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# PLAN

CANADA

## Habitat and Home

## *Habitat et Chez-Soi*

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Conference News  
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*les nouvelles et faits  
saillants du congrès*



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# HABITAT AND HOME HABITAT ET CHEZ-SOI

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congrès

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**ARE WE**

**THERE**

FLIP CAMERA / TALL / ROTORRE 2005

**SUMMARY** In an effort to find concrete ways to indigenize planning in Ontario, a team of researchers from Queen's University and the University of Waterloo and planning practitioners and leaders from the Mississaugas of the New Credit First Nation and Walpole Island First Nation in Ontario have come together to investigate how the First Nations can manage consultation requests and better influence development on First Nations' traditional territories. The research sheds light on ways to bring attention to the presence and capacity of the First Nations to inform, manage, and mitigate development processes and offers hope for building positive relationships among the province, municipalities and the First Nations.

**RÉSUMÉ** Dans le but de trouver des moyens concrets pour autochtoniser l'urbanisme en Ontario, une équipe de chercheurs des universités Queen's et Waterloo, ainsi que des urbanistes et des chefs des bandes des Mississaugas de la New Credit et de Walpole Island de la province se sont réunis afin d'examiner comment les Premières nations peuvent gérer les demandes de consultation et mieux influencer sur l'aménagement de leurs territoires traditionnels. Leurs résultats mettent en lumière les différentes façons d'attirer l'attention sur la présence et la capacité des Premières Nations à élaborer, gérer et limiter les processus d'aménagement, en laissant espérer la formation de relations fructueuses entre la province, les municipalités et les Premières Nations.

## Making inroads to decolonize planning knowledge and practices in Southern Ontario

by

LEELA VISWANATHAN PHD, MCIP, RPP,

FRASER McLEOD, CAROLYN KING,

JARED MACBETH *and* ERIN ALEXIUK

### INES OF ACCOUNTABILITY BETWEEN

the Crown and First Nations in Ontario are unclear; as such, consultation in the province does not necessarily or immediately render benefits to First Nations communities. For example, the Ontario Government passed the *Far North Act* on October 25, 2010 with the goal of increasing the participation of First Nations in land use planning in the north. The *Far North Act* is the most recent development of the legacy of Treaty No. 9, signed in 1905–1906 by First Nations of northern Ontario. Of importance is that the *Far North Act* was passed despite unanimous First Nations opposition. For the First Nations, the *Far North Act* raises serious social justice issues including inadequate consultation; negative impacts from land use planning on Treaty and Indigenous rights; jurisdictional division of First Nations traditional territories; inadequate resourcing; and limited power sharing.<sup>1</sup>

To explore ways of indigenizing planning in Ontario, a team of planning practitioners and leaders among the Mississaugas of the New Credit First Nation (MNCFN) and the Walpole Island First Nation (WIFN), as well as planning researchers from Queen's University and the University of Waterloo, came together with funding received from the Social Sciences and Humanities Research Council (SSHRC) to investigate how First Nations are involved in informing, managing, and mitigating development processes on First Nations' traditional territories. Team members share an awareness of how planning is culturally constituted by Canada's history of colonial settlement.

The emerging partnership seeks out concrete ways that Indigenous knowledge can inform collaborative planning and decision-making and ways to 'decolonize' approaches to planning such that First Nations have greater influence and power in line with the duty to consult, requirements to accommodate, and emerging thinking on consent.<sup>2</sup> By asking, "what will it take to release planning from its strong colonial attachment",<sup>3</sup> the research team is re-discovering and asserting the legitimacy of First Nations' knowledge rooted in First Nations' traditional territories and in practices that fall both inside and outside of professional planning conventions and processes.

The authors of this article make no claims to have fully answered the title question; however, the authors hope that both seasoned and new planners in both First Nation and non-First Nation contexts can learn from some of the practical inroads being made by the research project; these are (1) indigenizing dominant planning processes and policies such as the current review of Ontario's Provincial Policy Statement; (2) taking a closer look at the impact of the Crown Duty to Consult on First Nations' capacities to gain more control of development on First Nations' traditional territories; and (3) helping First Nation and municipal planners to find ways to build lines of communication, if not to foster collaboration.

### INDIGENIZING LAND USE PLANNING POLICY IN ONTARIO

A number of Ontario provincial policies regarding land use such as the *Mining Act* (1990), the *Clean Energy Act* (2006), the *Endangered Species Act* (2007), the *Provincial Parks and Conservation Reserves Act* (2007), and the *Far North Act* (2010) just to name a few, cite section 35 of the *Constitution Act, 1982*. By referring to section 35, these policies acknowledge that existing Treaty and Indigenous rights (referred to as Aboriginal rights) set out in the *Constitution Act, 1982* cannot be infringed upon or abolished in the interpretation or implementation of said policies.

The Ontario *Planning Act* (1990) "sets out the ground rules for land-use planning in Ontario and describes how land uses may be controlled, and who may control them."<sup>4</sup> Unfortunately, the *Planning Act* fails to properly acknowledge the rights of First Nations to inform and contribute to decision-making that impacts the rights of First Nations on traditional territories. The legislation, whether intentionally or unintentionally, devalues First Nations by referring to them as

a "public body" similar to other public actors including municipalities, departments, commissions, and officials of the provincial and federal government. In turn, in referring to First Nations as one of a number of public bodies, the *Planning Act* allocates the power to the Minister, to determine if a First Nation community is a valid affected public body depending on the issue, such as cultural heritage.

The Ontario Provincial Policy Statement (2005) (hereafter called the PPS) contains important policies related to land use planning in Ontario. The PPS is currently undergoing a required five-year review. As a complete policy document, the PPS covers various aspects of land use planning to which municipalities must comply. With ultimate power in the hands of relevant governmental Ministers to determine if and when First Nations have a valid role to play, the PPS review offered an opportunity to First Nations

WIFN and MNCFN want planning policy to be not only about protecting the rights and interests of First Nations but also about increasing awareness among planners regarding the need for and benefits of building positive relationships with First Nations—that it is good policy and practice, not simply a duty, to do so

communities to make recommendations, such as those regarding cultural heritage, and to change the draft policy, including adding words that enhanced First Nations' agency.

Various members of the research team participated in PPS consultation sessions in Toronto, Hamilton, and Kingston, Ontario. Furthermore, Jared Macbeth of the WIFN and Carolyn King of the MNCFN met with representatives of the Ontario Ministry of Municipal Affairs and Housing to learn more about the review of the PPS and to recommend ways to include First Nations in the rewording of the PPS. Without any reference to First Nations and Treaty and Indigenous rights in previous versions of the PPS, WIFN and MNCFN knew that they were "starting from scratch" and needed to give planners a context for including the First Nations in the PPS review. While the PPS review is not innovative in and of itself, the congruence of heightening the provincial government's consciousness about Treaty and Indigenous rights in land use planning, and the involvement of the WIFN and MNCFN, made a difference in the review process. This congruence presented a clear opportunity for the MNCFN and WIFN, as well as planners, to participate in policy-making that could make shifts in the course of planning with First Nations in the province. These meetings reflected efforts by MNCFN and WIFN to indigenize sections of the PPS and showed how the process of providing input and new wording such as "and the First Nations" would bring attention to the presence and capacity of First Nations to better influence development on First Nations' traditional territories.

## REVISITING FIRST NATIONS AND THE CROWN DUTY TO CONSULT

Legal cases including *R v. Sparrow* (1990), *R. v. Nikal* (1996), *R. v. Gladstone* (1996) and *Delgamuukw v. BC* (1997) first identified the Crown's duty to consult; however, the rulings from two cases brought to the Supreme Court of Canada in 2004, *Haida Nation v. BC* and *Taku River Tingit First Nation v. BC and Redfern Resources*, obligated both provincial and federal governments to consult with First Nations and accommodate Treaty and Indigenous rights.<sup>5</sup> Over the past nine years, the legal obligation of the Crown and the degree of meaningful consultation by the Crown continue to be tested.

Meanwhile, the MNCFN must contend with reviewing an inordinate number of requests for consultation regarding developments in the Greater Toronto Area, with little in human resources capacity to complete this task. In turn, the MNCFN has a keen interest in figuring out how to manage the consultation requests. Although the MNCFN and WIFN fully support being consulted and informed of proposed developments on their traditional territories, the current system of reviewing development requests does not recognize nor build the current capacity of First Nations to participate in this review process. In turn, both the MNCFN and WIFN favour building relationships with their adjacent municipalities and relevant regional councils in order to figure out how to better manage, if not "stem the flow of paper" in the form of consultation requests, and to participate in the development of Official Plans, associated guidelines and technical documents. Educating and training municipal planners about the impact of development on First Nations communities remain crucial.

## NEXT STEPS: BUILDING STRONGER MUNICIPAL-FIRST NATIONS RELATIONSHIPS

WIFN and MNCFN want planning policy to be not only about protecting the rights and interests of First Nations but also about increasing awareness among planners regarding the need for and benefits of building positive relationships with First Nations—that it is good policy and practice, not simply a duty, to do so. Any push by First Nations to redefine the Ontario PPS or the Crown Duty to consult will affect the ways in which municipalities both comply with provincial policy guidelines and build relationships with First Nations. Including phrasing such as "and the First Nations" in planning policy will trigger the attention of and dialogue between First Nations and municipalities.

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Building relationships between First Nations and municipalities is the next direction of this research collaboration. The planning researchers on the team have an interest in thinking about ways in which municipalities throughout Canada, particularly those with reserves that are located close to or within current municipal boundaries, can participate in a dialogue about planning and development with First Nations, as well as about government-to-government (First Nations and Federal/Provincial) relations in general. By involving planning students in planning activities with First Nations partners, this research enables the next generation of planners to benefit from the practice of planning-with-not for First Nations.

## CONCLUSION

The involvement of the MNCFN and the WIFN in the review of the Ontario Provincial Policy Statement shows what it means to indigenize planning legislation and to take conscious steps to dismantle the colonial constructs that are embedded in land use planning. This experience offers one more example of how universities and First Nations can work together through reciprocal mentoring, training, and learning. Building a relationship between First Nations and municipalities and provincial bodies on planning-related issues should not assume that existing planning practices are the basis for future planning practices. Innovation in planning with First Nations is possible with a growing willingness on the parts of First Nations and planners to participate in each other's worlds. The WIFN and MNCFN are making inroads into building relationships with municipalities and regions in Southern Ontario; however, it should not be assumed that all municipalities and First Nations across Canada are in similar positions at this time to open up to dialogue. Histories and experiences vary from region to region, and reconciliation is an ongoing process. Planning researchers can also anticipate that it is through on-the-ground engagement with First Nations, and wherever possible, involving planning students in these contexts of ethical practice, that the practices of planning with First Nations will ultimately drive the theory of what decolonizing planning looks like. ■

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