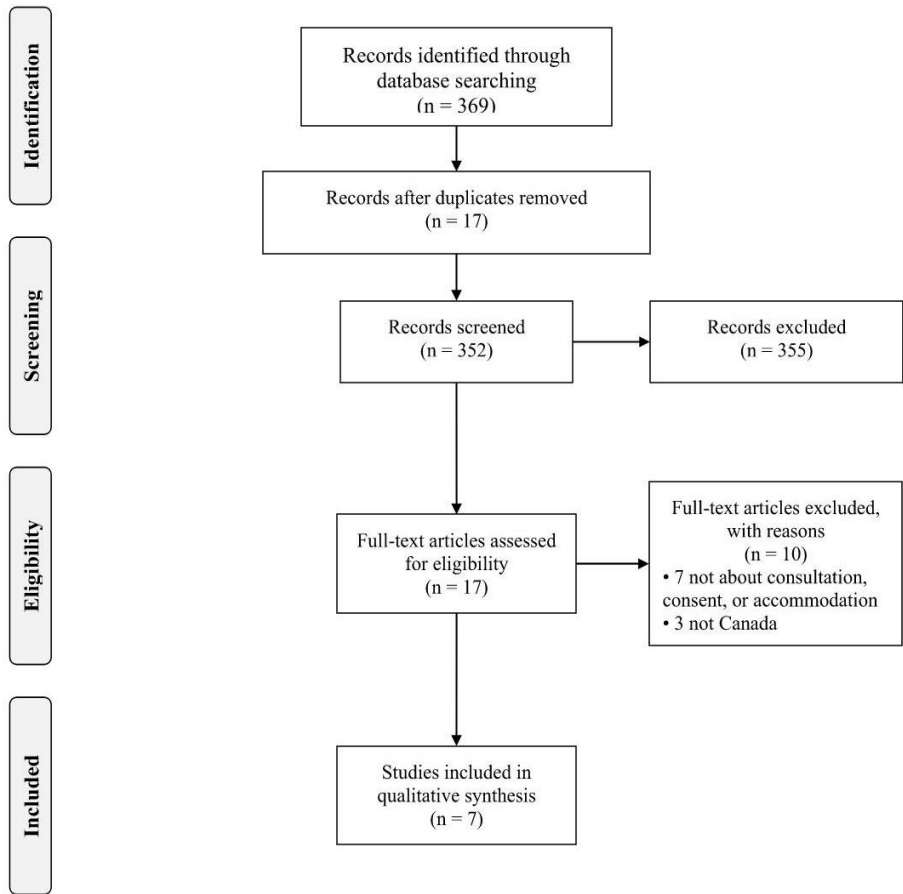


Figure 1.

PRISMA diagram (Moher et al., 2009) showing rapid review article selection process

## Results

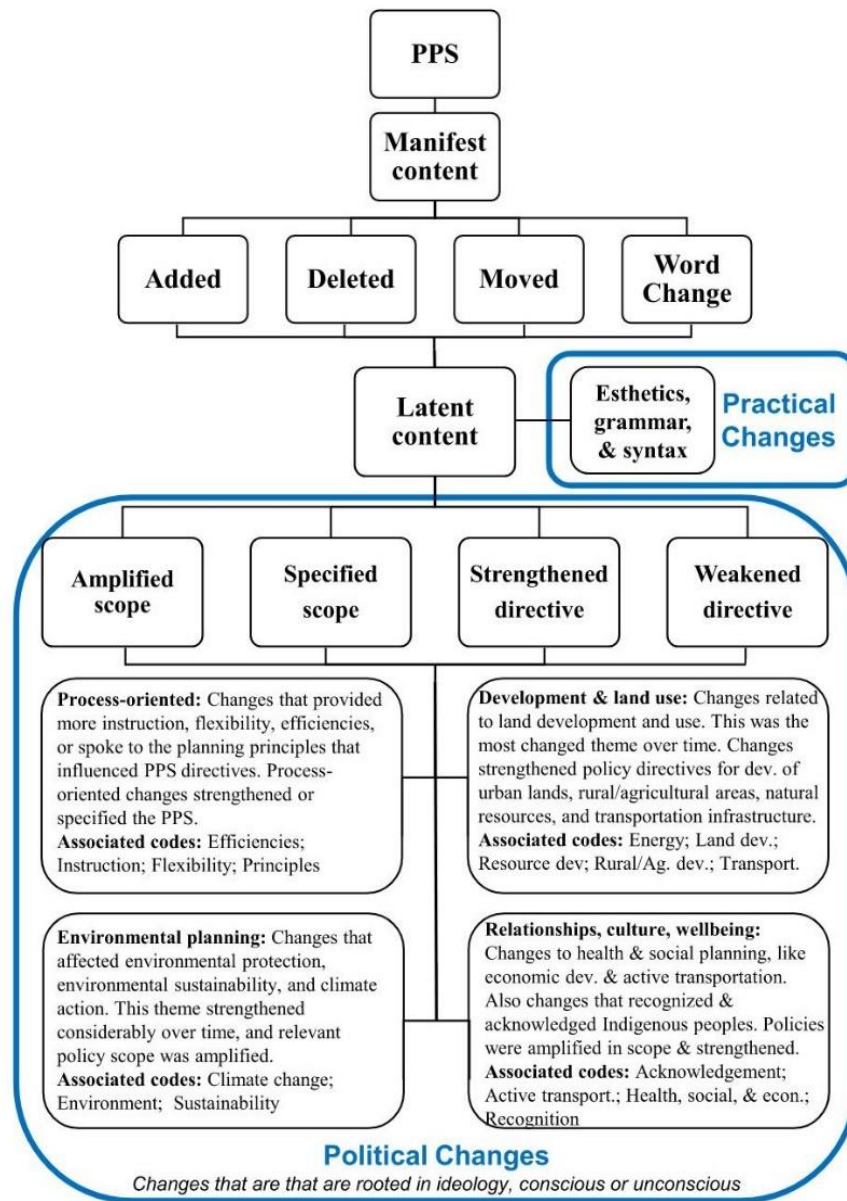
### Content analysis of changes made for the 2014 and 2020 PPS updates

The manifest and latent content analyses revealed that the 2014 update to the PPS was an extensive overhaul of the policy document, with no section left untouched. By contrast, the 2020 PPS contained more targeted updates addressing certain sections of the document but leaving many sections untouched. Accordingly, the 2014 update saw the PPS grow by a quarter in content from 2005 and the 2020 PPS is roughly one-fifth larger than its predecessor.

We identified four types of text-based changes made to the 2014 and 2020 PPS updates: text added (i.e., adding new words, phrases, context, instruction, or directives); text deleted (removing words, phrases, directives); text moved (moving words, phrases, or instruction from one part of the PPS to another); or word(s) changed (i.e., replacing a word with another, e.g., “should” to “shall” or “Ontario” to “the Province”).

With every addition, deletion, move, or word(s) changed, PPS directives were strengthened, weakened, amplified, or specified. Strengthening changes were defined as changes that bolstered a policy directive (e.g., changing “should” to “shall”). Weakening changes were those that reduced the strength of a policy directive (e.g., changing “shall” to “should”). Amplifying changes increased the scope of a policy directive, such as removing reference to a prevailing section of the PPS or other legislation. Finally, changes that specified instructions or policy directives in the PPS added or removed language to outline directive implementation or tied the directive to another section in the PPS/other legislation. With each update, MMAH strengthen the PPS, with greater compliance demanded from more directives, with increased instruction regarding implementation.

We considered the nature of the changes to be practical (e.g., updating the name of a ministry) or political (i.e., changes rooted in ideology). Political changes were most changes made to both the 2014 and 2020 versions of the PPS.



**Figure 2.** Manifest and latent analysis of changes to the Ontario PPS from 2005-2020 and emergent themes

*Relationships, culture, and wellbeing*

The theme “Relationships, culture, and wellbeing” captured domains common to health and social planning, including economic development and increased opportunities for active transportation. This theme also included changes that were coded as recognizing and acknowledging Indigenous peoples in Ontario, which we explore more closely in the next section. In general, policy directives associated with the “Relationships, culture, and wellbeing” theme were primarily amplified in scope and strengthened over time. An example of amplifying and strengthening health and social planning policies in the PPS are evident in the 2014 update to Section 1.0, Building Strong Communities:

**Table 1.** Amplifying and strengthening health and social planning policies in Section 1.0, Building Strong Communities\*

2005 PPS
1.0 Building Strong Communities Ontario's long-term prosperity, environmental health and social well-being depend on wisely managing change and promoting efficient land use and development patterns. Efficient land use and development patterns support strong, liveable <b>and</b> healthy communities, <b>protect</b> the environment and public health and safety, and facilitate economic growth.
2014 & 2020 PPS
1.0 Building Strong <b>Healthy</b> Communities <b>Ontario is a vast province with urban, rural, and northern communities with diversity in population, economic activities, pace of growth, service levels and physical and natural conditions.</b> Ontario's long-term prosperity, environmental health and social well-being depend on wisely managing change and promoting efficient land use and development patterns. Efficient land use and development patterns support <b>sustainability by promoting</b> strong, liveable, healthy <b>and resilient</b> communities, <b>protecting</b> the environment and public health and safety, and facilitating economic growth.
*Coloured text denotes words, phrases or sections that were <b>added</b> , <b>deleted</b> , <b>moved</b> , or <b>changed</b> .

In this example, language was added to identify the geographic, demographic, and economic diversity within the Province. Furthermore, the addition of the word “Healthy” into the title of the section signified an amplification in scope of the PPS towards other kinds of planning issues, not just land use planning issues.

An example of weakening directive related to the “Relationships, culture, and wellbeing” theme can be found in table 2, which is an excerpt of text also found in Section 1.0, Building Strong Communities:

**Table 2.** Example of a change that weakened Relationships, culture, and wellbeing and adding and strengthening development and land use change to section 1.1.3, Settlement Areas\*†

2014
<del>In determining the most appropriate direction for expansions to the boundaries of settlement areas or the identification of a settlement area by a planning authority, a planning authority shall apply the policies of Section 2: Wise Use and Management of Resources and Section 3: Protecting Public Health and Safety.</del>
2020
<b>In undertaking a comprehensive review, the level of detail of the assessment should correspond with the complexity and scale of the settlement boundary expansion or development proposal.</b> <b>1.1.3.9 Notwithstanding policy 1.1.3.8, municipalities may permit adjustments of settlement area boundaries outside a comprehensive review provided:</b> a) there would be no net increase in land within the settlement areas; b) the adjustment would support the municipality’s ability to meet <i>intensification and redevelopment</i> targets established by the municipality; c) prime agricultural areas are addressed in accordance with 1.1.3.8 (c), (d) and (e); and d) the <i>settlement area</i> to which lands would be added is appropriately serviced and there is sufficient reserve <i>infrastructure</i> capacity to service the lands.

\*Coloured text denotes words, phrases or sections that were **added**, **deleted**, **moved**, or **changed**.

†Emphasis original and denotes terms that are defined in Section 6, Definitions, of the PPS.

Here, MMAH removed instructions compelling planners and decision makers to ensure that any future boundary expansion would follow environmental and Health and safety provisions. In their place, new language was added that strengthened development possibilities by providing municipalities with greater flexibility for urban growth boundary expansion. These changes, however, may have weakened planning principles of public participation given that a comprehensive review process and other qualifying conditions outlined in section 1.1.3.8 are no longer always required.

Despite the above example, as previously stated, changes related to the “Relationships, culture, and wellbeing” theme were strengthened over time. This is especially the case for those changes most relevant to Indigenous peoples.

### Indigenous-Related Changes to the 2020 PPS

As with the general trend in the evolution of the PPS, the changes made in relation to Indigenous peoples were strengthened over time. In our analysis, acknowledgement and recognition emerged as distinct codes. All additions to the 2014 PPS in relation to Indigenous peoples “recognized” Indigenous peoples. That is, the language outlined a role or an interest of Indigenous peoples in land use planning in relation to culture/heritage resource management. In addition to further changes that strengthen recognition of Indigenous peoples, the 2020 update also included slightly stronger language highlighting an “acknowledgement” of land and people. “Acknowledgement” was defined as text that specifically named Indigenous peoples’ distinct relationship to the land, traditional knowledge, and expertise. This language seemed more profound than that which was coded as recognition because it made explicit that the relationship to land that many Indigenous peoples and communities have is distinct from settler relations on the land. The 2020 update further strengthened the acknowledgement and recognition of Indigenous peoples.

Below, every change made in the 2020 PPS in relation to Indigenous peoples is examined in the order they appear in the document.

#### *Preamble*

The first change made to the PPS in both the 2014 and 2020 updates occurred in the preamble to Part IV, Vision for Ontario’s Land Use Planning System. As noted in Table 3, the preamble begins by acknowledging the geographical diversity within the province; it then continued by pointing out the relevance of Aboriginal communities to the Province of Ontario:



**Table 3.** Indigenous-related changes made to the preamble of the PPS\*

2005 PPS	2014 PPS
<p>The Provincial Policy Statement reflects <del>this diversity</del> and is based on good planning principles that apply in communities across Ontario.</p>	<p><b>Ontario's rich cultural diversity is one of its distinctive and defining features.</b> The Provincial Policy Statement reflects <b>Ontario's diversity, which includes the histories and cultures of Aboriginal peoples,</b> and is based on good land use planning principles that apply in communities across Ontario. <b>The Province recognizes the importance of consulting with Aboriginal communities on planning matters that may affect their rights and interests.</b></p>
2014 PPS	2020 PPS
<p><b>Ontario's</b> rich cultural diversity is one of its distinctive and defining features. <del>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.</del> The Province recognizes the importance of consulting with Aboriginal communities on planning matters that may affect their <del>rights and interests.</del></p>	<p><b>The Province's</b> rich cultural diversity is one of its distinctive and defining features. <b>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.</b> The Province recognizes the importance of consulting with Aboriginal communities on planning matters that may affect their <b>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.</b></p>

\*Coloured text denotes words, phrases or sections that were **added**, **deleted**, **moved**, or **changed**.

The above excerpt shows how noteworthy the language shift in the 2014 update was, which was further built upon and strengthened in the 2020 PPS. The added text in 2020 acknowledged Indigenous people's unique relationship to the land and it recognized that Indigenous communities have a crucial role to play in contemporary land use planning. Additionally, section 35 of the *Constitution Act, 1982* was iterated, affirming the rights articulated therewithin at both provincial and

municipal level. Section 35 of the *Constitution Act, 1982* was first mentioned in the PPS when a new section was added in 2014 to Section 4.0, Implementation and Interpretation. The added text stated: “4.3 This Provincial Policy Statement shall be implemented in a manner that is consistent with the recognition and affirmation of existing Aboriginal and treaty rights in section 35 of the *Constitution Act, 1982*” (MMAH, 2020b, p.35). The text in section 4.3 remained unchanged in the 2020 PPS update.

Another addition to the 2020 PPS, noted in Table 12, was text that encouraged the formation of “constructive and cooperative relationships” between Indigenous communities and municipalities. As will be discussed below, similar text was present in the 2014 PPS, yet the policy language shifted in 2020 to mandate these relationships.

Finally, an important word change from the 2014 to the 2020 PPS was the use of the term “Indigenous” rather than Aboriginal. The latter term, a legal category of people in Canadian law, was only used in the 2020 PPS when in reference to section 35 of the *Constitution Act, 1982*. This word change was quite important, as it could amplify the scope of all relevant directives in the PPS by way of more inclusive language that encompasses all Indigenous peoples in Canada, regardless of status under federal legislation. It is unclear, however, if this was the intention or if it was simply an exchange of an outdated term (that still has legal weight) to a more widely used, but also non-legal, term.

### *Section 1.2.2*

Moving in numeric order, the next change was found in Section 1.0, Building Strong Healthy Communities. The word changes made to section 1.2.2, shown in Table 4, were possibly the most profound changes made to the 2020 PPS as it signifies a shift in policy that mandates municipalities to build relationship with Indigenous peoples and to coordinate with them on land use planning matters:

**Table 4.** Indigenous-related changes made to section 1.2.2 in Section 1.0, Building Strong Healthy Communities\*

2014 PPS
1.2.2 Planning authorities <b>are encouraged to</b> coordinate planning matters <b>with Aboriginal communities</b> .
2020 PPS
1.2.2 Planning authorities <b>shall engage with Indigenous communities and</b> coordinate <b>on land use</b> planning matters.

\*Coloured text denotes words, phrases or sections that were **added**, **deleted**, **moved**, or **changed**.

The changes made to section 1.2.2 strengthened the language by shifting from “encouraged” to “shall engage ... and coordinate” with Indigenous communities. Unfortunately, though, as with the previous version, the 2020 PPS did not outline *how* and *when* exactly municipalities and Indigenous communities shall engage and coordinate with each other.

### Section 2.6.5

While many of the changes made to the PPS clarified policy intent in relation to Indigenous peoples (or otherwise), this was not always the case. The full scope intended for the words changed in section 2.6.5, in Section 2.0, Wise Use and Management of Resources, was unclear. Table 5 shows the evolution of the policy was as follows:

**Table 5.** Indigenous-related changes made to section 2.6.5 in Section 2.0, Wise Use and Management of Resources\*

2014 PPS
2.6.5 Planning authorities shall consider <b>the</b> interests <b>of Aboriginal communities in conserving</b> cultural heritage and archaeological resources.
2020 PPS
2.6.5 Planning authorities <b>shall engage with Indigenous communities and</b> consider <b>their</b> interests <b>when identifying, protecting and managing</b> cultural heritage and archaeological resources.

\*Coloured text denotes words, phrases or sections that were **added**, **deleted**, **moved**, or **changed**.

While the changes are like those made in section 1.2.2 (above) with the shift from “encouraged” to “shall,” there may be a possibility that practitioners and decision makers could interpret these word changes as a directive to engage with Indigenous communities but only a suggestion to consider

their interests. Thus, in this instance, the changes made to the text may not actually amount to substantive changes in practice.

### *Section 4.8*

In Section 4.0, Implementation and Interpretation, the newly added text, presented on Table 6, positioned Indigenous communities as distinct entities to be consulted.

**Table 6.** Indigenous-related changes made to section 4.8 in Section 4.0, Implementation and Interpretation\*†

2014 PPS
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.
2020 PPS
4.8 The Province, in consultation with municipalities, <b>Indigenous communities</b> , 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.

\*Coloured text denotes words, phrases or sections that were **added**, **deleted**, **moved**, or **changed**.

The new text specifically placed Indigenous communities as: 1) separate from municipalities and/other public bodies, and 2) not a stakeholder group. This was potentially an important distinction made, as it emphasized Indigenous communities as distinct actors with unique interests around certain indicators for policy evaluation, which may have a direct impact on future policy creation or updates.

### *Built heritage resource and Cultural heritage landscape*

The final two changes made to the 2014 and 2020 PPS updates were found in Section 6.0, Definitions, found below in Tables 7 and 8. In this Section, two definitions were changed, “Built heritage resource” and “Cultural heritage landscape” are addressed as follows:

**Table 7.** Indigenous-related changes made to the “Built heritage resource” definition over time\*†

2005 PPS	2015 PPS
<p>Built heritage <b>resources</b>: means <del>one or more significant buildings, structures, monuments, installations or remains associated with architectural, cultural, social, political, economic or military history and identified as being important to a community. These resources may be identified through designation or heritage conservation easement under the <i>Ontario Heritage Act</i>, or listed by local, provincial or federal jurisdictions.</del></p>	<p>Built heritage <b>resource</b>: means <b>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.</b></p>
2014 PPS	2020 PPS
<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 <b>Aboriginal</b> community. Built heritage resources are generally located on property that <b>has been</b> 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 <b>or constructed part or</b> remnant that contributes to a property’s cultural heritage value or interest as identified by a community, including an <b>Indigenous</b> community. <i>Built heritage resources</i> are located on property that <b>may be</b> designated under Parts IV or V of the <i>Ontario Heritage Act</i>, or <b>that may be</b> included on local, provincial, federal <b>and/or international</b> registers.</p>

\*Coloured text denotes words, phrases or sections that were **added, deleted, moved, or changed**.

†Emphasis original and denotes terms that are defined in Section 6, Definitions, of the PPS.

**Table 8.** Indigenous-related changes made to the “Cultural heritage landscape” definition over time\*†

2005 PPS	2014 PPS
<p>Cultural heritage landscape: means a defined geographical area <del>of heritage significance which has</del> been modified by <del>human activities and is valued</del> by a community. <del>It involves a grouping(s) of individual heritage</del> features such as structures, spaces, archaeological sites and natural elements, <del>which together form a significant type of heritage form, distinctive from that of its constituent elements or parts</del>. Examples may include, but are not limited to, heritage conservation districts designated under the <i>Ontario Heritage Act</i>, <del>and</del> villages, parks, gardens, battlefields, mainstreets and neighbourhoods, cemeteries, trailways and industrial complexes of cultural heritage <del>value</del>.</p>	<p>Cultural heritage landscape: means a defined geographical area <b>that may have</b> been modified by <b>human activity and is identified as having cultural heritage value or interest</b> by a community, <b>including an Aboriginal community</b>. <b>The area may involve</b> features such as structures, spaces, archaeological sites or natural elements <b>that are valued together for their interrelationship, meaning or association</b>. 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, <b>viewsheds, natural areas</b> and industrial complexes of heritage <b>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)</b>.</p>
2014 PPS	2020 PPS
<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 <b>Aboriginal</b> community. The area may <b>involve</b> features such as structures, spaces, archaeological sites or natural elements that are valued together for their interrelationship, meaning or association. <del>Examples may include, but are not limited to, heritage conservation districts designated under the Ontario Heritage Act; 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).</del></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 <b>Indigenous</b> community. The area may <b>include</b> features such as <b>buildings</b>, structures, spaces, <b>views</b>, archaeological sites or natural elements that are valued together for their interrelationship, meaning or association. <b>Cultural heritage landscapes may be properties that have been determined to have cultural heritage value or interest under the Ontario Heritage Act, 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.</b></p>

\*Coloured text denotes words, phrases or sections that were **added**, **deleted**, **moved**, or **changed**.

†Emphasis original and denotes terms that are defined in Section 6, Definitions, of the PPS.

As with instances in the 2014 update, language addressing “Aboriginal” communities was added to each of the definitions, making clear to planners and decision makers that the built and cultural heritage of Indigenous peoples must be considered alongside settler built and cultural heritage. This addition acknowledged Indigenous peoples’ interest in land use and other planning issues that extend beyond lands abutting or adjacent to reserves. The 2020 changes subsequently amplified the scope of the “Built heritage resource” definition to include resources not yet been formally recognized under legislation as a heritage asset. The added text opened the definition to a more generous interpretation, while potentially providing greater leverage for an Indigenous community to more effectively protect areas that are seen as meaningful by the community but are outside the boundaries of reserve lands.

The language surrounding Indigenous peoples has strengthened in many important ways since 2014. Above all, we believe, was the shift towards mandated engagement and coordination with Indigenous communities on issues pertaining to land use planning and cultural resource management. While the changes fell far short of using language like the legal concept of duty to consult, the 2020 update appeared to have inched ever so slightly towards this type of policy-based consultation and accommodation. This is significant because the Crown duty to consult is the obligation, flowing from section 35 of the *Constitution Act, 1982*, which the Crown must consult with Aboriginal peoples about proposed Crown activities that may negatively affect existing or potential Aboriginal rights (Hoehn and Stevens, 2018). Canadian case law has established that the federal and provincial governments and crown corporations act as the Crown or as agents of the Crown, and therefore must act in a manner that will uphold the Honour of the Crown and its obligations. Yet, based on a narrowly conceived notion of municipal governance, the Supreme Court of British Columbia ruled that municipal governments are not the Crown or an agent of the Crown (Hoehn and Stevens, 2018). However, as a policy document such as the PPS demonstrates, municipal governments make decisions on matters that may interface with existing or potentially existing Aboriginal rights and treaty rights. Thus, for Ontario municipalities, in the context of a continually strengthening PPS, which is requiring greater consultation and coordination with Indigenous communities, it is conceivable that a policy-based municipal duty to consult could be a reality in the relatively near future. Thus, in an effort to understand how deeper and more effective nation-to-nation consultation and engagement may be realized by Ontario municipalities, it was valuable to

conduct a modified rapid review of academic literature from the past five years regarding municipal Indigenous consultation/engagement practices and the Crown duty to consult as it relates to municipalities.

### Grounding the Policy Content Analysis with a Modified Rapid Literature Review

The modified rapid review of the literature yielded seven studies (Alcantara and Kalman, 2019; Curry, 2018; Fawcett, Walker, and Greene, 2015; Heritz, 2016; Heritz, 2018; Hoehn and Stevens, 2018; Nejad et al., 2019). A summary of the data extracted from the reviewed studies is provided below.

#### *Study Locations*

The included studies focused almost exclusively on consultation and engagement with Indigenous people(s) living in urban centres (Curry, 2018; Fawcett, Walker, and Greene, 2015; Heritz, 2016; Heritz, 2018; Nejad et al., 2019), with only one article looking at municipal and Indigenous inter-governmental coordination (Alcantara and Kalman, 2019), and one article dealing strictly with law (Hoehn and Stevens, 2018). Of those studies conducted in specific places, data was presented from various locations across Canada but primarily in the western provinces: Edmonton, Alberta (Heritz, 2016); Vancouver (Curry, 2018; Heritz, 2016) and Skeena-Queen Charlotte, British Columbia (Curry, 2018); Winnipeg, Manitoba (Heritz, 2016; Nejad, 2019); Akwesasne/Cornwall (Alcantara and Kalman, 2019) and Toronto, Ontario (Heritz, 2016); and Saskatoon, Saskatchewan (Fawcett, Walker, and Greene, 2015). One study had a national focus (Heritz, 2018).

#### *Methods Described*

All the included studies used qualitative methods, exclusively. Interviewing, primarily semi-structured, was the most frequently cited mode of data collection, used in five studies (Alcantara and Kalman, 2019; Curry, 2018; Fawcett, Walker, and Greene, 2015; Heritz, 2016; Nejad et al., 2019). Four studies used policy/document analysis (Alcantara and Kalman, 2019; Curry, 2018; Heritz, 2016; Heritz, 2018), and one study presented a legal analysis that brought together several examples of case law to form an argument regarding municipal duty to consult (Hoehn and Stevens, 2018).



### *Engagement and Consultation Practices*

Several authors focused on engagement and consultation practices at a municipal level (Fawcett, Walker, and Greene, 2015; Heritz, 2016; Heritz, 2018; Nejad et al., 2019). The most frequent strategy noted was the use of Indigenous advisory committees in several cities (Fawcett, Walker, and Greene, 2015; Heritz, 2016; Heritz, 2018; Nejad et al., 2019). Several authors (Fawcett, Walker, and Greene, 2015; Nejad et al., 2019) also described the use of more traditional public engagement approaches commonly employed in planning practice, such as open houses and town halls. In the case of the City of Saskatoon, after open houses failed to engage urban Indigenous communities, Indigenous project champions were identified and asked to raise awareness of strategic plan consultation and public participation opportunities. Eventually, a Gathering event was held to garner greater Indigenous participation in the process (Fawcett, Walker, and Greene, 2015). This approach may have been successful due to its cultural relevance and familiarity for many Indigenous peoples in Canada. While the authors noted some examples that demonstrated an increased effort by municipal governments to engage and/or consult with urban Indigenous peoples, they all agreed that this approach falls far short of urban “co-production” (Fawcett, Walker, and Greene, 2015) or nation-to-nation relations (Fawcett, Walker, and Greene, 2015; Heritz, 2016; Heritz, 2018; Nejad et al., 2019). Heritz (2018) took this critique further by noting that, instead of moving towards forms of urban governance that affirm Indigenous self-determination, that several municipal efforts to engage Indigenous peoples actually produced the opposite effect. Heritz (2018) asserted that municipal approaches to engaging with Indigenous communities relies disproportionately on Indigenous peoples working in the non-profit sector to act as representatives for diverse urban Indigenous communities. Finally, Heritz (2018) argued that current models of Indigenous representation and engagement at the municipal level are overshadowed by policies that focus on service delivery, instead.

### *Inter-Governmental Cooperation and Coordination*

Inter-governmental cooperation and coordination was examined in two studies (Alcantara and Kalman, 2019; Curry, 2018). Using a “Haudenosaunee/Settler Approach,” Alcantara and Kalman (2019) evaluated the implementation of an inter-governmental agreement that saw the control of federal port lands to the settler community of Cornwall, Ontario and the Indigenous community of Akwesasne. The authors noted that the co-management agreement between the two governments,

which was motivated by a joint desire to clean up St. Lawrence River, was partially successful, as both parties were able to collaborate to achieve mutually beneficial targets for policy implementation, including joint-governance institutions. Yet, there were several aspects of the agreement that remained to be enacted (Alcantara and Kalman, 2019). The idea of collaborating in areas where there is mutual benefit was also addressed by Curry (2013). The study examined inter-governmental coordination (termed multi-level governance) across all levels of government (federal, provincial, municipal, and reserve government) in British Columbia. Referring to the province's Community-to-Community Forum, Curry (2019, p.177) noted that the Skeena-Queen Charlotte Regional District sought provincial funding to "facilitate discussion and to involve Indigenous groups in regional Governance". Curry (2019) determined, though, that even with additional support and resources, municipal-Indigenous relationships can be difficult to navigate due to the differences in jurisdiction (i.e., municipalities as creatures of the province while reserves fall under asserted authority of the federal government).

### *Municipal Duty to Consult*

Finally, only one study directly addressed the concept of municipal duty to consult (Hoehn and Stevens, 2018). After outlining the legal concepts of the honour of the Crown and the duty to consult, Hoehn and Stevens (2018) argued that while municipalities are not "the Crown" in the sense that the Federal and Provincial government are, they could be interpreted as agents or vehicles for the crown. The crux of their argument rested on two principles. First, the honour of the Crown is a pledge to protect Indigenous peoples from exploitation, and it applies to all dealings between the Crown and Indigenous peoples. Hoehn and Stevens, (2018) asserted that the Supreme Court has clarified that a generous interpretation of the Crown should be applied. Thus, in addition to federal and provincial governments, other governmental entities, like territorial governments and crown corporations have been ruled to act as the Crown or Agents of the Crown. Therefore, this same principle of generous interpretation should be extended to include municipal governments, which would compel the duty to consult. Second, courts have consistently found municipalities to be bound by the *Charter of Rights and Freedoms* in the *Constitution Act, 1982*, even though they are not mentioned in the *Charter* or the constitution. Hoehn and Stevens (2018) argue that if one part of the *Constitution Act, 1982*, applies to municipalities, the *Charter*, then other parts of the *Act* should apply, too, such as section 35. The authors emphasized that a full and robust interpretation of the honour

of the Crown is a component to reconciliation and that counter arguments, such as narrow interpretations of municipal governance that preclude it from acting as the Crown, or a lack of municipal resources to fulfil their duty to consult, should not be barriers to municipalities honouring section 35 and the duty to consult.

### Discussion

The results, as presented, demonstrate that Indigenous-related changes in the 2020 PPS update build upon and strengthen the 2014 text. This is most pointedly demonstrated with the mandated engagement, consultation, and coordination on land use planning matters. The modified rapid review of academic literature revealed that there are several municipal approaches used to consult and coordinate with Indigenous communities in Canadian cities but that these efforts are generally failing in many key aspects. We believe that the literature reviewed makes clear that a move towards municipal-Indigenous nation-to-nation relations, anchored in section 35 of the *Constitution Act, 1982*, and duty to consult will likely provide an opportunity for greater meaningful engagement and consultation.

The general strengthening of language in the PPS has both negative and positive potential consequences. From a municipal perspective, a potential negative consequence of an increasing number of explicit and mandatory directives in the PPS may run against the spirit of the principle of subsidiarity, and the idea that planning decisions are often best made locally. The possible positive consequences, though, could far outweigh the negative. For example, one potential positive consequence of the PPS strengthening related to Indigenous-municipal relationships, is that it can be a vehicle for constructive social change and forge a path of reconciliation. That is, at present, the PPS is requiring planners and decision makers to forge a relationship with Indigenous communities and to coordinate with them on planning matters. This mandated engagement is an opportunity for meaningful relationship building among Indigenous and non-Indigenous decision makers, greater inter-cultural understanding, and increased inter-community relations. As an added benefit, in the process of relationship building, non-Indigenous planners would learn about local Indigenous peoples, their histories, and their vision for their communities.

Considering the findings of our content and thematic analyses and the modified rapid review, we propose the following three policy recommendations:

### **1. Mandate a Municipal Duty to Consult in the Next PPS Update.**

The language in the PPS may be slowly inching towards establishing a provincial policy-based municipal duty to consult. Yet, as with the 2014 PPS, there remains in the 2020 PPS a need for greater concrete direction from the Province regarding how and when to engage, with what resources, and in what capacity – as the representatives of the Crown or not. Given that municipal duty to consult has already been discussed in Canadian courts (Hoehn and Stevens, 2018), we believe that it is only a matter of time until the courts rule to expand the scope of the Crown to include municipalities. Ontario has an opportunity to be a leader in Canada and to take the much-needed steps toward a serious engagement with Indigenous peoples and their relationship to the land, a part of which could include a policy-based municipal duty to consult. That said, however, decision makers who are looking to build a new way forward with Indigenous peoples in Ontario or across Canada, however, can consider applying, if not enforcing, a municipal duty to consult on their own accord. They do not need to wait for the federal government, the provinces, or the courts to force the issue.

### **2. Provide Funding and Appropriate Resourcing to Foster Engagement and Relationship-Building Between Municipalities and Section 35 Rights-Holding Indigenous Communities and Other Indigenous Peoples**

Given the 2020 PPS mandates to engagement and coordination with Indigenous peoples on land use planning matters, more resources for municipalities and Indigenous communities to engage in an appropriate and effective manner should be made available. Any municipality wishing to move in this direction, however, should bear in mind that different approaches to engagement and consultation will be needed depending on the context and/or the First Nation/Indigenous peoples being engaged. Section 35 rights-holding communities must be engaged in accordance with Aboriginal and treaty rights and follow (at least) the minimum standard protocols of duty to consult. Organizations based in urban settings, such as Friendship Centres, are not a stand-in for consulting with section 35 rights-holding communities whose traditional territory the municipality is on. Yet, Friendship Centres may be appropriate when engaging and consulting with Indigenous peoples who

live in urban areas. Ultimately, multiple, sustained avenues of open, honest, and transparent relationship building will likely be needed. These should be fostered not just through transactional planning-related interactions, but also other forms of deeper relationship building and intercultural exchange which may assist with building trust and efficiencies. All these efforts will take time, money, people, knowledge, and political will. If the Province wants to take seriously their statement that it “recognizes the importance of consulting with Aboriginal communities on planning matters that may affect their rights and interests” (MMAH 2014, p. 4; 2020, p. 5), then the appropriate measures (e.g., money for intercultural events, courses for municipal staff regarding local Indigenous histories and relevant Aboriginal and treaty rights/State obligations) must be mobilized to enable this principal to the fullest extent.

### **3. 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 Revisions**

The fact of the matter is that no matter where planning occurs anywhere in Canada, it is always occurring on traditional territories, ceded or not. In some cases, the Indigenous rights to the land have never been extinguished or are being renegotiated. Enforcing municipal will on Indigenous communities/territories or ignoring their concerns can and does lead to conflict between communities (e.g., the still unresolved Caledonia land dispute in Ontario). Thus, we believe that truly transformational and inclusive planning that leads to positive outcomes, and that is in the interest of all publics, lie in efforts in nation-to-nation co-creation of plans.

## **Conclusion**

A content analysis of the Provincial Policy Statement (PPS) from 2005-2020 was conducted, revealing that policy language in the PPS, over time, is strengthening and demanding greater compliance from municipal planners and decision makers. A thematic analysis identified that all Indigenous-related changes to the PPS affected relationship, culture, wellbeing. As with the PPS in general, the policy language pertaining to Indigenous peoples was strengthened. Yet, as the results from our modified rapid literature review indicate, the municipalities investigated are focused on using traditional public engagement techniques to engage primarily urban Indigenous communities

and have yielded mixed success. The review also showed there is a compelling case for municipal duty to consult and that nation-to-nation municipal-Indigenous relations need to be centred.

The present study demonstrates that, the PPS has evolved as a planning document since 2005, and in 2014 and 2020, expanded its strength and scope in relation to Indigenous peoples and municipal-Indigenous relations. The changes in the 2020 update could make the PPS an integral component of building stronger and deeper relationships between municipalities and Indigenous communities in Ontario. As the results from the modified rapid review suggest, however, fundamental to this relationship building, is a nation-to-nation approach that affirms Aboriginal and treaty rights, and is inclusive of the diversity of Indigenous peoples in Ontario and their knowledge. There is a need for further research that investigates *how* to move municipal-Indigenous relations towards a nation-to-nation framework. Additionally, research examining how to implement and fund municipal duty to consult could assist in moving policy makers in this direction. Municipal duty to consult as a legal reality in Canada is likely only a matter of time, but there is no need to wait. Recent changes to the PPS may, in fact, be laying the groundwork for new relationships between municipalities and neighbouring Indigenous communities, which could help to prepare all parties for more expansive engagement, consultation, and collaboration in the future.

While the use of Indigenous-inclusive language can be seen as a step towards opening dialogue between municipal governments and Indigenous peoples, at minimum, there is room for improvement in areas such as mandating municipal duty to consult, greater financial support for stronger relationship-building, consultation, cooperation, and coordination. More radically, municipalities engaging with Indigenous communities on a nation-to-nation basis and as co-creators of planning policy and the planning process may address the calls from Indigenous community members, activists, and scholars for community-based and culturally-relevant policy formation and implementation processes (King, 2010; 2013a; 2016; King and Pasternak, 2018; Palmater 2018) while building a more equitable and inclusive province and country.

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