Finding Common Ground:
Building Equitable Planning Futures with First Nations in Ontario, Canada

By

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A thesis submitted to the Graduate Program in Urban and Regional Planning
In conformity with the requirements for the
Degree of Master of Urban and Regional Planning

Queen’s University
Kingston, Ontario, Canada
September, 2014

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Abstract

This thesis analyzes selective land use and resource management policies in the province of Ontario, Canada and their relative capacity at recognizing and supporting First Nations. Written in a manuscript format, this thesis addresses the three following questions:

1. How have land use and resource management legislation and policies in Ontario recognized and supported First Nations’ rights and notions of honouring past Crown-First Nation relationships?

2. How are First Nations recognized and supported in the current and past versions of the Provincial Policy Statement in the province of Ontario?

3. How can top-down territorial planning policies in Ontario take a fundamental shift towards promoting new types of relationships and mutual understanding between municipalities and Indigenous peoples by learning from the Aotearoa New Zealand planning context?

The common approach to address these research questions is content analysis of policy documents through two separate analytical frameworks. The first manuscript addresses questions one and provides a baseline review of 337 provincial texts and their relative capacity at recognizing First Nations and Aboriginal and treaty rights, and embodying past Crown-First Nations relationships. The second manuscript then addresses the remaining questions by engaging in a comparative between the Ontario Provincial Policy Statement (PPS) (2014) and the Auckland Council Regional Policy Statement (ACRPS) (1999) from the Aotearoa New Zealand planning context.

The results highlight the relative limits of Ontario’s current approach and practical areas of improvement. From a theoretical standpoint, this thesis proposes a return to and the development of spaces of common ground to ensure that equitable and constructive planning relations between communities become the standard. In contrast to previous works that narrowly focus on
collaborative approaches and on-the-ground relations, this thesis concludes that provincial land use and resource management policies that shape the everyday deserve greater attention and that strategic-level amendments can enhance recognition and support of First Nations in planning processes. Other changes, including cultural changes will be required to move towards common ground, but we must remain optimistic that the process and a sustained commitment to fundamental change will leave planning in Ontario with First Nations in a better state than where it is today.
Co-Authorship

I hereby declare that this thesis incorporates material that is a result of a collaborative research initiative, as follows. The background research, content analysis, and synthesis of research findings were the work of Fraser McLeod. The role of Dr. Leela Viswanathan and Dr. Graham Whitelaw was largely through guidance and supervision throughout the research and framework designs for data analysis, and the overall thesis development. They are also responsible for first bringing the idea for this type of Ontario-focused policy analysis with respect to First Nations forward, and facilitating my own relationship with colleagues from the Mississaugas of the New Credit First Nation, the Walpole Island First Nation and the University of Waterloo. The two analytical frameworks at the heart of the analysis of this thesis were initially jointly developed between my supervisors and I, and then matured through feedback from the research partnership. Carolyn King of the Mississaugas of the New Credit First Nation and Jared Macbeth of the Walpole Island First Nation Heritage Centre provided critical feedback, ideas and validation for the research and assisted in the modification of certain sections, elements of the analytical frameworks utilized and the ideas that inspired the conceptualization of common ground. Finally, Dr. Daniel McCarthy and Erin Alexiuk of the University of Waterloo greatly assisted in the trajectory of the research by providing feedback and ideas throughout this iterative process.
Acknowledgements

First, I would like to thank my supervisor, Dr. Leela Viswanathan for her continuous support, care and encouragement throughout my time at SURP. From day one, it was a joy working with her as a research assistant and as a friend on this project and other endeavours.

To Dr. Graham Whitelaw, thank you for sharing your knowledge and expertise with me and always being there to think through new ideas and concepts.

To Jared, Carolyn, Dan, Erin, Randi and the rest of the research partnership, this thesis is a reflection of your involvement, ideas and commitment to the larger research project. The words that follow would not be possible without each of you. I am very grateful to have built relationships with all of you and I look forward to what comes next for our team.

To my thesis defense panel, thank you for investing your time and effort into the last step of my thesis process and for asking such thoughtful and critical questions.

To the staff, faculty and my classmates that were part of the SURP community these past two years, I cannot think of a better environment to learn and grow as an individual.

Finally, thank you to my family for your love and encouragement. At times while I may have appeared calm and collected when discussing this research that was largely due to the reassurance and support of Sarah. From the early stages of analysis to the final thesis defense, Sarah has been there and I cannot thank her enough.

This research was supported by the Social Sciences and Humanities Research Council.
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List of Abbreviations

ACRPS - Auckland Council Regional Policy Statement

PPS - Provincial Policy Statement

PAUP - Proposed Auckland Unitary Plan

RCAP - Royal Commission on Aboriginal Peoples

RMA - Resource Management Act

TCPA - Town and Country Planning Act

TRC - Truth and Reconciliation Commission of Canada

UN - United Nations
## Glossary

<table>
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<th>Term</th>
<th>Definition</th>
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<tr>
<td>hapū</td>
<td>subtribe</td>
</tr>
<tr>
<td>iwi</td>
<td>tribal group</td>
</tr>
<tr>
<td>kaitiakitanga</td>
<td>ethic of guardianship</td>
</tr>
<tr>
<td>mana whenua</td>
<td>customary rights and authority over land in an identified area</td>
</tr>
<tr>
<td>taonga</td>
<td>valued resources, assets; both material and non-material</td>
</tr>
<tr>
<td>tangata whenua</td>
<td>people of the land, Māori people</td>
</tr>
<tr>
<td>tino rangatiratanga¹</td>
<td>full chieftainship, authority of the hapū or iwi to make decisions and control over resources</td>
</tr>
<tr>
<td>rangatiratanga</td>
<td>see tino rangatiratanga</td>
</tr>
<tr>
<td>waahi tapu</td>
<td>sacred places</td>
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Source: Drawn from Ericksen *et al.* (2004), Awatere *et al.* (2013)

¹Note: For Maaka & Fleras (2005), defining tino rangatiratanga has and continues to be a complex task as it has been used to reference multiple ideas and concepts. They see it as “synonymous with the concept of indigenous rights to self-determining authority” (Maaka & Fleras, 2005, p. 102). Thus, term should be approached with certain degree of uncertainty because of multiple understandings.
Chapter 1. Introduction

Canada, a country richly endowed in land and natural resources, has witnessed the emergence of distinct conflicts between diverse First Nations and the Crown and non-Indigenous communities over access and rights to land and resources. These conflicts are often due to differing perspectives, a failure of the Crown to address embedded colonial assumptions and structures and ongoing breaches of treaty obligations (Booth & Skelton, 2010; DeVries, 2011; Ipperwash Inquiry, 2007; Johnston, 2007; RCAP, 1996b; Turner, 2005). With Aboriginal and treaty rights firmly recognized under section 35 of the Constitution Act, 1982, and basic public understandings of these rights evolving as a result of Indigenous scholars and leaders and recent rulings by Canada’s highest court, including the landmark Supreme Court of Canada ruling on Aboriginal title, Tsilhqot’in Nation v. British Columbia [2014], First Nations have higher expectations in the Crown and that past relations will be honoured and rights will be respected. Yet, higher expectations have not been accompanied by a parallel willingness by government officials to effectively address the inadequacies and uneven power relations of dominant non-Indigenous institutions, frameworks and policies (Turner, 2006). Specifically within the province of Ontario, First Nations have historically existed between jurisdictions and have been systematically overlooked and excluded along the edges of planning (Borrows, 1997b; Dorries, 2012; Ipperwash Inquiry, 2007; Porter, 2010). Consequently, barriers and inconsistencies remain in recognizing and supporting First Nations’ rights, claims, concerns and knowledge in provincial land use and resource management legislation and policies. These limitations constrain the capacity of First Nations to take part in more equitable and just planning practices. Conversely, these limitations also have impeded the capacity of practitioners at the municipal-
scale to be self-reflective and to engage First Nations in planning processes beyond conventional stakeholder methods.

**Rationale**
This thesis at its roots is the direct result of ongoing discussions and a collective recognition by practitioners and leaders among the Mississaugas of the New Credit First Nation and the Walpole Island First Nation, as well as planning researchers from Queen’s University and the University of Waterloo, that there was an immediate need to critically evaluate the manifest and latent content of provincial legislation, policies and plans to understand their intersection with First Nations. With minimal existing scholarly research into the capacity of provincial policies that regulate on-the-ground land use and resource management decisions and shape planning relations, which affect Aboriginal and treaty rights and traditional territories off-reserve, the main objectives of this thesis are to address the void in understanding that exists in relating First Nations to provincial policies and to raise awareness of the relative limits of Ontario’s current planning framework (see Dorries, 2014; Dorries, 2012; Johnston, 2007). Additionally, this thesis along with its manuscripts and analytical frameworks are also meant to assist in larger discussions amongst planning practitioners and scholars, including First Nations, of the limits of conventional planning approaches and policies that continue to situate First Nations as stakeholders; for these approaches do not reflect a meaningful understanding of inherent rights flowing from original occupancy of the land or the embedded colonial culture of planning that shape its uneven structures and relations (Porter, 2010).

**Research Questions**
The two manuscripts of this thesis have sought to address the following three questions:
1. How have land use and resource management legislation and policies in Ontario recognized and supported First Nations’ rights and notions of honouring past Crown-First Nation relationships?

2. How are First Nations recognized and supported in the current and past versions of the Provincial Policy Statement in the province of Ontario?

3. How can top-down territorial planning policies in Ontario take a fundamental shift towards promoting new types of relationships and mutual understanding between municipalities and Indigenous peoples by learning from the Aotearoa New Zealand planning context?

The first manuscript addresses question one, while the second manuscript focuses on answering questions two and three. The content analysis of the first manuscript was meant to critically examine and evaluate the relative capacity of selective land use and resource management policies in the province of Ontario, Canada at recognizing First Nations and Aboriginal and treaty rights, and embodying past Crown-First Nations relationship. Whereas, the comparative analysis at the centre of the second manuscript compares different versions of the Ontario Provincial Policy Statement (PPS) and the latest PPS (2014) to the Auckland Council Regional Policy Statement (ACRPS) (1999) of the Auckland Region of Aotearoa New Zealand in order to provide insight into how the PPS (2014) developed and the policy’s potential with respect to recognizing and supporting First Nations. The Aotearoa New Zealand planning context was selected as the comparative context because it is recognized as leading edge and puts recent changes to the PPS into perspective, illustrating that there are additional opportunities for top-down provincial policies to move beyond modest recognition and willingness to promote active reconciliation, and repair lost relations between communities and individuals. Ultimately, this thesis not only points to practical areas of improvement in existing provincial planning texts, but it initiates a larger theoretical discussion about how further changes to the structures of planning may assist in a transformative shift towards spaces of common ground between First Nations and non-First Nations and a more equitable and just planning system in Ontario.
Format and Structure of the Thesis
This thesis is written in a manuscript format as outlined by the Queen’s University School of Graduate Studies. Following this introduction, Chapter 2 provides a theoretical context of this thesis by briefly discussing municipal-First Nations relations, the colonial roots of planning, and reconciliation. Chapter 3 presents the first manuscript, “Finding Common Ground: A Critical Review of Land Use and Resource Management Policies in Ontario, Canada and their Intersection with First Nations”, which has, at the time of writing, been resubmitted with changes to the International Indigenous Policy Journal (IIJP) and approved for publication in Winter 2015. Chapter 4 provides the second manuscript, “Getting To Common Ground: A Comparison of Ontario, Canada’s Provincial Policy Statement and Auckland, Aotearoa New Zealand’s Auckland Council Regional Policy Statement with Respect to Indigenous Peoples”, which will be revised and submitted in early Fall to an academic journal. The numbering of tables and figures in both manuscripts has been modified to conform to the rest of the thesis. Chapter 5 summarizes the key findings of this research, and their overall contributions to planning theory and practice. Chapter 6 briefly concludes with the limitations of the thesis and highlights areas of further research.
Chapter 2. Literature Review

The following chapter involves an examination of literature covering three overlapping themes, which include municipal-First Nations relations, the colonial roots of planning, and reconciliation. These three themes provide the overarching theoretical foundations to the manuscripts in Chapter 3 and 4, as well as further rationale for the content analysis of provincial policies that was executed for this thesis.

Municipal-First Nations Relations

Boundaries

At the heart of municipal-First Nations relations is the issue of boundaries. With two levels of government in Canada, municipalities are ‘creatures of the province’ as section 92 of Constitution Act, 1867 gives exclusive authority to provincial authorities over local municipal matters, including land use planning (Sancton, 2011). In contrast, neighbouring First Nations and reserves, identified as ‘Indians, and Lands reserved for the Indians’ in section 91(24) of the Constitution Act, 1867 fall under the jurisdiction of the federal government (Borrows, 1997b; Dorries, 2012). In a sense, federalism in Canada coupled with the restrictive nature of the Indian Act creates boundaries and traps First Nations between competing jurisdictions, which then limit individual communities’ agency and authority over planning matters affecting traditional territories (Borrows, 1997b). Boundaries demarcate spatially and often in fixed areas where Indigenous rights ‘exist’ (Porter, 2013). For Dorries (2012), in her in-depth exploration of the role of planning in securing and normalizing Canada’s claims to sovereignty while eroding parallel Indigenous claims, the drawing of boundaries and the creation of rigid jurisdictions are fundamental to how Indigenous peoples continue to be systematically sidelined from planning processes in settler states. As she summarizes, “in short, the principle of jurisdiction allows for a
rigid separation of municipal, provincial and federal spheres of governance. The same jurisdictional logic allows Indigenous politics to be separated from the sphere of local land use planning” (2012, p. 72). Perceived rigid boundaries are then also institutionalized in specific provincial planning policies and plans (DeVries, 2011; Dorries, 2012; Borrows, 1997b). For instance, Ontario’s Planning Act (1990), makes very few provisions for the interests, knowledge and participation of First Nations in land use decision-making at the municipal-scale (Dorries, 2012). Thus, while boundaries are critical to sustaining settlement and spatial growth, they are also significant in sustaining crude ‘us and them’ binary mentalities between settlers and First Nations (DeVries, 2011) that erode First Nations’ presence in local planning, create conflicts and limit future opportunities to strengthen mutual understanding and cooperation between neighbouring communities.

**Relations**

Recently, scholars have begun to pay more attention to on-the-ground municipal-First Nations relations that are emerging regardless of perceived boundaries (Barrons & Garcea, 1999; Nelles & Alcantara, 2011; Sully et al. 2008; Walker, 2008; Walker & Belanger, 2013). For Nelles & Alcantara (2011), academics have historically ignored the wide range of inter-governmental agreements between First Nations and municipal governments, focusing instead on federal or provincial relations. In turn, they add to the discussion by identifying four categories of agreements unfolding between jurisdictions and communities, including: (1) relationship building; (2) decolonization; (3) capacity-building; and (4) jurisdictional negotiation and how these shift in relations unfolding at the local-scale gives insight into where Indigenous-settler relations may be moving towards in Canada (2011, p. 319). Although their analysis is specific to British Columbia and does not examine if relations were positive, the general findings indicate
both an overall growth in the number of partnerships between municipalities and First Nations in recent decades and an emerging recognition that these localized agreements “are necessary for dealing with a host of practical problems that affect both communities, jointly and separately” (Nelles & Alcantara, 2011, p.330).

Walker (2008) examines the notion of municipal-First Nations relations by providing a comprehensive look into five priority areas for municipalities to enhance their interface with Indigenous peoples within and outside the city limits and address perceived barriers. Municipalities are not the Crown, but they “should not wait around for other governments and should improve worth with Aboriginal communities because they have the power to do so and it is impractical not to” (Walker, 2008, p. 23). Recognizing further opportunities for Prairie cities in Canada to firmly position and normalize Indigeneity in localized policy and planning practices, Walker & Belanger (2013) highlight precedents and general benefits of relationship building accords, protocol agreements, communication and joint governance agreements, and urban reserve creation within a municipality’s boundaries among other areas to improve the health of relations between communities. The Province of Ontario has also begun looking into municipal-First Nations relations through the development of a briefing note, entitled Municipal-Aboriginal Relationships: Case Studies (2009), to provide guidance to other municipalities interested in collaboration and building mutually beneficial relations. However, good relations remain the exception and not the norm as they are constrained by top-down provincial policies that are future-seeking and have historically been concerned with strategic provincial interests and stakeholders in general, framing First Nations amongst others under the term ‘public bodies’. As a result, provincial policies remain largely inadequate in recognizing distinct rights, identities, claims and histories of Indigenous peoples, which makes it difficult for planners at the
municipal-scale to actively build relationships with First Nations (Dorries, 2012; Porter, 2010). Many local efforts, although well-intentioned, do not critically reflect on the role of municipalities in ongoing settlement and consequent separation of Indigenous peoples from their traditional lands and resources (Porter, 2010).

**Troubling Realities**

It is well recognized that the development of cities, and municipalities in settler states have played a substantial role in the spatial manifestations of colonialism through ongoing appropriation of land and removal of Indigenous peoples from the landscape for settlement purposes (Dorries, 2012; Hibbard *et al.* 2008; Matunga, 2013; Porter, 2013; Porter, 2010; Sandercock, 2004; Sandercock, 1998; Stanger-Ross, 2008). Framed as ‘nation-building’ “the aim was to remove any material evidence/reminder and memory of Indigenous communities, their places, sites, resources, and villages, and replace it with a new colonial order, ultimately creating a ‘new’ materiality and memory for/of settler communities” (Matunga, 2013, p. 9). Indigenous peoples and claims flowing from original occupancy were pushed to the periphery and, as was often the case across Canada, systematically resettled to reserves as part of treaty-making in an attempt to assimilate (Maaka & Fleras, 2005; Warry, 2007; RCAP, 1996a; Sandercock, 2004). In their place, similar to the narrative of Aotearoa New Zealand, non-Indigenous material representation, ranging from colonial monuments to city street patterns based on precedents from England (Matunga, 2013), took hold in the form of settlements that would later mature into the municipalities and regions of today. It is often difficult for the public at large to understand the connection between Indigenous rights and title in dense urban areas because cities themselves appear to be “a final extinguishment, a complete erasure, of Indigenous title” (Porter, 2013, p. 299).
For Stanger-Ross (2008), in his examination of Vancouver’s city government and planning approaches towards the Kitsilano and Musqueam reserves during the early 20th century, this complex and troubling relationship between competing Indigenous and non-Indigenous territorial claims and spaces within perceived municipal boundaries highlights the ongoing and evolving presence of forms of ‘municipal colonialism’. In a sense, local political and planning decisions, framed as rationale and scientific, and for the collective health of the city as a system, take on leading roles in the eradication and replacement of Indigenous territorial claims with settler claims (Stanger-Ross, 2008). For instance, the Plan for the City of Vancouver of the late 1920s represented a clear form of ‘municipal colonialism’ as the comprehensive plan proposed to incorporate both the Kitsilano and Musqueam reserves “into a system of ‘Large Parks and Pleasure Drives’”, and gave further justification for municipal officials to actively pursue expropriation of reserve lands (Stanger-Ross, 2008, p. 553). Consequently, municipal-First Nations relations and the conventional understandings of and approaches towards First Nations by municipal officials and planning practitioners are not removed from these troubling realities or the colonial culture of planning (Porter, 2010; DeVries, 2011).

**The Colonial Roots of Planning**

Although academics and practitioners in recent decades have had a tendency to focus on the emergence of more participatory and collaborative planning methods (see Forester, 1999; Forester, 1989; Healey 1997; Healey, 1992; Innes, 1996), “those approaches consistently miss what is the first and most important theoretical and practical work to be done: to turn our analysis towards the culture of the practice of planning” (Porter, 2006, p. 390). For Porter (2010), the practice of planning is culturally situated and embedded with a ‘colonial logic’ and subsequent structural power relations. Historically, planning has been used in settler states to
create boundaries, racial hierarchies and differences to justify the dispossession of Indigenous peoples from their traditional territories and connections to the land (Sandercock, 2004; Sandercock, 1998; Porter, 2010). During periods of settlement in many instances across Canada, priority was given to non-Indigenous squatters; while Indigenous forms of land use and management were rejected because they were deemed incompatible with ‘progressive’ colonial economic expansion (Godlewska & Webber, 2007; DeVries, 2011). For DeVries (2011), the racialized economies and colonial mindsets of the past that framed Indigenous peoples as “physical impediments” are ever-present in current societal discourses that overemphasize ‘progress’ and sustained growth (p.77). In turn, current state-based planning systems grounded in land and resource management policies through regulating the right to land itself sustain colonial hierarchies of difference to guarantee economic expansion, private property rights and the preservation of unilateral state claims to sovereignty (DeVries, 2011; Dorries, 2012; Porter, 2010). Even the widely accepted language of planning, including the term ‘stakeholder’, “is situated in, and rises from historically constituted colonial power relations” (Porter, 2010, p. 290). Further, by not differentiating Indigenous peoples from other participants in settler states, it fails to recognize unique rights, including self-determination, which “flow out of indigenous nationhood and that are not bestowed by the Canadian state” (Turner, 2006, p. 7). As a result, Indigenous peoples do not enter the planning process equitably and are ‘fixed’ to predefined positions, which limits their capacity to decide on their own terms what is best for communities and traditional territories (Barry & Porter, 2011).

Tuck & Yang (2012), enhance discussions of colonialism in settler states by illuminating that there are largely two forms of colonialism - external and internal. The former involves the selective exploitation of certain Indigenous peoples, resources and lands from the natural
environment of distant colonies to accumulate wealth and privilege for a select metropole; the latter involves the management of people, resources and lands within the national borders of a state through highly circumscribed ‘modes of control’ (Tuck & Yang, 2012). Without the traditional geographical separation between a metropole and distant colony in settler states and an emphasis on the violent acquisition and sustained possession of Indigenous land, colonialism in settler states, settler colonialism, is unique in the sense that it blends both forms (Tuck & Yang, 2012). Further, settler colonialism is a process that requires the violent and continued separation of Indigenous peoples, histories and claims from traditional territories as “land is remade into property and human relationships to land are restricted to the relationship of the owner to his property” (Tuck & Yang, 2012, p. 5). The very success of nation-building and the state’s unquestioned claim to sovereignty depends on this sustained separation and removal of an Indigenous presence from the land (Tuck & Yang, 2012; Matunga, 2013; Porter, 2010; Porter, 2013). Therefore, planning’s attentiveness to the rational management and allocation of land is not without a politics and further typifies how it remains a cultural situated and complicit practice in the colonial domination of space and production of place (Porter, 2006; Sandercock, 2004).

Barry & Porter (2011), try to make better sense of the colonial roots of planning and their contemporary material presence by examining the textually mediated ‘contact zones’ of planning where recognition of Indigenous territorial and political rights, interests and claims are brought to planning. While a large proportion of planning occurs on-the-ground, strategic level policies and plans “predefine the boundaries and the limitations of the contact zone by establishing appropriate courses of action and modes of behaviour” (Barry & Porter, 2011, p. 182). Examining texts is significant to planning theory and practice because it provides insight into
planning’s contradictory relation with Indigenous peoples and how specific power relations are created, sustained and can evolve over time through lobbying and challenging by Indigenous peoples (Barry & Porter, 2011; Porter & Barry, 2013). Critically understanding texts also shed light on how Indigenous peoples may be ‘fixed’ to predetermined positions and opportunities within dominant planning processes, even within more collaborative techniques (Barry & Porter, 2011). Accordingly, addressing the unquestioned colonial culture of planning and its structural power relations will require deeper inquiry into planning texts as their actual content can be both transformative and manipulative in how they structure everyday planning processes and recognition in relation to Indigenous peoples (Barry & Porter, 2011). Further, for Porter (2010), an ‘unlearning’ of one’s privilege as a planning practitioner is also essential in order to recognize how the basic structures, including values, knowledge and processes that make up the practice are highly circumscribed and entrenched in colonial logic. With planning still unfolding with “the colonial past fully present” (Porter, 2010, p. 149), reconciliation is critical to address the current limits of the practice and public perspectives in general that the practice directly and indirectly informs.

**Reconciliation**

Reconciliation is a necessary and complex process to heal and transform Indigenous peoples-settler relations through formally addressing historical and ongoing grievances attributed to settler colonialism and the systematic oppression and domination of Indigenous peoples by settler states (Corntassel & Holder, 2008; Fairweather, 2006; Hovey, 2012; RCAP, 1996a-c; Regan, 2010). Meaningful reconciliation does not have an end state, it is a process and a fundamental commitment to never forget past injustices and actively change relations between communities (Fairweather, 2006). Specific to Canada, the Royal Commission on Aboriginal
Peoples (RCAP) in 1996 and the Truth and Reconciliation Commission (TRC) that began in 2008 are clear national examples of state-led reconciliation processes (Fairweather, 2006; Regan, 2010). Further, official apologies by state leaders can also be interpreted as another means to reconcile, but official apologies must be documented in writing (Corntassel & Holder, 2008).

For instance, Canada’s 1998 Statement of Reconciliation by the minister of Indian Affairs for the violence and abuses committed in residential schools following the release of the findings of the RCAP (1996), was regarded by many Indigenous leaders as a ‘quasi-apology’ and a merely symbolic gesture because it was not an apology from the Prime Minister and its subsequent public release was online and not through formal channels, such as parliamentary records (Corntassel & Holder, 2008). Prime Minister Stephen Harper would later deliver a formal apology in 2008, but the general public remained largely unaware of the need for an apology and complacent in the continued denial of settler colonialism (Regan, 2010). Official apologies and truth commissions are well-intentioned and critical to the process of reconciliation, but remain largely a symbolic discourse structured by the state on its own terms to address individual injustices and require little engagement of the public at large if following through with action does not accompany them (Corntassel & Holder, 2008; Corntassel, 2012; Regan, 2010). Current forms of passive reconciliation secure a status quo and do not address the state’s unilateral claim to sovereignty or acknowledge Indigenous self-determination meaningfully (Corntassel, 2012; Turner, 2006).

For Taiaiaka Alfred in Wasáse: Indigenous Pathways of Action and Freedom (2005), reconciliation is not possible without substantive restitution as the former gives Indigenous peoples a place in a settler state and places no responsibility or obligations on the shoulders of
non-Indigenous society to acknowledge denial and redress gains received at the expense of Indigenous peoples. Alternatively, restitution can led to a break with the status quo by requiring transformative change and “is based on the proven notion that real peace-making requires making amends for harm done before any of the other steps to restore the fabric of a relationship can be taken” (Alfred, 2005, p. 151). As a precursor to reconciliation, it also recognizes the right to self-determination of Indigenous peoples, which would result in a fundamentally different relation between the state and Indigenous peoples than the current status quo (Corntassel & Holder, 2008). Much of what has been taken from Indigenous peoples, particularly land, people, and livelihoods may be difficult and take time to redress, but restitution provides a pathway for transforming relations as it moves responsibility to reconcile from the victim to the entire society (Corntassel & Holder, 2008; Regan, 2010). For Regan (2010), if we continue on a path of symbolic reconciliation without fundamental change and action to address underlying conditions and structures sustained through denial and national myths then may “deepen the divide” (p. 62). Truth telling is essential to this process and requires a commitment by dominant non-Indigenous society to ‘unsettle’ perceived truths and seek out multiple and alternative histories in order to challenge what we ‘know’ and confront injustices (Regan, 2010). The onus for change is on the shoulders of all, not just Indigenous people. The type of conventional recognition of Indigenous peoples as ‘stakeholders’ in current planning processes, is largely inadequate at attaining restitution because it has minimal effects on changing the actual planning system and occurs on planning’s own terms (Porter & Barry, 2013).

**Decolonization**

Recognizing the ongoing presence of settler colonialism in Canada and elsewhere has led some to suggest that meaningful change, particularly from present forms of reconciliation, will require
the decolonization of existing relationships (Alfred, 2005; Corntassel, 2012; Corntassel & Holder, 2008; Porter, 2010; Smith, 2012; Tuck & Yang, 2012). Decolonization has a tendency to be framed as here, there and everywhere as a ‘metaphor’, which does little to actually unsettle existing relations between Indigenous peoples and settler states and address ‘settler moves to innocence’ (Tuck & Yang, 2012). It is not a complementary process; it is a fundamental and distinct active process that challenges settler innocence (Tuck & Yang, 2012). Similar to restitution, decolonization also requires recognition of Indigenous self-determination and claims to sovereignty and territory (Corntassel & Holder, 2008; Tuck & Yang, 2012; Hibbard et al. 2008; Porter, 2010). With respect to planning, land and decolonization are material and culture. For Corntassel (2012), decolonization for Indigenous peoples is intrinsically linked to acts of resurgence as it “offers different pathways for reconnecting Indigenous nations with their traditional land-based and water-based cultural practices. The decolonization process operates at multiple levels and necessitates moving from an awareness of being in struggle, to actively engaging in everyday practices of resurgence” (p. 89). With settler colonialism being an oppressive and dominating force, decolonization provides a possibility to reject colonial concepts and ways of knowing and reconnect Indigenous knowledge and ideas (Smith, 2012).

To actively decolonize widely accepted and engrained mindsets, processes and structures requires overcoming the ‘politics of distraction’, which has emerged and evolved in settler states as a result of a continued state-led focus on rights, reconciliation, and resources to counter everyday efforts and actions to decolonize by Indigenous peoples (Corntassel, 2012). A movement of Indigenous peoples’ efforts and attention instead towards responsibilities, resurgence, and relationships can be a vehicle to further break with imposed systems of dependency, and disconnect (Corntassel, 2012). Certain acts by Indigenous peoples may take
time and may not receive intensive media or public attention, but collectively these acts have the potential to resist and counter state-imposed systems of domination and enable Indigenous peoples to restore their presence and define what is best for their lands, cultures and communities actively on their own terms (Corntassel, 2012).

**Conclusion**

This discussion may have left you, the reader, more confused and unsure of a pathway forward towards more ethical and just planning futures, as it is now more apparent that planning has been complicit in historical and continued injustices towards Indigenous peoples. Further, current forms of reconciliation may only result in deeper difference if they do not recognize the right to self-determination and equally valid forms of Indigenous knowledge, understandings and claims (Regan, 2010). If the system and practice of planning is to a certain degree broken and requires decolonization and an unlearning of colonial privilege (Porter, 2010), then the logical answer would be to ‘fix’ it. However, in the current period of resurgence, particularly in relation to Indigenous planning (Matunga, 2013), the pathway forward is not for planning to decide on its own terms.

Before any discussion of where to go next, we must as Indigenous and non-Indigenous communities strive for spaces of common ground to strengthen partnerships and enhance ‘relational accountability’ (Wilson, 2008). This idea parallels the thinking of Turner (2006) as he suggests that Indigenous philosophers and word warriors have a critical role to play in protecting and defining Indigenous rights and world views, but must also secure non-Indigenous allies to assist in making the case as legal and political arguments and in turn, develop “overlapping intellectual practices” to ensure larger shifts in public perspectives and general understandings (p. 120). Without a basis of mutual learning and understanding or clear recognition of the right to
self-determination by the state, effective reconciliation may be more aspirational then possible. Other directions, efforts and actions are necessary, and this conversation is by no means a concluded process. For transformative change to happen at the policy-scale we must first understand where we are. The following manuscripts provide insight into the current state of Ontario land use and resource management legislation and policies with respect to First Nations. Together, these manuscripts and their analytical frameworks represent one small act amongst a series in building awareness, bridging fragmented understandings and advocating for further First Nations-led amendments to Ontario’s planning system.
Chapter 3.


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Introduction

This article examines and critically evaluates both the degree of formal recognition of First Nations’ rights, and of honouring past Crown-First Nations relationships in contemporary provincial land use and resource management legislation that guide planning and development in Ontario. Due to jurisdictional boundaries and an overall lack of meaningful understanding of First Nations’ concerns and knowledge towards land and natural resources, the dominant, historical view is that First Nations are a “federal responsibility and thus not accounted for in provincial planning” (Borrows, 1997a, p. 444). Changes in the province of Ontario have established several mechanisms for connecting Indigenous Peoples to processes of government policy development and to establish lines of accountability between the provincial government and Indigenous Peoples. In particular as a direct result of the Ipperwash Inquiry (2007) following the death of Dudley George in 1995 at the Ipperwash Provincial Park occupation, the Ministry of Aboriginal Affairs was created. More recently, the Government of Ontario established the New Relationship Fund, in part to assist with “core consultation capacity funding” and to enable First Nations and Metis communities to work with different types of stakeholders including

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governments and private sector partners on land use and resource issues (Province of Ontario, 2014a). However, in light of these changes, relatively little research has been done with regards to comprehensively analyzing policies and plans at the provincial-scale for their recognition of First Nations (Dorries, 2014).

Our research team consists of leaders among the Mississaugas of the New Credit First Nation and the Walpole Island First Nation, and planning researchers from Queen’s University and the University of Waterloo whose backgrounds can be traced to immigrant settlers from Western Europe and India. We work as research partners and as co-authors of this article. Our partnership stems from ongoing conversations about the need to influence provincial policy both to improve municipal-First Nations relations and to enhance dialogue and improve planning within a culture that has historically situated First Nations’ issues, claims and knowledge along the edges of planning. With consultation mainly occurring today on a project-by-project basis, First Nations often do not have the capacity to influence decision-making (Viswanathan et al. 2013). New funding opportunities in the province for communities, including Ontario’s New Relationship Fund (see Province of Ontario, 2014a), are changing that reality incrementally, but there remains concern amongst our emerging partnership that meaningful change will not be able to sustain itself without amendments to higher guiding policies. Improvements to policy at the strategic level are required to enable improved on-the-ground planning relations.

The main goal of this article is to develop a baseline on provincial land use and resource management policies to understand their relative capacity at recognizing and supporting First Nations, Aboriginal and treaty rights, and embodying past Crown-First Nations relationships. Through text-based content analysis, this article identifies structural barriers within Crown
policies that “shape (both constrain and enable) the kinds of conversations that planners and land managers are able to have with Indigenous peoples, and the kind of decisions and processes in which Indigenous people are involved with” (Porter & Barry, 2013, p. 12). This development of a baseline has the potential to raise further awareness of the limits of provincial policies and ensure that when policies do come up for review, First Nations-led amendments result in more equitable planning processes.

This article contributes to First Nations policy analysis and development in a number of meaningful ways. First, for First Nations across Ontario, it highlights policies that limit their agency and ability to take part in equitable planning processes that affect their communities and traditional territories. It also acts as an educational guide and catalyst for First Nations to negotiate amendments and to challenge their perceived role as “stakeholders” and instead be viewed as planning partners. This article points to areas of improvement and establishes a necessary space for new discussions about alternative ways to proceed. For planners at the municipal-scale with limited knowledge of Crown-First Nations relations, this article is meant to enhance their understanding of the policies that shape their relations with First Nations. It also is meant to assist practitioners to become more self-reflective about how higher policies “shape, constrain, authorize and regulate” planning relations (Barry & Porter, 2011, p.183). This will not only assist planners in redefining municipal-First Nation interaction, but also help to enhance on-the-ground relations, including First Nations’ capacity to participate in planning review processes. Most importantly, this article and the baseline developed as a result of the analytical framework holds significance to partnering community members involved. For example, this baseline has led to the development of materials to assist both First Nations and municipalities in the review of provincial policies and plans. There are also broader effects, including substantial
changes to the latest Provincial Policy Statement (2014), a set of minimum standards relating to land use planning matters of provincial interest that all planning authorities and decision-makers must be consistent with. By having a baseline already developed on the draft policy statement, our partnership was able to attend consultations, meet with provincial representatives and provide recommendations that were included into the final PPS on enabling stronger positive municipal-First Nations relationships.

While pointing to opportunities for Indigenous peoples and governments to work with each other, this article emphasises the perspectives of First Nations partners who are involved in this research and also points to overarching practices of consultation, namely the Crown’s duty to consult, in its investigation of current land use policies affecting planning with First Nations peoples in Ontario. The paper draws from key learnings from the Royal Commission on Aboriginal Peoples (RCAP), drawing from the RCAP documents (1996a-c) where relevant, as they provide a foundation for relating federal and provincial governments to building policy that directly affects Indigenous-non-Indigenous relations in land use policy and planning.

The article is structured as follows: the introduction is followed by a description and justification of methods used to conduct the research. A literature review follows, which provides insights into the key themes that are foundational to the analytical framework guiding the content analysis. The content analysis broadly discusses common trends in the documents and then the three overarching classifications of the framework – significant, moderate and minimal – in the analysis of the policies. A discussion follows and highlights the post-2005 northern focus of Ontario policy, the issues of consent and the need to fundamentally create spaces of common ground. The discussion reveals both the current limits and future opportunities rooted in
Ontario’s land use and resource management policies. The paper concludes by sharing changes to policy already occurring in Ontario and proposes further policy and planning changes that also need to take place in order to make equitable and constructive relations between municipalities and First Nations the standard and not the exception.

**Methods**

This research was conducted by means of a content analysis of policy documents as well as a literature review. The literature review covered two related themes, Aboriginal and treaty rights, and the honour of the Crown. The literature review facilitated the development of a framework for the content analysis in order to deconstruct, analyze and evaluate the relative capacity of identified provincial policy documents to recognize and incorporate First Nations’ rights and honouring past relationships.

Conducted over a five-month period, the content analysis of documents covered a total of eight provincial ministries, 32 provincial legislations, 269 regulation documents, 16 policy statements, five provincial plans, six technical documents, two guideline documents, three draft documents and four other reports. The content analysis identified and charted the legislative and policy landscapes that interact with First Nations on issues of land use and resource management in Ontario. Three interviews, two with First Nations community representatives associated with the First Nations partners in this project and then a planning expert in southern Ontario were conducted to validate initial findings. These interviews are therefore integrated into the discussion section of this paper rather than as stand-alone findings.

The first level of content analysis focused on what Cope (2010) refers to as manifest content analysis; this approach identifies key terms, phrases and sections of policies in order to
understand the broader intersection of Ontario’s land use and resource management policies with First Nations. The surface content of each text was systematically searched and examined for indicator terms, including ‘Aboriginal’, ‘First Nation’, ‘Indigenous’ and ‘Indian’ within each policy. Next, a second set of processes known as latent content analysis was completed, where the flagged sections within each text and the text as a whole were assessed for certain themes and concepts in order to understand their recognition of First Nations and capacity to embody past Crown-First Nations relationships (Dunn, 2012). Flagged sections containing key indicator terms and each text as a whole were analyzed to see if there was any evidence of Aboriginal rights. Flagged sections and texts as a whole then underwent a second-tier of latent analysis to see if there was any recognition of honouring past Crown-First Nations relations by means of incorporating several key concepts in relation to First Nations including: (1) the duty to consult; (2) consultation; (3) accommodation; and (4) consent. These four concepts were selected because they provided an indication of the willingness of Crown policy-makers and officials to break with the status quo of a regulatory regime that has traditionally limited participation of First Nations, and recognize and support First Nations through reconciliation and visibly honouring past agreements made by the Crown. Both consultation and the duty to consult were selected as separate indicators because consultation is often broadly discussed in relation to all stakeholders, whereas the duty to consult is relatively a new concept that focuses solely on First Nations.

Based on these analyses, each text as a whole was coded and assigned an individual category of ‘significant’, ‘moderate’, or ‘minimal’. These assigned categories helped in data reduction and organization as they identified areas for further improvements and exploration. To be coded as significant, the policy had to have recognized First Nations directly, acknowledged Aboriginal and treaty rights within the text and encompassed two or more concepts of honouring past
relations. To be coded moderate, the policy had to have recognized First Nations directly, and acknowledged Aboriginal and treaty rights within the text or incorporated one of the four concepts of honouring past relations. Finally, to be coded minimal, the policy had to have no direct recognition of First Nations, no acknowledgment of Aboriginal and treaty rights and no apparent integration of any of the four concepts of honouring past relations. To mitigate biases, if a text was coded minimal, it was re-examined and all associated regulations were analyzed to identify if there was any direct recognition of First Nations, Aboriginal and treaty rights or any of the four concepts in relation to First Nations. This classification of documents was relative and primarily meant to assist in organizing and evaluating an individual policy’s capacity in relation to other policies.

Finally, three interviews provided verification of the content analysis of policy documents and of the analytic framework that was used. Interviews were conducted either face-to-face or over the telephone. General Research Ethics Board approval for Research with Human Participants was obtained through Queen’s University and the University of Waterloo such that our research approach followed Chapter 9 of the TCPS 2—2nd edition of Tri-Council Policy Statement: Ethical Conduct for Research Involving Humans addressing ethical practices for research involving First Nations, Inuit and Métis Peoples of Canada.

**Literature Review**

**Aboriginal and Treaty Rights**

*Aboriginal rights*. Aboriginal rights can be understood as collective or communal rights that manifest from the occupation and intrinsic use of land by Aboriginal peoples prior to the arrival of European settlers (Passelac-Ross, 2010). According to Slattery (2007), Aboriginal peoples have two different kinds of rights: generic rights and specific rights. Generic rights are
collectively held by all Aboriginal people of Canada, and they include the right to land, the right to resource-specific activities, the right to pass treaties, the right to practice one’s culture and spirituality and the right to self-government (Slattery, 2007; Teillet, 2005). Specific rights are unique to an individual community, and are completely dependent on the context and situation. For example, in some cases they may be defined by treaties or a court ruling (Slattery, 2007).

Aboriginal rights are constitutionally protected under section 35 of the Constitution Act, 1982, and can evolve in a modern form, but in certain instances, may not be fully accounted for by the Crown (Lambrecht, 2013). Beyond section 35, general understandings of Aboriginal rights are also influenced by external factors, including ongoing treaty relationships, land claim agreements and the Indian Act (Turner, 2006). Yet, there are limits to how Aboriginal rights are currently understood by the public at large as they are predominantly defined by non-Aboriginal individuals within state legal and political systems that do not fully grasp Indigenous philosophies and world views (Borrows, 1997b; Turner, 2006). Moreover, by not taking the spirit and intent of nation-to-nation relations seriously, the Crown has and continues to understand itself as the superior party in the treaty relations with unquestioned sovereignty (Borrows, 2001). For many Aboriginal peoples, rights do not flow from a Canadian state or legal system, but rather flow from nationhood and, as a result, prior occupation and jurisdiction over lands and communities (RCAP, 1996b; Turner, 2006).

Aboriginal title. Aboriginal title is the inherent and collective right to land or a territory that flows from the relationship between the Crown and Aboriginal peoples, and gives Aboriginal peoples “the right to control how the land is used” (Tsilhqot’in Nation, supra note VI at para. 75). While Aboriginal title was first acknowledged as the intrinsic right to territory by the Crown in Royal Proclamation of 1763, it was not until the landmark case of Calder et al. v. British
Columbia (Attorney-General) [1973], that the Supreme Court of Canada recognized that Aboriginal title to land pre-dated the arrival of European settlers and that such title existed outside of and not as a result of colonial law (RCAP, 1996b; Slattery, 2006). In Delgamuukw v. British Columbia [1997], Aboriginal title was further recognized as a burden on the Crown’s claim to land and placed responsibility on the Crown to negotiate through consulting and accommodating Aboriginal peoples in good faith in order reconcile issues of Aboriginal title in addition to other rights (Borrows, 2001; DeVries, 2011). Until recently, Delgamuukw was a leading case on Aboriginal title, but on June 26, 2014 the Supreme Court of Canada ruled in Tsilhqot’in Nation v. British Columbia [2014] that Aboriginal title exists as a fact and that it is territorial in nature, rather than just specific sites, such as reserves, by recognizing the unextinguished title of the Tsilhqot’in First Nation to over 1,700 square kilometres of land (Hildebrandt, 2014). This unanimous ruling by Canada’s highest court provided a three-point test to determine title, including sufficient occupation, continuity of occupation and exclusive historic occupation (Tsilhqot’in Nation, supra note V at para. 50). It also summarized that communities holding title have a right to benefit from the land, including the right to profit from it and the right to decide how the land will be used by future generations. According to the ruling, title is not absolute and provincial laws still apply, but if a government is to infringe on title lands, it requires consent or the infringement “must be undertaken in accordance with the Crown’s procedural duty to consult and must also be justified on the basis of a compelling and substantial public interest” (Tsilhqot’in Nation, supra note VI at para. 88). While specific to the context of areas of unceded territories, particularly British Columbia, this recent landmark case is highly noteworthy as it moves Aboriginal title from theoretical to fact and puts pressure on provincial and federal governments to act in good faith and to ensure First Nations are valued
partners in land use and resource management processes that affect their traditional territories. Furthermore, this recent connection within the Canadian legal system between Aboriginal title and consent as a result of the case can be interpreted as a long overdue return to the spirit and intent of Royal Proclamation of 1763 and the subsequent Treaty of Niagara in 1764. These foundational agreements of peace, friendship and respect first indicated that no territories could be taken or infringed upon without a First Nation’s consent (Borrows, 1997b).

*Treaty rights.* Treaty rights are context-specific rights stemming from negotiated nation-to-nation agreements between specific Indigenous communities and the Crown following the arrival of European settlers (Newman, 2009; Porter, 2010; Slattery, 2000). They are separate from Aboriginal rights and in certain cases, treaty rights may recognize, reinforce, or even reshape certain Aboriginal rights (Slattery, 2000). Although it is widely assumed in Canadian society that past treaties with the British Crown that predate Confederation were written agreements, the majority were oral agreements and based on spoken exchange between equal parties (Borrows, 1997b; Slattery, 2000). The written accounts of treaty rights that do exist are narratives of British Crown officials and may differ in spirit and intent from Aboriginal peoples who initially agreed to them (Slattery, 2000). As a result, the Supreme Court of Canada has recognized more recently that if both oral and written accounts do exist, they, along with any discrepancies, should be interpreted in an open manner that gives more weight to an oral history (Slattery, 2000). Each treaty agreement, whether pre-Confederation or post-Confederation such as recent land claim agreements, may differ in content and intent and should be interpreted, in theory, “in a flexible and evolutionary manner that is sensitive to changing conditions and practices” (Slattery, 2000, p. 209).
Yet, treaty rights as a constitutionally protected right under section 35 of the Constitution Act, 1982, remain a source of conflict between First Nations and federal and provincial governments due to misinterpretations, a general lack of consensus and infringing legislation (Lambrecht, 2013). Aboriginal peoples saw and continue to see treaties as a sacred means to share land and authority (Borrows, 2001; RCAP, 1996a). Treaties embody a “continuous relationship rather than a simple and final commercial transaction”, entered with a strong belief that they would remain honoured and intact (Maaka & Fleras, 2005, p.216). When treaty rights and claims to land off reserve are not honoured, First Nations are forced to use “blunt instruments to make their point” (Borrows, 1997a, p.445). Thus, the blockades and occupations that emerged in Ontario, particularly the ongoing events in Caledonia over the Douglas Creek Estates that began in 2006, in this light can be interpreted not as isolated incidences, but of consequences of a historical failure to understand First Nation land rights and respect for founding relations set out by treaties (DeVries, 2011; Ipperwash Inquiry, 2007). With a proportion of Canadians convinced that treaties are outdated and their obligations meaningless, the RCAP (1996b), declared that society as a whole needs to rethink treaties and see them as an essential and relevant means to ensure justice for Aboriginal nations and reconcile differences. The Ipperwash Inquiry (2007) reaffirmed this stance by advocating that Ontarians should understand that everyone shares the benefit of treaty obligations as the province and the majority of Canada was founded as a result of treaties with First Nations.

The Honour of the Crown
The doctrine of the honour of the Crown recognizes that when the British Crown ‘claimed’ what is now Canada, “it did so in the face of pre-existing Aboriginal sovereignty and territorial rights” (Slattery, 2005, p. 436). The Crown by asserting sovereignty in light of existing Aboriginal rights
to land and resources has a unique relationship and set of responsibilities, including the need to act with the ‘virtue of honour’ and refrain from dishonest practices when interacting with Aboriginal peoples in Canada (Ipperwash Inquiry, 2007; Lambrecht, 2013; Newman, 2009; Slattery, 2005). As stated by McLachlin C.J. in *Haida Nation v. British Columbia (Minister of Forests)* [2005], the honour of the Crown is an exclusive and symbolic obligation of the Crown and requires Aboriginal and treaty rights to “be determined, recognized and respected” by the Crown in order to promote meaningful reconciliation (Slattery, 2005, p. 437). The honour of the Crown is significant to this discussion because it promotes a break with static understandings of Aboriginal rights and title and binds the federal and provincial governments when exercising Crown powers to respect past relationships and obligations with First Nations and act with integrity in order to find “balance and compromise” between competing rights and discourses (Newman, 2009, p. 59).

*Duty to consult.* Recently, amid the legal establishment of the Crown’s duty to consult, Crown-First Nations relations are gradually being reconfigured to embody something substantially different (Newman, 2009). As described by Lambrecht (2013), “the duty to consult is, at its simplest, intended to ensure that Crown decision making regarding development of natural resources ‘respects Aboriginal interests in accordance with the honour of the Crown’” (p. 54). Although earlier cases first identified the Crown’s duty to consult and the need to act with integrity, it was not until the recent trilogy of cases in 2004 and 2005, that the procedural obligation of both federal and provincial governments to consult with First Nations prior to making various land and resource decisions became legally recognized (Newman, 2009; Slattery, 2005). The Supreme Court of Canada’s trilogy, which includes *Haida Nation v. British Columbia (Minister of Forests)* [2004], *Taku River Tlingit First Nation v. British Columbia*
(Project Assessment Director) [2004], and Mikisew Cree First Nation v. Canada (Minister of Canadian Heritage) [2005], all played a significant role in the evolution of the establishment of a new legal doctrine into how the Crown mediates and understands the intersection of Aboriginal and treaty rights legally outlined in section 35 of the Constitution Act, 1982 with on-the-ground decisions and developments (Newman, 2009). While the duty to consult is the responsibility of the provincial and federal Crown, parts of the process may be delegated to proponents or third parties (Lambrecht, 2013).

Newman (2009) has identified five distinct and fundamental components of the duty to the consult that have developed because of this recent trilogy of cases. First, the duty to consult can emerge before proof of an Aboriginal right or title claim or with uncertainty regarding an infringement on a treaty right (Newman, 2009). Second, the duty to consult can be triggered with the slightest of knowledge of a potential adverse effect on a right by the Crown (Newman, 2009). Third, degree and scope of consultation required of the Crown varies and is dependent on two factors- the strength of the Aboriginal claim and the scale of the potential impact on the Aboriginal or treaty right (Newman, 2009). Fourth, the duty to consult does not give First Nations the ability to veto a Crown decision or development, but it may lead to accommodation of a community’s interests in certain cases if negative impacts cannot be mitigated (Newman, 2009). Finally, if the Crown fails to meet their legal duty to consult, it can result in a spectrum of consequences, ranging from litigation to further consultations (Newman, 2009).

Beyond the legal and theoretical of the duty to consult, the actual practice is evolving and taking shape due to a diverse set of policy frameworks. At the federal-scale, the government has developed a recent set of guidelines, Aboriginal Consultation and Accommodation: Updated
Guidelines for Federal Officials to Fulfill the Duty to Consult (2011), to help guide federal officials in matters affecting Aboriginal peoples, rights and title (see AANDC, 2011). Whereas at the provincial-scale, the Ministry of Aboriginal Affairs in Ontario has a draft set of guidelines, Draft Guidelines for Ministries on Consultation with Aboriginal Peoples Related to Aboriginal Rights and Treaty Rights (2006), to provide general guidance, citing that provincial staff should always consult the Ministry’s Legal Services Branch for direction (see MAA, 2006). In addition, individual provincial ministries and administrative bodies have also developed their own individual guidelines and standards on the duty to consult, while the term itself is beginning to materialize within individual provincial legislation (Newman, 2009). Aboriginal communities and organizations at the national, provincial and community-scale are also developing their own consultation policies and protocols to ensure communities are active in defining how the duty to consult will transpire (Newman, 2009). Finally, industry proponents have developed their own consultation policies and programs specific to Aboriginal communities (Newman, 2009).

Accommodation. Consultation in certain cases may not be enough. As clarified in the Haida Nation case, “where a strong prima facie case exists for the claim, and consequences of the government’s proposed decision may adversely affect it in a significant way, addressing the Aboriginal concerns may require taking steps to avoid irreparable harm or to minimize the effects of infringement” (Haida Nation, supra note I at para. 47). From here, accommodation may be required and the Crown must reconcile Aboriginal interests with “other societal interests” (Newman, 2009, p. 59). Depending on the context and situation of the case and the stakeholders involved, the process of accommodation may differ (Newman, 2009). For instance, one type of accommodation heavily utilized by industry proponents when they have to carry out aspects of the consultation process as a third party is economic accommodation through Impact
Benefit Agreements (IBAs) (Caine & Krogerman, 2010). Yet, in cases involving Aboriginal title and unceded territories, as the recent Tsilhqot’in Nation case emphasized, consultation and accommodation may not be enough.

**Consent.** Fulfilling the duty to consult does not require the Crown to receive the consent of an affected First Nations to proceed as the Crown is only required to consult in good faith (Newman, 2009). However, if Aboriginal title is involved, consent of the Aboriginal title holder is required (Tsilhqot’in Nation, supra note VI at para. 76). The duty to consult and accommodation reflect progressive steps forward, but these approaches do not represent a complete paradigm shift towards honouring past relationships. With limited changes towards making free, prior and informed consent of First Nations a legal obligation on Crown-related land and resource management decisions, these attempts at reconciliation remain inadequate at honouring past relationships and agreements (Morellato, 2008). Honouring past relationships on the part of the Crown means becoming comfortable with notions of consent and integrating specific clauses in Crown legislation and policies that recognize the significance and pressing need for consent. The latest Tsilhqot’in Nation ruling as previously mentioned has the potential to change how we as First Nations and non-Nations peoples understand consent with respect to areas where there are outstanding land claims and unextinguished title. Despite the polarizing views and tensions that will likely result, such a critical ruling may assist individuals in understanding reconciliation and recognizing that consent may not be a barrier, but a long-awaited opportunity to “smash the status quo” of Crown-First Nations relationships and move towards policies of mutual respect and co-existence (AFN, 2012, p. 3).
Content Analysis of Policy Documents

Common Trends

Reference to First Nations. Recognition of First Nations was inconsistent in terms of choice, frequency and location of words across all policies and text. At one end of the spectrum, provincial Crown texts utilized terms of reference such as ‘First Nations’ along with approximately twelve variations of the term ‘Aboriginal’ paired with a complementary term, including ‘communities’, ‘partners’, ‘organizations’, ‘interests’, ‘peoples of Canada’, and ‘entrepreneurs’. The location and frequency of these terms differs within each text. For example, the Far North Act (2010), which is primarily focused on increasing participation of First Nation communities in land use planning in Northern Ontario, had direct mention of First Nations from the onset of the text in the purpose section and throughout the document at high frequency. The Growth Plan for Northern Ontario (2011), the Endangered Species Act (2007), the Green Energy Act (2009) and the Mining Act (1990) utilized similar terms of reference in their immediate preamble or purpose sections as well as throughout the text in a clear and meaningful manner. Whereas other statutes and policies, such as the Municipal Act (2001) referred to the indicator term ‘First Nations’ at a minimal frequency and only within specific clauses in the main body of the policy. Regardless of where terms of reference were located or their individual frequency, a high incidence of these texts that recognized First Nations made an effort to distinguish First Nations from other groups that were viewed as stakeholders. However, not all documents were as progressive in their choice of words and recognition.

In contrast, other statutes position First Nations alongside a long list of other political actors under the all-encompassing umbrella term, ‘public bodies’. In particular, within the Planning Act (1990), the Greenbelt Act (2005), the Places to Grow Act (2005), the Niagara Escarpment...
Planning and Development Act (1990), and the Oak Ridges Moraine Conservation Act (2001), the use of ‘public bodies’ as a term of reference for First Nations failed to recognize and identify the distinct spaces and relationships that diverse First Nations occupy within the Canadian landscape because it “fails to appreciate their unique status as original land owners of country that was wrested from them by the modern colonial state” (Porter, 2006, p. 389). For instance, the Planning Act (1990) listed First Nations amongst municipalities, departments, ministries, boards, commissions, and officials of a provincial or federal government, and in doing so, intentionally or unintentionally fails to recognize the distinct relations and responsibilities First Nations have within planning in Ontario both with neighbouring municipalities and the province. By addressing First Nations as just another ‘public body’, the Planning Act (1990) seemingly justifies the allocation of power to the Minister to determine if a First Nations community is a valid affected public body depending on the issue. Relying on the judgment of one provincial official in practice may prove problematic depending on the dispute as certain First Nations may be overlooked as a public body, unless conflicts gain media attention. Additionally, if guiding provincial policies are incapable of identifying and recognizing First Nations as significant and distinct communities, there may be minimal incentive for municipalities and other non-First Nation organizations, beyond a moral impetus or a legal challenge, to engage with First Nations and understand treaty relations and obligations (Participant Two, personal communication, November 2, 2012).

Reference to Aboriginal and treaty rights. Another pattern of inconsistencies emerged in analyzed documents in how each text recognized and affirmed Aboriginal and treaty rights. Among the 32 statutes examined, eight statutes respectively cited section 35 of the Constitution Act, 1982, a pivotal legal clause that to a certain degree, “gives constitutional protection to
Aboriginal and treaty rights” (Teillet, 2005, p. 35). These eight provincial land use and resource management legislations that cited section 35 as a primary means of acknowledging that the policies as a whole must be implemented in a manner that does not infringe or abolish existing Aboriginal and treaty rights included the Mining Act (1990), the Crown Forest Sustainability Act (1994), the Clean Water Act (2006), the Provincial Parks and Conservation Reserves Act (2007), the Endangered Species Act (2007), the Lake Simcoe Protection Act (2008), the Green Energy Act (2009), and the Far North Act (2010). Furthermore, inclusion of section 35 was not exclusive to pieces of legislation, as the Code of Practice (2009) for the Environmental Assessment Act (1990) also cited section 35 in referring to the need to consult and accommodate during environmental assessment processes that may infringe on Aboriginal and treaty rights. Additionally, the recognition of Aboriginal and treaty rights were evident in non-binding draft and technical documents as well through the explicit mention of rights, as was the case with was the Draft Guidelines for Ministries on Consultation with Aboriginal Peoples Related to Aboriginal Rights and Treaty Rights (2006) and Ontario’s Mineral Development Strategy (2006). The Greenbelt Plan (2005) and the Oak Ridges Moraine Conservation Plan (2006) also mentions Aboriginal and treaty rights in passing as it outlined that the policies in the plan would not infringe on issues of rights and that the province intends to consult First Nations on decisions relating the plan that may affect Crown lands and resources that are subject to treaty rights.

While the integration of section 35 of the Constitution Act, 1982 to these provincial Crown texts reflects a step forward in Crown-First Nations relationships, its episodic and gradual inclusion should be taken cautiously. The bulk of the eight legislative documents with direct mention of section 35, did not elaborate more in depth about Aboriginal and treaty rights beyond the initial reference. Within the Crown Forest Sustainability Act (1994), the direct reference of section 35
is the sole reference to First Nations in the entire document. Still, it must be acknowledged that the incorporation and recognition of Aboriginal and treaty rights within eight of the 32 land use and resource management statutes, as well as other non-binding texts represents a progressive policy trend forward. A trend that through awareness and advocacy may be consistently implemented within all Ontario land use and resource management statutes, ideally reconfiguring how First Nations are understood and engaged with on decisions and processes that affect their rights, their communities and their traditional territories.

**Categorizing Policies**

*Provincial policies categorized as significant.* Of the 337 texts analyzed, 13 provincial land use and resource management policies ranging from binding provincial legislation to draft guidelines for discussion purposes only were categorized as significant. Indeed no two texts designated as significant were precisely the same in their recognition and support of First Nations, but they did have three commonalities- each directly recognized First Nations, acknowledged Aboriginal and treaty rights in their wording and encompassed two or more concepts of honouring past Crown-First Nations relations in their latent content. An additional pattern emerged in terms of latent content as there was indication of consultation, the duty to consult and to a certain extent accommodation through reference of section 35 of the *Constitution Act, 1982*, but no indication of consent. The *Mining Act* (1990) and the *Far North Act* (2010) (table 1) were the only two pieces of legislation that mentioned the duty to consult and accommodation while speaking directly of First Nations and Aboriginal and treaty rights.

Other texts categorized as significant included the Provincial Policy Statement (2014), *Growth Plan for Northern Ontario* (2011), the *Environmental Assessment Act’s Code of Practice* (2009), and the *Draft Guidelines for Ministries on Consultation with Aboriginal Peoples Related to*
Aboriginal Rights and Treaty Rights (2006). Additionally, several secondary texts, including the discussion paper Towards Developing an Aboriginal Consultation Approach for Mineral Sector Activities (2007), and the technical paper Ontario’s Mineral Development Strategy (2006) were relatively progressive in their approach and discussion of how the provincial Crown and third parties can engage with First Nations. These results do not indicate that documents classified as ‘significant’ are ideal and without weakness in relation to recognition and support of First Nations and relationship building. Without further First Nations-led amendments as will later be discussed, these policies cannot truly reflect a fundamental shift in Crown-First Nations relationships. By giving the Minister of Northern Developments and Mines and his counterparts “broad discretionary authority” to manage mineral-based initiatives and dictate the terms to proceed by, the Mining Act (1990) minimizes the ability of First Nations to assess and influence provincial decisions (Pardy & Stoehr, 2011, p. 13).

Provincial policies categorized as moderate. Texts were designated moderate if their intersection with First Nations was apparent, but limited and relatively fragmented in their approach in comparison to other Crown texts. For example, the only indication of a discussion of First Nations and rights in the Crown Forest Sustainability Act (1994), occupied a single sentence in reference to section 35 of the Constitution Act, 1982 and how the act does not infringe on any recognized and affirmed Aboriginal or treaty rights. Nonetheless, two common features emerged amongst these policies- they referenced to First Nations through use of key indicator terms, and incorporated one of the four concepts of ‘honouring past relations or recognized Aboriginal and treaty rights’. In terms of honouring past relations, the majority spoke of consultation or accommodation, but often in reference to consulting and accommodating all stakeholders that the Minister deems appropriate. Additionally, reference to First Nations and key indicator terms in
many instances, particularly amongst major pieces of legislation, was done so under the broad title of public bodies.

Legislation that took a fragmented approach in their intersection with First Nations included the Planning Act (1990) (table 1), the Municipal Act (2001), the Places to Grow Act (2005), the Niagara Escarpment Planning and Development Act (1990), the Oak Ridges Moraine Conservation Act (2001), the Crown Forest Sustainability Act (1994), and several others. Overall, moderate texts further illustrated the clear inconsistencies of provincial Crown policies in Ontario as policies attached to legislation discussed First Nations in an apparent, but limited manner, while the legislation, such as the Public Lands Act (1990), the Environmental Assessment Act (2009), and the Environmental Protection Act (1990) made no such clear effort. What the moderate classification provides both First Nations and non-First Nation officials alike, is a clear indication that while there are often strong discussions of consultation, accommodation and support of First Nations and other Aboriginal organizations in political circles, the policies that guide how exactly land and resource management unfolds on-the-ground are inadequate and unclear (Participant One, personal communication, November 7, 2013).

**Provincial policies categorized as minimal.** A third set of land use and resource management policies materialized following the two-tiered analysis process, with no recognition of First Nations, no acknowledgement of Aboriginal and treaty rights and no reference to any form of honouring past Crown-First Nations relations,. These provincial Crown policies were designated minimal because their intersection with First Nations was non-existent within each text, even under liberal interpretation. In certain cases, higher legislation did have accompanying policy statements, guides and other texts that contained an apparent recognition of First Nations,
Aboriginal and treaty rights and consultation and accommodation. Thus, this final classification is not to suggest that all policies designated as minimal were identical and unreceptive to First Nations, but it is to suggest that there are many policies developed by the Province of Ontario that intentionally or unintentionally do not directly prioritize First Nations and their inherent and distinct rights. These texts include the Public Lands Act (1990) (table 1), the Lakes and Rivers Improvement Act (1990), the Aggregate Resources Act (1990), the Fish and Wildlife Conservation Act (1997), the Wilderness Areas Act (1990), the Forestry Act (1990), the Ontario Water Resources Act (1990), and the Environmental Bill of Rights (1993). The Growth Plan for the Greater Golden Horseshoe (2006) and the Niagara Escarpment Plan (2005) were likewise classified minimal with no clear recognition of First Nations within each provincial plan. Furthermore, the majority of the 269 regulations examined did not mention First Nations with the exception of eleven.

Table 1.
Examples of Select Provincial Land Use and Resource Management Legislation

<table>
<thead>
<tr>
<th>Select legislation Ministry [classification]</th>
<th>Purpose of the legislation</th>
<th>How are First Nations referenced and addressed?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Far North Act (2007) Ministry of Natural Resources and Forestry [Significant]</td>
<td>The purpose of the Far North Act is to provide direction for community based land use planning in the Far North region of the province, an area previous regulated as public lands, in a joint planning process between First Nations and Ontario that is consistent with existing Aboriginal and treaty rights protected under section 35 of the Constitution Act, 1982.</td>
<td>There is recognition of First Nations, acknowledgment of Aboriginal treaty rights within the opening purpose section and discussions of the duty to consult, consultation and accommodation in the latent content of the text. The outcomes of the Act are still emerging, but it aims to ensure a significant role for First Nations in planning in the region, protect areas of cultural and natural value, maintain biodiversity and enable sustainable economic development, which will benefit surrounding First Nations. However, the act has received ongoing criticisms since its development (see Gardner et al. 2010).</td>
</tr>
<tr>
<td>Planning Act (1990) Ministry of Municipal Affairs and Housing [Moderate]</td>
<td>The purpose of the Planning Act is to provide an overall policy framework for land use planning in the province and identify how land uses may be managed and who has the authority to do so. It is also meant to encourage</td>
<td>While First Nations are cited exclusively and separately as a term in the opening interpretation section, the actual wording only appears twice throughout the entire text. Conversely, First Nations are predominantly referenced using the term 'public bodies', which makes no clear</td>
</tr>
<tr>
<td>Select legislation Ministry [classification]</td>
<td>Purpose of the legislation</td>
<td>How are First Nations referenced and addressed?</td>
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<tr>
<td>public participation and recognize different stakeholders’ interests in land use decision making. This overarching act covers everything from how provincial policy statements are to be interpreted by municipalities to zoning by-law implementation.</td>
<td>distinct between First Nations and other stakeholders, particularly with respect to discussions of consultation.</td>
<td></td>
</tr>
<tr>
<td>The purpose of the Public Lands Act is to manage the use of Crown lands by providing the Ministry of Natural Resources and Forestry the authority to control how public lands and forests in Ontario are managed, sold and disposed. It applies to all Crown lands south of the Far North region in the province.</td>
<td>Within the actual legislation, there is no mention of First Nations. However, within associated policy statements (including PL 1.01.01 Strategic Direction For the Management of Ontario Crown Land &amp; PL 4.02.01 Application Review and Land Disposition Process) and the Guide for Crown Land Use Planning (2011) there are clear examples of recognition of First Nations under the umbrella term Aboriginal peoples, acknowledgement of Aboriginal and treaty rights and the continued ability to exercise these rights on crown lands, and discussions of the fiduciary obligations to consult and accommodate Aboriginal peoples.</td>
<td></td>
</tr>
</tbody>
</table>

**Discussion**

With First Nations’ engagement in planning matters being highly circumscribed and often pre-determined by government through provincial land use and resource management policies, it was crucial that a comprehensive baseline be developed to understand how engagement is evolving. The results broadly reaffirm the reality that First Nations are not treated fairly in land use and resource management processes (Borrows, 1997a; Porter & Barry, 2013), and illustrate several key concerns and contradictions.

**The Post-2005 Northern Focus**

A high proportion of texts categorized as significant and (the most progressive), were developed or amended post-2005. The Draft Guidelines for Ministries on Consultation (2006) and Ontario’s Mineral Development Strategy (2006), two texts which recognize the importance of the fiduciary duty to consult and accommodate and the need for Aboriginal involvement,
emerged one year after the end of the *Mikisew Cree* ruling, which extended the duty to consult to treaty rights (Newman, 2009). The *Mining Act* (1990), one of two pieces of legislation recognized as relatively progressive, was noticeably amended in 2009 as its purpose clause was expanded to include the words “[...] to encourage prospecting, staking and exploration for the development of mineral resources, in a manner consistent with the recognition and affirmation of existing Aboriginal and treaty rights in section 35 of the *Constitution Act, 1982*, including the duty to consult” (2009, c. 21, s. 2.). Additionally, since November 2012, the *Mining Act* (1990) has been further amended to give First Nations the ability to apply to have sites of Aboriginal cultural significance under 25 hectares recognized by the provincial Crown and withdrawn from province’s database to prevent mining claims from being staked (MNDM, 2013). These two specific amendments illustrate the gradual changes occurring post-2005, but they also link to a much larger trend worth mentioning.

The larger trend is that policies that have emerged or have been amended recently to reflect the interests of First Nations in Ontario primarily relate to Northern Ontario and resource development (Participant Three, personal communication, November 15, 2012) with the exception of the 2014 Provincial Policy Statement (Viswanathan *et al.* 2013). Those provincial policies relating to Southern Ontario and urban growth have not prioritized First Nations to the same extent. In particular, the *Growth Plan for the Greater Golden Horseshoe* (2006) does not recognize First Nations’ history in the region and their role and influence on the future successes of the region. As DeVries (2011) observed in her account of the conflicts surrounding the contested territory of the Six Nations in Caledonia, within the provincial growth plan’s primary map, the Six Nations’ reserve is “literally blanked out”, appearing as a white and unlabelled territory surrounded by land designated as beige and well-suited for priority and continued
growth (p.41). This type of ‘normative’ planning diagram is shaped by a dominant non-First Nation assumption that reserves are a federal jurisdiction and that lands outside of a reserve’s boundaries, including traditional territories, were honourably acquired and no longer of interest to First Nations (DeVries, 2011; Participant Two, personal communication, November 2, 2012). Additionally, major guiding acts and policy statements including the Planning Act (1990), the Places to Grow Act (2005), the Greenbelt Act (2005), the Niagara Escarpment Planning and Development Act (1990), and the Oak Ridges Moraine Conservation Act (2001) predominantly refer to First Nations at a minimum as just another ‘public body’, which in itself is highly inadequate because it frames First Nations’ concerns as one of many stakeholder concerns to consider (Barry & Porter, 2011; Porter, 2006; Sandercock, 2004).

With First Nations and traditional territories adjacent to and overlapping major urban areas in Southern Ontario, provincial policies outside of the realm of Northern Ontario and resource development need to come to terms with how land use and resource management policies that shape planning and development in urban areas can recognize and support First Nations as well as rights and claims. Recent changes to the Provincial Policy Statement (2014), which for the first time has policies that recognize First Nations under the constitutional term of Aboriginal peoples, section 35 of the Constitution Act, 1982 and the importance of consultation and coordination with First Nations, particularly on matters regarding archeological and heritage resources, may be an indication of an emerging shift. Nonetheless, if Northern resource-based policies such as the Mining Act (1990) and the Far North Act (2011) are relatively the most progressive legislation that exist in the province with the latter having received strong First Nations opposition (Gardner et al. 2010; Participant Three, personal communication, November 15, 2012), the province of Ontario will need to further improve both the way it understands
Aboriginal and treaty rights and the way it accounts for First Nation communities in its Crown policies both in Northern and Southern Ontario.

**Issues of Consent**

Although consultation, the duty to consult, and accommodation were discussed in certain policies and guidelines, there was no apparent discussion of consent in relation to First Nations in any text. Consent was mentioned in the *Planning Act* (1990) 107 times, but it was largely in relation to the Minister’s authority and consent between lower-tier and upper-tier municipalities when subdividing land. Without meaningful mention of consent in relation to First Nations, no policy examined can truly embody past Crown-First Nations relations in a meaningful manner because, short of consent, these types of high-level Crown policies fail to acknowledge and embody the nation-to-nation foundations of past agreements, particularly treaties grounded in mutual respect and recognition. In turn, an inability to understand and integrate consent offers no real fundamental change in approach and places First Nations vis-à-vis the provincial Crown in a subordinate and passive role.

With the recent *United Nations (UN) Declaration on Rights of Indigenous Peoples* (2007) identifying the eminent need for states to obtain “[…] free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them”, consent should not be viewed as archaic or irreconcilable in contested territories (UN, 2007, Article 19). Its application in higher-policies at the provincial Crown-scale could greatly improve the way First Nations and non-First Nation communities understand, and interact with each other, particularly with respect to planning at the municipal-scale. The recent *Tsilhqot’in Nation* case may catalyze greater change as it has elevated consent to the forefront of public discourse surrounding unceded territories and now requires the Crown to obtain consent from an affected
First Nation community where Aboriginal title is involved. Still, the term ‘consent’ has become a polarizing topic. Instead of using it as a best practice to base consultation with the intention of coming to an agreement, it has become a discussion on whether or not a First Nation has the right to unilaterally stop projects. The spirit of consent should be incorporated into policy while recognizing that the term itself may serve as a barrier to improved relations as fear of the unknown or opposition may undermine any chance to redress historical misconducts and injustices on the part of the Crown. Thus consultation, particularly in instances outside of cases involving Aboriginal title where consent is already a requirement, needs to evolve into a process that seeks to obtain the blessing of First Nation communities and encourages relationships based on mutual trust and respect.

Creating Space of Common Ground
While this research does point to areas of improvement within individual texts and policies, from a theoretical standpoint it links to a much larger discussion about how, as a province, Ontario, similar to other contested territories developed through unchecked settlement and colonial expansion, has deviated far from past Crown-First Nations relations first outlined in spirit and intent of the Royal Proclamation of 1763 and the subsequent Treaty of Niagara in 1764 (Borrows, 1997b). While the province and its guiding policies for land use and resource management are progressing towards greater recognition and understanding of First Nations, Aboriginal and treaty rights and the need to honour past Crown-First Nations relations, they are doing so slowly. This slow pace coupled with an inability on the part of provincial and federal governments and other institutions to acknowledge or address in a meaningful and honourable manner “decades, if not centuries, of broken promises, dispossession, and frustration” has resulted in ongoing First Nations disputes and protests (Ipperwash Inquiry, 2007, p. 2). The
well-documented confrontations of Ipperwash in 1995 and ongoing struggles in Caledonia are clear indications of a policy gridlock or “paradigm muddle”, where state governments remain caught between a set of contradicting mindsets that play out in policies, plans, perspectives and decisions- one characterized by the remnants of an entrenched colonial mindset bent on assimilating First Nations and the other newly emerging paradigm focused on empowering and engaging First Nations as distinct self-determining nations and partners with valid claims and concerns (Maaka & Fleras, 2005, p. 299). In turn, “the new seeks to dismantle the old, but the old guard is digging in its heels in one last-ditch effort to preserve the status quo”, thus resulting in minimal change to policy frameworks and general gridlock (Maaka & Fleras, 2005, p. 300). Amending provincial Crown texts to include recognition of First Nations, Aboriginal and treaty right, the duty to consult, accommodate and consent is one means to break this gridlock.

Beyond altering these texts that influence on-the-ground planning relationships, there is an immediate need to change course, and return to the types of relationships and understandings first embodied and symbolised by the Two Row Wampum (RCAP, 1996a, p. 123). As reflected on by Indigenous legal scholar John Borrows (1997a), “the two-row wampum belt reflects a diplomatic convention that recognizes interaction and separation of settler and First Nation societies” (164). Proposing that First Nations and non-First Nation communities can exist in a shared space of mutual trust and respect is influential and inspirational when thinking about how provincial Crown policies can evolve; it is no longer about First Nations as a stakeholders, it is about First Nations as equal partners with equal footing. In turn, recognizing equality and committing to long-term and sustained relationships has the potential to shift outcomes away from current win-lose situations and more towards developing meaningful solutions that reflect
the needs, intentions and beliefs of neighbouring First Nations and non-First Nation communities.

Planning can provide an opportunity to create spaces of common ground, but to do so requires, among other steps, reworking higher policies, including restrictive federal policies, through First Nations’ participation and voices to give clarity and direction on how to build and sustain relations between First Nations and neighbouring non-First Nation communities. It has the potential to facilitate cultural changes through bridging understandings and strengthening individual relations across communities that a continued dependence on ridged legal approaches may struggle to achieve. These spaces of common ground may not bring us to consensus on all issues, but they will enable us to co-exist and learn from each other on equal footing through sustained relations and interaction in an unprecedented manner. Yet, for planning to be fundamentally transformative, it requires recognition of both political and territorial rights to ensure First Nations are actively pursuing and shaping what is best for individual communities and traditional territories (Porter & Barry, 2013). This type of recognition, which parallels the recommendations of the RCAP (1996c), would ensure First Nations’ right to self-determination and an equitable planning practice more reflective of the shared foundations of the province.

**Conclusion**
This research is vital to discussions of Crown-First Nations relations because there is an immediate need for both a conceptual framework to analyze provincial land use and resource management policies and an overall baseline to be developed in Ontario. This comprehensive document analysis is a first step, among a series, that together have the potential to inform better Crown-First Nations relations along with numerous policies, processes and practices. This critical reflection is by no means a concluded process - we hope that the ideas present here and
the analytical framework will continue to evolve through dialogue and reflection and that they will advance discussions about the need for further amendments to clarify with provincial policies both the protection of rights and interests of First Nations and the need to build and sustain relationships between First Nations and neighbouring municipal jurisdictions. Additionally, within the context of Southern Ontario and rapid growth, it is critical that our understanding of recognition expand to include traditional territories in provincial land use and resource management policies, plans and decisions- not only to build mutual understanding between First Nations and the public at large, but most importantly, to give the land “a chair at the table”, as noted by Carolyn King, former Chief of the Mississaugas of the New Credit First Nation (Personal Communication, 12 June 2014), and ensure its proper stewardship for future generations.

In light of the United Nations’ recent adoption of the Declaration on the Rights of Indigenous Peoples (2007) and the release of the Report of the Ipperwash Inquiry (2007), Ontario is at a critical junction. The recommendations of the latter have certainly changed Ontario’s policy approach as the report highlighted “the vacuum of policy in Ontario addressing consultation and accommodation” (DeVries, 2011, p. 133). For example, Justice Linden’s recommendations have led to a Ministry of Aboriginal Affairs, encouraged the development and use of archaeological master plans by municipalities to better recognize Aboriginal burial and heritage sites and established a New Relationship Fund to build capacity and lines of communication and engagement amongst Aboriginal communities, including First Nations and Métis, with governments and third parties (Fraser & Viswanathan, 2013; Ipperwash Inquiry, 2007). Whether or not the province and the public have fully changed or unsettled their mindsets, remains unclear. Specifically, with recommendation 36 of the Ipperwash Inquiry (2007), outlining the
immediate need for the provincial government and Ministry of Aboriginal Affairs to create “mechanisms for obtaining input from Aboriginal communities on planning, policy, legislation, and programs affecting Aboriginal interests” (p.104), Ontario can set a precedent nationally and internationally by reworking certain guiding provincial policies to reflect meaningful and valued partnerships with First Nations. Good relations between municipalities and First Nations are occurring in different contexts and to different degrees across Ontario, but they are often as a result of the cooperative efforts of individuals across communities (Participant One, personal communication, November 7, 2013). To ensure that equitable and constructive relationships become the standard and not just isolated examples, there is an immediate need to begin to rework policies and plans to reflect mutual understanding and mutual learning in shared territory through First Nations-negotiated amendments. Other efforts and resources will be necessary to catalyze this change within governments and public perspectives as outlined in by the RCAP (1996c) and the Ipperwash Inquiry (2007). For now, however, there is a clearly defined hope that this fundamental shift will occur (Viswanathan et al. 2013; Walker et al. 2013). Recognizing that First Nations are foundational partners in Ontario’s past, present and future and acknowledging that new opportunities exist in rebuilding lost relationships and sustaining new relationships grounded in co-existence, will greatly assist in how we as non-First Nations and First Nations peoples recognize our pasts, understand ourselves, mutually respect and trust each other and plan differently in a shared territory.
Chapter 4.
Getting To Common Ground: A Comparison of Ontario, Canada’s Provincial Policy Statement and Auckland, Aotearoa New Zealand’s Auckland Council Regional Policy Statement with Respect to Indigenous Peoples
Fraser McLeod, Leela Viswanathan\(^7\), Graham Whitelaw\(^8\), Jared Macbeth\(^9\), Carolyn King\(^{10}\), Dan McCarthy\(^{11}\) and Erin Alexiuk\(^{12}\)

Introduction

Issue and Research Questions
In the province of Ontario, First Nations have historically been marginalized to the edges of planning largely because their communities and interests have existed between jurisdictions (Borrows, 1997a; Dorries, 2012). First Nation reserves have and continue to be controlled under federal jurisdiction and the restrictive confines of the Indian Act (RCAP, 1996a). Whereas, the provincial government exercises jurisdiction over off-reserve lands, including traditional territories and lands under specific treaties (Borrows, 1997a; Grassy Narrows First Nation v. Ontario [2014]; Johnston, 2007; RCAP, 1996a; Tsilhqot’ in Nation v. British Columbia [2014]). This division of power between the federal and provincial governments is delineated in section 91 and 92 of the Constitution Act, 1867. For example, section 92(5) gives Ontario the exclusive authority over the management and sale of public lands belonging to the province; while section 91(24) gives the federal government exclusive authority over “Indians, and lands reserved for the Indians”. Consequently, First Nations have largely been perceived as a federal concern and rendered “invisible in their own land” under the jurisdictions of a provincial planning framework that has historically not fully accounted for or understood First Nations, Aboriginal and treaty

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rights, and Indigenous world views (Borrows, 1997a, p. 420). This lack of understanding, particularly of First Nations’ continued interest in their traditional territories, coupled with a lack of clarity from provincial planning policies is self-reinforcing and maintains the exclusion of First Nations from equitable provincial planning processes and practices.

Most recently, changes have begun to materialize within provincial land use and resource management policies and approaches with respect to First Nations. The creation of a Ministry of Aboriginal Affairs as recommended by the Ipperwash Inquiry (2007) and the recent set of Supreme Court of Canada rulings that clarified the duty to consult, Aboriginal title and the fiduciary duties of both federal and provincial governments to Aboriginal peoples, have gradually altered how the province recognizes and supports First Nations. With on-the-ground land use planning and decision-making in Southern Ontario largely directed and guided by the province through the Planning Act (1990) and Provincial Policy Statement (PPS), the recent integration of specific policies concerning Aboriginal peoples in the PPS (2014) is both significant and long overdue (Dorries, 2014; McLeod et al. 2014). Based on the findings of the previous manuscript, the PPS (2014) was one of the most significant provincial policies. Although the results indicate the PPS (2014) was a standout policy, this could be misleading to a certain extent because of misinterpretations of the relative classification as an indication of a complete paradigm shift when, in reality, this policy does not deviate far from a status quo that has systematically excluded First Nations from planning processes and practices. It also remains unclear if this most recent PPS (2014) and its set of new policies with respect to First Nations and Aboriginal and treaty rights will help us, as non-First Nation and First Nations communities, get to common ground through addressing the inherent uneven nature of planning frameworks and ensuring a more equitable and just planning system in the province. Thus, to fully
comprehend the strengths and limitations of the PPS (2014), we identified an immediate need to move beyond relative assessment of Ontario policies. Consequently, we decided to carry out an international comparison with the former British colony of Aotearoa New Zealand with a similar uneven history of Indigenous peoples-state relations and policies that are known to be illustrative.

Focusing on document analysis, four versions of the PPS from 1994 onwards were reviewed using a four-tiered analytical framework to assess the evolution of the PPS and its intersection with First Nations. Then the results of the analysis of the current PPS (2014) were assessed relative to a parallel broad territorial policy statement from the planning context of Aotearoa New Zealand’s fastest growing and largest urbanized region, the Auckland Council Regional Policy Statement (ACRPS) (1999). This type of original content analysis of policy statements was executed to gain insight into where the PPS (2014) has come from and what it could become, with respect to recognizing and supporting First Nations. As part of this research, the following questions were addressed:

1. How are First Nations recognized and supported in the current and past versions of the Provincial Policy Statement in the province of Ontario?

2. How can top-down territorial planning policies in Ontario take a fundamental shift towards promoting new types of relationships and mutual understanding between municipalities and Indigenous peoples by learning from the Aotearoa New Zealand planning context?

**Rationale**

Aotearoa New Zealand was chosen from the early onset of the research process because it is well recognized that Aotearoa New Zealand, in comparison to Canada, is far more advanced in its relationships with Indigenous peoples at the local government scale (Awatere et al. 2013; Walker & Belanger, 2013; Participant Three, personal communication, June 13, 2014). Without
provinces in Aotearoa New Zealand and following the implementation of the *Resource Management Act (RMA)* (1991), planning authority was primarily devolved to regional and local governments. The ACRPS (1999) was the ideal comparative text with the PPS (2014) as it situates in a similar position within its respective planning hierarchy. As part of a comprehensive study of the effectiveness of Aotearoa New Zealand’s new planning regime under the *RMA* (1991) by Ericksen *et al.* (2004), the ACRPS ranked third overall out of 16 regional policy statements for Māori interests.

Yet, the soundest justifications for this comparative approach are grounded in regional connections between the two policy statements and the geographical areas where both policy statements influence lower-tier planning. First, at the regional-scale, both regions comprise of a large proportion of their respective national populations; the Auckland Region comprising 30% of Aotearoa New Zealand’s population and Southern Ontario comprising over 30% of Canada’s population (Memon *et al.* 2007; Province of Ontario, 2014b). Each region is growing fast and provides core economic functions nationally. Each region is also characterized in many places by similar patterns of low-density sprawl (Gordon & Janzen, 2013; Memon *et al.* 2007). In terms of governance, both regions during the 1990s faced a series of reforms and amalgamations that resulted in significant reductions of the number of local governments (Memon *et al.* 2007; Sancton, 2011). Finally, Southern Ontario and the Auckland Region both exist on ancestral lands of Indigenous peoples and planning texts in these regions until recently undervalued Indigenous peoples. Increasingly, Indigenous peoples in each region, parallel to efforts in other regions within settler states, are using land use planning as a form of resurgence, and to their benefit, in order to gain recognition of their rights and inherent connection to the land (Porter & Barry, 2013; Lane, 2006; Lane & Hibbard, 2005).
At the national-scale, there are also additional justifications. First, both Canada and Aotearoa New Zealand are settler states and have common asymmetrical structural features that dominate Indigenous peoples (Hibbard et al. 2008; Maaka & Fleras, 2005; Porter, 2010; Regan, 2010). These structures in both states are the result of British colonial planning and settlement that was initially facilitated through the negotiation of foundational documents between the British Crown and Indigenous peoples grounded in co-existence and recognition of Indigenous peoples as partners - Aotearoa New Zealand’s 1840 Treaty of Waitangi and Canada’s Royal Proclamation of 1763 (Porter, 2010). With continued settler migration, the Crown and non-Indigenous settlers in both states deviated from the spirit and intent of these foundational documents (Porter, 2010). This has given rise to ongoing conflicts between Indigenous and non-Indigenous peoples and the steady dispossession of Indigenous peoples from their ancestral lands (Porter, 2010). Both Māori in New Zealand and First Nations in Canada have a similar constitutional status as original occupants with territorial claims, yet they continue to be “marginalized and trapped against their will because they live within someone else’s framework” (Maaka & Fleras, 2005, p. 19).

As a result of differing contexts and histories, there are notable differences between Canada and Aotearoa New Zealand with respect to Indigenous peoples-state relations that must be acknowledged. First, Aboriginal peoples in Canada, including First Nations, are governed by the Indian Act - a federal act which has remained largely untouched since its conception in 1876 as means to assimilate distinct Indigenous nations and cultures and it continues to constrain all aspects individuals’ lives (Maaka & Fleras, 2005; RCAP, 1996a). There is no equivalent legislation for Māori by the central government in Aotearoa New Zealand. Second, Māori identity is not primarily associated with reserves as it is in Canada because there was not a parallel set of treaty negotiation processes by the Crown in Aotearoa New Zealand that resulted
in a system of rural reserves (Maaka & Fleras, 2005). Without the same rural reserve system, Māori individuals do not live on reserves and are almost entirely urban, which makes it difficult for government to keep Indigenous concerns and claims off-stage and out of sight as is the case in certain instances in Canada with remote First Nation reserves (Maaka & Fleras, 2005).

Lastly, there is a stark difference in how each state’s understanding of their founding document has evolved. While the Royal Proclamation of 1763 first recognized First Nations as partners with the right to self-determination, the actual spirit and intent of the Proclamation, especially regarding Indigenous perspectives, has been lost from the public conscience as Canadian society has largely disregarded the Proclamation’s continued relevance and significance (Borrows, 1997b; RCAP, 1996a). Colonial interpretations and a broad disregard for the principles of 1840 Treaty of Waitangi (herein after referred to as ‘the Treaty”) have gradually decreased with the formal reinstatement of the Treaty and the establishment of the Treaty of Waitangi Tribunal with the passing of the Treaty of Waitangi Act in 1975 (Porter, 2010). An evolving official recognition of the principles of the Treaty by the Crown has gradually reformed government, reaffirmed the existence of two nations and their founding partnership and assisted in the resurgence of Māori culture, peoples and language (Ericksen et al. 2004; Porter, 2010). Official recognition has not alleviated all challenges and contradictions for Māori people (Maaka & Fleras, 2005). Nevertheless, in spite of these differences and others, this type of comparison of planning policy is vital because it not only illuminates the current limitations of existing planning policy in Ontario, but it also initiates a conversation surrounding the opportunity for a greater degree of flexibility in reworking dominant planning policies and frameworks in order to find and sustain common ground in a shared territory.
Structure
This manuscript is structured as follows: the background begins by examining the ideas and theory behind state-based planning and several themes surrounding Indigenous peoples-state relations in Canada and Aotearoa New Zealand. The following section then contextualizes the two case studies of the Ontario PPS in Southern Ontario and the ACRPS in the Auckland region through charting the different statutory policy frameworks and providing further detail into each policy statement. Methods are then outlined, which primarily provides further detail into the document analysis and four-tiered analytical framework. Results of the document analysis are presented through discussions of previous versions of the PPS, the current PPS (2014), and the ACRPS (1999). The discussion section highlights where the province is, what can be learned from the ACRPS and Aotearoa New Zealand planning context, recommendations for change and ultimately, what it may take to get to common ground. The manuscript then concludes by discussing the implications of this comparative for planning practice and theory.

Background
State-Based Planning
Rational-Comprehensive Planning. A meaningful discussion of planning policy related to Indigenous peoples must begin with an acknowledgment of its rational-comprehensive foundations as the ideas behind this approach as a part of early state-imposed prescribed planning initiatives have not served Indigenous peoples and claims well (Hibbard et al. 2008; Lane, 2006; Porter, 2006; Sandercock, 1998; Stanger-Ross, 2008). This approach, found often within many introductory planning texts, frames planners as “know-units” of the state, serving a homogenous public through analyzing risk and offering a series of options for politicians (Faludi, 1973, p. 225; Healey, 1997). As Perloff outlined in his pivotal work Education for Planning (1957), planning rationally involves “a number of closely integrated steps, from the analysis of
the problems, the setting of broad objectives and the survey of available resources, to the establishment of specific operating targets, and through various stages until results can be checked” (p. 142). Early theorists assumed that series of rationally-applied problem-solving steps could be modified for any situation to ensure separation from ideologies and politics (Perloff, 1957).

With an overemphasis on quantitative methods, this “normalization and standardization of reality” undoubtedly made public consultation an afterthought as planners utilized a yard-stick approach to identify and address complex issues for a standardized public interest (Escobar, 2010, p. 147). As a result, pure rationale-comprehensive approaches would falter following its highpoint of approval in the 1950s, as the practice could not regulate the social tensions that it had created without alternative methods or meaningful public engagement. However, elements of rationale-comprehensive planning still inform practice today, as in many cases it continues to be a top-down expert-fueled practice that largely prioritizes non-Indigenous knowledge over Indigenous knowledge (Sandercock, 1998). Tiering is an ideal illustration of this continued presence of a rational approach in contemporary planning and is discussed below.

**Tiering.** Predominantly referred to in discussions of strategic environmental assessment processes (see Noble, 2009; Noble, 2000) and strategic spatial planning and land use regulation (see Healey, 2006; Williams, 1999), the concept of tiering centres on the idea of strategic or sequential integration between different tiers of policies, plans and programmes. Tiering has traditionally been understood as a top-down approach, but in certain instances it may take a bottom-up approach as local decision-making may influence larger policy changes (Noble, 2000). Specific to state-based planning policy frameworks that tend to be hierarchical, the
highest tier is referred to as the most strategic and provides comprehensive detail and general context over a range of issues to guide local decision-making and project implementation within a defined boundary (Healey, 2006). For instances, in Southern Ontario, an official plan by a lower-tier municipality must be consistent with the prescribed policies and plans above it, including high-tier municipal plans, provincial plans, the PPS, the Planning Act (1990) and other provincial legislation. While tiering may lead to stronger vertical integration and the realization of broad strategic goals, it continues create significant challenges for Indigenous peoples as narrowly defined boundaries necessary to delineate and validate different areas of governance and planning are largely inconsistent with diverse Indigenous boundaries and traditional territories (Berke et al. 2002). An Indigenous community’s interests may be dispersed across multiple jurisdictions, making it difficult to coordinate and communicate community concerns or alternatively, multiple Indigenous communities may exist within one jurisdiction, which may counter opportunities to build and sustain planning relations between authorities (Berke et al. 2002). These types of inconsistencies grounded in a continued emphasis on a rational approach may be addressed by taking a more participatory and collaborative approach, for which the discussion now turns to.

Collaborative Planning. Drawing primarily on the ideas of Jürgen Habermas, who questions the universality of scientific reason by arguing communication is also a form of rationality that enables “inter-subjective mutual learning” and has potential to achieve collective consensus, the communicative turn, often regarded as collaborative planning, asks planners to approach situations differently (Healey, 1992, p. 150; Forester, 1999). Through emphasizing dialogue as a vehicle to achieve a better understanding of difference, and the positionality of actors involved, this approach has a firm belief that direct democratic participation of all affected stakeholders
can and will lead to resolutions that reflect consensus amongst the plurality of society (Healey, 1992). In contrast to a rational-comprehensive approach, planners’ main concerns are to engage, listen, facilitate discussions and build consensus through dialogue among diverse stakeholders (Forester, 1999; Sandercock, 1998). Under this lens, planning is no longer a detached scientific process for a standardized public interest as planners must seek out the voices of marginalized communities, build relationships, create positive spaces for dialogue, and develop methods to proceed by in order to plan effectively (Forester, 1999). They also must constantly reflect and critique experiences, particularly the content and context of their communicative actions, to ensure that they are not skewing opinions or creating misrepresentations (Forester, 1989).

Focusing on the interaction between agency and structure, and the potential for mutual learning between all actors involved in the planning process, even those beyond the confines of formal institutions, collaborative planning gains its legitimacy through its focus on community-based processes (Healey, 2003). For example, to ensure a high degree of transparency and flexible inclusion, Healey (1997) frames those involved as ‘stakeholders’ because it “acts as a net to ‘capture’ both the articulate and the silent, the powerful and the powerless, those within a territorial political community, and those beyond its boundaries” (p. 260). Emphasizing the role of non-traditional actors in the planning process, and the potential for transformative changes to current structures, she argues that new collaborative processes should: enable a wide range of stakeholders to be heard and valued equally, recognize that there is opportunity for change beyond formal institutions, encourage interventions and non-traditional methods that reflect the local context, catalyze a high degree of inclusion while recognizing difference, and should be transparent and accountable (Healey, 1997, p. 288-289).
However, collaborative planning is limited and limiting in relation to Indigenous peoples because it fails to critically examine planning’s colonial roots and inherent power structures that play out at the community-scale (Huxley & Yiftachel, 2000; Sandercock, 2004; Porter, 2010). From a historical standpoint, planning as a process has been used across states to create spatial orders and boundaries, appropriate traditional lands and resources, isolate Indigenous peoples and create a racial hierarchy of difference to justify these acts (Sandercock, 2004; Porter, 2010). Focusing on communicative processes and community-based agreements, does not detach planning from the past or remove it from highly circumscribed power relations as planning largely remains an arm of the state and seeks to incorporate Indigenous views through pre-existing structures and terms (Barry & Porter, 2011; Huxley & Yiftachel, 2000; Lane & Corbett, 2005). For Barry & Porter (2011), planning texts at the centre of state-based policy frameworks are critical in sustaining uneven power relations as they continually “appropriate the political and spatial claims of indigenous peoples by assigning them to established planning categories and systems of meaning: traditional territories become ‘planning areas’ and demands for recognition become ‘business drivers’” (p. 182-183). In turn, with the state determining structural barriers and institutional assumptions to communicative models of planning through legislation, policies and allocation of resources, power differentials have the potential to undermine the goodwill and agency of planners who do try and implement policies and programs that respect and partner with Indigenous communities (Porter, 2010).

Further limitations associated with collaborative planning models in settler states stem directly from the use of the term stakeholders. While the term stakeholder may appear to signify a more inclusive and representative set of processes that enable a wide array of participants to equally contribute, for Indigenous peoples the use of the term stakeholder fails to acknowledge original
occupancy prior to European settlement (Porter & Barry, 2013; Porter, 2010; Porter, 2006). For collaborative planning to work effectively there must be recognition not only of prejudices and power relations, but that Indigenous communities occupy a different space than typical stakeholders and have alternative perspectives that can benefit planning decision-making (Porter, 2006). Additionally, these increasingly democratic ways of planning may not be able to resolve cases of “deep difference” between the state and Indigenous communities stemming from historical and ongoing injustices (Watson, 2006, p. 42). Amongst planners, there still remains a strong belief that the neutral application of “set of universal values” can transcend these differences and build consensus amongst divided parties (Watson, 2006, p. 39). This may not be the reality in all situations. As Watson (2006) reflects, “if differences are so deep then consensus (on planning issues) is impossible” (p. 42). In the Canadian context, with ongoing attempts at assimilating, and forcibly dispossessing Indigenous peoples of their land, resources and culture since first settlers arrived, and a continued failure to recognize the persistence of colonial ideologies and policies (Warry, 2007), Watson’s notion of the impracticality of building consensus may hold true unless policies and understandings begin to reflect shared foundations. Nevertheless, both rational-comprehensive and collaborative planning greatly inform the planning practice and policies, including policy statements, of Aotearoa New Zealand and Canada.

**Indigenous Peoples-State Relations**

With differing contexts and histories, this section of background is meant primarily to provide the reader with a brief snapshot into Indigenous peoples-state relations broadly in both Canada and Aotearoa New Zealand to give insight into founding documents, lost relations and recent
attempts at reconciliation. It is by no means a complete, all-inclusive account, but it is meant to provide a foundation into evolving relations.

Canada. The colonial settlement and planning of Canada is intrinsically linked to the Royal Proclamation of 1763 issued by King George III (Borrows, 1997b; Porter, 2010; Turner, 2006). This founding document not only recognized First Nations’ pre-existing title over North America as original occupants of the land, but also set the framework for Indigenous-settler relations, including land use (Godlewska & Webber, 2007). It prohibited the private purchase and settlement of Aboriginal lands by settlers and established that Indigenous ownership of these territories could only be taken up by the Crown through use of public treaties and acquiring consent (Borrows, 1997b; RCAP, 1996a). Yet, conventional interpretations largely overemphasize Crown interpretations and words of the imperial policy as direct recognition of the Crown’s unilateral and unquestioned claim to sovereignty (Borrows, 1997b). For Borrows (1997b), First Nations were active in the development of the Proclamation and one cannot fully understand the principles of it without understanding the text in relation to the Treaty of Niagara, 1764 and the Two Row Wampum as the principles of these agreements collectively promised a lasting nation-to-nation relationship of non-interference. The Proclamation also was the first indication of recognition of Aboriginal rights and title and the Crown’s fiduciary obligation to First Nations, often referred to as the honour of the Crown, as they were and remain First People to what is now Canada (Porter, 2010).

However, resulting treaties, particularly the numbered treaties that help settle the Prairies and parts of Northern Ontario, were often written on unequal terms, poorly enforced and did not reflect the spirit and intent of First Nation signatories towards sharing the land (RCAP, 1996a;
Porter, 2010). For many Canadians and government officials at that time, and still today, treaties were regarded as “ancient history” rather than living compacts and clear evidence of nation-to-nation relationships (RCAP, 1996a, p. 128; Maaka & Fleras, 2005). With the last of the numbered treaties in 1923, Crown policy makers had separated themselves from the principles of the *Royal Proclamation* and taken on the *Indian Act* as they pursued “a paternalistic approach in which Aboriginal people were treated as wards of the state” and the perception of First Nations soon shifted away from founding partners (Godlewska & Webber, 2007, p. 15). With the majority of traditional territories either ceded or expropriated by the early 20th century, First Nations were displaced from their lands and moved to isolated reserves often on poor and unsuitable lands in an attempt to assimilate individuals and limit future conflicts over land and resources between Indigenous and settler communities (Godlewska & Webber, 2007; RCAP, 1996b). Relationships reached a low point with the release of the White Paper in 1969 as the Canadian state embraced liberal values and attempted to terminate treaties and recognition of Aboriginal rights (Ipperwash Inquiry, 2007; RCAP, 1996a; Turner, 2006). Nevertheless, during this period of ongoing hostility towards First Nations’ rights, First Nation resistance and political action grew. In 1973, the Supreme Court of Canada in the landmark *Calder* case recognized that Aboriginal title to land pre-dated European settlement and that such a legal right existed outside and not as a result of British common law (Ipperwash Inquiry, 2007; Turner, 2006). This ruling coupled with efforts of Aboriginal peoples and leaders led to a change in approach by federal officials and the introduction of a formal claims process for comprehensive and specific claims as well as formal recognition of Aboriginal and treaty rights in section 35 of the *Constitution Act, 1982* (Ipperwash Inquiry, 2007).
Relations continue to be fragile between First Nations and the state as federal and provincial governments have remained hesitant towards change through failed accords and passive attempts at reconciliation that offer no larger structural changes in the relationship (Fairweather, 2006; Ipperwash Inquiry, 2007). For instance, the release of the five volume Report of the Royal Commission on Aboriginal Peoples (1996) called for a renewal in the relationship between Aboriginal and non-Aboriginal peoples, but it was limited in its application and the fact that it remained “embedded in the idea that the sovereignty of the Canadian state was not to be question” (Turner, 2006, p. 79). Specific to Ontario, the Ipperwash Inquiry (2007) called for changes to the province’s minimalist approach to Aboriginal relations and provided extensive recommendations, but the province has been reluctant to implement all recommendations.

In spite of this general reluctance, the most significant calls for change to the state’s approach from within have come from the Supreme Court of Canada through its trilogy of rulings, including *Haida Nation* [2004], *Taku River Tlingit* [2004], and *Mikisew Cree* [2005], as these landmark cases reaffirmed the honour of the Crown through discussions of the duty to consult and accommodate. Together with the recent *Tsilhqot’in Nation v. British Columbia* [2014] case, which brought clarity to Aboriginal title, it is apparent that there is increased interest in addressing ever-present colonial processes and repair lost relations since Canada has deviated far from the spirit and intent of the nation-to-nation partnership that it emerged from. Furthermore, for Regan (2010), Canada, despite the recent Truth and Reconciliation Commission (TRC), remains far from any form of meaningful reconciliation because the state remains focused on addressing the ‘Indian problem’ rather than the ‘settler problem’ and as a result, it continues to propagate a culture of denial and the colonial status quo. As she eloquently summarized, by not examining our colonial past “what we have instead is a foundation of untruths, upon which we
have built a discourse of reconciliation that promises to release Indigenous-settler relations from the shackles of colonialism, but will actually achieve just the opposite” (2010, p. 236).

**Aotearoa New Zealand.** Indigenous-peoples state relations in Aotearoa New Zealand also began with a foundational document between the British Crown and Māori people - the 1840 Treaty of Waitangi (Maaka & Fleras, 2005; Porter, 2010). For Maaka & Fleras (2005), the Treaty, which did not involve the transaction of any land, proposed a working partnership by establishing “a blueprint for a living agreement between independent political communities whose competing interests and jurisdictions were regulated by negotiation and compromise” (p. 106). Yet, the signing of the Treaty has resulted in significant conflicts as a result of differing views because there are three versions that exist - an English version, a Māori version and an English translation (Maaka & Fleras, 2005). The British Crown understood the English version to signify a political contract and a simple transaction by extinguishing absolute Indigenous sovereignty in exchange for granting Māori people full ownership of lands and resources and the privilege to be British subjects (Maaka & Fleras, 2005). Further, the Crown did not see the agreement as signifying a continuous relation (Maaka & Fleras, 2005). Whereas, Māori people understood their own text to signify a political compact that gave the Crown the privilege to govern while granting Māori tribes the absolute authority over ancestral lands and taonga and all the rights of British citizens (Maaka & Fleras, 2005). For Māori it also secured rangatiratanga rights and the right to self-determination (Maaka & Fleras, 2005). In spite of these differences, for a period of twelve years treaty relations and the protection of treaty rights were respected, but when authority was devolved to state officials in Aotearoa New Zealand from the British Crown, the principles were let go (Porter, 2010).
In the years that followed, the Māori-state relations and the founding partnership became fractured and one characterized by betrayal as continued colonial expansion, armed conflicts and acts of denial led to the significant loss Māori lands and resources under the justification of nation-building (Porter, 2010). Settler expansion was met with Indigenous resistance and resulted in a sustained period of assimilation policies against Māori language and culture (Porter, 2010). Planning played a pivotal role in this period, particularly through excluding recognition of Māori from the first *Town and Country Planning Act (TCPA)* in 1926 and utilizing zoning to further alienate ancestral lands (Awatere *et al.* 2013). In fact, “from 1850 to 1920, Māori land holdings fell from 90 percent to only 6.6 percent of the total area of New Zealand” (Berke *et al.* 2002, p. 117). Through continued resistance and lobbying during the 1960s and 1970s, the Treaty of Waitangi Tribunal was established in 1975 to address cultural and environmental grievances against the state for treaty infringements by the Crown (Maaka & Fleras, 2005). Following its formation the Tribunal was only authorized to hear grievances by the Crown that occurred after 1975 (Porter, 2010).

It was not until approximately ten years later that the central state government significantly altered its course of systemic denial through formally embracing the principles of the *Treaty* (Maaka & Fleras, 2005; Porter, 2010). This was in part due to changes that enabled the Waitangi Tribunal to explore historic grievances dating back to 1840 and the development of formal policies on land claim negotiations (Porter, 2010). In turn, the Tribunal’s mandate was also expanded to finally address and reconcile competing claims and differences between English version and the Māori version of the *Treaty* (Maaka & Fleras, 2005). Instead of focusing of the wording, the Tribunal has and continues to explore the spirit and intent of the *Treaty* and has defined a series of principles based on both texts to guide co-existence and cooperation between
people and cultures in contemporary Aotearoa New Zealand, including reciprocity, partnership, active protection, and autonomy (Maaka & Fleras, 2005). By attempting to commit itself to biculturalism under the guidance of Treaty principles, the Aotearoa New Zealand state has begun to renew the relationship, address dominant policies and revitalize Māori institutions critical to self-determination (Maaka & Fleras, 2005). The release of the RMA in 1991, a matter later discussed, further institutionalize recognition of the need to uphold the Treaty principles and respect Māori people and their rights in the management of physical and natural resources (Ericksen et al. 2004). Evidently, the narrative of Indigenous peoples-state relations is not complete and not without issues and contradictions. It remains a process that will require larger structural changes to ensure a meaningful partnership, but it is clear from this brief exploration that Aotearoa New Zealand as a settler state, relative to recent efforts by the Canadian state, is actively attempting to reconcile and redress in order to confront denial and repair lost relations with its First People.

Case Studies
This manuscript draws on two case studies- the PPS in Southern Ontario, Canada and the ACRPS in the Auckland Region of Aotearoa New Zealand. It should be noted that the first case study is situated in Southern Ontario rather than the entire province, which would include Northern Ontario for three major reasons: (1) the PPS largely influences planning decisions on private lands in Southern Ontario; (2) Southern Ontario is characterized by continued low-density sprawl and has a significantly denser population than Northern Ontario; and (3) members of the research partnership are affected by provincial planning policies and proposed developments because of the overlap between their traditional territories and built-up municipal areas in Southern Ontario. In the following section the context of each broad territorial policy
statement is initially situated in their respective policy contexts and then further detail regarding the individual policy statement’s history. Further details into each policy statement are provided in the results section.

Ontario Provincial Policy Statement – Southern Ontario, Canada

Planning Policy Framework. With the management of lands and resources constitutionally recognized as a provincial responsibility, the Province of Ontario takes a top-down policy-led approach to ensure the wise-use of land and resources under the guidance of the Planning Act (1991) (MAH, 2010). Historically, the provincial government has played a larger role in planning and was in charge of approving all land use matters, but since the mid-1990s planning approvals have largely been devolved to local planning authorities including the approval of amendments to official plans (Johnston, 2007). Beyond the Planning Act (1990) other land and resource management legislation, including the Oak Ridges Moraine Conservation Act (2001), the Greenbelt Act (2005), the Places to Grow Act (2005), the Public Lands Act (1990) and the Green Energy Act (2009) do exist alongside this statute at the highest strategic level of the province’s policy framework. As illustrated in figure 1, the majority of provincial plans and the PPS are situated under the highest level as they receive their authority from provincial legislation.

The PPS is intentionally situated at the same level of other provincial plans because it plays a critical role in planning in Southern Ontario and also influences the content of provincial plans. Yet, if there is a conflict between provincial plans and the PPS, provincial plans take precedent unless otherwise stated (MAH, 2013a). The remaining tiers of Ontario’s planning hierarchy consist of regional official plans by upper-tier municipalities and official plans by lower or single-tier municipalities, and local implementation tools. In theory, strategic direction from the
province tiers down to local authorities, but in certain areas of Southern Ontario, lower-tier municipalities must account for the PPS, four provincial plans, and higher-tier plans in their day-to-day planning decisions.

Figure 1. Policy Framework in Southern Ontario, Canada

History of the PPS. Between 1986 and 1992, the Province of Ontario had formally adopted four policy statements dealing with issues ranging from aggregate resources to the delivery of housing to guide provincial decision-making (Chipman, 2002). However, the closest predecessor to the current PPS only emerged in 1994, following a period of ‘planning reforms’ and the release of the Sewell Commission’s New Planning for Ontario Final Report (1993) as the province devolved responsibilities for certain planning matters to local authorities and took on a
prescribed policy-led role. Policy statements were advocated by the Commission as a means “to provide clarity and consistence” in defining provincial planning interests for lower-tier planning authorities (CPDRO, 1993, p.13). Since then, there have been four versions, including the 1994 Comprehensive Set of Policy Statements, the 1996 PPS, the 2005 PPS and the 2014 PPS.

The Current Ontario PPS (2014). The current PPS has three major policy sections – Building Strong Healthy Communities, Wise Use and Management of Resources, and Protection of Public Health and Safety (MAH, 2014a). In addition, there is also a section dedicated to implementation and interpretation. With planning approvals and responsibilities largely devolved to municipalities and local planning authorities, official plans are primary means of implementation for the PPS as these planning texts must be consistent with the PPS and situate provincial interests at the community-scale and in relation to local planning initiatives (MAH, 2010).

Auckland Council Regional Policy Statement – Auckland Region, New Zealand Planning Policy Framework. Since the early 1990s, Aotearoa New Zealand’s planning context has been characterized by a cooperative approach, in which regional and territorial authorities under the guidance of the RMA (1991) have had a great degree of discretion in developing policies and plans as New Zealand’s central government provides guidance on what plans should contain and not their content and rarely intervenes in local planning (Berke et al. 2002; Ericksen et al. 2004). The emergence of a cooperative approach and three-tiered structure for managing environmental planning matters are a direct result of state-led decentralization and a significant phase of reform from 1984 to 1991 that culminated in major legislative restructurings, with over 60 legislation and regulations, including the Town and Country Planning Act (TCPA), being consolidated into one comprehensive environmental statute, the RMA (1991) (Ericksen et al. 2004; Berke et al. 2002). For Ericksen et al. (2004), when legislative reform began, “there was
broad agreement that planning was handicapped by a system of fragmented, unco-ordinated, and overlapping statutes that were costly to administer, and that the plethora of existing resource law should be integrated into a single statute, and services by fewer, more efficient, agencies” (p. 5). Previous decades of top-down and incremental change had resulted in a contradictory and inefficient system, and created the ideal political climate for significant reform to take place (Ericksen et al. 2004).

In turn, this period of major reform effectively reduced the number of territorial authorities nationally, with the Auckland Region being consolidated from 29 to seven territorial authorities and one regional authority, the Auckland Regional Council (ARC) (Memon, 2007). It also led to the integration of “three substantive provisions involving Maori rights” including section 6(e), 7(a) and 8 (Ericksen et al. 2004, p. 118). Figure 2 illustrates the hierarchal ‘effects-based’ policy framework that is shaping the Auckland Region’s planning context. While the RMA (1991) is regarded as the highest strategic tier, the central government is also required to provide additional guidance through national policy statements and New Zealand Coastal Policy Statements (Ericksen et al. 2004). The ACRPS (1999) is situated just below this tier and has a significant influence on the content of regional plans, regional coastal plans, and district plans, as lower levels of plans and policies cannot be inconsistent with this regional policy statement (Ericksen et al. 2004). In addition, there is a transport strategy and two forums that influence planning decisions regionally (Auckland Council, 1999). Without a parallel governance hierarchy to accompany the policy hierarchy, local and regional governments are required to act in partnership to ensure that the goals of the statute are being met and they are not inconsistent with higher policies and plans (Ericksen et al. 2004).
History of the ACRPS. The ACRPS (1999) has had a shorter history in comparison to the PPS as it only emerged several years after the fundamental turning point in the decentralization of planning and governance in New Zealand with enactment of the RMA in 1991 (Berke et al. 2002). While its contents in effect today remain largely untouched, in November 2010, the region’s seven territorial authorities and one regional authority were combined to form the Auckland Council following recommendations by a Royal Commission into the effectiveness of the current governance models in New Zealand’s largest and fastest growing municipal area (Mouat & Dodson, 2013). This change affected Auckland’s regional policy statement as it was rebranded as the ACRPS to account for the new unitary metropolitan council. Additionally, as part of the shift to a consolidated governance model for the region, the Proposed Auckland
Unitary Plan (PAUP) was released in 2013, with a regional policy statement chapter to ensure the proposed plan kept in line with the responsibilities outlined in the *RMA* (1991) (see Auckland Council, 2013). Given the uncertainty regarding the PAUP’s timeframe and final approval and the ACRPS (1999) still in effect, this chapter does not to examine this new version in great detail using the analytical framework. However, new policies within the proposed text are alluded to in the discussion section given the potential significance they could have pending approval.

*The ACRPS* (1999). The current ACRPS has four parts—Regional Overview and Strategic Direction, Resource Management Matters of Significance to Iwi, Transport and Energy, and Environmental Protection (Auckland Council, 1999). These parts are divided up into 18 chapters that contain several standardized sections that identify issues, objectives, policies, methods, reasons, anticipated environmental results, and monitoring in order to provide an comprehensive framework to manage natural and physical resources and ultimately, achieve the purposes of the *RMA* (1991) identified sections 59 to 62.

**Methods**
To assess the current and past versions of the Ontario PPS and the ACRPS (1999) multiple methods were used, including a literature review, interviews, case studies and document analysis over a six-month period. These complementary methods were used to ensure triangulation to improve internal validity of initial findings, and external validity of the analytical framework (Yin, 2009). Methods are described in greater detail below.

*Literature Review*
The main purpose of the literature review was to provide background into the theory and concepts behind both state-based planning and Indigenous peoples-state relations. State-based
planning was organized into three sections: rational-comprehensive planning, collaborative planning, and strategic planning. Whereas, an Indigenous peoples-state relations was organized into two sections: Canada and Aotearoa New Zealand. The findings of the literature review (section two) informed the foundations of the four-tiered analytical framework and the primary indicators used in the content analysis of individual planning texts.

**Interviews**

Four short interviews with planning experts from First Nation communities and non-First Nation communities, were used for verification purposes to validate the four-tiered analytical framework and the initial results from the content analysis. The participants selected were primarily established contacts of Dr. Leela Viswanathan and Dr. Graham Whitelaw with a strong knowledge of planning in Ontario and Indigenous planning. Interviews took place between April and July 2014, and were conducted in person as well as by the phone in one instance. Interviews were content-focused and followed a similar structure for each participant. The framework and findings of the research were presented and then a flexible discussion followed, enabling the participant to provide feedback and verification (Dunn, 2010). The observations obtained from these short interviews were then integrated directly into the research process through minor modifications to the framework and the structure of the results. With the cross-cultural nature of this research, specific First Nation research protocols and agreements with individual communities were followed. Further, every effort has been made to protect the confidentiality of participants, and other identifiers beyond those outlined here may breach confidentiality and for this reason interview participants are identified in text as participant one, participant two, participant three and participant four.
**Case Studies**

The case study method was selected because it allowed for a comparison of the different policy statements with respect to Indigenous peoples while situating them within their respective policy contexts. As outlined by Yin (2009), “a case study is an empirical inquiry that investigates a contemporary problem in depth and within its real-life context, especially when the boundaries between phenomenon and context are not clearly evident” (p. 18). Planning policy does not emerge in isolation and therefore it was necessary to understand the larger context of planning policy frameworks and the history, structure and influence of each policy statement. The case studies for this comparative research, as previous indicated, are limited to four versions of the Ontario PPS (1994; 1996; 2005; 2014) and the ACRPS (1999).

**Document Analysis**

The primary method for analyzing policy statements and their associated higher-tier legislation was document analysis. With a central focus on critically understanding both manifest and latent content of policy statements with respect to Indigenous peoples and not their effects or implementation, document analysis was the ideal method for further inquiry (Cope, 2010). The justifications for the use of document analysis draws heavily from Barry & Porter (2011) and Porter & Barry (2013) as the critical examination of planning law and governance in British Columbia, Canada and Victoria, Australia, evident in both articles, highlights the need to analyze statutory planning texts, including legislation, policies, guidelines and regulations to better understand planning’s conflicting relationship with Indigenous peoples. In particular, Barry & Porter (2011) bring forward the notion of the highly circumscribed and uneven textually mediated ‘contact zones’ of planning where Indigenous peoples, interests and world views and planning intersect. While it is widely assumed that planning unfolds as a result of daily processes and interactions, the practice and its embedded power relations are shaped and regulated...
primarily through legislated and policy documents (Barry & Porter, 2011). By facilitating the minimum standards and institutional assumptions of the state-based planning, documents delineate parameters of ‘contact zones’ and impact how and if Indigenous peoples are recognized and factored into state-based planning processes and practices (Barry & Porter, 2011). Taking the concept of ‘contact zones’ and the role planning texts play in their manifestation into consideration, it became clear that it was just as important to understand the content of higher abstract policy statements that shape the everyday as it was to understand daily practices and processes that can advance Indigenous peoples’ rights, concerns, and knowledge as well as create uneven power relations and starting points for communities.

Yet, analytical frameworks to evaluate and make inferences about provincial and regional policy with respect to Indigenous peoples are relatively limited. The few frameworks that do exist relating to the New Zealand planning context, primarily Berke et al. (2002) and Ericksen et al. (2004), tend to “simplify Indigenous recognition to a matter of accommodating greater numbers of Indigenous peoples in mainstream decision-making forums” (Barry & Porter, 2011, p. 172). While these authors focused on New Zealand’s environmental planning regime under RMA (1991), including analyzing a number of plans and policy statements in great detail along with their successes and failures, the actual questions and criteria that guided their analysis were too RMA-focused, making it difficult to transfer to a comparative study. Amongst the criteria used to evaluate plan quality in relation to Māori issues, primacy was given to analyzing how well plans implemented the mandate of the RMA (1991), including the clarity of interpretations of the principles of the Treaty, the identification of key issues, the fact base quality of the plan and its internal consistency, rather than focusing on the manifest and latent content of the actual policies and how they may create and sustain asymmetrical relations and further exclusion of Indigenous
communities from the planning process in their evaluation. Finally, the methods used, in particular postal questionnaires, and the attention on the effectiveness and outcomes of plans and policies, were beyond the scope and focus of this research. As a result, with limited studies regarding the content analysis of Crown and local government planning policies in relation to Indigenous peoples and no clear comparative framework for planning policy statements to replicate, the research had to engage in theory development (Yin, 2009). Informed by the ideas of our research team and relevant academic authors listed below, a four-tiered framework was developed as an iterative process to address this void in the literature.

Four-Tiered Framework
The framework consists of four elements – clarity, recognition, willingness and active reconciliation. Each element is discussed in detail below and accompanied by an individual table that outlines the questions and primary indicators that informed the policy analysis. There is also a brief discussion of the authors that broadly informed the foundations of corresponding questions and indicators. Grounding the analytical framework in existing literature was done to ensure the implications of this research would link to larger discussions of planning theory and practice. Additionally, this analytical framework is by no means complete and should be treated as a living document to learn and build from.

Clarity
Clarity, as the first element of framework, is intended to chart the position of individual policy statements within their respective planning frameworks and evaluate whether they vertically connect to higher-tier legislation and lower-tier plans, such as official plans in Southern Ontario and district plans in the Auckland Region (Appendix A). Drawing from Ericksen et al. (2004) and Berke et al. (2002), who used multiple methods to evaluate how well
regional and district plans as well as certain regional policy statements in New Zealand accounted for the mandate of the *RMA* (1991) and key provisions relating to Māori interests and the *Treaty*, the first question and set of primary indicators (table 2) were established to analyze what guidance is provided by higher-tier legislation for each policy statement. The second question and set of indicators (table 2) draws from the concepts of strategic planning and tiering (Healey, 2006; Noble, 2009; Williams, 1999) and are intended to identify if lower-tier planning authorities have to conform to policy statements through reviewing the terminology in key provisions of the *Planning Act* (1990) and the *RMA* (1991). While planning policy tends to be hierarchical, without the requirement of conformity in statutory legislation, the provisions of a policy statement relating to Indigenous issues may be considered by local government on a voluntary basis or simply, disregarded. This first element provides the basis for stronger insight into how planning policy frameworks, in particular higher-tier legislation, may “work to subvert Indigenous interests” by not providing clarity or conformity to policy statements that shape everyday planning practices and processes (Dorries, 2012, p. 43).

Table 2.
*Key Aspects of the Element Clarity in Reference to the Ontario Provincial Policy Statement & the Auckland Council Regional Policy Statement*

<table>
<thead>
<tr>
<th>Question</th>
<th>Primary Indicators</th>
</tr>
</thead>
<tbody>
<tr>
<td>Do higher-tier legislation provide a clear mandate on Indigenous issues and rights for the policy statement?</td>
<td><strong>Ontario PPS</strong>- within <em>Planning Act</em> (1990) reference to: Indigenous peoples (First Nations; Aboriginal peoples; Indian Band; First Nation Council); Aboriginal &amp; treaty rights (section 35 of the <em>Constitution Act</em>, 1982; specific treaties); Royal Proclamation of 1763</td>
</tr>
<tr>
<td>Do lower-tier planning authorities have to conform to the policy statement when making informed land use planning decisions?</td>
<td><strong>Ontario PPS</strong>- Terminology in section 3 of the <em>Planning Act</em> (1990)</td>
</tr>
<tr>
<td></td>
<td><strong>Auckland RPS</strong>- Terminology in section 59-62 of the <em>RMA</em> (1991)</td>
</tr>
</tbody>
</table>
Recognition

Recognition, the second element of the framework, is meant to focus the policy analysis on how state-based planning as mediated through texts extends horizontally outwards to the edges of planning to draw in Indigenous peoples’ rights, concerns, claims and knowledge that have historically been overlooked (Appendix A). The first question and set of indicators (table 3), influenced by Barry & Porter (2011) and Porter & Barry (2013), centre on identifying the highly circumscribed sites of recognition within each policy statement where Indigenous peoples, treaties, rights and traditional territories are brought forward. This aspect of analysis is a critical step in highlighting where and if there are any forms of recognition in these policy statements. The second question and set of indicators (table 3) then further examine the latent content of flagged sites of recognition to evaluate whether Indigenous peoples are framed by the discourse of policy statements as just another stakeholder (Healey, 1997) or as equal and active partners with equal footing in the planning process (RCAP, 1996a; Borrows, 1997b; Maaka & Fleras, 2005; Porter, 2006). This second tier of analysis regarding recognition is firmly rooted in the assumption that Indigenous peoples cannot be just another stakeholder because this form of recognition fails to appreciate Indigenous identities stemming from original occupancy and the right to self-determination and assumes that inclusion “is the key aspiration of Indigenous peoples” (Porter, 2006, p. 389; RCAP, 1996b). Understanding what forms recognition takes in policy statements gives further insight into how lower-tier planning authorities recognize and engage with Indigenous peoples and more generally, the continued existence of asymmetrical relations between dominant planning frameworks and Indigenous peoples (Hibbard et al. 2008).
Table 3. *Key Aspects of the Element Recognition in Reference to the Ontario Provincial Policy Statement & the Auckland Council Regional Policy Statement*

<table>
<thead>
<tr>
<th>Question</th>
<th>Primary Indicators</th>
</tr>
</thead>
<tbody>
<tr>
<td>What form does recognition of Indigenous peoples, treaties, rights and</td>
<td><strong>Ontario PPS</strong>- reference to:</td>
</tr>
<tr>
<td>traditional territories take within the policy statement?</td>
<td>1- Indigenous peoples (First Nations; Aboriginal Peoples; Indian Band; First Nation</td>
</tr>
<tr>
<td></td>
<td>Council);</td>
</tr>
<tr>
<td></td>
<td>2- Aboriginal &amp; treaty rights (section 35 of the Constitution Act, 1982; specific</td>
</tr>
<tr>
<td></td>
<td>treaties; Royal Proclamation of 1763)</td>
</tr>
<tr>
<td></td>
<td>3- traditional territories (traditional territories; sites of cultural significance</td>
</tr>
<tr>
<td></td>
<td>to individual nations)</td>
</tr>
<tr>
<td></td>
<td>4- Indigenous language, expressions, and ideas</td>
</tr>
<tr>
<td><strong>Auckland Region ACRPS</strong>- reference to:</td>
<td></td>
</tr>
<tr>
<td>1- Indigenous peoples (Māori; Indigenous peoples; Tangata Whenua; Mana</td>
<td></td>
</tr>
<tr>
<td>Whenua)</td>
<td></td>
</tr>
<tr>
<td>2- treaties &amp; rights (Treaty of Waitangi)</td>
<td></td>
</tr>
<tr>
<td>3- traditional territories (ancestral lands; ancestral taonga)</td>
<td></td>
</tr>
<tr>
<td>4- Indigenous language, expressions, and ideas</td>
<td></td>
</tr>
<tr>
<td>How are Indigenous peoples framed within planning processes based on</td>
<td><strong>Reference to Indigenous peoples as stakeholders in planning processes</strong></td>
</tr>
<tr>
<td>the textual evidence of the policy statement?</td>
<td></td>
</tr>
<tr>
<td></td>
<td>**Reference to Indigenous peoples as equal and active partners with equal footing in</td>
</tr>
<tr>
<td></td>
<td>planning processes</td>
</tr>
</tbody>
</table>

Willingness

When planning interacts with Indigenous peoples it does so on its own terms as legislation and policies that guide the practice and processes of planning are determined predominantly by non-Indigenous state-based officials (Barry & Porter, 2011; Porter, 2010). Willingness, the third element of the framework, goes beyond visible recognition of Indigenous peoples and concerns by planning frameworks and texts, including policy statements, and moves towards engagement and establishing connections with the edges of planning (Appendix A). By having policies focusing on consultation and accommodation, policy statements, similar to other planning texts, integrate Indigenous peoples, perspectives and concerns into the planning process as a set of ‘interests’ (Barry & Porter, 2011). Still, Indigenous peoples do not enter planning systems on equal terms, and consultation and accommodation policies may not
fundamentally change a community’s uneven starting point in the planning process (Hibbard et al. 2008). Thus, in certain instances different degrees of willingness within texts may not change the status quo significantly and improve Indigenous peoples’ ability to shape local decision-making (Dorries, 2012; Participant Four, personal communication, July 23, 2014). Grounded in the ideas of the previous manuscript, this element’s question and set of indicators (table 4) are intended to identify the degree of willingness of the Crown set out in each policy statement to honour past relations through evaluating whether there is indication of consultation, accommodation or consent with respect to Indigenous peoples.

Table 4.
Key Aspects of the Element Willingness in Reference to the Ontario Provincial Policy Statement & the Auckland Council Regional Policy Statement

<table>
<thead>
<tr>
<th>Question</th>
<th>Primary Indicators</th>
</tr>
</thead>
<tbody>
<tr>
<td>What is the degree of willingness of the Crown set out in each individual policy statement to honour past relations and acknowledge and engage with Indigenous peoples, perspectives and concerns?</td>
<td>Reference to consultation with respect to Indigenous peoples</td>
</tr>
<tr>
<td></td>
<td>Reference to accommodation with respect to Indigenous peoples</td>
</tr>
<tr>
<td></td>
<td>Reference to consent with respect to Indigenous peoples</td>
</tr>
</tbody>
</table>

Active Reconciliation

Active reconciliation, the final element of the framework seeks to comparatively analyze the four versions of the PPS and the ACRPS (1999). It is multifaceted and embodies a set of temporal connections to the past and future, which together have the potential to enable planning as a system of representation to become unsettled and transformed by acknowledging what has happened in the past, figuring out what is going to be done about it and then following through with action. This would enable the practice to move closer to towards spaces of common ground, where planning as a process becomes grounded in mutual understanding,
mutual learning and co-production of policies and plans between Indigenous and non-Indigenous peoples (Appendix A). For Hovey (2012) “meaningful reconciliation is about building trust, figuring out difference, and looking for ways to change the relationships of the past, so the lasting future relations are possible” (p. 23). Similarly, active reconciliation with respect to framework is not a passive act that is a means to an end as has been the case in Canada through formal apologies (Fairweather, 2006). Reconciliation has no end state as it is an active and genuine process to change and transform uneven planning relations through first acknowledging planning’s past and current role in injustices towards Indigenous peoples. Furthermore, reconciliation acknowledges the limits of planning frameworks that continue to be defined by dominant society, that Indigenous peoples have an inherent right to self-determination and that there is an imminent need for effective and sustained equitable relationship building to restore shared territories. While reconciliation is the responsibility of all of society to address denial and make fundamental changes and restitution (Corntassel & Holder, 2008; Regan, 2010), state-based planning also has a significant role to play in its advancement. With emphasis given the management and allocation of land and resources, the practice of planning can be transformative and “a key site for genuine recognition and restitution of an Indigenous land base and the socio-cultural and economic benefits with which that comes” (Porter & Barry, 2013, p.57). To be transformative, practitioners and the policies that shape the everyday practice, must first acknowledge the use of planning in the marginalization of Indigenous peoples and separation of communities from ancestral lands in order to establish new relationships and accountability.

The overarching question and four primary indicators (table 5) that inform this element of the analytical framework were chosen because they act as points of reference into how prepared governing officials and planning policymakers are in actively challenging and restructuring the
status quo of Indigenous peoples-state relations based on the content of planning texts. For example, the third indicator centred around analyzing if there was any acknowledgement of Indigenous peoples’ right to self-determination because this right is crucial to countering uneven structures and the legacy of colonialism (Corntassel & Holder, 2008; Dorries, 2012; Hibbard et al. 2008; Porter, 2010; Regan, 2010). Recognition of self-determination flowing from Indigenous nationhood and original occupancy of the land in planning texts could very likely fundamentally change the types of relationships unfolding on-the-ground between individuals and communities and would lead to meaningful processes of reconciliation (Dorries, 2012; Turner, 2006). Self-determination as part of active reconciliation is not a novel claim, it is ever present as it is “articulated in historical treaties, reinforced by constitutional rights, and now affirmed at the international level in the United Nations Declaration on the Rights of Indigenous Peoples” (Regan, 2010, p. 61). The four indicators provide insight into what may be missing from current planning policy and collectively draw on Barry & Porter (2011), Borrows (1997a), Borrows (1998b), Corntassel & Holder (2008), Hibbard et al. (2008), Maaka & Fleras (2005), Porter (2010), Porter (2006), the RCAP (1996a-c), Regan (2010), Sandercock (2004), Sandercock (1998), Turner (2006) and the UN Declaration on the Rights of Indigenous Peoples (2007). Active reconciliation along with the previous three elements, serve to advance discussions about how we can move from the conceptual to actual changes in order to plan differently through mutual understanding and learning between Indigenous and non-Indigenous peoples on common ground.
Table 5.
Key Aspects of the Element Active Reconciliation in Reference to the Ontario Provincial Policy Statement & the Auckland Council Regional Policy Statement

<table>
<thead>
<tr>
<th>Question</th>
<th>Primary Indicators</th>
</tr>
</thead>
</table>
| How does the policy statement reconcile both the limitations of state-based planning efforts with respect to Indigenous peoples and the opportunities to support and sustain relationships and mutual understanding amongst Indigenous and non-Indigenous peoples? | Acknowledgement of ‘planning’s complicity’ in historical and ongoing injustices towards Indigenous peoples, rights and traditional territories. [
|                                                                         | "Porter (2006, p. 393)                                                                                                                                 |
|                                                                         | Acknowledgement of the current limitations of planning in understanding Indigenous peoples’ rights, concerns, claims and knowledge and the need for Indigenous voices and partnerships to actively transform planning. |
|                                                                         | Acknowledgement of Indigenous peoples’ inherent right to self-determination.                                                                                                                     |
|                                                                         | Acknowledgement of the need for building effective and sustained equitable relationships between the Crown, Indigenous peoples and non-Indigenous communities on common ground.                   |

Results
This section is divided into three parts – previous versions of the Ontario PPS (1994; 1996; 2005), the current Ontario PPS (2014) and the ACRPS (1999). Keeping with the context of Indigenous peoples-state relations in Southern Ontario and the Auckland Region, findings from the analytical framework relating to the PPS refer to First Nations, while findings relating to the ACRPS refer to Māori people, iwi, Mana Whenua or Tangata Whenua. Certain terms will be used interchangeably. Similar to the previous manuscript, results and discussions surrounding the PPS and Ontario’s planning context focus on First Nations, rather than Aboriginal peoples (the term predominantly used in the PPS itself) because the primary interest of the partnership is to enhance provincial policies in order to improve dialogue and understanding between municipalities and First Nations and fundamentally address the fragmented nature of planning in the province towards First Nations.

The three previous versions of the Ontario PPS (the 1994 Comprehensive Set of Policy Statements, the 1996 PPS and the 2005 PPS) differed vastly in terms of content and policies, and
came into effect under three different provincial governments. Yet, they share one major commonality: there was no clear acknowledgment of First Nations or Aboriginal peoples in general in any of the three planning texts. The general finding are summarized below.

Clarity

First, the *Planning Act* (1990) did not provide a clear mandate on First Nations’ issues and rights for the three policy statements. While there was reference to First Nations in the preamble of the guiding legislation, the term was referenced twice throughout. Instead, First Nations were predominantly referenced using the term ‘public bodies’, which makes no clear distinct between First Nations and other stakeholders. There was also no recognition of section 35 of the *Constitution Act, 1982*. In terms of conformity, the only major difference to note was the change of subsection 3(5) of the *Planning Act* (1990) from planning authorities ‘shall be consistent with’ to ‘shall have regard to’ the PPS when exercising authority regarding a planning matter following the election of the Progressive Conservative government under Premier Mike Harris and the enactment of the 1996 PPS (Chipman, 2002; Johnston, 2007). The ‘shall be consistent with’ provision was later reinstated with the enactment of the 2005 PPS following the passing of the *Strong Communities (Planning Amendment) Act*, 2004 under the provincial Liberal government. This shift greatly improved the vertical integration planning policy in Ontario by requiring planning authorities to conform to the PPS and ensuring that it applied to the outcomes of all planning decisions.

Recognition

In all three policy statements, there was minimal recognition of First Nations, treaties, rights and traditional territories relating to matters of provincial significance. The nearest effort at directly
recognizing First Nations was in the 2005 PPS through use of ‘other public bodies and stakeholders’ in policy 4.10, as it could broadly read to include First Nations. Additionally, by outlining the need to conserve ‘significant cultural heritage landscapes’ in policy 2.6.1, it could be interpreted as sites of cultural significance to First Nations and other Aboriginal peoples. This provision and others relating to cultural heritage “if applied with appropriate sensitivity” could protect First Nation heritage from ongoing development (Johnston, 2007, p. 48). In general, prior to the 2014 PPS, with Aboriginal and treaty rights and Aboriginal peoples acknowledged in overarching federal and provincial policies, including the Canadian Charter of Rights and Freedom, and the Ontario Human Rights Code, it was expected that First Nations and inherent rights would by default already apply to these texts and land use decision-making in general. Yet, it is unrealistic to assume that all non-First Nation planning practitioners at the municipal-scale would actively seek out, read and apply these federal and provincial texts to everyday planning decisions in conjunction with the policy statement. Furthermore, this lack of recognition coupled with guiding legislation that frames First Nations as ‘public bodies’, resulted in First Nations being framed as just another stakeholder in local planning processes and decision-making. This lack of meaningful differentiation between First Nations and other stakeholders does little to advance First Nations rights and knowledge in the province and alter the status quo.

Willingness

Amongst the three policy statements, there was no clear evidence of policies, subsections or general wording that emphasize consultation, accommodation or consent with respect to First Nations. In the 1994 and 2005 PPS, under the Interpretation and Implementation section and in reference to the Ministry developing performance indicators, there was mention of the need to
consult the public and stakeholders. The use of these general terms could be liberally interpreted as an inclusion of First Nations, but without direct recognition there was not a strong willingness on the part of the province in these policy statements to promote understandings and engagement with First Nations, perspective and concerns.

Active Reconciliation

Based on the analysis of the latent content of each policy statement, there was no acknowledgement of planning’s role in ongoing injustices, the limitations of planning, First Nations’ inherent right to self-determination, and the need for building effective and sustained equitable relationships. Evidently, in spite of the fact that the province as it is today exists as a direct result of treaties and ongoing contributions of First Nations, active reconciliation and addressing the status quo may not have been the agenda of provincial officials during the time period of these initial policy statements. For instances, the Ministry of Aboriginal Affairs in Ontario only emerged two years after the enactment of 2005 PPS and as a direct result of the recommendations of Ipperwash Inquiry (2007) (DeVries, 2011). These earlier versions of the PPS and their inability to recognize and support First Nations give insight into where the PPS has come from and as such, heighten the significance of recent changes to it.


The current PPS, which came into effect in April 2014, is significantly different than its predecessors (Dorries, 2014; McLeod et al. 2014). For the first time, this direction-setting planning document for municipal and other lower-tier planning authorities recognizes First Nations, inherent Aboriginal and treaty rights protected under section 35 of the Constitution Act, 1982 and the importance of strengthening communication and coordination with neighbouring
First Nations (McLeod et al. 2014). A critical analysis of the content of the current 2014 PPS through the lens of the four-tiered framework is discussed below.

**Clarity**

The *Planning Act* (1990) in its most recent form does not provide a clear mandate on First Nation issues and rights as distinct communities continue to be framed as ‘public bodies’. There is also no mention of section 35 of the *Constitution Act, 1982*, which protects Aboriginal and treaty rights or a clear connection to the principles of *Royal Proclamation of 1763* in this guiding legislation. In terms of conformity, according to subsection 3(5) of the *Planning Act* (1990), planning authorities, including municipalities, a local board, a planning board and provincial ministers ‘shall be consistent with’ the current PPS when exercising their authority over a planning matter. This subsection requires that all official plans at the municipal-scale be in line with the current PPS (MAH, 2014a). However, the PPS is read in conjunction with provincial plans, and if there is a conflict, provincial plans take precedent unless otherwise stated in legislation (MAH, 2014a). For example, certain legislation, such as the *Green Energy Act* (2009), can also override the current PPS as well as provincial and official plans. Thus, conformity to the PPS through official plans in certain regions of Southern Ontario may not be as straightforward due to overarching and conflicting provincial plans and legislation. This reality highlights the importance of developing new provisions based on First Nations-led amendments in policies relating to the Southern Ontario context that may overwrite the PPS in certain situations.
Recognition

In contrast to the void of recognition of the three previous PPS, the current PPS (2014) addresses this element to a certain extent (table 6). First, there is direct recognition of First Nations through use of the broad term Aboriginal, which under the Constitution Act, 1982 refers to First Nations, Métis and Inuit collectively. The use of the term Aboriginal in conjunction with peoples and communities occurs in six instances, primarily around discussions and definitions around conserving cultural heritage and archeological resources. There is also recognition of existing Aboriginal and treaty rights in section 4.0 of the PPS regarding implementation and interpretation as it outlines that the 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” (MAH, 2014a, p. 33). By recognizing existing rights protected under section 35, the policy statement avoids previous uncertainties attached with placing the onus on practitioners to read the PPS in conjunction with overarching federal and provincial policies. This acknowledgement of section 35 in the PPS visibly brings Aboriginal and treaty rights to the forefront of Ontario’s planning framework.

Conversely, the content analysis also highlighted several gaps in recognition. For instance, specific treaties and individual agreements to Ontario between the Crown and First Nations as well as the principles of the Royal Proclamation of 1763 are not recognized. Most noticeably, there is no recognition of the land and traditional territories in the most recent policy statement. Traditional territories are cited in a complementary draft document for discussion purposes only that provides clarity into how the policy statement will impact Northern Ontario, but this document holds no statutory impact and does not reflect the context of Southern Ontario (MAH, 2014b). It would behoove the Province to recognize traditional territories and bring them to the
forefront of planning policies in Ontario because these lands are often at the centre of ongoing First Nation grievances and disputes over continued development on contested territories (Ipperwash Inquiry, 2007; DeVries, 2011; Dorries, 2014; Participant Four, personal communication, July 23, 2014). Furthermore, without recognition in the policy statement, it cannot be assumed that all non-Indigenous practitioners and municipal councils would factor traditional territories into daily decision-making. In particular, there remains a prevalent assumption amongst non-First Nation communities that provincial lands have been honourably settled and that First Nations do not have a continued interest or right to the land, especially in already developed areas (Participant Two, personal communication, June 12, 2014). These types of assumptions, reproduced in current planning policy, counter meaningful opportunities to educate practitioners and the public at large into the significance of differing and equally valid Indigenous perspectives. Lastly, based on the content of the PPS, First Nations continue to be framed as stakeholders in planning processes. The province is gradually recognizing that First Nations have political rights and interests and a significant role to play in province-led planning through stronger language and policies, but there continues to be a lack of recognition of territorial rights and interests beyond reserve boundaries.

Table 6.
*Key Areas of Change in the PPS (2014) with Respect to First Nations*

<table>
<thead>
<tr>
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</thead>
<tbody>
<tr>
<td>No reference</td>
<td>Part IV: Vision for Ontario’s Land Use Planning System</td>
</tr>
<tr>
<td></td>
<td>Part V: Policies – 1.2 Coordination – 1.2.2</td>
</tr>
<tr>
<td></td>
<td>Part V: Policies - 2.0 Wise Use and Management of Resources – 2.6</td>
</tr>
<tr>
<td></td>
<td>Cultural Heritage and Archeology- 2.6.5</td>
</tr>
<tr>
<td></td>
<td>Part V: Policies - 4.0 Implementation and Interpretation -4.3</td>
</tr>
<tr>
<td></td>
<td>Part V: Policies - 6.0 Definitions – Built Heritage resources</td>
</tr>
<tr>
<td></td>
<td>Part V: Policies - 6.0 Definitions – Cultural heritage landscape</td>
</tr>
</tbody>
</table>
Willingness

The importance of consulting First Nations “on planning matters that may affect their rights and interests” as outlined in Part IV’s vision statement signals a degree of willingness that was absent from previous policy statements (MAH, 2014a, p. 4). There are also new sections that emphasizes consultation through stating that planning authorities ‘shall consider’ Aboriginal interests in conserving cultural heritage and archeological resources (section 2.6.5) and ‘are encouraged’ to coordinate planning matters with Aboriginal communities (section 1.2.2) (MAH, 2014a). Despite the use of less firm language in the latter, the integration of these new section represents a step forward for land use planning policy in Ontario. While the word ‘accommodate’ is not cited in the latest PPS, the direct integration of section 35 of the Constitution Act, 1982 in section 4.3 can be interpreted as a form of accommodation with respect to First Nations. In order to ensure that the implementation of the PPS’ policies do not infringe on existing Aboriginal and treaty rights, consultation and accommodation would be required. Reference to consent with respect to First Nations remains non-existent in the entire PPS. Nevertheless, consent may already be part of the on-the-ground processes and relations between certain municipalities and neighbouring First Nations even if it is absent in the province’s minimum standards of the PPS. Based on where the provincial Crown’s willingness has come from recently it may only be a matter of time before the PPS recognizes consent as a matter of provincial interest that can enhance the planning practice and relationships across communities. The recent Tsilhqot’in Nation v. British Columbia [2014] ruling regarding Aboriginal title may lead to further changes in the PPS as the Supreme Court of Canada ruling holds major implications for unceded territories and requires the Crown to seek consent when Aboriginal title is involved.
Active Reconciliation

The four indicators for active reconciliation were either not apparent or minimally visible in the review of the latent content of the latest PPS. There is no connection made between land use planning policies and historical and ongoing injustices towards First Nations, Aboriginal and treaty rights and traditional territories. A simple reference to the findings of the Ipperwash Inquiry (2007) or the Royal Commission on Aboriginal Peoples (RCAP) (1996) would address this inherent gap in understanding. In terms of an acknowledgement of the limitations of planning, Section 1.2.2 under very liberal interpretations could be construed as recognition of this limit and the need to coordinate with First Nations, but it still gives authority and agency to planning authorities to decide if it should coordinate. There is also no recognition in the PPS of First Nations’ inherent right to self-determination. Lastly, the policies relating to First Nations collectively, particularly those focused enhancing dialogue and communication between First Nations and municipalities, could be viewed as a necessary step towards more tangible policies regarding building effective and sustained equitable relationships. In theory, having a palatable and explicit policy that advocates relationship building could promote active reconciliation to a greater degree at the community-scale by pressing municipalities and neighbouring First Nations to build (if they have not already done so) mutual understanding and learning. In turn, stronger relations may lead to plans, policies and decisions that reflect differing, yet equally valid views between communities.


The ACRPS (1999), which came into effect in August 1999, was implemented to promote the sustainable management of natural and physical resources in the Auckland Region (Auckland Council, 1999). Under the RMA (1991), each regional council is required to prepare a regional
policy statement, which reflects the regional context and identifies significant resource issues and policies to address their management. Considering the ‘effects-based’ planning framework in the Auckland Region, the structure, content and size of the ACRPS does differ relative to the PPS. The four-tiered framework provides insight into how the ACRPS as a broad territorial policy statement recognizes and supports Māori people. The findings from this final section of the policy analysis are vital to understanding the limits of the PPS and how it can continue to advance with respect to recognizing and supporting First Nations in Ontario.

**Clarity**

The *RMA* (1991) did provide a clear mandate on Māori issues and rights for Auckland Council in preparation of a regional policy statement. First, subsection 6(e), outlines that “the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, waahi tapu and taonga” is a matter of national significance and shall be recognized and provided for by all persons exercising functions and authority under the act (1991, p. 69). Second, in subsection 7(a), there is recognition of kaitiakitanga and accordingly, plans and policies must ‘have regard to’ the exercise of guardianship by local Māori people. Third, section 8 identifies that principles of the *Treaty* ‘shall be taken into account’. Although the act does not define what the principles are and the use of vague language may lead to “considerable potential for noncompliance” (Berke *et al.*, 2002, p. 118) with regional and district councils having the agency to define and integrate these principles, recognition of this foundational document in prominent legislation offers visibility and further validation.

In addition to these broad provisions that apply to all decisions and plans under the *RMA* (1991), there are also policies specific to regional policy statements. Subsection 61(2A) (a) outlines that
when a regional council is preparing or altering a regional policy statement they ‘must take into account’ any relevant iwi planning document if it is brought forward by a recognized iwi authority. Subsection 62(1) (b) then identifies that any regional policy statement ‘must state’ resource management issues of regional iwi authorities. In terms of conformity, according to subsection 67(3) (c) and 75(3) (c), lower-tier regional plans and district plans ‘must give effect’ to their respective regional policy statement. Regional policy statements do have their own constraints as they must not be inconsistent in their content with national policy statements and the New Zealand Coastal Policy Statement (NZCPS) according to subsection 62(3).

**Recognition**

There is significant and meaningful recognition of Māori peoples, the Treaty, rights and ancestral lands in the ACRPS. To begin, the first page of the policy statement starts with Māori proverb in both Māori and English. Following this, section 2.2 regarding the current context of the Auckland Region, acknowledges that the Māori were first occupants of the region and New Zealand. Subsections 2.4.8 and 2.4.9, outlines that in accordance with the RMA (1991) that the relationship of Māori with their ancestral lands and resources are matters of national significance and that Tangata Whenua are under significant pressure to protect and manage their ancestral taonga. This is largely due to, as the policy statement goes on to outline, rapid development in the region, which has effectively reduced access to and the state of traditional sites and lands. There is also an admission that the Treaty of Waitangi has been undervalued historically in the management of resources in the region within subsection 2.4.9. The highest frequency of recognition occurs in Chapter 3 as it is entirely dedicated to regional resource issues significant to local Māori peoples. It lists Māori groups that were consulted during the development of the ACRPS and summarizes major issues, objectives, policies, methods and justifications.
Regarding the recognition of the *Treaty of Waitangi*, Appendix E provides the three accepted versions of the *Treaty* (English text, Māori text, translation of Māori text) while the principles of the *Treaty* are referenced in several instances throughout the text. The actual principles are never defined in greater detail beyond these references. With respect to traditional territories, there are clear instances of recognition of ancestral lands and taonga, but they are typically referenced with section 6(e) of the *RMA* (1991) and directly paraphrased from the *RMA* (1991), which does not account for the context of the Auckland Region. Finally, with a high frequency of references to Māori people through use of a wide variety of English and Māori terms and a continued reference to the principles of the *Treaty*, that include (although do not directly mention) the recognized aspiration of two nations living together in partnership, the policy statement frames Māori people as not only First People, but distinct partners in the planning process. In addition, through recognizing the customary authority of Tangata Whenua over resource management, referencing the Māori term rangatiratanga, which can be interpreted broadly as the right to self-determination, and emphasizing the need to take into account iwi planning documents, the policies found in this planning text move away, to a certain degree, from the traditional stakeholder approach to embody a partnership approach. Whether the cumulative effects of these different forms of recognition in the ACRPS lead to better results for local Māori people is debatable, as planning in New Zealand is still dominated by non-Indigenous perspectives and it may be difficult for new types of relationships to be fully realized when iwi authorities may be “under-resourced” and local councillors who often have final say in planning matters may not be “ready to genuinely share power with iwi” (Ericksen *et al.* 2004, p. 131).
Willingness

The ACRPS emphasizes a relatively strong willingness to honour past relations through emphasizing consultation and accommodation with respect to Māori people in different policies, methods, reasons and anticipated results. The most apparent examples of a willingness to consult occur in specific policies and methods in Chapter 3. For instance, policy 3.4.7 identifies that the involvement of Tangata Whenua in the development, implementation or review of the ACRPS as well as regional and district plans “shall be undertaken in ways which […] (iv) provide for early and effective consultation” (Auckland Council, 1999, Ch. 3., p.3). To give effect to this policy, several methods are provided, including the requirement that the Auckland Council through consultation with local Tangata Whenua develop up-to-date consultation guidelines and checklists and ensure a directory of Māori organizations and representatives are available to assist government and third parties with consultations. The Auckland Council and territorial authorities are also required to encourage applicants to consult affected Māori groups prior to submitting resource consents. To ensure the recognition and protection of sacred places, sites and resources, where agreed upon by Tangata Whenua (policy 3.4.2), the Auckland Council and territorial authorities are required through consultation to identify sites in plans and provide appropriate levels of protection.

Under the framework of the ACRPS, regional and district plans ‘will make’ provisions to protect “sites and areas of special significance to Tangata Whenua” where such sites are recognized to exist based on Indigenous knowledge, but not identified in conventional planning maps or diagrams (Auckland Council, 1999, Ch. 3, p. 3). This form of accommodation gives agency to Māori people to shape the dominant state-based planning framework without having to conform to it to ensure their claims and knowledge are valid. Achieving this, in practice, may be difficult.
in the face of overwhelming and competing claims to land by non-Indigenous society. When granting resource consents under policy 3.4.7(v), the Auckland Council and territorial authorities ‘where relevant’ need to take into account iwi planning documents as part of the planning process. Policy 3.4.10 further highlights a degree of accommodation by stating that the management of resources ‘shall take into account’ relevant Treaty claims and customary rights of Māori people. Lastly, in keeping with policy 3.4.13 to promote the ‘practical expression’ of kaitiakitanga, the ethic of guardianship, the Auckland Council and territorial authorities must identify opportunities to include iwi authorities in the management of ancestral sites and resources, including the potential to transfer authority and functions. These features of the policy statement together embody a willingness to recognize and engage with Indigenous peoples, perspective and concerns. However, in approximately 168 instances of the use of word ‘consent’ there was no documentation of the term in relation to Māori people. This lack of consent regarding Māori indicates a notable limitation of the policy statement and planning in general in the Auckland Region, as it primarily focuses on increasing Indigenous participation without a significant willingness to give Māori people greater responsibility and influence as a means to address the underlying uneven structures of the planning framework.

Active Reconciliation

In contrast to the current PPS and its predecessors, the ACRPS does engage with certain aspects of active reconciliation. To begin, section 3.2.3 acknowledges to a certain extent planning’s involvement in historical and ongoing injustices towards Māori people (italicised for emphasis):

The management of natural and physical in the Region has not always been in accordance with the Treaty. Findings of the Waitangi Tribunal thus far demonstrate that Crown breaches of the Treaty in Auckland has resulted in:

- the alienation of land and other resources which were guaranteed to Tangata Whenua
- loss of the use and enjoyment of resources as a result of pollutive discharges to ancestral waters
Tangata Whenua hold that customary rights and responsibilities over their taonga have never been extinguished. Tangata Whenua have continually opposed Crown laws and actions seen to be in breach of the Treaty of Waitangi agreement which confirms and guarantees customary rights (See Appendix E for full text of the Treaty of Waitangi)

Tangata Whenua consider a significant resource management issue to be the Crown's exercise of presumptive ownership, management and control over ancestral taonga. In many instances the Crown has individualised title and granted use rights in respect of taonga (eg. minerals, water, and land) to individuals and organisations. The Crown receives income as a result of those actions.

Such matters cannot be remedied through resource management processes. However, it is important that decisions under the RM Act are made with an awareness of these issues where they exist. So far as possible, care should be taken not to prejudice relationships of the Tangata Whenua with ancestral taonga, nor to exacerbate matters which are the subject of Treaty claims. Tangata Whenua have high expectations that systems put in place under the RM Act will ensure that, as far as practicable, future grievances pertaining to the management of natural and physical resources will be avoided (Auckland Council, 1999, Ch. 3, p. 3).

This recognition of how Crown-led regulatory frameworks, including planning policies, have led to past and current injustices against Indigenous peoples is a critical first step amongst a series to begin to redress and heal relations. Planning's involvement in historical circumstances linked to the loss of land cannot be erased from public memory if it is to become transformed. The ACRPS also acknowledges the current limitations of planning and the need for Indigenous voices and partnerships as “only Tangata Whenua or their representatives have the right to determine matters of resource management significant to them” (Auckland Council, 1999, Ch. 3, p. 1). Section 3.2.2 then lists five general factors identified by Māori communities that have inhibited the realization of statutory provisions and their full participation in planning processes. These factors include: a general misunderstanding of Māori values and interests, a lack of awareness of the rights and responsibilities of Māori people defined by New Zealand legislation, limited resources, a lack of techniques to ensure early and effective involvement in planning processes and a lack of capacity on the part of communities in understanding local non-Indigenous governments and procedures (Auckland Council, 1999, Ch. 3, p. 3). Overall, the policy statement fared relatively well with respect to these two indicators.
The ACRPS’ approach to active reconciliation, however, becomes progressively vague and limited when the two final indicators are critically taken into consideration. First, recognition of self-determination is not clear or explicit within the latent content of the policy statement. Although there is reference of rangatiratanga, which has become synonymous with the Indigenous right to self-determination, it is defined with the policy statement as “full tribal authority”, which can be understood as local Indigenous organizations that have been given certain authorities over the management of resources and delivery of services by the state following New Zealand’s major period of decentralization (Auckland Council, 1999, App. D, p.12). This narrow interpretation juxtaposes others that exist. For Maaka & Fleras (2005), rangatiratanga “constitutes a collective and inherent authority that justifies Māori claims to Māori models of self-determining autonomy over culture and identity, development of land and resources […] and a commitment to autonomy in partnership with the Crown” (p. 102). It challenges absolute claims of the Crown to authority and sovereignty by recognizing Māori as a founding partner (Maaka & Fleras, 2005). Thus, the policy statement frames Māori as partners with partial authority over certain management practices, but not as partners with equally valid claims, contributions and autonomy. Full recognition of self-determination may threaten the status quo and unquestioned normative nature of the dominant land use planning framework, and as a result, the policy statement approaches the term cautiously (Maaka & Fleras, 2005). The fourth indicator, an acknowledgement of the need for building effective and sustained equitable relationships, is partially recognized in the latent content of the policy statement through the emphasis on strengthen ties with Māori people and authority in different sections. Specifically, policies regarding the potential transfer of authority to Māori organization or iwi authorities could be interpreted as recognition of this need, but this transfer still occurs on planning’s own
terms and in the face of pressures from dominant non-Indigenous society, which may make lasting just relations and planning outcomes that reflect equal contributions from Māori and non-Māori peoples a distant aspiration. These last two aspects of active reconciliation highlight the limits of this policy statement in its own ability to support a fundamental shift towards common ground (Appendix A).

**Discussion**

*Where is the Province with respect to First Nations and planning policy?*

Based on the analysis, the Province of Ontario has made significant advances with respect to recognition and support of First Nations in the most recent PPS. The content of 2014 PPS signals a long-awaited change in approach towards recognition and support of First Nations’ rights and interests in provincial land use planning policy. Prior to the recent 2014 PPS there was minimal direction on municipal-First Nation relations beyond the Ministry of Municipal Affairs and Housing briefing note *Municipal-Aboriginal Relationships: Case Studies* (2009), which outlined the relevance of relationships, Aboriginal and treaty rights, several case studies and the lessons learned. Yet, this document was meant for discussion purposes only and had no legislative impact.

With respect to changes in the PPS relating to First Nations, one of the most significant changes has been the integration of First Nations within policies and definitions of conserving cultural heritage and archeological resources. In particular, the use of ‘shall’ in section 2.6.5 demonstrates that the province is willing to engage with a critical issue in Southern Ontario for First Nations and ensure that community concerns are part of the planning process. Recognition of section 35 of the *Constitution Act, 1982*, which reaffirms and protects Aboriginal and treaty rights, was also significant. This direct connection to section 35 in the policy statement brings
existing Aboriginal and treaty rights to the forefront of local municipal planning and decision-making and into the conscience of practitioners when implementing higher policy directives (Participant One, personal communication, June 12, 2014). Other major legislation in Ontario’s planning policy framework, including the Planning Act (1990), the Places to Grow Act (2005), the Greenbelt Plan (2005), the Oak Ridges Moraine Conservation Plan (2002) and the Growth Plan for the Greater Golden Horseshoe (2006) lack parallel forms of direct recognition of Aboriginal and treaty rights. Thus, the 2014 PPS may act as a point of reference for further amendments to address the extensive gaps in recognition and understanding of First Nations in the province.

The recent changes to PPS can be seen as part of a larger movement towards recognition of First Nations, and the duty to consult and accommodate in good faith in Ontario’s policy framework that has emerged because of several external events and factors. Nationally, the Supreme Court of Canada’s trilogy in 2004 and 2005 brought clarity to Crown’s duty to consult and accommodate and its fiduciary obligations to First Nations (Newman, 2009). Provincially, the release of the findings and recommendations of the Ipperwash Inquiry in 2007, nearly nine years after the Dudley George was killed by provincial police in Ipperwash Provincial Park, broadened the province’s understanding. Justice Linden in his comprehensive report identified that certain conflicts caused by traditional land use planning can be avoided if “First Nations are actively and meaningfully involved in the planning or development process” (Ipperwash Inquiry, 2007b, p. 136). This larger movement can also be attributed to the province’s continued interest in resource development on traditional territories of First Nations in Northern Ontario (Participant Two, personal communication, June 12, 2014). Locally, the efforts of First Nation leaders and
practitioners and human rights organizations to advocate for meaningful changes to provincial policy have also assisted in this shift.

Yet, Ontario’s current approach is limited and limiting. Taking into account the manifest and latent content of the 2014 PPS and the *Planning Act* (1990), it is clear that provincial officials are still wrestling with how to recognize and engage with First Nations in planning policy, rather than focusing on actively addressing larger structural issues of clarity in higher-tier legislation and exploring how to integrate forms of active reconciliation in provincial policy. The *Planning Act* (1990), the PPS’ overarching legislation, whether intentional or not, continues to advance the notion that First Nations are just another stakeholder and fails to provide a clear mandate on First Nations, Aboriginal and treaty rights and traditional territories (Participant Three, personal communication, June 13, 2014). Read in conjunction with section 3(9)7 of the Ontario Regulation 200/96, which outlines the requirement to give notice of a hearing for a minor variance to the Chief of every First Nation council, if the community’s reserve is within one kilometre of the subject land, one could argue that the *Planning Act* (1990) also advances the assumption that First Nation lands, interests and rights end at the boundaries of a reserve. Sustained and equitable relations may be a distant and ambitious aim when most municipalities, based on the planning mandate provided by the province, may assume that First Nations’ interests exist within the confines of reserve boundaries. For example, municipalities may not be fully aware of the overlap between traditional territories and municipal areas. Adding to this, there is still a need to integrate more explicit forms of active reconciliation in Ontario’s PPS.

Recommending fundamental changes to the *Planning Act* (1990) and provincial-led planning policy more broadly, with respect to First Nations are not novel ideas in Ontario. As outlined by
the Sewell Commission on Planning and Development Reform in Ontario (1993), “the Planning Act and other legislation should provide opportunities for municipalities to work together with Aboriginal communities in addressing planning and development questions” (p.58). The province’s current top-down policy-led approach still mirrors that of the early 1990s to a certain degree as planning is still largely defined by non-Indigenous individuals and institutions and the majority of Sewell’s innovative ideas and recommendations tied to planning and First Nations were not implemented (Dorries, 2014). Ultimately, the recent changes to the PPS should be applauded, but relative to the Aotearoa New Zealand planning context and the content of the ACRPS (1999), there are further changes to policies, perspectives and approaches required if mutual beneficial relations between communities are to become the cornerstone of the province’s planning approach.

**What can be learned from the ACRPS and the Aotearoa New Zealand planning context?**

While the ACRPS (1999) represents only one regional policy statement under the RMA (1991) and it has inherent limitations regarding implementation similar to other New Zealand regional policy statements (Ericksen *et al.* 2004), relative to the PPS (2014) it is considerably more progressive with respect to recognizing and supporting Indigenous peoples in the planning process. Through addressing clarity, recognition, willingness and to a certain degree active reconciliation, the ACRPS (1999) points to several important lessons. A major reason for its relative strength as a policy statements stems from clarity and the impressive mandate on Māori people and rights provided by its higher-tier, the RMA (1991) through sections 6(e), 7(a) and 8 (Awatere *et al.* 2013). In Aotearoa New Zealand, this recognition of Māori in planning legislation can be traced back to major revisions in 1977 to the TCPA with recognition of the relationship between Māori people and culture and their ancestral lands and resources as matter
of national significance (Awatere et al. 2005; Memon, 1991). This shift can be attributed in part to the creation of the Waitangi Tribunal in 1975, a formal mechanism to address historical grievances of Māori people (Awatere et al. 2013). Prior to the 1977, there was no mention of Māori people in the first TCPA of 1926 and slight recognition in the TCPA of 1953, but in “a very detrimental manner [as] it prevented building on land that remained in Māori title” (Kennedy, 2008, p.7). This slight recognition in 1953 led to the alienation of land and major migrations of Māori into cities, impacting Māori culture negatively (Kennedy, 2008). Thus, relative to Ontario, the Aotearoa New Zealand planning context in general has had a longer evolving and advanced history with respect to the integration of Māori rights and knowledge (Awatere et al. 2013).

Another major lesson from the ACRPS (1999) relates to the multiple forms recognition of Indigenous peoples in the policy statement. Not only is there recognition of Māori people through the interchangeable use of English and Indigenous terms, but there is recognition of rights, the Treaty and ancestral lands. The use of Indigenous terms, although often a source of contention as complex terms can be simplified or misappropriated through English translation (Awatere et al. 2013), is highly noteworthy because it is a clear instance in policy of Indigenous peoples drawing on their own traditions, cultures and words to define their communities and central government supporting these differing forms of recognition. Likewise recognition of principles of the Treaty in the policy statement that comprise of “partnership; reciprocity; mutual benefit; active protection; and redress” is critical because it forces local authorities to build an awareness of their implications at the local-scale and to act honourably and in good faith with Māori communities and authorities (Kennedy, 2008, p. 8). Direct recognition assists in the development of a greater awareness amongst the public at large of diverging histories and
understandings and the importance of these differences to fostering and sustaining mutually
beneficial treaty relations. While planning tends to be forward-thinking in the management of
land and resources, it is vital to understand its colonial past in order to situate the practice in its
cultural context (Porter, 2006).

With limits to the ACRPS (1999), a brief exploration of the draft PAUP (2013) can provide
further insight and ideas to draw on. In Part 1 Chapter B, relating to issues of significance to
Manu Whenua, section 5.1, which focuses on treaty partnerships and participation, outlines eight
treaty principles that must be recognized and provided for and acknowledges the right to Tino
Rangatiratanga in resource management processes and decisions among other objectives
(Auckland Council, 2013). This emphasis on self-determination in the manifest content of this
section can be interpreted as a clearer means than its predecessor to promote a balanced planning
approach between equal partners. Specific policies that follow emphasize partnership and co-
management agreements as well as transfer of authority and power over to Māori and iwi
authorities illustrate the Auckland Council is taking Indigenous involvement seriously and
pushing towards a more just and equitable planning model (Auckland Council, 2013). Furtherrmore, under methods there is recognition of specific advocacy and education methods
tied to consultation and accommodation including the development of toolkits for both Māori
and non-Māori individuals in planning process. There are also provisions relating to funding and
assistance that indicates “advice, information and funding for Mana Whenua when resource
management information and advice is sought by the council” to ensure sustained capacity and
relationship building (Auckland Council, 2013, Ch. B5, p. 4). Additionally, contrasting the
ACRPS (1999), the PAUP (2013) utilizes the term Mataawaka, which refers to Māori who live
in Auckland and are not part of a Mana Whenua group, and then outlines additional provisions to
ensure their rights and concerns are recognized in the planning process (Auckland Council, 2013). With high proportions of Aboriginal peoples living off-reserve in Ontario, the province could learn this innovative aspect of the PAUP (2013) to provide policy direction and resources through the PPS to ensure urban Aboriginal peoples, can effectively maintain their connection to culture and traditional territories in urban settings.

Further, section 5.4 of the PAUP (2013) may be of particular interest to the Southern Ontario planning context and policy directives on the protection of cultural heritage and archeological resources, as it prioritizes the protection of recognized sites, cultural landscapes and unidentified sites. Within the list of policies, it emphasizes that Māori people should be recognized as “specialists in determining their values and association with their cultural heritage”, that some information regarding heritage resources may be too sensitive to make public in plans and that methods, systems and protocols for documenting, managing and protecting Māori cultural heritage should be co-produced with Mana Whenua (Auckland Council, 2013, Ch. B5, p. 12).

Although the examples previously discussed represent a fraction of policies found in the 2013 PAUP’s regional policy statement chapter, they are compelling highlights of the progressive approach being taken by the Auckland Region and points of reference that the Province of Ontario can learn from when amending current planning policies in partnership with First Nations and other Aboriginal peoples.

Overall, policy statements, as is the case in Aotearoa New Zealand, can serve a critical educational function to enable practitioners to be more self-reflective and aware of the uneven starting points of the planning process for Indigenous peoples. They can also foster greater awareness and understanding of Indigenous rights and knowledge amongst the public at large.
Making clear connections to past and current injustices associated with the loss of land, highlighting the importance of treaty relations and identifying the limitations of current planning strategies and the need for Indigenous involvement are all aspects found in the ACRPS (1999), but are relatively absent from the latest PPS (2014). The Auckland Council and its regional policy statement are not perfect, but they are flexible and progressive in their approach and content of their planning policies. While Māori rights and knowledge have been recognized in planning legislation since the late 1970s in Aotearoa New Zealand, Ontario has only recently begun to directly integrate recognized and affirmed rights under section 35 of the Constitution Act, 1982. The Province has a responsibility to all Ontarians to be innovative and fundamentally to redress the current the status quo of provincial planning policy with respect to First Nations. The following section provides a series of concise recommendations to further enhance the PPS (2014).

**Recommendations for Further Changes**

Ontario needs to actively reconfigure its planning policy framework to support more just and effective planning practices. Doing so, could enhance awareness of the majority of non-Indigenous planning practitioners who may remain largely unaware of the foundations and continued relevance of treaty relations to the success of the province. Further changes could also create new opportunities for non-Indigenous communities to learn from and work together with Indigenous treaty partners. The continued distant and inactive approach of the federal government in Aboriginal affairs in Ontario coupled with the reality that the province is home to the largest Indigenous population in the country places additional significance on this need to act promptly (Ipperwash Inquiry, 2007). Based on the findings of this comparative, the following twelve recommendations would further enhance the current PPS (2014) and planning in Ontario:
**Clarity**

*Recommendation One:* The provincial government should actively seek out First Nations’ participation and involvement to amend the *Planning Act* (1990) to address the lack of a clear and meaningful mandate on First Nations issues and rights and promote context-specific accords between First Nations and municipal planning authorities where municipalities and traditional territories overlap.

*Recommendation Two:* The provincial government should prioritize relationship building by providing joint operational capacity funding to sustain long-term partnerships between First Nations and adjacent municipalities interested in strengthening mutual understanding and learning across communities.

**Recognition**

*Recommendation Three:* The provincial government in partnership with First Nations should expand recognition in the PPS to include policies that acknowledge traditional territories and First Nation peoples continued vested interest in lands outside of reserve boundaries.

*Recommendation Four:* The provincial government should alter the PPS and other aspects of its larger planning policy hierarchy to recognize First Nations as foundational partners in the province, not just another stakeholder.

*Recommendation Five:* The provincial government in partnership with First Nations should actively explore the opportunities to include Indigenous terms, language and knowledge into the PPS to ensure that it reflects the shared foundations of the province.

*Recommendation Six:* The provincial government in partnership with First Nations should provide for and support the protection of cultural heritage and archeological resources in the PPS that are known to exist, but may be too sensitive to identify and make public through official plans and other conventional planning means.

**Willingness**

*Recommendation Seven:* The provincial government in partnership with First Nations and municipalities should develop specific guidance material for the PPS relating to the need for effective communication and equitable relationship building to address issues of capacities and understanding between municipalities and First Nations. This would be in line with the content and directive provided on guidance material in the PPS.

*Recommendation Eight:* Taking into consideration the findings of the recent *Tsilhqot’in Nation v. British Columbia* [2014] Supreme Court of Canada ruling, the provincial government should be prepared to recognize Aboriginal title and amend the PPS or release additional guidance material to provide clarity on how this may affect planning with respect to consent in certain areas of the province subject to land claims and unceded territories.
Active Reconciliation

Recommendation Nine: The provincial government should actively incorporate findings of the Ipperwash Inquiry (2007), the RCAP (1996) and ongoing land claims into the PPS in order to directly acknowledge planning’s complicity and inherent limitations.

Recommendation Ten: The provincial government should earnestly explore co-management strategies between First Nations and municipalities as a means of bridging relations, trust and understanding between communities and make co-management a priority in the next 5-year review of the PPS.

Recommendation Eleven: The federal and provincial government should commit sufficient funds to work with First Nations, university planning programs and professional organizations to develop region-specific guidance material and educational programs for planning practitioners. These types of initiatives would ensure that practitioners under the guidance of the province are fully aware and cognizant the importance of First Nations’ rights, concerns and knowledge and mutually beneficial relations. It would also provide a space to discuss specific treaties and obligations, histories and land claims that have influenced that nature of relations in different regions.

Recommendation Twelve: The provincial government in partnership with First Nations should actively educate all Ontarians on the importance of treaty relations, the shared nature and history of the territory, and the inherent Indigenous foundations of the land that make up the municipalities that Ontarians work, reside and derive benefit from. This would greatly assist in addressing misunderstandings and fractured relations, and enhance the overall impact and reach of new policies in the PPS relating to municipal-First Nation relations.

What Will It Take to Get to Common Ground?

Planning can be a transformative force in addressing inherent asymmetrical Indigenous peoples-state relations, but it does not always lead to more just outcomes for Indigenous peoples (Hibbard et al. 2008). As previously mentioned rational-comprehensive planning processes in Canada, Aotearoa New Zealand and elsewhere continue to misunderstand and marginalize Indigenous peoples’ concerns and knowledge (Hibbard et al. 2008; Porter, 2010). The emergence of the communicative turn and an emphasis on collaboration and more inclusive ‘bottom-up’ approaches have also been limited in their efforts to understand and account for Indigenous peoples and in certain instances have proven “shallow and pernicious” (Lane & Corbett, 2005, p. 155). Some community-based approaches ignore local power relations that magnify inequalities for Indigenous communities and it blindly assumes collaborative models are
more just (Lane & Corbett, 2005). Further, academics and practitioners alike consistently forget to theorise planning’s own cultural context and critically examine why certain planning techniques and knowledge are valued over others (Porter, 2010). This is critical because at its roots “planning’s own genealogy is colonial and its work a fundamental activity to the ongoing colonial settlement of territory” (Porter, 2006, p. 391). Accordingly, the theoretical concept of common ground was developed to allow us to comprehend where conventional state-based planning is and where it could be in Ontario, Canada (Appendix A).

To one side of the diagram, conventional-state based planning exists in its current form as a relatively closed-system with a high degree of clarity internally between guiding provincial legislation down to official plans. Nation-to-nation foundational agreements and more contemporary international texts exist just above, but there are minimal connections to these because they exist outside the perceived boundaries of state-based planning. With respect to the Royal Proclamation of 1763, by minimally connecting to the wording rather than principles of this founding document, planning arguably reinforces narrow “colonial interpretations” and unilateral claims to sovereignty by the Crown and overlooks Indigenous interpretations and the document in relation others as well as oral agreements (Borrows, 1997b, p. 170). Outside of planning’s closed-system along the edges, is where Indigenous peoples’ rights, concerns, claims and knowledge situate. This visible separation between state-based planning and the edges of planning is largely as a result of the continued colonial processes and mindsets that inform planning policies and practice. Specific to Ontario and elsewhere in Canada, the Indian Act and preconceived perceptions about it reinforce this division (Borrows, 1997a) and shapes the uneven relations and understandings that emerge when conventional state-based planning extends horizontally outwards in order to recognize and engage with Indigenous peoples and
knowledge through consultation and accommodation. The types of relations and outcomes that unfold predominantly occur on planning’s own terms and not on common ground. This is not to claim that state-based planning has not resulted in favourable outcomes for Indigenous peoples, but it is to suggest that the current planning system and by extension dominant society have greater agency in shaping land use and resource management planning decisions that affect the traditional territories and livelihoods of Indigenous peoples. Coupled with the primacy given to the *Indian Act*, that “casts long, dark shadows across First Nations’ governmental powers”-asymmetrical and fragmented colonial relations remain (Borrows, 1997a, p. 419).

On the other side of the diagram, the process of active reconciliation and other efforts unsettles and transforms the boundary between planning and its edges as Indigenous peoples’ rights, concerns, claims and knowledge are equally situated with non-Indigenous society and the Crown in spaces of common ground. Indigenous peoples are no longer stakeholders in a planning system defined by dominant society, but are partners in a more equitable and just planning system, reflecting a shared territory. The lines of clarity firmly extend vertically to the principles of foundational documents and agreements, and international texts, including the principles of the *Royal Proclamation of 1763* in relation to the Two Row Wampum and the subsequent Treaty of Niagara, 1764 (Borrows, 1997b). Most notably, with stronger connections to the principles of the Two Row Wampum, planning relations and understandings that unfold in the spaces between planning authorities and Indigenous communities embody “the foundation-building principles of peace, friendship and respect between the two parties” (Borrows, 1997b, p. 165). This also reaffirms the right to self-determination of Indigenous peoples and brings forward the idea of mutual non-interference (Borrows, 1997b).
Renewing a connection to the principles of the Two Row Wampum through planning does not mean consensus will always be achieved, but land use and resource management decisions will be closer than before to a shared space of mutual understanding, mutual learning and co-production. The practice of planning itself will recognize the unique status of Indigenous peoples as well as the inherent rights that flow from nationhood and original occupancy (RCAP, 1996a; Porter, 2006; Turner, 2006). In contrast to the domination of Indigenous knowledge and sovereignty claims by non-Indigenous knowledge and claims due to the relatively closed and uneven nature of state-based planning and its unquestioned colonial roots (Porter, 2006), a return to the principles of the Two Row Wampum would allow communities to respect and learn from each other and rely on each other in times of need through a commitment to mutually beneficial relations and shared responsibilities, particularly with respect to planning. Additionally, within traditional territories, there will be a movement away from the perception that municipalities do not have to engage directly with First Nations because of different jurisdictions and the specter of the Indian Act to more cooperative approaches where these concerns take a back seat. This would enable Indigenous communities to move the forefront of planning decision-making and actively participate in defining what is best for their people and traditional territories. Thus, common ground can be understood as a dynamic process and not an end state. Illustrated as a circle, it is relational and meant as a process of renewal to remove barriers and outdated assumptions that inform planning and to consequently bridge divides between Indigenous and non-Indigenous communities, particularly municipalities and First Nations. It does not exist as a binary opposite of conventional planning because it can emerge within state-based planning policies, perspectives and people.
Conclusion

The analytical framework and ideas presented in this article are by no means a concluded story. They are meant as learning tools for practitioners at the municipal-scale, who may not be fully aware of the uneven nature of planning frameworks and how ways of knowing are highly-circumscribed with respect to Indigenous peoples through use of planning texts, to critically reflect on the types of relations that are and could be taking place (Barry & Porter, 2011). They also highlight similar tensions to those identified by Porter & Barry (2013) that occur within planning systems, both textually and on-the-ground, as there is an ongoing fluctuation between “the recognition of Indigenous rights and title and a desire to uphold established planning norms” (p. 55). The Province of Ontario has made significant advances relative to previous versions of the PPS with regards to recognizing and supporting First Nations, but relative to the Auckland Region and Aotearoa New Zealand planning context these changes are modest and remains distant from spaces of common ground. With jurisdictional issues and general confusions attributed to the division of Crown responsibilities between the federal and provincial government in Canada, it is easy enough for some to argue common ground similar to reconciliation is not the responsibility of municipalities or local practitioners as they are not the Crown. However, this narrow and often default legal position ignores the responsibility of all treaty people to acknowledge the inherent Indigenous foundations of the land that make up the communities they work, reside and derive benefit from. It also overlooks the fundamental fact that getting to common ground requires cultural changes, including a willingness on the part of non-Indigenous people to break with embedded cultural assumptions and ways of doing to garner greater public awareness of Indigenous peoples’ continued interest in the land and to ensure Indigenous peoples can actively define a shared planning approach on their own terms. Changing public perspectives will be critical to this process, and planning policies, including the
PPS, can serve as a vital and transformative role in ensuring more equitable planning futures in the province. All things considered, it may not be about establishing, but rather returning to common ground as first embodied in the Two Row Wampum.
Chapter 5. General Discussion

This chapter presents a summary of the key findings from the two manuscripts, discusses the relationship between the two with respect to the research questions and concludes by providing insight on the contributions to planning theory and practice.

Key Findings

Finding Common Ground

The main aim of first manuscript in Chapter 3 was to develop an overall baseline on land use and resource management policies in the province of Ontario, Canada and their relative capacity at recognizing First Nations and Aboriginal and treaty rights, and embodying past Crown-First Nations relationships. The manifest and latent content of 337 provincial texts were analyzed following the development of an analytical framework and individual texts were assigned a relative classification. In total, 13 planning documents were classified as significant and the most progressive, as each directly recognized First Nations, acknowledged Aboriginal and treaty rights in their manifest content and encompassed two or more concepts of honouring past-Crown First Nations relations. The only two pieces of legislation to receive this classification were the Mining Act (1990) and the Far North (2010). The remaining 324 texts either took a fragmented approach under the designation of moderate or had no intersection at all with First Nations under the classification of minimal. In particular, the Growth Plan for the Greater Golden Horseshoe (2006), the Niagara Escarpment Plan (2005), the Public Lands Act (1990), and the majority of the 269 regulations examined were classified as minimal. The results are indicative of a continued northern-focus with respect to First Nations in provincial policies and a failure to come to terms with how policies and plans in Southern Ontario can effectively recognize and support First Nations’ rights and continued interests in land, particularly with respect to
traditional territories that overlap built-up areas. Recent changes to the PPS (2014) with its classification as significant may be signaling an attempt to address this inherent limitation. Additionally, while the manuscript highlights areas of improvement for further amendments, from a theoretical standpoint it reveals that Ontario has deviated far from past Crown-First Nations relations and remains caught in a policy gridlock. It also highlights how the term ‘consent’ tends to be highly polarizing in policy and political discussions and why a shift in focus towards the ‘spirit of consent’ may lead to more equitable planning processes. In turn, the manuscript proposes a return to the types of relations first embodied by the Two Row Wampum to develop spaces of common ground and ensure equitable and constructive relationships between First Nations and municipalities are prioritized and become the standard, rather than the exception. Amending strategic provincial policies and plans serves an important function in enhancing recognition and support of First Nations and more just and equitable planning futures.

**Getting to Common Ground**

With a baseline developed in the previous manuscript, Chapter 4 and the second manuscript engaged in a comparative study to put the PPS (2014) and its relative classification as significant into perspective. Drawing from the planning context of a similar British settler state, Aotearoa New Zealand, an innovative four-tiered analytical framework, including the elements of clarity, recognition, willingness and active reconciliation was established and applied to explore individual policy statements’ manifest and latent content with respect to Indigenous peoples. First, the framework compared the latest PPS (2014) in relation to its three predecessors to understand where the PPS has come from. Following this, it compared the PPS (2014) to the ACRPS (1999) from the Auckland Region to understand where the PPS is and how it could be further enhanced. Based on the analysis between the four versions of the PPS, the Province of
Ontario has made significant advances with respect to recognition and support of First Nations in the most recent PPS (2014). However, when critically examined relative to the content of the ACRPS (1999), recent changes were modest. This reality can largely be attributed to the lack of clarity provided by the Planning Act (1990) for the PPS on First Nations and evidence of attempts to integrate aspects of active reconciliation into the PPS being non-existent. A series of twelve recommendations were provided that have the potential to enhance the current PPS (2014) and the theoretical concept of common ground was reflected upon in greater detail and through use of a diagram (Appendix A). The manuscript concludes by proposing that it is not about getting to common ground, but rather returning to it. To do so, will require larger cultural changes to dominant society and a fundamental recognition that all treaty people, both First Nations and non-First Nations, have a responsibility to change the course we are on, address denial, and rebuild lost relations and understandings. Further, with respect to planning, asymmetrical and colonial relations, whether apparent or not to practitioners, exist within the practice and further amendments to planning policies can catalyze additional changes within communities, organizations and individuals to break with these deeply held and deeply troublesome understandings that inform the everyday practice.

**The Relationship between Manuscripts**

Although the manuscripts differ with respect to scope and structure, and they rely on two different analytical frameworks, they are intrinsically related. Together they addressed the following research questions outlined in Chapter 1:

1. How have land use and resource management legislation and policies in Ontario recognized and supported First Nations’ rights and notions of honouring past Crown-First Nation relationships?
2. How are First Nations recognized and supported in the current and past versions of the Provincial Policy Statement in the province of Ontario?

3. How can top-down territorial planning policies in Ontario take a fundamental shift towards promoting new types of relationships and mutual understanding between municipalities and Indigenous peoples by learning from the Aotearoa New Zealand planning context?

The first manuscript in Chapter 3 effectively addressed question one, while the second manuscript in Chapter 4 addressed questions two and three. The thesis was structured in this manner to first provide a comprehensive and critical overview of the current state of land use and resource management policies in the province of Ontario and then provide detailed insight into the content of a relatively significant policy with the respect to First Nations by comparing it to the planning policy elsewhere. Thus, the thesis was meant to be both critical and forward-looking. These manuscripts together have advanced concept of spaces of common ground as well as other contributions to planning theory and practice, which the discussion now turns to.

**Contributions to Planning Practice and Theory**

Recognizing that municipalities are ‘creatures of the province’, this thesis examined the higher level provincial policies that shape the on-the-ground relations occurring at the municipal-scale both in Ontario and Aotearoa New Zealand in order to provide recommendations for how fundamental changes to guiding planning policies can improve the daily interactions and efforts of local municipal planners and First Nations. In turn, this research is both timely and integral to the future of planning as a profession both in Ontario and across the country as “little research has been done in Canada to improve the municipal-Aboriginal urban interface” (Walker, 2008, p. 24).

For the planning profession this thesis contributes to the field in a number of meaningful ways. First, for planners at the municipal-scale with limited knowledge of Crown-First Nations
relations and emerging legal concepts, such as the duty to consult, this research offers integral insight into what these concepts mean and how they are rapidly evolving. With municipal activities often triggering federal or provincial involvement, the duty to consult and First Nation participation in planning processes may increasingly become a matter that municipalities have to grapple with. Second, with many First Nations’ traditional territories overlapping major urbanized areas, planners and First Nations alike need to understand what guiding policies say and why they need greater clarity from the province on both First Nations’ continued interest in the land and the how to build opportunities to sustain constructive relations. Third, this type of research has the potential to assist individual planning practitioners in redefining the limits of municipal-First Nation interaction. Increasingly, municipal planners are becoming more aware of the role they have to play and the mutual benefits that come with developing stronger municipal-First Nation relationships. The Aotearoa New Zealand example of the ACRPS (1999) in Chapter 4 illustrates that as a province and a country, Ontario and Canada still have a long way road ahead and that a continued dependence on the status quo and a lack of innovation will only lead to further conflicts. Lastly, this thesis also has implications for planners outside of Ontario, by offering innovative analytical frameworks that have the potential to be transferred to other provinces to assess the degree of guidance and clarity from higher level policies given to planners at the municipal-scale and the degree of protection and recognition of Aboriginal rights and interests. This type of analysis will assist municipal planners to become more self-reflective, particularly with regards to how higher policies influence and regulate how they interact with and value First Nations (Barry & Porter, 2011).

This thesis also holds significant contributions to planning theory. First, similar to the work of Barry & Porter (2011), it highlights, particularly for advocates of collaborative planning, that
there is a close relation between planning texts and the practice of planning, and that a sustained reliance on theorizing about collaborative techniques to enhance Indigenous participation fails to acknowledge the opportunities to be had in reworking overarching strategic policies that regulate the everyday. A focus on content analysis highlights the sites of planning where embedded power relations are sustained and continually negotiated (Barry & Porter, 2011). Second, discussions surrounding the term ‘consent’ in contrast to the ‘spirit of consent’ have implications for collaborative planning theory. While the actual term ‘consent’ can be highly polarizing, the ‘spirit of consent’, different parties actively working towards acquiring consent and new understandings, provides an innovative avenue to establish a more equitable process by recognizing that the actual process or pathway forward is attainable if we begin with a deliberate and sustained effort to reach mutually beneficial understandings. Consensus may not always be possible, but the ‘spirit of consent’ will lead to a better informed planning process grounded in strengthened relationships and understandings, and a process that fully recognizes and supports First Nations’ continued interest in the land. Focusing on establishing processes that embody the ‘spirit of consent’ extends past collaborative planning theory’s shortcomings by recognizing First Nations’ distinct rights and may lead to processes that acknowledge First Nations as more than just another stakeholder in the planning practices of settler states.

The analytical framework developed in the second manuscript enhances individuals’ understanding of how conventional state-based planning systems in settler states operate as a closed system and tends to situate Indigenous peoples in predefined positions as just another stakeholders along the edges of planning, which legitimizes the domination of Indigenous knowledge and claims. Specific to Canada, the division of Crown authorities between federal and provincial governments as a result of section 91 and 92 of Constitution Act, 1867 together
with the constricting nature of and primacy given to the Indian Act situate First Nations between jurisdictions and continually limits individual communities’ capacity and power to shape planning processes outside the boundaries of reserves (Borrows, 1997b). In turn, common ground can be framed as a necessary space beyond state-based planning, that do not exist as its binary opposite, but as a process to be defined and negotiated in partnership and actively between communities through mutual understanding and learning. Finally, for planning theory, spaces of common ground also highlight the need to address the planning profession’s denial of Indigenous peoples’ right to self-determination and that the pathway forward is not for state-based planning to define on its own. From a theoretical standpoint, this research raises a final question that remains to be answered- how can we speak of societal reconciliation when the policies that influence the land and those who regulate it have not reconciled or found common ground with Indigenous peoples’ rights, self-determination and continued interest in the land?
Chapter 6. Conclusion

The trajectory of this research emerged from a simple question - what is the current intersection of provincial land use and resource management policies and First Nations in Ontario? It was a question for which no one amongst the research partnership, to which this thesis is making a contribution, had a clear and straightforward answer. Recognizing the significance and longevity of strategic level policies to institutional memory in a top-down provincial planning system, it became critical to develop a baseline on provincial land use and resource management policies to understand their manifest and latent content and their relative capacity. In turn, this would not only build awareness of the limits of current provincial policies in Ontario, but it would provide evidence to support ongoing First Nations-led amendments when policies come up for review.

The research process was by no means linear and fixed, it was iterative and developed through the type of mutual understanding and mutual learning we envision in spaces of common ground. If the recent Tsilhqot’in Nation v. British Columbia [2014] ruling on Aboriginal title is any indication, the status quo embodied in land use and resource management policies and institutional assumptions is not acceptable and resolutions will only emerge if individuals ‘unsettle’ the knowledge and practices they take for granted. For non-Indigenous planners, getting to common ground will take time, resources, accountability and humility, similar to the ideas of Porter (2010). Common ground may never be achieved, but we must remain optimistic that the process, new relations and understanding, and the sustained commitment to fundamental change will leave us in a better state than where we are today. In this final section, the importance of the partnership to this research, the limitations of this thesis and areas of further research are raised.
The Partnership
At the heart of this thesis and the larger research project is a partnership between researchers, planning practitioners and leaders from the Mississaugas of the New Credit, the Walpole Island First Nation, Queen’s University, and the University of Waterloo. This research and the ideas behind it, particularly the notion of common ground, would not be possible without the mutual learning and understanding that forms the backbone of this emerging partnership. While the message and the voice of this thesis appear on paper as one voice, in reality it represents a collective voice. What the partnership illustrates to a wider planning audience is the need to build relationships first. Too often those involved with planning only think in terms of techniques, goals, deadlines and outcomes, but to move any agenda forward there is a need to think of what comes first - relationship building. The types of relationships embodied in the theoretical concept of common ground are not novel or distant to the research team; they have been the basis of our emerging partnership. The message and the voice of this thesis along with its findings are strengthened from our differences and shared understandings.

Limitations
In spite of a heavy emphasis on triangulation at all stages of the research to enhance reliability, the thesis did have limitations (Yin, 2009). First, the primary means of analysis was content analysis and analytical frameworks were informed by the research team’s views and perceptions. To mitigate this bias, the analytical frameworks were grounded in existing literature and interviews were utilized to validate frameworks and findings. Second, the scope of the research focused on strategic-level land use and resource management policies in the province of Ontario and their relative capacity. The execution of the international comparative in the second manuscript to a certain extent assisted in moving beyond the relative Ontario-focused scope.
Third, the scope within both manuscripts was on the content of policies and not their implementation or resulting on-the-ground planning relations. While the findings were extremely context specific to strategic level legislation and policies, there was analytical generalizability. The first manuscript’s framework with modification has the potential to be applied to other provinces in Canada with its emphasis on emerging concepts, such as the duty to consult and consent and the second manuscript’s framework could also be applied to further territorial policy statements in Aotearoa New Zealand and other settler states. Lastly, with the cross-cultural nature of the research, there were clear limitations stemming from my positionality as a non-Indigenous researcher. This required ongoing self-reflection throughout the research process, remaining accountable to the research team, and relying on the ideas and thoughts of research partners to address uncertainty and gaps in my knowledge.

Areas of Further Research
With this thesis emerging as part of an iterative research process and the notion of common ground continually evolving, there are noteworthy areas of further research building from the foundations of this thesis. First, research into how the policies regarding First Nations in the current PPS (2014) are being implemented at the municipal-scale through specific case studies is necessary and could offer great insight into the effects of this latest shift in provincial policy on local planning relations and initiatives. Second, the development of sets of indicators to be used by municipalities and neighbouring First Nations to measure the health and stability of their own relationships could assist communities in strengthening their opportunities for mutual understanding, mutual learning and co-production. This is by no means suggesting that there is a need to develop a checklist of sorts as municipal-First Nations relationships are highly context specific. Yet, it is to suggest that there is an immediate need to develop, in partnership between
communities, broad indicators to assist local practitioners and leaders to recognize and to celebrate small victories as they move towards repairing lost relations and establishing new relations. Third, further research is needed to critically understand the content of planning legislation and policies in other provinces and territories in Canada and other British settler states. Fourth, additional research is needed to understand the wider political climates in Canada and Aotearoa New Zealand and how larger structural changes stemming from a shift towards decentralization and market-oriented approaches have shaped the planning practice and specific moments of change in relation to recognition and support Indigenous peoples and rights. Finally, similar analysis could be conducted on the state of Ontario land use and resource management policies with respect to First Nations in five or ten year increments to identify if policies have changed in their capacity to recognize and support First Nations. Regardless of whether further research focuses on other strategic level policies or examines on-the-ground planning relations in a case-by-case basis, they will be vital to ongoing efforts to repair fragmented policies, perspectives and relations between Indigenous and non-Indigenous communities and address denial on the part on non-Indigenous peoples in order to move towards more just and equitable planning futures in Canada.
References


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Appendix A. Getting to Common Ground
July 27, 2011

Dr. Leela Viswanathan
School of Urban and Regional Planning
Queen’s University

GREB Ref #: GSURP-140-11, ROMEO # 6000065
Title: "GSURP-140-11 Decolonizing planning knowledge and practices in the Mushkegowuk Territories: Possibilities and challenges for collaborative learning among planners, government, and indigenous communities"

Dear Dr. Viswanathan,

The General Research Ethics Board (GREB), by means of a full board review, has cleared your proposal entitled "GSURP-140-11 Decolonizing planning knowledge and practices in the Mushkegowuk Territories: Possibilities and challenges for collaborative learning among planners, government, and indigenous communities" for ethical compliance with the Tri-Council Guidelines (TCPS) and Queen’s ethics policies. In accordance with the Tri-Council Guidelines (article D.1.6) and Senate Terms of Reference (article G), your project has been cleared for one year. At the end of each year, the GREB will ask if your project has been completed and if not, what changes have occurred or will occur in the next year.

You are reminded of your obligation to advise the GREB, with a copy to your unit REB, of any adverse event(s) that occur during this one year period (access this form at https://eservices.queensu.ca/romeo_researcher/ and click Events - GREB Adverse Event Report). An adverse event includes, but is not limited to, a complaint, a change or unexpected event that alters the level of risk for the researcher or participants or situation that requires a substantial change in approach to a participant(s). You are also advised that all adverse events must be reported to the GREB within 48 hours.

You are also reminded that all changes that might affect human participants must be cleared by the GREB. For example, you must report changes to the level of risk, applicant characteristics, and implementations of new procedures. To make an amendment, access the application at https://eservices.queensu.ca/romeo_researcher/ and click Events - GREB Amendment to Approved Study Form. These changes will automatically be sent to the Ethics Coordinator, Gail Irving, at the Office of Research Services or irvingg@queensu.ca for further review and clearance by the GREB or GREBU Chair.

On behalf of the General Research Ethics Board, I wish you continued success in your research.

Yours sincerely,

Joan Stevenson, PhD
Professor and Chair
General Research Ethics Board

cc: Leela Viswanathan, Chair, Unit REB

JS/gi