

POLICY ANALYSIS

1. The provincial government should establish a permanent, independent, and impartial agency to facilitate and oversee the settling of land and treaty claims in Ontario. The agency should be called the Treaty Commission of Ontario.
2. The Treaty Commission of Ontario should be established in a provincial statute as an independent agency reporting directly to the Legislative Assembly of Ontario. The Treaty Commission of Ontario should have permanent administrative, legal, and research staff and should be fully independent from the governments of Canada, Ontario, and First Nations. The statute should specify that the purpose of the Treaty Commission of Ontario is to assist Ontario in discharging its treaty responsibilities.
3. The provincial government should make every reasonable effort to establish the Treaty Commission of Ontario with the full cooperation of the federal government. If that is not possible, the provincial government should establish the Treaty Commission of Ontario on its own in cooperation with First Nations in Ontario.
4. The governments of Ontario, Canada, and First Nations should jointly select the head of the Treaty Commission of Ontario—the Treaty Commissioner of Ontario. The selection process should be set out in the statute following discussions among the parties. The Treaty Commissioner should serve for a fixed but renewable term and should be removed only upon agreement by First Nations and the Legislative Assembly of Ontario.
5. The Treaty Commission of Ontario should be inaugurated in a prominent and ceremonial way. The ceremony should recall the 1764 Treaty of Niagara and renew its promises of mutual support and respect.
6. The Treaty Commission of Ontario should be given a four-part, strategic mandate:
 - a. The TCO should be given the authority to assist governments and First Nations, independently and impartially, in developing and applying a wide range of tools and processes to clarify and settle issues in an expeditious and cooperative way. In furtherance of this mandate, the

TCO should be given the authority to prioritize, consolidate, or batch claims, in whole or in part, to encourage joint fact-finding and historical research, to identify and find consensual ways of dealing with issues common to claims associated with a particular treaty or region, and to promote interest-based settlements.

- b. The TCO should be given the mandate to improve the efficiency and cost-effectiveness of the land claims process in Ontario. The TCO should be given the authority to work with parties to establish and publish benchmarks for processing claims and to require parties to use various forms of dispute resolution, binding as well as non-binding, when the benchmarks are not met.
 - c. The TCO should be given the mandate to make the claims process accountable and transparent to all Ontarians.
 - d. The TCO should be given a broad mandate to undertake public education about treaties, treaty relationships, and land claims in Ontario. The TCO should be given the specific authority to develop programs about treaty history designed to be part of the Ontario school curriculum.
7. The provincial and federal governments should commit sufficient resources to the TCO to enable it to achieve its objectives.
 8. Access to the Ontario land claims process should depend entirely on whether the documentation filed by the First Nation provides *prime facie* evidence that there has been a breach of the legal obligations of the Crown.
 9. The provincial government should improve public education about its land claim policies.
 10. The provincial government should commit sufficient funds to enable the Ontario land claims process to resolve claims within an acceptable period. This includes funding for First Nations to participate in the land claims process and for compensation for breaches of legal obligations by the Crown.
 11. The provincial government and the TCO should work together to develop a business and financial plan for the Ontario land claims process. The objective would be to estimate the resources needed to resolve claims and to meet reasonable benchmarks during the land claims process.
 12. The federal government should cooperate fully with the provincial government and First Nations in Ontario to establish the Treaty Commission of Ontario and promote its effectiveness.

13. The federal and provincial governments should work with the TCO and any equivalent federal agency to improve the efficiency, effectiveness, and fairness of the federal and provincial land claims processes. Together, they should undertake to do the following:
 - a. establish a common registry for federal and Ontario land claims.
 - b. establish a dispute resolution process that includes access to non-binding and binding resolution.
 - c. use binding arbitration to determine the legal liabilities of the federal and provincial governments.
 - d. develop common or consistent benchmarks and policies for federal and Ontario land claims.

The provincial government should make every reasonable effort to seek the federal government's cooperation on these issues. If that cooperation is not possible, the provincial government should proceed to address these issues on its own in cooperation with First Nations in Ontario.

14. The provincial government should work with First Nations and Métis organizations to develop policies regarding how the government can meet its duty to consult and accommodate. The duty to consult and accommodate should eventually be incorporated into provincial legislation, regulations, and other relevant government policies as appropriate.
15. The provincial government should promote respect and understanding of the duty to consult and accommodate within relevant provincial agencies and Ontario municipalities.
16. The provincial government should continue to work with Aboriginal organizations in Ontario to develop co-management arrangements and resource-sharing initiatives. The provincial government should also provide financial or other support to Aboriginal organizations and third parties to develop capacity, identify best practices, and formulate strategies to promote co-management and resource-sharing.
17. The provincial government should commission an independent evaluation of one or more significant co-management initiatives. This evaluation should be undertaken with the cooperation and participation of Aboriginal organizations.

18. The Ministry of Natural Resources and First Nations should work together to update and improve the Interim Enforcement Policy. This process should include discussions on how to evaluate and monitor the implementation of the policy and on how to improve the transparency and accountability of MNR enforcement activities.
19. The Ministry of Natural Resources and other provincial ministries whose activities in the regulation of natural resources affect Aboriginal and treaty rights should develop and circulate a Statement of Aboriginal Values which addresses their relations with Aboriginal peoples.
20. The Ministry of Natural Resources should establish a public complaints process.
21. The provincial government should develop and circulate a policy outlining how it will notify and consult with interested third parties on natural resource initiatives involving Aboriginal peoples.
22. The provincial government should work with First Nations and Aboriginal organizations to develop policies that acknowledge the uniqueness of Aboriginal burial and heritage sites, ensure that First Nations are aware of decisions affecting Aboriginal burial and heritage sites, and promote First Nations participation in decision-making. These rules and policies should eventually be incorporated into provincial legislation, regulations, and other government policies as appropriate.
23. The provincial government should ensure that the *Funeral, Burial and Cremation Services Act, 2002* includes the same appeal process for all types of cemeteries and burials and an obligation to consider Aboriginal values if a burial site is determined to be Aboriginal.
24. The provincial government, in consultation with First Nations and Aboriginal organizations, should clarify the meaning of “Aboriginal values” in all Class EA documents and other guidelines and policies applicable to public lands.
25. The provincial government, in consultation with First Nations and Aboriginal organizations, should determine the most effective means of advising First Nations and Aboriginal peoples of plans to excavate Aboriginal burial or heritage sites.
26. The provincial government should encourage municipalities to develop and use archaeological master plans across the province.

27. The provincial government should prepare plain language public education materials regarding Aboriginal burial and heritage sites.
28. The provincial government should work with First Nations and Aboriginal organizations to develop an Aboriginal burial and heritage site advisory committee.
29. The provincial government and Treaty Commission of Ontario should work with First Nations organizations and educators to develop a comprehensive plan to promote general public education about treaties in Ontario. The provincial government and Treaty Commission of Ontario should also work with local governments and school boards, First Nations, and community organizations to develop educational materials and strategies that emphasize the local or regional character of treaty relationships.
30. The Ministry of Education should establish formal working relationships with Aboriginal organizations to promote more Aboriginal perspectives and content in the elementary and secondary school curricula.
31. The Ministry of Education and Treaty Commission of Ontario should work with Aboriginal organizations, school boards, and teachers associations to develop appropriate, classroom-ready teaching tools and resources about Aboriginal history, treaty and Aboriginal rights, and related current events.
32. The provincial government should create a Ministry of Aboriginal Affairs. This ministry should have a dedicated minister and its own deputy minister.
33. The provincial government should create the appropriate Cabinet structure to support the new ministry. The provincial government should consider establishing a new Cabinet committee on Aboriginal Affairs and should consider including the Minister of Aboriginal Affairs on the Priorities and Planning Board of Cabinet.
34. The initial mandate and responsibilities of the Ministry of Aboriginal Affairs should include the following:
 - a. administer and support a revitalized land claims process in Ontario.
 - b. create and support a Treaty Commission of Ontario.
 - c. ensure that the province fulfills its duty to consult and accommodate.
 - d. improve Aboriginal/non-Aboriginal community relationships.

- e. establish the Ontario Aboriginal Reconciliation Fund.
 - f. oversee and report on the implementation of the recommendations of the Ipperwash Inquiry.
35. The provincial government should commit sufficient resources to the Ministry of Aboriginal Affairs to enable it to carry out its responsibilities. The budget for the ministry should include funding for a revitalized land claims process in Ontario, for the Ontario Aboriginal Reconciliation Fund, and for programs to improve Aboriginal/non-Aboriginal relations in Ontario.
36. The provincial government and Ministry of Aboriginal Affairs should create mechanisms for obtaining input from Aboriginal communities on planning, policy, legislation, and programs affecting Aboriginal interests.
37. The provincial government should establish and fund an Ontario Aboriginal Reconciliation Fund. The Ministry of Aboriginal Affairs should work with First Nations and Aboriginal organizations to determine the mandate, governance structure, funding guidelines, and administrative structure of the fund. The provincial government should commit sufficient resources to the fund to enable it to achieve its objectives.
38. Police services in Ontario should promote peacekeeping by adopting the following objectives when policing Aboriginal occupations and protests:
- a. minimize the risk of violence at occupations and protests.
 - b. preserve and restore public order.
 - c. facilitate the exercise of constitutionally protected rights.
 - d. remain neutral as to the underlying grievance.
 - e. facilitate the building of trusting relationships that will assist the parties to resolve the dispute constructively.
39. The OPP should maintain its Framework for Police Preparedness for Aboriginal Critical Incidents, Aboriginal Relations Teams, and related initiatives as a high priority and devote a commensurate level of resources and executive support to them.
40. The OPP should commission independent, third-party evaluations of its Framework for Police Preparedness for Aboriginal Critical Incidents and Aboriginal Relations Team program. These evaluations should include

significant and meaningful participation by Aboriginal representatives in their design, oversight, and analysis.

41. The OPP should post all significant OPP and provincial government documents and policies regarding the policing of Aboriginal occupations and protests on the OPP website. The OPP should also prepare and distribute an annual report on the Framework for Police Preparedness for Aboriginal Critical Incidents.
42. The OPP should establish a formal consultation committee with major Aboriginal organizations in Ontario.
43. The OPP should develop a consultation and liaison policy regarding non-Aboriginal communities which may be affected by an Aboriginal occupation or protest. This policy should be developed in consultation with local non-Aboriginal communities and should be distributed to local officials and posted on the OPP website.
44. The OPP should develop a strategy to restore relationships with both Aboriginal and non-Aboriginal communities after an Aboriginal occupation or protest. The provincial, federal, and municipal governments should support and participate in this strategy. This strategy should be distributed to interested parties and posted on the OPP website.
45. The provincial government should develop a provincial peacekeeping policy to govern its response to Aboriginal occupations and protests. The policy should publicly confirm the provincial government is committed to peacekeeping, and it should promote consistency and coordination between the provincial government and police services in Ontario. This policy should include:
 - a. a ministerial directive from the Minister of Community Safety and Correctional Services to the OPP confirming peacekeeping as the provincial government policy during an Aboriginal occupation or protest. The directive should acknowledge and support the general purposes and practices of the OPP Framework for Police Preparedness for Aboriginal Critical Incidents; and
 - b. a ministerial guideline from the Minister of Community Safety and Correctional Services to other police services in Ontario, functionally equivalent to the OPP directive but allowing for adaptation to local circumstances.

The provincial peacekeeping policy should state that it is applicable to the Ministry of Community Safety and Correctional Services, the OPP, the Ministry of Natural Resources, and any other ministries or agencies which may be involved in an Aboriginal occupation or protest.

The provincial peacekeeping policy should be promulgated as soon as practical. The Ministry of Community Safety and Correctional Services should then initiate a consultation process with First Nations, the OPP, other police services, and local communities as appropriate regarding the scope and content of a longer-term policy.

46. The provincial government should commit sufficient resources to the OPP to support its initiatives for policing Aboriginal occupations. This funding should be dependent upon the OPP agreeing to commission and publish independent evaluations of the Framework for Police Preparedness for Aboriginal Critical Incidents and the Aboriginal Relations Team program.
47. The provincial government should develop a policy governing the use of injunctions at Aboriginal occupations and protests. The policy should state that its purpose is to promote peacekeeping in Aboriginal occupations and protests. The policy should acknowledge the unique role of the Attorney General in injunction proceedings and commit the province to participating in proceedings where private landowners seek an injunction and treaty and Aboriginal rights may be affected.
48. The OPP should have the right to be represented separately in injunction proceedings. The provincial government should facilitate court-appointed counsel for interested parties in injunction proceedings if their participation would contribute to the court's understanding of the issues in dispute.
49. Interministerial "blockade" committees should be organized carefully to ensure that they respect ministerial accountability. These committees should be briefed on the following matters:
 - a. appropriate roles and responsibilities of police and government;
 - b. existing provincial government and police peacekeeping policies;
 - c. general aspects of police strategy and objectives when policing Aboriginal occupations and protests;
 - d. the unique constitutional status of Aboriginal rights and claims, and the constitutional right of peaceable assembly; and,

- e. the history, issues, and claims that may be in dispute.

Relevant ministers, ministerial staff, and other senior provincial officials should also be briefed on these issues.

50. The provincial government should adopt a flexible policy regarding negotiations with protesters during an Aboriginal occupation or protest. The factors to be considered should include:
 - a. a realistic assessment of the claim asserted by the protesters;
 - b. risks to public safety;
 - c. the willingness or capacity of protesters or the First Nation to negotiate;
 - d. the likelihood of a constructive, peaceful, timely agreement;
 - e. the social or economic disruption caused by the occupation; and,
 - f. any other relevant factors.
51. Federal, provincial, municipal, and First Nation governments should actively promote public education and community information about significant Aboriginal protests. The OPP should also actively promote public education and community information.
52. The federal government should publicly commit to working with the provincial government during Aboriginal occupations or protests in Ontario, cooperatively and with a shared commitment to settling underlying disputes. The federal government should generally assume the lead responsibility in negotiations when land claims are at stake.
53. The provincial government, First Nations organizations, the OPP, and other police services in Ontario should develop networks promoting communication, understanding, trust, and collaboration during Aboriginal occupations and protests. The following elements should be included in this effort:
 - a. The OPP and First Nations organizations in Ontario should develop public safety, communications, and/or operational protocols.
 - b. The OPP and First Nations police services should jointly plan for responding to Aboriginal occupations and protests. Existing protocols between the OPP and First Nation police services should be amended to include references to occupations and protests.

- c. The provincial government, the OPP, and representatives from municipal police services should develop resources, practices, or protocols to assist municipal police services during Aboriginal occupations and protests in urban areas.
 - d. The OPP and the Ministry of Natural Resources should develop an operational protocol consistent with the purposes and practices in the OPP Framework for Police Preparedness for Aboriginal Critical Incidents.
 - e. The OPP should provide crisis negotiator training to First Nations police services.
54. The OPP and other police services should provide verified information to the media in their news releases. Inaccurate information should be corrected promptly and publicly.
55. The Ministry of Community Safety and Correctional Services should bring together interested parties to discuss the Tactical Emergency Medical Support and civilian emergency medical services issues in this report, including the advice and recommendations of the Office of the Chief Coroner.
56. The federal and provincial governments should update their policies on First Nation policing to recognize that self-administered First Nation police services in Ontario are the primary police service providers in their communities.
57. The provincial government, OPP, and First Nation police services should work together to identify how the provincial government can support First Nation police services to be as effective as possible when policing Aboriginal occupations and protests, either within their own territories or in support of the OPP or other police services in Ontario. The OPP and First Nation police services should engage in joint planning and training for Aboriginal occupations and protests and existing protocols should refer to occupations and protests.
58. Federal, provincial, and First Nation governments should commit to developing long-range plans for First Nation policing in Ontario.
59. Federal, provincial, and First Nation governments should commit to developing a secure legislative basis for First Nation police services in Ontario.

60. The provincial government should work with the Nishnawbe Aski Nation, the Nishnawbe-Aski Police Services, and other First Nations in Ontario as appropriate to develop a “made in Ontario” legislative or regulatory framework for First Nation policing in Ontario. The provincial government should also amend the *Police Services Act* to allow First Nation police services or boards to appoint their own officers.
61. The provincial government, First Nation police services, and the OPP should establish an Ontario First Nation Chiefs of Police Association.
62. The federal and provincial governments should increase capital and operational funding for First Nation police services in Ontario. This funding should be secured by renewable, five-year agreements between the federal, provincial, and First Nation governments.
63. The OPP should maintain its Native Awareness Training and related police/Aboriginal relations initiatives as a high priority and devote a commensurate level of resources and executive support to them.
64. The OPP should develop active, ongoing monitoring strategies for its police/Aboriginal relations strategy and programs, including:
 - a. commissioning an independent, third-party evaluation of its Native Awareness Training and recruitment initiatives;
 - b. commissioning data collection studies to evaluate police decision-making and operations. These studies should be designed in partnership with First Nation organizations and the Ontario Provincial Police Association, if possible; and
 - c. working with First Nations organizations to develop a more formal monitoring and implementation program for the OPP police/Aboriginal programs.
65. The provincial government should develop a provincial police/Aboriginal relations strategy. This strategy should publicly confirm the commitment by the province to improving police/Aboriginal relations in Ontario. Elements of this strategy should include the following:
 - a. The Ministry of Community Safety and Correctional Services should work with the OPP and Aboriginal organizations to develop a provincial policy supporting the OPP police/Aboriginal relations programs.

- b. The Ministry of Community Safety and Correctional Services should work with the OPP, Aboriginal organizations, other police services, and the Ontario Human Rights Commission to identify and circulate best practices in police/Aboriginal relations.
 - c. The Ministry of Community Safety and Correctional Services should develop a provincial research and data collection strategy to promote improved police/Aboriginal relations policy and programs and bias-free policing across Ontario.
 - d. The Ministry of Community Safety and Correctional Services should issue a guideline for police forces in Ontario promoting best practices in police/Aboriginal relations.
 - e. The Ministry of Natural Resources should develop and implement a dedicated MNR/Aboriginal relations strategy, consistent with the analysis and recommendations in this report.
66. The provincial government should commit sufficient resources to the OPP to support its police/Aboriginal relations initiatives. This funding should be dependent upon agreement by the OPP to commission and publish independent evaluations of its Native Awareness Training and recruitment initiatives.
67. Bill 103, the *Independent Police Review Act, 2006*, should be reviewed to ensure that internally generated complaints related to a police service are handled by the Independent Police Review Director, including complaints relating to racism and other culturally insensitive behaviour.
68. The Independent Police Review Director should determine the most appropriate policy to be followed by his or her office and police services in Ontario in handling complaints of misconduct involving racism and other culturally insensitive conduct, including the role, if any, for informal discipline. The Independent Police Review Director should consult with community and Aboriginal organizations when developing this policy.
69. The Ministry of Community Safety and Correctional Services should issue a directive to all police services in Ontario, including the OPP, requiring police officers to report incidents of racism or other culturally insensitive behaviour by other officers to their supervisors.
70. The OPP should establish an internal process to ensure that racist and other culturally insensitive behaviour by police officers is dealt with publicly.

The OPP should also determine the most appropriate policy for handling complaints of misconduct involving racism and other culturally insensitive conduct, including the role, if any, for informal discipline.

71. Section 17 of the *Police Services Act* should be amended to specify that the power of the responsible minister to direct the OPP does not include directions regarding specific law enforcement decisions in individual cases, notwithstanding the responsible minister's authority to issue directives under s. 3(j) of the *Act*. This section should be further amended to specify that the commissioner of the OPP has "operational responsibility with respect to the control of the OPP, subject to written directives from the responsible minister."
72. The *Police Services Act* should be amended to prohibit anyone but the responsible minister (or his or her delegate) from providing directions to the OPP. The *Act* should also specify that ministerial directions must be directed to the commissioner of the OPP (or his or her delegate).
73. A regulation should be issued under the *Police Services Act* specifying the procedure for issuing, circulating, and withdrawing ministerial directives. This regulation should specify that
 - a. all ministerial directives are to be in writing, subject to the limited exception of an extraordinary or exigent circumstance which prevents the directive from being written down. In these situations, the directive must be issued in writing at the earliest opportunity; and
 - b. all ministerial directives should be publicly accessible, including being published in the *Ontario Gazette*, posted on the Ministry of Community Safety and Correctional Services website, and available to the public upon request within seven days of being issued. This provision is subject to the limited exception that the publication/circulation of the directive should be delayed if it would affect public safety or the integrity of an ongoing police operation. In these situations, the directive should be published/circulated at the earliest opportunity.
74. The regulation should also specify that
 - a. the commissioner of the OPP should refuse to consider a government direction which is not in writing or not intended to be made public;
 - b. the responsible minister does not have the authority to offer "guidance" as opposed to "direction" to the commissioner of the OPP; and

- c. government intervention with respect to “policies of operations” must be in the form of a written ministerial directive.
75. The OPP should post relevant ministerial directives on its website, circulate them to the OPP advisory committees, and make them available to the public upon request.
76. The Ministry of Community Safety and Correctional Services and the OPP should adopt complementary formal policies that set out their respective roles, responsibilities, and mutual expectations in police/government relations. These policies should adopt the principles and findings on police/government relations outlined in this report, including specific provisions on the following issues:
- the core of “police independence”
 - the “policy of operations”
 - police operational responsibilities
 - government policy responsibilities
 - information exchanges between police and government
 - dedicated procedures that will be used to manage police/government relations during a critical incident

All senior officials within the Ministry of Community Safety and Correctional Services and the OPP should be briefed or trained on these policies. Other government officials should be briefed as necessary. These policies should also be posted on the Ministry of Community Safety and Correctional Services and OPP websites and be made publicly available upon request.

77. The OPP should establish policies and procedures to insulate operational decision-makers, incident commanders, and front-line officers from inappropriate government direction or advice.
78. The Ministry of Natural Resources should develop a policy respecting ministerial directives to its conservation officers which is consistent with the principles and findings on police/government relations generally as set out in this report.