

PROTECTING LANDS AND WATERS

ADVANCING INDIGENOUS RIGHTS THROUGH INDIGENOUS PROTECTED AND CONSERVED AREAS

A Comprehensive Guide for Indigenous
Nations, Communities and Non-
Governmental Organizations in Ontario



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EXECUTIVE SUMMARY



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By recognizing the long-standing relationships of care and responsibility between Indigenous peoples and their territories, Indigenous Protected and Conserved Areas (IPCAs) are redefining how we envision and create protected areas.

As the Indigenous Circle of Experts defined in their seminal report reflecting on conservation in the spirit and practice of reconciliation, IPCAs are “lands and waters where Indigenous governments have the primary role in protecting and conserving ecosystems through Indigenous laws, governance and knowledge systems.”

Protected areas, however, have served to foster disconnect between Indigenous peoples and their lands. Indigenous peoples across Canada were forcefully removed from their lands, which settlers used and designated in myriad ways including designating lands as national, provincial and territory parks and protected areas. As the case studies in this toolkit illustrate, after decades of struggle and years of grassroots and often legal action, IPCAs are providing an opportunity for Indigenous communities to reclaim stewardship of their territories, while transforming conservation practices in Canada.

IPCAs have also become a centerpiece of global efforts to safeguard biodiversity and respond to climate change. Following the United Nations Convention on Biological Diversity, Canada adopted the 2020 Biodiversity Goals and Targets for Canada. Target 1 aimed to protect at least 17% of terrestrial areas and inland water, along with 10% of marine and coastal areas. More recently, Canada has increased this target to 25% protection by 2025. To reach this target, Canada has committed to supporting Indigenous engagement in conservation.

With thanks to the funding provided by the Law Foundation of Ontario, the Canadian Environmental Law Association with contributions by the Asubpeeschoseewagong Anishinabek (ANA) Land Protection Team, has created this toolkit which aims to shed light on IPCAs as an emerging legal mechanism for protecting lands and water.

As this toolkit explores, the legislative means for establishing protected areas assumes traditional models of conservation, which are Crown-led and Crown-governed. This is exemplified in the 55 different pieces of legislation across Canada that provide for the establishment of protected areas, but none which formally recognize nor set out the legal mechanism to establish an IPCA. This legislative lacuna has served as a bar to establishing IPCAs, as evident in Ontario, where none of the 520 provincial parks and conservation reserves are recognized as IPCAs.

The failure to recognize Indigenous laws and their legitimacy means IPCAs established by Indigenous communities pursuant to their Indigenous laws are often not recognized by the more dominant, Crown-legal structure. It also means that for lands where Indigenous communities have declared moratoriums on logging, mineral exploration or development, these protection measures may not be respected by virtue of not being established within the more dominant legal system.

As Indigenous-led conservation and IPCAs gain traction, both in Canada and around the world, this first of its kind toolkit strives to support the recognition of Indigenous-led conservation efforts; respond to barriers in establishing IPCAs; and model the legal and policy basis needed to advance Indigenous-led governance in the establishment and management of protected areas.

In the chapters that follow, we set out a series of immediate actions Indigenous nations can undertake to start discussions about lands protection and governance; interim measures which may help delay adverse impacts or risks, while developing an IPCA; and lasting solutions aimed at achieving long term protection of Indigenous lands and water.

We invite you to read, share and explore this toolkit and its many resources.

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The **Canadian Environmental Law Association**. CELA is a non-profit public interest organization, established in 1970. As a legal aid clinic, CELA is funded by Legal Aid Ontario and are part of a larger system of community legal clinics in Ontario. CELA has an office in Toronto with CELA staff located across the province to deliver regionally focused services. At CELA, we use existing laws to protect the environment and advocate for environmental law reform. CELA's legal services include providing brief legal summary advice, public legal education and representing low-income individuals, citizen groups, and not-for-profit organizations in litigation matters.

Project lead and settler lawyer **Kerrie Blaise** brings her experience representing Indigenous community members and leadership in a range of urgent governance and environmental law matters to this project. Kerrie is also a member of the Conservation through Reconciliation Partnership - a seven-year initiative that aims to critically investigate the state of conservation practice in Canada and support efforts to advance Indigenous-led conservation in the spirit of reconciliation and decolonization.

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The **Asubpeeschoseewagong Anishinabek (“ANA” or “Grassy Narrows”) Land Protection Team**. The ANA Land Protection Team works towards the implementation of the Asubpeeschoseewagong Anishinabek Aaki Declaration (ANA Land Declaration), which seeks to protect ANA territory from extractive industry, and Crown recognition of the ANA Indigenous Sovereignty and Protected Area (also referred to as the ANA Indigenous Protected Conserved Area or “IPCA”). The ANA Land Protection team works under the leadership and direction of ANA Chief and Council and is composed of ANA community members, policy and legal advisors.

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TABLE OF CONTENTS

INTRODUCTION	3
1. Indigenous Protected and Conserved Areas (IPCAs)	5
2. Guiding Principles and Ethical Space	8
3. Legal Authorities for IPCAs.....	12
4. IPCAs, Treaties and Conservation	14
5. Indigenous-led Conservation and Biodiversity Protection	15
6. The Connection of IPCAs to ‘Land Back’	16
7. Legislative Framework for Protected Areas and Crown Lands in Ontario	17
(a) Provincial Parks and Conservation Reserves Act.....	18
(b) Public Lands Act.....	19
8. Protected Areas and IPCAs in Ontario.....	25
IPCAs IN ONTARIO	26
Asubpeeschoseewagnot Anishinabek’s ISPA.....	26
Shawanaga Island IPCA.....	28
Mushkegowuk Marine Protected Area	29
North French River Watershed.....	30
Kitchenuhmaykoosib Inninuwug First Nation (KI) IPCA	31
Aki Sibi IPCA.....	32
PART 1 - TOWARDS PROTECTION: IMMEDIATE ACTIONS	36
1. Developing the Vision	36
2. Defining the Spatial Region.....	37
3. Identifying Threats	39
PART 2 - MITIGATING THREATS: INTERIM PROTECTION MEASURES	40
1. Restricting Lands from Mineral Exploration and Development under the <i>Mining Act</i>	40
(a) Withdrawal Orders – Generally.....	42
(b) Withdrawal Orders for ‘Sites of Aboriginal Cultural Significance’	44
(c) Surface Rights Restrictions	44

(d) Land Notices - Notice of Cautions	47
Case Study: Kitchenuhmaykoosib Inninuwug (KI) Land Withdrawal	48
2. Disposition of Lands under the Public Lands Act.....	51
3. Forest Management Planning.....	51
4. Amendments to Crown Land Use Designations	55
5. Land Cautions.....	59
Case Study – Temagami First Nation Land Caution.....	61
6. Certificate of Pending Litigation	62
7. Interim Measures based on Indigenous Right to Self-Determination.....	63
PART 3 - LASTING SOLUTIONS: ACHIEVING LONG TERM PROTECTION AND CROWN LEGAL RECOGNITION	66
1. Current Legal Context for Protected Areas	66
2. Governance Frameworks for Establishing IPCAs.....	68
(a) Indigenous Authorities	68
(b) Shared Indigenous-Crown Governance	72
(c) Crown Authority	79
3. IPCA Establishment Agreements within a Shared Indigenous-Crown Model	85
4. Pathways to Achieving an IPCA in Ontario.....	94
5. Law Reform & IPCA Legislation	95
RESOURCES	98
#1. Sample Briefing Note: Seeking Provincial Support for IPCAs	98
#2. Provincial Statements Regarding IPCAs	102
#3. Federal Statements Regarding IPCAs.....	115
#4. Online Resources and Annotated Bibliography.....	122

INTRODUCTION

In this Introductory chapter, readers will find resources to learn more about the fundamentals of Indigenous Protected and Conserved Areas (IPCAs) including their legal authority; the connections they share with other contemporary discussions about Land Back and biodiversity protection; and the current state of protected lands in Ontario.

This toolkit is a public legal resource, specific to establishing Indigenous-led and governed protected areas, known as Indigenous Protected and Conserved Areas (IPCAs), in Ontario. This toolkit aims to highlight the legal tools and strategies for overcoming barriers to land protection, and contribute to advancing Indigenous justice, which is fundamentally connected to the health of land and water.

In this toolkit, we endeavour to facilitate a broader understanding of how IPCAs can be created and recognized at the provincial level in Ontario. We also provide guidance on both interim and long-term protection measures which can be pursued in response to urgent threats to lands and waters.

The ideas, tools and templates provided in this toolkit are not exhaustive, and nor do they capture all of the advocacy and grassroots efforts, which work together in a coordinated way and build over years, enabling IPCA recognition.

This toolkit is divided into the following three parts:

- **Part 1** illustrates the immediate actions Indigenous nations can undertake to start discussions about lands protection and governance. This includes engagement within a community about its vision in developing an IPCA and better understanding the threats to their territory that an IPCA could potentially safeguard against
- **Part 2** is aimed at mitigating immediate threats, and presents a number of legal mechanisms, available in Canadian law, which can be used as interim protection measures
- **Part 3** aims to propose lasting solutions to achieve the long term protection of Indigenous lands and water, including the governance frameworks and pathways to support an IPCA in Ontario



A number of additional Resources are also appended to this toolkit in **Part 4**, including an annotated bibliography summarizing the many online resources available about IPCAs.

Readers are encouraged to adapt and customize this toolkit for their community-specific needs and reach out to seek independent legal advice, if some of the ideas within this toolkit are of interest or of relevance to efforts to protect a nation's lands and waters.

THE GOALS OF THIS TOOLKIT

- Support the recognition of Indigenous-led conservation efforts
- Respond to barriers in establishing IPCAs, as protected areas and parks have traditionally assumed Crown-based authority
- Model the legal and policy basis needed to advance Indigenous-led governance in the establishment and management of protected areas

1. Indigenous Protected and Conserved Areas (IPCAs)

IPCAs have become a centerpiece of global efforts to safeguard biodiversity. A growing body of research demonstrates that Indigenous leadership and governance is a key element of addressing both climate change and biodiversity loss. There is also growing recognition that Indigenous Natural Laws, that teach respect and responsibility to lands, have been more effective at protecting the health of ecosystems and species, than the traditional conservation practices established by the governments in Canada.¹

IPCAs provide an opportunity for Indigenous communities to reclaim stewardship of their territories and transform conservation practices in Canada. By recognizing the long-standing relationships of care and responsibility between Indigenous peoples and their territories, IPCAs are redefining how we envision and create protected areas.

IPCAs seek to improve the protection and conservation of lands and waters for future generations. They have been defined as “lands and waters where Indigenous governments have the primary role in protecting and conserving ecosystems through Indigenous laws, governance and knowledge systems.”² This definition was chosen by the Indigenous Circle of Experts (ICE) in their seminal 2018 report, *We Rise Together*.³

In using the label “IPCA,” we must recognize that IPCAs are diverse but also distinct from other forms of protected and conserved areas. While this term is used throughout this report, it does not preclude self-determined names that may be given by community to describe their local or grassroots protection efforts.⁴ **Figure 1** below shows the diversity of cultures and languages that influence the naming of IPCAs.

IPCAs will equally vary in their governance and management objectives, however, they generally include the following three core principles:

- they are Indigenous-led;
- they represent a long-term commitment to conservation; and
- they elevate Indigenous rights and responsibilities⁵

Principle 1 - Indigenous-led and governed

Indigenous-led means Indigenous governments have the principal role in determining the nature and management of the protected area. This means the Indigenous nation is the primary decision-maker, tasked with implementing and managing the area; while other

stakeholders (ie. government) may collaborate or be partners.⁶ This holds true even if the IPCA is based on Crown jurisdiction or jointly-authorized among governments.⁷ Although protecting biodiversity is a key attribute of IPCAs, these protected areas are unique from conventional lands conservation because they are also aimed at revitalizing Indigenous languages, cultures and protocols, while supporting sustainable and conservation-based economies.⁸

Principle 2 - Commitment to Conservation for Many Generations

A long-term commitment to conservation for many generations means IPCAs present opportunities for land redistribution, where Indigenous peoples regain title and access to their lands and work to protect and conserve them for generations to come.

This second core principle of IPCAs means that decisions made about an IPCA, its purpose and management, ought to be oriented towards a positive contribution to conservation of nature (ie. its preservation, sustainable use, and restoration). It also requires consideration of livelihoods and community wellbeing which, are in many instances, connected to the health of those lands and waters.

Principle 3 - Elevate Indigenous rights and responsibilities

Elevating Indigenous rights and responsibilities means providing authority to Indigenous governments to manage their lands and waters, including cultural or sacred sites. Put simply, a potential protected area cannot be an IPCA if the Indigenous community whose land the area falls within is not directly involved in its implementation, governance, and decisions about its long-term outcomes.

Figure 1. Diversity of Names⁹

Country	Local Name	National Description	Global Name
Australia	Brewarrina Ngemba Billabong	Indigenous Protected Area	ICCA
Belize	Bermudian Landing Community Baboon Sanctuary	Private Reserve	ICCA
Brazil	Rio Branquinho	Indigenous Area	ICCA
Cook Islands	Pouara	Ra'ui	LMMA/ICCA

Democratic Republic of Congo	Forêt Kabamba Iwama – Province de Maniema	Aboriginal Area and Territory and Community Heritage	ICCA
Guyana	Konashen	Community Owned Conservation Area	ICCA
India	Gursikaran forest	Community Forest	ICCA
Indonesia	Wilayah Adat	Traditionally managed land	ICCA
Fiji	Oi Mada Wara	Wildlife Management Area	ICCA
Kenya	Kaya Kinondo	Kaya	SNS/ICCA
Mexico	Area de Conservacion y Proteccion San Jacobo	Voluntary Conserved Area	ICCA
Philippines	Bilang-bilangan	Marine Sanctuary	ICCA
Tanzania	Mzungui Village	Village Forest Reserve	ICCA
The Gambia	Bolongfenyo Nature Reserve	National Protected Area	ICCA
USA	Monument Valley Navajo	Tribal Park	ICCA
Vietnam	Thanh Phu	Nature Reserve	ICCA

2. Guiding Principles and Ethical Space

“With opportunity comes risk,” remarked the Indigenous Circle of Experts (ICE) in their report, *We Rise Together*. In response to the newly evolving lands protection and conservation framework encompassed by IPCAs, the ICE proposed there be “ethical space” that respects the integrity of all knowledge systems.¹⁰ They identified that, due to a history of violence as between the Canadian government and Indigenous communities, a particular model of trust-building is required to heal wounds and move forward in peace and cooperation.¹¹

In addition to Indigenous communities, IPCAs create an opportunity for the Crown and allied organizations seeking to advance land protection to come together in ethical space. The ICE also set out a number of helpful principles to inform this dialogue - which this toolkit aims to uphold:

- (1) ethical space is a space where all knowledge systems interact with mutual respect, and kindness – no single system has more weight or legitimacy than another;
- (2) one system does not need the other to “corroborate” it to achieve internal validity;
- (3) ethical space requires flexibility and patience, as unforeseen factors may (and likely will) arise; and
- (4) ethical space is not a tool for satisfying mandated consultation or accommodation steps in existing federal or provincial legislation or policies. In sum, ethical space is a relationship of peace and openness.

Throughout discussions of land reclamation and conservation, it is also necessary to recognize the effects of land dispossession through a gendered lens. As a result of colonial and patriarchal statutory schemes such as the *Indian Act*, Indigenous women have often been dispossessed of their roles as matriarchal leaders.¹² IPCAs can create the space for Indigenous women, queer, transgender, gender diverse, and Two-Spirit peoples, who have been historically targeted and disempowered, to have their voice heard and ideas implemented in land protection and conservation.¹³ This is especially important in the context of water conservation where Indigenous women in many communities are water protectors.

Figure 2, below, provides discussion of key terms, like “jurisdiction” and the “Crown,” as relied upon in this toolkit. To get to know other terms which are used in conservation about IPCA, *Key Terms for Indigenous Protected and Conserved Areas* by the IISAAK OLAM

Foundation is particularly useful as well (see this toolkit’s [Annotated Bibliography](#) for details).

Figure 2. Key Terms

Common law	<p>A body of law based on judicial precedent and custom.¹⁴ It operates through <i>stare decisis</i>, which is a principle that applies previous materially similar cases to facts at hand, and through the hierarchy of courts, in which higher courts bind lower courts, in order to avoid arbitrary decision-making.¹⁵</p> <p>The rules of common law are deemed to exist even before a legislature or a court acknowledges them and are based on what is called “the logic of the law”.¹⁶ The common law creates “incremental development on a case-by-case basis”.¹⁷</p>
Crown Land	<p>A concept derived from the British common-law that established that only the Crown could properly “own” land.¹⁸ In Canada, the Crown presumes to hold underlying title to all lands, with Indigenous title being a “burden” on Crown title. This is the general framework in which treaties, Indigenous title claims, and rights claims have been interpreted within</p> <p>by the courts and governments.¹⁹</p>
Decolonize	<p>Decolonization, broadly speaking, endeavors to “reverse and remedy” colonialism.²⁰ Colonialism, and more specifically settler colonialism, is the process by which one society (settlers) seeks to move permanently onto the lands of another society (Indigenous Peoples).²¹ In doing so, settlers “carry their sovereignty with them,” and attempt to re-establish their political orders throughout the new lands.²²</p> <p>Re-establishing settler sovereignties and political orders is premised on the ‘cultural logic of elimination’ that removes Indigenous peoples from the land through means of massacre, forced removal and/or assimilation.²³ Settler-colonialism has both physical and psychological elements. Furthermore, settler colonialism must be understood as ongoing, in that colonialism is a system, not simply an event²⁴</p>

Jurisdiction

The ability to make decisions or assert authority over a particular territory, such as the traditional territory of a Nation, or over particular people, or a combination of both.²⁵ Jurisdiction can be a shared responsibility, however, in such an instance there must be ways to determine which government prevails if there is a conflict.²⁶ Jurisdiction can be inherent or it can be delegated to a government from another body or piece of legislation.

Within the common-law, the jurisdiction of Parliament and the provincial legislatures is enumerated within the *Constitution Act, 1867*, with section 91 and 92 listing federal and provincial heads of power, respectively. Similarly, municipal governments usually exercise jurisdiction that has been delegated from provincial legislation, and the territorial governments in the Yukon, Northwest Territories, and Nunavut acquire their jurisdiction from Parliament.²⁷ The powers in sections 91 and 92 are not necessarily mutually exclusive. Chief Justice Dickson has stated that "[t]he history of Canadian constitutional law has been to allow for a fair amount of interplay and indeed overlap between federal and provincial powers."²⁸

Along with the division of powers between the federal and provincial governments, there is the un-surrendered sovereignty of Indigenous peoples.²⁹ Canada has also recognized the inherent right of self-government is an existing Aboriginal right protected under section 35 of the *Constitution Act, 1982*, and it may find expression in treaties and in the context of the Crown's relationship with First Nations.³⁰

The Crown

A representation of the Head of State; the Crown's power to govern is exercised by Canada's government branches and represented by the Governor General and Lieutenant Governors,³¹ and the authority of the Crown's right to govern is detailed in the *Constitution Act*. Its sovereignty is said to be derived through the Doctrine of Discovery, which alleges that Indigenous peoples cannot claim ownership of the land, and through the doctrine of *Terra Nullius*, which deemed the land to be uninhabited, even though Indigenous peoples having lived on the land for thousands of years. While the Supreme Court of Canada in *Tsilhqot'in* that 'terra

nullius never applied in Canada.” However, as Indigenous legal scholars have remarked, “Canadian law has *terra nullius* written all over it.”³²

These doctrines also figure in the Calls to Action of the Truth and Reconciliation Committee who set out at Call to Action 47 that ‘federal, provincial, territorial, and municipal governments repudiate concepts used to justify European sovereignty over Indigenous peoples and lands, such as the Doctrine of Discovery and *terra nullius*, and to reform those laws, government policies, and litigation strategies that continue to rely on such concepts.’³³

Due to the Crown’s unique responsibilities and relationship with Indigenous peoples, there is a need to act in accordance with the “honour of the Crown”. This gives rise to an obligation to treat Indigenous peoples in a fair way and protect them from exploitation.³⁴ This principle dates back to the *Royal Proclamation of 1763*, and derives “from the Crown’s assertion of sovereignty in the face of prior Aboriginal occupation”.³⁵

Two-eyed seeing

A concept described by Mi’kmaq Elder Albert Marshall as “learning to see from one eye with the strengths of Indigenous knowledges and ways of knowing, and from the other eye with the strengths of western knowledges and ways of knowing – and learning to use both of these eyes together for the benefit of all”.³⁶

It is a method used to create a safe space and common ground, as well as improve decision-making processes, ensuring that no one knowledge system is privileged above the other.³⁷ It is considered a gift to be able to see the interconnectedness and co-existence between various perspectives.³⁸ There is an advantage to being able to look for different and better ways of doing things, and “fine tuning your mind into different places at once”. There are some concerns that Indigenous knowledge may be misused or tokenized when cast alongside Western knowledge, which may be portrayed as more relevant and rational.³⁹

3. Legal Authorities for IPCAs


Canada is among the countries with diverse legal traditions, which include Indigenous, civil and the common laws. This legal plurality, wherein multiple, distinct legal traditions operate at once,⁴⁰ frames this toolkit and its accompanying resources.

Despite Indigenous legal traditions making up some of the earliest practices of law in North America,⁴¹ the dominance of Western legal theory has narrowed the range of legal frameworks for protected areas. The failure to recognize Indigenous laws and their legitimacy⁴² means Indigenous communities who have established IPCAs pursuant to their Indigenous laws are often not recognized by the more dominant, Crown-legal structure. It also means that for lands where Indigenous communities have declared moratoriums on logging, mineral exploration or development, these protection measures may not be respected by virtue of not being established within the more dominant legal system.

In response to this challenge, this toolkit explores the range of legal options which can be used to establish an IPCA, falling along a “jurisdictional spectrum.”⁴³ As set out in **Table 1** below, this spectrum includes Crown-based authority on one end and Indigenous jurisdiction on the other (each of these authorities and what it means for IPCA establishment are reviewed in more detail in [Part 3 - Governance Frameworks for Establishing IPCAs](#)).

The idea of a jurisdictional spectrum flows from the ICE’s report which recommended that first, governments should recognize Indigenous legal orders and governance authorities. Second, IPCAs should be created as a distinct category of protected area. Third, governments should enable “mechanisms for a spectrum of IPCA governance models, including Indigenous governance and co governance models and agreements that allow for joint final decision-making powers between Crown ministers and Indigenous governments.”⁴⁴

Table 1. IPCA Jurisdiction Spectrum

	Indigenous Authority	Joint Designation	Crown Authority
	(HIGH) Extent of Indigenous Control in Decision-making (LOW) 		
Governance Framework	<ul style="list-style-type: none"> Based on inherent jurisdiction and laws, including right to self-government 	<ul style="list-style-type: none"> Indigenous-Non Governmental Organization (<i>*this designation is not canvassed in this report, but exist between an Indigenous government and land trust or conservation organization</i>) Indigenous-Crown Indigenous advisory boards Delegated authority 	<ul style="list-style-type: none"> Partnership Co-management Co-operative management board Indigenous advisory boards Delegated authority
Examples of Pros/Cons	<ul style="list-style-type: none"> May not be recognized by Crown government; does not mean it may not be recognized as such by conservation community⁴⁵ Respects and revives Indigenous legal systems Crown and Indigenous laws are harmonized 	<ul style="list-style-type: none"> May include agreements under existing federal, provincial or territorial laws IPCA recognized by both Crown and Indigenous legal authorities Crown and Indigenous jurisdictions can operate concurrently 	<ul style="list-style-type: none"> Debate as to whether these types of parks would qualify as IPCAs because of need to be Indigenous-led Often Indigenous governments role is purely advisory; Crown retains final decision-making authority

different to the colonial understanding of ownership, treaty interpretation is still in dispute today.⁵² In many cases, the historical record shows that the cede and surrender clauses, and often the “taking up” clause, were never translated into the Indigenous language, explained, nor agreed to at the time of treaty making. In spite of this, these clauses remain the legal basis on which the Crown claims unilateral authority to authorize industrial extraction on Indigenous territories in Ontario.

Some scholarship has noted that treaties might create a lack of willingness within government to change authority, in other words in regions with historic treaties, there may be limited federal and provincial incentive to enter into truly collaborative models. However, there are also examples of judicial notice of the importance of conservation within treaty rights.⁵³ Specifically, the importance of environmental protection, so that treaty rights are not infringed.⁵⁴ There is also growing recognition that the imperative of reconciliation requires a rebalancing of the Treaty relationship so that Indigenous priorities are better respected.

5. Indigenous-led Conservation and Biodiversity Protection

A growing body of research demonstrates that Indigenous leadership and governance is a key element of addressing both climate change and biodiversity loss. IPCAs have also been recognized as being the preferred solution for Canada to accomplish ‘Target 1’ of its biodiversity goals which aims to conserve 25 percent of Canada’s lands and 25 percent of its coastal and marine areas by 2025.⁵⁵

Canada’s Target 1 is based on Aichi Target 11 under the *United Nations Convention on Biological Diversity* (UN CBD) Strategic Plan for Biodiversity 2011-2020. Canada’s biodiversity goals and targets are in response to the UN CBD, a multilateral legally binding treaty that requires signatories to develop national strategies for the conservation and sustainable use of biological diversity.⁵⁶ Canada signed and ratified the CBD at the ‘Earth Summit’ in Rio de Janeiro in 1992 and in 2015, the federal, provincial, and territorial ministers adopted the 2020 Biodiversity Goals and Targets for Canada.

The UN's science advisory panel for biodiversity, the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES) found in a recent report at least a quarter of global lands are traditionally owned, managed or occupied by Indigenous groups. It also recognized that nature overseen by Indigenous peoples and local communities was declining at a less rapid rate, but the Indigenous communities were also more at risk as the deteriorating of nature underpinned local livelihoods. As the report found:

The areas of the world projected to experience significant negative effects from global changes in climate, biodiversity, ecosystem functions and nature's contributions to people are also areas in which large concentrations of Indigenous Peoples and many of the world's poorest communities reside.⁵⁷

The 15th meeting of the Conference of Parties (COP15), which commenced in 2021 and will continue later in 2022, reviews the achievement of the 2011-2020 CBD Strategic Plan for Biodiversity and aims to adopt a post-2020 global biodiversity framework, focusing on setting 2030 Action Targets, including the 30-by-30 target.⁵⁸ The Post-2020 Global Biodiversity framework provides a strategic vision and a global roadmap for the conservation, protection, restoration and sustainable management of biodiversity and ecosystems for the next decade.

During Part 1 of COP15, over 100 nations signed the Kunming Declaration on biodiversity, with the theme of the declaration being "Ecological Civilization: Building a Shared Future for All Life on Earth". The Kunming Declaration was a pledge from all signatories to make the protection of habitats an integral part of their respective government's policies. Commitment 5 of the Kunming Declaration recognizes the rights of Indigenous peoples and local communities to have full and effective participation in the context of area-based conservation.

The upcoming Part 2 COP15 presents an opportunity to discuss and advocate for key priorities around Indigenous-led conservation efforts. This includes recognizing and respecting the rights of Indigenous peoples and local communities, including Indigenous peoples' rights to provide or withhold free, prior, and informed consent; and recognizing the contribution of Indigenous Peoples in the conservation of lands, waters, and territories through their self-determined governance systems, including respect for their rights to their territories, lands, waters, and resources.

6. The Connection of IPCAs to 'Land Back'

"Land Back" as a term, is a fairly new concept that began as a meme and hashtag in 2018, however, as a movement, it has "existed for generations with a long legacy of organizing and sacrifice to get Indigenous Lands back into Indigenous hands".⁵⁹ The *Land Back Organization* describes Land Back as a political framework that allows for relationships across the many organizing movements to work towards true collective liberation.⁶⁰ Land Back also provides opportunities for reconciliation between Crown and Indigenous governments and peoples, while working towards the joint goals of conservation and land protection.

While Land Back can mean the literal restoration of land ownership back to Indigenous communities, it also has various more symbolic meanings. According to the *David Suzuki Foundation* and in the words of Isaac Murdoch, “Land Back is people returning back and finding their place in those systems of life”.⁶¹ Land Back can also be a form of cultural resurgence, particularly about “restoring the cultural importance of non-colonial gender identities and responsibilities and shedding the colonial grasp that suffocates us all (though some more than others)”.⁶² In addition to cultural resurgence, the movement is also about language back, ceremony back, and water back.⁶³

Youth are central to Land Back – in part due to its social media presence – and the movement has gained significant momentum among younger Indigenous peoples. One example is the *4Rs Youth Movement* which is a youth-driven initiative that was launched to create spaces to raise awareness and change the relationship between Indigenous and non-Indigenous young people.⁶⁴ 4Rs coordinator Ronald Gamblin describes Land Back as the stewardship and protection of mother earth when grandmothers and knowledge keepers say it, comprehensive land claims and self-governing agreements when Indigenous political leaders say it, and generally, fighting to reconnect with their land in meaningful ways as sovereign Indigenous Nations.⁶⁵

IPCA and Land Back share similar goals. One such goal is prioritizing Indigenous communities to lead conservation measures to protect and conserve their lands and waters. Not only does allowing Indigenous communities to lead conservation support Canada’s Target 1 biodiversity goals through the creation and implementation of IPCAs, it simultaneously supports the goals of Land Back by creating the space for Indigenous peoples to rebuild and strengthen their jurisdiction and connections with the earth and its elements, thereby strengthening their connections as a community.⁶⁶

7. Legislative Framework for Protected Areas and Crown Lands in Ontario

To understand the legislative lacunae providing for the establishment of IPCAs in Ontario, it is necessary to first review the existing protected areas and parks legislation. Neither the *Provincial Parks and Conservation Reserves Act* (“Parks Act”) nor the *Public Lands Act*, reviewed below, recognize Indigenous legal orders and governance authorities nor set out IPCAs as a distinct category of protected area, as recommended by the ICE.

(a) *Provincial Parks and Conservation Reserves Act*

Ontario's main protected areas law is the *Provincial Parks and Conservation Reserves Act* (*Parks Act*). Under the responsibility of the Ministry of Environment, Conservation and Parks (MECP), the Act sets out the legislative framework for the establishment and oversight of two forms of protected areas: provincial parks and conservation reserves.⁶⁷ Areas that are designated as provincial parks or conservation reserves are listed in regulations under the *Parks Act*. O Reg 316/07 lists [provincial parks](#) in Ontario and O Reg 315/07 lists [conservation reserves](#).

The Act further delineates provincial parks into the following classes, each with differing levels of ecological protection and permitted uses for recreation, science or educational purposes (ordered from most to least stringent ecological protection measures):

- Wilderness Class Parks
- Nature Reserve Class Parks
- Cultural Heritage Class Parks
- Natural Environment Class Parks
- Waterway Class Parks
- Recreational Class Parks

The Act also sets out the following objectives for areas designated as provincial parks and conservation reserves:

1. To permanently protecting ecosystems representative of Ontario's natural regions and biodiversity, to ensure their ecological integrity;
2. To provide opportunities for ecologically sustainable recreational and associated economic activities;
3. To facilitate scientific research in order to study ecological change; and
4. For provincial parks, to provide opportunities for residents of Ontario and visitors to increase their knowledge and appreciation of Ontario's natural and cultural heritage.⁶⁸

While some of the Act's objectives are also shared with IPCAs (ie. a commitment to [long-term conservation](#)), the lack of Indigenous governance and goal of elevating Indigenous rights and responsibilities (the remaining core principles of an IPCAs), differentiates Ontario's Parks Act from the goals and principles embedded within IPCAs.

The Act permits the Minister of Environment, Conservation and Parks to establish new parks and conservation reserves, prescribe park boundaries as well as increase or decrease the size of existing protected areas.⁶⁹ The acquisition of land for new purposes, including for protected areas, is enabled by the *Ministry of Infrastructure Act, 2011*.⁷⁰ The Act's land acquisition process, however, does not contemplate a role for Indigenous led or government-to-government decision-making, in keeping with the core principles of an IPCA.

The Minister is also able to use their regulation making power under the Act to classify a new provincial park,⁷¹ prescribe the park's management, activities in respect of the park⁷² and governance.⁷³ Similarly, the Act also permits the Minister to enter into a range of commercial and non-commercial agreements, issue leases and permits so long as the use, licence or occupation is "consistent with the Act and its regulations." **In theory, the Minister could set out a management and governance scheme which empowers Indigenous rights and responsibilities. To date, however, there has been no public indication that government intends to use the *Parks Act* to recognize IPCAs.**

(b) *Public Lands Act*

The *Public Lands Act* gives the Minister of Natural Resources and Forestry (MNRF) authority over the management of public, or Crown, lands. However, the *Public Lands Act* lacks provisions which set out its purpose or legislative objectives. Therefore, without specific terms which define its regulatory aims or set out what objectives inform the Minister's decision-making authority, there is no requirement that the approval of land use plans or designations within planning areas be subject to review by First Nation councils, for instance.⁷⁴ While the Ministry has developed the *Guide for Crown Land Use Planning* to guide land management decisions on Crown lands - which identify environmental protection as an objective and acknowledge Aboriginal and treaty rights - these policies are not legally binding.

Further, while the *Public Lands Act* states that the Minister has "charge of management, sale and disposition of the public lands and forests" and may "enter into agreements with any person" the Act is silent on the factors or considerations which may inform these decisions and agreements.⁷⁵

It is helpful to note, as will be discussed in greater detail in [Part 2](#) - Amendments to Crown Land Use Designations, that the *Guide for Crown Land Use Planning* sets out six primary Crown land use designations. **Table 2**, below, reviews each of these six

designations and summarizes the activities which are permitted. For areas designated as “Recommended” Provincial Park or “Recommended” Conservation Reserve, they are considered through the *Public Lands Act* for the purposes of land use planning and subsequently regulated under the *Parks Act*.

Table 2. Crown land use designations and permitted land uses⁷⁶

Land Use Designation	Description	Factors for Designation	Permitted Uses and Activities
Recommended Provincial Park	<p>Assigned one of the six provincial park classes upon designation:</p> <ul style="list-style-type: none"> • wilderness • nature reserve • cultural heritage • natural environment • waterway • recreational <p>Once designated as a Recommended Provincial Park, an area can be regulated as a provincial park under the <i>Parks Act</i></p>	<ul style="list-style-type: none"> • a very high level of protection of natural heritage values is desired • a substantial degree of permanency is desired • a considerable range of activities can be considered, depending on the classification. Some classifications (e.g. recreation) permit a broad range of activities while other classifications (e.g. nature reserve and wilderness) have a narrower range of permitted activities 	<p>Generally, there is:</p> <ul style="list-style-type: none"> ✗ No commercial forest harvesting ✗ No generation of electricity ✗ No prospecting, registration of mining claims, or mineral development ✗ No extracting aggregate, topsoil or peat ✗ No other industrial uses ✗ No new land dispositions, including sales, leases, licenses of occupation, and land use permits ✓ Existing aggregate pits

			<p>may continue to operate</p> <ul style="list-style-type: none"> ✓ Existing power generation facilities may continue ✓ First Nation hunting and trapping, and associated activities such as cabin building⁷⁷
Recommended Conservation Reserve	Once designated as a Recommended Conservation Reserve the area can be regulated as a Conservation Reserve under the <i>Parks Act</i>	<ul style="list-style-type: none"> • a high priority is placed on retaining compatible recreation or non-industrial resource use activities • a very high level of protection of natural heritage values is desired • use levels are relatively low and expected to stay low • minimal facilities are contemplated • intensive resource or user management is not needed • a substantial degree of permanency is desired 	<p>Generally, there is:</p> <ul style="list-style-type: none"> ✗ No commercial forest harvesting ✗ No generation of electricity ✗ No prospecting, registration of mining claims, or mineral development ✗ No extracting aggregate, topsoil or peat ✗ No other industrial uses ✗ No new land dispositions, including sales, leases, licenses of occupation, and land use permits

			<ul style="list-style-type: none"> ✓ Existing aggregate pits may continue to operate ✓ Existing power generation facilities may continue ✓ First Nation hunting and trapping, and associated activities such as cabin building⁷⁸
Forest Reserve	<p>Forest reserves resulted from the 1997-1999 Ontario Living Legacy land use planning process to a relatively small number of areas where there was pre-existing mining lands or aggregate permits within Recommended Provincial Parks and Conservation Reserves; intent was that these lands will be added to the provincial park or</p>	<ul style="list-style-type: none"> • protection of natural heritage and special landscapes is a priority • longer-term objective is to eliminate Forest Reserves entirely; as much as possible, MNRF will not designate new Forest Reserves when carrying out Crown land use planning 	<ul style="list-style-type: none"> • pre-existing interest or tenure under the <i>Mining Act</i> or <i>Aggregate Resources Act</i>, and activities authorized under these Acts can continue to take place x No commercial timber harvest x No generation of electricity x No extracting topsoil or peat x No other industrial uses

	conservation reserve when the mining claim or lease, or aggregate permit expires through normal processes		x No new land dispositions, including sales, leases, licenses of occupation, and land use permits
Provincial Wildlife Area	May have associated regulations under the <i>Fish and Wildlife Conservation Act</i> to provide controls on hunting activities; some may be located partly or entirely on lands owned by other agencies; this designation only applies to those lands administered by MNRF; may overlap with other Crown land use designations	<ul style="list-style-type: none"> No land use or resource management policies apply; determined through local planning; intent is to manage areas for outdoor recreation, particularly hunting and wildlife viewing 	
Enhanced Wildlife Area	Provides more detailed land use policy in areas of special features or values. Five categories:	<ul style="list-style-type: none"> Intended to be a longer term land use policy, rather than short term operational policy or prescriptions do not have a detailed set of 	<ul style="list-style-type: none"> ✓ A wide variety of resource and recreational uses can occur ✓ specific uses may be subject to conditions to maintain the

	<ul style="list-style-type: none"> Natural Heritage Recreation Remote Access Fish and Wildlife Great Lakes Coastal Areas 	<p>provincial level policies and primarily provide a framework for developing area-specific land use policies</p> <ul style="list-style-type: none"> desirable to develop reasonably detailed area-specific policies 	<p>features or values that make the area special</p> <ul style="list-style-type: none"> ✓ Policies must be consistent with the <i>Mining Act</i> ✓ Restrictions cannot be placed on mining claim registration unless the mineral rights for the area are withdrawn.
General Use Area	Most Crown lands are subject to this designation; default designation	<ul style="list-style-type: none"> Most flexible land use designation; may have land use specific policies 	<ul style="list-style-type: none"> ✓ Full range of resource and recreational uses permitted ✓ Policies can establish control on access (ie. where roads will be closed or public access limited)

8. Protected Areas and IPCAs in Ontario

Ontario has been identified as a “laggard” in a recent report card that graded the provincial government’s progress in protecting its lands and coastal waters.⁷⁹ In 2021, the Canadian Parks and Wilderness Society released its review of how well Canada and the provinces and territories were doing on delivery on a the promise to protect 17% of lands and 10% of ocean by 2020 (recalling, that it is widely understood that meeting these targets can only be achieved in collaboration with Indigenous peoples).⁸⁰

The report gave Ontario a failing grade, on the basis it demonstrated little to no commitment to protect more of the land base in Ontario.⁸¹ This notable lack of effort was coupled with harmful “anti-conservation action” like legislative reforms which changed environmental assessment and species at risk legislation. For example, Ontario completely removed the regulatory ability for a First Nation or a person to request an Individual Environmental Assessment of an industrial logging plan, and extended exemptions for logging and mining from the species at risk legislation.

Currently, the Ontario government has not recognized any IPCA as existing within the province, including among its 520 parks and conservation reserves. There are some projects however, between Indigenous communities and the federal government and Parks Canada, which aim to establish IPCAs. These examples, detailed below, are illuminating in understanding how Indigenous nations have sought to advance joint Crown-Indigenous conservation efforts.

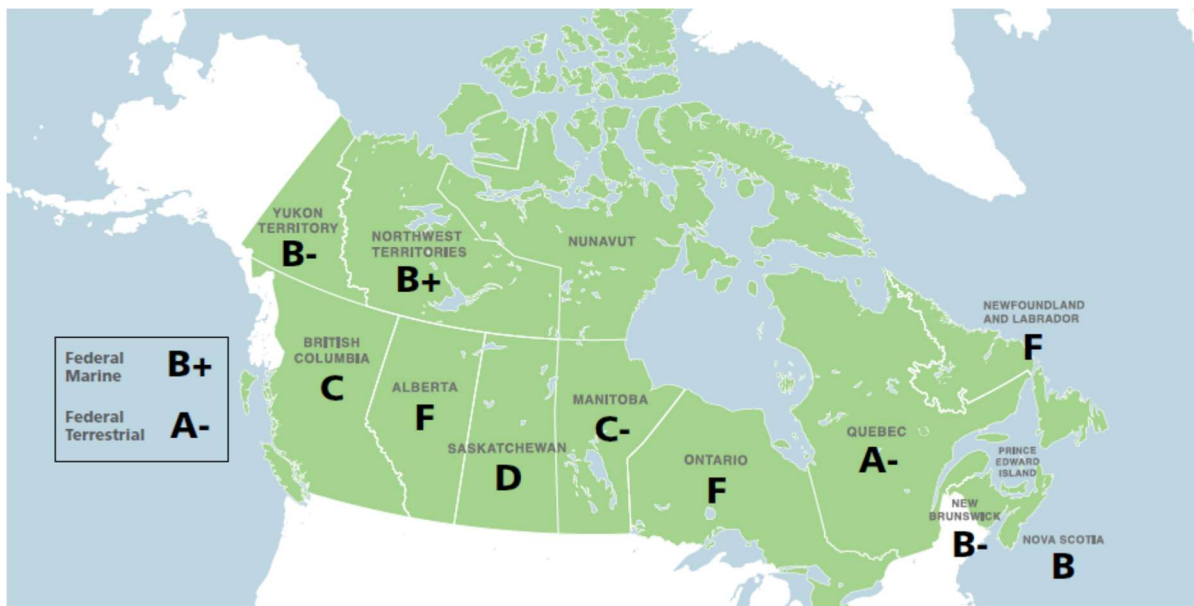


Image 2. Grades according to Canadian Parks and Wilderness Society (2021) report card on protected areas by jurisdiction⁸²

IPCAS IN ONTARIO

Asubpeeschoseewagnog Anishinabek's ISPA

In 2007, The Asubpeeschoseewagnog Anishinabek's (ANA or Grassy Narrows First Nation) declared a moratorium on industrial activities occurring without their consent on their Territory. In 2015, ANA people in a community referendum voted overwhelmingly against logging in ANA territory. In 2018, Grassy Narrows declared their territory to be an Indigenous Sovereignty and Protected Area (ISPA).

Grassy Narrows First Nation is the home of one of Canada's most infamous environmental health crises. Many people in this fishing community are still suffering from the toxic effects arising from the discharge of 9,000 kg of mercury from a paper mill into the Wabigoon River in the 1960s. Forty-five years after the dumping was curtailed, mercury levels in the river remain in the highest risk category and in some areas close to Grassy Narrows the mercury levels in the river sediment are still rising. Nothing has ever been done to clean up the river even though a joint Ontario-Canada scientific panel recommended specific remediation measures in 1983.

In 2002, grassroots Grassy Narrows people established a blockade of a major logging road on their Territory which stands to this day. In 2008, under pressure from litigation, boycotts, blockades, and negotiations, AbitibiBowater, the world's largest newsprint company withdrew from Grassy Narrows Territory and surrendered their license to log in the Whiskey Jack Forest Management Unit (FMU). Since that time there has been no industrial logging on Grassy Narrows Territory. This is the only Territory within Ontario's Area of Undertaking where large scale industrial logging is currently halted. While ANA has succeeded in halting all logging (which could have resulted in more mercury being released into the environment) in the 6,300 square kilometer ISPA since 2008, and for the duration of the Forest Management Plan currently in effect until 2024, this success is not yet secured in perpetuity. While Grassy Narrows has succeeded in preventing most on the ground mining exploration on their Territory, a recent staking boom of roughly 4,000 claims threatens an expansion of other industrial activity in ANA's Territory.

Under the direction of Chief and Council, ANA's Land Protection Team is taking steps towards Crown recognition of an IPCA consistent with ANA's ISPA. The ANA Land Declaration (enacted in October 2018) declares ANA Territory to be an Indigenous Sovereignty and Protected Area (ISPA). The Land Declaration is ANA's Anishinaabe law which sets out the longstanding vision and will of ANA people to protect ANA Territory.

While ANA received Target 1 funding from the federal government to work towards an IPCA, there remains an absence of provincial recognition (beyond some interim measures arrived at through conflict). **ANA is calling on the Crown to harmonize Crown law with ANA law with respect to land uses and protection within the ANA ISPA.**

Shawanaga Island IPCA

The waters of Georgian Bay are home to an island dominated by bedrock and stands of old white pine. It's called Shawanaga Island, and Shawanaga First Nation with the Georgian Bay Biosphere Reserve are seeking to protect its landscape and the many species that live within it and its surrounding waters by establishing an IPCA.[83]

Shawanaga Island is a 1,020-hectare (about 10 square kilometers) island located along the Georgian Bay coastline approximately 3 km from the mainland on Shawanaga Bay. An IPCA was sought for Shawanaga Island to “conserve important species, protect food security, facilitate understanding of and respect for Indigenous way of life, and to support development of conservation economies.”[84]

According to the Shawanaga First Nation, the IPCA will be a place of “reconciliation between Indigenous and settler societies, and between all people and the land. It will be a place of education and learning, sharing, growing, and healing.”

The protection and care of the IPCA will be led using the Shawanaga’s laws, governance and knowledge systems, as well as western science and management principles.[85]

Shawanaga First Nation received funding to establish the IPCA from Environment and Climate Change Canada’s Canada Nature Fund, through their Canada’s Target 1 initiative. Although the federal government is committed to supporting Shawanaga First Nation’s project under the Target 1 Challenge, the province of Ontario was not part of the site selection process for the IPCA. Shawanaga First Nation is now reaching out to the province to discuss long-term protections and care of the island.[86]

Next steps for the Shawanaga Island IPCA include establishing a Biocultural Guardians Program, to monitor and protect features of environmental and cultural importance, and collaborate with researchers and organizations to learn more about the island's ecology, identify climate change risks and develop resiliency measures.[87]

Mushkegowuk Marine Protected Area

In August 2021, then Grand Chief Jonathan Solomon, the elected leader of the Mushkegowuk Council, with the Minister of Environment and Climate Change and Parks Canada signed a Memorandum of Understanding (MOU) to launch a feasibility assessment for a National Marine Conservation Area (NMCA) in western James Bay and southwestern Hudson Bay.[88] The parties recognized their 'shared interest' in protecting the ecological and cultural integrity of the globally significant ecosystem, including the traditions and well being of the Omushkegowuk people of Treaty 9.

The marine region covered by the MOU aims to protect Weeneebeg (James Bay) and Washaybeyoh (Hudson Bay), encompassing an area of over 90,000 square-kilometers and would contribute to meeting Canada's commitment to protect biodiversity and conserve 25 percent of land and marine areas by 2025.

This biodiverse region is home to beluga whales and polar bears, and serves as a stop over for billions of migratory birds. It is also adjacent to the second largest peatland complex in the world.[89]

According to Mushkegowuk Council, its aim is to establish an Indigenous-led National Marine Conservation Area to protect Weeneebeg and Washaybeyoh, their culture, people, and the lands and waters that sustain all life.[90]

Ontario was not a party to the MOU, however, the MOU contains provisions for the establishment of a steering committee to help guide the feasibility assessment. Relevant authorities including the governments of Ontario and Nunavut, among other representatives from Parks Canada and other First Nations, could be included as members in the committee.[91]

North French River Watershed



Since 2002, the North French River has been declared by the Moose Cree First Nation (MCFN) as permanently protected. This declaration was reaffirmed in 2015 and 2021. In 2019, the MCFN began exploring the feasibility of establishing an IPCA in the North French River Watershed.[92] In 2019, the watershed project was approved for funding by the Government of Canada under its Nature Fund Challenge Projects.[93]

Originating approximately 80 km northeast of Cochrane, the North French River flows 280 km through the Canadian Shield towards James Bay. It is 660,000 hectares with 151,000 hectares already protected through a conservation reserve. The remaining 515,000 hectares remains unprotected and open to development.[94]

MCFN received funding from Environment and Climate Change Canada and has also successfully secured a grant from the Canada Nature Fund with matching funding commitments from the Metcalf Foundation and International Boreal Conservation Campaign.[95]

According to then Chief of MCFN Patricia Faries, “[t]he North French River is one of last sources of clean water for our people. Its protection and preservation are of paramount importance that’s why we deemed it permanently protected in 2002 and reaffirmed it in 2015...Its protection is also of paramount importance to our people.”[96]

Kitchenuhmaykoosib Inninuwug First Nation (KI) IPCA

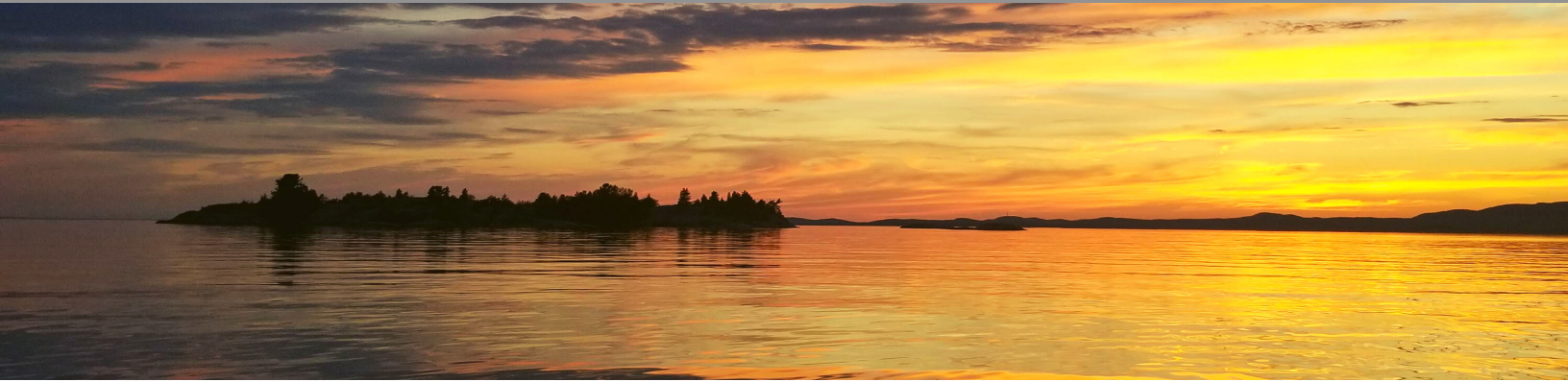


In 2005, Kitchenuhmaykoosib Inninuwug (KI) First Nation declared a moratorium on mining exploration and logging on their homeland. In 2008, KI succeeded in having 23,000 sq km of their homeland withdrawn from mining exploration by Ontario, and existing claims and leases that were causing conflict were bought out by the Crown and withdrawn.

In 2011, the First Nation created the KI Watershed Declaration which places all of the Fawn River watershed off limits to industrial extraction under KI law.

KI First Nation is exploring the potential establishment of an Indigenous Protected Area in the Fawn River Watershed located in the Kitchenuhmaykoosib Inninuwug Homeland.[97] The IPCA seeks to prevent development within the watershed surrounding Big Trout Lake and part of the KI First Nation traditional homelands.[98] The area covers 1.3 million hectares. In 2019, Environment and Climate Change Canada approved funding for the community to work toward establishing an IPCA and for capacity building.[99]

Aki Sibi IPCA



The Aki Sibi project forms an alliance of seven Algonquin communities, who seek to implement an IPCA on Algonquin territories. The Aki Sibi IPCA encompasses almost all of the Ottawa River Watershed.

Kebaowek First Nation and other Algonquin communities seek to establish this IPCA for land protection, culture and language resurgence, to continue to harvest their traditional medicines and foods, and to protect the forests and biodiversity, among others.

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- ² Indigenous Circle of Experts, *We Rise Together: Achieving Pathway to Canada Target 1*, Indigenous Circle of Experts’ Report and Recommendations, (Ottawa: Government of Canada, 2018) [ICE Report]
- ³ *Ibid*, p 5
- ⁴ United Nations Environment Program, “A toolkit to support conservation by indigenous peoples and local communities” (2013), p 12 [UNEP Toolkit]
- ⁵ ICE Report, *supra* note 2, p 104
- ⁶ H. Jonas et al. “An Analysis of International Law, National Legislation, Judgments, and Institutions as they Interrelate with Territories and Areas Covered by Indigenous Peoples and Local Communities,” (2012) *International Law and Jurisprudence* (1), s 2.1
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- ⁸ UNEP Toolkit, *supra* note 4
- ⁹ *Ibid*
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- ¹¹ *Ibid*, p 10
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- ¹³ *Ibid*, p 26
- ¹⁴ T. Miedema, “The Historic Roots of Canada’s Three Legal System” Law and Society Project
- ¹⁵ J. Borrows, “Indigenous Legal Traditions in Canada,” (2005) *Washington University Journal of Law & Policy* 19 [Borrows]
- ¹⁶ P. Weiler, “Two Models of Judicial Decision-Making” (1968) *Canadian Bar Review* 46 (3)
- ¹⁷ Borrows, *supra* note 15, p 189
- ¹⁸ Red Paper, *supra* note 12, p 24.
- ¹⁹ *Ibid*
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- ²² Mahmood Mamadani, “When Does a Settler Become Native? Reflections of the Colonial Roots of Citizenship in Equatorial and South Africa,” inaugural lecture as A C Jordan professor of African Studies, University of Cape Town, 13 May 1998 quoted in Lorenzo Veracini, *Settler Colonialism: A Theoretical Overview* (New York, NY: Palgrave MacMillan, 2010), p 3
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- ²⁷ *Ibid*, p 3
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- ³⁷ ICE Report, *supra* note 2, p 7
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- ³⁹ Eva Jewell, Gimaadaasamin, We Are Accounting for the People: Support for Customary Governance in Deshkan Ziiibiing (PhD dissertation, Royal Roads University, 2018), at 85
- ⁴⁰ *Ibid* at 172
- ⁴¹ https://openscholarship.wustl.edu/cgi/viewcontent.cgi?article=1380&context=law_journal_law_policy at p 175
- ⁴² Darcy Lindberg, “Miyō Nêhiyâwiwin (Beautiful Creeness) Ceremonial Aesthetics and Nêhiyaw Legal Pedagogy,” (2018) *Indigenous Law Journal* 16(1) p 53
- ⁴³ Innes & Lloyd-Smith, *supra* note 1
- ⁴⁴ ICE Report, *supra* note 2, p 60
- ⁴⁵ Innes & Lloyd-Smith, *supra* note 1, p 8
- ⁴⁶ Government of Canada, *Treaties and Agreements* (2020)
- ⁴⁷ *Ibid*
- ⁴⁸ *Ibid*
- ⁴⁹ Association of Municipalities Ontario, *Treaties Recognition Week - November 1 - 7*, October 2021, online: <https://www.amo.on.ca/advocacy/indigenous-relations/treaties-recognition-week-november-1-7>.
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- ⁵¹ *Ibid*
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- ⁵³ The Ontario Court of Appeal has opined on the question of conservation within treaty rights. In *R v Shipman* “in Aboriginal custom, protection and conservation of harvesting resources is paramount and it would be unusual if this was not reflected in the granting of consent to share in it.”
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- ⁶⁴ 4Rs Youth Movement ([2021](#))
- ⁶⁵ Gamblin, R., “LAND BACK! What do we mean?” 4Rs Youth (2021)
- ⁶⁶ Red Paper, *supra* note 12
- ⁶⁷ K. Blaise, “Briefing Note: Legal Landscape of Indigenous Protected and Conserved Areas (IPCAs) in Ontario,”(2020) Canadian Environmental Law Association
- ⁶⁸ *Ibid*, 2(1)
- ⁶⁹ *Ibid*, s 9(1)
- ⁷⁰ *Ministry of Infrastructure Act, 2011*, S.O. 2011, c.9 Sched. 27, s 9(1)
- ⁷¹ *Ibid*, s 54(a)
- ⁷² *Ibid*, s 54(c) and (d)
- ⁷³ *Ibid*, s 54(h)
- ⁷⁴ Under the current *Far North Act*, these are mandatory contents of a land use plan, subject to approval by the Minister and council of the First Nation; see *Far North Act*, s. 9(9), (13), (14).
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- ⁷⁵ *Public Lands Act*, s. 2
- ⁷⁶ Guide for Crown Land Use Planning, section 12.0
- ⁷⁷ *R v Sundown*, 1999 CanLII 673 (SCC), [1999] 1 SCR 393
- ⁷⁸ *Ibid*
- ⁷⁹ Canadian Parks and Wilderness Society, “The Grades are In: A report card on Canada’s Progress in Protecting its Land and Ocean” (2021), p 4 [CPAWS Report Card]
- ⁸⁰ *Ibid*; ICE Report, *supra* note 2 p 4
- ⁸¹ *Ibid*, p 23
- ⁸² CPAWS Report Card, *supra* note 79
- ⁸³ P. Bailey, Canadian Environmental Law Association “Blog – Indigenous-led conservation is gaining traction” (2020)
- ⁸⁴ Government of Canada, “Canada Target 1 Challenge” [Target 1 Challenge]
- ⁸⁵ Shawanaga Island Indigenous Protected & Conserved Area, “Story of the Island” (2021)
- ⁸⁶ *Ibid*
- ⁸⁷ *Ibid*
- ⁸⁸ Government of Canada, Parks Canada, News Release: *Government of Canada and Mushkegowuk Council working together to protect western James Bay*, August 9, 2021 [Parks Canada]
- ⁸⁹ Chiefs of Ontario, Newsletter Sept Oct 2021, p 5
- ⁹⁰ Mushkegowuk Marine Conservation, “Vision”
- ⁹¹ Parks Canada, *supra* note 88
- ⁹² Moose Cree First Nation, MCFN Reaffirms its Commitment to Protecting the North French River Watershed, September 2021 [Moose Cree First Nation].
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- ⁹⁵ Moose Cree First Nation, *supra* note 92
- ⁹⁶ North French, *supra* note 93
- ⁹⁷ Target 1 Challenge, *supra* note 84
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PART 1 - TOWARDS PROTECTION

Immediate Actions

Engaging community members in the development of an IPCA's vision, its planning and management processes is critical to the success of an IPCA. This chapter sets out some ideas for community involvement and engagement, drawing on the many resources and toolkits that already exist on this topic.

1. Developing the Vision

Creating a clear vision and mandate is a key element in establishing an IPCA. Inviting Elders, knowledge holders, women and youth to share their vision and hopes for the IPCA roots the effort in the voice of the community.[100] A number of resources, excerpted in our **Annotated Bibliography**, set out guidance for community-led IPCA projects, including:

A primer on governance for protected and conserved areas explores what governance means and its different models within Indigenous-led conservation measures. Governance quality is a focus of the document, where IUCN principles of “good governance” are applied to protected areas. These principles include legitimacy and voice, direction, performance, accountability, fairness and rights, and equitable and effective governance.

A toolkit to support conservation by indigenous peoples and local communities: building capacity and sharing knowledge for indigenous peoples' and community conserved territories and areas presents a selection of practical resources, developed by numerous organizations, making them readily accessible to community-based organizations who manage Indigenous Peoples' and Community Conserved Territories and Areas (ICCAs). All of the resources in this toolkit are sorted into five “themes”, which build on each other. The five themes include: documenting presence, management planning, monitoring and evaluation, communication, and values and finance.

See the resources in our **Annotated Bibliography** for further reading on community-led IPCA projects

2. Defining the Spatial Region

In an effort to regain authority and responsibility for lands and resources, there is a need to define the spatial region of the IPCA. This is not to prove the existence of Indigenous nations on these territories, but rather to inform decision-makers that there are laws, knowledge and practices which must be respected and reconciled with land uses which are incompatible with Indigenous-led protection efforts in this designated area.

Currently, one of the main challenges facing IPCAs is that customary or traditional laws may not be recognized by the federal or provincial government, thus leaving the lands open to threats from conflicting land uses and regulatory processes prescribed in Crown law. Therefore, with the view to defining the spatial context and informing the future management and oversight of the IPCA, communities can:

- Gather information from the community about boundaries, migration routes, and the use of territory;[101] this can provide deeper understandings of sacred or historical sites, and also foster custodial or stewardship relationships to those places

- Host participatory and cultural mapping projects to engage community members and integrate local understandings into planning[102]
- Document disturbance, through maps and photos, to show the impact of extractive industries and harvesting.

Communities can also make their IPCA known internationally. As part of the United Nation's Environment Program, communities can register their IPCA on the ICCA Registry.[103] The ICCA Registry was established in 2008 to raise awareness about the significance of Indigenous peoples' community-led conservation practices. The registry hosts both case studies and data, of maps, photos and stories which have been voluntarily reported by other IPCAs around the world.[104]

Some Indigenous peoples have also sought international recognition within the United Nations Educational, Scientific and Cultural Organization (UNESCO), which has designating bodies for World Heritage, Biosphere Reserves and Geoparks.[105] While the UNESCO World Heritage state alone cannot preclude provincially authorized activities like mining and logging, it can help to motivate change within the government and precipitate changes to land use designations.



Pimachiowin Aki, established as a UNESCO World Heritage site in 2018 is one such example. Covering nearly 3 million hectares of land in Manitoba and Northwestern Ontario, Pimachiowin Aki forms part of the ancestral home of the Anishinaabeg and encompasses the traditional lands of four Anishinaabeg communities. In an area home to millions of trees, hundreds of lakes, river and wetlands, and thousands of plant and animal species,[106] this is the first ‘mixed’ cultural and natural UNESCO World Heritage site in Canada and the largest protected area in the boreal of North America.

Leading up to the UNESCO designation, in 2002 four Anishinaabeg communities signed an Accord with the province of Manitoba to protect their ancestral lands, and confirm a government-to-government relationship. This was pivotal in the UNESCO nomination where in 2004, they were shortlisted among 125 other sites across Canada.[107]

This designation, however, arose after decades of land use planning and successful community advocacy, resulting in the province of Manitoba introducing legislation allowing the communities to create their own land use and resource management plans.

Under this traditional land use planning process, five protected areas were recognized under the provincial *Protected Areas Act*. These areas have subsequently become part of the UNESCO site.[108]

3. Identifying Threats

IPCAs are often established in response to threats and pressures on the environment, such as logging and mineral exploration. In these instances, an IPCA can provide a complete response to a threat, for instance, by prohibiting extractive industries by virtue of being protected lands. Some threats however, like climate change, will not have such a complete solution; however, IPCAs can be integral in mitigating or offsetting climate effects, for instance, by protecting peatlands (or muskeg) and forests which sequester carbon.

As part of the IPCA planning process, communities are encouraged to identify and prioritize both internal and external threats to the proposed protected area, so that in developing the IPCA's governance and management plans, frameworks responsive to the threats can be put in place.

- **Internal threats** to a proposed IPCA could include pre-existing crises, such as a lack of clean drinking water, adequate health care and sufficient housing. These threats could limit the capacity of a community to engage with its members and to oversee and manage an IPCA.
- **External threats** to a proposed IPCA could be environmental impacts caused by extractive industries (eg. logging, mining), or the encroachment of development or agricultural lands. Threats could also be economic or procedural, such as systemic barriers to managing a community's lands and resources and the economic insecurity resulting from depleted ecosystems.



¹⁰⁰ David Suzuki Foundation, “Tribal Parks and Indigenous Protected and Conserved Areas Lessons Learned from B.C. Examples,” (2018), p 5 f

¹⁰¹ UNEP Toolkit, *supra* note 4, p 14

¹⁰² *Ibid*, p 19

¹⁰³ United Nations Environment Program, “About the ICCA Registry” ICCA Registry (2022)

¹⁰⁴ UNEP-WCMC (2020). How to submit your ICCA data to global databases: A manual for indigenous peoples and local communities 2.0. UNEP-WCMC: Cambridge, UK.

¹⁰⁵ ICE Report, *supra* note 2, p 52

¹⁰⁶ Pimachiowin Aki, “Part of the largest stretch of untouched boreal wilderness left on earth” (2022)

¹⁰⁷ Pimachiowin Aki, “About Us – Timeline” (2022)

¹⁰⁸ Wabanong Nakaygum Okimawin “Backgrounder”, p 2

PART 2 - MITIGATING THREATS

Interim Protection Measures

There are many challenges that come with creating IPCAs in Ontario, such as an unclear legal framework, lack of acceptance by the provincial government, absence of ethical space for Indigenous traditions, and a history of exclusion of Indigenous knowledge and priorities from conservation. It also takes a significant amount of time to formulate, establish and secure an IPCA.

This chapter explores the interim measures communities may pursue in order to protect the health of their lands and community, in response to external threats such as resource extraction projects. These suggestions are not exhaustive, vary in degree of complexity and may require a Nation to seek independent legal advice. This part of the toolkit sets out a number of options to consider when seeking to alleviate impacts to lands, air and water pending more permanent forms of protection.

1. Restricting Lands from Mineral Exploration and Development under the Mining Act

There are two mechanisms through which lands can be withdrawn from mineral exploration and mining: first, by application to the Minister of Energy, Northern Development, Mines* (MNDM) under the Mining Act and secondly, at the request of the Ministry of Natural Resources under the Public Lands Act.[i]

Ontario's *Mining Act* sets out a number of discretionary tools that allows the Minister of MNDM to constrain or prohibit mineral exploration and development activities in a specified area.

The Minister can:

(1) Order the withdrawal from prospecting, mining claim registration, sale and lease any lands, mining rights or surface rights where those lands and rights remain the property of the Crown pursuant to section 35

(2) Order the withdrawal of lands, with a surface area of 25 hectares or less, to minimize or avoid disruption to "sites of Aboriginal cultural significance" caused by new mineral exploration and development activities

- (3) Restrict a claim holder's rights to use certain portions of their surface or mining claims pursuant to subsection 51(4)¹¹¹
- (4) Issue a "Notice of Caution" on the Mining Lands Administration System

These are discretionary decisions which must accord with the purposes of the Act, its regulations and policies.¹¹² Further, in response to Aboriginal rights and title settlement negotiations, a "notice of caution" may be placed on the Mining Lands Administration System, to notify prospective land users of heightened consultation and accommodation obligations and, that mineral exploration and development maybe uncertain on these lands. Each of these mechanisms are detailed in turn below.

** Clarification to readers: In June 2021, the Ministry of Energy, Northern Development and Mines was merged with the Ministry of Natural Resources, forming the Ministry of Energy, Northern Development, Mines, Natural Resources and Forestry (MNDMNRF). As each former ministry now operates as a department within one ministry, for clarity, references to the two departments (ie. Northern Development and Mines, NDM; and Natural Resources and Forests, NRF) are used throughout.*

(a) *Withdrawal Orders – Generally*

Section 35(1) of the *Mining Act* permits the Minister by order to "withdraw from prospecting, mining claim registration, sale and lease any lands, mining rights or surface rights that are the property of the Crown." These lands, mining rights or surface rights remain withdrawn unless reopened by the Minister. **In other words, a withdrawal order does not affect pre-existing mining rights and tenure such as mining claims, mining leases or licenses of occupation.¹¹³ However, there are precedents of the Crown buying out pre-existing mining rights in order to withdraw those lands when it is in the public interest, for example in order to resolve a conflict with a First Nation.**

According to the MNDM's procedure *Withdrawal and reopening of surface and / or mining rights*, a request to withdraw public lands under the *Mining Act* is made by a field office to the Deputy Mining Recorder. Prior to requesting a withdrawal order, the MNRF field office must do the following:

1. Identify the disposition requirement or MNRF program interest to be protected;
2. Consider whether it is necessary to withdraw the surface rights, the mining rights, or both, for the affected lands; and
3. Liaise with the NDM Resident Geologist, unless timing is critical and liaising would cause an unacceptable delay, threatening the viability of the program interest.

Once it has been decided that a withdrawal order will be requested, the MNRF field office will forward a request to the Deputy Mining Recorder, signed by the MNRF Supervisor. This request must include the following:

1. A completed and signed Request for Withdrawal or Reopening Order form;
2. The corresponding mapping shapefile; and
3. Compliance with any additional instructions and/or requirements provided by NDM.

In making a withdrawal request, the Ministry requires the area of land to be withdrawn to be kept to a minimum. Should an order withdrawing lands be issued, a copy of the order is to be provided to the Mining Recorder so that the online mining lands administration system can be updated.¹¹⁴

If granted, withdrawal orders are posted online by mining division on the Mining Lands Administration System [website](#).¹¹⁵ Orders as current as 2021 show the size of lands to be withdrawn range in size from 64 - 295 hectares and all order indicate the “area is withdrawn while the Ministry determines the status of the lands.” Each order, signed by a provincial Mining Recorder, is accompanied by a corresponding map.

When making a decision whether to order the withdrawal of lands under section 35 of the *Mining Act*, the Minister can consider any factors that they consider appropriate, such as those listed in section 35(2)(a) including:

- Whether the lands, mining rights or surface rights are required for developing or operating public highways, renewable energy projects or power transmission lines or for another use that would benefit the public
- Whether the order would be consistent with any prescribed land use designation that may be made with respect to the Far North, and
- Whether the lands meet the prescribed criteria as a site of Aboriginal cultural significance¹¹⁶

In deciding whether the lands meet the prescribed criteria as a site of Aboriginal cultural significance, the last of the factors listed above, a regulation of the *Mining Act*, *O Reg 45/11* sets out that ‘sites of Aboriginal cultural significance’ must be considered where the land is¹¹⁷:

- 25 hectares or less

- Is strongly associated with an Aboriginal community for social, cultural, sacred or ceremonial reasons, including because of its traditional use by that community, according to Aboriginal traditions, observances, customs or beliefs
- Is in a fixed location, subject to clear geographic description or delineation on a map, and
- Its identification is supported by the community, as evidenced by appropriate documentation.

(b) Withdrawal Orders for ‘Sites of Aboriginal Cultural Significance’

In addition to the general withdrawal order provisions noted above, a withdrawal order can also be sought to minimize or avoid disruption to “sites of Aboriginal cultural significance” caused by new mineral exploration and development activities *if* the site is 25 hectares or less. Should they exceed 25 hectares, the lands are considered through the general withdrawal process, noted above.¹¹⁸

According to the *Sites of Aboriginal Cultural Significance – Withdrawals and Surface Rights Restrictions* policy, the aim of such withdrawals is to “ensure that lands identified by Aboriginal communities as sites that might meet the prescribed criteria as a site of Aboriginal cultural significance are given due consideration in order to avoid or minimize disputes with Aboriginal communities and to help build relationships between communities, MNDM[NRF] and industry proponents.”¹¹⁹

For a withdrawal on the basis of a ‘site of Aboriginal cultural significance,’ applications should be accompanied by a Band Council Resolution or Community Council Resolution demonstrating the community’s support and awareness of the withdrawal request.

(c) Surface Rights Restrictions

Section 51(4) of the *Mining Act* permits the Minister by order to “impose restrictions on a mining claim holder’s right to the use of portions of the surface rights of a mining claim if, (a) the portions of the surface rights are on lands that meet the prescribed criteria as sites of Aboriginal cultural significance; or (b) any of the prescribed circumstances apply.”

Surface rights restrictions include restricting a claim holder’s rights to use certain portions of the surface of his or her mining claim. Section 51(4) orders to restrict surface

rights arise following notification of a claim being staked and recorded as part of the early exploration consultation processes.¹²⁰

Section 1 of the *Mining Act* defines “surface rights” as “every right in land other than the mining rights.” Generally, surface and subsurface (ie. mineral) rights to land are held separately, with the Crown holding subsurface rights, even where those surface rights might be privately held or occupied for farms or residential dwellings.¹²¹

There is also a hierarchy among surface and subsurface rights, wherein subsurface rights holders are conferred priority to claim use of the surface over the subsequent rights of others’, with the exception of the right to sand, peat and gravel.¹²² Section 50(2) of the *Mining Act* sets out the right of a mining claim holder to use the surface, to enter and use the part or parts of the surface of land that are “necessary” for the purpose of prospecting and development of the mines, minerals and mining rights “therein” - meaning, the claims themselves.

As noted above, withdrawal orders do not affect pre-existing mining rights and tenure such as mining claims, lease and licences.¹²³ Thus, if an area has not been withdrawn prior to a claim being staked, the Ministry will “encourage dialogue between communities and industry proponents, in an effort to address outstanding concerns that a community may have” and as a “last resort,” consider the imposition of a surface rights restriction.¹²⁴

There is no application process for a surface rights restriction, and they are only to be used in exceptional circumstances, when an agreement or voluntary measures to mitigate concerns cannot be reached.¹²⁵ Despite the lack of formal application process, the Ministry typically requires documentation from a community similar to that provided for a withdrawal on the basis of a ‘site of Aboriginal cultural significance,’ discussed above. Like withdrawals, the Ministry states surface rights restriction should be applied to the smallest area of land necessary to address the concern regarding the significance of the site.¹²⁶

Should a surface rights restriction be proposed, the claim holder is given notice and has 30 days to provide comments.¹²⁷ Should the claim holder object or challenge the veracity of the identified site, the Ministry may seek further information from the community. Should a surface rights restriction be imposed, a withdrawal order is filed the approved surface rights restrictions noted in the online mining lands administration system.

While there is no caselaw pertaining to the restriction of surface rights in the context of sites of 'Aboriginal cultural significance,' the court's decision in *2274659 Ontario Inc. v. Canada Chrome Corporation* provides helpful clarification on surface rights restrictions as set out in section 50 and 51 of the *Mining Act*.¹²⁸ The Court of Appeal held that the surface rights of the holder are limited to the parts necessary for prospecting, exploration and mining "therein" – that is, in the claims themselves, not claims at a distant location.¹²⁹ The court also held that the underlying purpose of subsection 50(2) of the *Mining Act* was to encourage multiple uses of surface rights on mining lands and as a result, the principle requires consideration of the possibility of accommodation of more than one use.¹³⁰ The court found the public interest in multiple uses of Crown lands "was a given" and each party bears the evidentiary onus to establish if multiple uses of surface rights were possible.

At issue in *2274659 Ontario Inc. v. Canada Chrome Corporation*, was an easement 2274659 Ontario Inc. (a subsidiary of Cliffs Natural Resources Inc). sought over 108 unpatented mining claims held by Canada Chrome Corp. 2274659 Ontario Inc sought to build a road over these claims, which had been staked in a linear fashion, to accord with Canada Chrome Corp.'s aim of building a railway. To obtain the right to build on those claims, 2274659 Ontario Inc. applied to the Minister of Natural Resources under s. 21 of the *Public Lands Act*, for a disposition of the surface rights over portions of the appellant's claims. It also sought an easement over Crown lands to permit it to build the road. When the consent of the mining claim holder was refused by Canada Chrome Corp., the application was referred to the Mining and Lands Commissioner (presently, the [Ontario Land Tribunal](#)) for an order pursuant to s. 51(2) of the *Mining Act* dispensing with consent. According to this provision, if the holder of an unpatented mining claim does not consent to such a disposition, the consent of the unpatented mining claim holder may be dispensed with after a reference to and hearing by the Mining and Lands Tribunal (also now the Ontario Land Tribunal).

The court found that the Canada Chrome Corp.'s proposed railway was not to be used to extract minerals from the claims themselves but rather, to permit the development of a mineral deposit farther away from the location of the claims, and thus it was not a surface right for which could claim a priority under section 51(1) of the *Mining Act*.

(d) *Land Notices - Notice of Cautions*

A Notice of Caution is a form of land notice that can accompany a “cell claim.” This is a tool available to MNDM that is short of a withdrawal, but can serve to discourage staking by proactively disclosing risks to companies who choose to stake in this area.

As defined in the *Mining Act*, a “cell claim” is a “mining claim, other than a boundary claim, relating to all of the land included in one or more cells on the provincial grid.”¹³¹ In cell areas where one or more First Nations have asserted Aboriginal rights or title or in cell areas where the claims are subject to ongoing litigation, a Notice of Caution may be issued.

A Notice of Caution will appear on the Mining Lands Administration System and are listed alongside other withdrawal notices, [here](#). As the MNDM advises in the Notice of Caution for the Northern Lake Superior Region:

Future exploration, development and related activities in this area may be subject to heightened Crown consultation and accommodation obligations.

Before you register a mining claim on this cell or expend funds in connection with potential mineral exploration activities, you are encouraged to obtain independent legal advice regarding any possible effect this litigation may have on your potential rights under the *Mining Act* and your commercial interests.¹³²

Case Study:

Kitchenuhmaykoosib Inninuwug (KI) Land Withdrawal

In 2006, the Kitchenuhmaykoosib Inninuwug (KI) First Nation's battle against Ontario to have the province and mining project proponents respect KI's jurisdiction and traditional territory gained national prominence. Since then, KI has managed to protect 23,000 km² of land from mining exploration.

KI is a remote First Nation community of roughly 1300 people located on the shores of Big Trout Lake and on the margins of the Hudson Bay lowlands, and a part of the Treaty 9 adhesion. KI began facing struggles when their sacred lands and spiritual sites "...were being staked and drilled in an extensive Canadian mining boom fueled by recent finds of diamonds and record high prices for gold, platinum, uranium, base metals and nickel." [133] Due to Ontario's "free entry" legislative framework, Crown lands are open for mineral exploration unless specifically withdrawn. [134]

Following the trilogy of decisions at the Supreme Court of Canada (SCC) - the *Haida Nation* and *Taku River Tlingit*

decisions in 2004, and the *Mikisew Cree* decision in 2005 - "consultation" became a recognized duty based on the honor of the Crown. [135] Accordingly, consultation required the Crown to consult with Indigenous communities or nations when the Crown had real or constructive knowledge of the potential existence of an Aboriginal or Treaty right or interest, and contemplates conduct that might adversely affect it. As legal scholars remarked at the time, "The duty required consultation with the affected Aboriginal people that went beyond simply talking to substantially addressing Aboriginal concerns by adopting appropriate accommodation measures." [136]

According to a piece written by David Peerla, the political advisor to KI, titled "*No Means No: The Kitchenuhmaykoosib Inninuwug and the Fight for Indigenous Resource Sovereignty*," KI was empowered by the legal victories of the SCC trilogy and "angered by the glacial pace of change in the Ontario government's consultation approach and worried by the rapid influx of mining "intruders" on their lands". [137]

In October 2005, five First Nations in Treaty 9 including KI “declared mining exploration moratoriums affecting 5 million hectares of land in Ontario’s Far North.”[138] KI had previously declared a moratorium on mining exploration, park creation and all other Ontario land dispositions in 2000.

Despite the moratorium, in 2006, Platinex Inc. - a junior exploration company in Ontario that had set up a drilling camp on KI’s traditional territory and in the headwaters of Big Trout Lake- launched a case against KI seeking injunctive relief from disruption by KI community members.[139] Although KI had advised Platinex of the moratorium which would remain in place until proper consultation leading to consent had occurred, “Platinex made public its mining application on the TSX Venture Exchange and represented that the KI First Nation had “verbally consented” to low impact exploration.”[140]

In February 2006, the Chief and Council of the KI First Nation wrote to Platinex that members of their community were committed to stopping exploratory drilling in the area, and many had gone to the drilling camp to protest.[141] Platinex and KI First Nation then both sought injunctive relief, with Platinex filing an injunction to seek a permanent court order preventing any interference from KI with the drilling program as well as \$10 billion in monetary damages.[142]

In June 2006, KI also brought a constitutional challenge against Ontario’s *Mining Act*, claiming that the Act failed to prioritize Aboriginal and Treaty rights. [143] The Ontario Superior Court of Justice held that Platinex had known since 2001 that the KI was not consenting to further exploration, and that the actions of Platinex were “disrespectful” of the First Nation’s interests.[144] Ultimately, on July 27, 2006, KI succeeded in having an interim injunction granted and Platinex lost its bid to begin the drilling project.[145]

In its decision, the Court emphasized that the loss of traditional lands could constitute irreparable harm and that no amount of money could compensate for this loss.[146] The Court ordered that Platinex be enjoined from engaging in exploration in the area for five months, conditional upon KI creating a “consultation committee” to meet with Platinex and the provincial Crown with the objective of developing an agreement with Platinex.[147]

With no resolution resulting from the consultation, and Ontario being added as a party to the injunction in 2007, the Court imposed the consultation protocol and memorandum of understanding agreements and ordered that Platinex could access their property beginning on June 1, 2007.[148]

In 2007, then Chief Donny Morris and five councilors, including grandmother Cecilia Begg, were jailed for contempt of court by defying the injunction to cease obstructing Platinex’s explorations.[i] This led to a national outpouring of social movement support for KI, protests, a peaceful occupation of the Queens Park lawn, and dozens of national media stories. In May 2008, the “KI 6” appealed to the Court of Appeal, and were released after serving half the initial sentence of six months in jail.[150] In June 2008, Ontario agreed to revise the *Mining Act* and begin law reform consultations.[151]

After continuously being denied access to KI territory, Platinex resorted to the litigation process it initiated with Ontario in May 2008. Following three more years of disputes, in December 2009, MNDM announced that an agreement had been finalized between the province and Platinex to settle the litigation against Ontario and KI.[152] This agreement included a \$5 million payment to Platinex upon the release of its mining claims in the KI traditional territory and the guarantee of a royalty of 2.5% of any future resource revenues from those lands.[153]

However, KI’s fight to protect their traditional territory continued. In 2009, God’s Lake Resources Inc (GLR), another junior exploration company, acquired permits to explore areas of promising gold-bearing ground near Sherman Lake in KI territory.

GLR commenced exploration in the summer of 2011, following which KI issued an eviction notice. At this time, KI and allies began mobilizing to further stop exploration activities.[154]

To ward off a protest planned for the Prospectors and Developers Association Conference (PDAC) in Toronto, among other factors, then MNDM Minister Rick Bartelucci announced in March 2012 that 23,000 km of KI traditional lands would be withdrawn from mineral exploration. [155] Shortly after, Ontario announced it would pay \$3.5 million to GLR for surrendering its mining lease and claims. [156]

The hard-won success of KI in ultimately having the Minister issue a withdrawal order, was accompanied by the reform of the *Mining Act* in 2009, which sought to increase consultation with Indigenous groups and communities. Effective November 1, 2012, the amended *Mining Act* requires consultation with First Nations to occur before obtaining mining exploration permits .[157]

It is important to note that while the courts ordered KI to allow mining exploration by Platinex, and even jailed KI leaders, the First Nation was able to win very significant victories through the strength and perseverance of their people, effective alliance building, media outreach, public demonstrations, political pressure, and on the ground land defence.

2. Disposition of Lands under the Public Lands Act

The MNRF can also request MNDM to withdraw lands from claim registration if MNRF program interests, require public lands to be protected from disposition under the *Mining Act*.¹⁵⁸ “Disposition” according to the MNRF’s *Application review and land disposition process policy* means the “granting of property (e.g. freehold or leasehold title) or personal rights (e.g. land use permit) to public lands, as defined and described in this policy and its accompanying procedure.”¹⁵⁹

If an application is received for disposition of public lands under the *Public Lands Act* (PLA), and those lands are not situated on a pre-existing registered mining claim, the MNRF provides it is unnecessary to withdraw the lands from mining claim registration as applications under the *PLA* take automatic priority over any subsequent registration of a mining claim with respect to the surface rights.¹⁶⁰ The MNRF is also obliged to inform the Mining Recorder for the pending disposition as soon as possible.

3. Forest Management Planning

Forest Management Planning (“FMP”) occurs in areas that are designated as “General Use” under the *Public Lands Act* and which are part of the Area of Undertaking (see **Images 4** and **6** below). Ontario, with the exception of the Far North, Southern Ontario, and existing Crown Protected Areas, is divided into geographic planning areas for forestry, known as forest management units (“FMU”).¹⁶¹

Generally, these are areas where the province has chosen to allow extensive industrial logging. The FMP process is generally dominated by industrial logging interests and is focused on the outcome of providing large wood supplies to industrial wood products mills through industrial logging. As illustrated in **Image 4**, below, each forest management unit is subject to an FMP which outlines the unit’s management objectives over a ten-year period.

The FMP planning process is overseen by the Ministry of Northern Development, Mines, Natural Resources, and Forestry (MDMNR). According to the *Crown Forest Sustainability Act*, each FMP is to have regard for plant life, animal life, water, soil, air, and social and economic values. Each FMP also contains a long-term management direction (“LTMD”) that is meant to balance objectives related to forest diversity, socio-economics, forest cover, and silviculture.



Image 4. Map of Forest Management Units in Ontario¹⁶²

An FMP is prepared by a plan author, who is a Registered Professional Forester, that works for the licence holder of the FMU. The licence holder is normally a regional forest products company, but in rare instances it is the Crown. The plan author works with the assistance of an interdisciplinary planning team and Local Citizens' Committee ("LCC"). An FMP is approved when the MNRF Regional Director is "satisfied that the plan provides for the sustainability of the forest, and that all identified concerns have been addressed."¹⁶³

There are five formal public consultation opportunities/stages in the preparation and approval of the FMP as follows:

- 1) Invitation to participate.
- 2) Review of the long-term management direction
- 3) Review of proposed operations.
- 4) Review of draft Forest Management Plan.
- 5) Inspection of approved Forest Management Plan.

At each of these stages, the public including First Nations are invited to comment. In making comments, strategic management zones, AOCs and values requiring protection, described above, could be set out and requests documented. At each stage a First Nation or person may also request issue resolution. First Nations have a right to develop a “custom consultation plan” with the NRF if they want to be consulted through a different process.

Despite what may appear as a detailed and prescriptive review, the FMP process very rarely leads to short or long-term measures that are consistent with common IPCA goals such as prohibiting industrial logging on a significantly sized area, or promoting small scale deeply sustainable, community-led, high value added forest products. Those IPCA outcomes usually require changing Crown Land Use Designations (see below).

That said, in the context of provincial forest management planning practices, there are two limited means which can potentially aid in the temporary safeguarding of areas with significant ecological or cultural value:

1. Identifying a site as an **Area of Concern**
2. Seeking a **Strategic Management Zone**

While both mechanisms are reviewed below, it is critical to note that they are both ineffective at providing ecosystem or watershed-level protection and at best, provide piecemeal and temporary safeguarding of smaller areas of land.

Strategic Management Zones

Early in the forest management planning process, it is possible to identify Strategic Management Zones (SMZ). While these are most often ecologically driven, such as “Caribou emphasis areas”, this tool can be used in rare circumstances to define large areas of an FMU that will not be subject to harvest, or other forest management activities, for the duration of the Forest Management Plan. There are precedents for this being done as an interim protection measure in the context of conflict over logging with First Nations, or in the context of an unresolved land claim, in Ontario. However, **SMZs are rare, and generally require the First Nation to develop significant leverage through legal or social movement work.**

Areas of Concern

In accordance with the provincial Forest Management Planning Manual, FMPs can contain 'operational prescriptions and conditions,' such as operational prescriptions for Areas of Concern (AOC).

An **Area of Concern** is:

A defined geographic area associated with an identified value that may be affected by forest management activities. Identified values are known natural, cultural or First Nation or Métis resource attributes or uses of land, including all lakes and streams, which must be considered in forest management planning.¹⁶⁴

A **value**, according is defined as:

A term used to describe known natural, cultural or First Nation or Métis resource attribute or use of land, including all lakes and streams, which must be considered in forest management planning.¹⁶⁵

The public and Indigenous communities can identify AOCs so that values can be potentially accommodated. Values may be identifiable as a 'point' (ie. a raptor nest or bat hibernaculum) or a 'polygon' (ie. a stand within the forest, or a stream). The type of values that could be identified are also far ranging and could include tourism, heritage, recreational, visual aesthetics, ecological features (ie. old growth forests), Indigenous and Metis values. AOCs are marked on an FMP's operational planning maps unless the disclosure of the value would be detrimental to its protection (i.e. disclosure of a location of endangered turtles or a sacred site).

The aim of an operational prescription for an AOC is to prevent, minimize, or mitigate adverse effects of forestry operations on the value(s) identified within the AOC.¹⁶⁶ AOCs may include reserves of land where there are prohibitions on operations and documentation regarding AOC's and accompanying operational prescriptions and conditions are to be set out in the FMP. The operational prescription for the AOC is to be implemented in the actual location of the value.

It should be noted, however, that AOCs are generally small in nature, such as a 100m buffer around the nest or den of a species of concern, and are only applied to known values. For example, there is no proactive duty within the law for an area to be searched for archaeological sites or wolverine dens before it is logged. The MRNF will

only have an AOC applied if they are marked on a map in advance, or if they happen to be found in the course of forestry operations. As such, AOCs are not an effective tool for protecting areas at the landscape or ecosystem level, and cannot be relied on to protect point values that are not previously documented.

If new values arise during the 10-year span of the FMP and operational prescriptions already exist, there is the potential to request an amendment to the plan. Requests can be made by any person, in written to their MNR district manager. The amendment request must contain:

- 1) a brief description of the need for, and nature of, the proposed amendment;
- 2) the rationale for the proposed amendment and a discussion of its significance; and
- 3) if new operations are proposed:
 - a) a brief description of the proposed operations, and a description of the previously approved operations in the FMP or contingency plan that will be changed by the proposed amendment; and
 - b) an outline of the applicable planning requirements for the proposed operations, including any public consultation and First Nation and Métis community involvement and consultation, based on the planning requirements for similar operations in a FMP.¹⁶⁷

The amendment request is then considered by the MNR district manager and the local citizens' committee for the designated forest management unit.¹⁶⁸

Comment Opportunities

4. Amendments to Crown Land Use Designations

Crown land use designations in Ontario, with the exception of the Far North, are documented in the *Crown Land Use Policy Atlas*.¹⁶⁹ Crown land planning is conducted pursuant to the *Public Lands Act*. Crown land planning assigns designations to specific areas of land and establishes permitted uses.¹⁷⁰

As reviewed in more detail above in the [Introduction](#) – *Public Lands Act* section, there are six primary Crown land use designations:

- Recommended Provincial Park
- Recommended Conservation Reserve
- Forest Reserve

- Provincial Wildlife Area
- Enhanced Management Area (five categories)
- General Use Area



Image 5. Crown Land Use Planning Areas

Table 2 above also reviewed each of the land use designations and permitted activities. In summary, recall that the ‘Recommended Provincial Park’ and ‘Recommended Conservation Reserve’ designations generally prohibit extractive industries like mining and forestry; Forest Reserves while also restrictive, are a historic land designation no longer in use; Enhanced Management Areas do not have prescribed permitted uses but are often accompanied by policies set out in fish and wildlife regulations (ie. hunting and fishing); and General Use Areas are the most expansive land use type in the province – where all kinds of industry, including logging, mining, damming, nuclear waste storage, etc. are permitted.

For most of Ontario outside of the Far North and Southern Ontario (known as the Area of Undertaking, see **Image 6** below), the province completed a land use planning process called Lands For Life from 1997 - 1999. This led to a modest increase in the protected area network in Ontario with a goal of reaching 12% of the land base, while cementing

the designation of other 88% of the Area of Undertaking as General Use and open to industry.

While conventional conservation NGOs, industry, and municipalities were extensively involved, most First Nations were largely overlooked. **Ontario continues to use the land use designations made during this process and has not shown a political interest in entertaining changes to these designations. This is a currently a major barrier to Crown recognition of IPCAs in this part of Ontario.**

In the Far North part of Ontario, the *Far North Act* provides a mechanism for First Nations to engage in a land use planning process with Ontario, where both parties must agree on land use designations and where new protected areas can be identified. This provides more flexibility in setting land use designations and in defining First Nation priority areas as protected from industry. There is also a mechanism for First Nations to request a withdrawal of unencumbered lands within large planning areas from mining activity during land use planning processes. While some First Nations have made use of the *Far North Act*, many have pointed out that it was imposed on First Nations by the Crown, does not recognize First Nations jurisdiction, and the Minister retains final discretion.



Image 6. Map of 'Area of the Undertaking' setting out where forestry practices can occur in Ontario (Source: [online](#))

Requesting a Change to Land Use Designation

Within the Crown land use planning area (see **Image 5** above), members of the public or an Indigenous nation can trigger an amendment to area-specific land use designations. However, as noted above, securing a change in land use designation is very difficult due to a current lack of political will. That said, requests for a land use designation change can be made in writing to the appropriate MNRF office and must include:

- a brief description of the proposed amendment, including a location with map;
- any partners in the amendment proposal;
- the rationale for the amendment; and
- a discussion of the amendment's significance and implications.¹⁷¹

The amendment request is then subject to an initial screening considering whether the proposal is consistent with broader government policy, and if the issues raised fall within the scope of Crown land use planning area are urgent and have a high degree of public interest.¹⁷²

In setting out the policy reasons favouring a change, for instance to a Recommended Protected Park or Recommended Conservation Reserve for the purposes of establishing an IPCA, see this toolkit's [resource](#) in Part 4 which illustrates a number of commitments and comments made by the provincial government in support of protecting lands and the environment. These can be helpful in framing your complaint and the rationale for government intervention.

If a decision is made to proceed with the request, the requester will be notified and then, the MNRF becomes the “custodian” of the amendment and responsible for the final decision. In making a decision on the proposed land use amendments, the government is required to consult with Indigenous communities.¹⁷³

According to the government's Crown land use planning guide, a need for interim protection may arise especially where there are proposals for Recommended Provincial Park or Recommended Conservation Reserve. Accordingly, these land use designations may be relied upon to temporarily prohibit activities that could limit future land uses (ie. forestry, road construction, aggregate extraction), while the land use amendment request is undergoing review.¹⁷⁴

5. Land Cautions

A caution is a legal mechanism that allows parties' interest in land to register an encumbrance on title. The registration of a caution on title can serve two overarching purposes: cautions provide of one's interest in a property and can prevent the registered owner from dealing with the property subject to the caution for a limited period. A caution is a helpful short-term mechanism to give notice of an interest in a property, while harmful for a seller because the property cannot be conveyed unless the caution is removed.

There are two means of seeking a caution under the *Land Titles Act*; first, under section 71 which is in the context of an agreement of purchase sale and second, section 128 wherein any party with a 'proprietary interest' can register a caution on title. As section 128 cautions are open to anyone with a 'proprietary interest' and not limited to agreements of purchase and sale, they are more relevant in the circumstance and thus are the only type of land caution reviewed in this section.

The *Land Titles Act* provides parties with proprietary interests the ability to register cautions on property.¹⁷⁵ However, such cautions are time limited, cannot be renewed, and will cease to have effect 60 days after the date of registration. Some examples of proprietary interests recognizes in jurisprudence include:

- The interest of a beneficiary under a trust agreement where the beneficiary claims to be entitled to and to have called for a transfer of lands or charge to him/her from the trustee;
- The interest of an optionee under an option to purchase when the optionee has exercised the option;
- An interest that may be protected by way of a caution pursuant to any Act of Ontario or Canada.¹⁷⁶

An application to register a caution accompanied by an affidavit in support of the application are provided to the local Land Registrar office and if approved, are uploaded to the Land Registry.¹⁷⁷ The validity of the registration of the caution depends on whether the cautioner has an interest in the registered land.¹⁷⁸

Historically, land cautions did not naturally expire after a period of 60 days and in the case study highlighted below, they were utilized by Temagami First Nation to prevent logging, mining and the sale of land. Given that cautions now cease to have effect within 60 days, the courts have remarked that they are “nothing more than notice to

the public of a claim to an interest in land. A caution provides an opportunity for the parties to deal with their differences.”¹⁷⁹

Case Study: Temagami First Nation Land Caution



A historical land caution from 1973 was utilized by Temagami First Nation as a way of asserting a claim to 4,000 square miles of land that they claimed as "n'Daki Menan", their traditional homeland.[180] Temagami First Nation registered land cautions against tracts of Crown land in their traditional land use area.

Unlike today's land cautions which are time-limited to 60 days, the land caution in this case remained in place throughout much of the 1970s and 1980s and it effectively prevented all types of development on Crown land, such as mining, logging, and the sale of land. This was an important part of protecting Temagami's famous old growth red and white pine forests and First Nation's sacred sites.

In 1995, the land caution was lifted when the Supreme Court of Canada found Temagami First Nation's right to the land had been extinguished by the Robinson-Huron Treaty of 1850.[181]

However, the court ordered Canada to enter into land claims negotiations with the Temagami First Nation and a large piece of land around Lake Temagami was set aside as potential future settlement lands which have largely had interim protection from industry and sale. The land claim has yet to be settled.

6. Certificate of Pending Litigation

A certificate of pending litigation (“CPL”) is another method to protect unregistered interests in land. Section 103(1) of the *Courts of Justice Act* entitles anyone who has commenced a proceeding, where an interest in land is in question, to obtain a CPL and have it registered against the title.

While CPL’s do not create an interest in land, they serve as notice to non-parties of the claim asserted and to developers, may indicate a riskier environment for investment. Courts have held the effects of a CPL can include:

- As an injunction, preventing the owner from exercising ‘incidents of ownership,’ as prospective purchasers or lessees will not undertake to assess the merits of a pending lawsuit or predict on the basis of incomplete information how a Court at some future date is likely to assess the plaintiff’s claim on the basis of evidence then available.
- As a grant to the person filing the certificate, an exclusive option to acquire the land as they alone need not be concerned with their own claim.
- A kind of preventative execution, ensuring that the owner continues to own the land so that it is available to satisfy any judgment in an action.¹⁸²

There is a two-step test to obtain a CPL. The first step requires there be sufficient evidence to establish a reasonable claim to an interest in the land, that could succeed at trial. The threshold for demonstrating a triable issue is low. The second prong of the test requires consideration of the equities between the parties, and the appropriateness of granting the order.¹⁸³

Interests in land have been found in situations including where there was an:

- Oral acceptance of a signed written offer to purchase¹⁸⁴
- Alleged breach of fiduciary duty giving rise to equitable interest in land; entirely possible that order for restitution would be granted at trial¹⁸⁵
- Action to set aside a fraudulent conveyance.¹⁸⁶

The court has broad discretion to discharge a CPL including any ground ‘considered just.’¹⁸⁷ On a motion to discharge a CPL, the onus is on the moving party to demonstrate there was no triable issue (ie. no reasonable claim to an interest in the land claimed). Equitable factors the court has considered in discharging a CPL include whether or not

the land is unique, bearing in mind that in a sense any parcel of land has some special value to the owner and the intent of the parties in acquiring the land.¹⁸⁸

7. Interim Measures based on Indigenous Right to Self-Determination

Currently, there are no IPCAs in Ontario recognized by the provincial government. However, as the IPCA case studies in the introductory [Protected Areas](#) section above highlights, many First Nations in Ontario have declared – whether through declarations or moratorium statements – that their territory is protected pursuant to their inherent law, and industrial activities, like forestry and mining are prohibited.

Thus, in reviewing the range of Crown-law based interim measures which can be considered, First Nations can and have also use their inherent right to self governance to:

- issue moratoriums or declarations protecting lands and water
- pass a Band Council Resolution upholding these statements
- issue eviction notices

In many instances these efforts have been effective, when backed up by legal, grassroots, and social media action by the First Nation. These efforts are also tangible ways Indigenous nations can demonstrate to the Crown, their community's support for the assertion of an IPCA.

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- ¹⁰⁹ *Mining Act*, RSO 1990, c M 14, s 35 [*Mining Act*]; *Public Lands Act*, RSO 1990, c P 43 [*Public Lands Act*]
- ¹¹⁰ Government of Ontario, MNDM POLICY: *Sites of Aboriginal Cultural Significance-Withdrawals and Surface Rights Restrictions*, p 2 [Aboriginal Culture Site Policy]
- ¹¹¹ *Mining Act*, s 35
- ¹¹² Including: *O Reg 45/11 General* and the *Sites of Aboriginal Cultural Significance – Withdrawals and Surface Rights Restrictions* policy.
- ¹¹³ *Ibid*, s 35(3)
- ¹¹⁴ 35(4.1) and (4.2)
- ¹¹⁵ http://www.geologyontario.mndm.gov.on.ca/mines/lands/withreop/default_e.html
- ¹¹⁶ *Mining Act*, *supra* note 109, s 35(2)(a)
- ¹¹⁷ *O Reg 45/11: GENERAL* s9(10), s 9.10
- ¹¹⁸ *O Reg 45/11 General*, s 9.10
- ¹¹⁹ Aboriginal Culture Site Policy, *supra* note 110, at II.
- ¹²⁰ *Ibid*, p 8
- ¹²¹ Joan Kuyek, *Unearthing injustice: how to protect your community from the mining industry* (2019) Toronto: Between the Lines, p 17
- ¹²² *Mining Act*, *supra* note 109, s 51(1)
- ¹²³ *Ibid*, s 35(3)
- ¹²⁴ *Ibid*
- ¹²⁵ Aboriginal Culture Site Policy, *supra* note 110, p 8
- ¹²⁶ *Ibid*, p 4
- ¹²⁷ *Ibid*, p 9
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- ¹²⁹ *Canada Chrome*, *supra* note , para 60
- ¹³⁰ *Ibid*, paras 49, 94
- ¹³¹ *Mining Act*, *supra* note 109, s 1
- ¹³² Government of Ontario, MNDM, *Land Notices: Northern Lake Superior Region, Notice of Caution* (16 Dec 2020)
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- ¹³⁵ *Ibid*, p 1
- ¹³⁶ Christie, Gordon, *Developing Case Law: The Future of Consultation and Accommodation*, University of British Columbia Law Review 39, March: 139-184 (2006)
- ¹³⁷ No Means No, *supra* note 134, at 1
- ¹³⁸ *Ibid*
- ¹³⁹ *Ibid*
- ¹⁴⁰ Scott Kerwin, *Analysis of Platinex Inc. v. Kitchenuhmaykoosib Inninuwug First Nation case*, Miningwatch Canada, (2006) [Kerwin]
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- ¹⁴³ Miningwatch Canada, *Ontario Attacks Aboriginal and Treaty Rights in Kitchenuhmaykoosib Inninuwug (KI) Litigation* (Jan 2007)
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- ¹⁴⁵ *Platinex Inc. v. Kitchenuhmaykoosib Inninuwug First Nation*, 2006 CarswellOnt 4758, [2006] OJ No 3140 [Platinex v KI]; see also *No Means No*, *supra* note 134, p 2
- ¹⁴⁶ *Platinex v KI*, *supra* note 145, at para 79; see also Kerwin, *supra* note 140.
- ¹⁴⁷ *Ibid*, para 138.
- ¹⁴⁸ *Platinex Inc. v. Kitchenuhmaykoosib Inninuwug First Nation*, 2007 CarswellOnt 3553, [2007] OJ No 2214 [Platinex v KI 2007].
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- ¹⁷³ *Ibid*
- ¹⁷⁴ *Ibid*, s 10.0
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https://files.ontario.ca/application_to_register_caution_under_subsections_128_1_and_2_of_the_land_titles_act.pdf
- ¹⁷⁶ Service Ontario, *"2000-2 Cautions under Section 71 and 128 Land Titles Act"* (2000)
- ¹⁷⁷ For application, see <https://www.ontario.ca/land-registration/application-register-caution-under-subsections-128-1-and-2-land-titles-act>
- ¹⁷⁸ *Pereira v. Quatsch*, 2013 ONSC 1158, para 22
- ¹⁷⁹ *Dong v. Liu*, 2008 CanLII 8609 (ON SC), para 66
- ¹⁸⁰ Ministry of Aboriginal Affairs, *"About the Temagami Land Claim"* Archive (2012)
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- ¹⁸³ *Lo Faso v. Ferracuti*, [2012] OJ No 1460, 18 RPR (5th) 250 (Ont SCJ)
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PART 3 - LASTING SOLUTIONS

Achieving Long Term Protection and Crown Legal Recognition

"The promise of IPCAs will ring hollow unless Canadians take steps to correct past wrongs and manage existing protected and conserved areas differently moving forward."

-Indigenous Circle of Experts in their report "We Rise Together"

1. Current Legal Context for Protected Areas

Indigenous peoples across Canada were forcefully removed from their lands, which settlers used and designated in a myriad of ways including designating lands as national, provincial and territory parks and protected areas. [189]

Traditional conservation models have failed to recognize Indigenous nations' intimate relationship with place and were created without their consent - to the extent that Indigenous people were 'cleared from the land' for tourist or recreational purposes.[190]

Historical protected areas have served to foster disconnection between Indigenous peoples and their territories and it would be unjust to hold out IPCAs as an opportunity for conservation, without first recognizing these historic wrongs and their ongoing impact.

At the same time, Crown-imposed industry on First Nations' lands have had, and often continue to have, devastating impacts on Indigenous peoples' health, livelihood, and way of life. First Nations continue to be 'cleared from the land' to make way for industrial logging, mining, and damming.

For government and non-governmental organizations - who may be partners or collaborators in IPCA projects - efforts to create, develop, and manage new protected areas as IPCAs must be trauma-informed. This means efforts to further Indigenous-led conservation cannot be viewed absent recognition of the damaging history of imposed, Crown land uses and park establishment.

We must also recognize that Indigenous worldviews provide distinct understandings of conservation. From a Canadian legal perspective, conservation is often achieved through legislation that restricts access and prescribes allowable uses. As reviewed above (see [Part 1 - IPCAs and Protected Areas in Ontario](#)), protected areas legislation usually includes within its purposes, the protection of tourism or recreational opportunities – not just ecological integrity. For Indigenous communities, conservation is often framed as being a relationship with the lands and waters, and the maintenance of those relationships for generations.¹⁹¹

In advocating for the establishment of IPCAs, Indigenous communities face an additional and significant barrier, as of the 55 different pieces of legislation for creating protecting areas across Canada, none formally recognize nor set out the legal mechanism for establishing an IPCA.¹⁹² As this toolkit explored in [Part 1 - Towards Protection: Immediate Actions](#), the legislative means for establishing protected areas assumes traditional models of conservation, which are Crown-led and Crown-governed. This legislative lacuna has served as a bar to establishing IPCAs, as evident in Ontario, where none of the 520 provincial parks and conservation reserves are recognized as IPCAs. There is a continued lack of reconciliation of Indigenous and Crown laws, demonstrated by the fact that Crown-based legal structures remain the dominant methods for lands protection, and IPCAs created under Indigenous laws continue to be violated by incompatible Crown authorized land uses with no framework to provide a path for Indigenous and Crown parties to work together to harmonize Indigenous and Crown laws on land use and protected areas.

To move ahead, governments must acknowledge that Indigenous and Crown legal orders can exist concurrently. Bringing together of Indigenous and Crown legal traditions must also adopt a two-eyed seeing approach to conservation, meaning the establishment and management of protected areas must be based on both Indigenous and Western knowledge systems. This would not only redefine how we establish parks but provide a model for Indigenous-Crown relations.

In making these statements, this toolkit also endorses the recommendations set out in the Indigenous Circle of Experts report, notably Recommendation 1, which ‘calls on federal, provincial and territorial governments to endorse the concept of IPCAs, as set out in the *We Rise Together* report.’¹⁹³

2. Governance Frameworks for Establishing IPCAs

As discussed in [Part 1](#) which provided an introduction to the legal authorities for IPCAs, this toolkit explores the range of legal options which can be used to establish an IPCA, falling along a “jurisdictional spectrum.”¹⁹⁴ As Innes and Lloyd-Smith (2021) describe, this spectrum is reflective of several significant characteristics that distinguish the different types of IPCAs:

1. The degree to which Indigenous and Crown jurisdictions and authorities are expressly recognized;
2. How Indigenous and Crown laws define and structure the goals, purposes and objectives of the IPCA; and
3. How Indigenous and Crown laws are operationalized in management decisions and actions¹⁹⁵

In this chapter, we review methods along this jurisdictional spectrum, starting with those which are based on the inherent jurisdiction and laws of Indigenous communities (see [3\(1\) Indigenous Authorities](#)), and then move to consider joint designation frameworks wherein the protected area is designated under both Indigenous and Crown laws (see [3\(2\) Shared Indigenous-Crown Governance](#)), and conclude with Crown-based initiatives, wherein the Indigenous community serves as a partner or co-manager (see [3\(3\) Crown Authority](#)).

In our review of shared Indigenous-Crown governance models, we highlight the examples where IPCAs have also been established with provincial government involvement in an attempt at providing a path forward in the context of Ontario.

(a) Indigenous Authorities

Within an Indigenous Authority model, Indigenous governments assert exclusive authority to make decisions regarding the IPCA and the management of the lands and waters (e.g., Treaty lands, reserves, Aboriginal title, etc.) for protection or conservation purposes. IPCAs established on the basis of Indigenous authorities are those which are based on the inherent jurisdiction and laws of Indigenous peoples. These protected areas are also assertions of sovereignty of the Indigenous communities’ law over their territory and unceded lands.

However, in exercising this exclusive authority, the lands may be subject to the laws of other jurisdictions, such as a provincial government that may not recognize the protected area status and instead, consider the lands to be available for mineral extraction, forestry activities, or other land uses. Thus, the main limitation to this type of IPCA is that the Indigenous communities' protected lands designation may not be respected nor recognized by the Crown (either provincially, federally or both). This means extractive industries may still continue without regard to Indigenous laws and the provincial government may continue to renew forest management plans and harvesting activities, and grant exploration licenses and mining permits – subject only to the duty to consult, as required by s 35 of the *Constitution Act, 1982*.

IPCA's established under exclusive Indigenous authorities have often been used where there is no willing Crown partner, and have often been followed, sometimes many years later, by shared Indigenous-Crown governance models. IPCA's under exclusive Indigenous authorities have often achieved effective protection, or interim protection, in the face of hostile Crown governments through the strategic use of litigation, negotiation, grassroots organizing, alliance building, media, social movements, blockades, and boycotts.

Asubpeeschoseewagnog Anishinabek's Indigenous Sovereignty and Protected Area

In 2007, The Asubpeeschoseewagnog Anishinabek's (ANA or Grassy Narrows First Nation) declared a moratorium on industry occurring without their consent in their Territory. In 2015, ANA people in a community referendum voted overwhelmingly against logging in ANA territory. In 2018, Grassy Narrows declared their territory to be an Indigenous Sovereignty and Protected Area (ISPA).

Grassy Narrows First Nation is the home of one of Canada's most infamous environmental health crises. Many people in this fishing community are still suffering from the toxic effects arising from the discharge of 9,000 kg of mercury from a paper mill into the Wabigoon River in the 1960s. Forty-five years after the dumping was curtailed, mercury levels in the river remain in the highest risk category and in some areas close to Grassy Narrows the mercury levels in the river sediment are still rising. Nothing has ever been done to clean up the river even though a joint Ontario-Canada scientific panel recommended specific remediation measures in 1983.

In 2002, grassroots Grassy Narrows people established a blockade of a major logging road on their Territory which stands to this day. In 2008, under pressure from litigation, boycotts, blockades, and negotiations, AbitibiBowater, the world's largest newsprint company withdrew from Grassy Narrows Territory and surrendered their license to log within the Whiskey Jack Forest Management Unit (FMU). Since then, there has been no industrial logging on Grassy Narrows Territory. This is the only Territory within Ontario's Area of Undertaking where large scale industrial logging is currently halted.

While ANA has succeeded in halting all logging (which could have resulted in more mercury being released into the environment) in the 6,300 square kilometer ISPA since 2008 and for the duration of the Forest Management Plan currently in effect until 2024, this success is not yet secure in perpetuity.

While Grassy Narrows has succeeded in preventing most on the ground mining exploration on their Territory, a recent staking boom of roughly 4,000 claims threatens an expansion of other industrial activity in ANA's Territory.

Under the direction of Chief and Council, ANA's Land Protection Team is taking steps towards Crown recognition of an IPCA consistent with ANA's ISPA. The ANA Land Declaration (enacted in October 2018) declares ANA Territory to be an Indigenous Sovereignty and Protected Area (ISPA). The Land Declaration is ANA's Anishinaabe law which sets out the longstanding vision and will of ANA people to protect ANA Territory. **ANA is calling on the Crown to harmonize Crown law with ANA law with respect to land uses and protection within the ANA ISPA.**



**A SUBPEESCHOSEEWAGONG
ANISHINABEK AAKI DECLARATION**
[GRASSY NARROWS FIRST NATION LAND DECLARATION]

We **love our land** and our way of life.

Our land and our way of life are **under attack**.

We **declare our Anishinabe Territory an Indigenous Sovereignty and Protected Area**. We will make our own decisions and there will be no industrial logging on our Anishinabe Territory.

We will **enforce our Declaration** under our own authority.

We **call on all nations to stand with us** in asserting and enforcing our sovereignty and this Declaration on our Anishinabe Territory.

WWW.FREEGRASSY.NET

(b) Shared Indigenous-Crown Governance

Within a shared Indigenous-Crown governance model, the emphasis is on Indigenous and Crown governments (including federal, provincial, territorial or municipal) working in partnership, cooperation and agreement to recognize, establish and/or manage a protected area.

Many IPCAs have governance models that require shared decision-making between the Indigenous government and a Crown government partner. The specific mechanisms for the planning, management, operation, monitoring and evaluation of an IPCA are typically set out in a contractual agreement between the Indigenous and Crown governments which expressly recognizes the jurisdictions and authorities of each partner. Significantly, they also mandate each partner to seek consensus with the other governments on policies, activities and developments in the IPCA.

For example, in Gwaii Haanas Haida Heritage Site, National Park Reserve, and National Marine Conservation Area Reserve, the Haida Nation and the Crown each appoint an equal number of members to an Archipelago Management Board (“AMB”). The Archipelago Management Board considers and seeks consensus on all matters related to park management, including the management of Haida traditional use activities, spiritual and cultural sites, visitor use, permitting commercial operations, undertaking annual maintenance work, and hiring and staffing decisions. **As is unfortunately the case, this arrangement was arrived at following decades of conflict during which the Haida unilaterally declared Indigenous Protected Areas over their lands and waters and engaged in blockades, boycotts and litigation to protect them.**

Consensus between the Parties is the most critical consideration in this model. Recalling the three key principles of IPCAs, Indigenous decision-makers must have equal authority in management, planning and decisions.¹⁹⁶ For shared decision-making to be meaningful, it must go well beyond “consultation” to incorporating and internalizing the often-divergent laws, knowledge, values and perspectives of both the Crown and the Indigenous governments.

From a legal perspective, each decision-maker (ie. the Minister or the Indigenous government) maintains their own authority to act in accordance with their own jurisdiction. As a Minister cannot fetter their discretion, it is critical that each authority agree to act in accordance with the agreement, which requires seeking consensus. For instance, as is reviewed in more detail in **Table 3** below, the text of an agreement could state *“Nothing in this Agreement limits the lawful jurisdiction, authority or obligations of*

either Party, except to the extent of the requirement that all reasonable efforts must have been made to reach consensus through [the dispute resolution processes in each Agreement].”¹⁹⁷

As Innes and Lloyd-Smith discuss in *Indigenous Laws in the Context of Conservation*:

As a general and well-established principle of Canadian law, a Minister or other designated official exercising discretion under legislation is accountable to Parliament, and is not permitted to “fetter” or restrict their discretion by transferring decision making authority to another person. The courts in Canada have affirmed that the general prohibition on the fettering of discretion applies in the context of shared decision-making. In the *Moresby Explorer* cases decided by the Federal Court of Canada, it was held that the Minister could not fetter discretion exercised under the *Canada National Parks Act* under the Gwaii Haanas Agreement.¹⁹⁸ However, the court also upheld the Agreement, finding that the Agreement preserved the exercise of discretion by the Minister.¹⁹⁹

One of the challenges with the shared Indigenous-Crown governance model is that it requires significant First Nation leverage and/or a willing Crown partner that is open to changing existing Crown land use designations and entering into creative new agreements or passing new legislation.

IPCA Designation Pursuant to the *K'asho Got'ine Law* and the territorial *Protected Areas Act*

Ts'udé Niljné Tuyeta (Northwest Territories)

The Government of the Northwest Territories (GNWT) has been collaborating with the Yamoga Land Corporation, Fort Good Hope Métis Nation Local #54 Land Corporation and Fort Good Hope Dene Band to establish Ts'udé Niljné Tuyeta as a territorial protected area.

The Yamoga Land Corporation seeks to establish management of Ts'udé Niljné Tuyeta as an Indigenous protected area under its law, the *K'asho Got'ine Law*, and as a designated “protected area” under the territorial *Protected Areas Act*.^[200]

Ts'udé Niljné Tuyeta territorial protected area, once established under the *Protected Areas Act*, will be established and managed collaboratively by the *K'asho Got'ine* of Fort Good Hope (Yamoga Land Corporation, Fort Good Hope Métis Nation Local #54 Land Corporation and Fort Good Hope Dene Band) and the GNWT.

The process for managing Ts'udé Niljné Tuyeta territorial protected area is set out by way of an Establishment Agreement whose provisions require the establishment of a Management Board, and the development and approval of a Management Plan.^[201]

The text of the Establishment Agreement with the territorial government is [here](#).^[202]

IPCA Designation Pursuant to Haida *Stewardship Law*, the *Oceans Act* and *Canada National Parks Act*

Gwaii Haanas and SGaan Kinghlas-Bowie Seamount Marine Protected Area (British Columbia)

Since the 1980s, the Haida Nation has created Haida Heritage Site designations to protect key areas of both land and sea within Haida territory, pursuant to their exclusive Indigenous Authority under their Haida Stewardship Law . Following a long period of the Haida Nation's assertive defence of its exclusive Indigenous Authority IPCAs, including logging blockades of Weyerhaeuser logging company in 2005, the Haida Nation has partnered with the federal government and provincial government of British Columbia to concurrently protect some of these Heritage Sites, which comprise 2 parks, 5 ecological reserves and 11 conservancies as defined by the provincial *Parks Act*. [203]

Federally, the SGaan Kinghlas is protected by way of the Bowie Seamount Marine Protected Area (MPA) Regulations under the *Oceans Act* and Gwaii Haanas, pursuant to the *Canada's National Parks Act*.

A Memorandum of Understanding (MOU) was also entered in to, between the Haida Nation, as represented by the Council of the Haida Nation (CHN) and Canada, as represented by the Minister of Fisheries and Oceans, which confirms a relationship based on mutual respect and understanding and facilitates the cooperative planning and management of the marine protected area (MPA).

In 2018, the management plan setting out the strategic direction for the effective collaborative management and operation of Gwaii Haanas was also released.

View the founding documents at the links below:

- MPA regulation with the federal government, [here](#) [204]
- MPA management plan with the federal government, [here](#) [205]
- MOU between the Haida Nation and Canada, [here](#) [206]
- Canada National Parks Act regulation designating Gwaii Haanas, [here](#) [207]
- 1993 Gwaii Haanas Agreement, [here](#) [208]
- Gwaii Haanas Gina 'Waadluxan KilGuhlGa Land-Sea-People Management Plan with the federal government, [here](#) [209]

IPCA Designation Pursuant to the *Canada National Parks Act* and the territorial *Protected Areas Act*

Thaidene Nënë (Northwest Territories)

In 2020, establishment agreements between the Government of the Northwest Territories (GNWT), Parks Canada, and Łutsël K'é Dene First Nation were finalized to designate Thaidene Nënë as a jointly established IPCA: as a federal National Park Reserve and as a Territorial Park under territorial legislation.

Dene legal principles of equality and reciprocity are woven throughout the IPCA's founding agreements, which establish a decision-making body called Thaidene Nënë xá dá yáłtı ("those who speak for Thaidene Nënë").

All decisions of Thaidene Nënë xá dá yáłtı are made by consensus, meaning one party cannot act without the consent of the other.

Thaidene Nënë is governed by agreements between Łutsël K'é Dene First Nation and Parks Canada which designated the 14070 km² core of Thaidene Nene as a National Park Reserve under the *Canada National Parks Act*, the Government of the Northwest Territories has designated the abutting 9105 km² as a Territorial Protected Area under the territorial *Protected Areas Act*, and an additional 3120 km² as a Wildlife Conservation Area under the *Wildlife Act*. The entirety of Thaidene Nënë is designated by Łutsël K'é Dene First Nation as an Indigenous Protected Area.

The text of the Agreement with the territorial government is [here](#).^[210]

IPCA Designation Pursuant to Dehcho law and the *Canada Wildlife Act*

Edézhíe Protected Area (Northwest Territories)

The Edézhíe Protected Area is in the Dehcho region of the Northwest Territories. Edézhíe was designated a Dehcho Protected Area under Dehcho law in 2018 and later that same year, the Dehcho First Nations Grand Chief and the Government of Canada signed the Edézhíe Agreement. By signing the Edézhíe Agreement, these two parties agreed to establish Edézhíe together, and to work together permanently to protect Edézhíe.

Complementing the Dehcho IPCA designation, Edézhíe is a designated a National Wildlife Area (NWA) in 2020, under the federal authority of the *Wildlife Area Regulations* under the *Canada Wildlife Act* (CWA). NWAs are established by regulation pursuant to the CWA to protect and conserve wildlife and wildlife habitat.

Section 12 of the CWA permits the Governor in Council to may make regulations for the preservation, control and management of lands acquired by the Minister of the Environment and Climate Change Canada (ECCC) under the CWA.

While National Wildlife Areas can only be designated on lands owned by the federal government, where lands are not federally owned, ECCC “may enter into an agreement with the landowner to establish and cooperatively manage a wildlife area, which would not be designated under the Regulations.”[211]

The text of the Agreement with the federal government is [here](#).[212]

(c) Crown Authority

Within a Crown Authority governance model, the Crown (vested in either the federal or provincial government) retains final decision-making authority and Indigenous roles remain largely advisory. Commonly, this is reflected as a “partnership” or “co-management” agreement with a First Nation in managing an existing park. Within a co-management structure, the Crown authority (such as Parks Canada or Ontario Parks) retains final decision-making, while Indigenous governments exercise what is functionally an advisory role through co-operative management boards, but unlike the shared Indigenous-Crown model, do not have final decision-making authorities.

It is debatable whether these types of parks qualify as IPCAs as they do not necessarily align with the principle that the lands are Indigenous-led and governed. However, while such co-management agreements are a weaker alternative to other types of IPCAs, they could function as an interim protection measure which negotiations towards a joint Indigenous-Crown governance model are underway.

La Croix First Nation & Quetico Provincial Park



The Quetico Provincial Park Management Plan is an agreement between the Lac La Croix First Nation and Ontario Parks to manage Quetico Provincial Park.

Established in 1913, Quetico Provincial Park is one of Ontario's largest and oldest wilderness parks, covering 4758 square kilometers. This park is located on the traditional territory of Lac La Croix First Nation.

The Quetico Provincial Park Management Plan was approved in September, 1977, and was revised in 1992 to reflect and support a renewed relationship between the Lac La Croix First Nation. "An Agreement of Co-Existence negotiated between the government of Ontario and the Lac La Croix First Nation, frames this relationship."

According to the text of the agreement, "The Agreement of Co-existence established a framework for long-term employment targets, spiritual and cultural use of Quetico, management and interpretation of Anishinaabe resources, co-management of mechanized guiding activity, and year-round road access to the First Nation community."

Mississauga First Nation & Mississagi Delta Provincial Nature Reserve



The Mississagi Delta Provincial Park Management Plan exists between Ontario Parks and Mississauga First Nation, for the Mississagi Delta Provincial Nature Reserve (MDPNR). The MDPNR was established in 1985, encompasses 2,395 hectares and protects an extensive sand delta at the mouth of the Mississagi River, where the river enters the North Channel of Lake Huron. The Park Management Plan was approved in 1998.

According to the government of Ontario, “this park management planning process was initiated partially as a result of the signing of the Mississauga First Nation Northern Boundary Land Claim Agreement.” The Thompson Township also formed a partnership with the Mississauga First Nation outside the mandate of the park planning process to oversee development projects on lands adjacent to the park.

Pikangikum First Nation & Whitefeather Dedicated Protected Area

In 2012, Pikangikum First Nation and Ontario Parks entered into an agreement to co-manage the Whitefeather Dedicated Protected Area. The Whitefeather Forest is located in Northwestern Ontario within the ancestral lands of Pikangikum First Nation, and is centered on the headwaters of the Berens River Watershed.

According to the agreement, the partnership focuses on holistic and integrated management grounded in

consensus-based dialogue, and incorporates a shared vision of protection and care for the Whitefeather Forest Protected Area.

This protected area came out of a land use planning process between the First Nation and Ontario on Pikangikum's Territory which was previously north of the Area of Undertaking and off limits to logging. Through the land use planning process, some areas were identified for protection and others were identified to be opened up to industrial logging. These new land use designations were brought into force by the Government of Ontario.

Pays Plat First Nation & Slate Islands Provincial Park

The Slate Islands Provincial Park Management Plan is a provincial park with the potential of creating a co-management agreement between the province of Ontario and Pays Plat First Nation. Slate Islands Provincial Park was classified as a Natural Environment provincial park in 1985, and is located in Lake Superior within the Corporation of the Township of Terrace Bay, encompassing 6570 hectares of land and waters including the waters of Lake Superior.

Although no co-management agreement has been made yet with Pays Plat First Nation, its potential has been identified. According to Ontario Parks “the planning team identified the potential of a partnership based model for the management and operation of the Slate Islands Provincial Park with willing partners including Pays Plat First Nation, the Township of Terrace Bay and Parks Canada Agency.”

Wikwemikong's Point Grondine Park & Killarney Provincial Park



On April 11, 2016, Killarney Provincial Park signed a partnership agreement with Wikwemikong Indigenous Community's Point Grondine Park, a First Nation owned and operated recreational park near the Killarney provincial park boundary.

This partnership between the two parks is about exchanging knowledge about park management, creating training and job-shadowing opportunities, and according to Killarney Superintendent Jeremy Pawson, "...demonstrates sustainable resource development opportunities and resource sharing benefits for both provincial parks and Indigenous communities."

3. IPCA Establishment Agreements within a Shared Indigenous-Crown Model

There are a number of IPCAs in Canada which have been established using a [shared Indigenous-Crown governance](#) model. In understanding how a similar path forward could be relied upon in the province of Ontario - if they were to be a willing Crown partner - it is helpful to more closely review agreements which have been signed between Indigenous nations and the Crown in other areas of Canada (whether represented by a territorial or federal government) to establish an IPCA.

These precedent IPCA establishment agreements illuminate:

- the three key principles of IPCAs and how they were considered within the terms of the agreement, namely that the IPCA be (1) Indigenous-led, (2) represent a long-term commitment to conservation and (3) elevate Indigenous rights and responsibilities
- timelines which may come into play once an agreement is entered in to (ie. within a certain period of time, accompanying enforcement or management planning documents must be adopted)
- protocols for knowledge sharing and ownership
- accompanying actions which are conditions of the agreement (ie. land withdrawals or provincial/territorial/federal designations under existing protected areas laws)
- the role of Indigenous Guardians and their expertise in managing and overseeing lands and waters²¹³

Table 3 below provides sample language only. In practice, the terms and provisions included in an agreement will be context-specific and likely informed by many months if not years of earlier community engagement sessions (see [Part 1 - Towards Protection: Immediate Actions](#) for guidance), and negotiations with the Crown authority.

Table 3. Joint Agreement Establishing an IPCA – Sample Provisions

	Edézhíe²¹⁴	Ts’udé Niljné Tuyeta²¹⁵	Thaidene Nënë²¹⁶
Principles of IPCAs			
Indigenous-led	<p>Parties are jointly responsible for management and operation (section 4.2)</p> <p>Parties shall carry out respective obligations in the best interests of Edézhíe (section 4.1)</p>	<p>Parties intend to cooperate in planning, management, operation, monitoring and evaluation (section 6.1)</p> <p>Parties shall work together to share responsibilities and mutual objectives (section 6.3)</p>	<p>Parties intend to cooperate in planning, management, operation, monitoring and evaluation (section 3.1.1)</p> <p>Parties have shared responsibilities (section 3.2.1)</p>
Represent a long-term commitment to conservation	<p>All decisions shall be consistent with purposes to (1) conserve and protect ecological integrity of Edézhíe watershed; (2) conserve wildlife and wildlife habitat; (3) research, monitoring, education (section 3.2)</p>	<p>Maintaining Ts’udé Niljné Tuyeta as an intact ecological and cultural landscape will contribute to a better understanding of the climate change (Preamble E)</p> <p>Activities within Ts’udé Niljné Tuyeta that are likely to have a significant adverse effect on the ecological</p>	<p>Parties acknowledge importance of Denesqłine Way of Life and Łutsël K’e Denesqłine Knowledge and that Denesqłine Way of Life will be fostered and maintained (sections 3.3.1 and 3.3.2)</p> <p>Long-term ecological vision to be set out, in accordance with</p>

	Edézhíé ²¹⁴	Ts'udé Niljné Tuyeta ²¹⁵	Thaidene Nënë ²¹⁶
		integrity, Heritage Resources, or the K'asho Got'ine Way of Life shall be avoided (section 5.5)	set of Ecological Integrity and The Denesoline Way of Life objectives (section 4.6.2)
Elevate Indigenous rights and responsibilities <i>*Recall the ICE report recommended all management practices be in accordance with UNDRIP and the principle of Free, Prior and Informed Consent</i>	<p>Establishes guardians program (section 4.3)</p> <p>Management board established; 5 members from Dehcho First Nation, 1 ECCC, 1 impartial chair (section 5.2)</p> <p>Management board assists parties in development of management plan (section 7.0)</p>	<p>All decisions are to be consistent with: (a) respecting and protecting the land and waters; (b) sustaining the K'asho Got'ine Way of Life; and (c) contributing to reconciliation between the Parties (section 5.1)</p> <p>Management plan shall include roles and responsibilities of Guardians (section 8.12)</p> <p>Guardians to be staffed and operated by K'asho Got'ine (section 11.1)</p>	<p>Thaidene Nene to be majority of members on management board (4.3)</p> <p>Regional management process developed with federal inclusion (section 4.7)</p>
Other Considerations			
Other Designations	Minister shall take such legislative steps as necessary		Within 18 months, conservation area must be established

	Edézhíé ²¹⁴	Ts'udé Niljné Tuyeta ²¹⁵	Thaidene Nënë ²¹⁶
	to add Edézhíé to <i>Wildlife Area Regulations</i> (section 2.1)		under <i>Wildlife Act</i> (section 11.3)
Consensus Decision Making	<p>Management board shall make decisions by consensus (section 5.8)</p> <p>Management board is comprised of 5 members appointed by the Dehcho First Nations; 1 member from Environment Climate Change Canada and 1 impartial chair, selected by the parties (section 5.2)</p>	<p>Management board shall be comprised of 4 members appointed by K'asho Got'ine; 2 members from the provincial government; 1 impartial chair joint selected (section 7.1)</p> <p>Nothing in this Agreement limits the lawful jurisdiction, authority or obligations of either Party, except as expressly set out herein.</p> <p>All reasonable efforts must be made to reach consensus (section 2.3)</p>	<p>A quorum of the Thaidē ne Nene xá dá yá ftí [management body] will be a majority of the members (section 4.3.2)</p> <p>Nothing in this Agreement limits the lawful jurisdiction, authority or obligations of either Party, except as expressly set out herein. All reasonable efforts must have been made to reach consensus (section 2.1.3)</p> <p>The Thaidēne Nene xá dá yáftí will make all decisions by consensus (section 4.2.1)</p>

	Edézhíé ²¹⁴	Ts'udé Niljné Tuyeta ²¹⁵	Thaidene Nënë ²¹⁶
Dispute Resolution	<p>Parties shall meet within 30 days upon notice of a dispute (or at a time mutually agreed) to seek resolution (section 8.3)</p> <p>If the dispute is not resolved, the Parties may agree to refer the matter to mediation; should that be successful it may be referred to arbitration (section 8.3)</p> <p>In the event of an issue arising, either party may commence an Issue Assessment; a formal response must be provided (section 8.4)</p> <p>If an issue is unable to be resolved, the issue may be forwarded to the working group of the Management</p>	<p>In the event a dispute arises, notice must be provided to the other party and a meeting scheduled within 30 days or at a time mutually agreed upon (section 19.6)</p> <p>If the dispute is not resolved 30 days from the first meeting, it may be referred to a mutually-acceptable mediator; if mediation is unsuccessful, either party may refer the dispute to an arbitrator (section 19.6)</p> <p>Any party may also initiate an issues resolution by way of an Issues Assessment process to bring forward proposed options for resolve the issue (section 19.7)</p>	<p>In the event a dispute arises, notice must be provided to the other party and a meeting scheduled within 30 days or at a time mutually agreed upon (section 5.3.1)</p> <p>If the dispute is not resolved 30 days from the first meeting, it may be referred to an agreed upon mediator (section 5.3.2)</p> <p>If mediation is unsuccessful, the mediator will provide a report to the parties and the matter may be referred to an arbitrator (section 5.3.2)</p> <p>Any party may also initiate an issues resolution by way of an Issues Assessment process to bring forward proposed options for resolve</p>

	Edézhíé²¹⁴	Ts'udé Niljné Tuyeta²¹⁵	Thaidene Nënë²¹⁶
	<p>Board, commission third party studies or an agreeable dispute resolution process (section 8.4)</p> <p>A formal report of the Issue shall be provided to both parties (section 8.4(d))</p> <p>In the event of final disagreement, the matter may be referred to the elected leadership and the Minister, asking that they reach an agreement in good faith (section 8.4(e))</p>	<p>If an issue is unable to be resolved, the issue may be forwarded to the working group of the Management Board, commission third party studies or an agreeable dispute resolution process (section 19.7)</p> <p>A formal report of the Issue shall be provided to both parties (section 19.7(g))</p> <p>In the event of final disagreement, the matter may be referred to the elected leadership and the Minister, asking that they reach an agreement in good faith (section 19.7(j))</p>	<p>the issue (section 5.4.1)</p> <p>If an issue is unable to be resolved, the issue may be forwarded to the working group of the Management Board or the parties may commission third party studies (section 5.4.2)</p> <p>A formal report of the Issue shall be provided to both parties (section 5.4.2)</p> <p>In the event of final disagreement, the matter may be referred to the elected leadership and the Minister, asking that they reach an agreement in good faith (section 5.4.2(g))</p>
Knowledge Sharing		<p>The Parties shall establish conditions for research, documentation, use, maintenance, and</p>	<p>All knowledge shared with the government remains the sole property of Łutsël</p>

	Edézhhie²¹⁴	Ts'udé Niljné Tuyeta²¹⁵	Thaidene Nënë²¹⁶
		<p>storage of Heritage Resources (section 13.4)</p> <p>The K'asho Got'ine shall establish conditions for the documentation, use, maintenance, protection, storage, duplication, dissemination and transfer of knowledge (section 14.1)</p>	K'e Dene First Nation (section 9.3.2)
Land Withdrawals	Shall work together prior to establishment date to secure permanent withdrawal of all rights that have not otherwise been granted to third parties (section 2.4)		
Enforcement	After signing of agreement, parties shall develop an enforcement protocol (section 4.5)	Parties to jointly develop an enforcement response protocol within 12 months of effective date (section 18.1)	Parties to jointly develop an enforcement response protocol within 12 months of effective date (section 9.2.1)

	Edézhíe ²¹⁴	Ts'udé Niljné Tuyeta ²¹⁵	Thaidene Nënë ²¹⁶
Funding <i>*Recall recommendation 26 of the ICE report which recommended government and conservation partners provide multi-year sustained funding</i>	<p>Funding to be provided to Dehcho to be set out in separate agreement (section 10.1)</p> <p>Endowment fund to be established to support Guardians program, Edézhíe staff and functions, capital infrastructure (section 10.12)</p> <p>Canada, subject to Treasury Board approval, shall match 3rd party contributions to Fund up to max of 10,000,000 within 5 years of effective date (section 1.0.15)</p>	<p>NWT to provide funding for management and operations (section 12.1)</p>	<p>NWT to provide funding (section 4.5.1)</p>
Timelines	<p>Management Plan to be approved within <u>5 years</u> of effective date (section 7.2)</p> <p>First management plan to undergo</p>	<p>Initial management plan to be created within <u>5 years</u> of effective date (section 8.1)</p> <p>Agreement to be reviewed <u>4 years</u></p>	<p>Management plan to be developed and approved within <u>5 years</u> of effective date (section 4.6.1)</p> <p>Agreement to be reviewed <u>4 years</u></p>

Edézhíe ²¹⁴	Ts'udé Niljné Tuyeta ²¹⁵	Thaidene Nënë ²¹⁶
	<p>review in <u>5 years</u>, then at <u>10 year</u> intervals (section 7.6)</p>	<p>after effective date and then at 5 year intervals (section 6.2.1)</p>
	<p>Parties to jointly develop an enforcement response protocol within <u>12 months</u> of effective date (section 18.1)</p>	<p>Implementation plan to identify individuals responsible for carrying out activities, identifying resources needed and setting how activities will be carried out to be made within <u>6 months</u> of effective date (section 9.1.1)</p>
	<p>Review of Management Plan to be performed every <u>5 years</u> (section 8.11)</p>	<p>Enforcement response to be developed within <u>12 months</u> of effective date (section 9.2.1)</p>
		<p>Within <u>18 months</u>, conservation area must be established under <i>Wildlife Act</i> (section 11.3)</p>

4. Pathways to Achieving an IPCA in Ontario

This toolkit strives to provide the legal options and mechanisms which could facilitate the establishment of an IPCA in Ontario, if there were a willing Crown partner. Based on the precedents, literature and legal commentary which has informed this toolkit, the following pathway could be considered for establishing an IPCA in Ontario based on a shared Indigenous-Crown governance model:

- **Indigenous community proposes to establish an IPCA:** while any level of government or a non-governmental organization could in theory propose an area of land be designated as an IPCA, it is critical that the proposal originate from an Indigenous community, in keeping with the fundamental principle that IPCAs be Indigenous-led and governed.
- **As an optional and interim measure, request a change to land use designation:** Indigenous communities can trigger an amendment to area-specific land use designations, requesting a land use designation change to a “Recommended Provincial Park” (for more information on making this request, visit [Part 2 - Amendments to Crown Land Use Designations](#)). As changes to land use designations can take a significant amount of time, an Indigenous nation would likely need to explore all interim measures, such as a withdrawal of unencumbered lands from mining exploration activity, in tandem.
- **Indigenous governing body and federal and/or provincial governments to enter into agreement to establish an IPCA:** as reviewed in precedent agreements (see [Part 3 - Shared Indigenous-Crown Governance](#)), it can be made a condition of the IPCA establishment agreement that:
 - (1) the Minister take such legislative steps as necessary to amend the regulations of the *Provincial Parks and Conservation Reserves Act*, listing the IPCA as a provincial park; and
 - (2) the Minister, prior to the establishment date of the IPCA, secure the permanent withdrawal of rights that have not yet been granted to third parties and resolve existing third-party interests
- **Regulation amended to list IPCA as a provincial park:** O Reg 316/07 lists the designated provincial parks in Ontario. In conformance with the timeline that is agreed to in the IPCA establishment agreement, the regulation under the

Provincial Parks and Conservation Reserves Act will require amending to add the IPCA as a listed wilderness class provincial park

The intent with this suggested pathway is that it is a condition of the establishment agreement that the Minister undertake the necessary legislative amendments and land withdrawals. This unfortunately, may be an insurmountable barrier if there is no political will on the part of the provincial government to entertain these discussions. This toolkit, however, aims to illustrate a way forward so that in advocating the need for an IPCA, a way forward is provided and a potential route set out. It is also critical for Indigenous communities to be aware of the existing IPCA success stories in Canada, both for their persuasive value and as precedents, where Indigenous-Crown relations have served as the basis for Indigenous-led conservation efforts.

5. Law Reform & IPCA Legislation

A final aspect which cannot be overlooked in advocating for the establishment of IPCAs, is the need for the provincial and federal governments to work with Indigenous peoples to enact IPCA legislation or, amend existing protected areas law. This toolkit has reviewed the ways in which many Indigenous communities in Canada have navigated existing Crown legal structures. **However, this does not preclude the need for IPCA legislation, which recognizes both Indigenous and Crown legal traditions, and upholds the three key principles of IPCAs. In the alternative or as a shorter-term measure, existing protected areas legislation should be amended to support IPCAs, as a distinct category of protected area.**

In the case of Ontario, an IPCA could be added to the classes of recognized provincial parks set out in the *Provincial Parks and Conservation Reserves Act* (“Parks Act”). Currently, the recognized classes of provincial parks are:

- Wilderness Class Parks
- Nature Reserve Class Parks
- Cultural Heritage Class Parks
- Natural Environment Class Parks
- Waterway Class Parks
- Recreational Class Parks

Further, the objectives of provincial parks designated under the of the Act could be amended to include objectives including:

- (1) to be Indigenous-led and to amplify Indigenous rights and responsibilities;
- (2) to support the practice and revival of the local Indigenous way of life;
- (3) to provide opportunities for ecologically sustainable, non-industrial Indigenous led economic activities.

Currently, the objectives for areas designated as provincial parks and conservation reserves are:

- (1) To permanently protecting ecosystems representative of Ontario's natural regions and biodiversity, to ensure their ecological integrity;
- (2) To provide opportunities for ecologically sustainable recreational and associated economic activities;
- (3) To facilitate scientific research in order to study ecological change; and
- (4) For provincial parks, to provide opportunities for residents of Ontario and visitors to increase their knowledge and appreciation of Ontario's natural and cultural heritage.²¹⁷

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- ¹⁸⁹ *Ibid*
- ¹⁹⁰ *Ibid*
- ¹⁹¹ *Ibid*, p 35
- ¹⁹² *Ibid*, p 34
- ¹⁹³ *Ibid*, p 58
- ¹⁹⁴ L. Innes & G. Lloyd-Smith, *supra* note 1
- ¹⁹⁵ *Ibid*, p 7
- ¹⁹⁶ *Ibid*, p 12
- ¹⁹⁷ See Table 3 for more information.
- ¹⁹⁸ *Moresby Explorers Ltd. v. Canada (Attorney General)*, [2001] 4 FC 591.
- ¹⁹⁹ Innes and Lloyd-Smith, *supra* note 1, p 13
- ²⁰⁰ *Protected Areas Act*, SNWT 2019, c 11, s 1, 17
- ²⁰¹ Government of Northwest Territories, “*Establishment of Ts’udé Niljné Tuyeta territorial protected area under the Protected Areas Act*”
- ²⁰² Government of Northwest Territories, “*AGREEMENT TO ESTABLISH TS’UDÉ NILJNÉ TUYETA AS A PROTECTED AREA BETWEEN THE FORT GOOD HOPE DENE BAND AND THE YAMOGA LANDS CORPORATION AND THE FORT GOOD HOPE MÉTIS NATION LOCAL #54 LAND CORPORAION AND THE AYONI KEH LAND CORPORATION AND THE BEHDZI AHDA*” FIRST NATION AND THE GOVERNMENT OF NORTHWEST TERRITORIES AS REPRESENTED BY THE MINISTER OF ENVIRONMENT AND NATURAL RESOURCES” (2019) [Ts'udé Niljné Tuyeta Agreement]
- ²⁰³ ICE Report, *supra* note 2p 35
- ²⁰⁴ *Bowie Seamount Marine Protected Area Regulations* (SOR/2008-124)
- ²⁰⁵ Haida Nation and Canada, “*SGaan KinghlasBowie Seamount*” (2019)
- ²⁰⁶ Haida Nation and Canada, “*Memorandum of Understanding – Bowie Seamount Agreement*” (2007)
- ²⁰⁷ *Gwaii Haanas National Park Reserve Order*, SOR/96-93
- ²⁰⁸ Haida Nation and Canada, “*Gwaii Haanas Agreement*” (1993)
- ²⁰⁹ Haida Nation and Canada, “*Gwaii Haanas National Park Reserve, National Marine Conservation Area Reserve, and Haida Heritage Site Management Plan 2018*” (2018)
- ²¹⁰ Lutsel K’e Dene First Nation and Government of Northwest Territories, “*Agreement to Establish Thaidene Nene Indigenous Protected Area, Territorial Protected Area, and Wildlife Conservation Area*,” (2019) [Lutsel K’e Dene Agreement]
- ²¹¹ Government of Canada, “*Current national wildlife areas*” (2021)
- ²¹² Dehcho First Nations and Canada, “*Agreement Regarding Establishment of Edehzhie*” (2018) [Dehcho Agreement]
- ²¹³ Indigenous Leadership Initiative, “*Indigenous Guardians*”
- ²¹⁴ Dehcho Agreement, *supra* note 212
- ²¹⁵ Ts'udé Niljné Tuyeta Agreement, *supra* note 202
- ²¹⁶ Lutsel K’e Dene Agreement, *supra* note 210
- ²¹⁷ *Ibid*, 2(1)

RESOURCES

#1. Sample Briefing Note: Seeking Provincial Support for IPCAs

The following briefing note is intended for use by First Nations in the context of discussions about the need for Indigenous-led conservation. This briefing note provides some background facts and references to provincial commitments on environment and Indigenous rights which may have some persuasive value in seeking government responsiveness to IPCA establishment.

Background on IPCA frameworks and support in Ontario

Indigenous Protected and Conserved Areas (IPCAs) are lands protected primarily by Indigenous governments, in accordance with Indigenous laws and knowledge systems.²¹⁸ According to the Indigenous Circle of Experts, there are three core elements to an IPCA: it is Indigenous led, there is a long-term commitment to conservation, and there is an elevation of Indigenous rights and responsibilities.²¹⁹ Recognizing the importance of IPCAs, the federal government has shown support and provided funding for a number of communities to build capacity towards establishing Crown recognized IPCAs on their lands.

Some examples of IPCAs within Ontario include:

- Shawanaga First Nation, for which the federal government provided funding to create IPCAs on their traditional land.
- Kitchenuhmaykoosib Inninuwu (KI) First Nation has passed a Watershed Declaration under KI law protecting the Fawn River watershed. The First Nation was provided funding from the federal government in order to help them with protecting this 1.3 million hectares of land.
- An IPCA to be created by the Moose Cree First Nation has been supported by the federal government.²²⁰
- Grassy Narrows First Nation passed a Land Declaration under Grassy Narrows law protecting 6,300 square kilometers of their Territory. They obtained funding from the Federal Government to build capacity towards establishing a Crown recognized IPCA.

Ontario, however, has not yet recognized or supported these selected IPCAs.²²¹

Despite funding support for IPCAs in Ontario from the federal government, 77% of land in Ontario is owned by the province²²² under Crown law, meaning that provincial recognition of the IPCAs and Indigenous sovereignty over the land is an important factor.

The importance of IPCAs for environmental protection.

The Federal Government is committed to conserving 25% of Canada's land and oceans by 2025, and 30% of each by 2030.²²³ Part of this commitment is an emphasis on increasing the number of IPCAs throughout the country. It is becoming widely accepted that traditional knowledge is a vital aspect of land protection, and that it has led to successful management of Indigenous lands since time immemorial.

It is not only the Federal government that has made various commitments to conservation and environmental protection. Indigenous rights and reconciliation, emissions reduction, strong environmental oversight and building up communities are all recurring claimed priorities for Ontario, as seen through parliamentary debates, news releases, and environment plans. However, the actions of the current government of Ontario have not been helpful to the Crown recognition of IPCAs, nor to the protection of the environment. Ontario's recognition of IPCAs is an imperative part of setting up effective, long-term protected areas.

Statements made by the Ontario government

The Ontario government has made recent statements in support of Indigenous rights and values, emissions reduction, and encouraging stronger environmental oversight. Supporting IPCAs throughout the province is a powerful way to incorporate all of these values within Ontario's conservation system.

Indigenous Rights and Values

Ontario has made statements to uplift Indigenous rights and values, as well as work towards reconciliation. From The Hon. Doug Ford stating that he stands "shoulder-to-shoulder with First Nations, Métis and Inuit communities to work toward a better

future."²²⁴, to Hon. Greg Rickford stating the importance of shared decision-making,²²⁵ there are statements being made to partner and work with communities.

Furthermore, Indigenous values such as preservation of lands for future generations have been a recurring and important point of concern in debates related to environmental protection. During the parliamentary debates for Bill 4 in 2018, Ms. Andrea Khanjin stated, "I believe that everyone in this House today wants to preserve and save our environment for future generations."²²⁶, and Hon. Jeff Yurek affirmed that generations to come can enjoy the nature Ontario has to offer.²²⁷ While these statements are encouraging, and offer an opportunity to hold the government accountable to their words in the court of public opinion, they are not legally enforceable commitments and have mostly not translated into meaningful action from this government.

According to the non-governmental Conservation through Reconciliation Project and the Indigenous Circle of Experts, "an IPCA represents a long-term commitment to conserve lands and waters for future generations."²²⁸ This principle of protecting the land for future generations is deeply rooted in Indigenous philosophy and values, and is an important tenet of Indigenous-led conservation practices and decision-making.²²⁹

Bringing Indigenous rights and values into conservation through IPCAs is also a powerful way to move towards reconciliation. Current conservation and industrial practices have led to forced displacement of Indigenous peoples from their traditional lands, loss of cultural and spiritual practices, and loss of livelihoods.²³⁰ IPCAs are an important step towards rectifying past harms done, both in the spirit of environmental protection and reconciliation.

Emissions Reduction

Premier Doug Ford has committed to surpassing the Paris Accord targets of 30% through Ontario's environmental policy.²³¹ Climate research done by the Pembina Institute sheds doubt on Ontario's ability to stay on track with these climate goals for the year 2030, given the increase in emissions in recent years.²³² An important way for Ontario to get on track to reaching these goals is by bringing traditional knowledge and Indigenous governance into conservation.

Ms. Andrea Khanjin's assertion that "We need to continue to find new ways to reduce emissions"²³³ emphasizes a matter that is important to Ontarians. The federal government has recognized, starting with the Pathway to Target 1 commitments, that

the creation of IPCAs is an essential piece of achieving Canada's climate goals. It is important for Ontario, likewise, to recognize that supporting IPCAs is a powerful way to achieve provincial emissions reduction goals.

Strong Environmental Oversight

Protecting Ontario's air, water, land, and species at risk has been a priority in Ontario, but one that has not always been put into action. Hon. Jeff Yurek, when responding to questions about Ontario's Environmental Assessment Act, stated, "we are focusing all our efforts on the medium- and high-risk projects that impact the environment the most, to ensure that we have strong environmental protection that continues as we move forward in this country".²³⁴ He also stated, "We will ensure that environmental protection is first and foremost throughout this entire process."²³⁵

It has been shown that traditional knowledge, gained from generations of living as stewards of their traditional lands, has led to high levels of biodiversity and environmental protection on lands managed by Indigenous communities.²³⁶ Ontario should not overlook the positive impact that IPCAs will have on environmental oversight and conservation.

Suggested Recommendation: Ontario should follow through with their commitments to Indigenous rights and values, emissions reduction, and environmental oversight by supporting the IPCAs proposed by Indigenous communities; this includes recognizing the importance of Indigenous-led conservation in Ontario, and contributing the funding needed to move forward with conservation plans. It also includes broadening the scope of what is regarded as "conservation" to include Indigenous livelihoods, practices and teachings on the land. This will help Ontario reach climate goals, and bring the province's actions in line with commitments made to protect the environment and advance reconciliation.

RESOURCES

#2. Provincial Statements Regarding IPCAs

The following chart lists a range of statements made by the government of Ontario which have persuasive value in arguing for an IPCA. These statements may be helpful to rely upon in public communication or in the context of meetings with the province, in pushing for Indigenous-led conservation.

Minister Name	Quote	Date	Source	Notes
Steve Clark	"Building on our enhancements over the past year, we are also proposing changes to the Environmental Assessment Act that will ensure stronger environmental oversight and will focus our resources on projects that have the highest impact on the environment"	July 8, 2020	Bill 197, COVID-19 Economic Recovery Act, 2020 First Reading https://www.ola.org/en/legislative-business/house-documents/parliament-42/session-1/2020-07-08/hansard#para611	IPCAs can be helpful for environmental oversight + have a high impact
Steve Clark	"We will not only get Ontarians back to work but back on their feet and able to build their communities up again."	July 8, 2020	Bill 197, COVID-19 Economic Recovery Act, 2020 First Reading https://www.ola.org/en/legislative-business/house-documents/parlia	Building communities up means bringing Indigenous communities to the point where they can sustain their

			ment-42/session-1/2020-07-08/hansard#para611	livelihoods, which includes being able to live off the land
Steve Clark	"Mr. Speaker, the second priority of our COVID-19 Economic Recovery Act is to strengthen communities across the province."	July 8, 2020	Bill 197, COVID-19 Economic Recovery Act, 2020 First Reading https://www.ola.org/en/legislative-business/house-documents/parliament-42/session-1/2020-07-08/hansard#para611	See above
Jeff Yurek	"I would like to talk today about the legislative amendments in Bill 197 that will help modernize Ontario's Environmental Assessment Act and contribute to a cleaner, stronger and more prosperous Ontario."	July 15, 2020	Bill 197, COVID-19 Economic Recovery Act, 2020 Second Reading https://www.ola.org/en/legislative-business/house-documents/parliament-42/session-1/2020-07-15/hansard#para639	IPCAs as a method of creating a "cleaner, stronger and more prosperous Ontario"
Jeff Yurek	"That's why we've been proposing sensible, practical changes that would ensure strong environmental oversight.."	July 15, 2020	Bill 197, COVID-19 Economic Recovery Act, 2020 Second Reading	Feeds into the narrative of them wanting to strengthen

			https://www.ola.org/en/legislative-business/house-documents/parliament-42/session-1/2020-07-15/hansard#para639	environmental protections.
Jeff Yurek	"We will ensure that environmental protection is first and foremost throughout this entire process."	July 15, 2020	Bill 197, COVID-19 Economic Recovery Act, 2020 Second Reading https://www.ola.org/en/legislative-business/house-documents/parliament-42/session-1/2020-07-15/hansard#para639	
Jeff Yurek	"We are modernizing the Environmental Assessment Act, which hasn't been modernized in over 50 years, Mr. Speaker."	July 20, 2020	Question Period – Environmental Protection https://www.ola.org/en/legislative-business/house-documents/parliament-42/session-1/2020-07-20/hansard#P25024191	Acknowledgement that environmental laws need to keep up with the times. Maybe a way to persuade them that they should also be updating legislation that may be used for an IPCA

<p>Jeff Yurek</p>	<p>"I'm looking forward to, if this act is passed—and I hope the member opposite is supportive—that we'll start the consultation with municipalities, Indigenous communities, stakeholders and environmental groups so that we can come up with this list of projects that will be needing an environmental assessment, so that we are focusing all our efforts on the medium- and high-risk projects that impact the environment the most, to ensure that we have strong environmental protection that continues as we move forward in this country, to ensure that it matches our environmental plan for Ontario for a strong, healthy environment and a strong, healthy economy."</p>	<p>July 21, 2020</p>	<p>Question Period – Environmental Protection https://www.ola.org/en/legislative-business/house-documents/parliament-42/session-1/2020-07-21/hansard#para531</p>	
<p>Stephen Lecce</p>	<p>"It is this political party that, through the living lands program, expanded park space in Ontario by the largest amount ever in the history. It is this party that initiated the first closure of a coal plant in the history of this province. It is this political party that created the Oak Ridges moraine which has protected the watershed</p>	<p>Feb 21, 2019</p>	<p>Bill 66, Restoring Ontario's Competitiveness Act, 2019 https://www.ola.org/en/legislative-business/house-documents/parliament-42/session-1/2019-02-</p>	

	for southern Ontario for a generation."		21/hansard#para1686	
Stephen Lecce	"Madam Speaker, we are proud of our environmental record and we will continue to take action to protect the environment.."	Feb 21, 2019	Bill 66, Restoring Ontario's Competitiveness Act, 2019 https://www.ola.org/en/legislative-business/house-documents/parliament-42/session-1/2019-02-21/hansard#para1686	
Rod Phillips	"We'll deliver real action on providing clean air, clean water, conservation, reducing emissions and cleaning up litter, garbage and waste. With the proposed legislation, we have an opportunity to usher in a new era of economically prudent, effective environmental action that will also protect families."	July 31, 2018	Bill 4 Cap and Trade First reading https://www.ola.org/en/legislative-business/house-documents/parliament-42/session-1/2018-07-31/hansard#para955	
Andrea Khanjin	"We have made great progress in reducing greenhouse gas emissions in Ontario, but we can do more. We need to continue to find new ways to reduce emissions. We	July 31, 2018	Bill 4 Cap and Trade First reading https://www.ola.org/en/legislative-business/house-	Environmental protection for future generations is a principle of IPCAs.

	<p>can do this through a variety of different ways such as advancing technology and becoming more innovative in our ways, as well as co-operating and working together. This is not a partisan issue. I believe that everyone in this House today wants to preserve and save our environment for future generations. This is why I'm asking each and every one of you to support this bill, so that we can work together to tackle climate change. Because let's face it: CO2 emissions do not have political jurisdictions."</p>		<p>documents/parliament-42/session-1/2018-07-31/hansard#para955</p>	
Belinda Karahalios	<p>"The minister also assures me that our government is committed to addressing environmental priorities, including clean air and clean water, conservation, reduction of pollution, and reducing litter and waste."</p>	<p>July 31, 2018</p>	<p>Bill 4 Cap and Trade First reading</p> <p>https://www.ola.org/en/legislative-business/house-documents/parliament-42/session-1/2018-07-31/hansard#para955</p>	
Rod Phillips	<p>"Yes, there are impacts on the environment, and we are going to be and are very serious about those</p>	<p>July 31, 2018</p>	<p>Bill 4 Cap and Trade First reading</p>	

	<p>and need to understand that people want clean air. They want clean water. They want action with regard to reduction in emissions, and they certainly want action in terms of looking at the effects of climate change because it's real."</p>		<p>https://www.ola.org/en/legislative-business/house-documents/parliament-42/session-1/2018-07-31/hansard#para955</p>	
Andrea Khanjin	<p>"Our government will continue to protect the environment for generations to come."</p>	July 26, 2021	<p>News release https://news.ontario.ca/en/release/1000591/ontario-proposing-to-add-darlington-provincial-park-into-the-greenbelt</p>	
David Piccini	<p>"This funding allows local organizations and groups to take environmental actions in their own communities – building a better future with clean, green growth."</p>	July 19, 2021	<p>News release https://news.ontario.ca/en/release/1000549/ontario-invests-over-19-million-to-protect-and-restore-the-great-lakes</p>	<p>This funding is a recognition of the importance of localized conservation for communities.</p>
David Piccini	<p>The health of the Great Lakes is closely connected to our province's health and prosperity – supplying water to our communities, sustaining traditional activities of Indigenous peoples and providing</p>	July 19, 2021	<p>News release https://news.ontario.ca/en/release/1000549/ontario-invests-over-19-million-to-protect-and-restore-the-great-lakes</p>	

	<p>healthy ecosystems for recreation and tourism</p> <p>Quote from Piccini: “This funding allows local organizations and groups to take environmental actions in their own communities – building a better future with clean, green growth.”</p> <p>The 44 projects are led by community-based organizations, municipalities, conservation authorities and Indigenous communities and organizations across Ontario, from Ottawa to Thunder Bay</p>			
	<p>“The Ontario government is securing greater Indigenous community involvement in forest management on the Kenogami Forest by issuing a forest licence to Ogwiidachiwaning Sustainable Forest Management Inc. (OSFMI), a new company whose members include local First Nations and forest industry companies.”</p>	<p>August 19, 2021</p>	<p>News release https://news.ontario.ca/en/release/1000754/ontario-supports-indigenous-industry-partnership-in-kenogami-forest</p>	

<p>Made-in-Ontario Environmental Plan</p>	<p>"Collaborate with partners to conserve and restore natural ecosystems such as wetlands, and ensure that climate change impacts are considered when developing plans for their protection." - page 47</p> <p>Continue to consult with the public and engage with Indigenous communities. Throughout the environment plan we have identified areas of action and key initiatives. These are areas where we are engaging with stakeholders and Indigenous communities to develop new approaches that support our common goals for environmental and climate leadership. - page 52</p>	<p>Nov 27, 2020</p>	<p>https://www.ontario.ca/page/made-in-ontario-environment-plan</p> <p>The plan: https://prod-environmental-registry.s3.amazonaws.com/2018-11/EnvironmentPlan.pdf</p>	
<p>Doug Ford</p>	<p>I stand shoulder-to-shoulder with First Nations, Métis and Inuit communities to work toward a better future.</p>	<p>July 1 2021</p>	<p>News Release https://news.ontario.ca/en/statements/1000448/premier-ford-reflects-on-canada-day</p>	<p>This is in the context of Canada Day and the unmarked graves found. Should-to-shoulder sounds like co-governance?</p>
<p>Greg Rickford</p>	<p>"We continue to be committed to offering an array of programs and</p>	<p>April 29, 2019</p>	<p>http://hansardinfo.ontla.on.ca/hansard/ISSUE/42-</p>	

	services, uncompromised in our efforts to modernize Indigenous affairs in Ontario and work effectively with our Indigenous stakeholders across the province.”		1/L097.htm#TopOfPage	
Greg Rickford	“.. just two years ago, this government made it a priority to reset the relationships with Indigenous communities to focus on things on the ground and in the community that could and would make a difference.”	Sept 30, 2020	COVID-19 Response in Indigenous and Remote Communities http://hansardindex.ontla.on.ca/hansardspeaker/42-1/1189-4_38.html	
Greg Rickford	"As a government, we've taken an across-the-ministry approach, a whole-of-government approach, to ensure that Indigenous people have their rightful place in just about every piece of legislation and policy option that this government is moving forward with. Take, for example, the Far North Act: a piece of legislation shoved down the throats of the isolated and remote northern communities by the previous government, absent any consultation. We are now working directly with them through	Feb 25, 2020	http://hansardindex.ontla.on.ca/hansardETITLE/42-1/L146-43.html#BeginOfTitle	Emphasis on working in partnership with communities, and acknowledgment that legislation shouldn't be forced on to communities.

	the NAN leadership to ensure that decision-making moving forward is shared between the government and the Indigenous communities who—wait for it—actually live there. "			
Jeff Yurek	"I can assure the member that having healthy communities and a healthy environment will always be the top priorities for this government. We know that tackling climate change is a key part of achieving this."	March 31, 2021	http://hansardindex.ontla.on.ca/hansardEISSUE/42-1/L242.htm#TopOfPage	
Jeff Yurek	"We're proud of the \$30 million that we're investing in wetlands across this province, not only to restore and to build wetlands, but we're going to ensure that they're there for the future generations down the road. "	March 30, 2021	http://hansardindex.ontla.on.ca/hansardspeaker/42-1/l241a-3_78.html	Future generations again acknowledging a key principle of IPCAs
Jeff Yurek	"We all want the same results, at the end of the day. We all want a clean environment. We want safe water to drink. We want protected lands. We want air that's of good quality to breathe. We want to make sure that we reduce our emissions to the targets that we set forth as this government and that we signed on with	March 25, 2021	http://hansardindex.ontla.on.ca/hansardEISSUE/42-1/L239A.htm#TopOfPage	One of the most effective ways to reduce emissions and protect lands IPCAs

	the federal government with regard to the Paris climate reduction”.			
Jeff Yurek	“Mr. Speaker, this government is committed to preserving and protecting our natural environment, and we continue to support the stewardship of the greenbelt now and for future generations. ”	March 1, 2021	http://hansardindex.ontla.on.ca/hansardEISSUE/42-1/L228.htm#TopOfPage	
Jeff Yurek	“..our government is committed to protecting and conserving our environment. We want to ensure that Ontario’s natural beauty can be enjoyed for generations to come. ”	Nov 30, 2020	http://hansardindex.ontla.on.ca/hansardspeaker/42-1/l215-3_62.html	
Jeff Yurek	"We are funding approximately \$5.8 million this year to support more than 65 projects run by local communities, academics, Indigenous communities and various organizations across Ontario that focus on improving water quality. Supporting actions that protect and restore the Great Lakes are key commitments in our made-in-Ontario environment plan. We are fulfilling the promise that we made to the people of Ontario to	Sept 17, 2020	http://hansardindex.ontla.on.ca/hansardspeaker/42-1/l182-3_48.html	

	protect the Great Lakes, which are so vital to our natural heritage and to the unparalleled quality of life that we enjoy in Ontario."			
John Yakabuski	"We believe our proposal will provide benefits to First Nations and other northern communities, ensure a collaborative approach to development and provide a stable environment for business."	Feb 25, 2019	http://hansardindex.ontla.on.ca/hansardEISSUE/42-1/L069.htm#TopOfPage	This is probably a stretch as it is In the context of opening up northern communities to more projects.
Doug Ford	"We believe climate change is real but, even better, we have an incredible policy moving forward to meet our target, the Paris accord, of 30%. We're well on our way. We're actually going to exceed that goal and focus on making sure we have clean air, clean lakes, clean rivers, and making sure that we respect the environment."	Dec 3, 2019	http://hansardindex.ontla.on.ca/hansardETITLE/42-1/L135-38.html#BeginOfTitle	IPCAs are key to helping us move towards climate targets.

RESOURCES

#3. Federal Statements Regarding IPCAs

The following chart lists a range of statements made by the federal government which have persuasive value in arguing for an IPCA. These statements may be helpful to rely upon in public communication or in the context of meetings with Canada, in pushing for Indigenous-led conservation.

Minister's Name	Quote	Date	Source	Notes
Steven Guilbeault, Minister of Environment and Climate Change	"I am directing every Minister to implement the United Nations Declaration on the Rights of Indigenous Peoples and to work in partnership with Indigenous Peoples to advance their rights."	December 16, 2021	Minister Guilbeault's mandate letter https://pm.gc.ca/en/mandate-letters/2021/12/16/minister-environment-and-climate-change-mandate-letter	
Steven Guilbeault	"Your work to protect communities and our abundant and diverse natural habitats and waters, including by advancing Indigenous-led conservation efforts, will also be crucial to secure a cleaner, healthier and greener future for Canadians."	December 16, 2021	Minister Guilbeault's mandate letter https://pm.gc.ca/en/mandate-letters/2021/12/16/minister-environment-and-climate-change-mandate-letter	

<p>Steven Guilbeault</p>	<p>“With the support of the Minister of Agriculture and Agri-Food, establish a Canada Water Agency and implement a strengthened Freshwater Action Plan, including a historic investment to provide funding to protect and restore large lakes and river systems, starting with the Great Lakes-St. Lawrence River System, Lake Simcoe, the Lake Winnipeg Basin, the Fraser River Basin and the Mackenzie River Basin. Invest in the Experimental Lakes Area in northern Ontario to support international freshwater science and research.”</p>	<p>December 16, 2021</p>	<p>Minister Guilbeault's mandate letter https://pm.gc.ca/en/mandate-letters/2021/12/16/minister-environment-and-climate-change-mandate-letter</p>	
<p>Steven Guilbeault</p>	<p>Following the establishment of a Canada Water Agency, advance the modernization of the Canada Water Act to reflect Canada’s freshwater reality, including climate change and Indigenous rights.</p>	<p>December 16, 2021</p>	<p>Minister Guilbeault's mandate letter https://pm.gc.ca/en/mandate-letters/2021/12/16/minister-environment-and-climate-change-mandate-letter</p>	

Steven Guilbeault	“Identify, and prioritize the clean-up of, contaminated sites in areas where Indigenous Peoples, racialized and low- income Canadians live.”	December 16, 2021	Minister Guilbeault's mandate letter https://pm.gc.ca/en/mandate-letters/2021/12/16/minister-environment-and-climate-change-mandate-letter	
Steven Guilbeault	“Continue to work with the Minister of Fisheries, Oceans and the Canadian Coast Guard and partners to ensure Canada meets its goals to conserve 25 per cent of our lands and waters by 2025 and 30 per cent of each by 2030, working to halt and reverse nature loss by 2030 in Canada, achieve a full recovery for nature by 2050 and champion this goal internationally. You will ensure that this work remains grounded in science, Indigenous knowledge and local perspectives.”	December 16, 2021	Minister Guilbeault's mandate letter https://pm.gc.ca/en/mandate-letters/2021/12/16/minister-environment-and-climate-change-mandate-letter	*

Steven Guilbeault	“Work with First Nations, Inuit and Métis partners to support new Indigenous Guardians programs and establish new Indigenous Guardians Networks, and support Indigenous communities to build capacity to establish more Indigenous Protected and Conserved Areas.”	December 16, 2021	Minister Guilbeault's mandate letter https://pm.gc.ca/en/mandate-letters/2021/12/16/minister-environment-and-climate-change-mandate-letter	*
Steven Guilbeault	“Establish 10 new national parks and 10 new national marine conservation areas (NMCAs) in the next five years, working with Indigenous communities on co-management agreements for these national parks and NMCAs.”	December 16, 2021	Minister Guilbeault's mandate letter https://pm.gc.ca/en/mandate-letters/2021/12/16/minister-environment-and-climate-change-mandate-letter	*
Steven Guilbeault	“In collaboration with the Minister of Crown-Indigenous Relations and the Minister of Indigenous Services, continue to work in partnership with First Nations, Inuit and the Métis Nation to address climate change and its impacts, and chart collaborative strategies.”	December 16, 2021	Minister Guilbeault's mandate letter https://pm.gc.ca/en/mandate-letters/2021/12/16/minister-environment-and-climate-change-mandate-letter	

<p>Steven Guilbeault</p>	<p>“Work with the Minister of Natural Resources to help protect old growth forests, notably in British Columbia, by reaching a nature agreement with B.C., establishing a \$50 million B.C. Old Growth Nature Fund, and ensuring First Nations, local communities and workers are partners in shaping the path forward for nature protection”</p>	<p>December 16, 2021</p>	<p>Minister Guilbeault's mandate letter https://pm.gc.ca/en/mandate-letters/2021/12/16/minister-environment-and-climate-change-mandate-letter</p>	
<p>Jonathan Wilkinson, Former Minister of Environment and Climate Change</p>	<p>“Indigenous peoples are key partners as we work to protect more nature, conserve biodiversity, and combat the worst effects of climate change. We understand that Indigenous peoples have a deep knowledge and understanding of land management, which is why IPCAs are being established, where Indigenous leadership is a defining attribute in the decisions that protect and conserve an area. Indigenous Guardians are able to not only look after the lands, waters, and ice in their territories, but also</p>	<p>August 12, 2021</p>	<p>Environment and Climate change Canada News Release - https://www.canada.ca/en/environment-climate-change/news/2021/08/government-of-canada-announces-340-million-to-support-indigenous-led-conservation.html</p>	<p>“Government of Canada announces \$340 million to support Indigenous-led conservation”</p>

	<p>to practise and teach their cultures in impactful ways. Canada has a lot to learn from Indigenous peoples in the way we steward nature, and by supporting IPCAs and Indigenous Guardians initiatives, we can continue that education.”</p>			
<p>The Honourable Carolyn Bennett, Minister of Crown-Indigenous Relations</p>	<p>“First Nations, Inuit, and Métis bring forward Indigenous knowledge and perspectives that are to learn from as we face the immense environmental challenges as a result of climate change, and as we work towards a more inclusive society. Programs like the Indigenous Guardians initiatives help support Indigenous peoples in protecting and conserving the environment, and help</p>	<p>August 12, 2021</p>	<p>Environment and Climate change Canada News Release - https://www.canada.ca/en/environment-climate-change/news/2021/08/government-of-canada-announces-340-million-to-support-indigenous-led-conservation.html</p>	<p>“Government of Canada announces \$340 million to support Indigenous-led conservation”</p>

	all Canadians to learn more about Indigenous ways of knowing for this generation and seven generations to come.”			
President Joe Biden and Prime Minister Justin Trudeau	<p>“The Prime Minister and the President agreed to be partners in protecting nature, including by supporting Indigenous-led conservation efforts”</p> <p>“In advancing climate solutions and protecting nature, both the President and the Prime Minister agreed on the importance of doing this work with Indigenous peoples, sub-national governments, workers, and stakeholders including civil society, youth, business and industry”</p>	February 23, 2021	Roadmap for a Renewed U.S.-Canada Partnership - https://pm.gc.ca/en/news/statements/2021/02/23/roadmap-renewed-us-canada-partnership	

RESOURCES

#4. Online Resources and Annotated Bibliography

A range of in-depth resources are available online about IPCAs in Canada and internationally. The following annotated bibliography provides an overview of those resources – ranging from policy papers to webinars – highlighting the contribution of Indigenous leaders, communities, legal scholars and advocates in this burgeoning field of Indigenous-led conservation.

A Dialogue with Leaders from Emerging IPCAs (webinar), Conservation Through Reconciliation Partnership, March 2021, online: <<https://conservation-reconciliation.ca/virtual-campfire-series-recordings/a-dialogue-with-leaders-from-emerging-ipcas>>

On March 18, the CRP and IISAAK OLAM Foundation co-hosted a dialogue about emerging IPCAs across Turtle Island/Canada featuring Elders, community members and leaders from Kitskiinan Kawekanawaynichikatek IPCA, Arqvillit IPCA, Bistcho Lake IPCA, and Aki Sibi IPCA. Moderated by Monica Shore (IISAAK OLAM Foundation), this session hosted a dialogue with Elder Dr. Flora Beardy (Kitskiinan Kawekanawaynichikatek IPCA), Shaomik Inukpuk (Arqvillit IPCA), Matthew Munson (Bistcho Lake IPCA) and Justin Roy (Aki Sibi IPCA). This webinar explored a diversity of experiences in establishing IPCAs and was designed for Indigenous governments and their allies who are establishing, stewarding, or just curious about Indigenous-led conservation and Indigenous Protected and Conserved Areas (IPCAs).

A Report of Canada's Federal, Provincial and Territorial Departments Responsible for Parks, Protected Areas, Conservation, Wildlife and Biodiversity, *One With Nature: A Renewed Approach to Land and Freshwater Conservation in Canada*, 2018, online: <<https://static1.squarespace.com/static/57e007452e69cf9a7af0a033/t/5c9cd18671c10bc304619547/1553781159734/Pathway-Report-Final-EN.pdf>>

This is a report by Canada's Federal, Provincial and Territorial Departments Responsible for Parks, Protected Areas, Conservation, Wildlife and Biodiversity.

This report represents the Canadian governments' response to the final reports of the Indigenous Circle of Experts and the National Steering Committee for the Pathway to Canada Target 1, outlining four priorities: Priority 1: expand the systems of federal, provincial and territorial protected and conserved areas; priority 2: promote greater recognition and support for existing Indigenous rights, responsibilities, and priorities in conservation; priority 3: maximize conservation outcomes; and priority 4: build support and participation for conservation with a broader community.

Blaise, K., *Briefing Note: Legal Landscape of Indigenous Protected and Conserved Areas (IPCAs) in Ontario*, Canadian Environmental Law Association, 2020, Online:

<<https://davidsuzuki.org/wp-content/uploads/2020/08/CELA-DSF-Legal-Landscape-IPCAs-Ontario.pdf>>

This briefing note reviews the legal mechanisms which may support the establishment of Indigenous Protected and Conserved Areas (IPCAs) in Ontario. The note begins by explaining that in Ontario, there is currently no provincial law which explicitly recognizes IPCAs as a form of protected area. The note then reviews three key provincial acts relating to protected areas and land use, including the *Provincial Parks and Conservation Reserves Act (PPCRA)*, the *Public Lands Act*, and the *Far North Act*. The author concludes by arguing that there is a demonstrably insufficient legal basis for the establishment of IPCAs in Ontario.

Borrini-Feyerabend, G., P. Bueno, T. Hay-Edie, B. Lang, A. Rastogi and T. Sandwith (2014). *A primer on governance for protected and conserved areas*, Stream on Enhancing Diversity and Quality of Governance, 2014 IUCN World Parks Congress. Gland, Switzerland: IUCN, online: <<https://www.iccaconsortium.org/wp-content/uploads/2015/08/publication-Primer-on-Governance-for-Protected-and-Conserved-Areas-2014-en.pdf>>

This document explores what governance means and its different models within ICCAs and other conservation measures. Governance quality is a focus of the document, where IUCN principles of “good governance” are applied to protected areas. These principles include: legitimacy and voice, direction, performance, accountability, fairness and rights, leading to equitable and effective governance. Governance vitality is also discussed and referred to as decision-making actors and institutions that are functional, responsive and thriving, meeting their role and responsibilities in timely and appropriate ways.

Bruce, K., *National Protected Areas: Relationships and Co-Management*, Conservation Through Reconciliation Partnership, April 2021, online: <<https://conservation-reconciliation.ca/crp-blog/national-protected-areas-relationships-and-co-management>>

This blog entry is a reflection of Bruce's research so far, working with and learning from Ta'an Kwäch'än Council and Kwanlin Dün First Nation, and as an outdoor youth educator in Yukon. The author argues that an important approach to reconciliation for non-Indigenous folk is to learn to listen, build meaningful relationships and actively reflect on our own unsettling. He further holds that reconciliation does not carry much weight in the absence of systemic and structural transformation, namely land restitution. The blog concludes by discussing IPCA co-management arrangements and how as can be seen in inspiring cases such as Gwaii Haanas and the Thaidene Néné National Park Reserve, there is a strong potential for park agreements to recognize Indigenous law and authority while honoring the spirit and intent of Treaty.

Corrigan, C. and Hay-Edie, T., 2013. 'A toolkit to support conservation by indigenous peoples and local communities: building capacity and sharing knowledge for indigenous peoples' and community conserved territories and areas (ICCAs)', UNEP-WCMC, Cambridge, UK, online: <https://www.unep-wcmc.org/system/dataset_file_fields/files/000/000/070/original/ICCA_toolkit_final_Version_2.pdf?1398438727>

This toolkit presents a selection of practical resources, developed by numerous organizations, making them readily accessible to community-based organizations who manage Indigenous Peoples' and Community Conserved Territories and Areas (ICCAs). All the resources in this toolkit are sorted into five "themes", which build on each other. The five themes include: documenting presence, management planning, monitoring and evaluation, communication, and values and finance. This toolkit has been designed as a resource kit with a large number of URL links to the internet to facilitate the downloading of documents and visiting web-pages. The goal of this resource is to be distributed widely to empower local communities and Indigenous peoples as part of the priorities of the UN system to contribute to the recognition of human rights, poverty reduction, biodiversity conservation and ecosystem protection.

David Suzuki Foundation, "Let Us Teach You" Exploring Empowerment for Indigenous Protected and Conserved Areas in B.C., Report of the September 27, 2017 IPCA

Workshop, September 2018, online: <<https://davidsuzuki.org/wp-content/uploads/2018/11/let-us-teach-you-exploring-empowerment-for-indigenous-protected-and-conserved-areas-in-b-c.pdf>>

This report is the summary of the workshop held in T'Sou-ke (southern Vancouver Island, B.C.) on September 27, 2018. The stated purpose of the meeting was to hold a conversation in ethical space between the Province and First Nations about how to create a supportive regulatory landscape so that Indigenous communities are empowered to successfully establish and govern IPCAs. After discussing the regulatory tools used for IPCAs in British Columbia and their shortcomings and alternatives, the report then suggests solutions that encompass and extend beyond IPCAs. These include: land use/ relationship planning, which has long been a tool to address the broader landscape, and some First Nations are engaged in a revitalized approach that is more community based and First Nation-driven. Governance, which is inherent to the ICE's definition of IPCA. Using UNDRIP and s.35 of the Constitution may require the Crown to appropriately recognize IPCAs to fulfill its constitutional obligations to Indigenous Peoples. Lastly, the theme of "Let us teach you", which means learning from Indigenous knowledge and culture and the idea that IPCAs are about teaching.

David Suzuki Foundation, TRIBAL PARKS AND INDIGENOUS PROTECTED AND CONSERVED AREAS LESSONS LEARNED FROM B.C. EXAMPLES, August 2018, online: <<https://davidsuzuki.org/wp-content/uploads/2018/08/tribal-parks-indigenous-protected-conserved-areas-lessons-b-c-examples.pdf>>

This report builds upon the Indigenous Circle of Experts (ICE) report titled *We Rise Together: Achieving Pathway to Canada Target 1 through the Creation of Indigenous Protected and Conserved Areas in the Spirit of Practice and Reconciliation*. This report explores six key themes that emerged from the interviews and literature review including: 1. Community involvement and engagement; 2. Indigenous governance; 3. Land use and management planning; 4. Management of industrial disturbance; 5. Establishing a healthy economy for sustainable livelihoods; and 6. Operational challenges. Specifically, three British Columbia IPCA initiatives are explored: K'ih tsaa'dze Tribal Park, Dasiqox Tribal Park, and Tla-o-qui-aht Tribal Parks. The report concludes with a summary of the lessons learned from these IPCAs including the need for a clear vision and mandate, using Indigenous land use planning processes can serve as a useful tool, interim protection measures, and the need for proactive and strategic communications and internal cooperation.

Dinneen, J., Canada working towards new future for Indigenous-led conservation, 2020, Mongabay News, online: <<https://news.mongabay.com/2020/01/canada-working-towards-new-future-for-indigenous-led-conservation/>>

In this blog, the author discusses the “fortress” model of conservation and compares it to Indigenous-led stewardship. “Fortress” model of conservation is a model based on the belief that biodiversity protection is best achieved by creating protected areas where ecosystems can function in isolation from human disturbance. The author argues that in Canada's "past", this meant dispossession and strife for Indigenous peoples. In contrast to the “fortress conservation” approach, Indigenous-led stewardship relies on the ways Indigenous people both inhabit and manage land and water in ways often compatible with the conservation of biodiversity. The blog concludes by arguing that research collaborations between Indigenous and non-Indigenous people are another encouraging sign of a turn towards Indigenous-led conservation in Canada.

Enns, E., IUCN: Indigenous Protected and Conserved Areas (IPCAs): Pathway to achieving Target 11 in Canada through reconciliation, February 2018, Online: <<https://www.iucn.org/news/protected-areas/201802/indigenous-protected-and-conserved-areas-ipc-as-pathway-achieving-target-11-canada-through-reconciliation>>

This blog briefly discusses how the Tribal Park model of IPCAs pioneered by Tla-o-qui-aht (a Nuu-chah-nulth Nation) has touched the hearts and minds of a diversity of people across the globe. The author contends that today, Tribal Parks add their voice to the growing chorus of Indigenous Peoples across Canada who are engaged in good faith with the governments of Canada to speak words of advice for achieving Canada’s commitment to the UN Convention of Biological Diversity’s Aichi Target 11, in the spirit and practice of reconciliation. To achieve the multi-level reconciliation needed, the author argues for the need for appropriate recognition of modern-day applications of traditional Indigenous governance values and principles.

Ermine, W., *Youtube video: Willie Ermine: What is Ethical Space?*, 2010, online: <https://www.youtube.com/watch?v=85PPdUE8Mb0&t=6s&ab_channel=DifferentKnowings>

In this video professor Ermine explains what ethical space is. He defines it as an area between knowledge systems, cross culturally, that is formed when two societies with disparate worldviews, are poised to engage each other. More

broadly, it is a place of different knowledge, ways of knowing and being, different epistemologies.

Government of Canada, Indigenous Leadership and Initiatives, 2021, online:

<<https://www.canada.ca/en/environment-climate-change/services/nature-legacy/indigenous-leadership-funding.html>>

This website discusses the Government of Canada's nature conservation initiatives, namely IPCAs. A total of 27 communities are receiving funding to establish Indigenous protected and conserved areas in locations across the country while another 25 are also receiving funding to help undertake early planning and engagement work that could result in additional Indigenous protected and conserved areas. The Indigenous Guardians Pilot Program and the Aboriginal fund for terrestrial and aquatic species at risk are also briefly mentioned.

Herrmann, T., Ferguson, M., Raygorodetsky, G. and Mulrennan, M., *Recognition and Support of ICCAs in Canada: Recognising and Supporting Territories and Areas Conserved By Indigenous Peoples And Local Communities: Global Overview and National Case Studies*. Secretariat of the Convention on Biological Diversity, ICCA Consortium, October 2012, online: <<https://www.cbd.int/pa/doc/ts64-case-studies/canada-en.pdf>>

This report discusses key issues faced in governing and managing ICCAs. It also highlights key issues related to ICCA recognition and support given by governments or non-governmental actors in Canada. The authors list a number of recommendations that could encourage recognition and support of ICCAs in Canada. This report uses the Tawich (Marine) Conservation Area Project as a case study to discuss the protected areas key threats, governance and management styles, ICCA recognition and support, and future plans.

IISAAK OLAM Foundation, *Indigenous Protected and Conserved Areas (IPCAs) and Ethical Space*, December 2019, online:

<<https://static1.squarespace.com/static/5a2f1db1c027d842f876e280/t/5e28ab03c2509c20c65c0ca7/1579723524248/IPCAs+and+Ethical+Space+-+IISAAK+OLAM+Foundation+-+Dec+2019.pdf>>

This brief document explains ethical space as a framework for guiding respectful interaction across cultural differences in a way that upholds the fundamental integrity of all knowledge systems entering that space. Ethical space is further

defined as a model that creates a space of mutual trust, respect, equality, and collaboration. The document highlights how in order to establish IPCAs in ethical space, IPCA proposals should be assessed independently by Indigenous communities through their own legal systems of validation and approval, parallel to a non-Indigenous assessment process. Beyond this, the two systems should enter into dialogue to "cross-validate their respective decisions and considerations with regards to an IPCA", based on standards of engagement (UNDRIP and FPIC (Free Prior and Informed Consent), the Canadian Constitution, Treaties, and so on).

IISAAK OLAM Foundation, Key Terms for Indigenous Protected and Conserved Areas (IPCAs), , 2020, online:

<<https://static1.squarespace.com/static/5a2f1db1c027d842f876e280/t/5e2885a159973a01ace27508/1579713953393/Key+Terms+for+IPCAs+2020.pdf>>

This document identifies a list of key terms used in conversations about IPCAs. This document is particularly useful for getting acquainted with the various terms used in IPCA discourse.

IISAAK OLAM Foundation, *IPCA Establishment Productive Retreat, TLA-O-QUI-AHT TRIBAL PARKS*, 2019, online:

<<https://static1.squarespace.com/static/5a2f1db1c027d842f876e280/t/5de83058b3cba52aa93cc6ee/1575497833726/IPCA+Retreat+Summary+Report+-+Dec+3+2019.pdf>>

This report provides an overview of the IPCA Establishment Productive Retreat, held in 2019 and hosted on Tla-o-qui-aht Territory. The purpose of this retreat was to bring together Indigenous Nations who are in the early phases of establishing IPCAs, as well as allies who support this work. Following a discussion of the proceedings at the retreat, this report then explores key themes and insights organized in four categories or "Mooses". The four key elements that cannot be ignored in conversations about IPCAs are: jurisdiction, financial solutions, capacity development, and cultural keystone species and places. These four elements are known collectively as the "Four Moose" in the Indigenous Circle of Experts 2018 report, *We Rise Together*. As each element or Moose is expanded upon, other key themes such as the importance of learning from Elders and Indigenous Guardians, and the importance of recognizing Indigenous laws, are revealed.

IISAAK OLAM Foundation, Shore, M., Enns, E., *Pacific IPCA Innovation Centre: Anchoring a New Movement of Indigenous-led Conservation*, Conservation Through Reconciliation Partnership, August 2021, online: <<https://conservation-reconciliation.ca/crp-blog/pacific-ipca-innovation-centre-anchoring-a-new-movement-of-indigenous-led-conservation>>

This blog explains what IPCA innovation centres are and how they are used to develop a world-class model for innovation and learning that is specifically designed for IPCAs. Specifically, IPCA Innovation Centres will be established regionally by Indigenous Peoples, organizations, Nations and partners. They are the on-the-land hubs where educational programming is delivered to support and strengthen IPCA establishment, governance and management within the region. Examples of such programming mentioned in this blog include language and cultural revitalization, Indigenous economics and stewardship in action, eco-cultural tourism, Indigenous technologies and craftsmanship, the art of Indigenous laws, and guardianship training. The first IPCA Innovation Centre is taking shape in Nuu-chah-nulth and Coast Salish territories on Vancouver Island, British Columbia, Canada. It has been named the Pacific IPCA Innovation Centre and will, over time, aim to include a network of satellite campuses along the Pacific coast from North to South America.

Indigenous Circle of Experts (ICE), *We Rise Together: Achieving Pathway to Canada Target 1 through the Creation of Indigenous Protected and Conserved Areas in the Spirit of Practice of Reconciliation*, The Indigenous Circle of Experts' Report and Recommendations, Catalog No R62-548/2018E-PDF (Ottawa: Government of Canada, 2018) online: <http://www.conservation2020canada.ca>.

This report was written by a National Advisory Panel and an Indigenous Circle of Experts (ICE) that were formed to provide advice and recommendations on achieving Canada Target 1. In 2015, Canada adopted a number of national targets known as the "2020 Biodiversity Goals and Targets for Canada." Canada Target 1 states: "By 2020, at least 17% of terrestrial areas and inland water, and 10% of coastal and marine areas, are conserved through networks of protected areas and other effective area-based conservation measures." This ICE report defines what IPCAs are, their characteristics and how they are formed, how IPCAs operate in the Canadian context, and 28 ICE recommendations to contribute towards reconciliation and conservation. This report is often referenced as a starting point for discussions relating to IPCAs.

Input by the Conservation Through Reconciliation Partnership (CRP) into Parks Canada's Horizon Scan. Prepared by Faisal Moola, PhD and Megan Youdelis, PhD University of Guelph. Online: <https://conservation-reconciliation.ca/s/Briefing-Note-Horizon-Scan.pdf>

In this briefing note, the Conservation Through Reconciliation Partnership (CRP) was invited by Parks Canada to participate in its Horizon Scan. The CRP was asked to contribute priority research questions to help inform Parks Canada's broader research agenda going forward. 11 priority research questions were identified, relating to emergent issues that are likely to impact protected areas, including Indigenous Protected and Conserved Areas, also based on the recommendations of the Indigenous Circle of Experts Report, *We Rise Together*. As the Indigenous Circle of Experts report makes clear, Parks Canada's priority should be to respect Indigenous Peoples' inherent and constitutionally enshrined rights and jurisdiction and elevate all existing parks and protected areas to the status of Indigenous Protected and Conserved Areas (IPCAs).

Innes, L., Loyd-Smith, G., *Indigenous Law in the Context of Conservation*, Conservation through Reconciliation Partnership March 2021, online: https://static1.squarespace.com/static/5d3f1e8262d8ed00013cdf1/t/60a6760cb82d4c085405eccd/1621521932893/Indigenous+Law+and+IPCA+Report+March+31+Final_May+6.pdf

This report examines SGaan KinghlasBowie Seamount Marine Protected Area in Haida Gwaii and Thaidene Nëné in Łutsël K'é Dene First Nation territory as two contemporary examples of how Indigenous laws operate alongside Crown laws within IPCAs. By discussing the different forms of IPCA jurisdiction and governance models, the authors conclude that IPCAs that integrate Crown and Indigenous jurisdictions provide a promising new direction for conservation action. Namely, to successfully build Nation-to-Nation and Crown-to-Inuit relationships that recognize and reconcile Crown and Indigenous jurisdictions and authorities, IPCA governance arrangements must find ways to bring together Indigenous and Crown legal systems. The report explores how mutual recognition of Indigenous and Crown jurisdictions throughout the establishment, management and operation of IPCAs can advance effective conservation and provide a pathway for reconciliation.

Innes, L., Lloyd-Smith, G., Blog: From Consultation to Recognition and Respect: Creating Space for Indigenous Laws in Conservation, Conservation through Reconciliation Partnership, June 2021, online: <<https://conservation-reconciliation.ca/crp-blog/from-consultation-to-recognition-and-respect-creating-space-for-indigenous-laws-in-conservation>>

This blog is an accompaniment to a report entitled: Indigenous Laws in the Context of Conservation. After briefly reviewing some of the key findings from the accompanying report, the blog discusses the two case studies from the report about the mutual recognition of the Crown and Indigenous law: the Thaidene Nënë, and the Gaan Kinghlas- Bowie Seamount Marine Protected Area. This blog is a short, simple, and easy to understand version of the accompanying report, filled with great information about how IPCAs offer a pathway for the Crown to recognize and affirm Indigenous laws and governance.

Innes, L., Attridge, I., & Lawson, S., *Respect and Responsibility: Integrating Indigenous Rights and Private Conservation in Canada: A Guide for Land Trusts and Other Non-Governmental Organizations*, November 2021, online: <<https://conservation-reconciliation.ca/ipcaresources/respect-and-responsibility-integrating-indigenous-rights-and-private-conservation-in-canada>>

This report provides guidance for private land conservation organizations seeking to adapt their practices and build respectful and appropriate relationships with Indigenous Nations. The authors argue that it is an important tool for conservation organizations seeking to understand the legal and policy landscape that frames key relationships with Indigenous communities in Canada and abroad. This report concludes that there is no ethical basis for private land conservation organizations to operate as though Indigenous governments have no role in relation to private lands. Each section of this report examines key structures that can inform an approach to private land conservation practice that is respectful of Indigenous rights and title, including: Canadian constitutional law, international law and standards and best practices.

Indigenous Use of Fire in Protected Areas (Webinar), Conservation Through Reconciliation Partnership, June 2021, online: <<https://cpcil.ca/events/indigenous-use-of-fire-in-protected-areas-utilisation-indigene-du-feu-dans/>>

On June 3, 2021, the CRP co-hosted a webinar exploring Indigenous use of fire in protected areas in partnership with the Canadian Parks Collective for Innovation and Leadership, and Canadian Parks Council. This panel discussion focused on the importance of Indigenous fire knowledge in parks and protected areas and will discuss the exciting opportunities and challenges that exist at the nexus of fire management, reconciliation and Indigenous-led conservation. The panel was

moderated by Robin Roth, and included Amy Cardinal Christianson, Nathan Cardinal, and Elder Rick Beaver as the panelists.

Lesage-Corbiere, J., Bell, A., *Transforming Conservation: Indigenous Protected and Conserved Areas in Ontario*, Ontario Nature, Plenty Canada, Walpole Island Land Trust, and the Indigenous Environmental Studies and Sciences program at Trent University, December 2018, online: <<https://ontarionature.org/transforming-conservation/>>

This report summarizes the learnings from May 28-30, 2018, when Ontario Nature, Plenty Canada, Walpole Island Land Trust and the Indigenous Environmental Studies and Sciences program at Trent University hosted a three-day gathering in London, Ontario on Indigenous Protected and Conserved Areas (IPCAs). A summary of the panels, discussions, and presentations are provided.

McDermott, Larry., & Roth, R., *Enacting a Reciprocal Ethic of Care: (Finally) Fulfilling Treaty Obligations*, Conservation Through Reconciliation Partnership, June 2021, online: <<https://conservation-reconciliation.ca/crp-blog/enacting-a-reciprocal-ethic-of-care>>

This blog entry is based on a chapter the authors wrote for *Transforming the Wild*, in which they explored what they see to be the biggest barrier to successful wildlife management – the unfulfilled and improperly implemented Treaties between settler states and Indigenous Nations. In this blog the authors discuss pre-European treaties and natural law, the Royal Proclamation of 1763 and the Treaty of Niagara, and explore what those have to do with wildlife management. At the end, the blog discusses an opportunity for Canada to learn governance processes, knowledge systems and worldviews that center on care, reciprocity and respect. Specifically, the mainstream wildlife management toolbox needs to be expanded to include Indigenous knowledge and practices that seek to maintain and enhance the abundance and ecological integrity of all species, and that fulfilling Treaty obligations would thus mark a turn in how relationships to wildlife are approached.

Moola, F., and Roth, R., *Moving Beyond Colonial Conservation Models: Indigenous Protected and Conserved Areas Offer Hope for Biodiversity and Advancing Reconciliation in the Canadian Boreal Forest*, NRC Research Press, 2018, Online: <<https://cdnsiencepub.com/doi/pdf/10.1139/er-2018-0091>>

This brief commentary suggests that although the Boreal Forest presents a significant and timely opportunity for large-scale conservation, we should not lose

sight of the fact that conventional conservation policy, such as the establishment of state-run parks and protected areas, have long played a role in the displacement of Indigenous Peoples. Specifically, the authors argue that Canada struggles with a legacy of colonial conservation policy. Many of the country's national, provincial, and territorial protected areas were established without regard to Indigenous rights or Treaty and resulted in the displacement of Indigenous Peoples, their loss of livelihood, and their access to spiritual sites. The commentary suggests that conserving lands and waters in partnership with Indigenous Peoples is the best way to protect biodiversity in the boreal that is consistent with our domestic and international obligations to respect and uphold the rights of Indigenous Peoples who call this globally recognized region home.

Nature United, A Blueprint for Action Conservation Finance to Support Canada's Target 1, online: <<https://www.natureunited.ca/content/dam/tnc/nature/en/documents/canada/A-Blueprint-for-Action-%20Nature-United.pdf>>

This blueprint synthesizes preliminary research into conservation finance opportunities relevant to Canada Target 1 and proposes a set of concrete steps to further explore and develop these opportunities. Five financing opportunities are identified, including green bonds, ecotourism conservation fees, renewable energy development, debt restructuring, and carbon offsets. The blueprint then discusses each of those five opportunities in relation to its applicability for Target 1 specifically. The blueprint also identifies two next-steps in conservation finance for Target 1. The first strategy includes the creation of a conservation finance toolbox and pilots for Target 1 project sites. Nature United proposes producing a conservation finance toolbox for Target 1 and strategically testing these tools with a focused set of diverse and interested Target 1 communities. Strategy two includes creating a Target 1 green bond task force and business case to encourage key partners to conduct the research and outreach needed to determine how a Target 1 green bond could be developed and issued, educate key government constituencies, and write a Target 1 green bond business case.

Nature Canada, Sakitawak IPCA in Northern Saskatchewan Represents the Future of Conservation Says Nature Canada, October 2021, Online: <<https://naturecanada.ca/news/press-releases/sakitawak-ipca-in-northern-saskatchewan-represents-the-future-of-conservation-says-nature-canada/>>

This news release reveals that Nature Canada has partnered with the Sakitawak IPCA to promote Indigenous-led conservation of the N-14 Fur Block in

Northwestern Saskatchewan. The conservation area is located about five hours north of Saskatoon in the heart of the Boreal Forest and contains critical habitat for threatened Woodland Caribou, freshwater fisheries, and old-growth pine forests. The Sakitawak IPCA is one of only four Métis-led conservation projects funded by the Government of Canada to create Indigenous-led protected areas. If protected, it will be the third-largest IPCA in Canada, covering 22,000 square kilometers or 523,000 hectares.

National Advisory Panel, *Canada's Conservation Vision: a Report of the National Advisory Panel*, March 2018, online:

<https://static1.squarespace.com/static/57e007452e69cf9a7af0a033/t/5b23dce1562fa7bac7ea095a/1529076973600/NAP_REPORT_EN_June+5_ACC.pdf>

This report from the National Advisory Panel lists 38 recommendations on how governments, non-governmental organizations, and Canadians could collectively achieve Canada Target 1 through a coordinated and connected network of protected and conservation areas. Following the recommendations and a discussion on Target 1, the report then discusses current legal frameworks for IPCAs and suggests new legal mechanisms that could be created that meet Indigenous objectives and international standards at the same time.

Nash, T., *Emerging Indigenous Protected and Conserved Areas: The Unama'ki Mi'kmaw IPCA Project*, April 2021, Online: <<https://conservation-reconciliation.ca/crp-blog/emerging-indigenous-protected-and-conserved-areas-the-unamaki-mikmaw-ipca-project>>

This blog by Trish Nash, IPCA Manager at the Unama'ki Institute of Natural Resources (UINR), provides a report on the UINR efforts to establish an Indigenous and Protected Areas (IPCA). By discussing the Mi'kmaw's relationship to the land and the governance structure of their IPCA, Nash highlights eight requirements for ensuring IPCAs are Indigenous-led. These include the idea that community engagement is on-going and will need to continue for all stages of IPCA development, the idea that words and definitions are important, such that words used must be specific as there is a difference between co-governance and co-management for example, the idea that Indigenous knowledge must be protected, and so on. Although these suggestions are Mi'kmaw specific, the general principles behind each can be transferable to other IPCAs.

Ontario Nature, Youtube Video: Protected Areas and Climate Action in Ontario: A Cross-Cultural Dialogue, online:

<https://www.youtube.com/watch?v=vmtoawl5QDk&ab_channel=OntarioNature>

This video captures some highlights from the Protected Areas and Climate Action in Ontario gathering, held in October 2019 in Kingston, ON. The video highlights the need for a culture based, and not a consumer based, solution to Indigenous led conservation, as well as the need to recognize Indigenous and Western knowledge as complementary and both accurate.

Ontario Nature, Youtube video: Indigenous Perspective on Protected areas, October 2017, online:

<https://www.youtube.com/watch?v=U21jR5zbLBs&ab_channel=OntarioNature>

This video captures some highlights from the Indigenous Perspectives on Protected Areas gathering, held in October 2017 in Peterborough, ON. This video emphasizes the need to listen and learn from Indigenous communities. Essential to IPCAs is the acknowledgement that the expertise needed to protect the environment will come from different knowledge systems collaborating together in a new innovative way to resolve and mitigate the conservation and IPCA issues faced.

Ontario Nature, *Your Protected Places: a Shared Vision for Ontario*, May 2021, online:

<<https://storymaps.arcgis.com/stories/41eff1b612824398ac5d80b96db56f21>>

This map designed by Ontario Nature is an interactive collection of candidates for protection across Ontario, from Ojibway Shores in Windsor, to Quarry Lake outside Ottawa, to the North French River near Moosonee, to the Farabout Peninsula west of Dryden. Descriptions, photos, and links to further resources are included for each location. This interactive map also welcomes people across Ontario to nominate places they would want to see permanently protected now and in the future.

Parks Canada, *The Land is Our Teacher Reflections and Stories on Working with Aboriginal Knowledge Holders to Manage Parks Canada's Heritage Places*, 2015, online:

<<https://conservation-reconciliation.ca/ipcaresources/the-land-is-our-teacher>>

This document is part of a series of tools that have been developed by Parks Canada's Aboriginal Affairs Secretariat. The stories found in this publication draw

from the experience Parks Canada team members have had in successfully managing heritage places and in developing programs and initiatives in collaboration with Aboriginal partners. They are designed to stimulate ideas through reflections, quotes, practical examples of practice and lessons learned, as well as to demonstrate best practices in establishing and maintaining partnerships. The document first explores stories on working with Aboriginal knowledge holders, and then lays out best practices to follow when working with Aboriginal traditional knowledge holders, and best practices for including traditional knowledge in heritage place management and resource conservation.

River Voices, Youtube video: Indigenous Protected and Conserved Areas, 2019, online: <https://www.youtube.com/watch?v=1n5_ayz7dq8&ab_channel=RiverVoices>

This video includes the voices of Elders and leaders, who discuss their vision for Canada and the global community and outline why Indigenous conservation and leadership is important and essential, for building healthy communities and a healthy world. Specifically, the Elders explain the need to look at conservation from the perspective that humans, nature, and animals are equals, the need for cross-cultural learning and the development of ethical space, and the importance of Indigenous leadership and inclusion in IPCAs.

Restructuring our Relations: Legal and Policy Dimensions of Indigenous-led Conservation in Ontario and Beyond (webinar), Conservation Through Reconciliation Partnership, October 2021, online: <<https://conservation-reconciliation.ca/virtual-campfire-series-recordings/restructuring-our-relations-legal-and-policy-dimensions-of-indigenous-led-conservation-in-ontario-and-beyond>>

On October 13, 2021, the CRP co-hosted a dialogue with the Osgoode Hall Law School to explore the legal and policy opportunities and challenges of Indigenous-led conservation in Ontario and other regions. Panelists discussed key concepts and principles behind Indigenous-led conservation, existing and emerging models, and key challenges to implementing these solutions. Panelists included Estella White, Larry Innes, Kerrie Blaise, Aimee Craft, Ian Attridge, and Lenore Keeshig.

Roth, R., & Moola, F., Urban parks are 'landscapes of opportunity' for Indigenous conservation leadership, Conservation through Reconciliation Partnership Leadership Circle, November 2021, online: <<https://conservation-reconciliation.ca/perspectives/urban-parks-are-landscapes-of-opportunity-for-indigenous-conservation-leadership>>

This blog discusses the Canadian government's \$130 million commitment to create a network of urban National Parks across the country. The authors argue that this commitment is a step forward in recognizing and valuing urban parks and forests for their ecological, educational, socio-cultural, and health benefits, but it falls short in recognizing the potential for urban parks to advance Indigenous self-determination and reconciliation. They continue by arguing that urban parks can be landscapes of opportunity for Indigenous rights, responsibilities, and relationships to thrive, if Indigenous Peoples are front and center in the planning, development, and management of urban parks. Namely, it is through the establishment of Indigenous Protected and Conserved Areas (IPCAs) that this can be achieved. The blog concludes by claiming that urban IPCAs would create safe spaces for Indigenous Peoples to re-establish relationships with their cultures, languages, and livelihoods within Canada's cities, and they would also create opportunities for the public to learn about Indigenous approaches to conservation and advance reconciliation by cultivating greater mutual understanding.

Tran, T., Neasloss, D., Kitsoo/Xai'xais Stewardship Authority, Bhattacharyya, J., and Ban, N., "*Borders don't protect areas, people do*": insights from the development of an Indigenous Protected and Conserved Area in Kitsoo/Xai'xais Nation Territory. FACETS. 5(1): 922-941, 2020, Online: <<https://doi.org/10.1139/facets-2020-0041>>

In this article, the authors describe a participatory action research collaboration with the Kitsoo/Xai'xais Nation to summarize the Nation's perspectives on their IPCA. The article presents the views of the Nation on the rationale and process of developing an IPCA in Kitsoo/Xai'xais Territory, in order to highlight the rationale (e.g., gaps, motivations, drivers) behind the Nation's IPCA development, describe the Nation's on-the-ground process to plan and implement an IPCA, and articulate key challenges facing the Nation's IPCA plus solutions to address them. The authors focused on a proposed IPCA for an area currently known as Green Inlet. The case study highlights that pursuing state legislative IPCA recognition is one pathway to support IPCA goals, however, state recognition can also hinder true respect for Indigenous decision-making and continue to uphold colonial practices. As such, certain Indigenous Nations may not want their IPCAs incorporated into state legislation. Further, the results highlight that IPCA managers can benefit from the use of hybrid approaches and that Indigenous Nations can use IPCAs as a tool to advance biodiversity conservation and support Indigenous resurgence. Lastly, the authors contend that territory-wide planning and stewardship capacity building are key investments to support IPCA development and management.

Tran, T., Ban, N., & Bhattacharyya, J., A review of successes, challenges, and lessons from Indigenous protected and conserved areas. *Biological Conservation*. 2019, 241. Online: <<https://doi.org/10.1016/j.biocon.2019.108271>>

This article reviewed the available academic literature to synthesize the motivations, successes, challenges, and lessons from protected and conserved areas led by Indigenous Peoples globally. The sources discussed 86 site-specific initiatives (i.e. with specific names and/or Indigenous Peoples/communities) involving at least 68 distinct Indigenous Peoples from at least 25 different countries. The results revealed that Indigenous Peoples' protected and conserved areas created socio-cultural, political, and ecological benefits such as improving Indigenous livelihoods, increasing governance and management capacities, and improving species populations and habitat protection. However, the article also discussed some challenges such as restrictive legislations, burdensome partnerships, insufficient funding, limited benefits, and demanded additional capacities and resources for mitigation. The article recommend that states and other external actors create and improve policies, legislations, and resources for Indigenous Peoples' protected and conserved areas as defined by Indigenous Peoples; provide resources and facilitate Indigenous leadership to shape external mechanisms for protected area establishment and development; and create new internal mechanisms for Indigenous engagement and partnerships. Indigenous Peoples would benefit from building partnerships to support and manage their areas.

Viswanathan, L., Canadian Institute of Planners, *Plan Canada* - Volume 59, Number 1 (Spring 2019), *All Our Relations: A Future for Planning*, pp. 215-219, Online: <<http://dx.doi.org/10.25316/IR-15261>>

The author argues that Indigenous-led community planning and state-based planning are parallel spaces and practices, driven and supported by different governance structures and world views. She therefore argues that planners in all realms must develop an appreciation for when and how these parallel planning systems might possibly find common ground, that is, "a shared space of mutual trust," reflecting the types of relationships symbolized by the Two Row Wampum.

Youdelis, M., Tran, K., and Lunstrum, E., *Indigenous-Led Conservation Reading List*. Conservation Through Reconciliation Publication, 2021, online:

https://docs.google.com/document/d/1vOzvjjSjWzOt993QO90TJ95D0u_JpD-rpi5qgL2QRaY/edit#

This reading list compiled by researchers from the Conservation Through Reconciliation Partnership lists many relevant links to other sources related to colonial conservation, IPCAs, governance models, and many other topics.

Youdelis, M. & Townsend, J. & Bhattacharyya, J. & Moola, F. & Fobister, J., *Decolonial conservation: establishing Indigenous Protected Areas for future generations in the face of extractive capitalism*, *Journal of Political Ecology* 28(1), 2021, online:

<https://doi.org/10.2458/jpe.4716>

This article discusses the inadequacy of the colonial-capitalist conservation paradigm to redress the biodiversity crisis, and explore IPCAs as one alternative, representing a paradigm shift from colonial to Indigenous-led conservation that reinvigorates Indigenous knowledge and governance systems. The authors argue that although Canada is supporting IPCAs through certain initiatives, the country's extractivist development model along with jurisdictional inconsistencies are undermining the establishment and long-term viability of many IPCAs. This article then explores two instances where Indigenous governments have established, or are establishing, IPCAs within long histories of resistance to colonial-capitalist exploitation. The authors conclude by arguing that there is a paradoxical tension in Canadian conservation whereby Indigenous-led conservation is promoted in theory, while being undermined in practice. IPCAs offer glimpses of productive, alternative sustainabilities that move away from the colonial-capitalist paradigm, but are being challenged by governments and industries that still fail to respect Indigenous jurisdiction.

Zurba, M., Beazley, KF., English, E., Buchmann-Duck, J., *Indigenous Protected and Conserved Areas (IPCAs), Aichi Target 11 and Canada's Pathway to Target 1: Focusing Conservation on Reconciliation*. *Land*. 2019; 8(1):10. Online:

<https://doi.org/10.3390/land8010010>

This article provides an analysis of the issues relating to the movement towards new models for Indigenous-led conservation in light of Canada's initiatives for greater protected areas representation through Target 1. The authors provide a background on Canada's Pathway to Target 1, which is based on Target 11 from the Aichi Biodiversity Targets set forth by the Convention on Biological Diversity (CBD). The article then provides an analysis of "wicked problems" that Indigenous

communities, governments, and other stakeholders in protected areas will need to navigate towards implementing the IPCA approach in Canada. It concludes with a discussion on the need to refocus conservation on reconciliation by restoring nation-to-nation relationships and relationships between the land and peoples, particularly important for colonial countries aiming for biodiversity conservation and reconciliation with Indigenous peoples through IPCAs.

²¹⁸ Indigenous Circle of Experts, “We Rise Together, Achieving Pathway to Canada Target 1 through the conservation of Indigenous Protected and Conserved Areas in the spirit and practice of reconciliation” *The Indigenous Circle of Experts’ Report and Recommendations* (2018) at 5 online (pdf): <https://www.iccaconsortium.org/wp-content/uploads/2018/03/PA234-ICE_Report_2018_Mar_22_web.pdf> [*Indigenous Circle of Experts*].

²¹⁹ *Ibid.*

²²⁰ “North French River,” Wildlands League: A Chapter of the Canadian Parks and Wilderness Society, (2020) , online: <<https://wildlandsleague.org/project/north-french-river/>>.

²²¹ Petri Bailey, “Indigenous-led conservation is gaining traction,” (21 August 2020), CELA, online: <<https://cela.ca/indigenous-led-conservation/>>.

²²² Government of Ontario, “Crown land management, what Crown land is and how it is managed,” Ministry of Natural Resources and Forestry, (Updated February 21, 2020), online: .

²²³ Office of the Prime Minister, “Minister of Environment and Climate Change Mandate Letter”, Mandate letters (13 June 2019) at para 26 online: <<https://pm.gc.ca/en/mandate-letters/2019/12/13/minister-environment-and-climate-change-mandate-letter>>.

²²⁴ Ontario, “Premier Ford Reflects on Canada Day” *Newsroom* (1 July 2021) online: <<https://news.ontario.ca/en/statement/1000448/premier-ford-reflects-on-canada-day>>.

²²⁵ Ontario, Legislative Assembly, *Hansard*, 42nd Leg, 2st Sess, (25 Feb 2020) at 1050. “*We are now working directly with them through the NAN leadership to ensure that decision-making moving forward is shared between the government and the Indigenous communities who—wait for it—actually live there.*”

²²⁶ Ontario, Legislative Assembly, *Hansard*, 42nd Leg, 1st Sess, (31 July 2018) at 1610.

²²⁷ Ontario, Legislative Assembly, *Hansard*, 42nd Leg, 1st Sess, (30 November 2020) at 1110. “*..our government is committed to protecting and conserving our environment. We want to ensure that Ontario’s natural beauty can be enjoyed for generations to come.*”

²²⁸ Conservation Through Reconciliation Project, “Indigenous Protected and Conserved Areas” at para 3 online: <<https://conservation-reconciliation.ca/about-ipcacs>>.

²²⁹ Indigenous Corporate Training Inc, “What is the Seventh Generation Principle?” (30 May 2020) online: <<https://www.ictinc.ca/blog/seventh-generation-principle>>.

²³⁰ M. Zurba et al, “Indigenous Protected and Conserved Areas (IPCAs), Aichi Target 11 and Canada’s Pathway to Target 1: Focusing Conservation on Reconciliation” (2019) 8:10 *Land* at 14.

²³¹ Ontario, Legislative Assembly, 42nd Leg, 1st Sess, (3 December 2019) at 1106. “*We believe climate change is real but, even better, we have an incredible policy moving forward to meet our target, the Paris accord, of 30%. We’re well on our way. We’re actually going to exceed that goal and focus on making sure we have clean air, clean lakes, clean rivers, and making sure that we respect the environment.*”

²³² Pembina Institute, “New research finds Canadian provinces and territories unprepared to deliver a safe climate” (23 July 2021) online: <<https://www.pembina.org/media-release/new-research-finds-canadian-provinces-and-territories-unprepared-deliver-safe>>.

²³³ Ontario, Legislative Assembly, *Hansard*, 42nd Leg, 1st Sess, (31 July 2018) at 1610.

²³⁴ Ontario, Legislative Assembly, *Hansard*, 42nd Leg, 1st Sess, (21 July 2020) at 1118.

²³⁵ Ontario, Legislative Assembly, *Hansard*, 42nd Leg, 1st Sess, (15 July 2020) at 1320.

²³⁶ *Indigenous Circle of Experts*, *supra* note 1 at 19.