



Office of the Auditor General of Ontario

Value-for-Money Audit  
Indigenous Affairs  
in Ontario



*December 2020*



# Indigenous Affairs in Ontario

## 1.0 Summary

Indigenous Peoples were the first to have inhabited the lands now known as Canada. In Canada, Indigenous Peoples are First Nations, Métis and Inuit. According to the last census in 2016, 22% of Canada's Indigenous population lived in Ontario. The nearly 375,000 Indigenous Peoples in Ontario accounted for 3% of Ontario's population. About 15% of Indigenous Peoples live on reserves (lands set aside by the Crown for the exclusive use of Indigenous communities).

According to the Truth and Reconciliation Commission, reconciliation between Indigenous and non-Indigenous people “requires constructive action on addressing the ongoing legacies of colonialism that have had destructive impacts on [Indigenous] peoples’ education, cultures and languages, health, child welfare, the administration of justice, and economic opportunities and prosperity” and “must create a more equitable and inclusive society by closing the gaps in social, health, and economic outcomes that exist between [Indigenous] and non-[Indigenous] Canadians.”

Indigenous Peoples have, in general, poorer health, education, social and economic outcomes than non-Indigenous people. Many societal and historical issues have led to inequity between Indigenous and non-Indigenous people, as well as

Indigenous people living on reserve and off reserve. Although First Nations, Métis and Inuit social and economic indicators have shown improvement from 2001 to 2016, there is still a significant gap when compared to other Ontarians. For example, Indigenous Peoples in Ontario do fare better than those in other Canadian provinces in attaining university degrees. However, in 2016 (latest available information), approximately 13% of Indigenous Peoples aged 25 to 64 had university degrees compared to 32% for non-Indigenous people. For Indigenous Peoples living off reserve in 2019, 42% had at least one chronic health condition, compared to 33% for non-Indigenous people.

Indigenous Peoples continue to advocate for their right to self-determination, the elimination of systemic racism, and having a primary role in the development and implementation of programs and services.

The Ministry of Indigenous Affairs (Ministry) is responsible for setting priorities and tracking the province's progress in delivering policies and programs effectively to improve the lives of Indigenous Peoples. The Ministry is also responsible for ensuring the province meets its legal obligation to consult Indigenous communities on government decisions that may infringe on their rights or impact them adversely. The Ministry is also the province's lead in land claims negotiations, and is responsible for settling land claims when a

First Nation asserts that the province has violated its Indigenous or treaty rights.

Overall, our audit found that the Ministry has neither taken the lead, nor been given the authority required to coordinate the province's policies, programs and services for Indigenous Peoples. Each provincial ministry independently designs and implements its own Indigenous policy initiatives according to its own priorities. Problems with this decentralized approach are compounded by the absence of oversight. The Ministry does not track or monitor provincially funded Indigenous programs and services. Effective coordination of programs and services cannot be performed without centralized knowledge of all the government's Indigenous programs and services. Further, other Ontario ministries that provide programs and services do not have effective engagement, accountability and oversight mechanisms in place. Therefore, these ministries cannot ensure that these programs and services are operating as intended to effectively and efficiently meet the needs of Indigenous communities. In contrast, during the COVID-19 pandemic, the Ministry was able to lead the province's efforts by meeting with Indigenous communities and service providers to get a more comprehensive understanding of their needs, relay those needs to the responsible ministries, and coordinate the government's response.

The following are some of our specific concerns:

- **The province is not regularly assessing and reporting on its effectiveness in improving the lives of Indigenous Peoples.** Despite committing to publicly report on the progress of Indigenous initiatives in the areas of health, employment, education and justice in response to the 2015 Truth and Reconciliation Commission report, the province has not done so. The Ministry did create reports on social and economic indicators using information from Statistics Canada and other sources in 2016 and 2018, but these reports were never publicly released. Canada, British Columbia and Alberta publicly report on their Indigenous affairs performance measures.
- **Neither the Ministry of Indigenous Affairs, nor any other provincial ministry or agency, is aware of all provincial programs and services for Indigenous Peoples in Ontario, and this information is not publicly available.** Without comprehensive information on Indigenous programs and services, the province cannot effectively coordinate its efforts to improve social and economic outcomes for Indigenous Peoples. The Ministry only posts 11 of the 140 provincial programs designed to benefit Indigenous Peoples on its webpage, and could only provide us with a listing of 30 programs when requested. To compile a complete inventory of all Indigenous programs and services in the province for a five-year period, we had to contact the Treasury Board Secretariat and each ministry separately for the information. As this information had never been compiled before, ministries took up to six months to identify all relevant programs and associated funding for our Office.
- **When developing programs and services for Indigenous Peoples, the province does not always engage them to ensure the programs and services effectively meet their needs.** Engaging with Indigenous Peoples helps ensure that ministries develop programs and services that more effectively meet the needs of the communities in a culturally appropriate manner. Unlike consultation, there is no legal obligation for engagement when developing Indigenous programs and services. However, engagement is considered a best practice. For example, lack of engagement by the Ministry of Health has resulted in Indigenous people not having access to culturally appropriate health care incorporating traditional healing and translators. The Ministry also did not engage Indigenous Peoples when developing either its 2016 Indigenous affairs strategy or its guide to help other ministries engage Indigenous Peoples.



- **The lack of broadband access for Indigenous communities is limiting health, social and economic progress.** Only 17% of households on First Nations reserves have access to the Canadian Radio-television and Telecommunications Commission (CRTC) standard for basic Internet services. This compares to 98.8% of households in medium and large urban populations, and 29.5% in rural populations. Without adequate Internet access, Indigenous communities cannot access health care services through eHealth or take part in remote learning education delivered online, and Indigenous businesses cannot access eCommerce opportunities.
- **Ministries do not have accountability measures in place to confirm funding for Indigenous programs and services is being used as intended.** Of the 18 programs and services we sampled, only two filed any supporting documents, such as invoices or receipts, to show that funds were being used as intended. These programs and services accounted for 33%, or \$400 million of \$1.2 billion in budgeted expenditures for Indigenous programs in 2019/20. When we requested documents from six ministries for 10 specific expenses, such as costs for meetings, only two ministries were able to provide any form of supporting documentation, such as invoices or receipts.
- **Ministries do not have adequate performance measures in place to ensure Indigenous programs and services are effective in meeting the needs of Indigenous people.** We found that 12 of the 18 programs we sampled did not have performance measures. Of the six programs that did have performance measures in place, three were not able to effectively measure whether the program was achieving its intended outcome. For example, the Weeneebayko Health Authority measured the level of services provided but not the health outcomes of the recipients. We found that services to remote communities delivered through this program had decreased by 45% from 2016/17 to 2019/20, and the Ministry had not investigated the cause or impacts of this. However, in 2017, a review of the program identified that reduced access to health care had resulted in worse health outcomes in the community, and an inability to manage chronic disease (such as diabetes).
- **Effectiveness of Indigenous programs and services is limited by uncertainty in funding.** Some government programs only guarantee funding for one to three years. Further, approving applications and providing funding can be significantly delayed. Four of the 14 programs we sampled that provided funding to Indigenous organizations or communities had agreements for three years or less. Indigenous communities and service providers we met with said that they are limited in their ability to retain staff, plan long-term, and use the funds received effectively. For example, one community mentioned that they were not able to bring mental health professionals to their northern community because they could not guarantee funding for the positions beyond a year.
- **The Ministry does not collect adequate information to ensure the province is meeting its legal obligation to consult Indigenous communities.** The province is required to consult Indigenous communities when it contemplates activity that may adversely impact Indigenous or treaty rights (for example, approving a mining permit on traditional Indigenous lands). Most consultations are performed by other government ministries, however the Ministry of Indigenous Affairs is not always aware of these consultations. Further, the Ministry does not have enough information to understand if consultations they are aware of comply with legal requirements, even though the Ministry has spent \$2.5 million since 2012 to maintain

a system to store this information. From January 2010 to October 2020, there were 35 legal actions brought against the Crown involving allegations of failing to adequately consult Indigenous communities. In three instances, the courts found that Ontario did not adequately consult. The province covered financial costs or provided funding to settle out of court in another three cases. The remaining legal actions were either settled out of court without cost to the province, dismissed, abandoned or still ongoing.

- **The province does not have a centralized resource for the assessment of Indigenous rights assertions which creates duplicate work among ministries and a risk that consultations might not be adequately conducted.** The obligation to consult Indigenous communities is based on established and asserted Indigenous and treaty rights. When an Indigenous community asserts that they have Indigenous or treaty rights to land, the province needs to determine the extent of consultation required based on these assertions. However, ministries do not have consistent processes to assess the credibility and strength of assertions of Indigenous or treaty rights. For example, the Ministry of Natural Resources and Forestry assessed four assertions, despite the fact that the province's Aboriginal Consultation Issues Working Group (created in 2012) had already completed this work.
- **The Ministry does not effectively manage its land claims settlement process in an accountable manner.** The Ministry does not establish expected timelines, milestones, or costs for the settlement of land claims. Further, it does not track delays or identify barriers which could allow it to improve efficiency. The Ipperwash Inquiry identified delays in the land claims process as “the single biggest source of frustration, distrust, and ill-feeling among [Indigenous Peoples]

in Ontario.” The 19 land claims we reviewed that the province had concluded took, on average, 22 years to settle. The Ministry told us that there were a number of factors outside of its control that caused the delays in providing compensation to communities for violations of their Indigenous or treaty rights (for example, lack of cooperation from the federal government or other provincial ministries). However, the Ministry did not collect any documents to support these causes of delays or provide details about the impact they had on negotiation timelines.

- **The Ministry plays conflicting roles in settling land claims against the government.** The government acts as a defendant in land claims, but also assesses the legitimacy of claims, and determines the financial support Indigenous communities receive to negotiate claims. In comparison, other provinces, such as British Columbia, Saskatchewan and Manitoba, have independent treaty commissions involved in the land claims settlement process between the federal and provincial governments, and Indigenous communities. First Nations have consistently raised concerns about the lack of an independent land claims process, the lack of control over negotiation funding and access to negotiation evidence. In 1996, the Royal Commission on Aboriginal Peoples recommended that an independent tribunal be appointed to facilitate negotiations on land issues and historical claims. In 2007, the Ipperwash Inquiry made a similar recommendation. Previous attempts to establish an independent commission in Ontario were unsuccessful because the federal government did not communicate its interest in a treaty commission.
- **Minimal information about land claims is made publicly available, reducing transparency and accountability.** The Ministry does not report on the number, cost or timeliness of land claims settled or under negotiation.

In contrast, in British Columbia, an independent treaty commission publishes a report annually outlining the number of land claims, the status of negotiations and costs to settle.

- **There is no reporting on the status of Ipperwash Inquiry recommendations.** The implementation of outstanding recommendations previously made by the Ipperwash Inquiry in 2007 could have addressed many of the issues identified in our report.

This report contains 14 recommendations, with 28 action items, to address our findings.

## Overall Conclusion

Our audit concluded that the Ministry of Indigenous Affairs is not leading the province's development of programs and services that improve social and economic outcomes for Indigenous Peoples. Specifically, the Ministry has not been mandated to lead a coordinated approach to Indigenous Affairs, and is not aware of all of the province's programs and services for Indigenous people. Further, the province is not ensuring its programs and services are operating as intended to effectively meet the needs of Indigenous people and their communities.

The Ministry is not effectively leading negotiations for the timely settlement of land claims. It does not manage settlements in a manner that enables it to identify barriers and improve timeliness, or hold itself accountable. Land claims in Ontario do not have an independent commission, and the Ministry's role, since Ontario started accepting and negotiating land claims in 1983, can place it in a conflict of interest situation.

The Ministry lacks transparency and accountability by not assessing or publicly reporting on the government's progress in meeting the needs of Indigenous Peoples, the effectiveness of Indigenous programs and services, or key information regarding land claims negotiations. It has also not reported on the status of recommendations made by the Ipperwash Inquiry, though it committed to

implement all recommendations included in the Inquiry's report.

## MINISTRY OVERALL RESPONSE

The Ministry of Indigenous Affairs is committed to improving social and economic outcomes for Indigenous Peoples in Ontario. While progress is being made, there is much more to be done and improvements will require continued work from all ministries and levels of government.

We recognize the importance of engaging with Indigenous partners on policies, programs and services across government and will provide advice and guidance to other ministries.

We thank the Auditor General of Ontario and her team for their report and insights on how we can improve our activities. Regarding information on Ontario's programs for Indigenous people, the Ministry will leverage its relationships with other ministries to update and maintain a comprehensive listing on its external website.

The Ministry appreciates the areas that the Auditor General has highlighted and is committed to using all tools available to support continuous improvement and effectively meet the needs of Indigenous people and their communities. For example, the Ministry will leverage the "one-window" approach that has been successful in responding to Indigenous partners' needs throughout the COVID-19 pandemic.

The Ministry welcomes the Auditor General's recommendation on how it can further improve its tracking and reporting on programs, outcomes and the progress of land claim negotiations, and appreciates that measurable goals and targets are necessary for assessing progress. For example, the Ministry will modernize the information management system to improve key milestone identification and reporting.

In addition, the Ministry will encourage all ministries to leverage enterprise-wide processes and activities, such as program reviews and collecting and reporting on performance

indicators, to identify opportunities to streamline, transform, become more efficient and improve outcomes.

## 2.0 Background

### 2.1 Indigenous Peoples in Ontario

“Indigenous” is the term that refers to the earliest known inhabitants of an area. They are distinct from people who settled on the lands since.

The United Nations defines Indigenous Peoples as “inheritors and practitioners of unique cultures and ways of relating to people and the environment. They have retained social, cultural, economic and political characteristics that are distinct from those of the dominant societies in which they live. Indigenous Peoples have sought recognition of their identities, way of life and their right to traditional lands, territories and natural resources for years.”

The term “Indigenous Peoples” is currently used in Canada and in international forums and will be used in this report. The term “Indian” to refer to Indigenous Peoples is no longer used broadly, as many find the term offensive because of its racist and colonial history. Despite this, it continues to be used in certain legal contexts because of its use in the *Indian Act* and other legislation. Similarly, the term “Aboriginal” is used in certain legal contexts. These terms will be used only when required for clarity in this report.

The Indigenous population of Canada is composed of three culturally and legally distinct groups: First Nations, Métis and Inuit:

- **First Nations:** First Nations People are descendants of the original inhabitants of North America who resided south of the Arctic. There are 133 First Nations communities in Ontario (see **Appendix 1**). The Political Confederacy is a provincial level forum for collective decision-making and advocacy (see **Appendix 2**). It is comprised of the Ontario

Regional Chief and the Grand Chiefs from the four Political Territorial Organizations (PTOs) and Independent First Nations. PTOs are the primary support for political advocacy and secretariat services. Tribal Councils are comprised of elected Chiefs and other representatives which oversee the delivery of programs and services for their communities. Not every community belongs to a PTO or a Tribal Council. Three First Nations communities are not currently affiliated with any collective body. The legal status of a First Nations person can have an impact on access to rights and benefits such as on-reserve housing, education and exemptions from taxes in specific situations. The legal status of a member of a First Nation includes the following:

- **Status Indian:** an individual whose name is included on the Indian Register, an official list maintained by the federal government. Certain criteria determine who is registered as a Status Indian. Only Status Indians are recognized as Indians under the federal *Indian Act*.
- **Non-status Indian:** an individual who considers themselves as First Nations or is a member of a First Nations group, but whom the federal government does not recognize as Indian under the *Indian Act*, either because they are unable to prove their status or have lost their status rights.
- **Treaty Indian:** a Status Indian who belongs to a First Nation that signed a treaty with the Crown.
- **Métis:** individuals whose ancestry is a mix of European and First Nations backgrounds. The Métis have developed a distinct culture and distinct communities. They have no historic treaties or distinct land bases in Ontario.
- **Inuit:** individuals who traditionally resided in the far north areas of what are now the four regions of Inuit Nunangat: the Inuvialuit Settlement Region (northern Northwest Territories), Nunavut, Nunavik (northern Quebec)



and Nunatsiavut (northern Labrador). Today, Inuit in Ontario primarily reside in urban centres.

According to the most recent data from Statistics Canada, there were 1,673,780 Indigenous people in Canada in 2016, representing 5% of the total population. Of that number, 374,395 lived in Ontario, the largest number of Indigenous people living in a Canadian province or territory. They accounted for almost 3% of Ontario's population and over 22% of all Indigenous people in Canada.

According to Statistics Canada, the Indigenous population in Ontario increased by 54% from 2006 to 2016 due to increased births and more individuals self-identifying as Indigenous. Overall, this population is younger than Ontario's non-Indigenous population—41% are under the age of 25, compared to 29% of the non-Indigenous population.

### 2.1.1 Social and Economic Indicators for Indigenous Peoples in Ontario

In contrast with other Canadian provinces, Indigenous people residing in Ontario perform higher on several social and economic indicators. As **Figure 1** demonstrates, Indigenous people in Ontario are more likely to have both a high school degree and a university degree.

The Community Well-being Index is a measure of the social and economic well-being of both non-Indigenous communities and First Nations communities across Canada compiled by Indigenous Services Canada. It considers education, labour force activity, income and housing. As shown in **Figure 2**, the Community Well-being scores for First Nations communities in Canadian provinces have been improving, however a large gap between these communities and non-Indigenous communities still exists.

According to Statistics Canada, in 2016, about 20% of Indigenous people in Canada and 15% of Indigenous people in Ontario lived on reserves. The remaining majority of about 80% and 85% respectively, lived off reserves. A reserve is land set aside by the federal government for the use and benefit of a First Nations community and its citizens. The *Indian Act* applies to most reserves in Canada.

Generally, in Ontario, social and economic indicators for First Nations people living on reserve have poorer outcomes than those off reserve. Respondents to the 2019 Chiefs of Ontario Regional Health Survey stated the top five challenges for First Nations communities were alcohol and drug use, employment, housing, lack of funding, and crime. **Figure 3** outlines some selected social and economic indicators comparing Indigenous people

**Figure 1: Social and Economic Indicators for Indigenous Peoples in Ontario and Other Canadian Provinces, 2016**

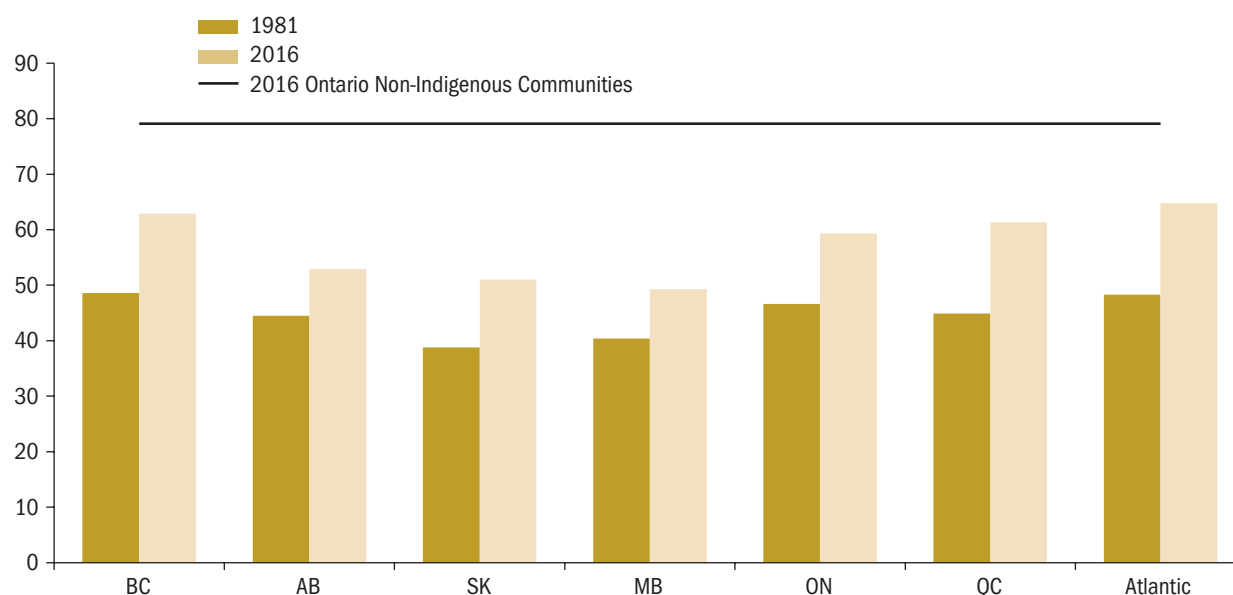
Source of data: Statistics Canada 2016

Indicator	BC	AB	SK	MB	ON	QC
% of Canada's total Indigenous population	16.2	15.5	10.5	13.3	<b>22.4</b>	10.9
% of population over the age of 15 with a high school degree	70.1	65.0	61.1	58.8	<b>70.9</b>	65.7
% of population aged 25–64 with a university degree	10.2	9.8	10.2	9.9	<b>12.5</b>	10.9
Employment rate of the population aged 25–64 (%)	64.0	63.7	55.8	58.8	<b>63.8</b>	63.3
Median annual employment income (before tax) for people over the age of 15 (\$)	24,183	32,598	26,222	26,013	<b>26,714</b>	24,889
% of dwellings in need of major repairs	16.8	18.2	24.4	24.9	<b>16.9</b>	18.1
% of Indigenous children under the age of 15 in foster care	4.0	3.8	2.6	6.3	<b>2.0</b>	2.4
# of adults admitted to federal and provincial custody per 100,000 population	3,263	7,679	5,638	9,531	<b>2,430</b>	1,249

Note: 2016 is the most recent year available for data.

**Figure 2: Average Community Well-being\* Scores for First Nation Communities, Ontario and Other Canadian Provinces, 1981 and 2016**

Source of data: Indigenous Services Canada, 1981 and 2016



\* The Community Well-Being scores combine indicators of educational attainment, income, housing conditions, and labour force activity from the Census of Canada to produce well-being “scores” for individual communities. The years 1981 and 2016 represent the widest range of data available.

**Figure 3: Social and Economic Indicators for Indigenous Peoples in Ontario Who Live On Reserve and Off Reserve, 2016**

Source of data: Statistics Canada 2016

Indicator	On Reserve	Off Reserve
% of population over the age of 15 with a high school degree	52.2	73.9
% of population aged 25–64 with a university degree	5.3	13.7
Employment rate of the population aged 25–64 (%)	52.6	65.5
Median annual employment income (before tax) for people over the age of 15 (\$)	18,188	28,086
% of dwellings in need of major repairs	41.5	12.7

Note: 2016 is the most recent year available for data.

living on and off reserve in Ontario. According to the most recent data from the Institute for Clinical and Evaluative Services, the prevalence of diabetes in 2014/15 was 21% higher for First Nations people who lived on reserve (18.7%) than those who lived off reserve (15.5%).

Many societal and historical issues have led to inequity between Indigenous and non-Indigenous people, as well as Indigenous people living on reserve and off reserve. While social and economic indicators for First Nations, Métis and Inuit are improving, in Ontario there is a significant gap com-

pared to other Ontarians. Indigenous people have poorer health, education, social and economic outcomes than non-Indigenous people. See **Section 4.1** for more details on social and economic gaps.

### 2.1.2 Drinking Water Advisories in Many Indigenous Communities

Drinking water advisories warn people that the water is unsafe to drink. A “boil water” advisory warns that water is unsafe for consumption because it has viruses, bacteria or parasites unless boiled. A

“do not consume” advisory is issued when contaminants, such as lead, are in the water and cannot be removed by boiling the water.

At the time of our audit, there were 46 active long-term drinking water advisories affecting 20% of Indigenous communities in Ontario. Five of these were “do not consume” advisories and the remaining 41 were “boil water” advisories. The 46 water advisories represent 75% of all active long-term water advisories in Canada, and have been in place, on average, for 12 years.

Most of these drinking water quality problems are the result of inadequate or malfunctioning infrastructure to treat the water. The federal government is responsible for resolving these issues, and provides funding to develop, operate and maintain water treatment facilities on reserves under the *Safe Drinking Water for First Nations Act*. Ontario is responsible for regulating and creating standards of drinking water in off-reserve locations, such as municipalities.

In 2015, the federal government made a commitment to end long-term boil water advisories in Canada by March 2021. At that time, Ontario partnered with the federal government to provide \$13 million in funding for 235 on-reserve water projects in 116 First Nations. The federal government would cover half of the cost of each project, the provincial government 25%, and the recipient First Nation the remaining costs. These projects include water and wastewater control system upgrades, generator replacements for water treatment plants and stormwater system improvements. At the time of our audit, the Indigenous Drinking Water Projects Office at the Ministry of Environment, Conservation and Parks had conducted on-site drinking water assessments in 53 communities. Of the 53 communities, only one community met safe drinking water standards. Common findings included treatment facility deficiencies, inadequate operator training, maintenance issues and a lack of water-quality monitoring. The findings from these assessments have supported First Nations in determining what resources are required to provide safe,

sustainable drinking water over the long term. In addition, some First Nations have indicated to the Ministry of Environment, Conservation and Parks that the findings from the assessments have also resulted in the approval of funding requests made to the federal government.

Indigenous communities are also affected by contamination that can pollute critical water sources. For example, mercury pollution in the English and Wabigoon Rivers, caused by a paper mill in Dryden that released around 10 metric tonnes of mercury into the Wabigoon River from 1963 to 1970, contaminated the fish population that the Wabaseemoong Independent Nations and Grassy Narrows First Nation communities relied on as a food source.

The Ministry of Environment, Conservation and Parks created an \$85 million trust fund in 2018 that is co-operatively managed by a panel of impacted First Nations and the Ministry. The funding is currently being used to assess the impacts of this contamination. A portion of this funding also provides for the operating costs of the panel, and costs for the panel’s engagement with Indigenous communities. As of March 31, 2020, approximately \$10.2 million from the trust fund had been spent.

The Ministry of Indigenous Affairs had also established a Mercury Disability Fund in 1986 to provide compensation to members of the Grassy Narrows First Nation and Wabaseemoong Independent Nations who demonstrate symptoms that are reasonably consistent with mercury poisoning. More than 200 people in the communities of Grassy Narrows and Wabaseemoong receive mercury disability payments. Since 2015/16, \$60 million has been spent through this program.

## 2.2 Land and Treaty Claims and Disputes

Treaties are agreements or contracts made between the Crown (originally with the British government, and then Canada) and Indigenous Peoples, defining the ongoing rights, benefits and obligations of

all parties. Between 1764 and 1930, Indigenous Peoples signed 46 treaties with the Crown, covering most of the lands in Ontario, that outlined exchanges of Indigenous land for payments or promises. In general, treaties included preserving hunting, fishing and harvesting rights, the establishment of reserve land (land set aside for First Nations use only), and the payment of annuities (money to be paid to a First Nation every year), among other provisions. Treaties enabled the Crown to gain access to the land and natural resources for the purposes of settlement and economic development. However, not all Indigenous groups signed treaties to surrender land which has resulted in a lack of defined treaty rights for these First Nations.

In 1973, the Canadian government began recognizing land claims of Status Indians. A land claim is a formal statement made by a First Nations or other Indigenous community against the Crown (the governments of Canada and Ontario) asserting it is legally entitled to land and/or financial compensation, it did not surrender its original rights to land and resources, or that the Crown has not lived up to its obligations under a treaty. Claims are based on alleged violations of Indigenous and treaty rights. See **Section 2.5.3** for the role of the Ministry of Indigenous Affairs in negotiating and settling land claims and negotiating other settlements.

### 2.2.1 The Royal Commission on Aboriginal Peoples

In March 1990, in an attempt to prevent the expansion of a golf course in the town of Oka, Quebec on to First Nation burial grounds, First Nations protestors set up barricades blocking access to the area. On July 11, 1990, Marcel Lemay, a Corporal in Quebec's provincial police force, died as the result of a gun fight between First Nations protestors and the Quebec provincial police at this site. A 78-day armed standoff referred to as the Oka Crisis followed, which escalated from conflicts surrounding land claims dating back to the 18th century.

In May 1991, the federal government announced the Royal Commission on Aboriginal Peoples. The mandate of the commission was to investigate and

propose solutions to the challenges affecting the relationship between Indigenous Peoples, the federal government and Canadian society as a whole. In October 1996, the commission released a report setting out 440 recommendations and a 20-year agenda to restructure the relationship between Indigenous Peoples and non-Indigenous people in Canada. Recommendations included developing Indigenous self-governments, culturally sensitive health strategies and education initiatives, and reviewing First Nations land claims through an independent tribunal. The recommendations made to the federal, provincial and territorial governments were intended to address virtually every aspect of Indigenous people's lives.

### 2.2.2 The Ipperwash Inquiry

On September 6, 1995, Anthony "Dudley" George, a Chippewa of the Kettle and Stony Point First Nation, was shot and fatally wounded by an Ontario Provincial Police (OPP) officer. He was participating in an occupation of Ipperwash Provincial Park on Lake Huron. The protest had its roots in a number of events dating back more than 60 years. These events included the federal government's expropriation of land from the Stony Point Reserve for Camp Ipperwash, a military training camp, during the Second World War, as well as the provincial government's failure to protect burial grounds at the camp and in nearby Ipperwash Provincial Park. The Indigenous groups affected had been requesting the return of the land and protection of the burial grounds for decades.

On November 12, 2003, the Ipperwash Inquiry was established under the *Public Inquiries Act* with a mandate to inquire about and report on events surrounding the death of Dudley George. The report on the Inquiry's findings, including conclusions and recommendations on how to avoid violence in similar circumstances in the future, was made public on May 31, 2007.

The report consisted of 100 recommendations to improve:

- policing of Indigenous protests and occupations;



- relationships among federal, provincial and First Nations governments;
- the land claims process;
- sharing the benefits of resource development;
- consultation concerning Indigenous and treaty rights; and
- public awareness and education about Indigenous Peoples.

A federal Ministerial Order, signed on August 25, 2020, set aside 46 hectares (114 acres) of land as an addition to the reserve of the Chipewas of Kettle and Stony Point First Nation.

## 2.3 Residential Schools

The federal government began to establish residential schools in the 1800s. Residential schools took Indigenous children away from their families with the intent of breaking their ties to their Indigenous cultures and assimilating them into the dominant non-Indigenous culture. There were 17 residential schools in Ontario. The last one closed in 1991.

In 2006, the largest class-action settlement in Canadian history was reached, involving about 86,000 former students and the federal government. It resulted in the Indian Residential Schools Settlement Agreement. The implementation of the Settlement Agreement began on September 19, 2007. The Settlement Agreement has five components, including a \$1.9-billion compensation package, and the Truth and Reconciliation Commission.

In June 2008, then Prime Minister Stephen Harper issued the following apology on behalf of Canadians for Indian Residential Schools: “The Government of Canada built an education system in which very young children were often forcibly removed from their homes, often taken far from their communities. Many were inadequately fed, clothed and housed. All were deprived of the care and nurturing of their parents, grandparents and communities. First Nations, Métis and Inuit languages and cultural practices were prohibited in these schools. Tragically, some of these children died while attending residential schools and others never returned home.”

### 2.3.1 Truth and Reconciliation Commission

The Truth and Reconciliation Commission of Canada (Commission) was established in 2008 as part of the Indian Residential Schools Settlement Agreement. The purpose of the Commission was to bear witness to the impacts of residential schools and facilitate reconciliation among former students and their families, their communities, governments and all Canadians.

In June 2015, the Commission made 94 “calls to action” (or recommendations) to further reconciliation between Canadians and Indigenous Peoples. In December 2015, the Prime Minister of Canada accepted the Commission’s final report, which called on all levels of government, educational and religious institutions, other private institutions, civil society groups and all Canadians to act on the 94 recommendations. They encompass child welfare, education, health, justice, language and culture.

## 2.4 Federal and Provincial Responsibilities for Indigenous Programs and Services

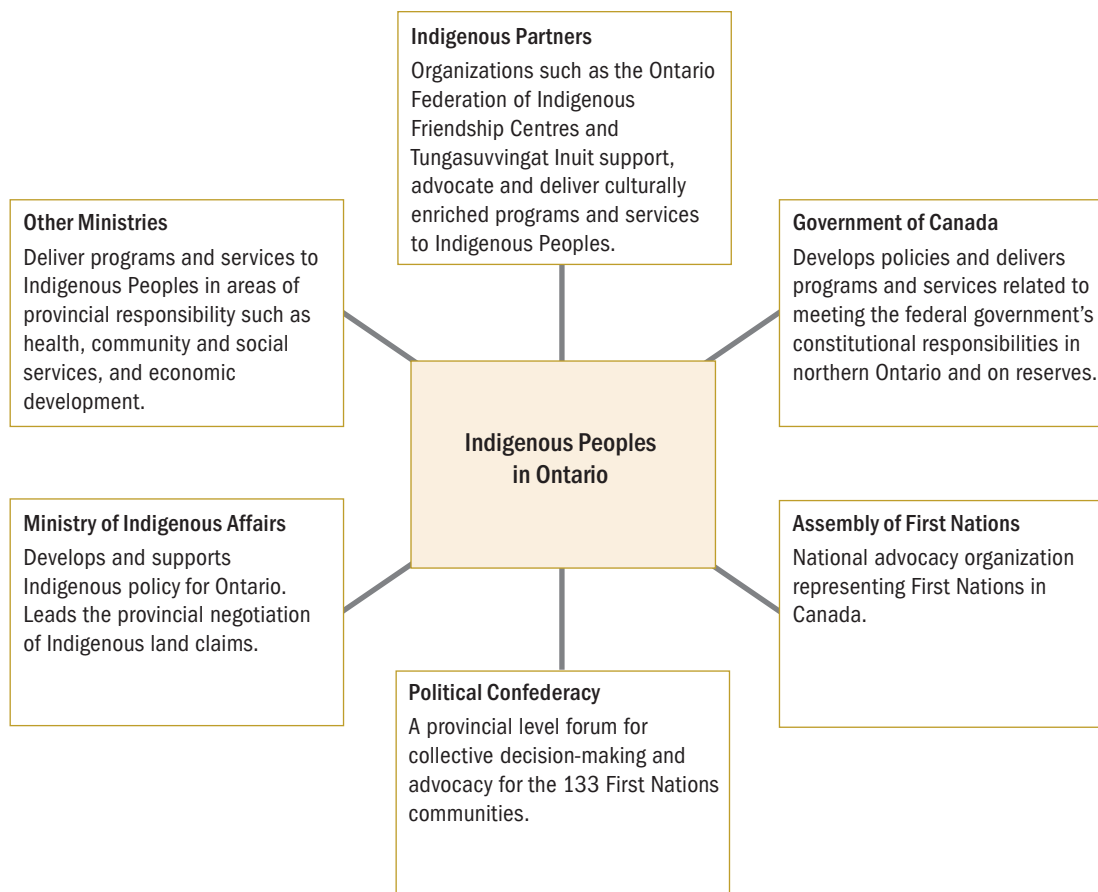
Historically, the federal government has been viewed as having primary responsibility for matters involving Indigenous Peoples. Provincial and federal legislation and agreements have resulted in responsibilities being shared between the federal and provincial governments in the areas of health, child welfare, child care, justice, education, training, income security and housing.

The federal and provincial governments each have responsibilities to deliver programs and services for the approximately 375,000 Indigenous people residing in Ontario (see **Figure 4**). Legal, historical, policy and financial factors influence how the different levels of government work together. Generally speaking:

- The federal *Constitution Act* was historically viewed as giving the federal government primary responsibility with respect to Indigenous Peoples.
- Under various provincial Acts, the province is responsible for providing a wide range of

**Figure 4: Government and Other Organizations Involved in Providing Indigenous Programs and Services in Ontario**

Prepared by the Office of the Auditor General of Ontario



services to Ontario residents in areas such as health care and child welfare. Given the federal government's responsibility for Indigenous Peoples, income assistance, child welfare, child care, nursing and homemaker services provided by the province to Indigenous people is cost-shared with the federal government under the Indian Welfare Agreement.

The federal and provincial governments also have legal obligations from the 46 treaties that cover most of the lands in Ontario. **Appendix 3** presents in detail each level of government's responsibilities.

## 2.5 Overview of the Ministry of Indigenous Affairs

The Ministry of Indigenous Affairs (Ministry) is responsible for leading collaboration and co-ordination across provincial ministries on Indigenous

policies and programs. This includes the responsibility for setting priorities and tracking the province's progress in effectively implementing Indigenous policies and programs. Other roles include:

- ensuring the province meets its constitutional obligations to consult Indigenous communities before any government action is taken that might adversely impact Indigenous or treaty rights;
- working to resolve Indigenous land claims issues;
- helping Indigenous people access government programs, services and information; and
- engaging with the federal government on priorities affecting Indigenous people.

The Ministry was formed by an Order-in-Council on June 21, 2007 in response to the recommendations of the Ipperwash Inquiry in May 2007.

Before the Ministry was created, Ontario had a Native Affairs Secretariat. The Secretariat was mandated to work with First Nations, and Indigenous organizations and businesses to build strong, prosperous and self-reliant Indigenous communities. The Secretariat also represented Ontario in self-government negotiations between Canada and First Nations as required. Its core businesses were negotiations, Indigenous economic development, coordination of Indigenous affairs and internal business support. Under these core businesses, the Secretariat's key activities included:

- conducting land claims negotiations on behalf of the province and implementing land claims settlements;
- funding capital projects that were delivered by other ministries;
- providing core funding for eligible Indigenous organizations; and
- promoting Indigenous economic development.

### 2.5.1 Indigenous Policy Leadership

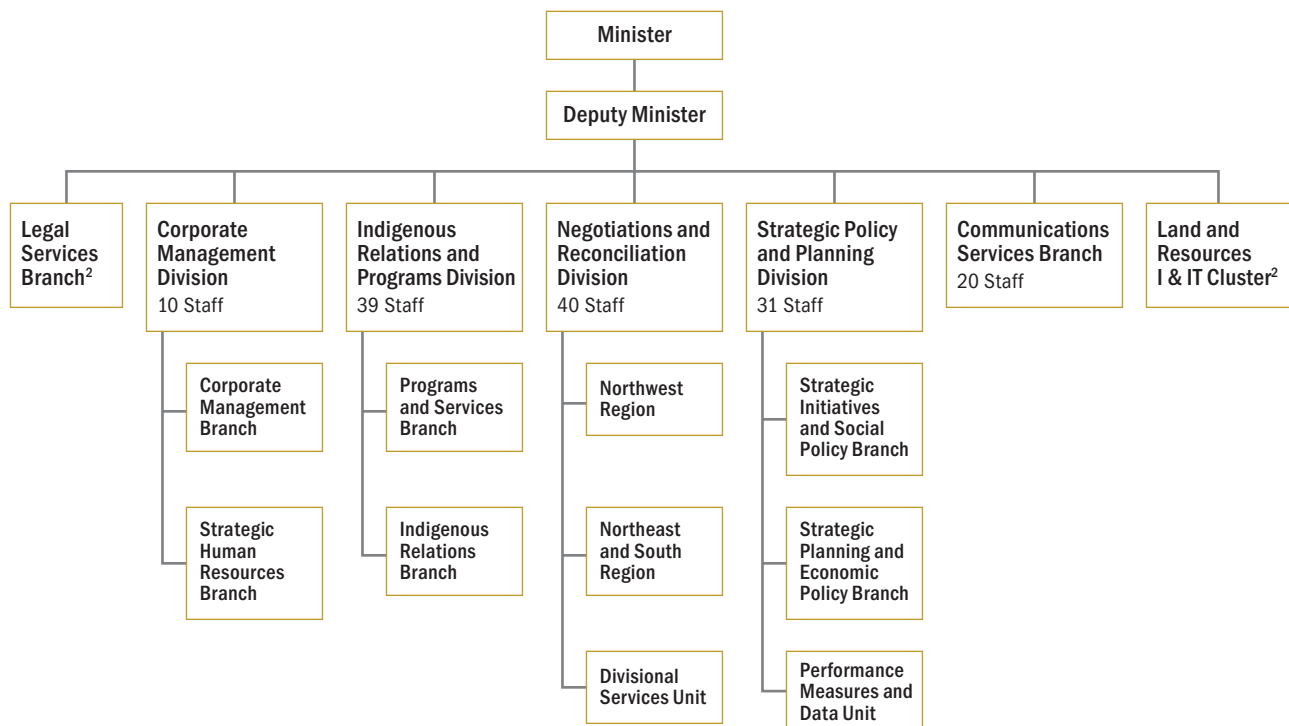
The Ministry is to work with other ministries and Indigenous partners to lead the development, co-ordination and implementation of government strategies and policies related to Indigenous affairs. The strategies and policies seek to follow best practices in areas such as governance and rights, improving social and economic outcomes and engaging the federal government on Indigenous issues. The Ministry's mandate is to focus on policies related to economic development, health, and community and social services.

### 2.5.2 Staffing and Expenditures

As of June, 2020, the Ministry had a total of 140 staff, up from 124 in 2015, representing a 11% increase in the last five years. **Figure 5** shows the staff by branch or division.

**Figure 5: Organizational Chart of the Ministry of Indigenous Affairs (140 Total Staff)**

Source of data: Ministry of Indigenous Affairs<sup>1</sup>



1. Data as of June 2020.

2. Legal Services Branch and I & IT Cluster staff are in other ministries.

**Figure 6: Ministry of Indigenous Affairs Expenditures, 2015/16–2019/20 (\$ million)**

Source of data: Public Accounts of Ontario

	2015/16	2016/17	2017/18	2018/19	2019/20	5-Year Total
Administration <sup>1</sup>	11.40	12.55	12.35	13.56	12.20	<b>62.06</b>
Indigenous Affairs <sup>2</sup>	60.16	76.98	84.09	89.34	55.23	<b>365.80</b>
<b>Land Claims and Self-Government Initiatives</b>						
Land claim settlements <sup>3</sup>	4.50	29.38	1,007.91 <sup>4</sup>	187.00	14.10	<b>1,242.89</b>
Negotiated settlements <sup>5</sup>	0.01	—	102.50 <sup>6</sup>	—	—	<b>102.51</b>
<b>Other</b>						
Minister's salary as per the <i>Executive Council Act</i> <sup>7</sup>	0.05	0.05	0.05	0.10 <sup>8</sup>	—	<b>0.25</b>
Parliamentary Assistant's salary ( <i>Executive Council Act</i> ) <sup>7</sup>	0.02	—	—	0.10 <sup>8</sup>	0.04	<b>0.16</b>
Bad debt expense ( <i>Financial Administration Act</i> ) <sup>9</sup>	—	1.60	0.11	—	—	<b>1.71</b>
Mercury Disability Fund <sup>10</sup>	—	—	—	—	5.17	<b>5.17</b>
<b>Total</b>	<b>76.14</b>	<b>120.56</b>	<b>1,207.01</b>	<b>290.10</b>	<b>86.74</b>	<b>1,780.55</b>

1. Administration includes salaries and wages, employee benefits, transportation and communication, services, supplies and equipment for the Corporate Management Branch, Communication Services Branch, Deputy Minister's Office, Minister's Office and most of the Legal Services Branch.
2. Indigenous Affairs includes salaries and wages, employee benefits, transportation and communication, services, supplies and equipment for the Negotiations and Reconciliation Division, Indigenous Relations and Programs Division, Strategic Policy and Planning Division, and some legal services costs. This program also includes most of the Ministry's transfer payments.
3. Land claim settlements include contingent liabilities and incurred expenses as reported in the Public Accounts.
4. This amount includes the expenses related to the settlement of the Williams Treaties Land Claim.
5. Negotiated settlements include any settlements made outside of a land claim settlement.
6. This amount relates to the Casino Brantford.
7. This Act states that the annual salary of every minister with a portfolio is 42.3% of the annual salary of a member of the Assembly, and the annual salary of every Parliamentary Assistant is 14.3% of the annual salary of a member of the Assembly.
8. As of 2018/19, there is no longer a dedicated Minister of Indigenous Affairs. The current Minister and Parliamentary Assistant allocate their time between the Ministry of Energy, Northern Development and Mines and the Ministry of Indigenous Affairs.
9. Under the *Financial Administration Act*: A debt owing to the Crown has become uncollectible and is considered a bad debt.
10. As the Trustee under the *English and Wabigoon River Systems Mercury Contamination Settlement Agreement Act, 1989* the Ministry has made payments in accordance with terms of the agreement.

Operating expenses (including land claims settlements) for the Ministry totalled \$1.8 billion for the last five years, and fluctuated widely from year to year due to land claims settlements. Land claims settlements accounted for about 70% of the Ministry's spending, largely due to significant settlements in the last few years. See **Figure 6** for Ministry expenditures from 2015/16 to 2019/20.

### 2.5.3 Provincial Programs and Services Expenditures

In 2019/20, the province budgeted approximately \$1.2 billion and spent approximately \$1.1 billion on programs and services specifically created for

Indigenous people. These expenses were largely incurred by other ministries on programs and services for health and mental health (\$377.7 million); education and child care (\$228.6 million); child and family well-being (\$167.5 million) and justice (\$124.9 million). See **Figure 7** for a breakdown of the \$4.5 billion in spending on Indigenous programs and services for the last five fiscal years.

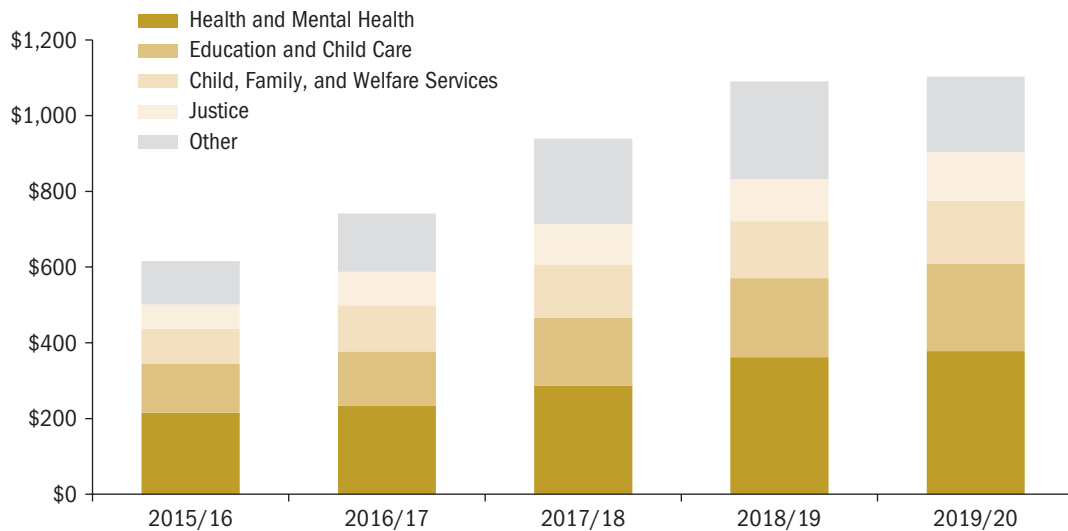
### 2.5.4 Negotiating and Settling Land Claims

Between 1764 and 1930, the Crown (originally the British government, and then Canada) and First Nations signed 46 treaties covering most of the lands in Ontario. See **Figure 8** for a map of all treaties in Ontario.



**Figure 7: Expenditures on Programs and Services for Indigenous Peoples in Ontario: 2015/16–2019/20 (\$ million)**

Source of data: Ontario Ministries



Note: "Other" category primarily includes housing, economic development, engagement, infrastructure, and programs to support natural resource development. Expenditure amount included are for programs specifically targeted to Indigenous Peoples.

Although most of these treaties were signed more than a century ago, treaty commitments remain valid. The Ministry is responsible for acting as the lead negotiator for the province.

Types of land claims include:

- **Aboriginal Title:** An Indigenous community claims it continues to have Aboriginal rights and title to its traditional lands.
- **Boundary:** An Indigenous community claims that reserve land received through a treaty does not reflect its understanding of the reserve it was to receive.
- **Flooding:** Reserve land has been flooded by the construction of water control structures, such as dams, and the Indigenous community claims it has not been adequately compensated.
- **Highway:** An Indigenous community claims that reserve land used for a public highway was inappropriately transferred, or the Indigenous community was inadequately compensated.
- **Treaty Land Entitlement:** An Indigenous community claims it did not receive the amount or quality of land it should have under a treaty.

- **Unsold Surrendered Lands:** An Indigenous community claims it surrendered land for sale, but the land remains unsold by the Crown.

The Ministry settles land claims by negotiating agreements to compensate the Indigenous community for the infringement. Land claims are legal issues and can be litigated in court, instead of being settled through negotiations. See **Figure 9** for the land claim settlement process. Settlements can include the Crown providing financial compensation and/or transferring lands to the community. Depending on the type of land claim, other government bodies may be involved in the negotiations or implementation of agreements reached. See **Figure 10** for the potential involvement of provincial ministries and the federal government.

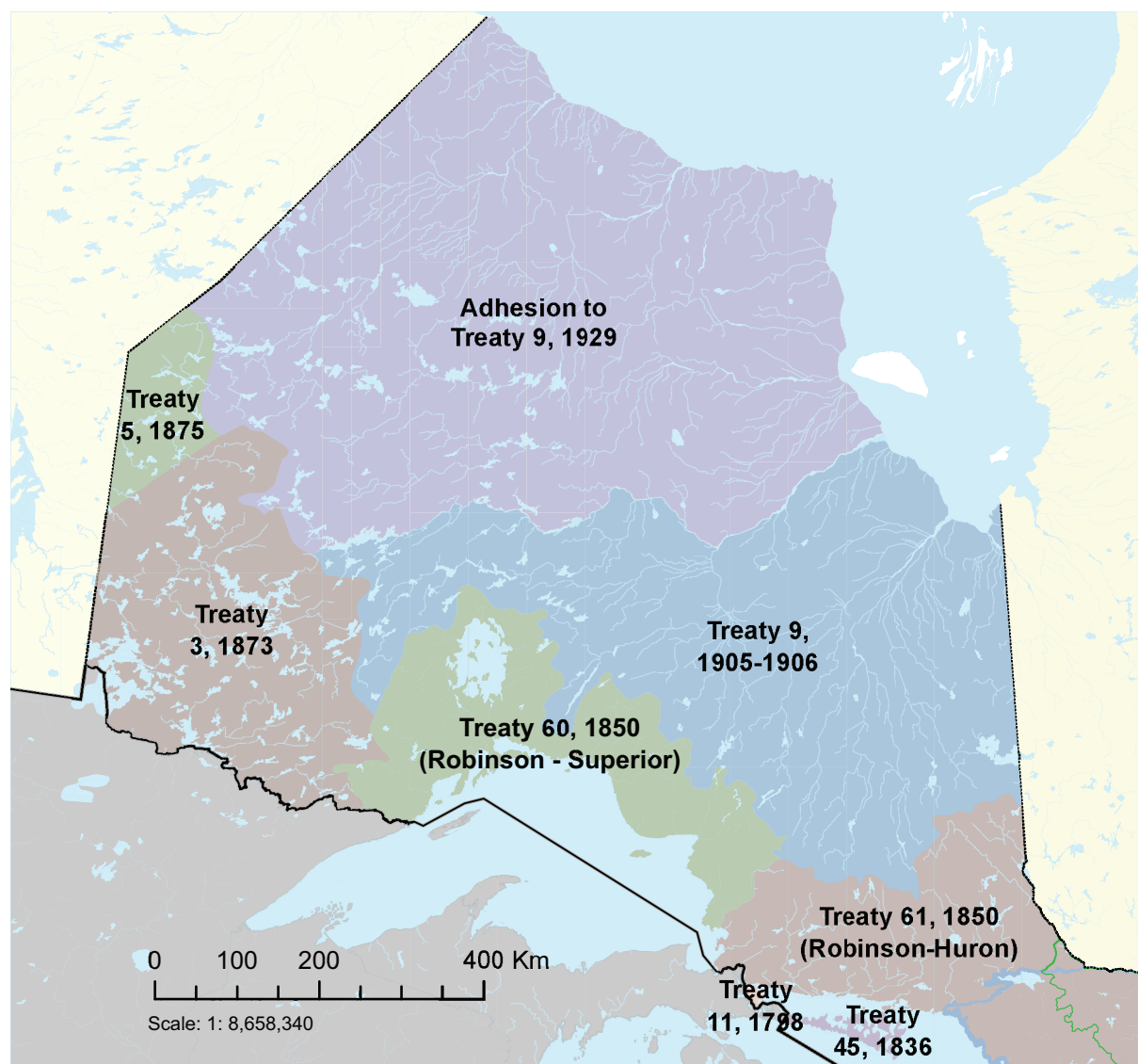
According to First Nations communities, settling a land claim provides an opportunity to build a more independent, healthy community. For example, a community could apply financial compensation toward long-term economic development.

Since 1983, 51 land claims have been settled in Ontario, which transferred 382,304 acres of land and \$1.8 billion in financial compensation,

**Figure 8: Maps of Ontario Treaty Areas**

Source: Ministry of Indigenous Affairs

## Northern



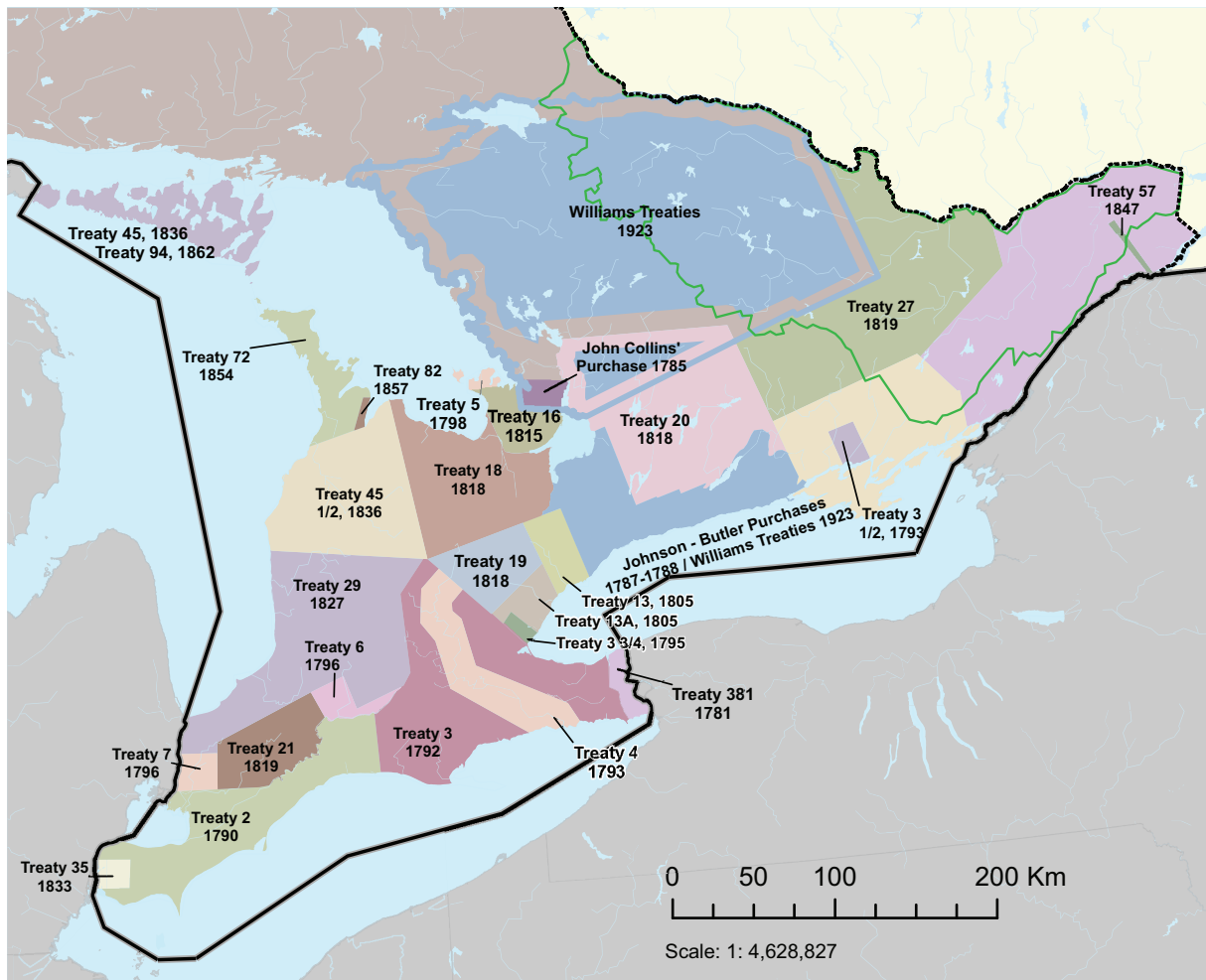
- Provisional Algonquin Settlement Area
- Canada - US Border
- Provincial Border

Note: Maps provided by the Ministry of Indigenous Affairs for illustrative purposes only. The maps do not reflect Ontario's position, nor do they constitute any admission, or limit Ontario's rights in any way.

\$700 million of which was provided by the province. The remainder of the financial compensation was provided by the federal government. See **Appendix 4** for a list of settled land claims. **Appendix 5** shows that as of October 2020, the Ministry had another 74 land claims in progress,

with 54 in active negotiations. The Ministry currently anticipates that an estimated 24 land claims may be settled from 2019/20 to 2021/22. The total amount of financial compensation that may be provided to settle these claims is estimated at up to \$558 million.

## Southern



- Provisional Algonquin Settlement Area
- Canada - US Border
- Provincial Border

Note: Maps provided by the Ministry of Indigenous Affairs for illustrative purposes only. The maps do not reflect Ontario's position, nor do they constitute any admission, or limit Ontario's rights in any way.

### 2.5.5 Consultation Guidance

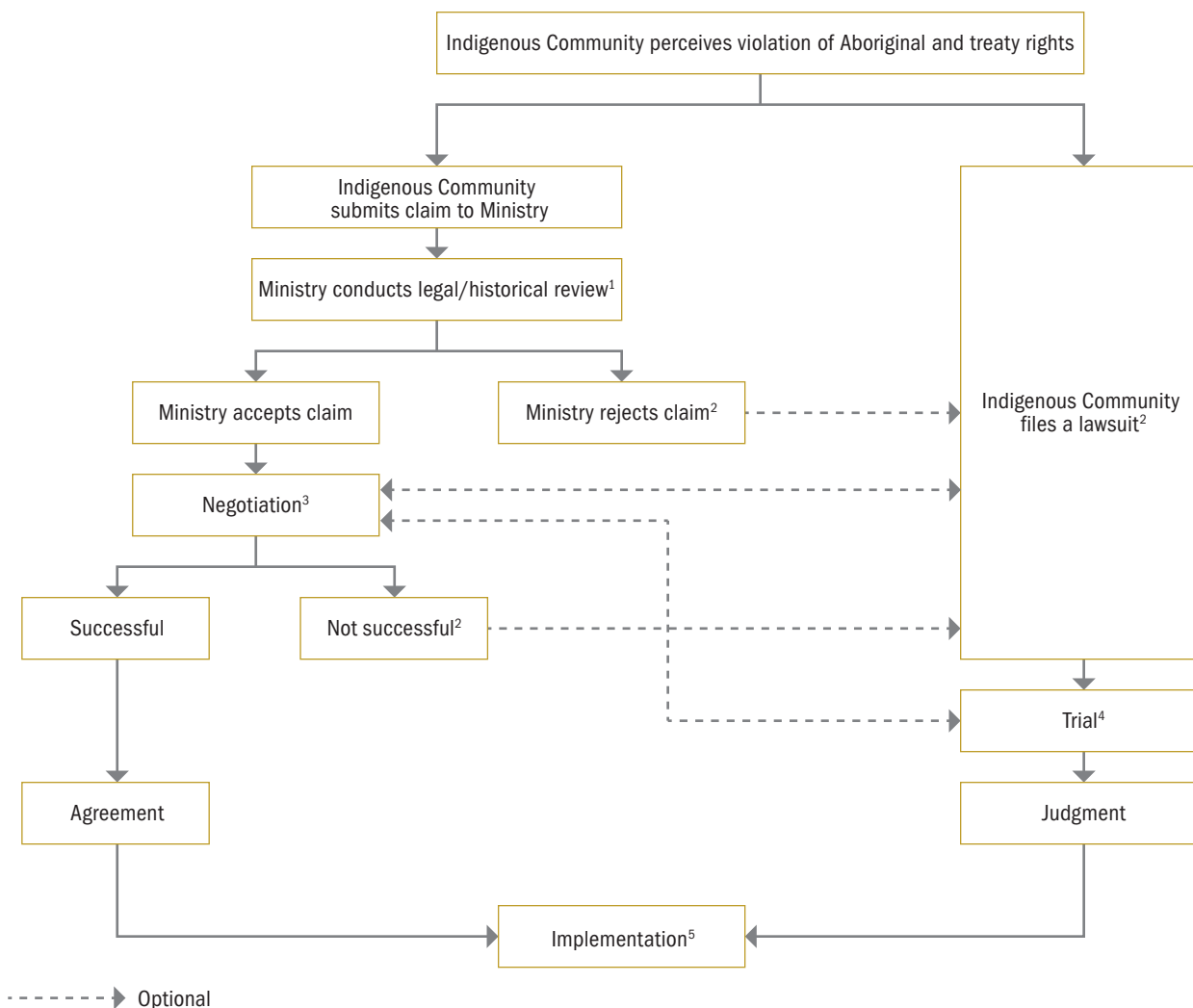
The Supreme Court of Canada ruled that the Crown has an obligation to consult with an Indigenous community when it has knowledge of an established or credibly asserted Aboriginal (Indigenous) or treaty right, and contemplates conduct that may adversely affect that right. Established rights are those that have been recognized by a court or through a settlement agreement with the Crown, or outlined in a treaty where there is no dispute regarding the meaning of the treaty right in ques-

tion. Asserted rights are claims made by an Indigenous community. Section 35 of the *Constitution Act, 1982* affirms Indigenous and treaty rights.

The Ministry is mandated to ensure the province is meeting its constitutional obligation to consult Indigenous communities. Specifically, the province must consult Indigenous communities when it is contemplating conduct that it knows might adversely impact Indigenous or treaty rights. For example, if the Ministry of Energy, Northern Development and Mines is considering approving

## Figure 9: Land Claim Process

Prepared by the Office of the Auditor General of Ontario



1. The Ministry may request additional information to support the claim from the community before deciding whether to accept or reject the claim for negotiation.
2. The community may file a lawsuit without filing a claim with the Ministry if the Ministry rejects the claim, or if negotiations are unsuccessful.
3. During negotiations, other government ministries are engaged if information needed is under the purview of the other ministries (see Figure 10). The First Nation community will have their own legal representative and their community Chief and/or community member(s) in the negotiations process.
4. Both parties, if they agree, can put the trial on hold and enter into negotiations.
5. During implementation, other government ministries and/or the federal government are engaged if duties to be performed fall under the mandates of the other ministries or the federal government (see Figure 10).

mineral exploration on traditional Indigenous lands, it must first discuss this meaningfully with the potentially impacted Indigenous community. To support this, the Ministry of Indigenous Affairs drafts guidelines, and provides training and advice to other ministries. Each ministry decides on the details of the consultation depending on its mandate and legislative framework.

The province also conducts engagement with Indigenous Peoples when it is contemplating government policies or programs that are intended to benefit Indigenous Peoples and their communities. Unlike consultation, there is no legal obligation for the Crown to conduct engagement. However, it is considered a best practice in effectively developing Indigenous programs and services. For example,



**Figure 10: Involvement of Other Provincial Ministries and the Federal Government in Land Claim Settlements**

Prepared by the Office of the Auditor General of Ontario

Government Entity	Responsibility <sup>1</sup>
Ministry of Natural Resources and Forestry	<ul style="list-style-type: none"> <li>• Approves all land that is to be transferred over as part of the settlement agreement</li> <li>• Performs various land analyses used during the negotiation and implementation, for example environmental assessments</li> <li>• Provides key information to negotiation table such as any existing rights or future interests on proposed lands</li> <li>• Assists in the implementation of land transfers by carrying out activities such as land surveys and site remediation</li> <li>• Ontario Surveyor General is responsible for undertaking land surveys</li> <li>• Assists with determining the value of the lands</li> <li>• Provides relevant information on claims impacted by forestry industry such as stakeholders and active licences</li> </ul>
Ministry of Environment, Conservation and Parks	<ul style="list-style-type: none"> <li>• Provides mapping and analyses of the provincial parks and conservation reserves</li> <li>• De-regulates parks and conservations so they can be transferred as part of settlement</li> </ul>
Ministry of Energy, Northern Development and Mines	<ul style="list-style-type: none"> <li>• Provides analyses on lands and their mineral potential</li> <li>• Provides information on third-party mining interests and proposed areas for mining development</li> <li>• Issues Mineral Withdrawal Orders on identified crown lands so no rights can be issued during negotiations</li> <li>• Ontario Power Generation can be engaged as a party on flooding claims as a result of their operations (dams) and are vital in settlement discussions</li> </ul>
Ministry of Transportation	<ul style="list-style-type: none"> <li>• Identifies all parcels of land in which the province has current or future transportation interest</li> </ul>
Treasury Board Secretariat	<ul style="list-style-type: none"> <li>• Approves the negotiation mandate</li> <li>• Approves the disbursement of funds as part of settlement</li> <li>• Approves any additional funding requests as part of negotiations process, either for the Ministry or First Nation community</li> </ul>
Federal Government	<ul style="list-style-type: none"> <li>• Researches and accepts claims<sup>2</sup></li> <li>• Participates in negotiations that involve both the federal and provincial government<sup>3</sup></li> <li>• Adds lands to reserves<sup>4</sup></li> </ul>

1. Additional responsibilities for other ministries may be involved depending on the nature of the land claim.

2. When Ontario and Canada are both part of a land claim they each perform their own research and assessment of the claim.

3. When the claim enters negotiations, it is expected that both levels of government attend the negotiations.

4. When an agreement is reached, both Ontario and Canada perform their own environmental assessments and vested rights check on the lands prior to transferring the land. Ontario transfers administration and control of the land to Canada, and Canada then sets aside the lands as reserve for the benefit of the First Nation community.

the Ministry of Indigenous Affairs engaged with Indigenous partners to develop the First Nations Community Economic Development Guide. This guide is used across Ontario by First Nations development officers, chiefs, councils and community members to capitalize on community economic opportunities, create new jobs and better partnerships, and strengthen First Nations economies.

### 3.0 Audit Objective and Scope

Our audit objective was to assess whether the Ministry of Indigenous Affairs, working in partnership with other ministries and the broader public sector, has effective and efficient systems and processes in place to:

- lead the development of policy, programs and services that improve outcomes for Indigenous Peoples in the areas of health, community and social services and economic development;
- lead provincial negotiations towards the timely and effective settlement of Indigenous land and other claims; and
- measure and publicly report on the results of negotiations and the effectiveness of programs and services in meeting the needs and improving the social and economic outcomes of Indigenous Peoples.

In planning our work, we identified the audit criteria (see **Appendix 6**) we would use to address our audit objective. We established these criteria based on a review of applicable legislation, policies and procedures, internal and external studies, and best practices. The Ministry's senior management reviewed and agreed with the suitability of our objective and associated criteria.

We conducted our audit at the Ministry office between January 2020 and March 2020. Due to the impacts of COVID-19, our work was subsequently conducted remotely. However, we continued to engage the Ministry, Indigenous communities and other stakeholders through video-conferencing and other forms of electronic communication.

We received written representation from Ministry management that, effective October 14, 2020, they had provided us with all the information they were aware of that could significantly affect the findings or the conclusions of this report.

Our audit focused on the Ministry's collaboration with other ministries in providing Indigenous programs and services, its co-ordination of those programs and services, its settlement of land claims, and its oversight of consultations with Indigenous Peoples.

We analyzed data, including:

- social and economic data for Indigenous Peoples in Canada and Ontario from 2001 to 2016 (latest available);

- health data for Indigenous and non-Indigenous people in Canada and Ontario for 2015 and 2019;
- average community well-being scores for First Nation communities in Ontario and other Canadian provinces in 1981 and 2016 (latest available);
- expenditure and performance data for primarily Indigenous programs in Ontario from 2015/16 to 2019/20; and
- the province of Ontario's land claims data from 1973 to 2020.

We found that reliable data on other indicators of well-being such as infant mortality rates, suicide prevalence and life expectancy was limited.

In order to review land claims settlements, consultations, and Indigenous programs and services, we interviewed staff and reviewed relevant documentation from the following ministries: Ministry of the Attorney General; Ministry of Children, Community and Social Services; Ministry of Colleges and Universities; Ministry of Education; Ministry of Energy, Northern Development and Mines; Ministry of the Environment, Conservation and Parks; Ministry of Finance; Ministry of Health; Ministry of Natural Resources and Forestry; and the Ministry of Transportation.

We met with the provincial organization, Chiefs of Ontario, and also spoke with Chiefs and representatives from Indigenous communities including Anishinabek Nation, Grand Council Treaty #3, Association of Iroquois and Allied Indians, Independent First Nations, Mississaugas of the New Credit First Nation, Nipissing First Nation and Sagamok Anishnawbek.

We also spoke with staff from non-government entities providing services to Indigenous people, including the Ontario Federation of Indigenous Friendship Centres, Ontario First Nations Technical Services Corporation, and the Tungasuvvingat Inuit.

In addition, we reviewed relevant research and best practices in Indigenous affairs in Canada and other provinces. We also engaged an independent

advisor with expertise in Indigenous affairs to assist us on this audit.

We conducted our work and reported on the results of our examination in accordance with the applicable Canadian Standards on Assurance Engagements—Direct Engagements issued by the Auditing and Assurance Standards Board of the Chartered Professional Accountants of Canada. This included obtaining a reasonable level of assurance.

The Office of the Auditor General of Ontario applies the Canadian Standard on Quality Control and, as a result, maintains a comprehensive quality-control system that includes documented policies and procedures with respect to compliance with rules of professional conduct, professional standards and applicable legal and regulatory requirements.

We have complied with the independence and other ethical requirements of the Code of Professional Conduct of the Chartered Professional

Accountants of Ontario, which are founded on fundamental principles of integrity, objectivity, professional competence and due care, confidentiality and professional behaviour.

## 4.0 Detailed Audit Observations

### 4.1 Indigenous People Continue to Experience Poorer Social and Economic Conditions than Non-Indigenous People

Despite significant average annual provincial investments of \$898 million over the last five years, there continues to be social and economic disparities between Indigenous and non-Indigenous people. **Figure 11** compares indicators of Indigenous and non-Indigenous people. Many societal

**Figure 11: Social and Economic Indicators for Indigenous Peoples and Non-Indigenous People in Ontario, 2001, 2006 and 2016**

Source of data: Statistics Canada 2001, 2006, 2016

Indicator	2001		2006		2016	
	Indigenous	Non-Indigenous	Indigenous	Non-Indigenous	Indigenous	Non-Indigenous
% of population over the age of 15 with a high school degree	57.7	70.5	62.4	78.0	70.9	82.8
% of population aged 25–64 with a university degree	7.0	22.6	9.0	26.3	12.5	32.4
Employment rate of the population aged 25–64 (%)	63.5	76.8	65.4	76.9	63.8	76.0
Median annual employment income (before tax) for people over the age of 15 (\$)	20,036	28,338	21,151	29,515	26,714	34,165
% of dwellings in need of major repairs	n/a	n/a	18.3	6.3	16.9	5.8
% of children under the age of 15 in foster care	1.8	0.4	2.6	0.5	2.0	0.2
# of adults admitted to federal and provincial custody per 100,000 population	3,873	757	3,690	788	2,430	510

Note: 2001 and 2016 represent the widest range of available data

\* n/a indicates the data was not available for that year.

and historical issues have led to inequity between Indigenous and non-Indigenous people. However, a decentralized approach to Indigenous policy and program development (see **Sections 4.2 and 4.4**), the lack of monitoring for program effectiveness (see **Sections 4.3 and 4.8**), poor oversight of program and service delivery (see **Section 4.7**), the lack of engagement with Indigenous communities on government programs and services (see **Section 4.5**), and delayed delivery of funding for programs and services (see **Section 4.9**) may have affected the province's effectiveness in reducing disparities between Indigenous and non-Indigenous people in Ontario.

Below we discuss significant areas of provincial responsibility where Indigenous people continue to have lower social and economic outcomes.

## Health

Although the federal government jointly funds some health-care services, ensuring equal access to health care for Indigenous people living in Ontario is the responsibility of the provincial government. Despite the province's average annual investment of about \$295 million over the last five years for on-reserve and off-reserve Indigenous health-care programs and services, Indigenous people continue to have poorer health outcomes in key areas.

First Nations Chiefs indicated that there is limited access to on-reserve health and wellness programs, which is a shared responsibility of the federal and provincial governments. The 2019 Chiefs of Ontario Regional Health Survey found that 46% of First Nations respondents who lived on reserve rated the quality of health-care services there as fair or poor. Respondents also reported high levels of health conditions such as arthritis (26%), high blood pressure (23%) and diabetes (23%). In contrast, the 2019 Canadian Community Health Survey found that Indigenous people residing off reserve reported lower rates of arthritis (22%), high blood pressure (15%) and diabetes (7%).

**Figure 12** demonstrates disparities in 2015 and 2019 between Indigenous people living off reserve and non-Indigenous people with self-reported chronic conditions, mental health conditions and substance use. This disparity existed despite the fact that Indigenous people living off reserve in urban centres have access to the same level of health care as non-Indigenous people living in those urban centres.

## Child and Family Well-being

Ontario provided an average of around \$134 million in funding over the last five years specifically targeted to Indigenous child, family and welfare services in 2019/20. Provincial governments have a responsibility to regulate child welfare. As outlined in **Figure 11**, Indigenous children are 10 times more likely to be in foster care than non-Indigenous children.

## Justice

Ontario spent, on average, around \$101 million annually on Indigenous justice programs over the last five years. Of this \$101 million, approximately \$67 million (or 66%) was spent on policing programs, while the remaining expenditures were related to legal services, victims' services, and correctional and community services. **Figure 11** demonstrates the disparities in admission rates to provincial and federal correctional institutions between Indigenous and non-Indigenous people.

## Education and Child Care

Over the last five years, Ontario spent an average of \$178 million annually on education and child care programs for Indigenous people (\$134 million for education and \$44 million for child care programs).

The province provides a grant for Indigenous students attending schools off reserve. On-reserve schools are funded by the federal government. In these schools, the responsibility for the develop-



**Figure 12: Self-Reported Health of Indigenous People Residing Off Reserve and Non-Indigenous People in Ontario, 2015 and 2019**

Source of data: Statistics Canada 2015 and 2019

Health Indicator	2015		2019	
	% of Indigenous People (Off Reserve)	% of Non-Indigenous People	% of Indigenous People (Off Reserve)	% of Non-Indigenous People
<b>Chronic Health</b>				
Self-reported health is fair or poor	19.3	11.0	17.7	10.9
Has one or more chronic condition	42.1	30.6	42.1	32.7
Has a respiratory disease	19.1	10.1	13.1	9.0
Self-reported obesity	29.1	19.9	30.8	20.7
<b>Mental Health</b>				
Self-reported mental health is fair or poor	14.2	6.5	18.8	8.6
Has depression that is moderate to severe	15.6	6.5	15.2	6.5
Self-reported mood disorder	18.5	8.4	21.2	9.4
Self-reported anxiety disorder	22.1	8.0	20.0	9.6
Has attempted suicide in their lifetime	10.5	2.4	9.7	2.5
Has considered suicide in their lifetime	26.1	9.9	25.8	11.4
<b>Substance Use</b>				
Has used illicit drugs in the last year <sup>1</sup>	27.0	11.1	27.4	15.9
Self-reported heavy drinker <sup>2</sup>	36.4	24.3	34.3	22.2

1. This health indicator was not available for 2019, so 2018 data has been substituted.

2. Statistics Canada defines heavy drinking as drinking five or more drinks on one occasion at least once per month in the past year for males, and drinking four or more drinks on one occasion at least once per month in the past year for females.

ment of the curriculum resides with the First Nation community, but it must be comparable to the provincial curriculum.

Ontario also funds child care programs on and off reserve. As shown in **Figure 11**, while both high school and university educational attainment improved for Indigenous people from 2001 to 2016, a significant disparity still exists between Indigenous and non-Indigenous people.

## Employment

Ontario spent an average of \$70 million annually on programs supporting Indigenous economic development and employment over the last five years. However, as shown in **Figure 11**, Indigenous people were less likely to be employed and earned almost \$7,500 less in employment

income per year than non-Indigenous people.

According to a 2017 Statistics Canada survey, the three biggest barriers Indigenous people residing off reserve faced in finding a job was a shortage of available jobs, not having enough work experience, and not having enough education or training. The 2019 Chiefs of Ontario Regional Health Survey found that 20% of respondents who said they were not currently looking for work indicated the reason for this was poor health or a disability.

## Housing

On average, Ontario spent approximately \$29 million annually on programs for Indigenous off-reserve housing over the last five years. The federal government is responsible for First Nations housing on reserve lands. Indigenous people living

off reserve were more than twice as likely as non-Indigenous people to report that they resided in housing that needed major repairs.

## 4.2 No Coordinated Approach to Indigenous Policies, Programs and Services

The Ministry of Indigenous Affairs was formed in 2007 as a result of the Ipperwash Inquiry, which recommended that the province create a separate Ministry with its own authority and a clear mandate to ensure that Indigenous issues receive the priority and focus they deserve. Unlike ministries responsible for Indigenous affairs in British Columbia and Manitoba, who have clear mandates to lead a cross-government vision of reconciliation, the Ministry does not have a mandate giving it the authority to lead the development of policies, programs and services related to Indigenous people. The Ministry states on its public webpage that its role is only to “promote collaboration and coordination across ministries.”

Saskatchewan also has legislation that outlines the powers of the Minister responsible for Indigenous Affairs to establish social and economic development programs and policies for Indigenous Peoples, and make recommendations with respect to Indigenous affairs. Unlike Saskatchewan, the work of the Ministry is not governed by similar legislation in Ontario. As noted earlier, the Ministry was formed by an Order-in-Council.

In 2016, the Ministry developed a strategy with the intention of ensuring efforts to improve social and economic outcomes for Indigenous people would be aligned across ministries in Ontario. However, our audit noted that each ministry independently designs and implements its own Indigenous policy initiatives according to its own priorities. In its 2018/19 published plans and annual results, the Ministry noted that while it had supported strategies of other ministries and Indigenous partners, it did not lead any policy development in the areas of economic develop-

ment, health (other than mental health and addictions), or community and social services.

The province’s decentralized approach to Indigenous affairs has created confusion and has increased demands on resources in Indigenous communities. Representatives from Indigenous communities and organizations identified concerns about the lack of coordination between and within provincial ministries. For example, they raised concerns that:

- The Ministry of Indigenous Affairs is disconnected from other provincial ministries. For example, the Ministry was unable to relay community concerns to the Ministry for Seniors and Accessibility, the Ministry of Education or the Ministry of Health, or arrange meetings with these ministries. Communities were left on their own to arrange these meetings, in some cases without success.
- Other ministries are not aware of the Ministry of Indigenous Affairs’ role or how to involve it in discussions. One community said that in the past, other ministries would have gone through or involved the Ministry of Indigenous Affairs in conversations, but the community reported that since 2018, this is no longer the case.
- A lack of coordination between ministries does not allow for programs and services that could better address a specific community’s needs. For example, one community struggled to identify a program that would address problems with addictions in the community. None of the available individual programs could address the community’s needs. The community was instead required to apply to many ministry programs of differing duration and reporting requirements, and piece together the funding to address the need.
- Ministries do not coordinate with each other in requests to community service providers for information related to Indigenous programs and services. This results in Indigenous communities and other service providers

submitting duplicate, manually produced reports to various ministries. Basic registration information and documentation is required for each program application. Funding agreements also differ between programs, requiring separate legal review. Between programs, there is also confusion about reporting requirements. For example, the definition of what is considered an eligible expense varies from program to program. These types of issues create additional administrative burdens for Indigenous service providers with limited resources.

In contrast, representatives from Indigenous communities and service providers noted that the Ministry had effectively coordinated with other ministries to provide emergency supports during the COVID-19 pandemic. During the pandemic, the Ministry has been able to meet with Indigenous communities and service providers to get a more comprehensive understanding of their needs, relay those needs to the responsible ministries, and coordinate the government's response. The communities we spoke to informed us that this "one-window" approach would also be valuable outside of emergencies.

On April 27, 2020 the province announced an investment of over \$37 million to support outbreak planning, prevention and mitigation efforts to ensure the health and well-being of Indigenous people and communities. The funding is intended to respond to the unique needs of First Nations, Métis and Inuit and their families across the province and includes:

- \$16.4 million from the Ministry of Indigenous Affairs to provide emergency funds for food, household goods, critical supplies, transportation, support and care, self-isolation facilities in remote and northern communities, and prevention and awareness;
- \$10 million from the Ministry of Children, Community and Social Services to support Indigenous communities and Children's Aid Societies to respond to the protection needs

of vulnerable children and their families during the outbreak;

- \$7.4 million from the Ministry of Municipal Affairs and Housing to help social service providers, charities and non-profits delivering critical housing services to Indigenous people living off reserve; and
- \$4 million from the Ministry of Transportation to ensure continued service to remote and northern airports, enabling essential goods and services to continue reaching isolated communities.

## RECOMMENDATION 1

To guide the government's initiatives to improve social and economic outcomes for Indigenous people, we recommend that the Ministry of Indigenous Affairs work with the government to consider updating its mandate to enable it to lead Indigenous affairs in Ontario and to ensure that the development and delivery of Indigenous policies, programs and services are coordinated across the province.

## MINISTRY RESPONSE

The Ministry of Indigenous Affairs will work with the government to address the recommendation made by the Auditor General of Ontario. The Ministry of Indigenous Affairs is supportive of having a more centralized role in co-ordinating Indigenous policies, programs and services across government. The Ministry will work with other ministries to determine how best to move forward. This would require operational changes at the Ministry, as well as buy-in across government for potential reorganizations across multiple ministries. The Ministry will work with Cabinet Office on ways to improve efficiencies and implement processes that involve the Ministry in policy and program development and decision-making earlier and more frequently.

### 4.3 Province Does Not Regularly Measure and Report on Social and Economic Outcomes of Indigenous People

Neither the Ministry of Indigenous Affairs nor any other ministry tracks, assesses, or reports on the effectiveness of the government's strategic efforts and funded initiatives in improving outcomes of Indigenous Peoples. Using such information and analysis, the government would likely be more effective in implementing a government-wide approach to Indigenous affairs by adjusting current programs or creating new ones to align with the needs of Indigenous Peoples and their communities. The federal government, British Columbia and Alberta publicly report on government objectives and performance measures related to Indigenous Peoples. For example:

- The federal government has a responsibility to ensure that Indigenous Peoples have reliable and sustainable infrastructure. The indicators measured and publicly reported include the percentage of First Nations housing that is assessed as adequate, the percentage of First Nations schools with a condition rating of good or new, and the number of long-term drinking water advisories. In addition, indicators of related programs are also reported.
- British Columbia measures and reports annually on social and economic outcomes of Indigenous Peoples. The province's annual service plan for the Ministry of Indigenous Relations and Reconciliation outlines how it will continue to track progress on key commitments and other emerging priorities.
- Alberta also measures and reports annually on the social and economic well-being of Indigenous Peoples in Alberta. Further, Alberta published a four-year business plan (2019-2023) that outlines the mandate and structure of the provincial ministry responsible for Indigenous affairs, outcomes desired, performance measures, targets, and financial information.

In 2015, the Truth and Reconciliation Commission (Commission) recommended that all levels of government release public reports annually on key social and economic indicators, including changes in identified outcomes of Indigenous Peoples. For example, the number of Indigenous children in care compared to non-Indigenous children; comparative funding for education of First Nations on and off reserve; and a number of health indicators including infant mortality, life expectancy, suicide rate, prevalence of mental health and chronic diseases, and the availability of health services.

In response to the Commission, the provincial government committed to publicly report on the progress of Indigenous initiatives in the areas of health, employment, education and justice. In 2016, the Ministry of Indigenous Affairs created an internal report on Indigenous social, health, and economic data from external sources, such as the 2006 Census, as well as data from other ministries. However, the Ministry said that this report was never intended to be publicly released and was not produced in response to the Commission's recommendation. In 2018, the Ministry updated this data, producing a second report with the intention of publicly releasing it. While the Ministry shared both progress reports with other ministries to help inform programming and funding decisions, the Ministry did not publicly release the 2018 report.

#### RECOMMENDATION 2

To ensure the programs and services provided by the province are achieving desired outcomes and are transparent to the public, we recommend that the Ministry of Indigenous Affairs:

- measure and publicly report on the province's effectiveness in improving key social and economic outcomes of Indigenous Peoples; and
- provide guidance to other ministries on adjusting and realigning the programs and supports to better meet the needs and priorities of Indigenous Peoples.

## MINISTRY RESPONSE

The Ministry of Indigenous Affairs accepts the recommendation made by the Auditor General of Ontario. The Ministry will assess how it can increase information sharing on the province's programs and services and how they are improving Indigenous well-being, as measured through the achievement of key specific social and economic outcomes for Indigenous Peoples. As part of this effort, the Ministry will work with partners/third parties, both within and external to government, to ensure that the right data is being collected and shared in a timely manner to assess progress in achieving outcomes. The Ministry agrees that public reporting provides an opportunity for the Ontario government to increase public awareness of Indigenous issues across the province. The Ministry is committed to providing guidance to ministries and will actively mobilize efforts to aid ministries in adjusting and realigning programs and support across the Ontario government to better meet the needs and priorities of Indigenous Peoples.

The Ministry will examine opportunities to replicate the "one-window" approach taken during the COVID-19 pandemic.

### 4.4 No Centralized Tracking or Disclosure of Programs and Services for Indigenous Peoples

Neither the Ministry of Indigenous Affairs nor any other provincial ministry or agency is aware of all provincial programs and services for Indigenous Peoples in Ontario. The effective coordination of programs and services, as discussed in **Section 4.2**, cannot be performed without centralized knowledge of all the government's Indigenous programs and services. Further, some of the Indigenous representatives we spoke with raised concerns about the lack of transparency of the types of programs and services offered by the Ontario government. Not only is it unclear what the government was

doing to address many of the health, social and economic disparities of Indigenous Peoples, Indigenous communities and organizations that provide services for Indigenous Peoples are not always aware of what programs are available.

The Ministry of Indigenous Affairs maintains a public website on programs and services available to Indigenous Peoples. However, at the time of our audit, the information on the website was outdated and incomplete. The website included information on only 11 of the 140 Indigenous programs offered. An organization that provides services for Indigenous Peoples told us about one education program they became aware they could apply for only because they had directly contacted the Ministry of Education for a listing of their programs.

We asked the Ministry to provide a list of all Indigenous programs in Ontario. The list the Ministry provided included only 30 out of the total of 140 programs in 2019/20, which accounted for only \$351 million of the total of \$1.1 billion in Indigenous spending in Ontario. To compile a complete inventory of all Indigenous programs and services in the province (see **Appendix 7**), we had to contact the Treasury Board Secretariat and each ministry separately for the information. As this information had never been compiled before, some ministries took up to six months to identify and compile a list of information about their programs and funding for 2014/15 to 2019/20 for our Office.

In comparison, the federal government maintains a public database of Indigenous programs and services offered by all departments, including spending on the programs and federal transfers to provinces. Further, there is reporting on performance indicators aligned with the core responsibilities of the programs.

## RECOMMENDATION 3

To create a comprehensive understanding for the government and the public about Indigenous programs and services available that can be used for decision-making and public communication, we recommend that the Ministry of Indigenous Affairs:



- Develop and maintain a list of all Indigenous programs and supports offered by the province and make the list available on its website; and
- Update the list on an annual basis.

## MINISTRY RESPONSE

The Ministry appreciates the work the Auditor General has done in compiling programs tailored for Indigenous Peoples in Ontario. The Ministry commits to updating the external website to reflect a comprehensive list of all relevant programs. The Ministry commits to leveraging its relationships with other ministries to maintain this list, which will be updated annually, and adding contacts for program information.

### 4.5 Indigenous Peoples and Communities Are Not Engaged Consistently in the Development of Government Programs, Services and Policies That Impact Them

Engagement refers to engaging in discussions with Indigenous Peoples and communities about government policies or programs that affect them. Unlike consultation, there is no legal obligation for this type of engagement. However, it is considered a best practice because it helps ensure that ministries have the key information and partnerships needed to develop programs and services that more effectively meet the needs of Indigenous communities in a culturally safe and appropriate manner. In 2015, the Truth and Reconciliation Commission called upon all governments to fully adopt and implement the United Nations Declaration on the Rights of Indigenous Peoples (a non-binding resolution adopted by the United Nations which advocates for the protection and promotion of the rights of Indigenous Peoples), which includes engaging Indigenous Peoples in developing and determining health, housing and other social and economic programs and policies affecting them.

The Ministry of Indigenous Affairs, which is responsible for providing advice to other ministries on engagement, does not always engage Indigenous Peoples. For example, the Ministry did not engage Indigenous Peoples in 2016 when it developed a strategy to outline the government's approach to Indigenous affairs. Further, the Ministry had not engaged Indigenous communities in 2019 when it developed a guide for other ministries on engaging with Indigenous Peoples.

Other ministries also did not always engage Indigenous Peoples when developing programs and services to meet their needs. In our review of a sample of programs and services for Indigenous Peoples, we found that ministries had not engaged with Indigenous communities and organizations in two of the 18 programs in the last five years. In eight of the 16 programs where ministries noted that they had engaged Indigenous communities, there was minimal documentation on the number of Indigenous communities and organizations identified as engagement participants. In four of the 16 programs, ministries were unable to provide documentation that demonstrated the perspectives gathered in engagement with communities or organizations. Lack of engagement reduces the effectiveness and participation in programs and services for Indigenous Peoples. For example:

- Indigenous Peoples were not engaged in the development of the *People's Health Care Act, 2019*, by Ontario Health and Ontario Health Teams. As a result, Indigenous service providers said that there is a lack of culturally appropriate and safe care for Indigenous Peoples in Ontario. Specifically, provincial health initiatives have not created an inclusive environment incorporating traditional healing methods or translators to facilitate communication and understanding between health-care providers and Indigenous patients. This limits Indigenous people's comfort in accessing health services. The Ministry of Health informed us that it had begun

engaging Indigenous Peoples to work towards addressing this gap in 2019/20.

- In one of the programs we sampled, physician services at the Weeneebayko Health Authority in Moose Factory, Ontario, we found that the Ministry of Health had not conducted any significant engagement in the last five years with the communities that received services through the Authority. As discussed later in **Section 4.8**, the quantity of services provided to these communities has declined significantly since 2016/17. Additionally, a 2017 clinical review of the Authority conducted by the Ministry of Health stated that some health services with low participation were likely not being accessed by patients because they were not adapted to their culture, and patients did not have trusting relationships with health-care providers.

#### RECOMMENDATION 4

To improve the effectiveness of government programs, services and policies for Indigenous Peoples, we recommend the Ministry of Indigenous Affairs:

- Engage Indigenous Peoples on their needs prior to or during the development of its programs, services, policies, as well as its government-wide approach to Indigenous affairs; and
- Work with other ministries to ensure they are engaging with Indigenous Peoples when they are developing relevant programs, services and policies.

#### MINISTRY RESPONSE

The Ministry of Indigenous Affairs agrees with the recommendation made by the Auditor General of Ontario. The Ministry is committed to build sufficient time into planning processes to ensure engagement with Indigenous partners and to provide advice accordingly except in the most urgent cases (for example, the creation of

policies around emergency COVID-19 funding for Indigenous businesses). The Ministry will develop a tracker for all policies, programs and services, as well as the engagement level that was provided, or, where engagement was not possible, the reason why. The Ministry will work across ministries to develop training, guidance, advice and other supports to ensure ministries have the tools they need to support meaningful engagement with Indigenous partners.

### 4.6 Lack of Broadband Impedes Benefits from eCommerce, eHealth and Online Learning in Indigenous Communities

The Indigenous communities we spoke with raised concerns about the lack of broadband access limiting social and economic progress. This was particularly impactful during isolation in response to the COVID-19 pandemic. One community informed us that they had children without access to high-speed Internet who were not able to participate in home schooling. Outside of COVID-19 isolation, the lack of Internet access restricted students from completing homework or accessing post-secondary programs available online. Another community informed us that Telehealth Ontario is not available to their community because they lack broadband, but another community about 25 kilometres away does have this access.

Better Internet access in Indigenous communities can improve the social and economic outcomes for Indigenous people by:

- Allowing members of the community to participate in eCommerce and jobs that can be performed remotely;
- Improving health outcomes through access to provincial eHealth services; and
- Improving education outcomes by enabling access to remote learning and other educational supports and opportunities.

In 2016, the Canadian Radio-television and Telecommunications Commission (CRTC) declared

broadband Internet a basic telecommunications service, and set new targets for Internet service providers download speeds of at least 50 megabits per second (Mbps) and upload speeds of at least 10 Mbps. Broadband speeds at this targeted level are offered by major telecommunications companies for moderate usage that enables customers to video conference and perform general activities such as emailing and web browsing.

In 2017, the Ontario government committed close to \$530 million for broadband infrastructure investments in rural communities, including Indigenous communities across Ontario. However, in 2018, only 17% of households on First Nations reserves in Ontario had access to Internet services that met the 50 Mbps download and 10 Mbps upload speed. In comparison, 98.8% of all households within medium and large urban populations in Ontario have access to Internet meeting the CRTC's target speed. Availability of the target speed service on First Nations reserves was also behind other rural areas – 29.5% of Ontario's rural population had access to this level of service. In 2018, households on First Nations reserves in New Brunswick and British Columbia had the highest availability of Internet services at speeds of 50 Mbps or faster (87.2% and 69.1%, respectively).

In the 2018 Ontario Budget, the province announced it would invest \$315 million over the next five years, in addition to the \$530 million committed to in 2017, to expand broadband access to underserved areas, including some First Nations communities. The plan includes a \$150 million commitment for a new broadband fund to bring broadband to 220,000 underserved homes and businesses, with additional funding expected from private sector companies and other levels of government. However, the Ministry of Infrastructure informed us that there is no specific investment targeted for First Nations communities, and that they had not engaged First Nations communities in developing the program. Further, the Ministry of Infrastructure was unaware of how many

First Nations communities were intended to be included in the government's commitment.

In the 2019 Government of Canada budget, the federal government committed \$1.7 billion to support connectivity initiatives. Additional funding would be provided for the Connect to Innovate program, which aims to improve satellite capacity to cover remote regions of the country. The program has connected more than 900 rural and remote communities, including 190 Indigenous communities. In total, from 2016 to 2019, the federal government committed to deliver up to \$6 billion in investments to connect all Canadians. Provinces, territories, municipalities, Indigenous communities, companies and others can submit proposals for infrastructure projects that provide fixed and mobile wireless broadband Internet service to underserved Canadians. The federal government's strategy aims to deliver the connectivity for 50 Mbps download and 10 Mbps upload speeds to 90% of Canadians by 2021, 95% of Canadians by 2026 and the hardest-to-reach Canadians by 2030.

## RECOMMENDATION 5

To improve social and economic outcomes for Indigenous Peoples, we recommend the Ministry of Indigenous Affairs work with the Ministry of Infrastructure and the Government of Canada to ensure all First Nations communities have access to broadband to enable participation in eCommerce, eHealth and online learning opportunities within a clearly defined time frame.

## MINISTRY RESPONSE

The Ministry of Indigenous Affairs accepts the recommendation made by the Auditor General of Ontario. The Ministry is actively working with the Ministry of Infrastructure (MOI), the Ministry of Energy, Northern Development and Mines (ENDM), the Ministry of Education (EDU) and others, as well as the Government of Canada, to aggressively scale up capacity on

reserve and in Northern communities to support Broadband Internet.

The Ministry will work with the above-noted partners to support a broadband strategy that is responsive to the needs of Indigenous communities and organizations in line with public commitments made by the Canadian Radio-television and Telecommunications Commission to close the digital divide across Canada.

#### 4.7 Ministries Have Poor Oversight of Funding Provided for the Delivery of Programs and Services to Indigenous Peoples

Ministries do not have accountability measures in place to confirm program funding is being used as intended. Of the 18 Indigenous programs and services we sampled, only two had documents to prove that funds were being used as intended. This limits the ministries' ability to ensure their programs and services are operating as intended to meet the needs of Indigenous Peoples.

We reviewed a sample of 18 significant programs and services that support Indigenous people, accounting for approximately 33% (\$400 million of \$1.2 billion) of budgeted expenditures in 2019/20 (see **Appendix 7**). The province transfers money to Indigenous communities and service providers, as well as non-Indigenous service providers, to deliver programs and services for Indigenous people. Fourteen of these programs were delivered by Indigenous communities or organizations and the other four programs were delivered by other public organizations such as school boards and universities.

We reviewed these programs to assess whether they had agreements with clear accountability provisions and processes in place to ensure that funds were used for the purposes intended. In all of these programs, there was a provision in the program agreements that would enable the ministries to verify how these funds were spent. For example, the ministries could request receipts or invoices,

and audit the organization that received the funds. However, ministries had verified whether funds were being used properly for only two of the 18 programs we sampled. Without this information, ministries could not ensure that the programs were operating as intended.

For 10 Indigenous programs from six ministries, we reviewed specific expenses, such as costs for membership meetings, and for building a health-care facility. We requested that ministries provide documents showing that the funds were expensed as intended. We found that ministries were able to provide adequate support for these expenses for only two programs. For the remaining programs, the ministries could not provide sufficient documentation to support the expenses claimed. For example, we reviewed a conference expense for one program because the calculation of the expense was not clear in the report submitted by the community. We requested receipts and invoices from the ministry to support this expense, but the ministry was only able to provide hand-written notes from the program recipient explaining that the expenses consisted of travel, accommodation and catering. No invoices or receipts were available. Having ministries verify how program funding is spent supports the accountability for public funds and ensures Indigenous people are receiving the intended benefits from these programs.

#### RECOMMENDATION 6

To ensure the programs and services provided by the province are operating as intended, we recommend that the Ministry of Indigenous Affairs develop guidance for other ministries providing Indigenous programs and services to:

- ensure that the agreements for programs and services have sufficient accountability measures so that funding is spent as intended; and
- ensure ministries follow the requirements contained in the agreements.

## MINISTRY RESPONSE

The Ministry of Indigenous Affairs agrees with the recommendation made by the Auditor General of Ontario. Indigenous communities have indicated a lack of capacity to meet the numerous administrative reporting requirements across government, and for many First Nations it was identified as the single largest challenge. The Ministry understands accountability measures are important; however, it is mindful of not creating additional reporting burdens.

The Ministry will work to develop a summary of guiding principles on transfer payment delivery to Indigenous communities that align with the province's goals to improve outcomes for Indigenous Peoples in Ontario. The Ministry will share this broadly within one year and adjust its programs accordingly. The Ministry will also encourage other ministries to follow enterprise-wide policies and directives such as the Transfer Payment Accountability Directive, the Transfer Payment Operational Policy, and the Transfer Payment Financial Management Policy, which set out accountability measures to ensure program funding is being used as intended.

The Ministry does not have the authority to enforce, direct or require other ministries to follow accountability measures related to the administration of transfer payment agreements in other ministries.

### 4.8 Ministries Do Not Ensure Programs and Services are Achieving Intended Outcomes

Ministries do not have adequate performance measures in place to ensure Indigenous programs and services are effective in achieving the desired outcomes. We found that 12 of the 18 programs we sampled did not have performance measures. Of the six programs that did have performance measures in place, half were not able to measure effectiveness because outcome measures were not reasonable,

targets were not established to be able to assess progress, or the performance measures were not directly relevant to the objective of the program. This limits the ministries' ability to ensure programs and services are meeting the government's objectives and the needs of Indigenous communities.

Four of the six programs with performance measures had shown improvements, one program had not existed long enough to assess a trend, and one program—the Ministry of Natural Resources and Forestry's Far North Program—had not shown any progress. The goal of the Far North Program is to work collaboratively with First Nations communities to create land use plans for northern areas where the communities have Indigenous and treaty rights. These land use plans dictate which lands will be protected for activities such as hunting, and which lands will be made available for development like mining or forestry. Developing these land use plans allows First Nations communities to have a greater say on the future of their traditional lands. Generally, without land use plans in place on these lands, development cannot occur. While the target set for this program is to have 100% of land in the Far North with a land use plan, the ministry had only developed plans for 6.7% of the area at the time of our audit. Though the percentage of lands with developed plans had not changed since 2011, the Ministry of Natural Resources and Forestry had not adjusted its target or identified a date to achieve its target.

The 12 programs that did not have performance measures instead had service metrics to measure outputs, such as the number of clients served. We found that two programs showed decreased service. Specifically, we reviewed the Weeneebayko Health Authority which provides physician services to a northern Ontario hospital in Moose Factory, as well as five surrounding communities, four of which are located in remote areas. The program has targets for the number of days physicians must provide services in both the local community and in the four remote communities. The Ministry of Health established these targets in 2006 and has



not adjusted them since. We reviewed data on the program from 2016/17 to 2019/20 and found that the number of days that services were provided in all communities had decreased by 29%, and the total number of service days in the remote communities decreased by 45%. The Ministry of Health said that it had not conducted any analysis on why there was a decrease in health-care services in these communities, but that the decrease in service days was most likely due to high physician turnover and difficulty recruiting physicians.

A 2017 clinical review of the Weeneebayko Health Authority conducted by an inspector appointed by the Ministry of Health stated that the lack of physician services provided in the community had led to worse health outcomes for local residents, increased costs to transport patients to other regions to access health services, and the lack of ability to provide services for chronic disease management. The report also found that the current number of physicians was not enough to meet the demand, as there were only two dedicated physicians to provide community health-care services to a population of 12,000 people. The report recommended that the Ministry and the Authority should identify the number of physicians needed to provide health-care services in their service area, comparable to other non-urban areas of the province. In response to the review, the Ministry increased the number of physician positions by six full-time equivalents in November 2018, but these additional positions had yet to be filled at the time of our audit.

For the On-Reserve Child Care and Child and Family Programs, we found that the main service metric, the number of children enrolled, had decreased by 34% across all service providers from 2015/16 to 2018/19. The Ministry of Education, which is responsible for overseeing this program, was not able to provide any analysis on this trend. They told us that yearly service variances were most likely due to delays in reporting of the number of children enrolled by Indigenous child care organizations.

## RECOMMENDATION 7

To ensure Indigenous programs and services provided by the province are operating as intended and achieving desired outcomes, we recommend that the Ministry of Indigenous Affairs develop guidance for other ministries providing such programs and services to ensure that the programs and services:

- include measures that assess their effectiveness in achieving the desired outcomes; and
- use the information to adjust the programs as required.

## MINISTRY RESPONSE

The Ministry of Indigenous Affairs agrees with this recommendation. The Ministry will work with the Treasury Board Secretariat over the next three years to encourage other ministries to have their programs assessed for efficiency and effectiveness, overall value-for-money, and alignment with core government priorities and the desired outcomes of the programs and services as they specifically relate to Indigenous people in Ontario. The Ministry will communicate to all ministries to leverage enterprise-wide processes and activities (such as undertaking program reviews, collecting and reporting on performance indicators) to identify opportunities to streamline, transform, become more efficient and improve outcomes and adjust the Ministry's programs accordingly over the next three years.

## 4.9 Effectiveness of Some Indigenous Programs and Services Limited by Uncertainty and Delays in Funding

Indigenous communities and service providers are unable to perform long-term planning or effectively retain staff because many government programs and services do not guarantee funding for more

than a year. The need to re-apply to these programs annually also creates additional demands on the community's resources, and delays in approval can limit the effectiveness of the funding by requiring significant spending in a short period of time.

In our sample of 18 programs and services, 14 were transfer payment programs to Indigenous communities or organizations. Of these 14 programs, we found that for two programs, the funding recipients had to re-apply annually, even though many of these recipients had continued to be granted these funds year after year. For example, one Indigenous recipient had received funding for the Ministry of Natural Resources and Forestry's Far North Program for twelve consecutive years. However, they had to re-apply every year for these funds. Some ministries had created more flexible contracts and reporting processes for other programs. Two agreements we reviewed funded programs for two years and three years respectively, and set out secured funding and reporting processes for the entire term. The remaining 10 contracts we reviewed were "evergreen" contracts that were automatically renewed every year with an amendment outlining any yearly changes for service levels or additional one-time funding. For example, the Ministry of Children, Community and Social Services recently created a mechanism to allow Indigenous service providers to apply to multiple child welfare programs under one evergreen contract. This decreases the administrative burden for the service provider by allowing them to report annually on these programs in two consolidated reports. After the original contract was signed, the service provider did not need to re-apply the following year, and the budget was set with dates the provider would be paid.

Indigenous communities and service providers we spoke to raised concerns that they struggled to maintain qualified staff because jobs could not be guaranteed. For example, one community we spoke to said they struggled to bring mental health care providers to their northern community because funding was not guaranteed beyond a year.

Ministries can also take a long time to provide funding to Indigenous communities or service providers, leaving a short window to spend the funds. Ministries took more than three months into the term of a program's contract to transfer funding to recipients in three of the 14 Indigenous transfer payment programs we sampled. This further limits the effectiveness of the programs. For example, one community we spoke to identified that they had completed their application for the Ministry of Indigenous Affairs' Indigenous Economic Development Program by July 15, 2019 but did not receive a transfer payment until January 2020. This left less than three months for them to spend the funding, which was required to be completed by March 31, 2020. We reviewed application data for all recipients of this program and found that it took, on average, almost six months for the ministry to make the first payment after the application was completed by the recipient. This was an improvement from 2018/19 however, when the average time to transfer the first payment was over nine months.

To determine whether this issue was more prevalent in smaller programs, we sampled an additional 10 programs with annual expenditures below \$10 million, and found that in four of these programs, recipients had to re-apply annually. In three of these programs, it took, on average, 80 days for the Ministry to approve the application and a further 66 days to provide funding. For the fourth program, the Ministry was unable to provide the data needed to complete the analysis.

## RECOMMENDATION 8

We recommend that the Ministry of Indigenous Affairs guide ministries on:

- developing Indigenous program funding agreements with a long-term view, where appropriate; and
- approving and transferring funds under agreements prior to the beginning of the funding year.

## MINISTRY RESPONSE

The Ministry of Indigenous Affairs agrees with the recommendation. The Ministry will work with other ministries to encourage the development of multi-year funding agreements, where possible, to assist with flowing funds early in the fiscal year. However, it does not have the authority to direct other ministries or to approve and transfer funds prior to the beginning of the funding year.

### 4.10 Ministry Lacks Information to Adequately Oversee Consultations Performed by Other Ministries

The Ministry of Indigenous Affairs does not have sufficient information to effectively fulfil its mandate to ensure that the province is meeting its constitutional obligation to consult with Indigenous communities. Consultations are performed by various ministries, and the Ministry does not obtain knowledge of these consultations and whether they are being conducted in compliance with legislative requirements.

Each ministry conducts its own consultations and is not required to inform the Ministry of Indigenous Affairs of its consultation activities. The Ministry would only have knowledge of other ministries' consultations or their compliance in meeting their obligations if the consulting ministry informed the Ministry of Indigenous Affairs or reached out for advice or support. The level of consultation ministries perform depends on their assessments of the strength of the Aboriginal (Indigenous) and treaty rights, and their understanding of potential adverse impacts in each case. Consultation can range from a notice to the impacted community of an upcoming decision, to requiring the Indigenous community's consent for the government to perform the action contemplated.

Aside from the Ministry of Energy, Northern Development and Mines, which performed 458 consultations in 2019/20, no other ministries tracked

how many consultations they performed and who they consulted. In 2018, the Ministry conducted a one-time survey of the nine ministries that perform the majority of consultations to find out how many consultations they had initiated. The Ministry estimated that three ministries performed more than 500 consultations a year, two performed between 50 and 500 a year, and the remaining four ministries performed fewer than 50 consultations a year.

In 2006, the government developed a system that can track the consultations being performed by various ministries. The system also holds information on existing treaties, assertions by communities, and the province's interpretation of which communities to consult in a given area. The system cost \$1.4 million dollars to develop, and has required about \$2.5 million to maintain since 2012. However, the use of this system is not mandatory and it is not being consistently accessed or updated by ministries. The number of individuals who accessed the system decreased by 34% from 2016 to 2019. Additionally, no consultation information had been added to the system by any ministry since 2015, including consultations conducted by the Ministry itself. The Ministry informed us that the staff assigned to update this information were moved to other areas within government. However, the Ministry continued to pay the annual system maintenance fees so that other ministries could access the system. Individuals we talked to at other ministries mentioned that the system was not user-friendly and that it was very time consuming to enter information.

The Ministry is currently procuring a new system to replace the 2006 system, and estimates that the new system will be launched in March 2021. At the time of our audit, the Ministry estimated that the new system would cost approximately \$1.6 million, including \$775,000 in one-time development costs, as well as approximately \$807,000 in ongoing operational costs over the first five years. Although other ministries have been involved in developing this new system, its use will again not be mandatory. Ministries we met with mentioned that they

supported the development of a new system, but they had doubts about whether or not it would be adequately used. They felt that not all information would be input into the system and, therefore, were not sure if the information would be complete, accurate and relevant to their needs.

## RECOMMENDATION 9

To assist the province in meeting its constitutional obligation to consult Indigenous Peoples so that the Ministry can meet its mandate of ensuring the province is meeting its duty to consult, we recommend that the Ministry of Indigenous Affairs:

- Work with other ministries to ensure they have complete and accurate information on consultations occurring in the province;
- Mandate the use of the consultation tracking system for all ministries and establish the type of information required to be entered into the system; and
- Review consultations on a risk basis to ensure they are meeting the province's requirements.

## MINISTRY RESPONSE

The Ministry is committed to meeting its constitutional duty to consult. The Ministry also commits to working with ministries to develop and implement a comprehensive Knowledge Management System that will effectively support Indigenous consultations and allow the Ministry to track information for all ministries. To ensure other ministries' use of the system, the Ministry will provide ongoing training and supports for users and regularly update the tool to ensure accurate and complete information is available, including regular outreach to ministries as required and sharing costs of the system across ministries.

The Ministry will use the Knowledge Management System to provide guidance on consultations to help ministries ensure that they are meeting provincial requirements.

## 4.11 No Centralized Resource for Assessment of Indigenous Rights Assertions

The obligation to consult Indigenous communities is based on established and asserted Aboriginal (Indigenous) and treaty rights. When an Indigenous community asserts that they have Indigenous and treaty rights in a given geographic area, the province needs to determine the extent of consultation required based on these assertions. While the Ministry of Indigenous Affairs drafts consultation guidelines and provides training and advice to other ministries, ministries do not have consistent processes to assess the credibility and strength of assertions of Indigenous and treaty rights. This can lead to inconsistent interpretations of which Indigenous communities to consult, and how to meaningfully consult them.

Currently, the Aboriginal Consultation Issues Working Group (created in 2012) comprised of legal counsel from multiple ministries assesses and provides advice on the need to consult for assertions that are not established. However, these decisions have not been uploaded on the Ministry's information system for consultations. This can create confusion among multiple ministries and lead to a duplication in work, which constrains the resources of other ministries. For example, the Ministry of Natural Resources and Forestry identified four challenging assertions they had received from First Nations communities outside of the province, and from communities that are not recognized by the federal government under the *Indian Act*. These communities have asserted rights over different areas of Ontario, and wish to be consulted on initiatives like forest management plans. However, the working group had already assessed the credibility of these assertions, therefore the Ministry of Natural Resources and Forestry had unnecessarily duplicated this work. At the time of our audit, the Ministry of Natural Resources and Forestry was still trying to determine if three of these communities' Indigenous rights require consultation, even though

the working group had already determined that the three assertions did not require consultation.

In addition, as discussed in **Section 4.10**, the system that holds historical information on assertions of Indigenous and treaty rights made by Indigenous communities is not consistently used by all ministries and has not been updated since 2015. Ministries we interviewed, and meeting minutes between the Ministry and both Indigenous communities and industry stakeholders we reviewed, noted concerns about inconsistent knowledge and interpretation of assertions. The Supreme Court has ruled that the Crown has a duty to consult when it has knowledge of an asserted right. If one ministry is aware of an assertion of Indigenous or treaty rights, a court could rule that the entire provincial government was aware. Therefore, if another ministry was unaware of the assertion and failed to consult, the province may not be fulfilling its legal obligation.

Ministries we interviewed identified that it would be useful to have one ministry responsible for receiving and interpreting assertions, and providing guidance on which communities to consult and how to consult with them based on the geographic locations of the projects and the assertions made. In 2017, the Ministry of Indigenous Affairs developed options to establish a centralized unit to support the assessment of assertions and to develop a process to make assertion decisions more transparent through public disclosure. The Ministry said that the work on this had not progressed over the last two years due to other government priorities. However, at the time of our audit, the Ministry said that they had begun working on this initiative again in May 2020.

Allegations that consultations with Indigenous communities were not handled properly in the past have resulted in legal disputes. Civil cases against the province are rare when factoring in the estimated number of consultations conducted in a year. Nevertheless, from January 2010 to October 2020, there were 35 cases brought against the Crown involving allegations that Ontario, and sometimes other levels of government, had failed to

adequately consult with an Indigenous community. Of the 35 proceedings:

- three found that Ontario did not adequately consult with Indigenous communities;
- seven were settled outside of court, three of which resulted in the ministry covering the litigation costs or providing funding to the Indigenous community;
- nine were dismissed;
- five were abandoned, went dormant, or were withdrawn; and
- the remaining eleven are still ongoing.

Failure to properly consult Indigenous communities has also resulted in delays to private sector development and the associated economic benefits. For example, in 2018 the Superior Court of Justice found that the then Ministry of Northern Development and Mines did not adequately ensure that a mining company had consulted with a First Nations community prior to issuing an exploration permit for the company in 2016. The Court ruled that the exploration permit could not be enforced until the ministry and the mining company adequately consulted with the First Nations community. At the time of our audit, the permit was still on hold, the project had not proceeded, and according to the Ministry of Energy, Northern Development and Mines, the relationship between the First Nations community and ministry was strained. In another example, the Superior Court of Justice found that the Ministry of Natural Resources and Forestry had not adequately consulted with a First Nations community before approving a licence for a limestone quarry in 2016. The court decided to set aside the licence until adequate consultation had occurred. At the time of our audit, the company had not continued its pursuit of a licence.

## RECOMMENDATION 10

To avoid inconsistencies when ministries comply with the province's duty to consult, we recommend the Ministry of Indigenous Affairs:



- centralize the assessment of assertions made by Indigenous communities; and
- provide guidance to all ministries on the consultation based on the assessment of the assertions made.

## MINISTRY RESPONSE

The Ministry of Indigenous Affairs recognizes that there are a number of challenges associated with assessing assertions related to Aboriginal and treaty rights.

The Ministry has been leading discussions with other ministries and partners to provide operational and policy guidance to increase consistency in the assessment of assertions. In addition, a primary objective of the development and implementation of the new Knowledge Management System (KMS) is to support ministries by providing access to regularly updated resources (such as historical, geographical, legal, etc.) necessary to make informed, timely and transparent consultation decisions (such as who, when and how). The centralized KMS solution will also provide information on the assessment and consultation processes underway across the province to assist with inter-ministerial coordination where needed.

### 4.12 Land Claims Process Lengthy with No Accountability Measures to Determine Path to Improvement

Land claims are assertions made by a First Nation or another Indigenous community that their Indigenous and/or treaty rights have been violated. These are legal issues which could be litigated in court or settled through negotiations. Each land claim involves unique rights assertions and perceived violations to be negotiated.

In a land claims process, the Ministry reviews and assesses the validity of the claim received, negotiates a settlement with the Indigenous community if the claim is accepted, and coordinates

the implementation of the agreement. This may involve providing financial compensation and/or parcels of land.

The Ministry supports First Nations' participation in land claims negotiations through the Support for Community Negotiations Fund (Fund), which includes funding lawyers and other professionals providing services to Indigenous communities pursuing land claims. Between 2015/16 and 2019/20, the Fund provided First Nations with \$23 million. In the same period, a total of \$526.6 million was awarded in land claims settlements. Similar to the issues identified in **Section 4.7**, we found that the reporting requirements associated with the Fund lack adequate accountability measures to ensure the funds are being spent as intended.

The Ministry informed us that fees for legal, consulting and other professional services identified by the Indigenous communities sometimes exceed Fund amounts. These fees can be funded through other sources such as a contingency arrangement, where the community commits to pay these expenses with a portion of the land claims settlements they are awarded. However, we could not ascertain how much money First Nations are paying through these arrangements for legal, consulting and other professional services for land claims. There was no record of how much of the settlement amount was paid out to legal, consulting and other professional firms for fees and charges that the Fund did not cover.

The Ipperwash Inquiry report noted, "The single biggest source of frustration, distrust, and ill-feeling among [Indigenous] people in Ontario is [the provincial government's] failure to deal in a just and expeditious way with breaches of treaty and other legal obligations to First Nations." Lengthy land claims assessments, negotiations and implementations delay communities from being acknowledged and compensated for infringements of their Indigenous and treaty rights.

We reviewed the 19 land claims implemented between Ontario and First Nations communities

from 1983 to 2019, to determine the time it took for agreements to be reached and implemented. We found that it took, on average, 22 years to reach a settlement agreement and fulfill the responsibilities outlined in the terms of the agreement, such as providing the compensation negotiated. Another 12 claims have settled but have yet to be fully implemented. These claims have been ongoing for, on average, 10 years (ranging from one to 29 years).

#### 4.12.1 Ministry Does Not Document External Causes of Delays

As discussed in 4.12.2 below, the Ministry does not track or document the causes of delays in settling land claims. We interviewed staff from the Ministry of Indigenous Affairs and other ministries, and reviewed 12 land claims files to get a better understanding of the causes of delays.

We noted that Ontario is one of three parties, along with the First Nations community and the federal government, in the land claims process. Representing Ontario, the Ministry is not the sole decision-maker that determines the timely resolution of land claims. Each party has their own internal process for approaching the claim and when or if to move forward. From its anecdotal experience, the Ministry said changes in First Nations councils can result in new negotiators representing the Indigenous communities' interests in a claim. This limits progress, as negotiations may have to start over. However, the Ministry could not provide examples of when this had occurred or the delays it had caused because negotiators did not adequately document it in the land claims files.

We also noted that land claims settlements involving the federal government can take significantly longer. In one claim we reviewed, Ontario accepted the land claim in 2003 but did not begin negotiations until 2009 because the federal government had not accepted the claim for negotiations until then. Ontario did not engage with the First Nations community between 2003 and 2009.

We also reviewed two land claims involving land to be added to reserves, a process under the

jurisdiction of the federal government. We noted that in both instances, while Ontario fulfilled its duties in transferring lands within five years of the settlement agreement, the federal government had yet to add the land to the reserves. These communities' land settlement agreements date back to 1991 and 1994.

In another land claim, formal proposals for provincial and federal compensation amounts were made pending the completion of a land survey. However, Ontario's Surveyor General at the Ministry of Natural Resources and Forestry was not satisfied with the survey conducted by the federal government. It took a year for an agreement to be reached amongst the parties on acceptable survey terms. While a survey was completed and accepted by all parties, the First Nation expressed concern about the delay and sought additional compensation from both levels of government. The amount is still in negotiation. This land claim has been ongoing for 16 years since Ontario accepted the claim for negotiation.

The Ministry said another cause of delays is the lack of timely responses from other provincial ministries. See **Figure 10** for a listing of other governments involved in settling land claims. The Ministry does not have the legislative authority to demand the timely information or the collaboration from partner ministries that is vital to the land claims process.

However, partner ministries such as the Ministry of Environment, Conservation and Parks, the Ministry of Energy, Northern Development and Mines, the Ministry of Natural Resources and Forestry, and the Ministry of Transportation also expressed concerns about the following types of delays during land claims:

- If partner ministries are not involved in or represented at the negotiation table, some things can be “lost in translation” when the Ministry of Indigenous Affairs represents their interests during negotiations;
- If there is inadequate engagement with partner ministries during land claims negotiations, the Ministry of Indigenous Affairs can

make commitments that are sometimes contrary to their interests or cannot be fulfilled;

- Partner ministries do not receive enough information on what is being communicated at the negotiation table to identify potential implications for ongoing projects;
- The Ministry of Indigenous Affairs often reaches out directly to staff-level contacts at partner ministries instead of following a formal process involving staff at the senior management level who have decision-making power.

Similar to the Ministry of Indigenous Affairs, the partner ministries could not provide support for the causes of delays mentioned or their impacts due to poor record-keeping of the negotiations.

#### 4.12.2 Land Claims Process Lacks Timelines and Milestones

The Ministry does not establish expected timelines, milestones, or cost estimates for the settlement of land claims once research and assessment are completed (see **Section 4.12.1**). It also does not track and report its progress on land claims, including any barriers resulting in delays. Without this information, the Ministry is unable to assess its performance, use this information to improve its processes and hold itself and other parties accountable for delays in the land claims settlement process.

In 2008, the federal government made a commitment to research and assess claims within three years. As well, the federal government established a three-year target for the negotiation and settlement of claims where outstanding lawful obligations were found.

The Ministry does not use its land claims negotiation system, developed in 2011, to track and report progress on land claims. The information in the system is also inaccurate. For example, when we reviewed the system, it showed 61 claims under negotiation when at that time, there were actually only 54 claims under negotiation. Therefore, the Ministry also did not have an accurate and up-to-

date list of all settled land claims. The list of settled land claims and dates of significant milestones the Ministry provided to our audit team required over 15 adjustments which took the Ministry two months to make.

The Ministry also did not record key dates, such as settlement and implementation dates (for example, the date land was transferred to a community). The Ministry informed us that these dates must be requested from other ministries, as it did not have this information. However, when requested the other ministries did not have this information readily available, because they assumed the Ministry was tracking it.

We reviewed 12 land claims files with a total of over 20,000 documents and found that the files did not contain documents to explain the causes of delays or information that would enable us to determine the impact of these delays. The Ministry was unable to provide any evidence to support the Ministry's rationale for the delays. Further, the Ministry did not provide any guidance for staff regarding the type of information that should be maintained, resulting in inconsistencies between files and negotiators. We were told that various informal meetings were held internally to provide updates on files. However, no minutes were taken at these meetings. The lack of useful information in land claims files is a barrier to improving the land claims settlement process.

#### RECOMMENDATION 11

To improve the timeliness of land claims resolutions, we recommend that the Ministry of Indigenous Affairs:

- Establish milestones and reasonable timeframes for negotiating, settling and implementing land claims;
- Document the causes of delays;
- Provide guidance on documentation to all staff involved in land claims; and
- Monitor and report on the progress achieving set milestones.

## MINISTRY RESPONSE

The Ministry is committed to the timely resolution of land claims. The Ministry of Indigenous Affairs recognizes the value in establishing milestones and monitoring progress to achieving those milestones. There is also merit in documenting challenges to reaching settlements on a timely basis to inform future process improvements. The Ministry is undertaking several projects to address this recommendation, including: modernizing the information management system and practices applied to land claims, process mapping, key milestone identification and reporting, and internal operating policy development, including guidance on documentation.

### 4.13 Concerns in Land Claims Process

The Ministry of Indigenous Affairs is responsible for assessing whether an Indigenous land claim is valid and should be negotiated. This means the government determines the validity of the Indigenous community's claim that it had violated Indigenous and treaty rights. The Ministry then determines the Indigenous community's financial support for participating in negotiations. Because the government is the defendant in the claim, determines the validity of the claim and controls the Indigenous community's financial support, the land claims process itself has created long-standing First Nations concerns.

Historically, frustration with the land, treaty and Indigenous claim processes have led Indigenous Peoples to blockade or occupy public and private spaces, as seen in significant events such as the Oka crisis in Quebec and the Ipperwash crisis in Ontario. The underlying causes of these disputes involved assertions to land and the lack of a timely, fair and effective process for dealing with land issues and historical claims.

In 1996, the Royal Commission on Aboriginal Peoples recommended that an independent tribunal be appointed to facilitate negotiations on land issues and historical claims. In 2007, the Ipperwash Inquiry reiterated the recommendation that Ontario create an independent treaty commission to establish and publish benchmarks for negotiations and dispute resolution techniques. However, Ontario does not have an independent treaty commission, nor has it established, monitored or published negotiation benchmarks.

Between 1979 and 2000, Ontario had an independent commission, called the Indian Commission of Ontario, with a mandate to oversee and facilitate the process for First Nations land claims. The commission was established with the federal government, Ontario, and First Nations Chiefs in Ontario. This commission had a range of powers including the ability to convene meetings, meet separately with the parties, request information, and recommend suspension of negotiations or court proceedings. These powers could not be used without the consent of all parties. After the mandate of the commission expired, the then federal Department of Indian and Northern Affairs Canada conducted a review of the commission and identified that it had inadequate powers and lacked the authority to resolve disputes.

Between 2008 and 2012, the Ministry engaged First Nations and the federal government on the creation of a treaty commission based on a recommendation of the Ipperwash Inquiry. The attempts were unsuccessful because the federal government did not communicate its interest in a treaty commission. However, the Ipperwash Inquiry recommended that "the provincial government should make every reasonable effort to establish the [treaty commission] ... with full cooperation of the federal government. If that is not possible, however, the provincial government should proceed to establish the [treaty commission] and address other issues on its own with the full participation and cooperation of First Nations in Ontario."

We noted that other provinces, such as British Columbia, Saskatchewan and Manitoba, have independent treaty commissions with varying mandates and powers in the land claims process between the federal and provincial governments and Indigenous communities.

The federal government has a tribunal that can hear land claims the government decides not to negotiate. The tribunal disagreed with the federal government on 12 of the 14 claims brought between 2009 and 2016. However, Ontario does not have a tribunal or a process for obtaining independent reviews of land claims decisions. In the last 10 years, the Ministry of Indigenous Affairs has rejected 10 claims with no independent review of its decision, which could identify any gaps or shortfalls in the Ministry's assessment. For example, one land claim was submitted in 1985 to both the federal government and Ontario. Canada accepted this claim in 1995, but put negotiations on hold pending Ontario's involvement. In 2007, Ontario rejected this claim. In January 2011, the First Nations community that filed the claim launched a lawsuit including additional allegations, at which time Ontario decided to begin negotiations. A settlement agreement was reached in March 2017.

## RECOMMENDATION 12

To address concerns about the land claims settlement process, we recommend the Ministry of Indigenous Affairs assess the feasibility of establishing an independent body to assess future land claims, determine negotiation funding for Indigenous claimants, and monitor and report on the progress of land claims. If feasible, recommend its implementation to the province.

## MINISTRY RESPONSE

The Ministry agrees that the land claims process must be unbiased and fair. Ontario has a Ministry division of professional staff dedicated to a fair land claims process. This process includes an evidence-based historical and legal

assessment of land claims. The land claims process in Ontario is voluntary and First Nations can also utilize the independent court system.

The Ministry is aware that the development of a National Treaty Commission was referenced in the December 13, 2019 "Federal Minister of Crown-Indigenous Relations Mandate Letter" and will monitor those federal efforts.

## 4.14 Province Lacks Transparency in Reporting on Land Claims

Minimal information is publicly available on the number of land claims, the nature of these claims, or their progress in negotiations. This lack of transparency reduces public awareness of Indigenous land claims and the Ministry's accountability for effectively and efficiently settling these claims.

In contrast, the British Columbia Treaty Commission publishes an annual report that outlines the number of land claims and their progression through the negotiation process, including timelines and the settlement amounts paid. The commission has identified the public disclosure of land claims information as a best practice.

In comparison, Ontario only publicly reports information on land claims through its website. The information posted includes the total number of claims in negotiation. For claims in negotiation, the Ministry reports on the location of the claim, the type of claim, and when the claim was received or submitted, as well as a brief overview of the claim. However, we noted that the information is not complete, and there is no reporting on costs to date or the progress made in negotiations. For example, the province is currently negotiating three claims dating back to 2011 that are not on the Ministry's website. The Ministry discloses the total land claim settlement amount paid and further amounts anticipated to be paid in aggregate through its annual Public Accounts reporting. However, it does not differentiate between the portion of the settlement that has already been paid and the portion expected to be paid in the future.



### RECOMMENDATION 13

To enhance public awareness of Indigenous land claims and the Ministry's accountability for effectively and efficiently settling these claims, we recommend the Ministry of Indigenous Affairs:

- ensure the reporting of its land claims is complete; and
- publicly report the costs by individual claim, as well as the progress made in negotiations.

### MINISTRY RESPONSE

The Ministry agrees that public awareness of Indigenous land claims is important and is committed to timely and informative reporting of land claims under negotiation on our public website at Ontario.ca. The Ministry currently reports funds transferred for land claim settlements through the Public Accounts annual reporting process and will work with negotiation partners for more specific annual reporting of land claim settlement amounts.

## 4.15 No Reporting on Status of Ipperwash Recommendations

The Ipperwash Inquiry, the Royal Commission on Aboriginal Peoples, and the Truth and Reconciliation Commission were the results of significant events in Indigenous history in Canada. According to the provincial and federal governments, lessons learned from these events, along with the recommendations made by the Ipperwash Inquiry, the Royal Commission on Aboriginal Peoples and the Truth and Reconciliation Commission are important for reconciliation between Canadians and Indigenous Peoples. While the provincial and federal governments have made commitments to act on the recommendations, there is minimal assessment and reporting on the progress in implementing these recommendations.

The then Minister of Aboriginal Affairs committed to implementing all recommendations in the Ipperwash Inquiry's report in May 2008, and a Memorandum of Understanding (MOU) between the Government of Ontario and the Ontario First Nations Political Confederacy was signed in September 2008. The MOU commits the parties to work collaboratively under the Ipperwash Inquiry Priorities and Action Committee to implement the Ipperwash recommendations. The province last reported on the status of the Ipperwash recommendations in February 2014 when the Ipperwash Priority Actions Committee was disbanded. There has been no reporting on progress in implementing the Ipperwash recommendations by the government since 2014. Key recommendations that have not been implemented from the Inquiry and the Commissions include:

- establishing a treaty commission;
- establishing measurable goals to identify and close the gaps in health outcomes between Indigenous and non-Indigenous communities;
- publishing annual progress reports and assessing long-term trends and indicators in areas such as suicide, mental health, chronic diseases and availability of appropriate health services;
- committing to meaningful consultation and informed consent of Indigenous Peoples before proceeding with economic development projects; and
- publishing annual reports on the number of Indigenous children who are in care, compared with non-Indigenous children.

As seen in **Figure 13**, many issues discussed in earlier sections of this report are related to the outstanding recommendations previously made by the Ipperwash Inquiry, which could have addressed issues identified in our report.

### Figure 13: Ipperwash Inquiry Report Recommendations

Prepared by the Office of the Auditor General of Ontario

Auditor General Report Section	Ipperwash Inquiry
4.2 No Coordinated Approach to Indigenous Policies, Programs and Services	Recommended a Ministry be created with its own Minister and the resources to carry out its responsibilities.
4.5 Indigenous Peoples and Communities Are Not Engaged Consistently in the Development of Government Programs, Services and Policies That Impact Them	Recommended creating “mechanisms for obtaining input from [Indigenous] communities on planning, policy, legislation, and programs affecting [Indigenous] interests.”
4.10 Ministry Lacks Information to Adequately Oversee Consultations Performed by Other Ministries	Recommended that the “initial mandate and responsibilities of the Ministry of [Indigenous] Affairs should include the following: Ensure that the province fulfills its duty to consult and accommodate.”
4.12 Land Claims Process Lengthy with No Accountability Measures to Determine Path to Improvement	Recommended the then Treaty Commission of Ontario “should be given the mandate to improve the efficiency and cost-effectiveness of the land claims process in Ontario” and “be given the authority to work with parties to establish and publish benchmarks for processing claims.”
4.13 Concerns in Land Claims Process	Recommended the provincial government “establish a permanent, independent, and impartial agency to facilitate and oversee the settling of land and treaty claims in Ontario.”
4.14 Province Lacks Transparency in Reporting on Land Claims	The recommended treaty commission should be given a mandate to “make the claims process accountable and transparent to all Ontarians.”
4.15 No Reporting on Status of Ipperwash Recommendations	Recommended that the Ministry “Oversee and report on the implementation of the recommendations of the Ipperwash Inquiry.”

## RECOMMENDATION 14

To further reconciliation between the government and Indigenous Peoples, we recommend that the Ministry of Indigenous Affairs work with other provincial ministries to:

- implement the recommendations of the Ipperwash Inquiry; and
- regularly monitor and publicly report on progress on actions taken toward implementing the recommendations.

## MINISTRY RESPONSE

The Ministry of Indigenous Affairs accepts the recommendation made by the Auditor General of Ontario. The Ministry agrees that public awareness of the province’s progress in addressing the recommendations of the Ipperwash Inquiry is important.

Between 2008 and 2014, the Ministry led efforts across ministries and with the Chiefs of Ontario through the Ipperwash Inquiry Prior-

ities and Action Committee (IIPAC) to assess and address the Ipperwash recommendations. This multi-year effort resulted in legislative, policy and operational changes including: establishing the Ministry of Aboriginal Affairs as a stand-alone ministry; launching the New Relationship Fund to fund consultation capacity in Indigenous communities; implementing significant changes to the OPP’s standard operating procedures including the way police respond to demonstrations; proclaiming in 2012 the *Funeral, Burial and Creation Services Act*, 2002, which is inclusive of processes regarding Indigenous burials; working extensively with Indigenous communities to develop new material for the provincial curriculum that reflect Indigenous perspectives; and implementing substantial changes to the land claims process to make it more effective and efficient, as well as signing a land transfer agreement for Ipperwash Provincial Park with Kettle and Stony Point First Nation.

Since 2015, when the joint IIPAC process concluded, the province has continued to address the longer-term issues identified in the report including: entering into Resource Revenue Sharing agreements with First Nations communities and establishing a legislative basis for First Nations policing through the *Community Safety and Policing Act, 2019*.

The Ministry will use the Ipperwash recommendations as a basis for the advice to ministries in policy development in the sectors covered in the inquiry. The Ministry will also work with Indigenous partners to determine indicators that are meaningful for reporting on Indigenous well-being and Ontario's progress in meeting the needs of Indigenous communities. This includes reporting on progress on actions in responding to the Ipperwash recommendations and other significant reports.

## Appendix 1: First Nations Communities in Ontario

Source of data: Ministry of Indigenous Affairs

Provincial Territorial Organizations		
Grand Council Treaty #3		
Animakee Wa Zhing Asubpeeschoseewagong (Grassy Narrows) Buffalo Point Couchiching Migisi Sahgaigan (Eagle Lake) Iskatewizaagegan 39 Lac des Mille Lacs Lac La Croix Lac Seul	Mishkosiminiziibiing (Big Grassy) Mitaanjigamiing Naicatchewenin (Northwest Bay) Naongashiing (Big Island) Naotakamegwanning (Whitefish bay) Nigigoonsiminikaaning (Red Gut) Northwest Angle 33 Niisaachewan (Dalles) Onigaming (Sabaskong) Rainy River (Manitou Rapids)	Sagkeeng (Fort Alexander) Saugeen Seine River Shoal Lake 40 Wabaseemoong (Whitedog) Wabauskang Waabigoniiw Saaga'iganiiw (Wabigoon Lake) Wauzhushk Onigum (Rat Portage) Washagamis Bay
Nishnawbe Aski Nation		
Aroland First Nation Attawapiskat First Nation Bearskin Lake First Nation Beaverhouse First Nation Brunswick House First Nation Cat Lake First Nation Chapleau Cree First Nation Chapleau Ojibwe First Nation Constance Lake First Nation Deer Lake First Nation Eabametoong First Nation Flying Post First Nation Fort Albany First Nation Fort Severn First Nation Ginoogaming First Nation Hornepayne First Nation Kasabonika Lake First Nation	Kashechewan First Nation Keewaywin First Nation Kingfisher Lake First Nation Koocheching First Nation Lac Seul First Nation Long Lake #58 First Nation McDowell Lake First Nation Marten Falls First Nation Matachewan First Nation Mattagami First Nation Mishkeegogamang First Nation Missanabie Cree First Nation Mocreebec Council of the Cree Nation Moose Cree First Nation Muskkrat Dam First Nation Neskantaga First Nation	Nibinamik First Nation North Caribou Lake First Nation North Spirit Lake First Nation Pikangikum First Nation Poplar Hill First Nation Sachigo Lake First Nation Sandy Lake First Nation Slate Falls First Nation Taykwa Tagamou Nation (New Post) Wahgoshig First Nation Wapekeka First Nation Wawakapewin First Nation Webequie First Nation Weenusk First Nation Whitewater Lake First Nation Wunnumin Lake First Nation
Anishinabek Nation: Union of Ontario Indians		
Aamjiwnaang First Nation Alderville First Nation Algonquins of Pikwakanagan First Nation Atikameksheng Anishnawbek Aundeck Omni Kaning Beausoleil First Nation Binjitiwaabik Zaaging Anishinaabek (Rocky Bay) Chippewas of Georgina Island Chippewas of Kettle and Stoney Point Chippewas of the Thames Chippewas of Rama First Nation Curve Lake First Nation Dokis First Nation Fort William First Nation	Garden River First Nation Henvey Inlet First Nation Long Lake #58 M'Chigeeng First Nation Magnetawan First Nation Michipicoten First Nation Mississauga First Nation Mississaugas of Scugog Island First Nation Moose Deer Point Munsee Delaware Namaygoosisagagun First Nation Netmizaagamig Nishnaabeg (Pic Morbert)	Nipissing First Nation Ojibways of the Pic River First Nation Pays Plat First Nation Red Rock Indian Band Sheshegwaning First Nation Sheguiandah First Nation Serpent River First Nation Thessalon First Nation Wahnapiatae First Nation Wasauksing First Nation Whitefish River First Nation Wiikwemikoong Unceded Territory Zhiibaahaasing First Nation
Association of Iroquois and Allied Indians		
Batchewana First Nation of Ojibways Caldwell First Nation Delaware Nation	Hiawatha First Nation (Mississaugas of Rice Lake) Mohawks of the Bay of Quinte	Oneida Nation of the Thames Wahta Mohawks

**Independent First Nations**

Animbiigoo Zaagiigan Anishinaabek First Nation (Lake Nipigon Ojibway)	Chippewas of Saugeen	Mohawks of Akwesasne
Bingwi Neyaashi Anishinaabek	Iskatewizaagegan No. 39 Independent First Nations	Shawanaga First Nation
Bkejwanong Territory (Walpole Island)	Kitchenuhmaykoosib Inninuwug (Big Trout Lake)	Temagami First Nation
Chippewas of Nawash (Cape Croker)		Wabaseemoong First Nation
		Whitesand First Nation

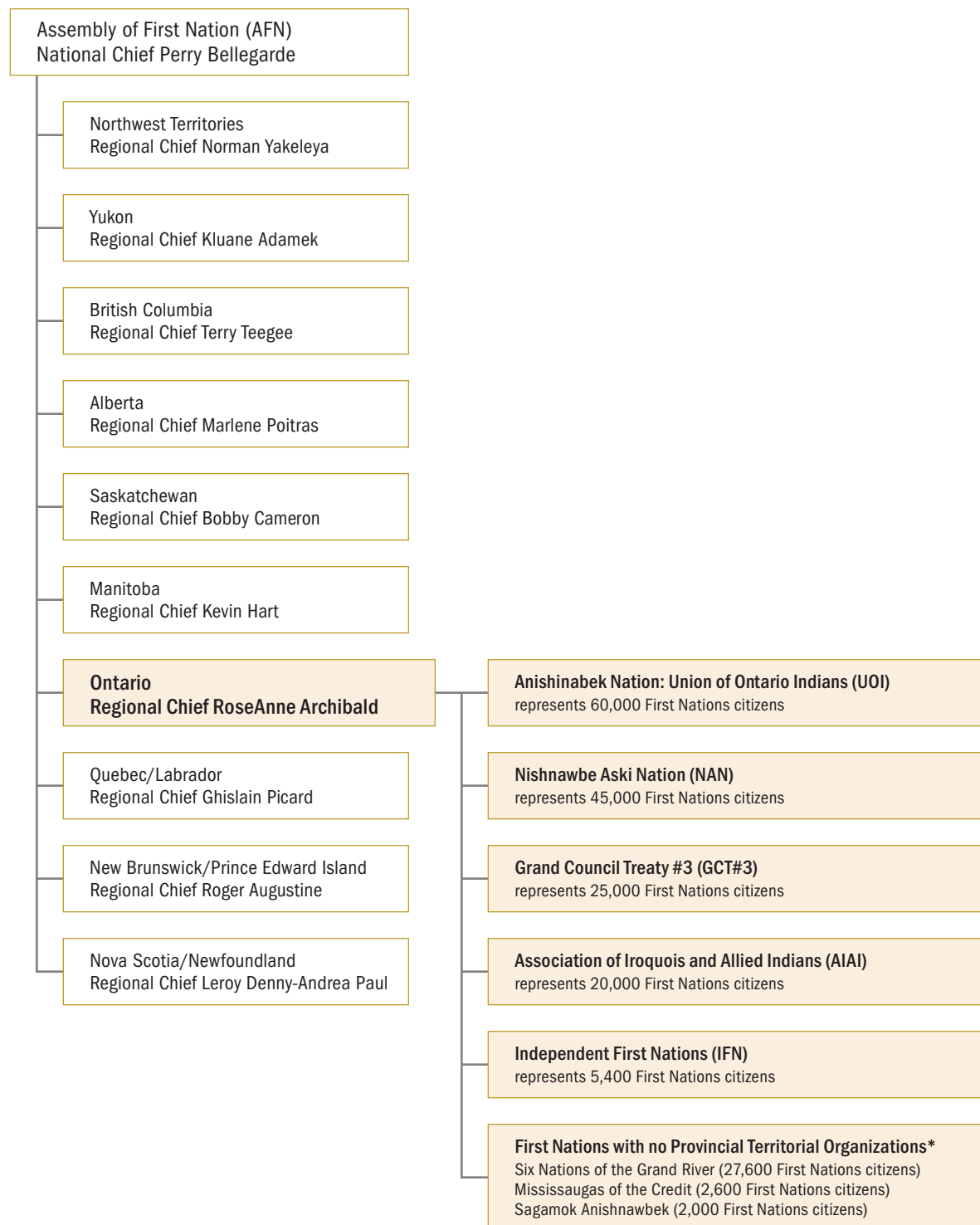
**First Nations with no Provincial Territorial Organization Affiliations**

Six Nations of the Grand River	Mississaugas of the Credit First Nation	Sagamok Anishnawbek First Nation
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## Appendix 2: Political Confederacy, August 2020

Prepared by the Office of the Auditor General of Ontario



\* In Ontario, the majority of First Nations are affiliated with larger regional groupings known as Provincial Territorial Organizations (PTOs). PTOs are the primary support for advocacy and secretariat services for First Nations and each PTO has an elected Grand Chief.

## Appendix 3: Federal and Provincial Responsibilities for Social and Economic Outcomes

Prepared by the Office of the Auditor General of Ontario

Roles and Responsibilities Related to Indigenous People		Canada
Sector	Ontario	
Health and Mental Health	<p>Federal and provincial responsibility for health overlap for First Nations living on reserve.</p> <ul style="list-style-type: none"> <li>Ontario designs and delivers services in the areas of: primary and specialty care, home and community care, long term care and public health.</li> <li>Province provides insured health services to OHIP-eligible residents, including Indigenous people regardless of where they live in Ontario (on or off reserve).</li> <li>Ontario funds these insured services for all Ontario residents under the Health Insurance Act. Regulation 552 sets out the requirements to be a resident in Ontario. Any person who meets these requirements is eligible for OHIP coverage.</li> </ul>	<ul style="list-style-type: none"> <li>The Canada Health Act outlines criteria and conditions provinces and territories must meet, in relation to insured health services and extended health services, to receive their entire allocation of federal health funding through the Canada Health Transfer.</li> <li>Historically, Canada has provided funding for health care programs and services on First Nation reserve lands including major capital projects and selected health benefits (e.g. Non-Insured Health Benefits for Inuit and Status First Nations).</li> <li>On-reserve health services (nursing stations) are generally provided through the federal government (may not be billed to OHIP).</li> </ul>
Child and Family Wellbeing	<p>Child and family wellbeing on First Nation reserve lands are cost-shared between Ontario and Canada through the 1965 Indian Welfare Agreement. The intent of the agreement is for Canada to reimburse Ontario for approximately 92-95% of eligible expenses across four programs: income assistance, child care, child welfare, and homemakers and nurses services.</p> <ul style="list-style-type: none"> <li>Ontario provides funding to Children's Aid Societies (including Indigenous Children's Aid Societies) to deliver child protection services and prevention services.</li> <li>Ontario also provides funding to a number of Indigenous child and family services organizations to provide Indigenous-specific, community-based child, youth and family wellbeing and prevention programs.</li> <li>Ontario has developed a system whereby local service system managers oversee the delivery and planning of child care and early years programs and services in their areas of service.</li> <li>Some First Nations operate licensed child care and early years and family programs in their communities and are funded directly by Ontario.</li> <li>Ontario funds early years and child care programs for people living off reserve through Consolidated Municipal Service Managers and District Social Services Administration Boards.</li> <li>Ontario is responsible for the statutory, regulatory and policy frameworks governing Ontario Works and the program is delivered through Consolidated Municipal Service Managers and District Social Services Administrative Boards and First Nations communities.</li> <li>Ontario fully funds the Ontario Disability Support Program to First Nations residents on reserve as it not cost shared through the Indian Welfare Agreement.</li> </ul>	<ul style="list-style-type: none"> <li>On January 1, 2020 the federal government's new legislation, An Act respecting First Nations, Inuit and Métis children, youth and families ("the federal Act") sets out a mechanism for laws of "Indigenous groups, communities or peoples" pertaining to child and family services to gain the force of federal law.</li> <li>The federal government funds two Indigenous early learning and child care programs on reserve: First Nations and Inuit Child Care initiative and Aboriginal Head Start On Reserve.</li> </ul>

Sector	Roles and Responsibilities Related to Indigenous People	
	Ontario	Canada
Justice	<p>The First Nations Policing Program (FNPP) is a program to support the delivery of policing to First Nations implemented through and agreement between Canada, Ontario and First Nation communities. Costs are shared between the Canada (52%) and Ontario (48%). Policing outside the FNPP is paid for at 100% of the costs by the police service of the jurisdiction which is primarily the Ontario Provincial Police.</p> <ul style="list-style-type: none"> <li>Ontario designs and delivers programs and services in the area of policing and administers the Police Services Act which requires that policing be provided in all parts of the province, including First Nation communities, either by the OPP or a municipal police force.</li> <li>Under the Police Services Act, the OPP is responsible for policing those parts of Ontario that do not have a municipal police force. Thus, OPP is responsible for policing on most First Nation reserves, even where there are First Nation police services.</li> <li>Most First Nation police services operate like municipal services, however the underlying responsibility for the provision of adequate and effective policing lays with the OPP.</li> </ul>	<ul style="list-style-type: none"> <li>Canada provides an enhancement to the existing police services (which across most of Ontario is the Ontario Provincial Police) on First Nation reserve lands.</li> <li>Canada has limitations regarding the scope of items funded as they relate to this enhancement.</li> </ul>
Education	<p>Ontario and Canada both have authority to legislate all aspects of education on First Nations reserve lands.</p> <ul style="list-style-type: none"> <li>Ontario designs and delivers programs and services and provides funding to institutions in the learning sector and administers legislation related to elementary and post-secondary education.</li> <li>Provincial education laws of general application apply on reserve to Indigenous people.</li> <li>Most First Nations, Métis, and Inuit learners in Ontario attend publicly assisted colleges, universities, and Indigenous Institutes. Ontario provides special purposes grants, including Indigenous student bursaries, to support the access and success of Indigenous learners in postsecondary education and training.</li> <li>Indigenous learners may also access financial assistance through the Ontario Student Assistance Program, including the Ontario Indigenous Travel Grant.</li> <li>Under the Indigenous Institutes Act, 2017 nine Indigenous Institutes are prescribed in regulation and ongoing operating funding from the province for the purposes of providing postsecondary education and training.</li> </ul>	<ul style="list-style-type: none"> <li>Federal delivery of First Nations elementary and secondary education on reserve is managed principally by Department of Indigenous Services Canada through its Elementary and Secondary Education program.</li> <li>This program supports instructional services in First Nation/federally-operated schools, reimbursement of tuition costs for on-reserve students who attend off-reserve provincially funded schools, and other services such as transportation, counselling and financial assistance.</li> <li>The federal government provides funding to First Nation and Inuit learners through Post-Secondary Student Support Program and provides funding on a time limited basis to Indigenous Institutions through the Post-Secondary Partnerships Program.</li> <li>The federal government provides funding to Indigenous Institutes on a time limited project basis through Post-Secondary Partnerships Program.</li> </ul>

Sector	Roles and Responsibilities Related to Indigenous People	
	Ontario	Canada
Housing	<p>Funding for off reserve Indigenous housing is cost shared between Canada and Ontario through the National Housing Strategy.</p> <ul style="list-style-type: none"> <li>The Ministry of Municipal Affairs and Housing Ontario designs and delivers programs and services in the housing sector and administers legislation.</li> <li>Ontario does not fund housing on reserve.</li> <li>As part of the National Housing strategy, Ontario chooses to flow Ontario Priorities Housing Initiative funding to Indigenous Program Administrators to provide housing off reserve (federally/provincially cost-shared).</li> <li>Ontario funds off reserve Indigenous housing through unilateral provincial funding through the Indigenous supportive Housing program.</li> </ul>	<ul style="list-style-type: none"> <li>The federal government has the Constitutional authority for First Nations housing on reserve lands.</li> <li>The federal government provides housing services on reserve through Indigenous Services Canada and the Canadian Mortgage and Housing Corporation.</li> </ul>
Water	<ul style="list-style-type: none"> <li>Provincial water laws are of general application, or aspects of them may apply on First Nation reserve lands and to Indigenous people, in certain circumstances.</li> <li>Ontario manages and regulates drinking water in the province.</li> <li>Ontario and municipalities regulate and provide drinking water related services in the province, most regulatory activities are limited to off-reserve locations.</li> <li>Ontario does not fund clean water projects on reserve, but may provide technical support in some instances upon request.</li> <li>Ontario has been delivering the federal-provincial cost-shared infrastructure program Clean Water and Waste Water Fund and Small Communities Fund which benefits recipients such as First Nations.</li> </ul>	

## Appendix 4: Settled Land Claims In Ontario Since 1983

Prepared by the Office of the Auditor General of Ontario

#	Land Claim	Settlement Year	Land (Acres)	Province (\$ million)	Federal (\$ million)
1.	Islington Band of Saulteaux	1983	—	8.80	—
2.	Wabigoon River Systems Mercury Contamination	1985	—	2.17	2.75
3.	United Chiefs and Councils of Mnidoo Mnising-Manitoulin	1990	9,444	7.28	—
4.	Ontario Ossington-Islington	1991	—	—	—
5.	Six Nishnawbe-Aski Nation (NAN) Bands	1991	150,464	—	—
6.	Aamjiwnaang (Sarnia)	1994	—	9.00	—
7.	Mississauga #8 Northern Boundary	1994	40,000	5.62	8.05
8.	Ojibways of Garden River	1994	23,100	6.35	—
9.	Shoal Lake Watershed	1994	—	0.18	—
10.	Brunswick House	1995	—	2.00	5.05
11.	Eabametoong (Fort Hope)	1995	—	—	—
12.	Nipissing	1995	32,864	—	—
13.	Wikwemkoong (Wikwemikong)	1995	24,000	0.30	13.60
14.	Grand River Notification Agreement	1996	—	—	—
15.	Whitefish River	1997	1,850	—	—
16.	Assabaska (Mishkosiimiiniiziibing and Onigaming)	1999	2,700	1.57	4.06
17.	Mishkosiminiziibing (Big Grassy River)	1999	650	1.50	0.50
18.	Cat Lake	2000	3,479	—	—
19.	Thessalon	2000	—	0.45	—
20.	Wahta Mohawks (Gibson)	2002	8,300	3.79	6.24
21.	Tyendinaga/Mohawks of the Bay of Quinte (Turton Penn)	2004	—	1.20	1.13
22.	Lake Nipigon Ojibway (Animbiigoo Zaagi'igan Anishinaabek)	2005	3,138	—	—
23.	Rainy River First Nation	2005	14,924	30.11	37.12
24.	Sand Point (Bingwi Neyaashi Anishinaabek)	2006	2,433	—	—
25.	Hunter's Point	2007	12	2.80	—
26.	Michipicoten Boundary Claim	2007	3,293	—	46.90
27.	Fort William Boundary	2010	11,505	5.20	149.40
28.	Missanabie Cree Land Transfer	2010	9,600	—	—
29.	Wabigoon Lake Ojibway Nation	2011	—	27.00	—
30.	Pic Mobert	2014	3,954	—	—
31.	Chapleau Cree	2015	9,884	0.35	22.13
32.	Shawanaga	2015	—	4.00	—
33.	Rocky Bay (Bijnjitiwaabik Zaaging Anishinaabek)	2016	4,480	—	—
34.	Lac des Milles Lac	2017	—	43.83	33.60
35.	Mitaanjigamiing	2017	4,135	1.80	23.60
36.	Pays Plat (Pagwaasheeng)	2018	4,078	—	—
37.	Williams Treaties First Nations	2018	—	444.00	666.00
38.	Flying Post First Nation	2019	—	14.00	—
39.	Garden River Settlement	2019	—	9.69	9.05
<b>Subtotal</b>			<b>368,287</b>	<b>632.99</b>	<b>1,029.18</b>



#	Land Claim	Settlement Year	Land (Acres)	Province (\$ million)	Federal (\$ million)
40.	Rat Portage (Wauzhushk Onigum)*	2009			
41.	Couchiching*	2011			
42.	Red Rock Settlement*	2011			
43.	Wabaseemoong Independent First Nation*	2011			
44.	Whitesand Settlement*	2011			
45.	Mishkegogamang Ojibway and Slate Falls*	2013			
46.	Chapleau Ojibwe*	2015			
47.	Mishkosiimiinibing (Big Grassy River) *	2015			
48.	Ojibways of Onigaming First Nation*	2015			
49.	Rainy River*	2015			
50.	Whitefish River*	2017			
51.	Agency 1 – Couchiching, Mitaanjugaming, Naicatchewenin, Nigigoonsiminikaaning*	2018	—	—	—
<b>Subtotal</b>			<b>14,017</b>	<b>68.49</b>	<b>104.00</b>
<b>Total</b>			<b>382,304</b>	<b>701.48</b>	<b>1,133.18</b>

\* We were requested by the Ministry to aggregate the individual settlement amounts.

## Appendix 5: Ontario Land Claims in Progress, as of October 2020

Prepared by the Office of the Auditor General of Ontario

First Nation/ File Name	Date Ontario Accepted
<b>Unsold Surrendered Land</b>	
1. Whitefish River	1995
2. Chippewas of Nawash	2016
3. Agency One	2017
<b>Flooding</b>	
4. Couchiching	2003
5. Naicatchewenin	2003
6. Nigigoonsiminikaaning	2003
7. Seine River	2003
8. Mitaanjigamiing (Stanjikoming)	2003
9. Anishinabe of Wauzhushk Onigum	2007
10. Anishinaabeg of Naongashiing	2007
11. Mishkosiminiziibiing	2007
12. Iskatewizaagegan 39	2007
13. Naotkamegwanning	2007
14. Northwest Angle 33	2007
15. Animakee Wa Zhing #37	2007
16. Niisaachewan Anishinabe	2007
17. Ochiichagwe'babigo'ining [Dalles]	2007
18. Ojibways of Onigaming	2007
19. Shoal Lake 40	2007
20. Buffalo Point	2007
21. Mississauga 8 (Flooding)	2009
22. Gull Bay	2017
<b>Treaty Land Entitlement</b>	
23. Grassy Narrows	2011
24. Seine River	2011
25. Wabauskang	2011
26. Lac La Croix	2012
27. Matachewan	2012
28. Moose Cree	2013
29. Animakee Wa Zhing #37	2013
30. Eabametoong	2013
31. Fort Severn	2016
32. Ginoogaming	2016
33. Naicatchewenin	2018

First Nation/ File Name	Date Ontario Accepted
<b>Boundary</b>	
34. Wiiwemkoong	2008
35. Wasauksing	2011
36. Thessalon	2016
37. Shawanaga	2019
38. Wahnapiatae	2020
39. Gull Bay	2020
<b>Aboriginal Title</b>	
40. Algonquins of Ontario	1991
<b>Highway</b>	
41. Mississauga 8	2001
42. Rainy River	2008
43. Ojibways of Onigaming	2011
<b>Other</b>	
44. Obashkaandagaang	2009
45. Temagami	2010
46. Naicatchewenin	2011
47. Pays Plat	2011
48. Sandy Lake	2015

Note: There are six additional claims in progress as of October 2020 that are not included in this appendix because lands under negotiations have not been publicly identified.

## Appendix 6: Audit Criteria

Prepared by the Office of the Auditor General of Ontario

1. Roles and responsibilities between ministries and the federal government for Indigenous programs and services are clearly defined, and accountability requirements are established.
2. Ministry programs and services are:
  - directed to the achievement of desired outcomes that reflect the needs and priorities of Indigenous people; and
  - effectively monitored and coordinated across the ministries and the broader public sector.
3. The Ministry has effective processes in place to co-ordinate with and guide other ministries and the broader public sector to meet the province's constitutional duties to consult with Indigenous people.
4. A framework based on best practices exists to support the timely and effective resolution of Indigenous land claims and other settlements.
5. Accurate, timely and complete financial, operational and outcome data across the province's Indigenous programs and services are regularly collected and analyzed to help guide decision-making.
6. Meaningful performance measures and targets relating to Indigenous policies, programs and services are established, monitored and publicly reported to ensure that the intended outcomes are achieved and that corrective actions are taken on a timely basis when issues are identified.

## Appendix 7: Programs and Services for Indigenous People, 2019/20 (\$ million)

Prepared by the Office of the Auditor General of Ontario

Program or Service	Budgeted Amount	Expenditure
<b>Attorney General</b>	<b>35.3</b>	<b>31.3</b>
Indigenous Victims Services	8.3	8.3
Restorative Justice Programs	7.5	6.4
Other programs or services with annual budgets <\$5 million	19.5	16.6
<b>Children, Community and Social Services</b>	<b>180.6</b>	<b>181.9</b>
Child Welfare—Indigenous Community and Prevention Supports <sup>1</sup>	85.7	85.0
Indigenous Healing and Wellness Strategy*	71.5	68.7
Anti-Human Trafficking Supports*	9.9	9.9
Ontario Works—Transitional Support Fund for First Nations	7.1	11.9
Other programs or services with annual budgets <\$5 million	6.4	6.4
<b>Education</b>	<b>177.8</b>	<b>177.5</b>
Indigenous Education Grant*	80.2	82.8
First Nations Child Care and Child and Family on Reserve*	48.8	52.2
Indigenous-Led Child Care and Child and Family Programs*	30.0	25.5
Other programs or services with annual budgets <\$5 million	18.8	17.0
<b>Energy, Northern Development and Mines</b>	<b>97.1</b>	<b>78.9</b>
Aboriginal Economic Development <sup>2</sup>	29.3	21.8
On-Reserve First Nations Delivery Credit	26.2	24.4
Resource Revenue Sharing	15.9	15.9
Matawa Broadband	14.0	8.2
Winter Roads	5.8	5.8
Other programs or services with annual budgets <\$5 million	5.9	2.8
<b>Environment, Conservation and Parks</b>	<b>1.2</b>	<b>1.1</b>
First Nations Drinking Water Initiatives*	0.9	0.7
Other programs or services with annual budgets <\$5 million	0.3	0.4
<b>Health</b>	<b>395.4</b>	<b>377.7</b>
First Nations Land Ambulance Services	68.3	68.2
Aboriginal Health Access Centres	36.9	35.6
Sioux Lookout Meno Ya Win Health Centre	35.8	36.3
Weeneebayko Area Health Authority	33.4	33.4
Indigenous Inter-professional Primary Care Teams*	33.4	27.8
Mental Health Services for Indigenous Child and Youth	33.0	29.2
Indigenous-Led Mental Health and Addictions Programs & Indigenous Treatment and Healing Centres*	23.2	22.7
Sioux Lookout Regional Physicians' Services	17.3	15.6
Home and Community Care: First Nations	14.3	13.7
Aboriginal Community Health Centres	11.7	11.7
Indigenous Long-Term Care Homes	11.5	11.7
Diabetes Programs for Indigenous People*	9.0	9.0
Homemakers and Nurses Services	8.1	8.6

Program or Service	Budgeted Amount	Expenditure
Indigenous Mental Health and Addictions	7.0	3.1
Weeneebayko Area Health Authority – Physician Services*	6.5	5.3
Other programs or services with annual budgets <\$5 million	46.0	45.8
<b>Heritage, Sport, Tourism and Culture Industries</b>	<b>6.0</b>	<b>5.6</b>
Aboriginal Programs (Sport)	2.8	2.6
Other programs or services with annual budgets <\$5 million	3.2	3.0
<b>Indigenous Affairs</b>	<b>45.9</b>	<b>46.1</b>
New Relationship Fund	14.5	12.1
Indigenous Economic Development Fund	8.2	7.8
Policy Development Engagement Fund	5.7	2.2
Other programs or services with annual budgets <\$5 million	17.5	24.0
<b>Labour, Training and Skills Development</b>	<b>0.3</b>	<b>0.2</b>
G'minoomaadozimin Health and Safety Initiative	0.3	0.2
<b>Municipal Affairs and Housing</b>	<b>35.4</b>	<b>34.0</b>
Indigenous Supportive Housing Program—Ending Homelessness	13.3	13.3
Ontario Priorities Housing Initiative	8.4	8.4
Rural and Native Housing	8.4	7.0
Other programs or services with annual budgets <\$5 million	5.3	5.3
<b>Natural Resources and Forestry</b>	<b>16.2</b>	<b>11.0</b>
Resource Revenue Sharing	12.7	8.7
Other programs or services with annual budgets <\$5 million <sup>3</sup>	3.5	2.3
<b>Solicitor General</b>	<b>82.5</b>	<b>82.6</b>
First Nations Policing Program	48.9	48.1
OPP Indigenous Policing Bureau	21.2	23.5
Federal-Provincial First Nations Policing Agreement – Capital	5.0	4.9
Other programs or services with annual budgets <\$5 million	7.4	6.1
<b>Training, Colleges and Universities</b>	<b>54.3</b>	<b>53.7</b>
Indigenous Support Program <sup>4</sup>	51.3	53.7
Other programs or services with annual budgets <\$5 million	3.0	0.0
<b>Transportation</b>	<b>37.4</b>	<b>21.7</b>
Remote Aviation	31.5	16.0
First Nations Roads	5.5	5.4
Other programs or services with annual budgets <\$5 million	0.4	0.3
<b>Total</b>	<b>1,165.4</b>	<b>1,103.3</b>

\* Programs reviewed by the Office of the Auditor General of Ontario.

1. Contains three programs reviewed: Family Wellbeing Program, Akwe:go Urban Aboriginal Children's Program/Wasa-Nabin Urban Aboriginal Youth Program, and Aboriginal Fetal Alcohol Spectrum Disorder and Child Nutrition Program
2. Contains two programs reviewed: Ring of Fire Infrastructure Projects and Aboriginal Economic Development – Ring of Fire
3. Contains the Far North Program, which was reviewed by our office
4. Contains two programs reviewed: Indigenous Student Success Fund and Indigenous Institutes Operating Grant





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