

# Chapter 1

## Section 1.04

Ministry of Indigenous Affairs

# Indigenous Affairs in Ontario

Follow-Up on Value-for-Money Audit, 2020 Annual Report

### RECOMMENDATION STATUS OVERVIEW

|                   | # of Actions Recommended | Status of Actions Recommended |                                     |                       |                         |                      |
|-------------------|--------------------------|-------------------------------|-------------------------------------|-----------------------|-------------------------|----------------------|
|                   |                          | Fully Implemented             | In the Process of Being Implemented | Little or No Progress | Will Not Be Implemented | No Longer Applicable |
| Recommendation 1  | 1                        |                               |                                     | 1                     |                         |                      |
| Recommendation 2  | 2                        |                               | 2                                   |                       |                         |                      |
| Recommendation 3  | 2                        | 1                             |                                     | 1                     |                         |                      |
| Recommendation 4  | 2                        |                               | 1                                   | 1                     |                         |                      |
| Recommendation 5  | 1                        |                               | 1                                   |                       |                         |                      |
| Recommendation 6  | 2                        |                               |                                     |                       | 2                       |                      |
| Recommendation 7  | 2                        |                               |                                     |                       | 2                       |                      |
| Recommendation 8  | 2                        |                               |                                     | 2                     |                         |                      |
| Recommendation 9  | 3                        |                               |                                     | 3                     |                         |                      |
| Recommendation 10 | 2                        |                               |                                     | 2                     |                         |                      |
| Recommendation 11 | 4                        | 4                             |                                     |                       |                         |                      |
| Recommendation 12 | 1                        |                               |                                     |                       | 1                       |                      |
| Recommendation 13 | 2                        | 2                             |                                     |                       |                         |                      |
| Recommendation 14 | 2                        |                               |                                     | 2                     |                         |                      |
| <b>Total</b>      | <b>28</b>                | <b>7</b>                      | <b>4</b>                            | <b>12</b>             | <b>5</b>                | <b>0</b>             |
| <b>%</b>          | <b>100</b>               | <b>25</b>                     | <b>14</b>                           | <b>43</b>             | <b>18</b>               | <b>0</b>             |

## Overall Conclusion

The Ministry of Indigenous Affairs, as of November 15, 2022, has fully implemented 25% of actions we recommended in our 2020 Annual Report. The Ministry has made progress in implementing an additional 14% of the recommendations.

The Ministry has fully implemented recommendations such as developing time frames for assessing, negotiating and implementing land claims and

documenting events or circumstances that affected the anticipated progress in settling land claims.

However, the Ministry has made little progress on 43% of the recommendations, including working 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 and working with other ministries to ensure they are engaging with Indigenous Peoples

when they are developing relevant programs, services and policies.

The Ministry will not implement 18% of our recommendations, including addressing concerns about the land claims settlement process by establishing an independent body to assess future land claims, determine negotiation funding for Indigenous claimants, monitor and report on the progress of land claims and, if feasible, recommend its implementation to the Province. We continue to believe that this recommendation should be revisited by the Ministry as there may come a time when this may be advisable.

Further, the Ministry will not be making efforts to develop guidance for other ministries so that programs and services are operating as intended to meet the needs of Indigenous Peoples. We continue to believe that this recommendation is important to supporting Indigenous Peoples and should be revisited by the Ministry.

The status of actions taken on each of our recommendations is described in this report.

## Background

In Canada, Indigenous Peoples are First Nations, Métis and Inuit. According to the last census in 2021, 22% of Canada's Indigenous population lived in Ontario. The nearly 407,000 Indigenous Peoples in Ontario accounted for 3% of Ontario's population. About 12% of Indigenous Peoples live on reserves (lands set aside by the Crown for the exclusive use of Indigenous communities). Many societal and historical issues have led to inequity between Indigenous and non-Indigenous people in Ontario, as well as Indigenous people living on reserve and off reserve.

Indigenous Peoples continue to advocate for their right to self-determination, eliminating systemic racism, and having a primary role in developing and implementing 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.

Overall, our audit in 2020 found that the Ministry had neither taken the lead, nor been given the authority required to co-ordinate the Province's policies, programs and services for Indigenous Peoples.

Each provincial ministry independently designed and implemented its own Indigenous policy initiatives according to its own priorities. Problems with this decentralized approach were compounded by the absence of Ministry oversight.

The following were some of our specific concerns:

- The Province was 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 had 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 not 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, was aware of all provincial programs and services for Indigenous Peoples in Ontario, and this information was not publicly available. Without comprehensive information on Indigenous programs and services, the Province could not effectively co-ordinate its efforts to improve social and economic outcomes for Indigenous Peoples. At the time of our 2020 audit, the Ministry posted only 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 not 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 did not always engage them to ensure the programs and services effectively met 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 was 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 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 Ministry also did not effectively manage its land claims settlement process in an accountable manner. The Ministry did not establish expected timelines, milestones or costs for the settlement of land claims. Further, it did not track delays or identify barriers that 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 in 2020 that the Province had concluded took, on average, 22 years to settle.

## Status of Actions Taken on Recommendations

We conducted assurance work between April 2022 and September 2022. We obtained written representation from the Ministry of Indigenous Affairs that effective November 15, 2022, it has provided us with a complete

update of the status of the recommendations we made in the original audit two years ago.

## No Co-ordinated Approach to Indigenous Policies, Programs and Services

### 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.*

**Status: Little or no progress.**

### Details

In our 2020 audit, we found that the Ministry of Indigenous Affairs, unlike ministries responsible for Indigenous affairs in British Columbia and Manitoba, did not have the authority or a clear mandate to lead the development of policies, programs and services related to Indigenous people. The Province’s decentralized approach to Indigenous affairs had created confusion and increased demands on resources in Indigenous communities. Representatives from Indigenous communities raised concerns that this lack of co-ordination did 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.

In our follow-up, we found that the Ministry has not yet made efforts to propose changes to its mandate that would enable it to lead Indigenous affairs in Ontario. However, the Ministry noted that it may have an opportunity to propose this change during 2022. The

Ministry has made additional efforts to ensure consistent guidance across government relating to Indigenous affairs. This includes giving cross-government presentations to highlight supports the Ministry can provide and developing a tool to be used as a guidance document in policy/program development to help assess impacts on Indigenous Peoples. The Ministry worked with Cabinet Office to ensure that proposals contained in this guidance document related to Indigenous affairs met a standard set of expectations, including evidence that analysis had been completed on any potential impacts the proposals may have on Indigenous Peoples and that consideration of legal requirements in relation to Indigenous communities were explicit considerations.

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

### 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;*
- *provide guidance to other ministries on adjusting and realigning the programs and supports to better meet the needs and priorities of Indigenous Peoples.*

**Status: In the process of being implemented by September 2024.**

### Details

We found in our 2020 audit that neither the Ministry of Indigenous Affairs nor any other Ministry tracked, assessed, or reported on the effectiveness of the government's strategic efforts and funded initiatives in improving outcomes of Indigenous Peoples. In comparison, the federal government, British Columbia and Alberta publicly reported on government objectives and performance measures related to Indigenous Peoples. In response to the 2015 Truth and

Reconciliation Commission, the provincial government committed to publicly report on the progress of Indigenous initiatives in the areas of health, employment, education and justice. However, as of our 2020 report, it had not done so.

In our follow-up, we found that the Ministry has been increasing its data capabilities by acquiring data analytics software for the purpose of developing dashboards and reports on socio-economic outcomes. The Ministry also intends to use Statistics Canada's 2021 Census of Population data and Ontario Indigenous-specific data to be released September 2022. This information will support the Ministry in developing a public progress report to be released in September 2024. Once this information is collected and analyzed, it will enable the Province to provide guidance to other ministries on adjusting and realigning the programs and supports to better meet the needs and priorities of Indigenous Peoples.

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

### 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;*

**Status: Fully Implemented.**

### Details

Our 2020 audit found that neither the Ministry nor any other provincial ministry or agency was aware of all the provincial programs and services for Indigenous Peoples in Ontario. 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. The Ministry maintained a public website on programs

and services available to Indigenous Peoples, but it only included information on 11 of the 140 programs offered. When we asked the Ministry for a list of all Indigenous programs and services, the Ministry was only aware of 30 of the 140 programs in 2019/20, accounting for only \$351 million of the total of \$1.1 billion in Indigenous spending in Ontario.

In our follow-up, we found that the Ministry worked with partners at other ministries to gather and verify the accuracy of information on Indigenous programs and services, including hyperlinks to further program information. On September 28, 2022, the Ministry completed this listing and made it publicly available on a central webpage on the Ministry's website.

- *Update the list on an annual basis.*

**Status: Little or no progress.**

### Details

While the Ministry expects to update the listing of Indigenous programs and services on an annual basis, further follow-up work will be needed to verify whether the updates become a consistent practice over the coming years.

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

### 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;*

**Status: In the process of being implemented by December 2023.**

### Details

We found in our 2020 audit that the Ministry did 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.

In our follow-up, we found that the Ministry has only developed one new program, the Regional Social Emergency Manager program, that funds emergency manager positions to support Indigenous communities with social emergency management. The Ministry engaged with Indigenous partners including community front-line workers and regional health and social services providers on social emergency management needs in the development of this program. Further follow up work in 2023 will determine whether or not this becomes a consistent practice.

- *work with other ministries to ensure they are engaging with Indigenous Peoples when they are developing relevant programs, services and policies.*

**Status: Little or no progress.**

### Details

Our 2020 audit found that other ministries also did not always engage Indigenous Peoples when developing programs and services to meet their needs. 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.

In our follow-up, we found that the Ministry has not developed or amended any internal guidance provided to, or co-ordination processes with, other ministries to help ensure Indigenous Peoples are consulted on programs, services and policies impacting them. The Ministry noted that without a mandate to lead Indigenous affairs in Ontario, as discussed in **Recommendation 1**, it would not be able to ensure Indigenous Peoples are being engaged when other ministries are developing relevant programs, services and policies.

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

### 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.*

**Status: In the process of being implemented by December 2025.**

### Details

In our 2020 audit, 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.

In our follow-up, we found that the Ministry is continuing to engage with other provincial ministries, such as the Ministry of Infrastructure, and the Government of Canada to bring broadband access to First Nation communities. In July 2021, the Province announced \$1.2 billion in 58 new projects through the Province's Improving Connectivity for Ontario (ICON) program and the federal Universal Broadband Fund (UBF). This includes a joint provincial and federal investment to bring high-speed Internet to 67 First Nation communities in Ontario. As part of the Spring 2021 Ontario budget, the Province announced an additional \$2.8 billion for high-speed Internet infrastructure to connect every region in Ontario, including underserved First Nation communities. The Province has committed to bringing high-speed Internet access to all communities by the end of 2025.

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

### 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;*
- *ensure ministries follow the requirements contained in the agreements.*

**Status: Will not be implemented. The Office of the Auditor General continues to believe this is a significant recommendation and continues to recommend that the Ministry support the effectiveness of programs and services for Indigenous Peoples by developing guidance to ensure that programs and services are operating as intended to meet the needs of Indigenous Peoples.**

### Details

We found in our 2020 audit that ministries did not have accountability measures in place to confirm program funding was being used as intended. Of the 18 Indigenous programs and services we sampled, only two were able to provide documents to prove that funds were being used as intended. This limited the ministries' ability to ensure their programs and services were operating as intended to meet the needs of Indigenous Peoples. For example, when reviewing expenses for a program we requested receipts and invoices to support the expenses, but the Ministry was only able to provide a handwritten note explaining what the expenses consisted of.

In our follow-up, the Ministry informed us that it will not develop any guidance for other ministries providing Indigenous programs and services. However, the Ministry told us that it provides advice and guidance on

agreements impacting Indigenous communities when requested.

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

### 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;*
- *use the information to adjust the programs as required.*

**Status:** Will not be implemented. The Office of the Auditor General continues to believe this is a significant recommendation and continues to recommend that the Ministry support the effectiveness of programs and services for Indigenous Peoples by developing guidance to ensure that programs and services are operating as intended to meet the needs of Indigenous Peoples.

### Details

We found in our 2020 audit that ministries did 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 such measures. Of the six that did have program measures, half were not able to measure the programs' effectiveness. This limited the ministries' ability to ensure programs and services are meeting the government's objectives and the needs of Indigenous communities.

In our follow-up, we found that the Treasury Board Secretariat is in the process of completing a Transfer Payment Performance Measurement Framework initiative. This initiative is intended to improve the alignment of performance measures with program

objectives to evaluate program effectiveness. The Ministry informed us that it participates in presentations related to this initiative and contributes to the discussion of effectiveness measures within the Indigenous context. The Ministry expects that the resulting revised approach will result in enhanced measures reflected in the development of transfer payment agreements with Indigenous partners. However, the Ministry has noted that it will not formally document best practices in programs and services for Indigenous Peoples to help guide other Ministries in ensuring they are operating as intended to achieve the desired outcomes.

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

### 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;*
- *approving and transferring funds under agreements prior to the beginning of the funding year.*

**Status:** Little or no progress.

### Details

We found in our 2020 audit that Indigenous communities and service providers were unable to perform long-term planning or effectively retain staff because many government programs and services did not guarantee funding for more than a year. The need to re-apply to these programs annually created additional demands on the community's resources, and delays in approvals limited the effectiveness of funding by requiring significant spending in a short period of time. In our sample of 14 transfer payment programs, two programs required recipients to re-apply annually, even though many recipients had continued to receive 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 12 consecutive years. However, they had to re-apply every year for these funds.

Our audit also found that ministries took more than three months into the term of a program's contract to transfer funding to recipients in three of the 14 transfer payment programs we sampled. This limited the effectiveness of the program. 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 by March 31, 2020.

In our follow-up, we found that the Ministry has not made efforts to have program funding agreements developed with a long-term view or that the approval and transfer of funds under agreements are performed prior to the funding year as identified in the funding agreements.

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

### 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;
- review consultations on a risk basis to ensure they are meeting the province's requirements.

**Status: Little or no progress.**

### Details

We found in our 2020 audit that the Ministry did not have sufficient information to fulfill its mandate to ensure that the Province was meeting its constitutional obligation to consult with Indigenous communities.

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 2006, the government developed a system to track the consultations being performed by various ministries. However, the use of this system was not mandatory and was not being accessed or updated by ministries, including consultations conducted by the Ministry of Indigenous Affairs.

In our follow-up, we found that in 2021 the Ministry began implementing the Ontario Portal for Indigenous Consultation (OPIC). OPIC includes a tool to allow ministries to track consultation activities in a centralized system. However, at the time of our follow-up report, we found that OPIC is in the very early stages of implementation. The Ministry also does not currently plan to update this tool to include past consultation records and is currently considering mandating the use of this system. The Ministry informed us that later phases of the implementation of this new tool will involve developing a risk-based approach to review consultations.

## No Centralized Resource for Assessment of Indigenous Rights Assertions

### 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;
- provide guidance to all ministries on the consultation based on the assessment of the assertions made.

**Status: Little or no progress.**

### Details

The obligation to consult Indigenous communities is based on established and asserted Indigenous and treaty rights. Allegations that consultations with Indigenous communities were not handled properly in the past have resulted in legal disputes and failure

to properly consult Indigenous communities has also resulted in delays to private sector development and the associated economic benefits. We found in our 2020 audit that ministries did not have consistent processes to assess the credibility and strength of assertions of Indigenous and treaty rights. 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 due to other government priorities.

In our follow-up, we found that the Ministry is developing a process and structure within the Ontario Portal for Indigenous Consultation (OPIC) to centralize the assessment of assertions. However, as noted earlier, OPIC is in the very early stages of implementation. The Ministry is also currently involved in an inter-ministry working group that is working on a pilot to test a coordinated approach to assessing information on Indigenous and treaty rights assertions.

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

### 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;
- monitor and report on the progress achieving set milestones.

**Status: Fully implemented.**

### Details

Land claims are assertions made by a First Nation or another Indigenous community that their Indigenous and/or treaty rights have been violated. 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 co-ordinates the implementation of the agreement. This may involve providing financial compensation and/or parcels of land. Lengthy land claims assessments, negotiations and implementations delay communities from being acknowledged and compensated for infringements of their Indigenous and treaty rights. The 19 land claims we reviewed in 2020 that the Province had concluded took, on average, 22 years to settle.

We found in our 2020 audit that the Ministry did not track or document the causes of delays in settling land claims to better understand the causes of delays. Further, the Ministry did not establish expected timelines, milestones, or cost estimates for the settlement of land claims once research and assessment are completed. It did not track and report its progress on land claims, including any barriers resulting in delays. Without this information, the Ministry was 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 process.

In our follow-up, we found that the Ministry has developed and approved time frames for assessing, negotiating and implementing land claims. For example, it plans to assess claims within three years of the Indigenous community's land claim submission. However, the implementation phase may vary depending on the agreement negotiated. For each individual land claim settlement, an implementation committee will develop an implementation plan which outlines the relevant milestones and timelines for implementation.

The Ministry has also developed a Claim Record to document events or circumstances that affected the anticipated progress of the assessment, negotiation and implementation of land claims and a guidance document advising staff on how to document these events or circumstances. Starting in May 2022, monthly reports were being provided internally on the land claims process to the Assistant Deputy Minister and Directors within the Ministry.

## Concerns in Land Claims Process

### 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.*

**Status: Will not be implemented. The Office of the Auditor General continues to believe this is a significant recommendation and continues to recommend that the Ministry make efforts to assess the feasibility of establishing an independent body to address concerns about the land claims settlement process.**

### Details

We found in our 2020 audit that the Ministry 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. 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. It 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."

In our 2020 audit, the Ministry informed us that it would monitor the efforts of the federal government in the establishment of a National Treaty Commission. In our follow-up, however, the Ministry informed us that it has little to no additional information on the establishment of a National Treaty Commission since the time of our audit and that it would discontinue these monitoring efforts and considerations of establishing an independent body to assess future land claims. Additionally, the Ministry noted that the Assembly of First Nations, a national advocacy organization representing First Nations in Canada, will not be advocating for a National Treaty Commission. The Ministry further noted that First Nations that have concerns about the independence of the land claims process can choose to file a claim through the courts.

## Province Lacks Transparency in Reporting on Land Claims

### 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;
- publicly report the costs by individual claim, as well as the progress made in negotiations.

**Status: Fully implemented.**

### Details

We found in our 2020 audit that minimal information was publicly available on the number of land claims, the nature of these claims or their progress in negotiations. In contrast, the British Columbia Treaty Commission published annual reports that outlined the number of land claims and their progression through the negotiation process, including timelines and the settlement amounts paid.

In our follow-up, we found that the Ministry updated information on current land claims under negotiation on March 29, 2022 and plans to continue

updating semi-annually or as required. On March 29, 2022, the Ministry also developed a new section on the land claims web page that includes settlement or land and/or financial compensation. This information will also be updated semi-annually or as required.

## No Reporting on Status of Ipperwash Recommendations

### 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;*
- *regularly monitor and publicly report on progress on actions taken toward implementing the recommendations.*

**Status: Little or no progress.**

### Details

We found in our 2020 audit that in May 2008, the then Minister of Aboriginal Affairs committed to implementing all recommendations of the Ipperwash Inquiry's report. The Province last reported on the status of the Ipperwash recommendations in February 2014 when the Ipperwash Priority Actions Committee was disbanded. At that time, there were a number of key recommendations that had not been implemented; this included establishing a Treaty Commission of Ontario. There has been no reporting on progress in implementing the Ipperwash recommendations by the government since 2014.

In our follow-up, we found that the Ministry requested all ministries provide it with updates on the actions taken in response to the Ipperwash Inquiry recommendations. Once this information is received, the Ministry will perform an assessment on the status of provincial actions taken to respond to the recommendations. It will then work with Indigenous partners to develop indicators/outcomes to publicly report on Ontario's progress in addressing the recommendations.