

**RE-IMAGINING LOCAL GOVERNANCE:  
THE LANDSCAPE OF “LOCAL” IN TORONTO**

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## **Abstract**

In 1997, the Province of Ontario formed the City of Toronto, amalgamating one regional and six small municipalities into a single city government. This action altered the formal institutions of local governance, replacing what was once regional with a City Council meant to represent “city-wide” issues, and without providing a clear model for local or smaller-than-city decision-making. The purpose of this dissertation is to conceptualize the meaning of “local governance” within the City of Toronto as a result of the overlap of wards (as represented by councillors), community councils, business improvement areas and neighbourhood associations, each of which claim geographical boundaries as justification for the representation of locally-based populations, and claim to be open to participation to some degree. This research asks whether the overlap of these bodies has unrecognized consequences, in particular, the effect on historically marginalized residents. This dissertation offers a theoretical conceptualization of “local governance” grounded in legal pluralism and legal geography that presents the city as a set of uneven and overlapping local legal spaces operating on multiple scales. Using a mixed methods approach that includes doctrinal review, case studies, and semi-structured interviews, the dissertation finds that wards dominate the law and practice of local decision-making, and do not represent an inclusive local governance model in Toronto. BIAs and neighbourhood associations are unevenly distributed across the city, exist mainly in the socio-economically privileged areas and have grown in number and broadened their mandates since Toronto’s 1997 amalgamation. Toronto’s community councils, which were initially conceived by the province as a means to provide “local” access to municipal decision-making, have failed to achieve their legislative potential. The dissertation concludes that reimagined community councils, grounded within a normative understanding of the urban commons, serve as a means to create a more inclusive and participatory local governance model in Toronto.

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## Introduction

In 2013, Toronto City Council decided to alter a recently-approved seven-stop Light Rail Transit (LRT) project in Scarborough, a suburban area that comprises about a quarter of the city's land mass, to a three-stop subway.<sup>1</sup> The LRT was meant to provide rapid transit access to some of the poorest residents of Toronto, who at present endure long commutes using a complex network of buses and an outdated rail line. The rationale for the shift in the plan, as asserted by the then-Mayor Rob Ford, was that Scarborough residents deserve equal consideration in city-wide decision-making.<sup>2</sup> In his view, spatial and distributional justice demanded a rapid transit plan equivalent to those of other areas within Toronto. In the five years that followed, the subway dwindled to a single stop, exacerbating the "transit injustice" that has plagued Scarborough for years,<sup>3</sup> and the price escalated from one to three billion dollars.<sup>4</sup> The Scarborough subway decision alerts us to the need for transit plans that address the needs of Toronto's poorest residents.<sup>5</sup> However, it also raises another crucial issue at this point in Toronto's municipal history: should local residents have a say in "city-wide" decisions? In the case of the subway, what role should Scarborough residents have had – especially the most vulnerable – in determining the policy actions that affect their day-to-day lives?

The central question that this dissertation seeks to answer is what "local governance" means in the City of Toronto as a result of the overlap of various governance bodies, each with their own set of geographic boundaries and assertions of representation. In Toronto, these overlapping bodies are wards (as represented by councillors), community councils, business improvement areas and neighbourhood associations, each of which claims

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<sup>1</sup> City Manager, Report to City Council: Scarborough Rapid Transit Options (12 July 2013), online: <<https://perma.cc/9E5M-YZ3L>>.

<sup>2</sup> Bob Hepburn, "Scarborough deserves respect, fairness," *Toronto Star* (30 June 2016), online: <<https://perma.cc/Z3F9-PB8L>>.

<sup>3</sup> Roger Keil, Melissa Ollevier and Erica Tsang, "Why is there no Environmental Justice in Canada" in Julian Agyeman, Peter Cole, Randolph Haluza-DeLay, Pat O'Riley (eds), *Speaking for Ourselves: Environmental Justice in Canada* (Vancouver: UBC Press, 2009) at 78.

<sup>4</sup> City Clerk, City Council Decision: Next Steps on the Scarborough Subway Extension, City of Toronto (28 March 2017), online: <<https://perma.cc/W6N6-K5T6>>.

<sup>5</sup> Rahul Gupta, "Scarborough group demands province study LRT plan," *Inside Toronto* (25 April 2017), online: <<https://perma.cc/U9MG-NQGA>>.

geographical boundaries as justification for the representation of locally-based populations, plays a role in local governance, and claims to be open to participation to some degree. Fundamentally, this research asks whether the overlap of these bodies has unrecognized consequences and how these consequences affect marginalized people. “Representation” refers to the meaningful involvement of all demographics of the populations who reside within the applicable boundaries. “Marginalized people” are economically disadvantaged populations, although I recognize that gender and racial factors interpenetrate economic disadvantage. While the conceptual meaning of “local governance” is explored later in this dissertation, I start with a working definition of the term as a geographically identifiable community that makes a governance claim based on particular boundaries. Given that all of these governance bodies articulate their mandate in terms of a claim to “local governance,” I centre the theoretical examination of the meaning of this term and its implications.

## **I. Why local governance?**

According to Saskia Sassen, the global city is a singular, territorially-specific entity alongside others that competes internationally for the ideal nexus of profitability and livability.<sup>6</sup> At the same time, large cities are the sum of their local geographies, identified by boundary lines that demarcate neighbourhoods and communities.<sup>7</sup> City decision-making is often thought of in the context of City Council, a body comprised of a mayor and councillors that determines the municipality’s policies and by-laws. In reality, given the breadth of matters within their jurisdiction, large cities must delegate to committees, commissions and other bodies responsibility to consider certain matters, sometimes as final decision-makers. Outside of formal government and its “top down” powers of delegation, grassroots or “bottom up” publics form at the community or neighbourhood level within cities, nudging and urging transformation.

My interest in this topic began while I was working in a senior policy role at the City of Toronto between 2009 and 2015. My areas of expertise were “city-wide” matters like

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<sup>6</sup> Saskia Sassen, *Cities in a World Economy* (Pine Forge Press, 2012).

<sup>7</sup> Gerald E. Frug, “The Geography of Community” (1996) 48 *Stanford Law Review* 1047.



intergovernmental relations, housing, and infrastructure, which had clear routes of reporting into City Council. By contrast, I observed that “local” issues were comparably undefined and messy to my legally trained brain. I learned that the city’s electoral districts, called wards, divided Toronto into 44 geographic spaces each with an elected councillor. But, it was also evident that councillors varied extensively in their day-to-day involvement in negotiating ward-based matters. At that time, I observed that, despite their name, the city’s four community councils did not have a role in issues like housing, child care, community centres or transit, regardless of the local interest in such initiatives; these issues, instead, fell within the mandates of the “city-wide” standing communities. Public engagement changed a lot too, during my time at City Hall, including the disbanding of almost all of the city’s advisory committees and a loss of staff mandate to pursue “Civics 101,” an educational initiative to increase knowledge about municipal government. This wild west of messy local spaces, governance, and engagement was fascinating to me, and I eagerly wanted to understand how “local governance” was actualized in the city.

Even before its genesis as a city in 1834, Toronto divided its geography based on “wards,” a construct borrowed from England, whereby an elected councillor represents the residents of each ward. Wards remained the connective tissue of the city’s governance throughout its many annexations and amalgamations, the most recent in 1998 when the Province of Ontario brought together seven municipalities to form the current City of Toronto. Until 2006, the Province of Ontario had the authority to draw municipal boundaries. The city’s current wards are a legacy of this provincial power: Toronto’s 44 wards were struck in 2000 based on the federal and provincial electoral districts and then divided by two.<sup>8</sup>

In 1998, the forced provincial amalgamation of one upper-tier and six lower-tier municipalities resulted in a lawsuit, a referendum, and unparalleled civic activism.<sup>9</sup> The

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<sup>8</sup> At the time of writing, Toronto’s 44 wards – now with very different populations – are being redrawn for the first time since 2000, a process detailed in Chapter 5.

<sup>9</sup> Mary Louise McAllister, *Governing Ourselves?: The Politics of Canadian Communities* (Vancouver: UBC Press, 2004) at 38.

resident opposition centered on the impact that the new “mega city” would have on public access to City Hall. The Province of Ontario included a last-minute change in the *City of Toronto Act, 1997* that required the new City of Toronto to consider the inclusion of “neighbourhood committees” and “community councils” in its governance model.<sup>10</sup> Caught between a fear of a decentralized model that would ultimately privilege the former municipalities and the political pressure to include governance bodies lying somewhere between the ward and City Council, the new City of Toronto created community councils with very little autonomy, no community representation, and a narrow set of issues defined as “local” delegated for their review.

Since their inception, there has been little change in the mandates and composition of Toronto’s four community councils. Under the *City of Toronto Act, 2006* (COTA), City Council has wide authority to determine who may serve on a community council and their corresponding authorities.<sup>11</sup> The councillors within community council boundaries are the sole members. Community councils may make final decisions on specified “local” matters like on-street permit parking and traffic calming, but not matters affecting more than one community council, nor matters that have been determined to have “city-wide” significance. A seldom-used provision of the City’s procedural bylaw also gives community councils the power to consider “neighbourhood issues.” In conceptualizing community councils, neither staff nor City Council has explained the rationale for the “local” versus “city-wide” binary, nor how to reconcile arguments that an issue could, in fact, be both.

This dissertation also examines the role of the two other bodies that play an important role in local decision-making. Business Improvement Areas (BIAs) have existed in Toronto since 1970 and are regulated through the city’s procedural bylaw. By contrast, neighbourhood associations are *ad hoc* organizations that are unregulated by and have no formal ties to the City of Toronto and correlate with higher than average socio-economic

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<sup>10</sup> *City of Toronto Act, 1997* (No. 2), S.O. 1997, c. 26 (this legislation was introduced to create the new amalgamated City of Toronto. Other than provisions to the contrary in this Act, the City of Toronto remained subject to the authorities prescribed under the Municipal Act, R.S.O. 1990, c. M.45, as amended and, later, repealed).

<sup>11</sup> *City of Toronto Act, 2006*. S.O. 2006, Ch. 11 [hereinafter “COTA”].

demographics. Both BIAs and neighbourhood associations justify their advocacy and service roles by asserting that they represent local populations within specific boundaries. Both BIAs and neighbourhood associations engage in active lobbying and can play a highly influential role in the decisions that take place at the ward or community council level.

Wards, community councils, BIAs and neighbourhood associations each play a role in local governance. But, what does their overlap mean in understanding the term “local governance” and what are the effects on inclusive representation across Toronto? These are the questions that this dissertation seeks to answer.

## **II. Mapping Toronto: Competing Tales of Prosperity and Inequality**

Boaventura de Sousa Santos writes that “maps distort reality in order to establish orientation.”<sup>12</sup> Likewise, the maps used to describe Toronto orient our attention and establish a lens of analysis. In one city map, we see a growing, prosperous, diverse urban space. This account of Canada’s largest city, with a population of 2.6 million people at the last census count,<sup>13</sup> is replete with distinctions such as eighth safest<sup>14</sup> and fifth most livable city in the world;<sup>15</sup> tenth most financially competitive city;<sup>16</sup> and in fifth place for its labour and economic “attractiveness” in North America.<sup>17</sup> In 2016, Toronto was chosen to join the Resilient Cities Network, an initiative of the Rockefeller Centre which provides funding for the hiring of a “Chief Resiliency Officer” to tackle the effects of globalization, urbanization and climate change, as well as networking opportunities with other “global cities.”<sup>18</sup> This version of Toronto is the “economic engine” of the region,

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<sup>12</sup> Boaventura de Sousa Santos, “Law: A Map of Misreading – Toward a Postmodern Conception of Law” (1987) 14 J.L. & Soc’y 281 at 458.

<sup>13</sup> City of Toronto, 2011 Census: Population and Dwelling Counts (last retrieved: 11 May 2017), online: <<https://perma.cc/AN6N-PN4Z>> at 1.

<sup>14</sup> Economist Intelligence Unit, The Safe Cities Index (2005), online: <<https://perma.cc/W785-YS72>>.

<sup>15</sup> Economist Intelligence Unit, Global Liveability Ranking (2016), online: <<https://perma.cc/47C9-NLUN>>.

<sup>16</sup> Z/Yen Group Limited, GFCI 19 Introduction (2016).

<sup>17</sup> Toronto Region Board of Trade, Toronto as a Global City: Scorecard on Prosperity (2015), online: <<https://perma.cc/2U8C-JANK>>.

<sup>18</sup> Rockefeller Foundation, 100 Resilient Cities, Overview (2016), online: <<https://perma.cc/X4EG-ZZ4V>>.

province, and country, with 10% of the country's GDP drawing from the activity within its boundaries.<sup>19</sup>

This orientation reinforces Toronto's emerging status as a "global city," one of a small set of interconnected urban centres that dictate the flow of capital and attract investment.<sup>20</sup> Likewise, Richard Florida's theory of the creative class describes an economically-thriving, progressive urban centre like Toronto's, where young, mobile workers flit across the globe, starting companies, painting hipster graffiti and ultimately strengthening the economic prosperity of those cities fortunate enough to attract them.<sup>21</sup> "The creative centres tend to be the winners of our age," he writes. "Not only do they have high concentrations of creative economic outcomes in the form of innovative and high-tech industry growth. They also show strong signs of overall regional vitality such as increases in regional employment and population."<sup>22</sup>

This account of Toronto sees its sizeable newcomer population as evidence of the success of Toronto's motto, "Diversity our Strength." The BBC dubbed Toronto the "most multicultural city in the world,"<sup>23</sup> with over two hundred racialized communities and 140 languages spoken.<sup>24</sup> This map portrays Toronto as a welcoming, growing, and thriving city, where people come to make their home and a better life for themselves.

This vibrant characterization obscures Toronto's growing spatial injustice, visible when the lens of analysis zooms in on localized areas of the city. Under this more focused view, low-income and visible minority residents inhabit different parts of the city than affluent or middle-class white Torontonians. Scholars Alan Walks and David Hulchanski have written extensively about the rising levels of income inequality over the last three

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<sup>19</sup> Toronto Region Board of Trade, *Toronto as a Global City: Scorecard on Prosperity* (2015), online: <<https://perma.cc/2U8C-JANK>>.

<sup>20</sup> Saskia Sassen, "The Global City: Introducing a Concept" (2005) XI:2 *Brown Journal of World Affairs* 27 at 39.

<sup>21</sup> Richard Florida, "Cities and the Creative Class" (2003) 2:1 *Cities and Commentary* 3.

<sup>22</sup> *Ibid.* at 8.

<sup>23</sup> D. Flack, "Toronto named most diverse city in the world," *blogTo* (15 May 2016), online: <<https://perma.cc/KH7X-WH43>>.

<sup>24</sup> *Ibid.*

decades and the degree to which this inequality is spatialized.<sup>25</sup> Hulchanski identified three geographically distinct cities in his 2010 report: one where incomes have increased by 20% since 1970; a second where incomes have increased or decreased by less than 20%; and a third where incomes decreased by more than 20%.<sup>26</sup>

Toronto's spatial poverty is overlaid with racial inequality. As Roger Keil, Melissa Ollevier and Erica Tsang write, "Toronto's view of itself as the most diverse city on the planet usually comes with the bravado of claiming normative superiority in questions of diversity, too."<sup>27</sup> The reality is a "paper thin veneer" of multiculturalism, when in fact, poverty and inequality are socio-spatially located.<sup>28</sup> As a cautionary tale, they write, "Much of the literature on ghettos comes from the United States, where racial segregation, particularly of the black and Hispanic population, is a major concern. Although stark segregation like that in the United States does not (yet) exist, there are indications of increasing inequalities in Canadian cities, especially Toronto."<sup>29</sup> Keil, Ollevier and Tsang include housing amongst the most egregious environmental concerns in the city, with substandard housing in poor, racialized areas of the city laden with rodent infestations and hazardous odors.<sup>30</sup> The least economically affluent areas are also "transit deserts," meaning that they suffer from the poorest levels of transit service.<sup>31</sup> Since 2009, when Keil, Ollevier and Tsang wrote their piece, the geographic disparities of low-income and racialized communities have become even more acute. According to the Toronto Foundation's 2016 Vital Signs report, income inequality is increasing by double the speed in Toronto as compared with the rest of the country.<sup>32</sup> This report notes

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<sup>25</sup> See e.g. Alan Walks, *Income Inequality and Polarization in Canada's Cities: An Examination and New Form of Measurement* (Toronto: Cities Centre, 2013), online: <<https://perma.cc/9J35-3VZJ>>; and David Hulchanski, *The Three Cities Within Toronto: Income Polarization among Toronto's Neighbourhoods, 1970–2005*. (Toronto: University of Toronto Cities Centre, 2010).

<sup>26</sup> *Ibid.* at 7.

<sup>27</sup> Keil, Ollevier & Tsang, *supra* note 3 at 66.

<sup>28</sup> *Ibid.* at 66, referencing Kanishka Goonewardena and Stefan Kipfer, "Spaces of Difference: Reflections from Toronto on Multiculturalism, Bourgeois Urbanism and the Possibility of Radical Urban Politics" (2005) 29:3 *International Journal of Urban and Regional Research* 670.

<sup>29</sup> Keil, Ollevier & Tsang, *supra* note 3 at 71.

<sup>30</sup> *Ibid.* at 68.

<sup>31</sup> Martin Prosperity Institute, "Transit Deserts and Hulchanski's Three Cities," Martin Prosperity Insights, (Toronto: University of Toronto, n.d.) at 1. See also Keil, Ollevier & Tsang, *supra* note 3 at 78.

<sup>32</sup> Toronto Foundation, "Gap Between Rich and Poor" in *Toronto's Vital Signs Report* (2016), online: <<https://perma.cc/JA72-P3F6>>.

that Toronto is the “child poverty capital of Canada” with over 28% of children living in poverty.<sup>33</sup> Overall, more than 22% of Toronto’s residents live in poverty, similar to Boston and Los Angeles, and second only to London, UK.<sup>34</sup> In Toronto, poverty is racialized. The 2011 National Household Survey notes that poorer areas tend to have more visible minorities and immigrants.<sup>35</sup> White, non-immigrant children have the lowest poverty rates.<sup>36</sup> The United Way recently concluded that, “Left unaddressed, Toronto is at risk of becoming the income inequality capital of Canada.”<sup>37</sup> Perhaps as a reflection, the number of immigrants moving to Toronto dropped by 19% from 2011 to 2013.<sup>38</sup>

This present study focuses on the zoomed in characterization of Toronto to analyze how the local governance model overlaps with and affects the city’s spatial inequality.

### III. Theoretical Considerations

This dissertation brings together the scholarship of legal pluralists, in particular Santos,<sup>39</sup> with the work of property and local government scholars Gerald Frug,<sup>40</sup> Sheila Foster and Christian Iaione,<sup>41</sup> legal geographer Nicholas Blomley<sup>42</sup> and interdisciplinary scholar Mariana Valverde,<sup>43</sup> to conceptualize “local governance.” I advance a conceptualization of “local governance” drawn from notions of legal pluralism and legal geography that offers new insights into the spatiality of Toronto’s local boundaries and bodies, and their

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<sup>33</sup> Ibid.

<sup>34</sup> Ibid, referencing World Council on City Data: WCCD Open City Data Portal. (2015), online: <<https://perma.cc/28W7-JHHK>>.

<sup>35</sup> Campaign 2000, Media Release (2015), online: <<https://perma.cc/EW2U-Y8AF>> (noting that National Household Survey data is given voluntarily, thus may not be as accurate).

<sup>36</sup> D. Macdonald and D. Wilson, “Shameful Neglect – Indigenous Child Poverty in Canada,” Canadian Centre for Policy Alternatives (2016), online: <<https://perma.cc/8A97-TLTE>>.

<sup>37</sup> United Way, “The Opportunity Equation: Building opportunity in the face of growing income inequality” (2015), online: <<https://perma.cc/K9S3-FYXV>> at 3.

<sup>38</sup> Toronto Workforce Innovation Group, Local Labour Market Update (2014).

<sup>39</sup> See e.g. Santos, *supra* note 12.

<sup>40</sup> See e.g. Frug, *supra* note 7 and Gerald Frug, “Decentering Decentralization” (1993) 60 U. Chi. L. Rev. 253.

<sup>41</sup> See e.g. Sheila Foster & Christian Iaione, “The City as a Commons” (2016) 34 Yale L. & Pol’y Rev. 281 and Sheila R. Foster, “Collective Action and the Urban Commons” (2011) 87:1 *Notre Dame Law Review* 57.

<sup>42</sup> See e.g. Nicholas Blomley, *Law, Space and Geographies of Power* (London: The Guilford Press, 1994).

<sup>43</sup> See e.g. Mariana Valverde, “Time Thickens, Takes on Flesh: Spatiotemporal Dynamics in Law” in I. Braverman, N. Blomley, D. Delaney & A. Kedar, eds. *The Expanding Spaces of Law: A Timely Legal Geography* (Stanford University Press, 2014).

impact on the city's most marginalized populations. This conceptualization holds that, first, "local governance" is pluralistic and recognizes the interlegality of multiple normative orders known as "local legal spaces," which cannot be considered self-enclosed, autonomous units; and second, that state iterations of local governance bodies create political, social, and spatial realities, through multiple overlapping institutions; incorporate other norms, orders, rules and practices; and include and exclude certain people and communities through the setting of boundaries and participation rules. This project advances both legal pluralism and legal geography project by recognizing localized areas of the city as multiscalar and interlegal in themselves, with a local governance model that is inclusive of a plurality of formal and informal bodies and geographies.

This conception moves beyond the contours of legal scholarship to explore the implications of this study for notions of power. Valverde, Blomley, and Santos belong to the loosely defined and still-unfolding legal geographies project and consider how maps and geography can shed light on the dynamics of legal and political power. They and others within the legal geography project also explore the complexities of "interlegality," meaning how norms and laws interact within particular spaces and over time, and how power is asserted and competing parties claim jurisdiction. As detailed in Chapter 3, Toronto's local governance model embodies the overarching aim of these and other scholars to make sense of overlapping, discontinuous, and in some cases contradictory boundaries and institutions.

Drawing on this conceptualization, I advance a normative argument that inclusive, participatory "local governance" should be conceived within the theoretical framework of the urban commons. In so doing, I apply Foster and Iaione's model of the urban commons that, regardless of whether spaces are privately or publicly owned, the city is a territorial space in which citizens claim to have a role or stake, a norm which is reinforced in law.<sup>44</sup> Foster and Iaione draw on Elinor Ostrom's famous study, captured in her book *Governing the Commons*, which meticulously challenged the assumption that

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<sup>44</sup> Sheila Foster & Christian Iaione, "The City as a Commons" (2016) 34 Yale L. & Pol'y Rev. 281.

common property cannot be governed collectively without substantial waste and inefficiency.<sup>45</sup> Foster and Iaione adapt Ostrom's thesis to the urban form and, in particular, to the question of how public-private organizations can effectively play a role in governing specific city areas. They argue that to do so, they must incorporate "bottom-up" governance practices by engaging the public. My dissertation draws on Foster and Iaione's work to argue that the urban commons represents a helpful normative framework that values inclusive participation in the specific practices of laws and institutions created by local governments.

However, Foster and Iaione rightly note that in considering the city as an urban commons, and in conceptualizing governance institutions, the question of inclusivity is crucial, even though they do not directly contend with this question in their work. As such, my normative theoretical contribution incorporates the work of Gregory Alexander, Eduardo Peñalver and Gerald Frug, also property law theorists, who delve squarely into the impact of boundaries on the representation of historically disadvantaged people in city spaces. These and other authors, including Richard Thompson Ford, have observed that creating neighbourhood boundaries and enabling local power also lead to "insiders" and "outsider" and disproportionately impacts racialized, low-income people, and others who have been historically disadvantaged. Through the notion of the urban commons, I apply the conceptualization of "local governance" to advance a normative understanding of the roles and mandates of Toronto's local governance institutions. In doing so, Valverde, Blomley and Santos' works complement notions of the urban commons in providing a framework for Toronto's complex, messy local governance model for the analysis that follows in the dissertation.

#### **IV. Case studies: Exploring "Local Governance" in "City-wide" Decisions**

Under COTA, City Council is empowered "to represent the public and to consider the well-being and interests of the City."<sup>46</sup> Under the theoretical framework advanced in this dissertation, "city-wide" issues have disparate, specific and localized effects, meaning

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<sup>45</sup> Elinor Ostrom, *Governing the Commons: The Evolution of Institutions for Collective Action* (Cambridge University Press, 1990).

<sup>46</sup> COTA, *supra* note 11 at s. 131(a).



that local impacts are created by decisions taken at the “city-wide” level. This dissertation introduces two case studies to evaluate the theoretical framework advanced in Chapter 1, including how wards, community councils, business improvement areas and neighbourhood associations are involved in decision-making on “city-wide” issues, and the effect of their roles on inclusive participation.

In Chapter 4, this dissertation explores two casino decisions taken by City Council in an eighteen-month period with vastly different results. In the 2012-13 casino debate, four casino options were identified as possible locations for a new casino in the City of Toronto, all soundly rejected by City Council on the basis of “local” concerns such as traffic, planning and the localized effects of addiction and health. In 2015, the expansion of the Woodbine Racetrack to a casino in Rexdale, one of the city’s poorest areas, was approved. These decisions offer insights into how place-based notions of “local governance” are exercised unevenly across the city, examining how advocates in the downtown debate were able to modify governance practices to shift the scale of decision-making, while “local” issues in suburban Rexdale focused exclusively on economic considerations, with the casino characterized as a rare opportunity for job creation with little attention to civic engagement, incorporation of community knowledges or consideration of the social effects of casinos. The studies query whether “local governance” served as a privileged, but ultimately unequal, assertion in contested jurisdictional claims and whether the spatiality of casino development demands attention to the empowerment of local communities amidst a landscape of socio-economic inequality.<sup>47</sup>

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<sup>47</sup> See eg. Carissa Schively, “Understanding the NIMBY and LULU Phenomena: Reassessing Our Knowledge Base and Informing Future Research” (2007) 21:3 *Journal of Planning Literature* 255 (analyzing the complexity of research related to ‘locally undesirable land use’ (LULUs) and “not in my backyard” (NIMBY) phenomena in cities); Tee L. Guidotti and Sheila Abercrombie, “Aurum: a case study in the politics of NIMBY” (2008) 26 *Waste Management & Research* 582 (examining the importance of the political history of the community in regard to community responses to LULU and NIMBY phenomenon); Prashan Ranasinghe and Mariana Valverde, “Governing Homelessness Through Land-use: A Sociolegal Study of the Toronto Shelter Zoning By-law” (2006) 31:3 *Canadian Journal of Sociology* 325 (arguing that NIMBY phenomena related to municipal responses to homelessness are impacted by the specific “machinery” of municipal law, especially zoning bylaws, which are not guided by substantive democracy, equality or social justice).

Chapter 5 sets out the ward boundary review initiated in 2013. This case study took place over two terms of Council and concerned the drawing of new ward boundaries throughout Toronto. The ward boundary review was the first since the introduction of the *City of Toronto Act, 2006*, which gave the City of Toronto expansive authority to consider the design of its governance model, including the drawing of electoral districts. Like other governments, Toronto is bound by jurisprudence that mandates that wards be drawn, in part, to protect the boundaries of “communities of interest.”<sup>48</sup> This case study directly examines the contested meanings of “communities of interest” asserted by councillors, BIAs, neighbourhood associations and others, and how these meanings overlay with the geographically-based placement of wards and other local governance bodies. This case study directly examines the bodies empowered in the review, and the interplay between wards and other “local governance” bodies, including BIAs and neighbourhood associations.

The analysis presented in both case studies tests the conceptualization of “local governance” introduced in Chapter 1. The case studies also animate the central normative question in this dissertation, explored in Chapter 6: how can the framework of the urban commons advance an inclusive, participatory “local governance” model in Toronto?

## **V. Structure of the Argument**

Chapter 1 articulates the theoretical framework that forms the backbone of this dissertation. I review the major debates in legal pluralism and legal geography related to the concept of “local governance.” Drawing on the work of Blomley, Valverde, and Santos, I theorize a meaning of “local governance” that builds on what I call “local legal spaces,” meaning the competing spatial claims to smaller-than-city areas of the city. I offer a conceptualization of “local governance” that recognizes the pluralistic and interlegal nature of “local legal spaces,” yet is framed by the state in political and spatial terms without necessarily incorporating other norms, orders, rules and practices, and may ultimately include and exclude certain people and communities through the setting of

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<sup>48</sup> *Reference Re Provincial Electoral Boundaries (Sask.)* [1991] 2 SCR 158.

boundaries and participation rules. The aim of this chapter is two-fold. First, it advances the legal geography project by focusing on smaller-than-city spaces as pluralistic, comprised of multiple scales, and with significant implications for distributional justice. Second, it argues in favour of a normative conception of an inclusive and participatory local governance model based on Sheila Foster and Christian Iaione's notion of the "urban commons."

Chapter 2 sets out the methodological approach used to understand the meaning of "local governance" within the City of Toronto. This dissertation uses a mixed methodological approach, combining doctrinal analysis with qualitative empirical methods of case studies, interviews, and ethnographic observation. In this chapter I set out the methods used to obtain data on wards, community councils, BIAs and neighbourhood associations, and detail the criteria used to select the case studies, together with the role of doctrine, semi-structured interviews, data analysis, and ethnography to gather the data necessary to draw the conclusions reached in this dissertation. My theoretical framework and normative argument are interested in how "local governance" is constructed by official actors and within official city governance institutions, and, as such, I explain why the use of case studies to examine the localized effects of "city-wide" issues is critical to conceptualizing "local governance."

Chapter 3 sets out the City of Toronto's existing model of local governance. The aim is to explain the "law in the books" in the city's smaller-than-city governance and focuses specifically on wards and community councils, as well as the city's neighbourhood associations and business improvement areas (BIAs).<sup>49</sup> First, I set out the interplay between provincial requirements and the city's bylaws as they relate to governance. This chapter explains the historical significance of the ward and the centrality of the ward councillor in local decision-making. Next, this chapter introduces community councils as "ghosts" of the former municipalities with largely unused powers to redefine and reframe local governance. Third, I show that neighbourhood associations and BIAs assert a role in

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<sup>49</sup> For a concise description of "law in the books" and "law in action," see Rebecca L. Sandefur, "When is Law in Action?" (2016) 77 Ohio State Law Review 59.

local governance both by advancing representation based on particular geographical boundaries, and through their privileged access to ward councillors and formal municipal governance bodies. The chapter details the histories, locations, and mandates of these organizations, setting out the differences and similarities in their relationship to the city. Drawing on quantitative and interview data describing the role of these bodies in local governance and their interaction with other actors, I argue that neighbourhood associations positively correlate with higher levels of homeownership and economic advantage, however, have significantly modified their structures and mandates to move beyond planning as the focus of attention.

To further understand the meaning of “local governance,” Chapters 4 and 5 set out the case studies used in the dissertation: the 2012-13 and 2015 casino decisions, and the ward boundary review. The case studies were “city-wide” issues, meaning that they were identified under city policy as having city-wide significance and therefore requiring deliberation and decision-making by City Council and the Executive Committee. The objective of the thorough case study review is to examine more closely whether and how wards, community councils, neighbourhood associations, and BIAs are involved in deciding these “city-wide” issues through the assertion of a local role. The chapter sets out the meaning of “local governance” that emerged from each of the case studies, as well as the degree to which this governance was inclusive and participatory.

Chapter 6 draws together the data presented throughout the dissertation to reimagine Toronto’s local governance model through the lens of an urban commons. The dissertation concludes that ward councillors are the chief representatives in decision-making regarding the local impacts of city-wide issues; BIAs and NAs can play an important role in representing local issues at the ward level, but their presence varies spatially across the city; and community councils can use their authority under the procedural bylaw to mediate city-wide matters with community groups and gather expansive information on the local implications of city-wide issues, but these powers are seldom employed. The result, I argue, is a local governance model that operates unevenly across Toronto’s landscape of spatial inequality. The chapter applies the conceptual

meaning of “local governance” presented in Chapter 1 to the City of Toronto’s local governance model, querying what a reframing within the urban commons would mean for the city’s approach to local decision-making. The chapter concludes with an ambitious agenda in the making of “local governance” in Toronto that conceptualizes community councils by incorporating urban commons principles.

## **VI. The Normative Aspiration**

Outside of its theoretical contributions, this research is timely and important from a normative perspective. First, scholars from numerous disciplines and decision-makers across governments continue to grapple with questions as to optimal approaches to decision-making, representation, and participation at the municipal level.<sup>50</sup> From a theoretical perspective, scholars have presented compelling analyses as to why Jane Jacobs’ advocacy of neighbourhood-based decision-making can lead to inequalities in resident participation and resource sharing across cities in the United States, but fewer studies have taken place within the Canadian context.<sup>51</sup> Also, many studies have focused on city planning rather than a broader set of issues that conceptualizes the meaning of “local governance.” This research sheds light on how Toronto’s overlapping local institutions contribute to understandings of local governance, both conceptually and geographically, and the impacts of this overlapping model on participation. This research hopes to advance an understanding of how the current model of local governance affects residents and to reconsider approaches to participation and representation.

Second, this research aims to be specifically meaningful for policy-makers in the City of Toronto who may soon reconsider the role and scope of its local governance model. Toronto is now the sixth largest jurisdiction in the country with a population larger than many Canadian provinces. The policy areas within the City of Toronto's authority are

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<sup>50</sup> See e.g. Archon Fung, *Empowered Participation: Reinventing Urban Democracy* (Princeton University Press, 2004); Boaventura de Sousa Santos, “Participatory Budgeting in Porto Alegre: Toward a Redistributive Democracy” (2008) 26 *Politics & Society* 461.

<sup>51</sup> See e.g. Hoi Kong, “Toward a Federal Theory of the City” (2012) 56:3 *McGill LJ* 473; and Mariana Valverde, *Everyday Law on the Street: City Governance in an Age of Diversity* (The University of Chicago Press, 2012).

tremendously broad. In a typical City Council meeting, issues under consideration range from street sign names to long-term regional transit planning and funding. Despite the city's size and the complexity of the issues under review, City Council continues to make almost all decisions, with little delegation to other bodies. Regarding local governance, ward councillors representing approximately 60,000 residents exercise a tremendous amount of power, with little role for the city's four community councils. At the same time, neighbourhood associations and BIAs have ballooned in number and broadened in mandate since amalgamation, seeking a broader role on matters of relevance to their neighbourhoods. As detailed in Chapter 5, Toronto is grappling with the re-design of its ward boundaries, where questions of jurisdiction, geographic boundaries, and who is included - and thus excluded – within the city's mapped areas have been raised. Following the ward boundary review, the City of Toronto will turn its attention to the boundaries of community councils and, perhaps, their role and composition. This dissertation aims to contribute to this ongoing dialogue by asking how the City of Toronto can conceive of a local governance model that better represents its diverse residents.

## Chapter 1 – A Theoretical Map-Making of “Local Governance”

This dissertation conceptualizes the meaning of “local governance” by asking how local spaces within the city of Toronto are created, imagined and governed by law. This chapter sets the theoretical framework for the dissertation, which focuses on “local governance” as comprising overlapping geographies and competing claims to representation, and examines how the overlap impacts meaningful, inclusive participation. I offer a conceptualization of local governance that is grounded within legal pluralism and legal geography, and that is meant to serve both explanatory and diagnostic purposes. By “explanatory,” I mean the principles or statements used to explain facts or phenomena, to be tested later based on the methodological approach outlined in Chapter 2. By “diagnostic,” I mean the identification of causes and contributions to particular outcomes. I introduce a roadmap of the various literatures that come together to explain the meaning of local governance within the context of legal pluralism and legal geography.

A key area of exploration – the one that will be the chief focus of this dissertation – expands on what has been termed “vertical tensions” within legal geography, meaning the many scales that operate with a given jurisdiction.<sup>52</sup> Drawing on the work of Gerald Frug, Boaventura de Sousa Santos and Mariana Valverde, the theoretical framework of the dissertation queries vertical tensions within the “local legal spaces” of the city, asking how scale operates within this smaller-than-city scale. In my project, I limit the question to which formal and informal actors and institutions claim to represent those within localized areas of the city, examining their legal structures, the geographies that they advance, and the implications for the meaningful participation of residents across the city. Following this conceptualization of “local governance,” chiefly meant to theorize how local legal spaces overlap and impact inclusive participation in local governance, this chapter argues that the “urban commons” as advanced by Sheila Foster and Christian Iaione may serve as a useful normative framework for an inclusive, participatory local

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<sup>52</sup> Nicholas Blomley “What sort of a legal space is a city?” in Andrea Mubi Brighenti (ed.) *Urban Interstices: The Aesthetics and the Politics of the In-between* (Farnham: Ashgate, 2013), online: <<http://ssrn.com/abstract=2165083>>.

governance model. The aim of the dissertation broadly – and of this chapter specifically – is to defend a conceptualization of local governance that is subsequently evaluated in the case studies that follow.

This chapter is organized as follows. First, this chapter sets out the legal geography framework that serves as the basis for the conceptualization of local governance, including the meaning and relevance of interlegality, legal pluralism, and local legal spaces. Second, as the core element of this chapter, I bring together these literatures to offer and defend a two-part conceptualization of local governance according to which, first, local governance is pluralistic and recognizes the interlegality of multiple normative orders such that local spaces cannot be considered self-enclosed, autonomous units; and, second, that state iterations of local governance bodies create political, social, and spatial realities, through multiple overlapping institutions; incorporate other norms, orders, rules and practices; and include and exclude certain people and communities through the setting of boundaries and participation rules. The chapter concludes by arguing that Sheila Foster and Christian Iaione's meaning of the urban commons may be used to normatively evaluate how local bodies make overlapping and contradictory claims about their legal jurisdiction over segments of the city; and, second, that the impact of local governance may be assessed based on the degree to which it provides meaningful and inclusive participation of historically marginalized people.

## **I. Legal geography: interlegality and the significance of space**

There has been a growing shift in the treatment of space in legal theory. Before the 1990s, legal theorists saw space as a background upon which legal norms could be considered, but not a factor that needed closer integration and analysis.<sup>53</sup> Much of the scholarship later identified or attributed to the legal geography project didn't expressly intend to broaden a legal geography project; instead existing scholarship was considered

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<sup>53</sup> Yishai Blank & Issi Rosen-Zvi, "The spatial turn in legal theory" (2010) 10:1 Studies in Culture, Polity and Identities 39-62, online: <<http://www.highbeam.com/doc/1P3-2349533531.html>>.



to be “speaking” legal geography all along.<sup>54</sup> For example, Gerald Frug, who wrote about “localism” and “regionalism,” is an example of a legal scholar who questioned the relationship of law and geography prior to the conceptualization of “legal geography.”<sup>55</sup> Santos’s innovative use of cartography to illustrate his conclusion that “laws are maps; written laws are cartographic maps; customary, informal laws are mental maps” critically married law and space long before the legal geography project was coined.<sup>56</sup> While the connections did not explicitly recognize or draw on geography scholarship as a tool to better understand legal dynamics at play, space itself was recognized as an active and important subject of analysis rather than a benign and irrelevant backdrop. In this dissertation, I assert that the legal geography project’s recognition of the interrelationship of law and space is crucial to understand the meaning of local governance as embodying both geographic spaces and legal rules.

Scholars began drifting to a more common and identifiable understanding of the connections between law and geography, owing in part to the critical legal studies movement.<sup>57</sup> Those interested in the intersections between law and geography suddenly found each other, beginning to form intellectual linkages reflected in consequential bridging work.<sup>58</sup> These connections ultimately resulted in work that had the following recognizable attributes in common.<sup>59</sup> First, all sought to reexamine the “legal in terms of the spatial and the spatial in terms of the legal” to see whether former ideas or

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<sup>54</sup> Nicholas Blomley, “Introduction” in I. Braverman, N. Blomley, D. Delaney & A. Kedar, eds. *The Expanding Spaces of Law: A Timely Legal Geography* (Stanford University Press, 2014) at xvii.

<sup>55</sup> Frug, *supra* note 7. See also Hoi Kong, “Toward a Federal Theory of the City” (2012) 56:3 McGill LJ 473, who summarizes American and Canadian literature relating to localism (“Localists stress the values of local-governance legitimacy, measured in terms of citizen participation in governance, and effectiveness, measured by the extent to which public-good provision matches consumer preferences”) and regionalism (“Regionalists stress the values of distributive fairness and effectiveness, which is defined in terms of metropolitan regions’ global competitiveness”).

<sup>56</sup> Santos, *supra* note 12 at 282.

<sup>57</sup> Iru Braverman et al., “Expanding the Spaces of Law” in I. Braverman, N. Blomley, D. Delaney & A. Kedar, eds. *The Expanding Spaces of Law: A Timely Legal Geography* (Stanford University Press, 2014) at 4.

<sup>58</sup> Nicholas Blomley and Joel Bakan, “Spacing Out: Towards a Critical Geography of Law” (1992) 30:3 Osgoode Hall Law Journal 661-690. For representative works during this period, see e.g. Nicholas Blomley, *Law, Space and Geographies of Power* (London: The Guilford Press, 1994); David Delaney, *Race, Place and the Law* (Austin: University of Texas Press, 1998); and Davina Cooper, *Governing Out of Order: Space, Law and the Politics of Belonging* (London: Rivers Oram Press, 1998).

<sup>59</sup> Nicholas Blomey, David, Delaney, and Richard, Fords (eds.), *The Legal Geographies Reader* (1991).

conclusions were challenged or altered in light of new gaps revealed.<sup>60</sup> In so doing, the spatial imagination could be broadly envisaged to include geographically demarcated boundaries as well as institutions of governance. Second, all works examined how social space is produced, maintained and transformed through the use of legal terminology such as “property” and “rights.” Third, the works sought to understand how the “legal” and the “spatial” were aspects of each other and were fundamental parts of another “more holistically conceived social-material reality.”<sup>61</sup> One of the aims of this dissertation is to examine how legal rules that demarcate boundaries create, transform and sanction what is deemed to be “local legal space,” influencing the conceptualization of “local governance.” As in the legal geography project, the theoretical framework proposed here considers the “spatial” and the “legal” to be interconnected notions in the framing of “local governance.”

Legal geography is concerned with the production and political importance of law and space.<sup>62</sup> Legal geography engages in spatial policy analysis to understand how legal frameworks influence and change landscapes and social processes.<sup>63</sup> This interdisciplinary intellectual project – also referred to as “braided lines of inquiry”<sup>64</sup> - seeks to understand how spaces within the public sphere are negotiated and understood.<sup>65</sup> The foundation of this theoretical movement, often called critical legal geography, was grounded in David Harvey’s 1973 work on territorial social justice.<sup>66</sup> It initially began as a specialized branch of political geography and sought to understand the underlying social processes that shape the legal and physical landscape.<sup>67</sup> It has since moved on to capture social regulation and jurisprudence as it relates to geography, recognizing that law is “literally constitutive of the nation state, the community, the firm, the market and

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<sup>60</sup> Blomley, *supra* note 54 at xvii

<sup>61</sup> *Ibid.* at xvii.

<sup>62</sup> Sarah Keenan, “Property as Governance: Time, Space and Belonging in Australia’s Northern Territory Intervention” (2013) 76:3 MLR 464 at 468.

<sup>63</sup> Melinda Harm Benson, “Mining Sacred Space: Law’s Enactment of Competing Ontologies in the American West” (2012) 44:6 Environment and Planning 1443 at 1445.

<sup>64</sup> I. Braverman, N. Blomley, D. Delaney & A. Kedar, eds. *The Expanding Spaces of Law: A Timely Legal Geography* (Stanford University Press, 2014) at 1.

<sup>65</sup> Nicholas Blomley, “Public Space” in Nicholas Blomley, David Delaney, Richard T. Ford, eds. *The Legal Geographies Reader: Law, Power and Space* (Malden, Mass: Blackwell, 2001).

<sup>66</sup> David Harvey, *Social Justice and the City* (Athens, University of Georgia Press, 1973).

<sup>67</sup> Benson, *supra* note 63 at 1445.

the family” and that “social relation ... is also shaped by and understood in terms of space and place.”<sup>68</sup> Now, legal geography aims to both draw on and contribute to broader social and humanities studies and, perhaps, to develop a distinct theoretical and methodological framework that can be translated into a broader range of contexts.<sup>69</sup> This means that the project must move beyond recognizing where the “legal” takes place within the “spatial,” and instead to engage in examinations of “lived geographies,” in which the understandings and practices of legal forms and their geographies are examined as mutually constitutive.<sup>70</sup> This project seeks to contribute to this broader debate by theorizing the meaning of local governance within a legal geography framework, first by advancing how smaller-than-city spaces have multiple scales represented by a plurality of legal forms that operate unevenly across the city.

Examining space and law in tandem illuminates questions of power by seeing how they intersect, inform and identify such power: “[T]he connections between the legal and the spatial in the world may, in some situations, be so tight as to be identical. Is the state a legal or spatial entity? Is eviction a legal or spatial state of affairs? Is deportation a legal or spatial (corporeal) experience? What is revealed by regarding them through one lens but not the other? What is obscured? What might hinge on what is being obscured remaining so? Ultimately, perhaps, the relation of law and space is an instance of the relationship between meaning and world.”<sup>71</sup> Likewise, in this dissertation, identifying local governance means an illumination of how space and law enable belonging and, in particular, whether the formal processes of local enable meaningful, inclusive participation. Put another way, how do the formal and informal bodies that define and create local governance affect the representation of those located within smaller-than-city boundaries of the city?

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<sup>68</sup> Blomley, *supra* note 54 at xv.

<sup>69</sup> David Delaney, *The Spatial, the Legal, and the Pragmatics of World-Making: Nomospheric Investigations* (2010). Delaney argues that temporal objects of attention rooted as “law” and “space” – homes, public spaces, borders, etc. – do not exist autonomously in separate realms, but are already known and fused. These nomoscapes are ideological products that co-exist and are mutually entangled.

<sup>70</sup> Benson, *supra* note 63 at 1446.

<sup>71</sup> Blomley, *supra* note 54 at xix.

The theoretical framework offered by this dissertation is both diagnostic and normative. It seeks to explain how the overlap of formal and informal bodies define and create “local legal spaces,” which assert competing geographic boundaries and claims to representation that form the basis of local governance. The dissertation aims to contribute to the legal geography project by identifying how the work of Blomley, Valverde, Santos and others informs what may be understood as “local legal spaces.” Drawing in particular on Blomley’s work on interlegality and Santos’ notions of scale, this dissertation examines the local legal spaces that assert multiple and competing geographic and representative claims, theorizing how “local governance” may be conceptualized as multi-scalar, influenced by a plurality of formal and informal rules and norms, and which includes and excludes particular populations. Following this conceptualization, the chapter outlines how a normative understanding of “local governance” grounded in an urban commons framework may guide how the City of Toronto could enable a more inclusive, participatory city through the design of their legal processes and institutions enacted in a local governance model. This study explicitly adopts a legal pluralist lens, expanding on the scope and applicability of “interlegality” within the legal geography project. I next explore this pluralist lens.

### **“Legal pluralism”**

The version of legal pluralism that I invoke distinguishes between “state law,” which I take to mean law that is formally enacted by a governmental power, and “social orders” which are rules and norms created by non-state actors.<sup>72</sup> The chief struggle in identifying the rules and norms created by non-state actors is avoiding oversimplification. As Sally Engel Merry writes,

Where do we stop speaking of law and find ourselves simply describing social life? Is it useful to call these forms of ordering law? In writing about legal pluralism, I find that once legal centralism has been vanquished, calling all forms of ordering that are not state law by the term law confounds the analysis.

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<sup>72</sup> Sally Falk Moore, “Certainties Undone: Fifty Turbulent Years of Legal Anthropology, 1949–1999” in Sally Falk Moore (ed), *Law and Anthropology: A Reader* (2005) at 357.

The literature in this field has not yet clearly demarcated a boundary between normative orders that can and cannot be called law.<sup>73</sup>

This dissertation recognizes that “state” and “non-state” are rudimentary distinctions that are not, in practice, simple to distinguish.<sup>74</sup> This dissertation enters this debate by seeking to understand how local, as a legal space, encompasses and is molded by state and non-state rules and norms. In this way, I assert a claim that state law is a dominant force that can and does direct non-state actors.<sup>75</sup> I also see descriptive merit in conceptualizing local governance as a nameable legal object with attached rules to advance conclusions as to what is “law” within Toronto’s governance model, even as I agree that such labels are socially constructed, not *a priori* facts.<sup>76</sup> I believe that such labels can help in identifying rights and responsibilities, and create more opportunities for the exercise of political power.

To Moore, law consists of some combination of social norms, rules, customs, and practices, as well as “hard” legal rules created and sanctioned by the state.<sup>77</sup> In what she calls the “semiautonomous social field,” which describes the multiple systems of ordering in ordering in complex societies, Moore suggests that social norms, rules, customs and practices can be created internally, yet are vulnerable to the rules and decisions emanating from the larger world within which they are surrounded.<sup>78</sup> Moore sets out a version of legal pluralism that allows for semiautonomous social fields with different strengths and powers, and which are more or less bound by the rules of the larger world. Although Moore does not refer to this “larger world” as state-based with powers to compel, other scholars have framed it in this respect.<sup>79</sup> Peter Fitzpatrick suggests that

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<sup>73</sup> Sally Engel Merry, “Legal Pluralism” (1988) 22 *Law and Society Review* 869 at 878-879.

<sup>74</sup> Note also Peer Zumbansen’s thoughtful contributions regarding the challenge in distinguishing between legal and a non-legal forms of regulation within the context of transnational law (Peer Zumbansen, “Defining the Space of Transnational Law: Legal Theory, Global Governance, and Legal Pluralism” (2012) 21:2 *Trans L and Cont Problems* 305).

<sup>75</sup> M. Kleinmans & R. A. MacDonald (1998) “What is Critical Legal Pluralism?” (1998) 12 *Canadian Journal of Law and Society* 25 at 31.

<sup>76</sup> *Ibid.* at 42.

<sup>77</sup> Sally Falk Moore, “Law and Social Change: The Semi-Autonomous Social Field as an Appropriate Subject of Study” (1973) 7:4 *Law & Society Review* 719. See also Merry, *supra* note 73.

<sup>78</sup> *Ibid.* at 879.

<sup>79</sup> *Ibid.* at 879.

state law is comprised of a plurality of social forms, which he calls “integral plurality.”<sup>80</sup> He uses this term to build on Moore’s notions of how social fields and the larger world continuously engage in interaction. Fitzpatrick names state law as affecting and influencing other social forms in a “contradictory process of mutual support and opposition.”<sup>81</sup> Unlike Moore, who sees the larger world as framing social forms, Fitzpatrick believes that state law is influenced and altered by other social forms, including organizations, the workplace and family, and that these social forms are also influenced and altered by state law. Influencing factors may also include spaces that exist in practice or memory.<sup>82</sup>

Moore’s identification of the semiautonomous social field is a helpful broad framework in this present study for its clarification that many social orderings have their own rules and customs, yet are framed and affected by external rules, as a way of understanding overlapping local governance bodies generally speaking, especially when coupled with Fitzpatrick’s view of state law and social orders as continuously affecting and altering one another.<sup>83</sup> I assert that “local governance” is comprised of an overlapping set of formal and informal, and state and non-state laws, that each comprises a semiautonomous social field. Legal pluralism allows me to look beyond formal law, as chiefly described in provincial laws and municipal codes, to understand how local is governed and the many levels of norm creation.<sup>84</sup> Moore’s language of semiautonomous social spheres captures the interconnected nature of local governance bodies as not just reducible to law/non-law and private/public binaries, but as an overlapping set of norms, orders, rules and practices that govern Toronto’s local spaces. I assert that there is both a theoretical and descriptive importance to understanding what is law/non-law in order to identify and understand the exercise of power in localized spaces in the city.

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<sup>80</sup> Peter Fitzpatrick, “Law and Societies.” (1984) 22:1 Osgoode Hall L.J. 115, online: <<http://digitalcommons.osgoode.yorku.ca/ohlj/vol22/iss1/5>>.

<sup>81</sup> *Ibid* at 116.

<sup>82</sup> Franz von Benda-Beckmann & Keebat von Benda-Beckmann, “Places that come and go: A legal anthropological perspective on the temporalities of space in plural legal orders” in I. Braverman, N. Blomley, D. Delaney & A. Kedar, eds. *The Expanding Spaces of Law: A Timely Legal Geography* (Stanford University Press, 2014) at 41.

<sup>83</sup> For a lively debate of legal pluralism, see [https://sydney.edu.au/law/slr/slr30\\_3/Tamanaha.pdf](https://sydney.edu.au/law/slr/slr30_3/Tamanaha.pdf).

<sup>84</sup> Zumbansen, *supra* note 74 at 326.

My pluralistic account of law is further informed by the work of Boaventura de Sousa Santos, who draws on transnationalism to add a political dimension to legal space. Santos challenges the view that the state should be understood in its Hegelian form as a “well ordered political life,” meaning a neutralized, bureaucratized set of rules, on the basis that it fails to incorporate the power of political challenge.<sup>85</sup> Instead, Santos believes that legal orders, which include the many rules within the state,<sup>86</sup> do not merely coexist in the same political space, but are interpenetrated and superimposed legal spaces.<sup>87</sup> Santos notes the three phases of legal pluralism: the colonial and post-colonial period (which includes the work of Moore and Fitzpatrick), legal pluralism within modern capitalist societies and, third, a postmodern view of the law.<sup>88</sup> The differences are based in part on the scale that is being studied, from “local, infrastate legal orders coexisting within the same national time space” to, now, “suprastate global legal orders coexisting in the world system with both state and infrastate legal orders.”<sup>89</sup> To Santos, thinking of suprastate global legal orders expands both the idea of law and the idea of politics, and allows for “a revitalization of democratic content within a broader legal configuration.”<sup>90</sup> Thus, it is not just that entities or institutions co-exist and influence one another, entities impact notions of politics, democracy and belonging which in turn affect actions and then again impact these and other entities and institutions. According to Franz and Keebat von Benda-Beckmann, “places are defined by reference to the persons occupying them,” showing the degree to which legal spaces are informed by non-state phenomena.<sup>91</sup>

Scholars, including Santos, have highlighted that legal pluralism should also extend its analysis beyond identifying state law and social spheres and the resulting interlegalities,

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<sup>85</sup> Boaventura de Sousa Santos, *Toward a New Legal Common Sense: Law, Globalization, and Emancipation* (London: Butterworths: 2002) at 71.

<sup>86</sup> *Ibid.* at 85.

<sup>87</sup> Baudouin Dupret, *What is plural in the law? A praxiological answer* (2005) 1 European Journal of Legal Studies at para. 23, online: <<https://ema.revues.org/1869>>.

<sup>88</sup> Santos, *supra* note 85 at 48.

<sup>89</sup> *Ibid.* at 48.

<sup>90</sup> *Ibid.* at 98.

<sup>91</sup> von Benda-Beckmann & von Benda-Beckmann, *supra* note 82 at 38.

but to understanding power dynamics as well.<sup>92</sup> As von Benda-Beckmann and Spiertz state, “Law thus embodies power positions and power relationships.”<sup>93</sup> As Santos writes in his examination of the political transformation that resulted from grassroots participatory budgeting in Brazil: “[Participatory budgeting] involves both state official law and non-state (or quasi-non-state), unofficial (or quasi-unofficial) law played out in forms of confrontational or complementary legal pluralities and interlegalities.”<sup>94</sup> I suggest that legal pluralists’ emphasis on identifying interlegalities achieves a crucial first step in understanding power relations: seeing and understanding the state and non-state law and their scales in operation. The notion of “interlegality,” and its relevance to local legal spaces, is explored next.

## Interlegality

Interlegality alerts us to the existence of formal legal codes that may govern our encounter, in addition to informal understandings of the law. As we saw from legal pluralism and especially the work of Santos, interlegality connects us back to legal pluralism through the intersection and interstices of different normative orders. Blomley likens the relationship between and among governments to a “Russian doll-like conception of spatial order, in which some levels are higher or lower, or bigger or smaller; and in which one scale nests within another, in an ordered hierarchy.”<sup>95</sup> This conception is not new. Santos, in charting his use of maps to illustrate law, stated: “The legal developments reveal the existence of three different legal spaces and their correspondent forms of law: local, national and world legality. It is rather unsatisfactory to distinguish these legal orders by their respective objects of regulation because often they seem to regulate the same kind of social action.”<sup>96</sup>

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<sup>92</sup> Zumbansen, *supra* note 74; Sylvia Walby, “Complexity Theory, Systems Theory, and Multiple Intersecting Social Inequalities” (2007) 37:4 *Philosophy of the Social Sciences* 449.

<sup>93</sup> von Benda-Beckmann, F., K. von Benda-Beckmann, and H. L. J. Spiertz, “Local law and customary practices in the study of water rights” (1997) in *Water rights, conflict and policy*, ed. R. Pradhan, F. von Benda-Beckmann, K. von Benda-Beckmann, H. L. J. Spiertz, S. S. Khadka, and K. Azharul Haq. Colombo, Sri Lanka: International Irrigation Management Institute at 226.

<sup>94</sup> Boaventura de Sousa Santos and César A. Rodríguez-Garavito, *Law and Globalization from Below: Towards a Cosmopolitan Legality* (New York: Cambridge University Press, 2005) at 337.

<sup>95</sup> Blomley, *supra* note 56 at xix.

<sup>96</sup> Santos, *supra* note 12 at 287.



Interlegality has been applied to urban law, where provincial governments have legal jurisdiction over municipalities, and federal policies are said to be separate from cities. Blomley states, “The complexities of politics, for example, are fit into and explained by scalar categories (is homelessness a local, regional or national issue?), running the risk of unduly narrowing the conversation. The city is treated as inevitably situated in the ‘local’ categorical box, with all that this smuggles in. That which is designated ‘local’, for example, is assumed to have certain distinctive characteristics, set apart from other scales.”<sup>97</sup> To Blomley, local is “here,” described later as its own scale rather than a miniaturized version of another level of government.<sup>98</sup>

This narrowing is acute when examining urban issues, as city governments – and especially the country’s largest urban areas – frequently take leadership roles that cross jurisdictional lines, such as their involvement in enacting policies to address homelessness, immigration and settlement, and the development of transit strategies. Thus, rather than conceiving of “levels” or “orders” of government “operating simultaneously on different scales and from different interpretive standpoints,”<sup>99</sup> one may look for the interactions of legal spaces with geography to see what emerges. Valverde asks the fundamental question, “what would happen if, for example, those who have breached the criminal code were governed as if the criminal law were local? What if climate change were imagined as a municipal or regional issue? What if cities seceded from the state? Why can cities not have foreign policy, or national states engage in land use planning?”<sup>100</sup>

While this dissertation does not take up the connection between transnational norms and city space, Santos’ postmodern view of the law as grounded within legal pluralism offers an additional dimension relevant to this dissertation: it expands an analysis of the co-existence and interaction of state law and legal orders to include representation and

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<sup>97</sup> Blomley, *supra* note 54 at 8.

<sup>98</sup> *Ibid.* at 9.

<sup>99</sup> Santos, *supra* note 12.

<sup>100</sup> Mariana Valverde, “Jurisdiction and scale: legal technicalities as resources for theory” (2009) 18:2 Social and Legal Studies 139 at 146.

participation.<sup>101</sup> His insistence on drawing attention to representation and participation within the context of scale makes his approach especially fruitful in articulating a theoretical framework for local governance. To Santos, current approaches to representation and participation focus on “top down,” meaning state coordinated, rather than “bottom up” efforts to engage citizenry as “stakeholders” in political processes.<sup>102</sup> He writes, “By default or design, those doing the imagining are the elites or the members of the middle class with the economic or culture capital to count as ‘stakeholders’.”<sup>103</sup> Missing from the picture are the grassroots organizations and community leaders who “mobilize resistance to neoliberal legality,” even though these hidden voices are shifting and shaping the law.<sup>104</sup> Similarly, this research seeks to understand how state law shapes narratives of engagement and participation and to understand which voices are included and excluded within usual engagement practices. Invoking a legal pluralist lens allows us to better understand how power is invoked in legal spaces, as described next.

## Legal spaces

Legal geography has been the subject of ongoing internal debate about its limitations, potential, and future possibilities. For example, Delaney notes, “there is an increasing sense that this project has gotten stuck in its bridging phase and that inherited conceptual dualisms are impeding further progress.”<sup>105</sup> These “conceptual dualisms” are the lenses of geography and law, each of which may have their own language and analysis for making sense of the world. In this dissertation, I build on existing conversations on legal geography’s focus on legal spaces to understand how such spaces can inform the meaning of local governance. In the conceptualization advanced next, I argue that the

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<sup>101</sup> See e.g. Luis Eslava & Sundhya Pahuja, “Between Resistance and Reform: TWAIL and the Universality of International Law” (2011) 3 Trade L. Dev. 103; Eslava, L. “Istanbul Vignettes: Observing the Everyday Operation of International Law” (2014) 2:3 London Review of International Law 47; Sassen, *supra* note 20; and Santos, *supra* note 12.

<sup>102</sup> Boaventura de Sousa Santos and Caesar A Rodriguez-Garavito, ‘Law, Politics, and the Subaltern in Counter-Hegemonic Globalization’ in Boaventura de Sousa Santos and Caesar A. Rodriguez-Garavito (eds), *Law and Globalization from Below: Towards a Cosmopolitan Legality* (Cambridge University Press, 2005). See also Archon Fung, *Empowered participation reinventing urban democracy* (Princeton, New Jersey: Princeton University Press, 2004).

<sup>103</sup> Santos & Rodriguez-Garavito, *supra* note 102 at 9.

<sup>104</sup> *Ibid.* at 11.

<sup>105</sup> David Delaney, *The Spatial, the land the Pragmatics of World-Making: Nomospheric Investigations* (Taylor & Francis, 2010) at 11.

legal spaces that inform local governance must acknowledge the multiplicity of scales in operation in smaller-than-city spaces. An analysis of scale is not only relevant when looking at the overlap of international, national, state and local; scale can also reveal important implications for distributive justice.<sup>106</sup>

Like legal pluralists, legal geographers have recognized that law is not just present in formal, bureaucratic structures, but also in everyday situations.<sup>107</sup> What legal geography adds to the conversation is a more thorough emphasis on “legal spaces” as the foci of analysis and, in this present study, what is meant by a “local legal space.”

Legal geography helps to deepen what is meant by the term “legal spaces,” which I use as a foundation or focal point to understand how such spaces are governed. To von Benda-Beckmann and von Benda-Beckmann, space is a “constituent element of social life and organization” that helps conceptualize social interactions and relationships, even with the understanding that notions of space are ultimately social constructions.<sup>108</sup> In this dissertation, legal spaces refer to notions of space that have been given formal legal meaning, as well as an articulation of alternative norms, rules, customs and practices within these same spaces. While individual understandings of space can differ, spaces are replete with a complex range of interconnecting institutions and entities that have been given social meaning, which in turn affect individual understandings of space.<sup>109</sup> Notions of space can be cemented into law, assert validity or even supremacy, and connect numerous legal and non-legal spaces through rules and norms, even though other conceptions of space may exist, too. Many dynamics operate in tandem – some in formal law, some not.

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<sup>106</sup> See e.g. Setha Low, *Politics of Public Space*. (New York Routledge, 2006); Don Mitchell, *The Right to the City: Social Justice and the Fight for Public Space* (New York: The Guilford Press, 2003); and Iris Marion Young, “Equality of whom? Social groups and judgments of injustice” (2001) 9:1 Journal of Political Philosophy 1.

<sup>107</sup> Mariana Valverde, *Everyday Law on the Street: City Governance in an Age of Diversity* (The University of Chicago Press, 2012).

<sup>108</sup> von Benda-Beckmann & von Benda-Beckmann, *supra* note 82 at 30-31.

<sup>109</sup> *Ibid.* at 31-32.

Adding to the complexity is the notion of formal law as a rich layering of codes, bylaws, policies, laws, regulations and other rules. They may operate at the municipal, provincial or federal level, or within carved-out subsets of these government orders. State laws also create physical boundaries and, in this way, they are spatial in nature.<sup>110</sup> I assert that the way in which laws are described by governments tells us a part of the story in understanding the legal space in operation, but such descriptions are not determinative and can even mislead.<sup>111</sup> Instead, it is imperative that a layered, creative approach is used to understand the legal dynamics at play in the creation and enforcement of jurisdictional boundaries. As Blomley notes, “To trace such interstitial connections requires an imaginative and conceptual leap, a necessary condition for which is to think around scale, while recognizing its powerful hold.”<sup>112</sup>

Legal spaces also include historical iterations of boundaries and bodies. One of the noteworthy areas of analysis taking place in legal geography is a purposeful inclusion of time. Time helps to advance the idea that legal space is not a separate, fixed notion; instead, it is as understood by Doreen Massey: “dynamic and heterogeneous – not the dead, inert matter which time runs over the top of, but the constantly evolving, politically important dimension of multiplicity itself.”<sup>113</sup> Mariana Valverde affirms Massey’s focus on time as an important category of analysis, lamenting that “there is a tendency to privilege space and isolate it from time and to reduce time to empirical history.”<sup>114</sup> She invokes the notion of a “chronotype” from the work of Mikhail Bakhtin, to conceptualize one way that space and time can be understood without reducing them to “separate dimensions to be considered one after the other.”<sup>115</sup> Bakhtin invoked the Agora and Roman family as chronotypes to understand space-time, whereby “time, as it were, thickens, takes on flesh, becomes artistically visible; likewise, space becomes charged

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<sup>110</sup> See e.g. Moore, *supra* note 74 at 357 who states that, “even scholars who emphasis the socially constructed character of scale still implicitly adhere to a view of them as ‘actually existing entities that constitute the spatial context within and among which social action takes place’.”

<sup>111</sup> Blomley, *supra* note 54.

<sup>112</sup> *Ibid.* at 17.

<sup>113</sup> Keenan, *supra* note 62 at 485.

<sup>114</sup> Valverde, *supra* note 43.

<sup>115</sup> *Ibid* at 67.

and responsive to the movements of time, plot and history.”<sup>116</sup> Space and time cannot be discrete, separated concepts; they are instead part of one another. Valverde points to the chronotype as a vehicle that has and can reframe the tendency to either exclude time or study it within a compartmentalized way.

My theorization of local governance incorporates this aspect of Massey and Valverde’s work by arguing that the legal spaces include historical events, boundaries, laws, and norms that were previously enacted in the law, and continue to exist even where their legal frameworks like wards or municipalities no longer remain. I suggest that legal spaces may continue to include historical versions of legal realities, even where they are no longer acknowledged in formal law. These legal “ghosts” remain a part of local legal spaces and are therefore relevant to the meaning of local governance. As an empirical matter, in examining the local legal spaces of Toronto, time is not just relevant, but a crucial element of analysis. The boundaries of the City of Toronto, a single-tier municipality since 1999, were previously comprised of seven municipalities: the Municipality of Metropolitan Toronto (“Metro Toronto”) and six smaller municipalities – Toronto, York, North York, East York, Scarborough, and Etobicoke.<sup>117</sup> The provincial decision to amalgamate means that what was once regional (Metro Toronto) is now city-wide (the post-1999 City of Toronto), and what was a city is now “local.” What is “regional” is also subject to many different geographic configurations, including the Greater Toronto Area (GTA),<sup>118</sup> the Greater Toronto Hamilton Area (GTHA),<sup>119</sup> Metrolinx, a regional transportation agency set up to improve the coordination and integration of all modes of transportation in the GTHA municipalities,<sup>120</sup> and the Greater Golden Horseshoe,<sup>121</sup> each of which is used provincially to advance particular legislative initiatives.

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<sup>116</sup> Bakhtin, quoted in *ibid.* at 67.

<sup>117</sup> COTA, *supra* note 11.

<sup>118</sup> This term came into use in the 1990s and continues to be in official use in the Government of Ontario such as the Ministry of Finance. Canada has designated the Toronto census metropolitan area as slightly smaller than the GTA boundaries.

<sup>119</sup> In 2006, provincial planning policy increasingly began to refer to the “Greater Toronto and Hamilton Area” as opposed to GTA.

<sup>120</sup> *Metrolinx Act, 2006*, S.O. 2006, c. 16

<sup>121</sup> The Greater Golden Horseshoe is officially designated in Ontario Regulation 416/905[3] under the *Places to Grow Act*, S.O. 2005, Chapter 13.

A focus on legal spaces also alerts us the notion of scale by examining the cascade of spatial boundaries of smaller-than-city decision-making and the resulting implications for an inclusive, participatory governance model. Here, I advance Santos' scholarship related to scale to ask how much one focuses in or out on spaces and therefore offers a more or less detailed perspective, and applies this lens of scale to decision-making.<sup>122</sup> Santos offers an analogy between maps and law by distinguishing between "large scale" and "small scale." A large-scale map shows less land but far more detail ("a miniaturized version of reality") and small-scale more land, showing relative positions, but ultimately less detail.<sup>123</sup> Scale differs in its presentation of detail or relative positions, and may "zoom in" on particular phenomena. Scale is relevant in how law is crafted, as "laws use different criteria to determine the meaningful details and the relevant features of the activity to be regulated."<sup>124</sup> Scholars have capably observed how a "zooming in" to micro scales of the city ultimately leads to the exclusion of the most vulnerable.<sup>125</sup> This dissertation examines how competing notions of local governance "zoom in" to city spaces and the degree to which the scale of decision-making impacts inclusivity.

While Blomley and Santos focus their studies of interlegality on the normative orders at the local, provincial or state, national and international scales, this dissertation explores interlegality within the local scale only, meaning the many governance bodies and their boundaries within smaller-than-city spaces, as outlined below. Building on the meaning of legal spaces, the next section orients local legal spaces as the "zoomed in" spaces that are the subject matter of this dissertation.

### **"Local legal spaces"**

This section defends local legal spaces as an important site of inquiry. Blomley remarks that, "Jurisdictions are conceived as technical devices, sorting mechanisms that can be

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<sup>122</sup> Santos, *supra* note 12 at 287.

<sup>123</sup> *Ibid.*

<sup>124</sup> *Ibid.*

<sup>125</sup> See esp. Kong, *supra* note 57 at 500-2 (examining the arguments related to localized decision-making).

used to allocate people and objects to particular categories.”<sup>126</sup> One of these “sorting devices” is the localized boundaries within city spaces. One way of thinking about the law of local government centres on the power of municipal governments operating under the authority of provincial or federal law.<sup>127</sup> Under this view, scholars grapple with the manner in which boundaries should be drawn, and the nature and type of bodies best able to govern at the local level.

This scholarship has also included a focus on the boundaries and decision-making authority of smaller-than-city spaces like the “neighbourhood” and “community.” Deborah G. Martin writes that the neighbourhood is constructed “based on common ideals of what we expect an urban neighborhood to be.”<sup>128</sup> In her view, the neighbourhood is the locale upon which human, political and economic activity is centred and where “everyday life is situated.”<sup>129</sup> Pragmatically, the neighbourhood may be the place where the needs and circumstances of individual residents and families most clearly come together.<sup>130</sup> “Community” has been defined as a particular spatial setting where social interactions occur and regarding the kinds of social interactions that occur.<sup>131</sup> These studies help to locate the city and the legal spaces within them as important objects of study.

In Canada, there is a small, but growing legal scholarship related to the legal spaces of cities.<sup>132</sup> The centrality of law in relation to the city is highlighted by Hoi Kong, who writes, “Whether one conceives of a city broadly as a community of interest, or more specifically, as a municipality, laws shape cities, and the relevant issues of law are

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<sup>126</sup> Blomley, *supra* note 54.

<sup>127</sup> See e.g. Yishai Blank, “Localism in the New Global Legal Order” (2006) 47:1 Harvard Law Review 263; David J. Barron, “A Localist Critique of the New Federalism” (2001) 51 Duke Law Journal 377.

<sup>128</sup> Deborah G. Martin, “Enacting Neighborhood” (2003) 24:5 Urban Geography 361–385 at 362.

<sup>129</sup> *Ibid* at 365.

<sup>130</sup> Robert Chaskin and Sunil Garg, “The Issue of Governance in Neighborhood-Based Initiatives” (1997) 32:5 *Rub Affairs Rev* 631 at 636.

<sup>131</sup> See esp. Denis J. Brion, An Essay on LULU, NIMBY, and the Problem of Distributive Justice, 15 B.C. *Envtl. Aff. L. Rev.* 437 (1988), online: <<http://lawdigitalcommons.bc.edu/ealr/vol15/iss3/2>> (who notes diverse definitions of the term “community” as it related to the NIMBY phenomena).

<sup>132</sup> See e.g. Ron Levi and Mariana Valverde, “Freedom of the City: Canadian Cities and the Quest for Governmental Status” (2006) 44:3 *Osgoode Hall Law Journal* 409; and Hoi Kong, “Toward a Federal Theory of the City” (2012) 56:3 *McGill LJ* 473; Hoi Kong, “The Deliberative City” (2010) 28 *Windsor Y B Access Just* 411.

distinct from those of political theory.”<sup>133</sup> Indeed, the law serves a critical role in empowering people and communities within an urban space to engage and act. Sassen describes large cities as “a new frontier zone.”<sup>134</sup> She says: “Access to the city is no longer simply a matter of having or not having power. Urban spaces have become hybrid bases from which to act” through robust governance structures.<sup>135</sup> Such governance structures are critical to action: “If we really want to understand how democratic institutions support effectiveness and accountability in government, we must be clear about which governance entities have the legal authority to deliver services.”<sup>136</sup> The law also helps to define the micro spaces and bodies within the complex city that play a role in local and city-wide decision-making.

This study builds on this scholarship by conceptualizing local governance as concerning the boundaries and decision-making that takes place in “local legal spaces” that operate at the smaller-than-city level. I seek to add precision to the plural claims and orderings of these spaces across Toronto, arguing that local governance in Toronto includes multiple, competing bodies at the smaller-than-city level, notably wards, community councils, business improvement areas (BIAs) and neighbourhood associations. Wards or “electoral districts” are created for administrative and representative purposes;<sup>137</sup> community councils are public, deliberative bodies with a mandated set of responsibilities over a particular set of issues and represent a particular geographic area with a smaller-than-city space;<sup>138</sup> BIAs are privately run organizations operating under city approval which aim to supplement public services within geographically defined boundaries through a compulsory tax on local property owners and/or businesses;<sup>139</sup> and neighbourhood associations are “a civic organization oriented towards maintaining or improving the

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<sup>133</sup> Kong, *supra* note 55 at 475.

<sup>134</sup> Sassen, *supra* note 6 at 86.

<sup>135</sup> *Ibid.*

<sup>136</sup> Ester Fuchs, “Governing the Twenty-First Century City” (2012) 65:2 *Journal of International Affairs* 43 at 45.

<sup>137</sup> Governing Toronto Advisory Panel, *The City We Want: The Government We Need The Report of the Governing Toronto Advisory Panel* (Toronto, 2005) at 11.

<sup>138</sup> Zachary Spicer, “A Patchwork of Participation: The Search for Community Representation in Post-Amalgamation Ontario” (2016) 49:1 *Canadian Journal of Political Science* 129.

<sup>139</sup> John R. Logan and Gordana Rabrenovic, “Neighbourhood Associations: Their Issues, Their Allies and Their Opponents” (1990) 26:1 *Urban Affairs Quarterly* 68 at 68.



quality of life in a geographically defined residential area.”<sup>140</sup> Each of these bodies has its own set of boundaries that may or may not overlap in whole or in part, and claims to represent some or all interests within its boundaries.

To summarize, the theoretical framework adopted in this dissertation builds upon the existing scholarship by expanding upon notions of legal pluralism and interlegality as articulated by Blomley, Santos and Valverde to conceptualize how “local legal spaces” are governed in Toronto. I argue that local legal spaces are affected by bodies that assert their own geographies, belongings and histories, whether formally through the state, informally through non-state bodies, or as a result of historical iterations of legal realities, even where they are no longer acknowledged in formal law. The conceptual framework advances that local governance can be recognized as an interlegal legal space within multiple semiautonomous social spheres rather than a single self-enclosed autonomous unit; and that state iterations of local governance create political, social, and spatial realities through multiple overlapping institutions, are impacted by other norms, orders, rules and practices, and include and exclude certain people and communities through the setting of boundaries and participation rules. This framework contributes to the legal geography project by arguing that these smaller-than-city legal spaces are multi-scaled and affected by historical iterations of boundaries and bodies that continue to have contemporary meaning, and have important implications for inclusive governance.

This theorization contributes to legal geography by focusing Blomley’s notion of interlegality on the local sphere *itself* is an interlegal space, governed by multiple laws, norms and rules, and itself a product of the shifts in mandates and power of plural bodies operating both within and outside the formal governance model. This conceptualization includes Valverde’s notion of temporal relevance by viewing past iterations of law and boundaries as not simply empirical data or linear storytelling, but as “local legal ghosts” that continue to have relevance in the meaning of “local governance,” and by incorporating Santos’ idea of multi-scalar spaces, as well as the implications of power based on how the formal governance model understands and privileges particular scales.

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<sup>140</sup> Logan & Rabrenovic, *supra* note 139 at 68.

The dissertation aims to contribute to distributive justice in the city by articulating an inclusive local governance model that serves a broader range of residents.<sup>141</sup>

Following the conceptualization of local governance, which I elaborate in the next section, I then argue that the notion of the urban commons offers an inclusive, participatory framework to normatively evaluate local governance.

## **II. Conceptualizing local governance**

In practice, as is explored in the chapters that follow, local governance is a contested legal concept used interchangeably with terms like “community” and “neighbourhood,” and without precision in much of the research on urban boundaries and governance. As noted in the survey of theoretical literature above, local governance carries distinct and critical theoretical questions, specifically: how smaller-than-city boundaries are legally constructed and constituted; which bodies are empowered to make decisions; and to what extent the relevant institutions are organized formally or informally.

I propose a conceptualization of local governance that consists of the following two components, drawn from the analysis set out earlier in this chapter and further explained below:

1. A pluralist conception of local governance recognizes the interlegality of multiple normative orders such that local spaces cannot be considered self-enclosed autonomous units; and
2. State iterations of local governance bodies:
  - a) create political, social, and spatial realities through multiple overlapping institutions;
  - b) incorporate non-state norms, orders, rules and practices; and

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<sup>141</sup> Iris Marion Young, *Justice and the Politics of Difference* (Princeton, NJ: Princeton University Press, 1990); Iris Marion Young, *Inclusion and Democracy* (Oxford: Oxford University Press, 2000).

- c) include and exclude certain people and communities through the setting of boundaries and participation rules.

## **1. A pluralist conception of local governance**

Legal pluralism outlines the combination of social norms, rules, customs and practices that operate alongside formal legal rules created by the state. Moore and Fitzpatrick understand state law and social norms as affecting and altering one another. Legal pluralism frames local governance beyond state law as follows.

First, a legal pluralist orientation helps us to see the many bodies operating within smaller-than-city spaces. This descriptive component of the meaning of local governance suggests that the legal spaces of local consist of an overlapping set of norms, orders, rules and practices.<sup>142</sup> Within this space are a set of semiautonomous entities or institutions that co-exist and influence one another. I suggest that the first step in understanding local governance is to acknowledge its inclusion of multiple interconnected spheres beyond state law and including the norms, orders, rules and practices that may also operate within smaller-than-city spaces. The underlying premise articulated in this first part of understanding local governance is that the entities and institutions within a local space are shaped and re-shaped by one another, transforming the entities or institutions over time.

Highlighting legal pluralism as a first step in local affirms what von Benda-Beckmann and Spiertz affirm as “power relationships,” meaning the importance of the specific context in articulating relationships.<sup>143</sup> Conceptualizing local governance through the lens

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<sup>142</sup> Sally Falk Moore, *Law and Social Change: The Semi-Autonomous Social Field as an Appropriate Subject of Study* (1973) 7:4 *Law & Society Review* 719.

<sup>143</sup> von Benda-Beckmann, F., K. von Benda-Beckmann, and H. L. J. Spiertz, “Local law and customary practices in the study of water rights” (1997) in *Water rights, conflict and policy*, ed. R. Pradhan, F. von Benda-Beckmann, K. von Benda- Beckmann, H. L. J. Spiertz, S. S. Khadka, and K. Azharul Haq. Colombo, Sri Lanka: International Irrigation Management Institute.

of legal pluralism helps to see that many entities and institutions overlap within a localized space. It also affirms that the specific context – which bodies, what history, what articulations of power – are central to defining and understanding local.

The next component of local governance is to understand the specific norms, orders, rules and practices that penetrate an interlegal, semiautonomous order. This means grappling with whether and how boundaries and institutions may encapsulate communities in any meaningful way as an embodiment of local,<sup>144</sup> or whether such boundaries and institutions are simply political devices that ultimately have no real meaning.<sup>145</sup> I suggest that by identifying the laws in existence and to whom they belong is a critical component of local governance.

## **2. State iterations of local governance**

Drawing in particular on Santos' notion of scale, Blomley's work on interlegality, and incorporating aspects of Valverde's observations of time, this second part of the conceptualization focuses on the multiple competing legal spaces of local governance. In this dissertation, legal spaces refer to notions of space that have been given formal legal meaning, as well as an articulation of alternative norms, rules, customs and practices within these same spaces. This part of the conceptualization of local governance clarifies what state law has done to cement an understanding of local governance and how other entities and institutions have been included in this legal framework, if at all. This diagnostic step allows us to understand what has been included in – and what has been left out of – state law's conceptualization of local.

### **a) State iterations of local governance bodies create political, social, and spatial realities through overlapping governance and institutions**

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<sup>144</sup> Frug, *supra* note 7; Frug, *supra* note 42; Gregory Alexander & Eduardo Peñalver, "Properties of Community" (2009) 10 Theoretical Inquiries in Law 127 (2009).

<sup>145</sup> Richard C. Schragger, "The Limits of Localism" (2001-2002) 100 Mich. L. Rev. 371.

Understanding local governance means examining the relevant state and non-state iterations. These state and non-state claimants each assert political, social, and spatial realities. In her brilliant response to the *Localism Act, 2011*, legislation introduced in the United Kingdom that aimed to define what was meant by local,<sup>146</sup> Antonia Layard writes that the legal construction of “local” in the UK context may have jarred with other conceptualizations of the term and the place.<sup>147</sup> “Yet once legally implemented with defined boundaries,” she rightly observes, “a locality or neighbourhood takes on a new administrative, political and sometimes socially constructed reality.”<sup>148</sup> In Toronto’s context, numerous iterations of the city’s local boundaries have been created through law and policy and over time, with corresponding institutions and governance models introduced as well. Amalgamation disrupted what was considered to be “local,” “city-wide” and “regional” even within the same physically bounded area, challenging the rules and norms that structured power and relationships. To Layard, law’s work in these institutions and governance has taken on a “constructed reality.”<sup>149</sup> Put more simply, law cements an understanding of local governance even where other – and often competing – conceptualizations of the term exist.

Based on existing literature, as detailed below, city governments may draw formalized boundaries and bodies based on three rationales: the desirability of civic engagement and participation; the importance of local autonomy or “subsidiarity,” and the utilitarian need for further delegation at the municipal level.<sup>150</sup> These boundaries and bodies that emerge as a result of these decisions are the formal local legal spaces, or the “constructed realities,” of which Layard speaks.

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<sup>146</sup> *Localism Act, 2011*, c. 20, online: < <http://www.legislation.gov.uk/ukpga/2011/20/contents/enacted>>.

<sup>147</sup> Antonia Layard, “The Localism Act 2011: What is ‘local’ and how do we legally construct it?” (2012) 14:2 *Environmental Law Review* 134 at 135.

<sup>148</sup> *Ibid.*

<sup>149</sup> *Ibid.*

<sup>150</sup> But see Zachary Spicer, “A Patchwork of Participation: The Search for Community Representation in Post-Amalgamation Ontario” (2016) 49:1 *Canadian Journal of Political Science* 129, who suggests that the twin purposes of community councils are stewardship and delegation. As I discuss, subsidiarity is added as a rationale based on legal theory and case law.

On the first rationale, as argued by Enid Slack and Richard Bird, local bodies allow large single-tier cities to have greater public access and accountability to residents.<sup>151</sup> Scaling access to municipal government to a smaller level than city council allows residents to have their issues heard and feel that they have some agency over their interests.<sup>152</sup> This argument may be particularly compelling for very large urban centres on the basis that a more populous and geographically widespread city necessitates localized governance bodies in addition to a single city council to adequately consider the range of needs or interests within a particular set of boundaries. In this context, bodies like wards and community councils, canvassed in Chapter 3, enable closer contact with elected officials. This rationale may also matter more in the case of amalgamated cities, where the previous municipalities had histories, boundaries, and cultures that were meaningful to residents. Such cities might wish to maintain some degree of continuity and therefore continue some form of organizational structure to maintain these connections.

This dissertation argues that mere listening is insufficient. Participation must be linked to decision-making power. In a Toronto-based study, Deborah Cowen and Vanessa Parlette concluded that municipal action that is entirely separated from consultation, skills building and leadership opportunities for a broad range of residents, but especially those most commonly excluded from decision-making power, ultimately fails to address the larger systemic causes of poverty that are outside of the power of municipal governments.<sup>153</sup>

Localized bodies may be seen to fulfill the democratic ideal of representation that is closer to the community. In the 1950s, Jane Jacobs passionately advocated the importance of neighbourhoods in the built form and the decision-making of urban areas.<sup>154</sup> In her view, local decision-making was more legitimately democratic and connected to the interests and desires of those within neighbourhoods. The fundamental

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<sup>151</sup> Enid Slack & Richard Bird, "Does Municipal Amalgamation Strengthen the Financial Viability of Local Government? A Canadian Example" 13:5 International Center for Public Policy 1 at 4.

<sup>152</sup> Lionel D. Feldman, Katherine Athol Hamilton Graham & Susan D. Phillips, "Governance Structures for the New City of Toronto" (1997) A report prepared for the Toronto Transition Team.

<sup>153</sup> Deborah Cowen & Vanessa Parlette, *Toronto's Inner Suburbs, Investing in Social Infrastructure in Scarborough* (University of Toronto: City Centre, 2011).

<sup>154</sup> Jane Jacobs, *The Death and Life of Great American Cities* (1961).

question was the degree to which residents should have a role to play in the policies that affect them. In their study on whether neighborhood associations encourage more political participation, Jeffrey Berry, Kent Portney and Ken Thomson argue that the “key to making America more participatory may be making political participation more meaningful in the context of the communities people live in.”<sup>155</sup> They suggest that collective challenges are best understood in a more narrow geographical space and ultimately lead to decisions that are better for society as a whole. Erwin Chemerinsky and Sam Kleiner tout the benefits of local councils, including that they are uniquely positioned to allow historically marginalized residents to engage in the political life of the city.<sup>156</sup> Elena Fagotto and Archon Fung conclude that such bodies permit “deliberative democracy” based on increased neighbourhood capacity for collective action and neighbourhood development.<sup>157</sup>

Some scholars believe that localized power protects smaller-than-city areas from provincial/state and federal policies which aim to offload responsibility to municipalities without corresponding funding. According to Richard Briffault, local governments should be given more autonomy and power.<sup>158</sup> Briffault suggests that many claims to localized autonomy draw on the Greek polis, Aristotle and Rousseau to invoke “a mythic, golden era in the history of democracy when political communities were small enough to give each citizen an effective voice and the citizenry exercised a collective role in politics and as a contemporary exhortation to vest power in today's cities.”<sup>159</sup> To Briffault, “Localist ideology masks local power and hides the privatization of local public life behind the rhetoric of efficiency, participation, community and local self-

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<sup>155</sup> Jeffrey M. Berry, Kent E. Portney, & Ken Thomson, *The Rebirth of Urban Democracy* (Brookings Institution Press, 1993) at 4.

<sup>156</sup> Erwin Chemerinsky & Sam Kleiner, “Federalism from the Neighborhood Up: Los Angeles's Neighborhood Councils, Minority Representation, and Democratic Legitimacy” (2013) 32:2 Yale Law & Pol'y Rev.

<sup>157</sup> Elena Fagotto & Archon Fung, “Empowered Participation in Urban Governance: The Minneapolis Neighborhood Revitalization Program” (2006) 30:3 International Journal of Urban and Regional Research 638.

<sup>158</sup> Richard Briffault, “Our Localism: Part II — Localism and Legal Theory” (1990) 90 Columbia Law Review 348.

<sup>159</sup> *Ibid.* at 445.

determination.”<sup>160</sup> He believes that the “nostalgia” for parochial political autonomy leads to increased delegation to the local level without an appreciation for the many matters which cannot be solved by such small political units. Moreover, it exacerbates the “us” and “them” exclusion of particular populations, especially the most economically marginalized, by ghettoizing landscapes as “inner city” and poor. The result is that upper-level governments – in Canada, the provincial and federal governments – may offload to smaller, localized units as a way of deflecting their responsibility. Briffault suggests that, instead, participatory initiatives must be combined with state support and funding for local action.<sup>161</sup>

Put another way, the rationale for creating state-based conceptions of local is the logic that such bodies are best able to ensure fair and participatory governance within the city. Many scholars assert specific proposals for such state-based conceptions. To Will Kymlicka, negotiation must ultimately lead to a set of rules or policies that articulate the boundaries and rules of particular environments. Kymlicka urges that “political boundaries be drawn to ensure that the community has sufficient powers to define and to protect itself.”<sup>162</sup> Gerald Frug advocates for the adoption of “charettes,” particularly in planning, which are lengthy negotiation sessions that bring together diverse interests like developers, neighbourhood residents, bankers and city officials to provide concrete feedback on development projects and to educate people on the costs of zoning policies.<sup>163</sup> Frug argues that these and other community creating strategies should be firmly embedded in the fabric of local government law, that community is something that can be asserted, not merely facilitated, and that there is an obligation on local governments to do so. The obligation that Frug speaks of is based on the normative view that municipal governments have an obligation to facilitate political participation.<sup>164</sup> Frug believes that participation, especially at the individual level, is an important value that is best realized through small political units and, that to be meaningful, there must be a

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<sup>160</sup> *Ibid.* at 452.

<sup>161</sup> *Ibid.*

<sup>162</sup> Will Kymlicka, *Liberalism, Community and Culture* (New York City: Oxford University Press, 1989).

<sup>163</sup> Frug, *supra* note 7 at 1104.

<sup>164</sup> Gerald E. Frug, “The City as a Legal Concept” (1980) 93:6 Harvard Law Review 1057.



genuine transfer of power.<sup>165</sup> In each of these conceptions, the state can and should retain the power to craft local boundaries and governance bodies. This dissertation, too, seeks to understand what role the “state” (and which “state” we mean) should play in creating boundaries and governance models.

Fung and Erik Olin Wright encourage an increase in public participation, writing that programs that devolve powers to associations,<sup>166</sup> invite associations to share in public power,<sup>167</sup> or open public decisions to citizens directly<sup>168</sup> all tie active citizen participation closely to the exercise of public power. They suggest that tying public power to participation can “forge connections between associative life and the quality of democratic governance” in several ways. For example, when the medium of public decision making becomes participation rather than money, status, or certified expertise, weaker voices may be more easily included and heard.<sup>169</sup> Their arguments acknowledge that the balance of power in the municipal setting is disproportionately weighted towards those with greater resources, putting the obligation squarely on these “weaker voices” to take part in participation exercises, to be “easily heard.”

The second rationale in favour of local bodies is that the local scale deserves protection based on legal principles. The principle of subsidiarity holds that “the smallest possible social or political entities should have all the rights and powers they need to regulate their own affairs freely and effectively.”<sup>170</sup> From a legal perspective, the idea of a lower scaled forum is connected to the principle of subsidiarity, which provides that government powers should always reside at the lowest level possible.<sup>171</sup> The roots of the term subsidiarity trace back to philosopher Thomas Aquinas and ask fundamental questions

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<sup>165</sup> Briffault, *supra* note 158 at 394.

<sup>166</sup> Archon Fung & Erik Olin Wright, “Deepening Democracy: Innovations in Empowered Participatory Governance” (2001) 29:1 Politics & Society 5.

<sup>167</sup> Joshua Cohen & Joel Rogers, *Associations and democracy* (Verso, 1995).

<sup>168</sup> Fung & Wright, *supra* note 166.

<sup>169</sup> *Ibid.*

<sup>170</sup> Eugénie Brouillet, “Canadian Federalism and the Principle of Subsidiarity: Should We Open Pandora’s Box?” (2011) 54 Sup Ct L Rev 601 at 605.

<sup>171</sup> Yishai Blank, “Federalism, Subsidiarity, and the Role of Local Governments in an Age of Global Multilevel Governance” (2009) 37:2 Fordham Law Journal 510 at 533.

about the relationship between political power and civil society.<sup>172</sup> Subsidiarity in the Canadian sense is a flexible legal principle that accommodates the involvement of multiple scales in decision-making. Likewise, American scholar Gerald Frug argues that smaller bounded jurisdictions – such as neighbourhoods – have a right to govern themselves.<sup>173</sup> Subsidiarity can be conceived as either negative, where the larger entity must not intervene when the smaller can manage its affairs on its own, or positive, where the smaller entity must be given powers to accomplish its goals.<sup>174</sup> One of the aims of this dissertation is to understand the appropriate scale of subsidiarity in different local legal spaces of Toronto.

In Canada, the principle of subsidiarity has resulted in judicial deference to municipal decision-making. In Canada, municipalities are not a constitutionally recognized form of government.<sup>175</sup> Their authority emanates from provincial statutes.<sup>176</sup> Despite the fact that subsidiarity is absent from the Constitution itself, the Supreme Court of Canada (SCC) has ruled that the principle of subsidiarity supports deference to decision-making by municipal governments based on their closeness to the residents that they represent, regardless of whether the subject matter of the decision falls within the strict scope of the municipality's prescribed powers.<sup>177</sup> In the 2001 *Spraytech* decision, the SCC considered the constitutionality of a municipal by-law that restricted the use of pesticides. Justice L'Heureux-Dubé, writing for the majority, stated, "The case arises in an era in which matters of governance are often examined through the lens of the principle of subsidiarity. This is the proposition that law-making and implementation are often best achieved at a level of government that is not only effective, but also closest to the citizens affected and thus most responsive to their needs, to local distinctiveness, and to population diversity."<sup>178</sup> The court ruled that matters related to the environment are not

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<sup>172</sup> Brouillet, *supra* note 170 at 604.

<sup>173</sup> Frug, *supra* note 42.

<sup>174</sup> *Ibid.*

<sup>175</sup> *Constitution Act, 1867 (U.K.)*, 30 & 31 Vict., c. 3, reprinted in R.S.C. 1985, App. II, No. 5., section 92(8).

<sup>176</sup> *Constitution Act, 1867*, section 92(8).

<sup>177</sup> *Canada Ltée (Spraytech, Société d'arrosage) v. Hudson (Town)*, [2001] 2 S.C.R. 241, 2001 SCC 40 [hereinafter "Spraytech"].

<sup>178</sup> *Ibid* at paras. 3-4.

exclusive to any particular level of government, but instead require the intervention of all, thus permitting the by-law to stand. In a sense, Justice L'Heureux-Dubé echoes Blomley's conception of different legal spaces operating simultaneously in certain contexts.

The SCC's interpretation of subsidiarity has echoes in Santos' work in asking how much one focuses in or out on spaces to offer a more or less detailed perspective.<sup>179</sup> Scale is relevant in how law is crafted, as "laws use different criteria to determine the meaningful details and the relevant features of the activity to be regulated."<sup>180</sup> A community or neighbourhood body can thus be thought of in the context of large-scale law, where there is a zooming in on the localized area and a study of the effects on the community. This scale is the zoomed-in area of the city, enabling a more careful consideration of the policies that affect a localized area. Subsidiarity acts as a legal principle to include this scale in its decision-making model. In this dissertation, subsidiarity is understood as a dynamic principle that offers "a degree of flexibility to governance by striking a balance between respect for the diverse entities present and a level of state cohesion."<sup>181</sup> The dynamic, flexible nature of subsidiarity means that it cannot prescribe specific normative outcomes. Alain Delcamp states: "[i]t is evident that the notion of subsidiarity is unfocused and cannot itself, except with great difficulty, generate legal effects."<sup>182</sup>

When applied to state-based notions of local governance, subsidiarity thus serves as a defense for delegation of power rooted in the assertion that a micro-examination of the impacts of urban change is best made at a localized scale. However, as Delcamp states, the dynamic nature of this term means that there are ever-changing arguments as to which localized institutions and boundaries are the idealized sites for decision-making. In Toronto's case, as we will see in Chapter 3, wards and community councils each serve as constructed realities, formalized by City Council yet operated flexibly through a combination of rules and custom. Their roles in decision-making differ based on the local

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<sup>179</sup> Santos, *supra* note 12.

<sup>180</sup> *Ibid.*

<sup>181</sup> Brouillet, *supra* note 170 at 606.

<sup>182</sup> Alain Delcamp, "Principe de subsidiarité et décentralisation" (1993) 23 *Revue française de droit constitutionnel* 609 at 623, translated in *Ibid.*

legal space that they occupy within Toronto. The rationality of subsidiarity enables localized governance, yet the lack of precision in the specific roles of these formal units of governance leads to disparate effects in differing parts of the city.

The third argument in favour of local governance concerns legislative efficiency, or the better operation of government through delegation. The suggestion is that such local bodies should have responsibility for certain localized functions like planning, parking and zoning decisions to give City Council the time and mandate to focus on issues that affect the city as a whole.<sup>183</sup> Delegation need not be final decision-making power; it can also mean that a committee or body deliberates on a matter to work out the relevant policy issues before it comes to city council for final approval. However, in both cases, the objective is to reduce the number of matters that appear on city council agendas for debate and decision-making.

Delegation weakens centralized power where final decisions are made in a localized forum. This is especially significant where a uniform policy across the city is desired or where particular people are left vulnerable to localized decisions. The phenomenon of “not in my backyard” or “NIMBY” refers to local protest movements opposing a proposed development or land use.<sup>184</sup> NIMBY is almost always used in a pejorative sense and refers to participation that is self-interested and unrepresentative of the views of the larger community.<sup>185</sup> There are many concerns with an expanded delegation. In particular, the issues of fairness and exclusion in neighbourhood decision-making have been well-documented by numerous scholars. In the United States, Frug has written about the effects of NIMBY decision-making at the neighbourhood level, and has argued that marginalized and poorer residents disproportionately feel the ramifications of such thinking.<sup>186</sup> Ford suggests that too much delegation to the neighbourhood scale has the effect of using zoning laws to push out or reduce the number of marginalized

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<sup>183</sup> *Anonymous interview with City of Toronto staff member #1*, ed (2015).

<sup>184</sup> Katie McClymont and Paul O’Hare, “‘We’re not NIMBYs!’ Contrasting local protest groups with idealised conceptions of sustainable communities” (2008) 13:3 *Local Environment* 321 at 321.

<sup>185</sup> *Ibid.* at 322. See also Michael G. Young, “Necessary but insufficient: NIMBY and the development of a therapeutic community for homeless persons with co-morbid disorders” (2012) 17:3 *Local Environment* 281 at 282-3.

<sup>186</sup> Frug, *supra* note 7.

inhabitants.<sup>187</sup> Young advocates that to address neighbourhood protectionism, final decision-making must take place at the regional level, not at the local scale.<sup>188</sup>

In the Canadian context, Valverde writes that neighbourhood decision-making leads to unfair, racist practices and that the regional level is better equipped to balance the competing interests in question.<sup>189</sup> She believes that community-level decision making, rather than centralized planning, will lead to further inequality within Toronto.<sup>190</sup>

Valverde offers compelling evidence that the City of Toronto must revisit and reject Jane Jacobs' "village life" ideal of community involvement in favour of deeper governance models that recognize the representative needs of complex cities. She highlights two important reasons for regional rather than local decision-making: first, the "dysfunctional dance of local governance" by local politicians and city staff who are more likely to validate complaints if they are received from well-connected residents or groups.<sup>191</sup>

Second, she believes that community consultations exclude certain voices (mainly those of vulnerable persons) in introducing housing designed to assist disabled, homeless, and other marginalized persons. Kong, in arguing in favour of a regional body, argues that "The regional district system enables representatives of municipalities to decide amongst themselves what the relevant geographical contours of governance challenges in a regional district are, and to determine the appropriate responses to these challenges."<sup>192</sup>

Schrager notes that it is difficult to differentiate between local decisions that are meant to affirm a way of life for one community and those meant to exclude. Both may, in fact, be the same decision.<sup>193</sup> Valverde cautions against delegating decision-making to localized bodies, arguing that such bodies may exclude certain voices, particularly those of vulnerable persons. She advances the notion that centralized planning may reduce

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<sup>187</sup> Richard Thompson Ford, "The Boundaries of Race: Political Geography in Legal Analysis" (1994) 107 Harv. L. Rev. 1843 at 1860-78; Richard Thompson Ford, "Law's Territory (A History of Jurisdiction)" (1999) 97 Mich. L. Rev. 843 at 847.

<sup>188</sup> Young, *supra* note 141.

<sup>189</sup> Mariana Valverde, *Everyday Law on the Street: City Governance in an Age of Diversity* (The University of Chicago Press, 2012).

<sup>190</sup> *Ibid.* at 103.

<sup>191</sup> *Ibid.* at 82.

<sup>192</sup> Kong, *supra* note 55 at 514.

<sup>193</sup> Richard C. Schrager, "The Limits of Localism" (2001-2002) 100 Mich. L. Rev. 371.

inequality within Toronto.<sup>194</sup> Young and Briffault have asserted that regional decision-making leads to more equitable decision-making, whereas the scale of the neighbourhood results in exclusionary policies. The theme common to all these authors is that localized decision-making means more exclusive, less equitable decisions, whereas regional or city-wide decisions will consider a broader range of residents.

Ultimately, from the perspective of local governments, the identification of local boundaries and bodies is an exercise that aims to find the proper site and scale of governance, balancing political representation, inclusivity, and fairness in decision-making. This dissertation, too, aims to theorize how local boundaries and bodies can achieve these distributive justice aims, but seeks to include other conceptions of local governance, namely community-based bodies, explored next.

#### **b) State iterations of local governance bodies incorporate other norms, orders, rules, and practices**

The next component in understanding local governance is to see the interplay between state law, as articulated above, and other norms, orders, rules and practices. Although state and non-state bodies co-exist and can be thought of as mutually constitutive, the naming of norms, orders, rules, and practices outside of state law helps to identify what state law has not included in its articulation of local governance. Given that different legal orders are conceived as separate entities coexisting in the same political space, naming these interlegal spaces may not be accepted by all as the legitimate encapsulation of what is meant by local governance. My theoretical framework and normative argument focus on how local governance is constructed by official actors and within official city governance institutions and, as such, interviews with city officials together with other data are the basis of my methodological approach. This analysis is meant to parse out how non-state local boundaries and bodies are woven within the formal governance model. The advantage of this analysis, within the context of the theoretical framework, is to identify which interests are included within formal iterations of a local governance

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<sup>194</sup> Valverde, *supra* note 189.

model. This stage of analysis sets the stage for the next, which is to conceptualize which boundaries and bodies are excluded.

According to Jurgen Habermas, there is an ongoing negotiation between and within groups regarding the boundaries of “neighbourhood” or “community.”<sup>195</sup> This is especially true in Toronto, where residents and businesses at the neighbourhood and community level craft boundary lines around particular geographies, forming associations to reflect their interests and shifting the balance of power. According to Schragger, communities are the products of contested political norms dependent on borders to define them. He writes: “[T]he definitional work of “community” is accomplished intrinsically – at the borders between places. The legal rules for incorporating or excluding others generate both a community's identity and its claim to self-govern.”<sup>196</sup> Similarly, Martin writes that neighbourhoods are ultimately created by the political actions of those that define and constitute neighbourhoods. As she says, “We do not know neighborhoods when we see them; we construct them ... based on common ideals of what we expect an urban neighborhood to be.”<sup>197</sup>

Local governance must include knowledge of actors and bodies beyond the state.<sup>198</sup> Robert Dahl observed that, within urban areas, many interests are involved in the policy-making process, all interests are reflected by an interest group and these groups are equally powerful when it comes to negotiating decisions.<sup>199</sup> According to Clarence Stone, cities consist of “regimes,” which are the informal arrangements through which a community is governed.”<sup>200</sup> Certain regimes are more stable and powerful, and thus have more power in the democratic model. In the Canadian context, scholars Christopher Leo,

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<sup>195</sup> Jurgen Habermas, *The Structural Transformation of the Public Sphere* (1962).

<sup>196</sup> Schragger, *supra* note 193 at 376.

<sup>197</sup> Martin, *supra* note 128 at 362.

<sup>198</sup> Robert A. Dahl, *Who governs? Democracy and power in an American city* (New Haven: Yale University Press, 1961); Nelson W. Polsby, *Community Power and Political Theory* (Yale University Press, 1963); and Clarence N. Stone, *Regime Politics: Governing Atlanta 1946- 1988* (University Press of Kansas, 1989).

<sup>199</sup> Göktug~Morçöl, Triparna Vasavada and Sohee Kim, “Business Improvement Districts in Urban Governance: A Longitudinal Case Study Administration & Society” (2014) 46:7 Administration & Society 796; Andrew Sancton, *Canadian Local Government: An Urban Perspective* (New York, Oxford University Press, 2011) at 231.

<sup>200</sup> Clarence Stone, “Rethinking the Policy-Politics Connection” (2005) 26:3 Policy Studies 241 at 250.

Timothy Cobban, and Kristin R. Good, all agree that, outside of formal governmental institutions, a multitude of actors influence decision-making in Canadian municipalities.<sup>201</sup> Aaron Moore believes that scholars must consider the many interests, bodies, and structures beyond the formal institutions of municipal government to understand how decisions are made.<sup>202</sup> Like Stone, this dissertation seeks to understand which institutional actors influence local decision-making, although it does not assess whether these actors form a regime, nor whether their relationship adds stability to the political system.

This dissertation focuses on BIAs and neighbourhood associations as non-state bodies that play a role in local governance. While this argument is fleshed out further in Chapter 3, for this theoretical framework BIAs and neighbourhood associations are the principal non-state bodies that reinforce the notion that local governments are not the sole decision-makers in municipal action.<sup>203</sup> This is true of such bodies in other jurisdictions as well. In a comprehensive study of the nature of BIA governance, researchers Göktug Morçöl, Triparna Vasavada, and Sohee Kim studied BIAs in Center City, Pennsylvania to evaluate the role of BIAs in urban governance. They noted that BIAs are conceptualized in three different ways: as tools of governmental policies, as actors in urban governance networks, and as private governments.<sup>204</sup> The study showed that BIA directors play a profoundly important role in this overall question of urban governance, as their involvement in the city's governance became "deeper and wider" over the years.<sup>205</sup> Similarly, in a study of Toronto's Downtown Young BIA, researchers observed that the objectives of BIAs tend to evolve from basic operational and tactical tasks to more

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<sup>201</sup> See esp. Christopher Leo, "Global Change and Local Politics: Economic Decline and the Local Regime in Edmonton (1995) 17:3 J. of Urb Aff 277; Timothy Cobban, "The Political Economy of Urban Development: Downtown Revitalization in London, Ontario, 1993-2002" (2003) 12:2 Cdn J of Urb Res; and Kristin R. Good, *Municipalities and Multiculturalism: The Politics of Immigration in Toronto and Vancouver* (Toronto: University of Toronto Press, 2009).

<sup>202</sup> Aaron Moore, *Planning Politics in Toronto: The Ontario Municipal Board and Urban Development* (Toronto: University of Toronto Press, 2013) at 11.

<sup>203</sup> Göktug Morçöl and JF Wolf, "Understanding Business Improvement Districts: A new governance framework" (2010) 70:6 Public Administration Review 906 at 908. The metaphor of BIAs as "an actor in a network" has meant three things: autonomy from governments, existing in relationships with other actors, and participating in collective action to determine policy goals in urban areas.

<sup>204</sup> *Ibid.*

<sup>205</sup> *Ibid.* at 814.



strategic tasks. This leads to improved data, cost-effective decision support, and increased coordination at the city, regional, provincial and national levels.<sup>206</sup> Likewise, as seen in Chapter 3, Toronto's BIAs differ dramatically in size, budget and mandate.

Neighbourhood associations may also influence local governance. Some scholars suggest that neighbourhood association can influence development projects.<sup>207</sup> Chaskin and Greenberg believe that neighbourhood associations are central to local governance, through fostering collective decision-making and encouraging civic engagement, whether or not they are offered administrative and financial support (Los Angeles and New York) or not (Chicago).<sup>208</sup> Even where neighbourhood associations are not part of formal processes, they are embedded in governance mechanisms by leveraging relationships with allies and partners and negotiating on behalf of their membership.<sup>209</sup> In Chicago, they have been able to use this "interstitial" space successfully to shape policy and allocate resources in the public realm, ultimately playing a more direct role in governance.<sup>210</sup> Buckman believes that neighbourhood associations representing their interests should be listened to and involved in the development process.<sup>211</sup>

Two main concerns have been raised by theorists with regard to BIAs and neighbourhood associations, both of which concern the decision-making power of these bodies and each of which is relevant to understanding how these non-state actors may influence the boundaries and governance of the "local." First, some theorists are concerned that utilitarian notions of neighbourhood and community can have negative consequences. Alexander and Peñalver believe in a human or political need to belong, to participate and

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<sup>206</sup> *Ibid* at 802.

<sup>207</sup> Stephen T. Buckman, "Upper Middle Class NIMBY in Phoenix: The Community Dynamics of the Development Process in the Arcadia Neighborhood?" (2011) 19 *Journal of Community Practice* 308.

<sup>208</sup> Robert J. Chaskin & David Micah Greenberg, "Between Public and Private Action: Neighborhood Organizations and Local Governance" (2015) 44:2 *Nonprofit and Voluntary Sector Quarterly* 248. See also Kent E. Portney & Jeffrey M. Berry, "Mobilizing Minority Communities: Social Capital and Participation in Urban Neighbourhoods" (1997) 40:5 *American Behavioural Scientist* 632 at 634. See also Pepijn van Houwelingen, "Neighborhood Associations and Social Capital in Japan" (2012) 48:4 *Urban Affairs Review* 467.

<sup>209</sup> Robert J. Chaskin & David Micah Greenberg, "Between Public and Private Action: Neighborhood Organizations and Local Governance" (2015) 44:2 *Nonprofit and Voluntary Sector Quarterly* 248 at 264.

<sup>210</sup> *Ibid.* at 265.

<sup>211</sup> Stephen T. Buckman, "Upper Middle Class NIMBY in Phoenix: The Community Dynamics of the Development Process in the Arcadia Neighborhood?" (2011) 19 *Journal of Community Practice* 308 at 323.

to contribute.<sup>212</sup> Under this conception, community is not a place; it is a coming together of people. They argue that the territorial conception of community – namely that boundaries create togetherness, has destroyed the conditions under which the intimate relationships that characterize communities may develop. As a result, associations and institutions are the “new” community, where “solidarity is based on transitory convergences of instrumental objectives, have replaced community as the dominant mode of group life in modern America.”<sup>213</sup>

Toronto’s 184 neighbourhood associations are not officially sanctioned by the city, but are instead private organizations comprised of neighborhood residents that are scattered unevenly across the city.<sup>214</sup> Chaskin and Garg suggest viewing the neighbourhood association along a spectrum. At one end they serve as parallel institutions providing an alternative form of provision of public good; farther along the spectrum they are separate but complementary institutions to local government, offering goods and services beyond the scope of local government; yet farther along, they are incorporated into local government as formal methods of representation and action; and at the other end they are in opposition to local government, advocating for change.<sup>215</sup>

BIAs go even farther in exacerbating the tension between “public” and “private,” as they represent private interests, yet are often officially sanctioned by municipal governments. Some studies have shown that BIA staff, especially executive directors, do not believe they have any close identification with governmental institutions and see themselves as firmly part of the private sector rather than any form of government.<sup>216</sup> In his piece on BIAs, Richard Briffault notes that the “public” and the “private” spheres are interconnected in relation to BIAs, stating: “... the public’s use and enjoyment of the streets, parks, squares and other public spaces that are at the heart of urban living, [BIAs]—whatever their place on the public-private continuum—can enhance the public

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<sup>212</sup> Alexander & Peñalver, *supra* note 144 at 144.

<sup>213</sup> *Ibid.*

<sup>214</sup> Stephen R. Miller, “Legal Neighborhoods” (2013) 37 Harv. Envtl. L. Rev. 105 at 145.

<sup>215</sup> Chaskin, Robert J. and Sunil Garg, “The issue of governance in neighborhood-based initiatives” (1997) 32:5 Urban Affairs Review 631 at 640.

<sup>216</sup> James F. Wolf, “Urban Governance and Business Improvement Districts: The Washington, DC BIDs” (2006) 29 Intl Journal of Public Administration 53 at 70.

environment and contribute to an enrichment of the public life.” Similarly, Wolf emphatically states that BIAs are “a part of urban governance and public administration.”<sup>217</sup> He argues that BIAs must be placed within the public administration context, even if their objectives focus on the “private” concerns of their members.<sup>218</sup> In answering the degree to which BIAs govern the public and the private, the conversation must in part include the differing roles of BIAs within a single city. Lewis notes that as BIAs become service providers, development brokers and place makers, there is a corresponding retreat of municipal government.<sup>219</sup> Randy Lippert and Mark Sleiman suggest that BIAs “defy a public or private designation, encounter resistance and failure, and produce and transfer knowledge for their own and other institutions’ purposes.” As such, they are not simply private actors seeking additional power, and they do not fit easily within particular descriptions as exclusionary or inequality-enhancing. Instead, they are complex organizations that cannot be easily categorized. Similarly, this dissertation seeks to understand the role and significance of these bodies across the city, including the effect of BIAs on residents.

Second, theorists note that neighbourhood associations and BIAs disproportionately allow for the public engagement and influence of economically privileged residents.<sup>220</sup> Neighbourhood associations, in particular, are seen as dominated by homeowners who are white and middle class, who do not reach out to other members of the communities, and focus largely on land use rather than social issues.<sup>221</sup> Leslie notes that BIAs shape boundaries, marketing neighbourhoods, and affect who may participate in governance.<sup>222</sup>

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<sup>217</sup> *Ibid.*

<sup>218</sup> *Ibid.*

<sup>219</sup> Nathaniel M. Lewis, “Grappling with Governance: The Emergence of Business Improvement Districts in a National Capital” (2010) 46:2 *Urban Affairs Review* 180 at 203.

<sup>220</sup> Oren M. Levin-Waldman, “Income, civic participation and achieving greater democracy” (2013) 43 *The Journal of Socio-Economics* 83.

<sup>221</sup> Amalia Alarcon De Morris & Paul Leistner, “From Neighborhood Association System to Participatory Democracy: Broadening and Deepening Public Involvement in Portland, Oregon” (2009) *National Civic Review* 47 at 48.

<sup>222</sup> John Paul Catungal, Deborah Leslie & Yvonne Hii, “Geographies of Displacement in the Creative City: The Case of Liberty Village, Toronto” (2009) 46:5-6 *Urban Studies* 1095.

Government-like powers are given to a group of business and property owners through the establishment of BIAs.<sup>223</sup> In Washington, BIAs have purportedly contributed to racial and cultural inequality by favouring the views of mostly white property owners in their decision-making.<sup>224</sup> Some question whether the organizations emphasize the power of affluent neighbourhoods in comparison to more vulnerable parts of the city, in part because poor sections of the city do not have BIAs despite the existence of commercial areas supporting residents.<sup>225</sup>

This means that BIAs and neighbourhood associations may exacerbate spatial and social injustice.<sup>226</sup> Susanna Schaller and Gabriella Modan argue that BIAs increase tensions within localized areas.<sup>227</sup> This tension is especially prevalent in economically and ethnically mixed neighbourhoods, and where access to decision-making processes varies.<sup>228</sup> BIAs limit democracy and exclude particular perspectives of residency and public space.<sup>229</sup> The BIA framework reinforces political dynamics that exclude marginalized and low-income residents, as well as small businesses.<sup>230</sup>

Richard Ford argues that social exclusion is exacerbated in a local-focused approach to decision-making.<sup>231</sup> He states: “Residence in a municipality or membership in a homeowners association involves more than simply the location of one’s domicile; it also involves the right to act as a citizen, to influence the character and direction of a jurisdiction or association through the exercise of the franchise, and to share in public resources” which ultimately disadvantages racialized residents.<sup>232</sup> Martha Mahoney,<sup>233</sup>

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<sup>223</sup> Lewis, *supra* note 219.

<sup>224</sup> *Ibid* at 206.

<sup>225</sup> Kevin Ward, “Business Improvement Districts: policy origins, mobile policies and urban liveability” (2007) 2 *Geography Compass* 2 657; William J. Mallett, “Private Government Formation in the DC Metropolitan Area” (1993) 24:3 *Growth & Change* 385.

<sup>226</sup> Lewis, *supra* note 219 at 208.

<sup>227</sup> Susanna Schaller and Gabriella Modan, “Contesting Public Space and Citizenship Implications for Neighborhood Business Improvement Districts” (2005) 24:3 *Journal of Planning Education and Research* 94.

<sup>228</sup> Ward, *supra* note 225; William J. Mallett, “Private Government Formation in the DC Metropolitan Area” (1993) 24:3 *Growth & Change* 385 at 394.

<sup>229</sup> *Ibid* at 395.

<sup>230</sup> *Ibid* at 405.

<sup>231</sup> Ford, *supra* note 187 at 1860-78.

<sup>232</sup> *Ibid.* at 847.

and Douglas S. Massey & Nancy A. Denton<sup>234</sup> argue that wealthier neighbourhoods will use municipal tools such as zoning to limit the range of who may access the neighbourhood. Gerald Frug recognizes that there are implications for those not included within neighbourhoods, which at its most extreme can create the “other,” or classes of “undesirable” people whom neighbourhood decision-makers seek to create a policy to exclude.<sup>235</sup>

The conceptualization of local governance as proposed in this dissertation asserts the relevance of these non-state entities. This study seeks to understand the extent to which BIAs and neighbourhood associations are important actors in Toronto’s governance model when overlapped with state-based local governance bodies like wards and community councils.

**c) State iterations of local governance bodies include and exclude certain people and communities through the setting of boundaries and participation rules**

Next, a conceptualization of local governance must account for inclusion and exclusion through the drawing of boundaries and based on the mechanisms for participation. This next component of analysis considers the inclusivity of the local governance model, including judgments about who is eligible to participate, in what manner, and with what power. This step draws on Santos’ belief that there are a multiplicity of laws, institutions and boundaries operating formally and informally, and that one articulation of law may be rejected if it differs too dramatically from other notions of representation and space.<sup>236</sup> In this dissertation, the empirical analysis of this component of the conceptualization of local governance incorporates Santos’ examination of the orders, practices and knowledges that produce unequal power relations.<sup>237</sup>

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<sup>233</sup> Martha Mahoney, “Law and Racial Geography: Public Housing and the Economy in New Orleans” (1990) 42 Stan. L. Rev. 1251 at 1258.

<sup>234</sup> Douglas S. Massey & Nancy A. Denton, *American Apartheid: Segregation and the Making of the Underclass* (University of Chicago Press: 1993).

<sup>235</sup> Frug, *supra* note 7 at 1053.

<sup>236</sup> Santos, *supra* note 85 at 472.

<sup>237</sup> Boaventura de Sousa Santos, “The Future of the World Social Forum: The work of translation” (2005) 48:2 Development 15 at 17. By “imperfectly” I mean that the translations of normative orders, practices

The creation of boundaries necessarily identifies who is and isn't included. Richard Ford notes that "the work that jurisdiction does is left largely unquestioned" and that once jurisdictions are created, institutions and legal orders take on a life of their own.<sup>238</sup> Boundaries literally mark which residents are included, but can also be understood in a participatory sense, where particular persons may not access or influence decision-making. It may not always be clear when city boundaries are meant to affirm a way of life for one community and to exclude others from participating.<sup>239</sup> As Schragger notes, the creation of communities is ultimately a political process with equally plausible "alternative localisms" existing as well, and that "the hardest questions are ... choosing between one iteration of the community and numerous other possible iterations of the community."<sup>240</sup> The problem is that once created by government, these boundaries have consequences, especially if they result in institutions with decision-making power. Fundamentally, this means there is no single set of boundary lines that necessarily make sense over others, but once drawn, these lines have significant consequences.

Scholars dispute what is a "just" local boundary line. American scholar Iris Marion Young believed that metropolitan-wide or regional governments were preferable, in part to address the inequality that may result from smaller units of government thinking only of their own interests. Young concluded that, to promote the normative ideal of city life, cities themselves "should cease to have sovereign authority."<sup>241</sup> Instead, "the lowest level of governmental power should be regional."<sup>242</sup> She adopted this position because she assumed that decentralizing power to cities means ceding power to separate, autonomous, mini-states. She believed that local governments will act selfishly with disregard to the needs of their neighbours, and that it is only through the adoption of regional policy that a fairer distribution of urban resources will result. In the regional structure she imagined, she tried to give neighborhoods some influence over decision-making, but did not

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and knowledges are considered and only partially identified, rather than fully examined, as a result of the constraints in scope. This limitation is further discussed in Chapter 6.

<sup>238</sup> Ford, *supra* note 187 at 847.

<sup>239</sup> Schragger, *supra* note 193 at 426.

<sup>240</sup> *Ibid.* at 462.

<sup>241</sup> Young, *supra* note 141 at 237-38.

<sup>242</sup> *Ibid.* at 252.

meaningfully try to decentralize political power. She transferred to a regional government all of the conventional city functions: “powers of legislation, regulation, and taxation, significant control over land use and capital investment, and control over the design and administration of public services - without significant change.”<sup>243</sup> Similarly, Valverde concluded that, in the context of planning, regional is the appropriate scale of decision-making based on the lack of inclusion and dominance by privileged residents at a more localized scale.<sup>244</sup>

As noted by Young, Valverde and others, there are significant implications for those not included within neighbourhoods, which at its most extreme can create the “other,” or classes of “undesirable” people whom neighbourhood decision-makers try to exclude.<sup>245</sup> In advancing the argument that a stronger role for localized decision-making will enhance participatory democracy, Archon Fung argues that the design, membership, and authority of local bodies must be carefully considered by a broad range of stakeholders, and must be regularly reviewed to ensure that they advance inclusion and meaningful participation.<sup>246</sup>

This dissertation queries the boundary lines that are created as part of local governance, asking how these lines are crafted and the resulting implications for inclusive participation. My assertion is that the diagnostic stages above provide a conceptual understanding of how local as a legal space is understood and advanced within the governance model articulated by municipal governments. I suggest that these components of a conceptualization of local governance provide a framework to evaluate Toronto’s local governance model in Chapters 4 and 5. This conceptualization also provides a foundation for advancing a normative theorization of local governance, described next.

### **III. Characterizing local governance as an urban commons**

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<sup>243</sup> *Ibid* at 252-53.

<sup>244</sup> Valverde, *supra* note 189.

<sup>245</sup> Frug, *supra* note 7 at 1053.

<sup>246</sup> Archon Fung, “Varieties of Participation in Complex Governance” (2006) 66:1 Public Administration Review 66.

Ultimately, this dissertation aims to promote distributive justice in the context of the city. To acknowledge that a plural set of bodies play a role in local governance, to enhance the legitimacy of state law in crafting particular boundaries and legal orders, and to offset some of the effects of exclusion, I assert that local governance should be understood in the context of an urban commons. Seeing local governance through the normative lens of a commons clarifies that smaller-than-city legal spaces are comprised of public and private spaces, and that the sum total of these spaces should be inclusive and participatory. The urban commons, as an offshoot of progressive property theory, is one way of conceptualizing how the law can be used to advance social justice. I argue that viewing local legal spaces through the lens of an urban commons, founded on the norms above, advances the normative objectives of a more inclusive, participatory framework of local governance.

## **1. The meaning of the urban commons**

The academic discourse on the commons is vast and varied. The notion of an “urban commons” has no uniform definition or agreed upon principles, and includes the application, critique, and acclaim of Ostrom’s view across a wide range of disciplines. In law, notions of the commons have been applied to environmental law, communications law and the rights of the homeless, to name a few.<sup>247</sup> Christian Borch and Martin Kornberger state that the city “is not a frictionless agglomeration of commoners, but rather a site for ongoing contestation about what counts as a common and who counts as commoners.”<sup>248</sup>

There are countless definitions of the “urban commons” making it challenging to offer a singular definition that captures the many facets of the term, whether as a political movement or a theoretical framework.<sup>249</sup> This normative framework of local governance focuses on the urban commons as a form of governance, in particular where multiple

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<sup>247</sup> Christian Borch & Martin Kornberger, *Urban Commons: Rethinking the City* (Routledge, 2015).

<sup>248</sup> Christian Borch & Martin Kornberger, “Introduction” in C Borch & M. Kornberger, *Urban Commons: Rethinking the City* (Routledge, 2015) at 15.

<sup>249</sup> Maja Hojer Bruun, “Communities and the commons” in Christian Borch and Martin Kornberger, eds., *Urban Commons: Rethinking the City* (Routledge, 2015) at 154.



bodies claim to have rights to govern within an urban context, who mediates such claims, and how.<sup>250</sup> This is a different conception of the urban commons from Harvey, who suggests that spaces become urban commons through social action. Like Maja Hojer Bruun, this understanding of the urban commons believes that “the commons are characterized by overlapping right to and claims in the commons.”<sup>251</sup> However, while Bruun focuses on the moral right possessed by people and communities who claim an interest in the commons, this paper limits its scope to the conceptualization of the governance of local legal spaces within an urban commons framework.

This conversation about the urban commons places property law at the centre of the debate.<sup>252</sup> Property law, in particular, serves a key role in this complex terrain of city governance, both conceptually and because of its connection to planning. In regard to the larger conceptual question, Blomley notes the centrality of property law in this way: “Not only does the making of property entail the making of space ... but property’s enactments are also caught up in the creation of particular landscapes that are simultaneously material and representational.”<sup>253</sup> Many property scholars would agree. From the early days of law school, students are taught that property’s lineage back to the origins of English common law provides a stabilizing model upon which much of the legal system can be understood. Property courses typically begin by categorizing the world into four sometimes overlapping categories that more or less explain how title to land and goods can be understood: private, common, public, and non-property or open access.<sup>254</sup> In this model, private property is the property owned by individuals who can exclude others from access. Common property is collectively owned, while public property is managed

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<sup>250</sup> *Ibid.* at 158. Foster & Iaione, *supra* note 44.

<sup>251</sup> *Ibid.*

<sup>252</sup> See esp Elizabeth Blackmar, “Appropriating ‘the Commons’: The Tragedy of Property Rights Discourse” in Low, S., and N. Smith, *The Politics of Public Space* (New York: Taylor & Francis, 2006) at 49-80, who examines how the language of property rights has shaped the kinds of claims that are made on and about public property, leading to the opening and closing of democratic public space.

<sup>253</sup> Nicholas Blomley, *Unsettling the city: Urban land and the politics of property* (Routledge: 2004) at 20. See also Sarah Hamill, “Private Rights to Common Property: The Evolution of Common Property in Canada” (2012) 58:2 McGill Law Journal 365.

<sup>254</sup> Daniel H. Cole & Elinor Ostrom (eds.) *Property in Land and Other Resources* (Lincoln Institute of Land Policy, 2012) at 42-43.

and controlled by government. The final category has no ownership and can be freely used by all.

Sarah Hamill notes that these categories are “hopelessly inadequate for the real world.”<sup>255</sup> Similarly, recent years have seen an explosion of critique regarding what is understood as an overly simplistic, strictly doctrinal understanding of property, with scholars opining on tenets including the oversimplification of “owner” and the degree to which it obscures the many parties who have legal and other interests in property,<sup>256</sup> the link between belonging and property,<sup>257</sup> whether property includes obligations to third party, non-interest holders,<sup>258</sup> and the transformative effects of environmental and indigenous law on property.<sup>259</sup> To Larissa Katz, the crucial question is who sets the agenda for the private property in question.<sup>260</sup> Alexander and Peñalver state: “Property stands so squarely at the intersection between the individual and community because systems of property are always the creation of some community.”<sup>261</sup> Blomley notes the variety of communities who live on land and put it to work, including squatters, without any desire to formalize their rights.<sup>262</sup>

Common property presents a particular problem for traditional notions of property law.<sup>263</sup> Common property interests are shared amongst many users, without necessarily having divided lines, hierarchical interests, or the capacity to exclude, each of which features in traditional conceptions of private property.<sup>264</sup> In *The Tragedy of the Commons*, biologist Garrett Hardin asserted that open-access commons were an unsatisfactory form of interest based on the inevitability that depletion and destruction would occur as individual

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<sup>255</sup> Hamill, *supra* note 253.

<sup>256</sup> Estair van Wagner, “Putting Property in its Place: Relational Theory, Environmental Rights and Land Use Planning” (2015) *Revue Générale De Droit* 43 at 275.

<sup>257</sup> Sarah Keenan, *Subversive Property: Law and the Production of Spaces of Belonging* (Routledge, 2014).

<sup>258</sup> Christopher Essert, *Property in Licences and the Law of Things* (2014) 59:3 *McGill LJ* 559.

<sup>259</sup> Nicole Graham, *Landscape: Property, Environment, Law* (Oxon: Routledge, 2011).

<sup>260</sup> Larissa Katz, “Exclusion and Exclusivity in Property Law” (2008) 58:3 *University of Toronto Law Journal* 275 at 278.

<sup>261</sup> Alexander & Peñalver, *supra* note 144 at 128.

<sup>262</sup> Blomley, *supra* note 253 at 20.

<sup>263</sup> Hamill, *supra* note 253.

<sup>264</sup> Elinor Ostrom, James Walker, & Roy Gardner, “Covenants With and Without a Sword: Self-Governance Is Possible” (1992) 86:2 *American Political Science Review* 404.

parties do not have an interest to conserve or sustainably use the resource.<sup>265</sup> This has been referred to as the “tragedy of the commons.” In this worrisome tale, free-riders will take advantage of the public nature of the good or land and, because there are no consequences to this abuse, the common property will ultimately be destroyed. By contrast, Carol Rose has disputed the characterization of common property as an inevitable tragedy, arguing instead that “inherently public property,” which is both owned and managed by society at large, is not a tragedy, but a comedy.<sup>266</sup> Common property can be understood as a comedy because it can both expand wealth and bring community members together, the latter of which she calls “sociability.”<sup>267</sup> Rose asserts that law allocates access to certain lands to the public because “public access to those locations is as important as the general privatization of property in other spheres of our law.”<sup>268</sup> Henry George understands common property as integral to understanding and addressing injustice, including within cities.<sup>269</sup>

Ostrom critiqued Hardin’s work on the basis of governance, among other reasons. She asserted that a commons is not solely a resource, as Hardin would understand, but is instead a resource plus the social community and its corresponding values, rules and norms that are used to manage or govern the resource. In her book, *Governing the Commons*, for which she won the Nobel Prize in 1999, Ostrom offered real-world examples of the management of common goods such as fisheries, land irrigation systems, and farmlands.<sup>270</sup> She found that the tragedy of the commons could be avoided and identified a number of factors conducive to successful resource management: first, the resource should have definable boundaries; second, there should be a perceptible threat of resource depletion and it must be difficult to find substitutes; third, there should be small and stable populations with a thick social network and social norms promoting

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<sup>265</sup> G. Hardin, “The Tragedy of the Commons” (1968) 162 Science 1243 at 1244.

<sup>266</sup> Carol Rose, “The Comedy of the Commons: Commerce, Custom, and Inherently Public Property” (1986) 53 U. Chi. L. Rev. 711 at 720.

<sup>267</sup> *Ibid.* at 723.

<sup>268</sup> *Ibid.* at 781.

<sup>269</sup> Franklin Obeng-Odoom, “The Meaning, Prospects, and Future of the Commons: Revisiting the Legacies of Elinor Ostrom and Henry George” (2016) 75: 2 American Journal of Economics and Sociology 372.

<sup>270</sup> Elinor Ostrom, James Walker, & Roy Gardner, “Covenants With and Without a Sword: Self-Governance Is Possible” (1992) 86:2 American Political Science Review 404.

conservation; and fourth, there should be appropriate community-based rules and procedures in place with built-in incentives for responsible use and punishments for overuse.<sup>271</sup> This facet of the commons – the implications for governance in the context of local legal spaces – is explored next.

## **2. Connecting the urban commons and local governance**

Under Sheila Foster and Christian Iaione’s version of the urban commons, the resources in question within the urban commons are very broad and diverse, including public streets, public parks, public and neighbourhood amenities, and public spaces.<sup>272</sup> To them, shared urban resources that include local streets, parks, spaces, and neighbourhood amenities are subject to Hardin’s free-rider problem regarding resource depletion since it is difficult to exclude potential users who lack incentives to conserve or use them.<sup>273</sup> To Vinay Gidwanu and Amita Baviskar, the urban commons are public goods that may be classified in two ways: first, as ecological commons (e.g. air, water, landfills), and, second, as a civic commons (e.g. streets, public spaces, public transit, public schools).<sup>274</sup> The commons are a dynamic, collectively owned variety of resources governed by custom and are constantly negotiated through law or social norms and values. To these scholars, the urban commons are inclusive of the resources that are shared among all persons which lie at frontiers or within a particular territorial area. Put another way, all spaces and resources within the city’s boundaries form part of the “urban commons.”

By asking how Foster and Iaione’s conception of the “urban commons” maps onto “local legal spaces” presented in the first part of this chapter, I assert that the urban commons framework can be normatively applied to the governance of local legal spaces, regardless of the underlying legal interests within those spaces. In Foster and Iaione’s conception of the urban commons, it does not matter how the resource in question is owned, whether

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<sup>271</sup> *Ibid.*

<sup>272</sup> Foster & Iaione, *supra* note 44.

<sup>273</sup> Foster, *supra* note 41 at 1995-1996, online:

<[www.jstor.org.ezproxy.library.yorku.ca/stable/pdf/41511325.pdf](http://www.jstor.org.ezproxy.library.yorku.ca/stable/pdf/41511325.pdf)>.

<sup>274</sup> Vinay Gidwani & Amita Baviskar, “Urban Commons” (2011) 46:50 *Economic and Political Weekly* 1 at 2, online: <[http://environmentportal.in/files/file/Commons\\_1.pdf](http://environmentportal.in/files/file/Commons_1.pdf)>.

privately or publicly.<sup>275</sup> Likewise, to Blomley, the idea of an “urban commons” includes community gardens, land trusts and squatting, as well as his own description of a large private property development in downtown Vancouver which resulted in the eviction of a sizeable homeless population.<sup>276</sup> Blomley recommends that the lens of the commons be rethought as a model that is not as “radically dissimilar from private property as one might suppose.”<sup>277</sup> He recognizes the political heft of property as enabling “individuals and groups in the city a language for naming, blaming and claiming.”<sup>278</sup> Here, the “commons” uses the language of a private property right to assert that non-property owners have a right to a parcel of land. Blomley is not troubled, as Hamill is, by an understanding of the urban commons that includes a private property ownership model of the right in question.<sup>279</sup>

Instead, for Blomley, the focus is on the nature of governance. Institutions are meant to protect and enhance shared resources in a city.<sup>280</sup> Under this view, urban commons are unrestricted and unregulated open access resources which enable uncoordinated stakeholders to overconsume or overexploit finite city resources. Land use regulations are seen as an avenue to manage the enhanced utility or value within an urban landscape. To some scholars, the city government is the appropriate decision-maker.<sup>281</sup>

However, Foster and Iaione suggest looking to Ostrom’s work on the commons to appreciate a third option: cooperation among private actors to manage certain resources.<sup>282</sup> Foster and Iaione explicitly critique the notion that there are only two possible choices in ensuring the urban commons, between centralized governmental

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<sup>275</sup> Foster & Iaione, *supra* note 44.

<sup>276</sup> Nicholas Blomley, “Enclosure, common right, and the property of the poor” (2008) 17 *Social and Legal Studies* 311 at 318.

<sup>277</sup> Blomley, *supra* note 253 at 154.

<sup>278</sup> *Ibid.*

<sup>279</sup> Hamill, *supra* note 253.

<sup>280</sup> Tara Lynne Clapp & Peter B Meyer, “Managing the Urban Commons: Applying Common Property Frameworks to Urban Environmental Quality” (May 31-June 4, 2000) *Constituting the Commons: Crafting Sustainable Commons in the New Millennium, the Eighth Biennial Conference of the International Association for the Study of Common Property* 1 at 1-2, online: <dlc.dlib.indiana.edu/dlc/handle/10535/1963>.

<sup>281</sup> Foster & Iaione, *supra* note 44 at 298.

<sup>282</sup> Foster, *supra* note 41 at 63.

regulation and privatization of the urban commons. In their view, these choices do not include the alternative avenues for decision-making and management for the urban commons such as those for cooperative natural resource management regimes. It is uncertain how Foster and Iaione's vision of governance dovetails with Rose's notion of decision-making in regard to "inherently public property," although presumably a local government consents to this collaborative approach.<sup>283</sup>

Foster and Iaione link Ostrom's resource management factors to qualities possessed by common resources in the city, especially the lack of rivalry in consumption and a lack of excludability in access to and enjoyment of their benefits.<sup>284</sup> This conceptualization is not meant to undermine the existence of private property rights in the city; instead, Foster and Iaione argue that the city as a whole is an urban commons. They demonstrate the applicability of an urban commons framework to the city through the observation that, if a local government does not properly manage the urban commons for whatever reason, "regulatory slippage" can occur, whereby the common resource is degraded in value or attractiveness for other types of users and uses.<sup>285</sup> At this point, the space in question "creates conditions which begin to mimic the type of commons problem that Hardin wrote about—that is, such resources become rivalrous and prone to degradation and perhaps destruction."<sup>286</sup> The openness of many cityscapes produces benefits of social value but quickly mimics the susceptibility of a common pool natural resource to overuse in either volume or intensity. Similarly, Tara Lynne Clapp and Peter Meyer further use the commons framework to describe the governance practices of institutional actors regarding the environment.<sup>287</sup> Clapp and Meyer critique the ability of city governments to limit environmental depletion owing to existing municipal institutions of varying scales, regulatory structures, land markets, and state and local government policies and regulations. Thus, they argue, to ensure distributional equity, municipal institutions should allow for communities to protect themselves from harm through the establishment

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<sup>283</sup> Rose, *supra* note 268 at 721.

<sup>284</sup> Foster, *supra* note 41.

<sup>285</sup> *Ibid* at 59.

<sup>286</sup> *Ibid*.

<sup>287</sup> Clapp & Meyer, *supra* note 280 at 1-2.

of shared cooperative normative structures. In this way, governance beyond the state achieves a degree of fairness that is otherwise not possible.

Under this view, if the city government is not acting as a proper steward of city space, some other form of governance can and should be invoked to limit the degradation of city resources. Foster and Iaione refer to this form of commons governance as “bottom up,” making room for co-partners, or co-collaborators, users of the commons and other actors who have a stake in the commons.<sup>288</sup> They focus their analysis on the possibility of bringing more collaborative governance tools to “decisions about how city space and common goods are used, who has access to them, and how they are shared” among a diverse urban population.<sup>289</sup> Under their view, urban commons are spaces that afford residents shared access to local urbanized resources, thus urban residents who are accessing urban resource pools have a common stake in ensuring the longevity of the resource.<sup>290</sup>

The purpose of looking at the local governance model through the lens of the urban commons, especially where non-government actors play an important role, is to protect the “common good.”<sup>291</sup> Zoning bylaws can be rethought as tools to promote the common good, for example, the use of exclusionary zoning tools as a tool to open access to the particular areas of the city to those who have been excluded.<sup>292</sup> Non-state actors can get involved in a governance model where governments are too strained to address a broader range of city issues. Beyond pragmatic considerations, Foster and Iaione assert this broader claim in support of the view that, regardless of whether spaces are privately or publicly owned, the city is a territorial space in which citizens claim to have a role or stake, and this claim is reinforced by law.<sup>293</sup>

This dissertation adopts Foster and Iaione’s conception of the urban commons to argue

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<sup>288</sup> Foster & Iaione, *supra* note 44 at 327.

<sup>289</sup> Foster, *supra* note 41.

<sup>290</sup> Foster & Iaione, *supra* note 44 at 284.

<sup>291</sup> *Ibid.*

<sup>292</sup> *Ibid.* at 295.

<sup>293</sup> *Ibid.*

that this framework may serve as a helpful model for a normative understanding of the smaller-than-city spaces to which a local governance model is then applied. The next section details the advantages of such a framework.

### **3. The urban commons as a normative framework for local governance**

Local governance as understood within the lens of an urban commons framework is the crucial normative pillar in identifying and advancing a framework to understand a local legal space. What, then, would such a “local” urban commons look like? How would it advance the theoretical framework of a local legal space? The urban commons is consistent with a framework of local legal spaces that is multi-scaled, continuously created and recreated as a function of time, and measured based on the degree to which it enables a more inclusive, participatory approach to governance. This is the conception of local governance advanced in this dissertation.

Viewing local governance through the lens of an urban commons has three normative benefits. First, the scalar logic of urban governance means that local governance can be understood as a cooperative decision-making model that moves beyond the state to include empowered non-state actors. To Foster and Iaione, the urban commons can be governed in a manner that empowers the local government and persons by having conditions that allow communities to autonomously decide on and enforce the rules for sharing and managing commons resources. In Foster and Iaione’s view, it is possible to re-situate city’s role as an enabler and facilitator of collaboration. Here, the state would create the conditions under which a city’s residents can develop collaborative relationships with each other and with public authorities. The idea is that the urban commons can then be used as a tool to reverse city inequalities by “empowering residents to collaborate in order to undertake the care and regeneration of the resources.”<sup>294</sup> This collaboration, they argue, can take place across multiple scales, including more localized versions that exist in Toronto. For example, Foster provides extensive evidence that this is already taking place through organizations like BIAs and park conservatories that

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<sup>294</sup> *Ibid.*



receive authority to manage a city resource.<sup>295</sup> This presumes that common interests exist among residents, local governments and other parties, such as businesses.

Foster and Iaione use the concept of subsidiarity to “re-orient public authorities away from the central state to an active citizenry willing to cooperatively govern common resources.”<sup>296</sup> As mentioned, the principle of subsidiarity provides that government powers should reside at the lowest level possible.<sup>297</sup> The commons makes room for “bottom up” governance by co-partners, or co-collaborators, users of the commons and other actors who have a stake in the commons at the city-wide scale. Foster and Iaione endorse the urban commons as an opportunity to include collaborative governance tools in “decisions about how city space and common goods are used, who has access to them, and how they are shared” among a diverse urban population.<sup>298</sup> They suggest that subsidiarity can be a design feature for urban commons governance as the citizen is conceived as active and willing to take care of shared resources. Perceived this way, residents have a role in the ongoing decision-making related to the city. Building on Santos’ notion of scale, this dissertation looks at the scale of local governance to understand how boundaries and governance would be impacted by such a reorientation and what it means for inclusivity.<sup>299</sup> This first consideration is mindful of debates about neoliberal shifts in urban power and the retreat of governments and, as such, maintains that inclusive participation must be the underlying objective of a normative framework of local governance.<sup>300</sup>

Second, the urban commons is consistent with the theoretical framework of local governance advanced in this dissertation in regard to flexibility. Norms and rules in respect of boundaries and governance shift over time, as is described in Toronto’s case in Chapter 3. Local legal spaces are continuously created and recreated. In pursuing the

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<sup>295</sup> *Ibid* at 133.

<sup>296</sup> *Ibid.* at 326.

<sup>297</sup> Blank, *supra* note 127 at 279.

<sup>298</sup> Foster & Iaione, *supra* note 44.

<sup>299</sup> Santos, *supra* note 85 at 460.

<sup>300</sup> See e.g. Peter Marcuse and Ronald van Kempen (eds.), *Of States and Cities – The Partitioning of Urban Space* (Oxford: Oxford University Press, 2002) and Susan S. Fainstein, *The just city* (Ithaca: Cornell University Press, 2010).

objective of a local legal space that enables participation and inclusivity, this dissertation adopts a flexible and contextualized approach to governance. This flexibility is inspired by the work of scholars who urge a less rigid concept of commons management.<sup>301</sup> According to Santos, the model for this public engagement and involvement should be complex and sophisticated to reflect the importance of overlapping, multifaceted, multiplayer decision-making at the municipal level. He favours this decisional complexity in stark contrast to the approach of Max Weber, who argues instead for rational bureaucracy. Santos proposed the following hypothesis: “in internally differentiated societies, the stronger the bond between democracy and distributive justice, the more complex the methodology that guarantees such bond tends to be. The decrease of complexity that bureaucracy allows for cannot but bring about the loosening of the bond between democracy and distributive justice.”<sup>302</sup> Thus, a rational system of decision-making misrepresents the messy reality of participatory democracy, which is interconnected with tugs and pulls of representation and delegation. Santos notes the tendency that, “irrespective of the plurality of normative orders circulating in society, each one of them, taken separately, aspires to be exclusive, to have the monopoly of regulation and control of social action within its legal territory.”<sup>303</sup> But, what might happen if the foci of local governance are shifted without rigidity as to particular configurations? Can local legal spaces be contextual and flexible, even varied across different geographies?<sup>304</sup>

Third, I argue that the urban commons provides a normative framework for distributive justice. Foster and Iaione state that, “The core impetus to conceive of the city as a commons aims at changing the democratic and economic functioning of the city,”<sup>305</sup> to move towards “a system which at its core redistributes decision making power and

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<sup>301</sup> Rose, *supra* note 266.

<sup>302</sup> Boaventura de Sousa Santos, “Participatory Budgeting in Porto Alegre: Toward a Redistributive Democracy” (2008) 26 *Politics & Society* 461.

<sup>303</sup> Santos, *supra* note 85 at 458.

<sup>304</sup> See Paul S. Berman, “The Globalization of Jurisdiction” (2002) 151 *U. Pa. L. Rev.* 311 (who asserts at 322 that legal jurisdiction can be described as “social interactions that are fluid processes, not motionless demarcations frozen in time and space”).

<sup>305</sup> *Ibid.* at 335.

influence away from the center and towards an engaged public.”<sup>306</sup> To Foster and Iaione, “a commons-based governance approach envisions cities as vehicles for collaboration across formal governance arrangements toward social and economic inclusion.”<sup>307</sup> Foster and Iaione flag the following issues as ones to be considered in an urban commons: “[A]re collaboration arenas able to guarantee equal access by underrepresented groups who are too often unable to access political and larger decision making processes, or can the potential of such collaborative processes represent a significant step towards a more egalitarian process than currently exists? How can we avoid the risk that the collaborative ecosystem produces output that results in a patchwork, instead of a network, of governance arrangements for the urban commons?”<sup>308</sup>

Likewise, this dissertation argues for a normative framing of local governance that is inclusive and participatory. In Chapter 6, I develop this normative argument in relation to Toronto’s local governance model, advancing four principles for local governance.

#### **IV. Conclusion**

This dissertation uses the conceptualization of local governance as set out in this chapter to investigate the overlapping geographic boundaries and decision-making roles of Toronto’s four main localized governance bodies. This chapter sets out the framework to be used in the dissertation. First, this chapter sets out the framework that serves as the basis for the conceptualization of local governance, including the meaning and relevance of interlegality as drawn from legal pluralism and legal geography.

Second, as the core element of this chapter, I bring together these literatures to offer and defend a two-part conceptualization of local governance that, first, local governance is pluralistic and recognizes the interlegality of multiple normative orders such that local spaces cannot be considered self-enclosed, autonomous units; and, second, that state iterations of local governance bodies create political, social, and spatial realities, through

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<sup>306</sup> *Ibid.* at 335.

<sup>307</sup> *Ibid.* at 336.

<sup>308</sup> Foster & Iaione, *supra* note 44 at 335.

multiple overlapping institutions; incorporate other norms, orders, rules and practices; and include and exclude certain people and communities through the setting of boundaries and participation rules.

The chapter concludes by arguing that this conceptualization of local governance, examined alongside Sheila Foster and Christian Iaione's concept of the urban commons, may be used to explore and evaluate how local bodies make overlapping and contradictory claims about their legal jurisdiction over segments of the city; and, second, to propose a local governance model that improves the inclusivity and participation of historically marginalized people.

We next turn to the methodology adopted by this dissertation to understand the legal spaces of Toronto's local governance model.

## Chapter 2 – The Methodological Puzzle

Susan Fainstein writes, “[L]ocal policies make life better or worse for people. There are many decisions, especially involving housing, transport, and recreation, made at the local level that differentially affect people’s quality of life.”<sup>309</sup> Taking the City of Toronto as its focus, this dissertation asks how local governance is conceptualized and reflected in the overlap of formal bodies empowered under applicable law and through the uneven involvement of non-state bodies that assert geographic boundaries and a representative role in local areas of the city. Fundamentally, as a dissertation rooted in law, it asks how legal rules may be used to foster inclusive connections and a just city.<sup>310</sup>

On the one hand, this is a dissertation about how the law is used to create and reinforce physical boundaries and overlapping governing institutions within the city. On the other hand, this study also seeks to understand how institutions are used and acted upon outside of the formal contours of law. As such, the dissertation steps outside of a doctrinal review of applicable legal codes to invite a mixed methodological approach. The methodology adopted in this study combines doctrinal analysis with qualitative and basic quantitative empirical methods.

My methodological approach is informed by the interplay of theory and method, and by the concept of positionality. Socio-legal researchers whose academic training is in law have been criticized as “methodologically unsophisticated.”<sup>311</sup> To avoid such criticism, Fiona Cownie and Anthony Bradney suggest careful consideration of the adoption of an approach and method in light of the research question; review of academic literature on theory and method; and waiting until the research method and theoretical approach are clear before proceeding to the collection of data.<sup>312</sup> While my approach included careful consideration of the underlying theory and method, and was clear as data collection took

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<sup>309</sup> Susan S. Fainstein, “The Just City” (2014) 18:1 International Journal of Urban Sciences 1 at 14.

<sup>310</sup> Gregory S. Alexander, *Dilemmas of Group Autonomy: Residential Associations and Community*, (1989) Cornell Law Faculty Publications 466.

<sup>311</sup> Fiona Cownie and Anthony Bradney, *Socio-legal studies: A Challenge to the Doctrinal Approach in Dawn Watkins and Mandy Burton, Research Methods in Law* (New York, Routledge, 2013) at 37.

<sup>312</sup> *Ibid.* at 38

place, I left space to undertake what Elinor Ostrom called “moving back and forth from the world of theory to the world of action.”<sup>313</sup> As Ostrom notes, without theory, one is unable to understand the many dynamics that operate in different situations. Empirical work helps to centre theoretical work. This meant, during field work, continually coming back to my theoretical approach and research question to ensure intellectual honesty. Ostrom’s approach is consistent with those of Allaine Cerwonka, and Liisa H. Malkki, who do not agree with a reduction of observed practices to mere illustrations of ideas and who instead reflect on the process of observation as “partial understanding, as well as floods of insight.”<sup>314</sup> An interpretive process in the approach of Ostrom, Cerwonka, and Malkki involves a “continuous movement between explanations (theories) about the object or process at issue and the parts that force adjustment or reaffirm the researcher’s initial “guessing.”<sup>315</sup>

This interplay of theory and method held true in my research process. I initially decided to focus on community councils as my sole object of inquiry. As time progressed, I realized that a singular examination of community councils as expressions of local governance would limit my ability to understand the many bodies that informed how smaller-than-city spaces are governed, and that I needed to broaden the study to incorporate wards, neighbourhood associations and business improvement areas, each of which claimed physical boundaries and a mandate of representation.

This realization mirrors the recognition in my theoretical framework that the nuances of local areas of the city are instrumental to understanding how these legal spaces are crafted through boundaries and governance. I began my dissertation with a reasonably clear sense of the theoretical framework that I would use during the study, believing that I would engage Gerald Frug’s meaning of “community” as a spatiotemporal concept that had limited application in Toronto given the differences in municipal legal structures in Canada and the United States. However, as I began to craft my detailed project outline

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<sup>313</sup> Elinor Ostrom, *Governing the Commons* (1990)

<sup>314</sup> Allaine Cerwonka and Liisa H. Malkki, *Improvising Theory: Process and Temporality in Ethnographic Fieldwork* (Chicago: The University of Chicago Press, 2007) at 17.

<sup>315</sup> *Ibid.* at 19.

and to research the “law in the books” related to governance (what is now Chapter 3), the theoretical framework went through a period of adjustment. As I learned new details about the City of Toronto’s local governance model, my theoretical lens shifted, seeking to better explain what I was learning. I expanded the literature that I was engaging with beyond the familiar contours of legal scholarship, discovering theorists including Valverde and Blomley, whose research became central to my own. As my writing progressed, I used this work to articulate a conceptualization of local governance that could be evaluated using the case studies.

The research question also became more refined as my field work and writing progressed. In late 2015, I had developed a conceptualization of local governance outlined in Chapter 1 and was grounded within a prescriptive framework. As I interviewed councillors and senior staff members and explained the project to them, I observed the absence of a normative objective in my research question. This led me to consider the larger question of what I intended to advance as a theoretically-grounded meaning of local governance, ultimately leading me to consider the urban commons. What does this concept mean in the case of Toronto and its local legal spaces? Can the urban commons animate the goals of legal geography to move beyond analyzing how the “legal” and the “spatial” are mutually constitutive and instead to examine what the legal forms and geographies mean for inclusive, participatory governance grounded within an urban commons framework?<sup>316</sup> Attending academic conferences and obtaining feedback on this intellectual and methodological journey were – and continue to be – particularly helpful tools to refine and make sense of the material with which I was engaging.

My work is also deeply impacted by my own experiences working at Toronto City Hall and, as such, my positionality and prejudgments can never be erased from the knowledge production process that I engaged in throughout the data collection period. At the time that I began my doctoral work in 2012, I was working full-time as a civil servant in the City Manager’s Office working on intergovernmental files, mainly related to transit, infrastructure, and housing. I very consciously chose a topic that was unrelated to my

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<sup>316</sup> Benson, *supra* note 63 at 1446.

day-to-day work in order to create an intellectual distance between my dissertation project and what I called my “professional work.” I wanted to avoid concerns regarding ethics of engaging with relevant material outside of the strict parameters of permissible methods of data collection. However, my desire to engage in doctoral work was motivated by a gap in the analysis of Canadian urban governance that I had observed as a civil servant. In the transit, infrastructure and housing files that I worked on, I observed a lack of systemic processes for addressing the “local” aspects of city-wide decisions. This puzzle has undeniably influenced my perspective on local governance, much as I tried to avoid bridging my academic and professional work. This background further contributed to the desire for a normative understanding of “local governance ” that may guide how governments may enable a more inclusive, participatory city through the design of legal processes and institutions.

The interplay of practical experience and scholarly work is not new in academia, particularly in the field of law, as constitutional law professor Erwin Chemerinsky observed in his scholarly work related to the development of neighborhood councils in Los Angeles.<sup>317</sup> Chemerinsky recounted his role as a commissioner setting up the councils, including working with community stakeholders, weighing options and confronting political realities, observing at the end, “As with everything else in charter reform, the provisions concerning Neighborhood Councils were a compromise. It made me appreciate how much the United States Constitution, too, was a compromise.”<sup>318</sup> Thus, his expertise as a scholar and day-to-day experiences as a commissioner could not be disassociated, but instead merged in both his experience in city government and his analysis of neighbourhood councils.

Philosopher Hans-Georg Gadamer observes that method does not properly capture how knowledge gathering occurs.<sup>319</sup> Instead, the act of interpreting always involves a “fusion of horizons” influenced by the historical specificity of the researcher, and the history and

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<sup>317</sup> Chemerinsky & Kleiner, *supra* note 156 at 571.

<sup>318</sup> *Ibid.* at 574.

<sup>319</sup> Hans-Georg Gadamer, *Truth and Method* (New York: Continuum Press, 1999).



character of the object of study.<sup>320</sup> What we see as researchers is necessarily mediated by a vantage point that prioritizes particular information and questions to understand the phenomenon.<sup>321</sup> In this study, my experiences at City Hall, both before and during the crafting of the dissertation, informed my interest in the topic, the lens through which I understood the issue, and facilitated connections to interview subjects that might not have otherwise been available to me.

Research is “an attempt to discover something.”<sup>322</sup> It is with the methodological tools described below that I embarked on the discovery that follows in this dissertation.

## **I. Doctrinal analysis: textual review of case law and legislation**

Hoi Kong remarks that cities are “creatures of the law.”<sup>323</sup> Likewise, this dissertation advances the idea that the legislative foundation of the city of Toronto provides an essential context for understanding the city’s governance institutions, as well as its view of what “local governance” means. While this dissertation draws on interdisciplinary work – particularly from the legal geography project – to challenge core concepts, the analysis is fundamentally rooted in a study of law. From a legal perspective, Toronto’s governance model is set out “in the books,” including provincial legislation and municipal bylaws. Similarly, this research seeks to understand how state law shapes narratives of engagement and participation, and to understand which voices are excluded within usual engagement practices, necessitating knowledge of how legal codes set out the local governance. The dissertation incorporates the analysis of legal doctrine, which includes both statutory interpretation and case law, to set out and understand Toronto’s institutions, legislative powers, and governance rules. This approach is also called “black letter law” or “formal” law and assumes that there exists a systemization of law that can be interpreted and known.

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<sup>320</sup> Allaine Cerwonka and Liisa H. Malkki, *Improvising Theory: Process and Temporality in Ethnographic Fieldwork* (Chicago: The University of Chicago Press, 2007) at 23.

<sup>321</sup> *Ibid.* at 26.

<sup>322</sup> R.D. Wimmer and J.R. Dominick, *Mass media research: An introduction* (10<sup>th</sup> ed.). Boston, MA: Cengage Learning, 2014) at 2.

<sup>323</sup> Kong, *supra* note 55.

There is no agreement by legal theorists on the nature of doctrine as a discipline and the degree to which it draws from hermeneutic, argumentative, logical and normative elements.<sup>324</sup> In property law, which I view as the legal family within which this study resides, a doctrinal approach has typically been used, professing to relate what the law is, not what it should be.<sup>325</sup> Property law is considered to be a particularly complex exercise, where the question of “what is the law?” is the most difficult research question of all.<sup>326</sup>

Mary Jane Mossman accounts for this complexity as follows:

[P]roperty scholarship must take account of statutes, both ancient and modern, which are interwoven with common-law principles; as well, it must accommodate a background of ideas, often only implicit, about the constitutional protection of property interests. The tasks of enunciating the law and demonstrating the efficacy of its application in a particular context may be overwhelming in themselves; and these difficulties may provide at least a partial explanation for the absence of property scholarship that advances beyond explication of this sort. Moreover, the combination of provincial jurisdiction over property and the nature of property law analysis - an amalgam of statutes, common law, and constitutional principles - makes the task a daunting one indeed.<sup>327</sup>

In Chapter 3, I follow these steps to set out the applicable law as it relates to the City of Toronto’s governance model. The legislation, namely COTA and other statutes such as the *Planning Act, 2000*, constitutes the City of Toronto as a corporate entity under provincial dominion. This legislation sets out the city’s boundaries, obligations and powers. I analyze provincial legislation that outlines Toronto’s powers and constraints, as well as legal decisions, particularly of the Supreme Court of Canada, that have interpreted the scope of municipal authority. There are nuances in the applicable law, especially regarding the interplay of provincial law and municipal bylaws, and of court cases and decisions of the Ontario Municipal Board (OMB). The dissertation benefits from a close textual reading of the relevant provisions, in particular the rules and

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<sup>324</sup> Mark Van Hoecke (ed), *Methodologies of Legal Research* (Oxford: Hart Publishing, 2011).

<sup>325</sup> Martin Dixon, “A Doctrinal Approach to Property Law Scholarship: Who Cares and Why?” (2014) 3:3 *Prop L. R.* 160.

<sup>326</sup> *Ibid.*

<sup>327</sup> Mary Jane Mossman, “Toward ‘New Property’ and ‘New Scholarship’: An Assessment of Canadian Property Scholarship” (1985) 23.4 *OHLJ* 633 at 635.

performance of community councils. I also examine the legislation that previously defined Toronto's powers and obligations, particularly at the time of amalgamation in 1998, as part of the story of how the city's governance model has evolved.

Chapter 3 describes wards and community councils as the local governance bodies formally endorsed by the city, analyzing the roles that these bodies play in local planning and other decisions. The city is divided into discrete electoral districts called wards, each of which has a population of approximately 60,000 residents who elect a councillor to represent them. In the 1998 amalgamation of seven municipalities to form the City of Toronto's current municipal boundaries, the Province of Ontario created "community councils," which were intended to bring the local voices of the pre-amalgamated municipalities formally within the city's political structure. The City of Toronto's procedural bylaw permits community councils to operate differently from other standing committees. This section illustrates the history and role that wards and community councils play in the City of Toronto's formal local governance model.

However, the city's authorities under provincial legislation, and wards and community councils as the city's formal local bodies, are only one part of the City of Toronto's local governance story. As such, Chapter 3 examines business improvement areas (BIAs) and neighbourhood associations (NAs) as institutions that play a key role in the city's governance. I explain how these bodies are created, managed and integrated into city decision-making in and outside of the law, including significant distinctions between the two types of bodies in their connections to councillors and bureaucrats, their uneven presence in the city, and their involvement in local planning decisions. Chapters 4 and 5 each set out case studies to illustrate how Toronto's formal local governance bodies (wards and community councils) interplay with informal bodies (BIAs and NAs) in decision-making at the smaller-than-city scale.

The approach taken in this dissertation has two principal strengths. First, this dissertation contributes to an emerging legal scholarship on municipal governance in the Canadian context. In 2006, Ron Levi and Mariana Valverde published an article on the legal status

of Canadian cities by canvassing relevant doctrine and noting the lack of constitutional space for an expanded municipal authority.<sup>328</sup> Since then, Hoi Kong has published several articles on cities, federalism, and administrative law.<sup>329</sup> Kong's articles include statutory interpretation and analysis of case law, contributing an understanding of the evolving political role of cities and the legal instruments that are used to both frame their powers and enable self-governance.<sup>330</sup> My work builds on this emerging scholarship on Canadian municipal law by conceptualizing what is meant by local governance and how the urban commons may apply a normative framework in the Canadian urban context. I add to this conversation by theorizing the city in the context of legal pluralism and legal geography as comprising a plurality of laws, norms, and codes, and both state and non-state bodies that unevenly impact decision-making. Ultimately, I share many Canadian scholars' objective to understand how municipal authority contributes to more inclusive cities.

Second, legal analysis can expose particular aspects of the law through a careful textual analysis and a thorough reading of legislation and case law. Here, a close reading of the legislation and municipal bylaws in Chapter 3 suggests a set of powers for community councils that are rarely practiced. Thus, a review of law demonstrates a law "in the books," but not "in action."<sup>331</sup> Likewise, Chapter 3 sets out an argument concerning subsidiarity that can be used in subsequent arguments for an augmented municipal authority. This approach also emulates Ostrom's approach in her commons research whereby careful attention was placed on definitions and the institutional structures at the heart of the research.<sup>332</sup> This dissertation's doctrinal analysis will contribute to an understanding of how the law shapes Canadian cities that may be used by legal educators and practitioners, as well as those in the academy.<sup>333</sup>

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<sup>328</sup> Levi & Valverde, *supra* note 134.

<sup>329</sup> See e.g. Kong, *supra* note 55 at 475.

<sup>330</sup> See e.g. Hoi Kong, "Subsidiarity, Republicanism and the Division of Powers in Canada" (2015) 45 *Revue de droit de l'Université de Sherbrooke* 13.

<sup>331</sup> Valverde, *supra* note 191.

<sup>332</sup> Elinor Ostrom, *Governing the Commons: The Evolution of Institutions for Collective Action* (Cambridge University Press, 1990). See also Lee Anne Fennell, *Ostrom's Law: Property Rights in the Commons* (2011) 5:1 *Int'l J of the Commons* 9, online: < <http://www.law.uchicago.edu/files/file/SSRN-id1962336.pdf> >.

<sup>333</sup> Richard Posner, "Legal Scholarship Today" (2002) 115 *Harv. L. Rev.* 1314 at 1316, online: <[http://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=2833&context=journal\\_articles](http://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=2833&context=journal_articles)> at 1317

However, in this dissertation and elsewhere, this traditional approach to legal analysis is rapidly expanding to include theoretical approaches such as law and economics, critical legal studies, law and society, critical race theory and others, resulting in transformations in the kinds of methodologies used.<sup>334</sup> For example, scholars who ground their studies within a critical legal studies approach may move beyond doctrine to include semi-structured interviews or participatory observation, in part, because doctrinal analysis does not acknowledge the liberal bias inherent in the law's professed rationality and logic.<sup>335</sup> As Blomley notes, the way in which laws are described by governments does not assist us in fully understanding the legal space in operation.<sup>336</sup> If black letter law or legal doctrine is the limit of the inquiry, then the research is failing to address the social, political and economic reality in which the rules sit.<sup>337</sup> However, there is no consensus as to the extent to which these "non-law" or societal perspectives must be considered.<sup>338</sup> At minimum, Mary Jane Mossman argues that an acknowledgment of the perspective from which a scholar is writing, their underlying values and assumptions, and the limits of rational discourse are essential in property law scholarship.<sup>339</sup> In property law classes, these perspectives are referred to as "relevant policy considerations and societal goals."<sup>340</sup>

But, is this enough? I suggest that a layered, creative approach that moves beyond doctrine may better understand the legal dynamics at play in the creation and enforcement of jurisdictional boundaries, as well as the nature and inclusivity of the resulting governance model. This dissertation recognizes that "state" and "non-state" are

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(questioning whether the core audience for legal scholarship should continue to be legal practitioners like lawyers and judges or whether ideas are meant to be chiefly circulated amongst academics).

<sup>334</sup> *Ibid.* at 1316.

<sup>335</sup> Mossman, *supra* note 327 at 640.

<sup>336</sup> Blomley, *supra* note 50.

<sup>337</sup> Dixon, *supra* note 325.

<sup>338</sup> Harry T. Edwards, "The Growing Disjunction Between Legal Education and the Legal Profession" (1992) 91 Mich L R 34, 42-43 (1992)

<sup>339</sup> Mossman, *supra* note 327 at 651.

<sup>340</sup> Peter T. Wendel, "The Perfect Blend of Methodology, Doctrine & Theory" (1999) 22 Seattle Univ L R 1031 at 1040, online:

<<http://digitalcommons.law.seattleu.edu/cgi/viewcontent.cgi?article=1604&context=sulr>>.

rudimentary distinctions that are not, in practice, simple to distinguish.<sup>341</sup> However, incorporating a qualitative approach through the methods described below provides a more fulsome analysis of Toronto's governance model than reviewing provincial and municipal statutes, and by examining case law, which provides an incomplete picture as to how wards, community councils, BIAs and neighbourhood associations inform the meaning of local legal spaces in Toronto. From an information-gathering perspective, learning from those who both designed and work within these bodies helped me to understand why decisions were made or events took place, absent data available on paper, in City Council decisions or on Hansard. To understand the local governance role of councillors, watching community council and other meetings helped me to observe the dynamics between councillors, representatives of neighbourhood association and BIAs. The two case studies allowed for an exploration of how geographic boundaries and overlapping governing institutions used and acted upon in city decision-making. In short, a methodological approach that integrated an examination of both doctrine and qualitative methods was consistent with the theoretical framework that guides this research.

## II. Case studies

The lens of legal pluralism helps to see that many governance entities and institutions overlap within a localized space. This dissertation adopts a case study approach to understand how Toronto's boundaries and governance institutions overlap.<sup>342</sup> Case studies are used to explore a particular context and to understand how the people within interact with one another and the outside world.<sup>343</sup> As stated by Chris Hart, case studies allow a researcher to "evaluate research within the paradigm in which it has been conducted," in this case permitting me to understand the process of local governance

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<sup>341</sup> Note also Peer Zumbansen's thoughtful contributions regarding the challenge in distinguishing between legal and a non-legal forms of regulation within the context of transnational law (Zumbansen, *supra* note 74).

<sup>342</sup> G. Thomas, "A Typology for the case study in social science following a review of definition, discourse and structure" (2011) 17(6) *Qual Inquiry* 511.

<sup>343</sup> Satnam Choongh, "Doing Ethnographic Research: Lessons from a Case Study" in Mike McConville and Wing Hong Chui (eds), *Research Methods for Law* (Edinburgh: Edinburgh University Press, 2007) at 70

within the structures that it is operating.<sup>344</sup> Case studies are not meant as a tool to create a grand, generalized theory of urban governance in Toronto or elsewhere; rather as a way of understanding how local governance occurs in a particular place and time.<sup>345</sup> Authors must make clear why the case studies have been selected amongst the universe of possible studies and should set out sufficient contextual boundaries.<sup>346</sup>

Case study research is helpful in illustrating, capturing and gaining insights on the complexity of Toronto's local governance model. Most importantly, I selected cases that allowed me to test the conceptualization of local governance advanced in Chapter 1 as to how wards, community councils, BIAs and NAs framed their geographies and roles in regard to decision-making, and to identify which geographies and roles are included and excluded by the formal local governance model. This both serves a diagnostic purpose, meaning the application of the conceptualization of local governance, and sets the stage for the normative goal, which is to advance local governance that incorporates an urban commons framework.

I used four criteria to determine case study selection. The first criterion, overlapping local governance institutions, means that wards, community councils, BIAs and neighbourhood associations played or could have played a role in decision-making. This meant that the case studies must have been limited to the boundaries of the City of Toronto, rather than a decision that involved multiple municipalities. I did not purposely decide upon case studies that necessarily involved these four governance bodies; instead, I wanted to observe without prejudging the degree to which wards, community councils, BIAs and neighbourhood associations did or did not assert themselves as relevant. Second, I selected as case studies matters that were deemed to be "city-wide" issues – that is, matters where Toronto City Council served as the final decision-maker under applicable law. As will be described in Chapter 3, numerous studies have concluded that Toronto's

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<sup>344</sup> Chris Hart, *Doing a literature review: Releasing the social science research imagination*. (London: Sage, 1998).

<sup>345</sup> G. Thomas, "Doing case study: Abduction not Induction, phronosis not theory" (2010) 16(7) Qual. Inquiry 575 at 578. See, *contra*, Andrew Bennett, Case Study Methods: Design, Uses and Comparative Advantages

<sup>346</sup> Nerida Hyett, Amanda Kenny and Virginia Dickson-Smith, "Methodology or Method? A critical review of qualitative case study reports" (2014) 9 Int'l J of Qual Stud on Health & Well-being.

councillors are rulers of “fiefdoms,” exercising an overwhelming degree of power within their wards. As such, the case studies are each of “city-wide” issues, meaning that they are not confined to a matter solely concerning a single ward.<sup>347</sup> Third, I selected case studies that concerned or tested geographic boundaries of local governance, meaning that the spatial aspects and governance elements were considered in tandem. Fourth, the case studies concerned distributive justice in that the issues to be decided would have localized implications for the health, safety and democratic power of residents.

These criteria were consistent with the theoretical framework set out in Chapter 1. The two-part conceptualization of local governance queries what state law has done to cement an understanding of local and through what legal mechanisms and the competing legal notions of local within one context. Case studies allow for the exploration of a particular context or setting to understand how local governance is understood and shaped. The focus on specific case studies reveals how state iterations of local governance base themselves on rationales of closeness to residents, subsidiarity and legislative efficacy. It allowed me to test how entities and institutions are included in performances of local see what has been included in – and what has been left out of – state law’s conceptualization of local governance.

Ultimately, three case studies were chosen. Chapter 4 sets out the first two, the 2012-13 and 2015 casino decisions. In the 2012-13 casino debate, four casino options in two community council areas were identified as possible locations for a new casino in the City of Toronto. The 2015 casino decision concerned the expansion of the Woodbine Racetrack in the northwest part of the city. These two case studies provided insight into whether the site of a casino is a “local” or a “city-wide” matter and which bodies should be included in decision-making. It also illustrates differing levels of involvement of BIAs and neighbourhood associations as participants in the City of Toronto’s governance model.

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<sup>347</sup> Moore, *supra* note 202 at 154.



Chapter 5 sets out the third case study, the ward boundary review, which was initiated in 2013. This case study took place over two terms of City Council and concerned the drawing of new electoral district boundaries in Toronto. This was the first fulsome ward boundary review since amalgamation, as a more limited review in 2000 gave the City an opportunity to divide the 22 federal electoral districts in two to create 44 wards. This case study examined the meaning of local governance by examining which parts of the city's local governance model was and should be engaged in decision-making; how "communities of interest" can and should be identified; and the interplay between wards, BIAs, neighbourhood associations and other bodies. The chapter also examines broader claims to local governance made during the review, including the number, mandate, and design of community councils and other place-based local governance institutions.

### **III. Empirical research methods**

For my empirical research (namely, the case studies and the characterization of the institutional framework of the City of Toronto's governance model), I employed a mix of qualitative methods including semi-structured interviews, participant observation at meetings and consultation sessions, archival research, and media analysis. I also used geographic information systems (GIS) and other quantitative data to illustrate other findings. This combination of methods allowed me to draw on a variety of sources and perspectives to develop a nuanced understanding of local governance.

#### **1. Semi-structured interviews**

The strengths of interviews, particularly semi-structured interviews, as a research method are well documented. As Kevin Dunn states, interviews are a respectful and empowering method for research participants, in that their views can be heard. As Gill Valentine notes, participants are free to respond openly, as opposed to providing fixed, categorized

responses, and have the opportunity to explain their responses and redirect the question, which is not possible with techniques like questionnaires.<sup>348</sup>

Semi-structured interviews rely on a predetermined line of questioning but allow for additional questions during the process of the interview.<sup>349</sup> I conducted semi-structured interviews with former and current city staff and city councillors. The interviews are cited in Appendix A. City staff described the circumstances that led to the creation of and changes to community councils, how the ward boundary review and casino decisions were initiated, the way in which BIAs and neighbourhood associations are included in decision-making, and relationships between ward councillors and city staff. City councillors provided information on their roles and participation in the casino debates in particular, including how they saw their role in the local decision-making of a “city-wide” issue and the degree to which they interacted with and involve BIAs and neighbourhood associations. I focused on interviews with staff and councillors to understand how they see the operation of local governance through the lens of formal structures. The purpose was to understand how these formal municipal actors understand the roles of BIAs and neighbourhood associations in decision-making processes. I drafted and forwarded to participants a list of broad questions in advance, but ultimately structured the interview as a conversation, rather than a series of rehearsed and carefully worded questions. In some cases, participants agreed to have the interviews taped, in which case they were recorded on a digital recorder and later transcribed. For those who preferred not to have their interviews recorded, I took detailed notes during the interview. In accordance with applicable human participant research standards, I honoured the requests of individuals to remain anonymous.

Community councils were created at the time of amalgamation and were intended to serve as the locus of local participation, consultation and decision-making within the boundaries of the pre-amalgamated lower-tier municipalities. Community councils were

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<sup>348</sup> Gill Valentine, “Tell me about...: Using interview as a research methodology” in R Flowerdew and D Martin, *Methods in Human Geography: A Guide for Students Doing a Research Project* (Edinburgh: Longman Press, 2005).

<sup>349</sup> K. Dunn, “Interviewing” in Iain Hay, *Qualitative Research Methods in Human Geography* (2<sup>nd</sup> ed) (New York: Oxford University Press, 2005).

later reviewed by city staff, resulting in changes to the City of Toronto's procedural bylaws setting out the role and function of these bodies. I was especially interested in speaking with senior staff from the Municipality of Metropolitan Toronto and the former pre-amalgamated municipalities who were involved in the creation of community councils in 1998, and those who authored the City of Toronto report on community councils in 2003 to better understand the rationale for the boundaries selected and the mandate of the community councils.<sup>350</sup> As set out in Chapter 1, this dissertation argues, as Valverde and Massey do, that space and time are not discrete, separated concepts; they are instead part of one another. Similarly, the history of Toronto's governance model, and especially the story of amalgamation, is present in contemporary rules and practices, too. These municipal actors are or were senior decision-makers in the city involved in the three case studies, so I was able to solicit information on how wards, community councils, BIAs and neighbourhood associations were involved in their decision-making processes. Having engaged in work at the City of Toronto, I drew on my own knowledge and professional networks as starting points for who to interview. I asked each interviewee who would be helpful to interview next until I began hearing the names of those who had already been interviewed.<sup>351</sup>

Table 2.1 summarizes the categories and number of interviewees.

Interviewee category	Number of interviewees	Interview dates	Focus of interview	Relevant municipal governance body
City staff (retired and current)	6	<ul style="list-style-type: none"> <li>• December, 2015</li> <li>• March 2015</li> <li>• April 2016</li> <li>• February 2016</li> <li>• February 2016</li> </ul>	<ul style="list-style-type: none"> <li>• Ward role in local decision-making (6)</li> <li>• Decision-making in city-wide debates (6)</li> <li>• Design of community councils (3)</li> </ul>	<ul style="list-style-type: none"> <li>• Ward</li> <li>• Community Council</li> <li>• BIA</li> <li>• NA</li> </ul>

<sup>350</sup> See esp. City of Toronto, *The process to establish community councils*, online: <[http://www.toronto.ca/committees/community\\_councils\\_background.htm](http://www.toronto.ca/committees/community_councils_background.htm)>.

<sup>351</sup> Annie Rochette, personal communications (31 May 2016).

		<ul style="list-style-type: none"> <li>• May 2016</li> </ul>	<ul style="list-style-type: none"> <li>• 2012-13 casino case study (3)</li> <li>• Ward boundary review (3)</li> <li>• Approaches to civic engagement (2)</li> <li>• Decision-making in local planning processes (1)</li> <li>• 2015 casino case study (1)</li> </ul>	
Municipal councillors (past and current)	4	April 2015	<ul style="list-style-type: none"> <li>• Ward role in local decision-making (4)</li> <li>• Decision-making in local planning processes (4)</li> <li>• Decision-making in city-wide debates (4)</li> <li>• Design of community councils (4)</li> <li>• 2012-13 casino case study (3)</li> <li>• 2015 casino case study (2)</li> </ul>	<ul style="list-style-type: none"> <li>• Ward</li> <li>• Community Council</li> <li>• BIA</li> <li>• NA</li> </ul>
Civil society activists	3	March 2015	<ul style="list-style-type: none"> <li>• Origin of the 2012-13 casino debate</li> <li>• Role of councillors in the 2012-13 casino debate</li> </ul>	Ward

**Table 2.1 - Interview participants and topics**

There are two limitations to my interviewing approach. First, three of the four councillors that were interviewed were from the Toronto-East York Community Council area. These

three councillors were interviewed to understand their role in the 2012-13 casino debate in particular and their novel use of community councils in decision-making, as they represented wards identified as possible sites for a casino. I also wanted to interview councillors who were involved in the 2015 casino decision, which involved a ward in the Etobicoke-York community council area, but despite many attempts to reach out I was not able to secure interviews with these councillors. I attempted to overcome this limitation through a careful review of news media during the six-month period of the municipal debate, as well as interviews with a city staff member who was involved in the file. However, the lack of participation of councillors from this area serves as a significant limitation of the 2015 casino case study.

Second, except for the 2012-13 casino decision case study, wherein I interviewed three activists who were the public of the involved in the opposition to a downtown casino, I did not interview non-staff members or non-councillors who attended consultations or interacted with ward councillors, community councils, BIAs or neighbourhood associations. This dissertation was focused on local governance as constructed by formal actors and within formal city governance bodies rather than the direct experiences of residents. For information on city engagement and civic participation in city processes, I relied on the work of scholars including Deborah Cowen and Vanessa Parlette, as well as news media.<sup>352</sup> To understand the roles of BIAs and NAs, I supplemented my qualitative research with GIS mapping and quantitative methods, as outlined below.

## **2. GIS data and Quantitative methods**

When I started the research, I was able to locate some case studies on the roles of BIAs and NAs in past municipal decisions, as well as a central databank of information with raw data on the city's 81 BIAs.<sup>353</sup> However, there was very little information on NAs.

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<sup>352</sup> See esp. Deborah Cowen, "Suburban Citizenship? The Rise of Targeting and the Eclipse of Social Rights in Toronto" (2005) 6(3) *Social and Cultural Geography* 335; Vanessa Parlette and Deborah Cowen, "Dead Malls: Suburban Activism, Local Spaces, Global Logistics" (2010) 35:4 *Int'l J of Urb & Reg Res* 794; Cowen & Parlette, *supra* note 153; and Lisa Marie Freeman, *Making Room: The Geography of Rooming House Regulation in Toronto* (University of Toronto: Dissertation, 2013).

<sup>353</sup> See Chapter 3.

There were also no studies such as the ones by Jill Gross examining the overall data on such bodies within a specific city.<sup>354</sup> Given the dissertation question, I felt that an important exercise was gathering information on the locations, sizes, and budgets of BIAs and NAs throughout the City of Toronto. This exercise was relatively straightforward in the case of BIAs, where a great deal of information could be found on the City of Toronto website or obtained from city staff. As detailed in Chapter 3, the process was significantly more difficult in the case of NAs, as there is no centralized information, organizations may be inactive, and activities rely on the volunteer efforts of NA members. This methodological approach was invaluable in understanding the role of BIAs and NAs in governance, by identifying where they are geographically located, how they overlap with wards and community council boundaries, and their organizational sizes within different geographies of the city.

Chapter 3 includes maps produced using GIS, setting out where BIAs and NAs exist within the city. Their locations are compared with ward and community council boundaries. The chapter also sets out the locations vis-à-vis other indicators including income levels to provide further information on the role of these bodies within particular areas of the city. This part of the dissertation also provides more quantitative data, including descriptive statistics on the specific locations of these bodies, their organizational size, budget, mandate and creation date. As noted in Chapter 3, this information was collected by canvassing the websites of BIAs and NAs, and by e-mailing them directly. Chapters 4 and 5 also include GIS maps of the showing the locations of BIAs and NAs in relation to the specific case studies. The purpose of these maps is to better illustrate the significant differences in the presence of these bodies across ward and community council areas and the overall effect on city governance.

I did not interview representatives from BIAs and NAs, opting instead to use GIS mapping and the use of quantitative methods. This decision was based on three rationales. First and most importantly, my theoretical framework and normative argument

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<sup>354</sup> Jill Simone Gross, "Business Improvement Districts in New York City's Low-Income and High-Income Neighborhoods" (2005) 19:2 *Economic Development Quarterly* 174.

are interested in how local governance is constructed by official actors and within official city governance institutions and, as such, I concluded that I could base my analysis on interviews with city officials together with other data. Second, I was able to locate information on the roles of BIAs and NAs in the case studies that form part of this dissertation. Many BIAs and NAs have detailed websites that include their deputations to the city, positions on issues, and commissioned planning reports. Also, the contributions of BIAs and NAs were noted in the reports prepared by the ward boundary review consultants and in media reports, especially newspaper articles. In my observations of ward boundary review open houses, I was able to observe the actions of BIA and NA representatives. Third, I was able to gather a significant amount of detail on the way in which these bodies understood their overall role in governance through their websites and by contacting them directly. As a result, I concluded that I had data outside of interviews to draw on regarding the local governance role of BIAs and NAs in the case studies and concerning the overall research question.

### 3. Participant observation

Participant observation is “the systematic description of events, behaviors, interactions, and artifacts (objects) in the social setting chosen for study.”<sup>355</sup> This approach allows researchers to locate themselves within the natural setting of the people or institutions under study through observing activities.<sup>356</sup> Irus Braverman notes that observation and ethnography have specific relevance to legal scholars, suggesting that due to “our familiarity with administrative structures and bureaucratic reasoning, as well as our affiliation and heightened access to professional experts and government schemes, legal scholars may play an important role in what cultural anthropology has termed ‘studying up’, ‘multi-sited’, ‘engaged’, and ‘para’-ethnographies.”<sup>357</sup> She states that in exercising

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<sup>355</sup> Catherine Marshall & Gretchen B. Rossman, *Designing Qualitative Research* (Singapore: Sage Publications, 2016) at 79.

<sup>356</sup> Kathleen Musante DeWalt & Billie R. DeWalt, *Participant Observation: A Guide for Fieldworkers* (New York: Altamira Press, 2002) at vii.

<sup>357</sup> Irus Braverman, “Who’s Afraid of Methodology? Advocating a Methodological Turn in Legal Geography” in Irus Braverman, Nicholas Blomley, David Delaney & Alexandre (Sandy) Kedar (eds), *The Expanding Spaces of Law: A Timely Legal Geography* (Stanford: Stanford University Press, 2014) at 120-121.

this role, legal scholars are “familiar with legal language and therefore ‘insiders’ in the legal world. As a result, we are probably both better-situated and better-equipped than scholars in other disciplines to explore the intricacies of various administrative structures.”<sup>358</sup>

Participant observation allowed me to understand the practices of community council meetings and consultations. Toronto’s four community councils meet monthly, other than in August, on the same day. I attended one of each monthly community council meetings in 2015 and 2016, staying from 9:30 am, when the meeting began, either to the conclusion or until 5:00 pm, whichever was earlier. I also attended committee meetings where issues relevant to the case studies were considered, such as the Executive Committee meeting in May 2015 where the expansion of the Woodbine Casino was considered. In addition, I attended and participated in two consultation sessions in Toronto and Scarborough concerning the ward boundary review.<sup>359</sup>

By attending these meetings and observing dynamics, I was able to see how councillors and staff interacted, the types of sub-issues considered, and the role and engagement of the public, including BIA and neighbourhood association representatives. Community councils largely serve as local planning committees, with oversight over matters like amendments to the city’s zoning bylaw, whether trees may be removed from private property, and front-yard parking. At the first community council meeting that I attended, I became aware of the difference in atmosphere when certain planning issues were considered by the community council, and the room transformed into what I call “trial-like.”<sup>360</sup> In the morning, developers and lawyers sat at a table in front of the community council members and were interrogated as to height densities and other similar matters. Later, when issues like street parking and trees were considered, the developers and lawyers left, and the room felt relaxed, with councillors and members of the public speaking far more informally with one another. Likewise, at the meeting of the Etobicoke

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<sup>358</sup> *Ibid.*

<sup>359</sup> Ward boundary review consultation session, Metro Hall, 55 John Street (October 7, 2015, 7-9 PM) and Ward boundary review consultation session, Wilmar Heights Event Centre, Scarborough (October 17, 2015, 10 AM - 12 PM).

<sup>360</sup> Toronto-East York Community Council, Committee Room 1 at Toronto City Hall (February 18, 2015).



Community Council on January 19, 2016, I felt the physical separations limiting the degree to which residents could see councillors sitting at the front of the room. I was also able to see distinctions amongst the four community councils, including the degree to which “community” issues beyond transactional planning matters were raised.

Observing meetings also helped me understand who was attending, including representatives of BIAs and NAs. This proved to be especially important to the ward boundary review consultations, as representatives of BIAs and NAs were the main attendees and contributors. While the ward boundary review consultants published detailed accounts of the meetings, attending in person helped to understand their roles and contributions to the debate. By attending the meetings in person, I was better able to understand the nuanced operation of community councils. Without attending in person, the only records are the electronic meeting agenda, the list of deputants, the motions introduced and the voting record. Unlike City Council and the Executive Committee meetings, community council meetings are not recorded on video. In some ways, they are like any other City Council committee, delegated a decision-making role over a particular subject area and operating with a sharp division between councillors and the public. However, they also have attributes of the community or neighbourhood forums that were originally intended when the City of Toronto was amalgamated in 1998, and the procedural bylaw was redrafted in 2006. These experiences would not have been possible without attending the meetings.

#### **4. Archival research**

Archival research consists of documents and textual material by and about an organization created in the past that may not be otherwise available.<sup>361</sup> Consistent with the theoretical framework that underlies this project, I understand that archived material is created within particular institutional, social, political and economic contexts and that the documents that I was reviewing were telling a very specific version of history, mainly from the perspective of councillors and staff members. While the archived materials are

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<sup>361</sup> Marc J. Ventresca and John W. Mohr, “Archival Research Methods” in Joel A. C. Baum, ed. *Companion to Organizations* (Blackwell Publishers, 2001) at 2.

not a “true, accurate or absolute account of the past,”<sup>362</sup> they do offer a part of the story and, in particular, additional materials beyond the online repository for staff reports to add context and understanding to the decisions made at particular junctions.

As Marc Ventresca and John Mohr observe, written records can act as an essential tool of bureaucratic decision-making: “Indeed the production of written documents may well be the most distinctive quality of modern organizational life. Few official actions of any sort are conceived, enabled, or enacted without having been written down both in advance, in retrospect, and invariably several more times in between.”<sup>363</sup> The crammed boxes from city councillors, filled with drafts and redrafts of selected city staff reports, meeting minutes and agendas, reflected these materials as the tools of city government.

Documents are a fundamental element of bureaucracy, solidifying the positionality of the actors who tell the story of particular events.<sup>364</sup> Even the Toronto City Archives itself, a municipal department, exhibits bureaucratic control, requiring researchers to sign in to access boxes, introducing finding aides, and expecting researchers to interact with archived materials in very specific ways, such as working exclusively on one desk and limits on copying or photographing material.

The pluralist framework of this dissertation recognized that formal laws are based on official decision-making, and the on-line and archived materials affirmed that municipal and provincial governments considered and enacted rules that framed the city’s “local” boundaries and governance bodies. The minutes, agendas, staff reports and studies contained within the busy archived boxes included notes written in margins by councillors, noting the points that they acknowledged as especially important in debates. The boxes also contained newspaper clippings.

I canvassed two kinds of archives: the online archives, available through the City of Toronto website, and boxes and materials found at Toronto City Archives. The archival research took place in the early stages of this project to help in defining the key questions

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<sup>362</sup> *Ibid.*

<sup>363</sup> *Ibid.* at 3.

<sup>364</sup> *Ibid.* at 4.

of the dissertation and to establish a base of evidence for events that took place in part decades ago.<sup>365</sup> I used these materials to create an inventory of decisions on the creation of local boundaries and governance bodies that had been taken by the Province of Ontario and relevant municipal governments, including the City of Toronto and the pre-amalgamated municipalities. This inventory served as a timeline that was drafted and re-drafted as more information became known.

Attention was placed on finding reports, notes and decisions related to three key events in the consideration of local legal spaces: the consideration of community councils by the Toronto Transition Team in 1997-98; the Toronto ward boundary review in 2000; and the refinement of community councils in 2002-2003. The online archive system for the period in question resulted in limited findings, so visits to Toronto City Archives were crucial in retrieving relevant materials. For example, only by going through archived boxes was I able to find hundreds of pages of meeting materials of a 2003 sub-committee, chaired by then-Councillor David Miller, devoted to the question of community councils. This discovery was an “aha!” moment in this early period of research.<sup>366</sup> This material was invisible in the city’s online archive system.

Online archives were invaluable in finding more contemporary information on the case studies. The City of Toronto’s online portal includes all staff reports, attachments, voting records, motions and lists of deputants for all City Council and committee decisions dating back to 2006. Having worked at the City of Toronto, I was comfortable and adept at navigating the online portal.

It was my intention to help to tell part of the story through the material gathered, particularly the way in which local legal spaces were considered and crafted by city officials. While unexpected, these archived materials were also helpful for the conduct of semi-structured interviews. Staff reports and other written materials were used to “trigger” the memories of key staff members who were a part of key decisions. Within

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<sup>365</sup> *Ibid.* at 4.

<sup>366</sup> Alexis E. Ramsey, *Ad Dressing the Past: A Critical Methodology for Archival Research in Rhetoric and Composition* (Unpublished Dissertation: Purdue University, 2008) at 96.

the pluralist framework of the dissertation, the use of archived materials helped me to revisit with interviewees the environment of the city between 1997 and 2003, when amalgamation took place, and key decisions were made regarding ward boundaries and community councils, and to interpret the rationale and context for the production of certain reports by city staff.<sup>367</sup>

## **5. Media analysis**

This dissertation also adopted media content analysis. The principal use was to overcome a methodological weakness of not having secured interviews with councillors in the Etobicoke-East York community council area regarding the 2015 casino debate. As media analysis was a supporting methodology, I adopted clip-counting, which means, “relevant articles are collected and typically sorted chronologically or by date.”<sup>368</sup> I conducted a careful review of these news media during the six-month period of the municipal debate.

In conclusion, this dissertation adopted a mixed methods approach to investigate the conceptualization of what local governance means in the City of Toronto as a result of the overlap of various local governance institutions. This is a dissertation primarily rooted in law, and therefore details the relevant legislation, case law and policy reports that inform this question, in particular, the role of wards and community councils as the bodies with formal authority to represent local geographies and residents. However, this dissertation adopts a mixed methodological approach to understand how formal and informal bodies claim to represent those within smaller-than-city areas of the city, examining their legal structures, the geographies of local that they advance, and the implications for the meaningful participation of residents across the city. The theoretical framework and the conceptualization of the term local governance identified in Chapter 1 inform the methodology outlined in this chapter and are then queried in the empirical

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<sup>367</sup> Richard Bohannon, *Public Religion and the Urban Environment: Constructing a River Town* (New York: Continuum International Publishing Group, 2013) at 8.

<sup>368</sup> David Michaelson and Toni L. Griffin, *A New Model for Media Content Analysis* (The Institute for Public Relations, 2005) at 2.

studies that follow. The intention is to provide a deeper account of the meaning of local governance in Toronto.

### **Chapter 3 – Demystifying Toronto’s messy local governance model**

Local legal spaces in Toronto are governed by a complex set of municipal, provincial and federal statutes, bylaws, and policies, as well as informal processes and relationships. The aim of this chapter is to analyze local legal spaces in law and action and to apply the conceptualization of local governance provided in Chapter 1. This chapter animates the theoretical framework in Chapter 1 by conceptualizing “local governance” as a pluralist space comprised of state and non-state actors that assert boundaries and rules and analyzes the implications for who is excluded as a result of this model. I argue that amalgamation led to a gap in inclusive, participatory local governance which the city government has yet to fill, a weakness in the model that this dissertation seeks to address. I argue that four factors contributed to an uncertain and unequal local governance model: the unfulfilled, post-amalgamation mandate of community councils; the empowerment of the ward, rather than the community council, as the site of local decision-making; the geographically uneven rise in the number and influence of neighbourhood associations and business improvement areas; and the City of Toronto’s procedural distinction between “local” and “city-wide.” In Chapter 6, this dissertation turns to the normative question of how understanding local governance within the framework of an urban commons could be used to reimagine the City of Toronto’s local governance model.

This chapter first sets out the legal framework for understanding the evolution of Toronto’s authority and the power it presently has to determine its governance model. This section first provides context for how local governance changed as a result of amalgamation, shifting what was once regional (Metro Toronto) to city-wide (City of Toronto), but without empowering local legal spaces within the new governance model. The purpose is to clarify that under COTA and case law that advances subsidiarity as a judicial principle, Toronto has sufficient power to create a governance model that empowers localized decision-making.

Second, I set out the law and role of the city’s formal local legal spaces: community councils and wards. Community councils, while purportedly set out in law as

replacements for pre-amalgamated municipalities, are in practice disempowered planning committees that rarely exercise their procedural mandate to consider “neighbourhood issues.” This section revisits the literature canvassed in Chapter 1, arguing that the city has opted not to delegate greater authority to community councils, notwithstanding their capacity to bring a broader set of voices to local decision-making. Here, I introduce and critique the city’s procedural distinction between “local” and “city-wide” issues.

I argue that, within this formal model, ward councillors serve as the principal drivers of local decision-making. Wards themselves have long served as defenders of boundaries that define particular communities and interests, some of which have historical significance as distinct villages or towns. In this capacity, wards are meant as spatial areas that serve both as the locus of public contact with decision-makers and empower ward councillors to represent the interests of those within their boundaries. However, drawing on interviews with senior staff members and councillors, I suggest that the absence of other formal local legal spaces leaves councillors serving as the “ward boss,” granted considerable deference in matters that affect the spatial and other decisions within their boundaries. The power of the councillor includes the extent to which community councils will be used as bodies considering “neighbourhood issues.”

Third, I analyze the role and rise in number of business improvement areas and neighbourhood associations since amalgamation. Scholars including Moore and Martin have observed the crucial importance of these bodies in particular when it comes to city governance.<sup>369</sup> Like wards and community councils, these bodies are spatially based within smaller-than-city areas within the city. They each claim to represent some or all residents or businesses within their boundaries. From this perspective, they appear to challenge the formal city structure as bodies with other versions of boundaries, and their distinct claims of representation and participation. These bodies also interface with elected and city officials in a range of manners, with delegated powers for park

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<sup>369</sup> Moore, *supra* note 202; Martin, *supra* note 128.

redevelopment or city beautification.<sup>370</sup> From a legal perspective, their connection to city governance manifests differently, with BIAs having a formal connection to the city, as “city boards” with access to funding and with institutional assistance, while NAs serve as local lobbyists with uneven roles across the city. The purpose of this part is to highlight the importance of these bodies in framing local governance within certain localized areas of the city, while at the same time contributing to significant challenges for inclusive representation.

I conclude the chapter by drawing on the work of Santos and Valverde to argue that a ward-based power at the local level leads to uneven governance. Local legal spaces in law are framed within a ward-based model, highly contingent on the objectives and practices of individual councillors. Ward councillors serve as the primary local decision-makers despite the existence of community councils, which have authority “in the books” to exercise more power in local decision-making. The City of Toronto reinforces the focus of local governance to the ward level by creating an artificial procedural distinction between “local” and “city-wide,” and by exercising considerable power in the creation and operation of BIAs and neighbourhood associations, which themselves are unrepresentative of the residents within their boundaries. The effect is a governance model that empowers the ward councillor, disproportionately focuses attention on planning issues to the detriment of other city matters, and undermines the inclusivity of participation.

## **I. Governing Toronto**

The city has been an object of study in countless disciplines, both in and outside the law.<sup>371</sup> It has also been studied amongst disciplines – for example in politics and law - in recognition that it is an inherently interdisciplinary subject.<sup>372</sup> Cities have been studied

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<sup>370</sup> Anonymous interview with City of Toronto councillor #2, Toronto, Ontario, Canada (7 July 2016) – author conducted.

<sup>371</sup> Kong, *supra* note 53 at 478.

<sup>372</sup> Joan C. Williams, “The Constitutional Vulnerability of American Local Government: The Politics of City Status in American Law” (1986) Wis. L. Rev. 83, online: <[http://repository.uchastings.edu/cgi/viewcontent.cgi?article=1794&context=faculty\\_scholarship](http://repository.uchastings.edu/cgi/viewcontent.cgi?article=1794&context=faculty_scholarship)> (arguing



from the “bottom up” and the “top down,” and within the context of street-level activity through to its relationships at regional, provincial, federal and international levels. As a corporation and a government, it is a fascinating site for legal and socio-legal study, as it is enabled and restricted by legislation, owns and manages its land, and has fiduciary and other kinds of obligations. The city is also understood as a party with interests that it may assert concerning other governments or actors – it can sue and be sued, buy and sell, and create legal structures for its effective operation.

The city may be understood within the context of the one or more pieces of legislation that empower it to exist and to act.<sup>373</sup> “Municipal” in this context means the one or more statutes that give corporate entities their powers. The term “city” is, in statutory terms in Ontario, undefined. The most recent set of municipal statutes removed references to titles like “city,” “town” and “village.”<sup>374</sup> However, my framing of the “city” within the context of legal pluralism and legal geography places it outside of the familiar and safe contours of municipal statutes.<sup>375</sup> In particular, this chapter situates Toronto’s local governance model as an overlapping set of “local legal spaces” that explicitly include “formal” bodies set out in law and “informal” bodies with relationships to the City of Toronto, each of which represents distinct boundaries and governance roles. I suggest that the local governance model impacts who may participate in decision-making by privileging particular organizations and city issues deemed to be “local” under city bylaws and provincial law, namely ward-based planning decisions.

This first section of the chapter focuses specifically on the legal history of the City of Toronto since amalgamation to demonstrate how the legal meaning of “local,” “city-

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that political perspectives on municipal autonomy and excessive governmental power guide judicial decision-making, rather than precedents relating to cities’ resources and responsibilities).

<sup>373</sup> In Ontario, there are two principal pieces of legislation that determine the powers and obligations of local governments: COTA, *supra* note 11 applies exclusively to Toronto, while the Municipal Act, 2001, S.O. 2011, c. 25 applies to all other 444 municipalities. There are dozens of other pieces of legislation that impact local governments as well, including the Planning Act, R.S.O. 1990 c. P. 13, the Places to Grow Act, 2005, S.O. 2005, c. 13, and Municipal Conflict of Interest Act, R.S.O. 1990, c. M.50, to name a few.

<sup>374</sup> Municipal Act, s. 457(1).

<sup>375</sup> Note e.g. Statistics Canada’s 2011 changes in the definition of “urban” which offers three categories to reflect what it calls the “urban-rural continuum”: Statistics Canada, From urban areas to population centres, online: <<http://www.statcan.gc.ca/eng/subjects/standard/sgc/notice/sgc-06>>.

wide” and “regional” has changed as a result of new provincial legislation, case law, and changes to municipal bylaws. The section builds on the work of Frug, Layard and Schragger to explain how the City of Toronto sets out its local governance model, including applicable institutions and geographies under the various rules to which it is bound and has considerable authority to redesign its local model. This section provides a foundation for the remaining sections of this chapter by setting out the vertical tensions and interlegalities that claim to represent smaller-than-city areas of the city and the implications for the meaningful participation of residents.

### **1. A brief history of Toronto’s boundaries**

The land upon which the City of Toronto sits has a rich history of colonial desettlement of indigenous peoples, incorporations, annexations, amalgamations, legislative enactments and governance reviews.<sup>376</sup> The British government asserted power over the Indigenous communities residing in what it is the City of Toronto beginning from the period of contact ultimately leading to treaties that limited the expression of indigenous sovereignty over this land.<sup>377</sup> European populations gradually moved into these spaces, and many of the areas that are now known as “wards” were independent villages and towns. Since 2001, the Province of Ontario has granted authority to municipalities to set city-wide (meaning the boundaries of the city as a whole), as well as local or ward boundaries, otherwise known as “electoral districts.”<sup>378</sup>

In Chapter 1, I introduced local legal spaces as including the notion of time as integrated and interpenetrated.<sup>379</sup> As an empirical matter, as we will see in this section, time is not just a relevant, but a *crucial* element of analysis. Toronto began as a minor post and warehouse as part of the French fur trade but had been long inhabited by Indigenous

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<sup>376</sup> This dissertation does not consider Indigenous settlement and claims over what is now the City of Toronto, but acknowledges that it is the traditional territory of the Huron-Wendat, the Mississaugas of the New Credit and the Haudenosaunee peoples, known as Turtle Island.

<sup>377</sup> For further detail on this period of colonial history, see Victoria Jane Freeman, *‘Toronto Has No History!’ Indigeneity, Settler Colonialism and Historical Memory in Canada’s Largest City* (University of Toronto: Unpublished Dissertation, 2010).

<sup>378</sup> *Municipal Act, 2001*, SO 2001, c 25, s 222.

<sup>379</sup> Valverde, *supra* note 43 at 69-70.

peoples prior to this time.<sup>380</sup> Lieutenant-Colonel John Graves Simcoe incorporated York (later Toronto) as a township in 1793, bounded by George, Berkeley, Adelaide and Front streets.<sup>381</sup> It was essentially a garrison town, given its strategic proximity to the Great Lakes.<sup>382</sup> Simcoe entrenched in Upper Canada (part of present-day Ontario) “top-down government in the colony, and encouraged York’s superiority, with its haughty customs and attitudes, and the distinctive British and Anglican character it would retain for decades.”<sup>383</sup> It was incorporated as a city and renamed “Toronto” in 1834 and, by this point, the boundaries extended from Parliament, Bathurst and Queen streets down to Lake Ontario.<sup>384</sup> The first elected mayor was Canada’s future prime minister, William Lyon Mackenzie.<sup>385</sup> Upon its incorporation, the city was divided into five wards: St. Andrew’s, St. David’s, St. George’s, St. Lawrence and St. Patrick’s.<sup>386</sup> The legal authorities of the city included police, firefighters, taverns, Sabbath observance and billiards, and the mayor served as chief magistrate for city quarter sessions, which deliberated on issues of public morality, like drunken and disorderly conduct.<sup>387</sup> The mayor of the city was chosen by the ten aldermen elected in five wards who, along with ten common councilmen who represented the city as a whole, formed Toronto’s first city council.<sup>388</sup> From 1834 until the 1880s, the outer boundaries of what was then the City of Toronto largely remained unchanged.

Toronto grew substantially during the 19th and the beginning of the 20th centuries by annexing surrounding territory, an approach to municipal expansion that occurred in many other cities in North America. Many of these communities continue to maintain strong identities and are acknowledged in ward names and by neighbourhood associations, as we will see in the next section. These annexed areas were previously

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<sup>380</sup> J.M.S. Careless, *The Rise of Cities in Canada before 1914* (The Canadian Historical Association, Historical Booklet No. 32, 1978) at 10

<sup>381</sup> Allan Levine, *Toronto: Biography of a City* (Madeira Park: Douglas and McIntyre, 2014) at 26

<sup>382</sup> Careless, *supra* note 380 at 11.

<sup>383</sup> *Ibid.* at 27

<sup>384</sup> *Ibid.* at 51. Note that the city also had jurisdiction over the area as far east as the Don, west to Dufferin Street, north to Bloor and Street south to what is now the Toronto Islands (*Ibid.*).

<sup>385</sup> *Ibid.* at 52.

<sup>386</sup> *Ibid.*

<sup>387</sup> *Ibid.*

<sup>388</sup> *Ibid.* I could not find evidence of the retention of city-wide councillors until the creation of the Metropolitan Municipality of Toronto.

comprised of both incorporated and unincorporated communities. By 1901, the boundaries of Toronto extended west to High Park, north to the country beyond Yorkville Village, and east to the Don.<sup>389</sup> These annexations included the Yorkville Village in 1883, the Annex in 1887, Seaton Village in 1884 and, the following year, the town of Parkdale, all of which have retained their names and have been maintained as “communities of interest,” as we will see in Chapter 5.<sup>390</sup> After the war, the city expanded to St. Clair Avenue, past Danforth Avenue and west to Jane street.<sup>391</sup> In terms of notable land masses, High Park was given to Toronto in 1873, along with a deed that the park remain, “for the free use, benefit and enjoyment of the citizens of Toronto.”<sup>392</sup> West Toronto Junction and North Toronto were annexed in the early 1900s. After 1910, most districts located outside of the city core incorporated as separate political entities.<sup>393</sup> By 1941, the western suburbs included the Village of Swansea, Long Branch, Mimico, New Toronto, the Townships of York, North York and East York, together with the Villages of Forest Hill and Leaside. To the east, Scarborough Township remained largely rural.

The ward has remained constant in Toronto’s history since its colonial creation in 1834, regardless of assertions of legislative power that have molded geographic boundaries and authorities to govern. The concept of a ward has its genesis in the United Kingdom, where it served as an administrative division of a country with its own local decision-making body, represented by land owners, which met monthly and was used to resolve private disputes and criminal matters.<sup>394</sup> Now, the ward is an electoral district of a city or borough that is represented by an elected official.<sup>395</sup> The “ward” is not defined in Ontario’s provincial or municipal statutes, but serves a crucial role in the city’s governance model for the representation of local interests.<sup>396</sup> Within this model, wards

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<sup>389</sup> *Ibid* at 87.

<sup>390</sup> *Ibid* at 87.

<sup>391</sup> *Ibid* at 136

<sup>392</sup> *Ibid* at 88.

<sup>393</sup> Richard Harris & Martin Luymes, “The Growth of Toronto, 1861-1941” (1990) 18:3 Urban History Review 245 at 247 online: <<https://www.erudit.org/revue/uh/1990/v18/n3/1017721ar.pdf>>.

<sup>394</sup> Farlex, Inc., “The Free Dictionary, Ward”, online: [www.thefreedictionary.com/ward](http://www.thefreedictionary.com/ward); The Editors Encylaeperia Britannica, “Hundred English Government”, online: <<http://www.britannica.com/topic/hundred-English-government>>.

<sup>395</sup> Oxford University Press, “Ward”, online: <<http://www.oxforddictionaries.com/definition/english/ward>>.

<sup>396</sup> *Municipal Act, City of Toronto Act, 1997*. See Ward Boundaries, RRO 1990, Reg 825.

serve as demarcated boundaries that define particular “communities of interest” some of which have historical significance as distinct villages or towns. Then and now, wards are also entrenched in the city’s governance model as vehicles for representative democracy, with councillors playing both a legislative and constituency role.<sup>397</sup> In their legislative roles, they pass laws, create policies and programs, determine the service mix and service levels, and oversee the work of departments.<sup>398</sup> In their constituency activities, they are a direct connection between their residents and city governments, a function that absorbs a substantial amount of their time.<sup>399</sup> As a City of Toronto senior staff member told me, “One of the advantages of the ward and riding system is there actually is somebody to go to and somebody who can convey a geographic area’s interest... So each councillor has dual roles, they’re part of a government, in the absence of a party, they’re all part of a government, but they’re also representatives of community.”<sup>400</sup>

In 1954, the Province of Ontario formed a regional (or upper-tier) municipality, comprised of members from lower-tier municipalities, called the Metropolitan Toronto Federation (“Metro”).<sup>401</sup> Metro had the same geographic boundaries as the current City of Toronto. At the time, there were 13 lower-tier municipalities, later amalgamated to form a total of six cities and boroughs.<sup>402</sup> One of the purported reasons for the decision to form a regional government was the great inequality across the Metro region, and the belief that Metro would more fairly equalize transit and core social services.<sup>403</sup> Metro would manage matters of “regional” interest, while the six lower-tier municipalities including Toronto would oversee “local” matters.<sup>404</sup> However, at the local level, the municipalities

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<sup>397</sup> Governing Toronto Advisory Panel, *The City We Want—The Government We Need: The Report of the Governing Toronto Advisory Panel* (November 2005), online: <<http://www.toronto.ca/legdocs/2005/agendas/committees/pof/pof051129/it004att.pdf>> at 11.

<sup>398</sup> *Ibid.*

<sup>399</sup> *Ibid.*

<sup>400</sup> Anonymous interview with City of Toronto staff member #2, Shelter, Support and Housing Administration Division Toronto, Ontario, Canada (2 February 2016) – author conducted.

<sup>401</sup> Levine, *supra* note 381 at 204.

<sup>402</sup> Province of Ontario, Municipality of Metropolitan Toronto and the Regional Municipality of York (last retrieved: 16 April 2016), online: <<http://www.archives.gov.on.ca/en/maps/counties/rm-york.aspx>>.

<sup>403</sup> Andre Cote, *The Maturing Metropolis: Governance in Toronto a Decade from Amalgamation* (Institute on Municipal Finance and Government, 1999) at 5, online: <<http://munkschool.utoronto.ca/imfg/wp-content/uploads/2011/10/The-Maturing-Metropolis-Andre-Cote.pdf>>.

<sup>404</sup> Levine, *supra* note 381 at 26

<sup>404</sup> Careless, *supra* note 380.

in the metropolitan area, except Mimico, “guarded their respective neighbourhoods like medieval warlords.”<sup>405</sup>



**Illustration 3.1: Map of Pre-amalgamated City of Toronto, 1967-1997<sup>406</sup>**

Illustration 3.1 shows the boundaries of the pre-amalgamated City of Toronto between 1967 and 1997. The period between 1954 and 1997 saw changes to the division of power amongst the upper and lower-tiers and the way in which decisions were made within the municipalities. For example, representation on both the Metro and lower-tier councils were initially decided based on the electoral district: two councillors were elected from each ward and the one with the most votes represented the ward on both their local and the Metro council, while the second-place finisher served on the lower-tier council.<sup>407</sup> The result was that success for Metro councillors ultimately meant preoccupation with

<sup>405</sup> *Ibid.* at 204.

<sup>406</sup> Toronto City Directory, Map (5 May 2015), online: <<http://www.toronto-city.info>>.

<sup>407</sup> Cote, *supra* note 403 at 6.

local issues and interests.<sup>408</sup> This changed in 1988, where councillors were directly elected to serve on Metro council.<sup>409</sup> Continued friction ultimately led to the establishment of the Greater Toronto Area (GTA) Task Force, led by Anne Golden, on April 1, 1995.<sup>410</sup> The Task Force's mandate was to recommend a governance model best suited to address lagging economic growth, costs urban development patterns and authority for service delivery, among other concerns.<sup>411</sup>

As such, the timing of provincial legislation to reconsider the governance of the Metro area was not entirely surprising, although the lack of clarity around the rationale was mystifying.<sup>412</sup> In 1997, the Province of Ontario introduced Bill 103, a highly controversial piece of legislation that would ultimately establish the new amalgamated City of Toronto. At the time that this legislation was introduced, seven municipalities existed within the geographical boundaries of the City – the upper-tier Municipality of Metropolitan Toronto (“Metro”), which was responsible for “regional” issues like transit, regional planning and libraries, as well as the six local municipalities of the Borough of East York, the City of Etobicoke, the City of North York, the City of Scarborough, City of Toronto and the City of York. What was once regional (the upper-tier Municipality of Metropolitan Toronto) would become city-wide (the amalgamated City of Toronto), although some of the regional functions – in particular, transit and planning – were retained by the province rather than delegated to the new City of Toronto.

The power to create a ward system has only very recently been delegated to municipalities. At amalgamation, the Province set the number of single member wards at 57, down from the 106 elected officials across the regional and local municipalities, and gave the next City of Toronto the power to create to designate the number and location of wards.<sup>413</sup> This power was revoked by the province within a year and only reinstated with

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<sup>408</sup> Levine, *supra* note 381 at 204.

<sup>409</sup> *Ibid.*

<sup>410</sup> Anne Golden, Report of the Greater Toronto Area Task Force (Toronto, 1996).

<sup>411</sup> Enid Slack, “A Preliminary Assessment of the New City of Toronto” (2000) XX111(1) Can J of Reg Sc 13 at 14.

<sup>412</sup> Slack & Bird, *supra* note 151 at 7.

<sup>413</sup> City of Toronto Act, 1997; Office of the Mayor, Building the New City of Toronto: Three Year Status Report on Amalgamation (City of Toronto, 2001) at 8.

the introduction of COTA.

In December 1998, shortly after amalgamation, City Council adopted a new ward structure based on 57 single member wards for the 2000 election. A March 1998 staff report set out the purpose of moving to a single member ward structure – rather than emulating the Metro structure of a two-tier representative model – was to “increase the accountability of Members of Council and reduce confusion on the part of residents.”<sup>414</sup> Staff explored five possible approaches and ultimately recommended the creation of 57 wards on the basis that, “The average ward population per elected official would remain at its current level of around 39,000.” City Council enacted By-laws Nos. 228-1999 and 275-1999 to create the new wards.<sup>415</sup> These by-laws were appealed to the Ontario Municipal Board (OMB), and were upheld, with some amendments, but were never put into effect.<sup>416</sup>

Instead, in 1999, the Province introduced the *Fewer Municipal Politicians Act*, aimed at reducing the overall number of councillors.<sup>417</sup> The legislation tied Toronto’s ward boundaries to those of the Province, who had adopted the same boundaries as the federal electoral districts in the mid-1990s. The Province designated 44 wards for Toronto: the 22 provincial/federal ridings, divided by two.<sup>418</sup> Federal ridings are strictly reviewed every ten years by an independent commission based on population and other criteria.<sup>419</sup> The Act also removed Toronto’s just-granted authority to enact a by-law to change the ward structure or Council composition, although allowed Toronto to recommend how each of the 22 provincial electoral districts should be divided to create 44 wards.<sup>420</sup> Over a single month, in January 2000, the City through the City Clerk’s Office held public

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<sup>414</sup> Canadian Urban Institute, Beate Bowron Etcetera Inc., The Davidson Group Inc., and Thomas Ostler. *Toronto ward boundary review: background research report* (2014), online: <<https://perma.cc/27K7-VPJH>>.

<sup>415</sup> City of Toronto Clerk, City of Toronto Council and Committees" (1999), online: <<http://www.toronto.ca/legdocs/2000/agendas/committees/adm/adm000111/it001.htm>>.

<sup>416</sup> Canadian Urban Institute, et al. *supra* note 414.

<sup>417</sup> Bill 25 Fewer Municipal Politicians Act, 37:1 Minister of Municipal Affairs and Housing, 1999.

<sup>418</sup> Canadian Urban Institute, et al. *supra* note 414 at 2-3.

<sup>419</sup> *Ibid.* at 3.

<sup>420</sup> *Ibid.* at 33.



open houses to gather public input concerning the appropriate boundaries.<sup>421</sup> On January 19, 2000, City Council adopted recommendations to divide the 22 electoral districts into 44 wards and forwarded those recommendations to the Minister. On March 20, 2000, the provincial government issued Ontario Regulation 191/00, establishing the City of Toronto's new ward structure, effective December 1, 2000. Illustration 3.2 shows the current ward boundaries of the City of Toronto, which have remained unchanged since 2000.

As a result of COTA's enactment, the city now has full authority over its system of representation, including powers related to "establishing, changing or dissolving wards."<sup>422</sup> The Act clarifies this power in section 128(1), where it states: "Without limiting sections 7<sup>423</sup> and 8,<sup>424</sup> those sections authorize the City to divide or redivide the City into wards or to dissolve the existing wards." The City is empowered to determine its manner of representation – whether through the election of councilors based on wards, elected at-large, or some combination of the two.<sup>425</sup> This means that the City may also eliminate all wards.

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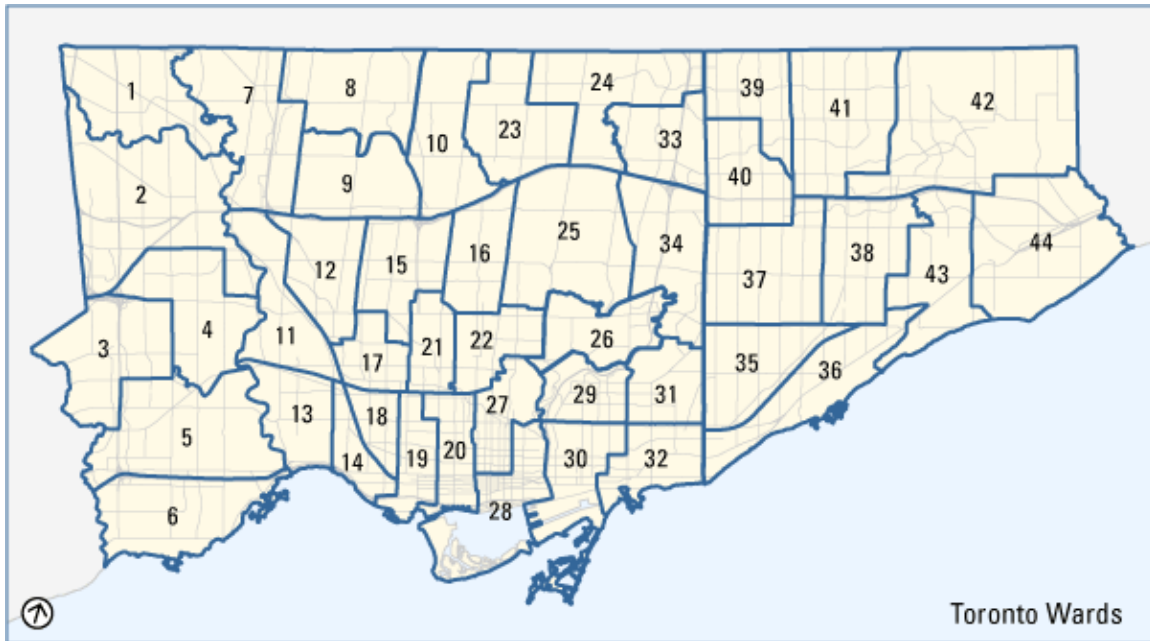
<sup>421</sup> City Clerk, Toronto Staff Report: Request to Change a Ward Boundary Ward 27 Toronto Centre-Rosedale and Ward 28 Toronto Centre-Rosedale, City of Toronto (2001), online: <<http://www.toronto.ca/legdocs/2001/agendas/committees/adm/adm010206/it017.pdf>>.

<sup>422</sup> COTA, *supra* note 11 at s. 4(3).

<sup>423</sup> *Ibid.* at s. 7 states: "The City has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under this or any other Act."

<sup>424</sup> *Ibid.* at s. 8(2) states: "The City may pass by-laws respecting the following matters: 1. Governance structure of the City and its local boards (restricted definition)."

<sup>425</sup> *Ibid.* at s. 129.



**Illustration 3.2: Map of Toronto's ward boundaries in 2016**<sup>426</sup>

However, provincial law again includes a minimum standard for Toronto's governance decisions: the Act empowers five hundred electors in the City of Toronto to petition City Council to pass a bylaw dividing or redividing the City into wards or dissolving existing wards.<sup>427</sup> If the City does not pass a bylaw within 90 days after receiving the petition, any of the electors may apply to the Ontario Municipal Board (OMB) to divide, re-divide or dissolve the wards.<sup>428</sup> The OMB may hear the application and make an order.<sup>429</sup> The date the order will come into force depends on when the OMB order is made.<sup>430</sup> The order is deemed to be a by-law of the City, which may be subsequently amended or repealed.<sup>431</sup> The irony of this legislative provision is that the process for conducting a ward boundary review, as we will see in Chapter 5, is long and complex, with numerous required rounds of public consultation and that may, in turn, be appealed to the OMB. By contrast, city

<sup>426</sup> City of Toronto, Ward Profiles (last retrieved: 13 April 2016), online: <<http://www1.toronto.ca/wps/portal/contentonly?vgnextoid=2394fe17e5648410VgnVCM10000071d60f89RCRD>>.

<sup>427</sup> COTA, *supra* note 11 at s. 129(1) and (2). S. 129(3) defines "elector" as "a person whose name appears on the voters' list, as amended up until the close of voting on voting day, for the last regular election preceding a petition being presented to council under subsection (1)."

<sup>428</sup> *Ibid.* at s. 129(4).

<sup>429</sup> *Ibid.* at s. 129(5).

<sup>430</sup> *Ibid.* at s. 129(6).

<sup>431</sup> *Ibid.* at s. 129(8).

staff estimated that the timeline required for the introduction of new ward boundaries would be at least two years, far more than the 90 days prescribed in the Act.<sup>432</sup> It is notable that this section of the Act has not been triggered, despite the sharp inequalities in representation across the City's wards, as detailed in Chapter 5.

This articulation of historical events is relevant to this dissertation for two reasons. First, it demonstrates that the City of Toronto is the product of many local areas that have been added and adjusted over almost 200 years. These changes have been imposed by colonial and later provincial governments, creating municipal corporations that in themselves may not identify as particular communities. Second, many of these annexed towns and amalgamated municipal entities continue to have defined identities as "legal ghosts" in Toronto that continue to be maintained by the geographies of the city's wards and the influence of other kinds of bodies – namely neighbourhood associations – which advance decision-making claims, as we will see later in this chapter.

The next section shows how Toronto's legal authority to govern has evolved over time.

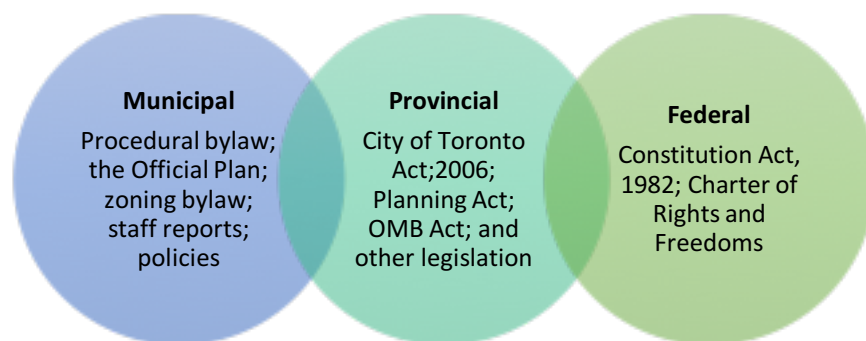
## **2. Toronto's decision-making authority**

Valverde notes the benefits in setting out the specific laws that apply in particular settings. This "inventory of laws" both clarifies the specific laws that apply and illustrates the complex overlapping of rules that govern particular issues. Figure 3.1 provides a detailed inventory of the laws and institutions applicable to local governance in Toronto.<sup>433</sup> I argue that a reading of these laws, coupled with case law advancing subsidiarity, gives the City of Toronto sufficient authority to determine a local governance model premised on a more inclusive, participatory framework.

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<sup>432</sup> City Manager, Staff Report: A Ward Boundary Review for Toronto (13 May 2013), online: <<https://perma.cc/GP9R-8B3C>>.

<sup>433</sup> Valverde, *supra* note 189 at 21, 28. This visual representation is an adaptation of Valverde's "legal inventory of laws," which aims to provide an overview of the "basic legal architecture" engaged in particular disputes.



**Figure 3.1. Inventory of Laws**

Municipal authority in Ontario has been shaped by four key factors: a nineteenth century doctrine of municipal authority known as Dillon’s rule, the *Constitution Act, 1867*, legislation introduced by the Province of Ontario, and case law. “Dillon’s rule” is an important doctrine that has framed Canadian municipal authority. It emerged in reaction to municipalities incurring massive debts to finance public improvements. Dillon’s rule refers to the framework of municipal authority established by John Dillion, a 19<sup>th</sup>-century American jurist who objected to “municipal largesse and waste.”<sup>434</sup> Under this doctrine of “prescribed powers,” municipalities can act only when expressly authorized by statute.<sup>435</sup> This doctrine reinforces a long-standing narrative on the negative aspects of cities. As Frug notes: “From colonial times to the present day, a long and powerful tradition of anti-urbanism has been articulated by a wide variety of Americans: the founding fathers (Jefferson, Franklin), major novelists (Hawthorne, Henry James), philosophers (Emerson, Dewey), architects (Frank Lloyd Wright), even the classic works of urban sociology.”<sup>436</sup> In the Canadian context, Dillon’s rule suggests a relationship between municipalities and provinces like that of a parent and child, with provinces keeping a “watchful eye” on how municipal powers are exercised in concern that they will be inappropriately used.<sup>437</sup> On a practical level, it means that municipal authority

<sup>434</sup> Levi & Valverde, *supra* note 132 at 418-19.

<sup>435</sup> *Ibid.* at 416.

<sup>436</sup> Frug, *supra* note 7 at 1055.

<sup>437</sup> Eugene Q.C., Meehan, Robert, Chiarelli & Marie-France, Major, “The Constitutional Legal Status of Municipalities 1849-2004: Success Is a Journey, but Also a Destination” (2007) 22 Nat’l J. Const. L. 1 at 5.

may not be exercised unless the Province explicitly grants these governments explicit power to do so.

Section 92(8) of the *Constitution Act, 1867* states that “municipal institutions in the Province” are within the province’s exclusive jurisdiction. With municipalities colloquially referred to as “creatures of the province,” provincial governments are constitutionally empowered to set rules regarding what municipalities can and cannot do.<sup>438</sup> While early jurisprudence debated whether municipalities were to be considered governments or corporations under the law, it is now well-established that both provincial and municipal decisions are subject to review per the *Charter of Rights and Freedoms*. Courts have interpreted the provisions of provincial acts as enabling municipalities to act as “governments” based on powers delegated from the provincial legislatures, and that municipalities must be able to govern based on the best interests of their residents and based on conceptions of the public good.<sup>439</sup>

The notion of cities as “creatures of the province” was fervently articulated in the 1997 decision of the *Ontario Superior Court in East York v. Ontario (Attorney General)*.<sup>440</sup> This case challenged the unilateral decision of the Province of Ontario to create the Toronto's megacity in 1998 without the consent of the amalgamated six municipalities. While referencing the lack of evidence of consultation and the vast number of people who voted against the amalgamation, the Superior Court concluded that the unilateral action did not exceed the province's constitutional authority to make laws relating to municipal institutions in the province. The court determined that the power to restructure Toronto is within provincial authority under section 92(8) of the *Constitution Act*, and set out four “clear” principles regarding the constitutional status of Canadian cities:<sup>441</sup>

(i) municipal institutions lack constitutional status;

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<sup>438</sup> *Ibid.* at 416.

<sup>439</sup> *Pacific National Investment Ltd. V. Victoria (City)*, 2000 CarswellBV 2439, 2000 CarswellBC 2441, [2000] 2 S.C.R. 919, reconsideration/rehearing refused 2001 CarswellBC523, 2001 CarswellBC 524 (S.C.C.).

<sup>440</sup> (1997), 34 O.R. (3d) 789 (Gen. Div.), aff'd (1997), 36 O.R. (3d) 733 (C.A.), leave to appeal to S.C.C. refused, [1998] 1 S.C.R. vii.

<sup>441</sup> *Ibid.* at 797-98.

(ii) municipal institutions are creatures of the legislature and exist only if provincial legislation so provides;

(iii) municipal institutions have no independent autonomy and their powers are subject to abolition or repeal by provincial legislation; and

(iv) municipal institutions may exercise only those powers which are conferred upon them by statute.

The Supreme Court of Canada referenced Dillon's Rule most recently in 1993 in *R. v. Greenbaum*. This case involves a street vendor who was unable to receive a permit to sell t-shirts on Toronto streets as a result of a city by-law. In critiquing the City's exercise of unauthorized power, Justice Iacobucci stated in *Greenbaum*:

The courts, as a result of this inferior legal position [of municipalities], have traditionally interpreted narrowly statutes respecting grants of powers to municipalities. This approach may be described as 'Dillon's rule,' which states that a municipality may exercise only those powers expressly conferred by statute, those powers necessarily or fairly implied by the expressed power in the statute, and those indispensable powers essential and not merely convenient to the effectuation of the purposes of the corporation.<sup>442</sup>

Less than ten years later, the Supreme Court of Canada challenged the idea that municipalities are mere creatures of the province. In *Spraytech v. Hudson*,<sup>443</sup> the Court allowed the town of Hudson, Quebec, to ban the use of aesthetic pesticides, although considered non-toxic by provincial and federal regulators. In permitting a municipality the power to protect the general welfare of its residents, the Court relied on a key text in Canadian municipal law, quoting that: "the legislature cannot possibly foresee all the powers that are necessary to the statutory equipment of its creatures..."<sup>444</sup>

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<sup>442</sup> *R. v. Greenbaum*, [1993] 1 S.C.R. 674 at 688-689.

<sup>443</sup> *Spraytech*, *supra* note 177.

<sup>444</sup> Ian M., Rogers, *The Law of Canadian Municipal Corporations*, 2d ed., Looseleaf (Toronto: Carswell, 1971); quoted in *Spraytech*, *supra* note 179 at 258-59.

The Court also introduced a conceptual approach to interpreting municipal authority. Justice L'Heureux-Dubé invoked the European Union's principle of “subsidiarity.”<sup>445</sup> As Levi & Valverde note: “This principle, which European Union sources stress is not a justiciable legal doctrine but rather a political principle, is invoked to elaborate the basic political character of municipalities, with the Court addressing something much larger than the traditional questions of ultra vires and the standard of review...”<sup>446</sup> While subsidiarity cannot override the status of municipalities as creatures of the province, it operates as a principle affirming that “legislative action is to be taken by the government that is closest to the citizen and is thus considered to be in the best position to respond to the citizen’s concerns.”<sup>447</sup> Peter Hogg describes subsidiarity as “a principle of social organization that prescribes that decisions affecting individuals should be as far as possible, be made by the level of government closest to the individuals affected.”<sup>448</sup>

In *Croplife*, the Ontario Court of Appeal adopted this expansive interpretation of municipal authority, stating that general welfare powers are to be interpreted broadly and generously within their context and statutory limits to achieve the legitimate interests of the municipality and its inhabitants.<sup>449</sup> The court signaled a shift away from the traditionally restrictive, prescribed approach to the interpretation of municipal power in favour of a broad purposive approach recognizing more flexibility in municipal government.<sup>450</sup>

Alongside judicial decisions, there were important legislative progressions that contributed to more expansive power for municipalities, especially Toronto. Most notably, the Province of Ontario introduced COTA, which was enacted when Premier Dalton McGuinty and Toronto Mayor David Miller were in power.<sup>451</sup> The intention was

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<sup>445</sup> *Spraytech*, *supra* note 177 at 249.

<sup>446</sup> Levi & Valverde, *supra* note 132 at 424-25.

<sup>447</sup> See *Reference re Assisted Human Reproduction Act*, [2010] 3 SCR 457 at para 183. But note *ibid* at 72, “subsidiarity does not override the division of powers in the Constitution Act, 1867.”

<sup>448</sup> Peter Hogg, *Constitutional Law of Canada* (Toronto: Carswell, 2002) at 114.

<sup>449</sup> *Croplife*, 2005 CarswellOnt 1877; 10 M.P.L.R. (4<sup>th</sup>) 1 (C.A.), leave to appeal refused, 2005 CarswellOnt 6587.

<sup>450</sup> *Galganov v. Russell (Township)*, 2012 ONCA 409, 99 M.P.L.R. (4<sup>th</sup>) 1, leave to appeal refused 2012 CarswellOnt 15189, 2012 CarswellOnt 15190 (S.C.C.).

<sup>451</sup> COTA, *supra* note 11.

to give Toronto more expansive powers to self-govern in matters within its jurisdiction.<sup>452</sup> A major change brought about in the new legislation was the introduction of section 8, which granted broad discretion to the City to pass laws related to “general health and safety.” This “permissive” legislation has been likened to the unique “home rule” status of some American cities, who are given exclusive jurisdiction over matters within areas of responsibility, such as education, zoning, and planning, although in practice, Toronto’s powers fall well short of those in home rule jurisdiction and the province has retained its power to override the municipality’s decisions.<sup>453</sup> The province’s deference to the City of Toronto has been inconsistently applied: at times, the province refuses to endorse municipal decisions;<sup>454</sup> other times it defers to them entirely.<sup>455</sup>

However, unlike home rule, which confers full authority to local governments within clearly demarcated areas of authority, the City continues to be subject to numerous restrictions, ranging from the mechanisms it may use to raise revenue to the levies of tow truck drivers.<sup>456</sup> In addition to COTA, the Province of Ontario has introduced many pieces of legislation that impact Toronto’s decision-making powers, including the *Planning Act*,<sup>457</sup> the *Ontario Municipal Board Act*,<sup>458</sup> the *Municipal Conflict of Interest Act*,<sup>459</sup> the *Municipal Elections Act, 1996*,<sup>460</sup> and the *Municipal Freedom of Information and Protection of Privacy Act*.<sup>461</sup> These and other pieces of legislation restrict the actions that municipalities may take and set out the consequences of any breach.

Lower courts over the last five years have proven not to be comfortable in interpreting

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<sup>452</sup> *Friends of Landsdowne Inc. v. Ottawa (City)*, 2012 ONCA 273 (referring to a similar provision in the *Municipal Act*, 2001).

<sup>453</sup> Levi & Valverde, *supra* note 134 at 454-55.

<sup>454</sup> See e.g. Robert Benzie, “Kathleen Wynne Stopping John Tory’s Plan For Tolls On DVP, Gardiner” *The Toronto Star* (26 January 2017).

<sup>455</sup> Adrian Morrow, “Ontario Minister says stripping Ford of mayoralty powers was legal, appropriate” *The Globe and Mail* (19 November 2013).

<sup>456</sup> COTA, *supra* note 11 at s. 93(1).

<sup>457</sup> R.S.O. 1990, c. P.13.

<sup>458</sup> *Ontario Municipal Board Act*, R.S.O. 1990, c. O.28.

<sup>459</sup> R.S.O. 1990, c. M.50.

<sup>460</sup> S.O. 1996, c. 32.

<sup>461</sup> R.S.O. 1990, c. M.56.



subsidiarity to disregard the division of powers as set out in the *Constitution Act* and granting unlimited authority to municipalities. In 2012, the Ontario Superior Court struck down a municipal bylaw banning the possession, consumption, and sale of shark fin products on the basis that the bylaw was ultra vires Toronto's legislative powers.<sup>462</sup> The court held that, although the power to make decisions on "municipal issues" is broad, the issue to be addressed by a bylaw must relate to the municipality as a local entity. The court stated, "A by-law must have a proper municipal purpose; otherwise it falls outside the jurisdiction of the City and the powers delegated to it by the City."<sup>463</sup> In this case, the protection of sharks could not have been a concern of the City of Toronto, as there are no sharks near the city. It also failed the health and safety prong as there is no threat to the health of Torontonians due to the consumption of shark fin soup. As such, the shark fin ban was not a "municipal issue" as it did not concern the environmental well-being of the city, protect sharks, and or protect the health and safety of consumers. Put another way, the courts appear to have pulled back on the strong presumption of validity for municipal laws.<sup>464</sup>

In *Magder v. Ford*, the court held that even with the "generous approach" to interpretation of municipal powers, courts have never departed from the principle that municipalities are creatures of the province.<sup>465</sup> Similarly, in *Wainfleet Wind Energy Inc. v. The Corporation of the Township of Wainfleet*, the court found that a bylaw prohibiting wind farms within two kilometres of "a property" was void for vagueness.<sup>466</sup> The court also commented in obiter that, while the township could enact bylaws related to the economic, social and environmental well-being and the health, safety, and well-being of persons, the Province of Ontario already had enacted the *Green Energy and Green Economy Act, 2009* and, thus, there are significant limits on a municipality's ability to enact bylaws which touch on defined areas of provincial authority.

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<sup>462</sup> Eng v Toronto, 2012 ONSC 6818.

<sup>463</sup> *Ibid* at para. 19.

<sup>464</sup> Friends of Lansdowne Inc. v. Ottawa (City), 2012 ONCA 273 (CanLII), para. 14; Ontario Restaurant Hotel & Motel Association v. Toronto, 2005 CanLII 36152 (ON CA), [2005] O.J. No. 4268 (C.A.), para. 3; Spraytech, *supra* note 177, para. 21 and 26

<sup>465</sup> *Magder v. Ford*, 2013 ONSC 263, 2013 CarswellOnt 387, 113 O.R. (3d), add'l reasons 2013 CarswellOnt 3752

<sup>466</sup> *Wainfleet Wind Energy Inc. v. The Corporation of the Township of Wainfleet* [2013] O.J. No. 1744.

Thus, the constitution empowers provincial governments to constrain and regulate municipal authority in Ontario generally by permitting the provincial government to override municipal decisions. Also, the principle of subsidiarity complicates the notion of “creature of the province.” We are left with a constitutional and legislative framework that leaves uncertain the extent to which municipal decisions may later be determined to be *ultra vires* or beyond their jurisdiction. Despite this uncertain framework, the next section argues that considerable deference has been given to City Council to determine its governance model.

### **3. Authority for local governance**

This section sets out the legislative provisions and judicial interpretations that enable the City of Toronto to delegate some of its powers to local bodies. This section then outlines the City’s decision in relation to these powers, including delegation to committees and staff under the procedural bylaw. In addition, to provide context for one of the chief arguments in favour of delegation to local governance bodies – namely, enabling richer resident involvement in decision-making – this section provides information on the legal requirements for public participation.

COTA was enacted to provide the city with a broader, more flexible framework within which to work.<sup>467</sup> It begins with the centrality of governance, stating: “The City of Toronto exists for the purpose of providing good government for matters within its jurisdiction, and the city council is a democratically elected government which is responsible and accountable.”<sup>468</sup> Section 2 of the Act pronounces that, “The purpose of this Act is to create a framework of broad powers for the City which balances the interests of the Province and the City and which recognizes that the City must be able to do the following things in order to provide good government,” including the power to,

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<sup>467</sup> Fourth Generation Realty Corp. v. Ottawa (City), 2005 CarswellOnt 1939, 197 O.A.C. 389 (C.A.); 1786889 Ontario Inc. v. Toronto (City), 2013 CarswellOnt 14904, 2013 ONSC 5697.

<sup>468</sup> COTA, *supra* note 11 at section 1(1).

“Determine the appropriate structure for governing the City.”<sup>469</sup>

Section 6 of COTA also gives broad powers to the City of Toronto to design its governance model, stating: “The powers of the City under this or any other Act shall be interpreted broadly so as to confer broad authority on the City to enable the City to govern its affairs as it considers appropriate and to enhance the City’s ability to respond to municipal issues.”<sup>470</sup> It further provides that, “The City may pass by-laws respecting ... Governance structure of the City and its local boards.”<sup>471</sup>

Notwithstanding this broad permissive language, COTA carves out power for the Province to make specific regulations that fall squarely within the city’s powers enumerated above, including that the Lieutenant Governor in Council may: require the city to establish an executive committee<sup>472</sup> and may prescribing the composition, powers and duties of the committee; requiring the head of council to appoint the chairs and vice-chairs of specified committees of council and specified local boards; and requiring council to appoint specified committees composed of members of council elected from specified geographic areas of the city and requiring the city to delegate prescribed powers and duties to the committees.<sup>473</sup> COTA also sets out that the City must pass a procedure by-law for “governing the calling, place and proceedings of meetings,”<sup>474</sup> and provides

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<sup>469</sup> COTA, *supra* note 11 at section 2.

<sup>470</sup> *Ibid.* at section 6 (1).

<sup>471</sup> *Ibid.* at section 8(2). COTA defines “local board (restricted definition)” as “a local board other than, (a) a society as defined in subsection 3 (1) of the *Child and Family Services Act*, (b) a board of health as defined in subsection 1 (1) of the *Health Protection and Promotion Act*, (c) a committee of management established under the *Long-Term Care Homes Act, 2007*, (d) a police services board established under the *Police Services Act*, (e) a board as defined in section 1 of the *Public Libraries Act*, or (f) a corporation established in accordance with section 148. A “local board” means “a city board, transportation commission, public library board, board of health, police services board, planning board, or any other board, commission, committee, body or local authority established or exercising any power under any Act with respect to the affairs or purposes of one or more municipalities, excluding a school board and a conservation authority” (COTA, *supra* note 11 at Section 3 (1)).

<sup>472</sup> Under the Act, “committee” means any advisory or other committee, subcommittee or similar entity of which at least 50 per cent of the members are also members of one or more municipal councils or local boards other than a police services board or public library board (COTA, *supra* note 11 at section 189 (1)).

<sup>473</sup> COTA, *supra* note 11 at section 152 (1). To date, the Province has not exercised this power.

<sup>474</sup> *Ibid.* at section 189 (2). “Meeting” is defined as “any regular, special or other meeting of city council, of the local board or of a committee of either of them” (Section 189 (1)).

that the city shall adopt and maintain policies with respect to:<sup>475</sup>

5. The manner in which the City will try to ensure that it is accountable to the public for its actions, and the manner in which the City will try to ensure that its actions are transparent to the public;

...

7. The delegation of its powers and duties.

Rather than asserting provincial dominance, these provisions establish the minimum requirements of the city's governance model, which were implemented by the City of Toronto shortly following COTA's introduction. The province has yet to intervene on the City of Toronto's decisions about its governance model.

Indeed, COTA contemplates the primacy of City Council as the chief decision-making body of the city. The overarching role of City Council is referenced in section 132. (1) of the Act, which states: "The powers of the City shall be exercised by city council." As a senior staff member at the City told me: [O]ne of the messages that I'm really trying to get across to people when I explain governance ... is the main sentence in the City of Toronto: 'all the powers of the city must be exercised by city council.' [I]t's not a throw-away line, it's a very important line because it establishes the paramountcy of council, it establishes the weak mayor system, it establishes the foundation for delegation."<sup>476</sup>

However, in setting out City Council's role, COTA does not suggest that all or most decisions must be made by City Council. Instead, it enumerates City Council's role as stewarding the city through actions such as: representing the public; considering the well-being and interests of the city; determining which services the city provides; ensuring

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<sup>475</sup> *Ibid.* at section 212 (1).

<sup>476</sup> Anonymous interview with City of Toronto staff member #1, City Clerk's Office, Toronto, Ontario, Canada (18 December 2015) – author conducted.

accountability and transparency in operations; and maintaining the financial integrity.<sup>477</sup>

Within this framework, certain actions must be taken by City Council and, therefore, cannot be delegated. This includes the power to impose taxes, to adopt or make changes to the official plan, or to adopt or amend the city budget.<sup>478</sup> However, COTA clearly provides for delegation to committees and other bodies, subject to various restrictions. COTA sets out that the city can delegate its powers, including its administrative powers.<sup>479</sup> The words “administrative” and “administration” are broad enough to encompass all conduct engaged by a governmental authority in furtherance of governmental business and otherwise.<sup>480</sup> A delegation may be revoked and may be subject to any conditions that City Council considers appropriate.<sup>481</sup>

The resulting rules regarding delegation are also broad. Under the Act, legislative and quasi-judicial powers may be delegated to:

- (a) one or more members of city council or a council committee;
- (b) a body having at least two members of whom at least 50 per cent are,
  - (i) members of city council,
  - (ii) individuals appointed by city council,
  - (iii) a combination of individuals described in subclauses (i) and (ii); or
- (c) an individual who is an officer, employee or agent of the City.<sup>482</sup>

Read together, these sections of COTA point to the primacy of City Council as the chief governance body, subject to the inclusion of certain outlined governance bodies and bylaws. COTA also provides that the city may delegate many of its functions to “local” governance bodies, subject to the enumerated restrictions. We now turn to the rules and institutions that the City of Toronto has created for local governance.

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<sup>477</sup> COTA, *supra* note 11 at section 131.

<sup>478</sup> *Ibid.* at section 22(1).

<sup>479</sup> *Ibid.* at section 22(2).

<sup>480</sup> *Doublesweet Investments Ltd. v. Toronto (City)*, 2012 ONSC 6377, 2012 CarswellOnt 15863 (Div Ct).

<sup>481</sup> COTA, *supra* note 11 at sections 20 (2) (1) and (5).

<sup>482</sup> *Ibid.* at section 21 (1).

#### 4. The community council: Toronto's "local" governance body?

In Toronto, community councils were created as a hasty political response to the perceived lack of direct access to city hall as a result of the 1998 amalgamation. This section canvasses the legal role of community councils and concludes that community councils fall short of their intended local role, despite legislation that positions them as possible stewards of a broader local area than the ward. This section sets out their history, structure, membership and authorities, and the distinction between "local" and "city-wide," which lies at the foundation of their function.

The forced amalgamation led to unprecedented civic activism throughout the former municipalities, focused largely on what would happen to local identity and the ability to access more localized bodies. *Globe & Mail* journalist Colin Vaughan wrote at the time: "Those who fear their local neighbourhood will sink into the megacity morass should prepare themselves for grimmer news. The province has promised that neighbourhood issues will be dealt with by six advisory community councils made up of local, elected officials from the megacouncil along with hand-picked local residents. ... But there is no mention of such bodies in Bill 103, the legislation setting up the megacity, just a vague, two-line reference to the establishment of neighbourhood committees: without a mention of powers and responsibilities."<sup>483</sup>

Referendums were held in each of the six lower-tier municipalities in Metropolitan Toronto.<sup>484</sup> The turnout for the referendums was 36%, and opposition to the proposed amalgamated City of Toronto ranged from 70 to 81% of voters depending on the municipality.<sup>485</sup> The referendum results were not binding on the Province and would not change the provincial government's decision.<sup>486</sup> The former municipalities also launched a lawsuit against the Province of Ontario, challenging the amalgamation under sections

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<sup>483</sup> Colin Vaughan, "Anomalies of amalgamation," *Globe and Mail* (3 March 1997).

<sup>484</sup> *East York (Borough) v. Ontario (Attorney General)*, 1997 CanLII 12263 (ON SC).

<sup>485</sup> McAllister, *supra* note 9 at 39.

<sup>486</sup> *East York v. Ontario*, *supra* note 484.

2(b), (d), 7, 8 and 15(1) of the *Charter of Rights and Freedoms*.<sup>487</sup> Among other arguments, the municipalities argued that the amalgamation would weaken the representation of citizens. Justice Borins of the Ontario Court (General Division) ultimately held that section 92 of the Constitution allowed the province to amalgamate the municipalities, regardless of the “megachutzpah” of the action. He also noted that among the six-member Transition Team’s responsibilities was active community consultation in reviewing the role and scope of responsibility of community councils.<sup>488</sup>

The Province appointed a Transition Team comprised of councillors from the former municipalities<sup>489</sup> to address legislative and governance issues related to the amalgamation, including “community councils and neighbourhood matters” as one of the eight governance issues to be studied in detail.<sup>490</sup> As part of their process, the Transition Team undertook extensive consultations with residents, bureaucrats, and local politicians. They produced, first, an interim report and, following more consultation, a final report with recommendations. As a senior staff member from the City of Toronto told me, this legislation “left it up to the city to decide what the community councils would do. So when it started off, the province set up this Transition Team with Alan Tonks<sup>491</sup> and they came up with a model, it wasn’t all that well thought through, it was an absolute compromise... So it was a cobbled together, very quick, political compromise.”<sup>492</sup>

The Transition Team recommended the creation of six community councils with the boundaries of the former municipalities, with stewardship as a primary responsibility. To the Transition Team, stewardship went beyond local planning matters to “keeping in

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<sup>487</sup> *Ibid.* at para 5.

<sup>488</sup> *Ibid.*

<sup>489</sup> Transition Team, *New City, New Opportunities* (Toronto, December 1997). The members of the Transition Team were Chair Alan Tonks (Municipality of Metropolitan Toronto), Willis Blair (East York), Michael Gee (Toronto), Lois Griffin (Etobicoke), Paul Sutherland (North York) and John Wimbs (Scarborough).

<sup>490</sup> The Transition Team identified the eight principle issues as (1) A New Civic Mission, (2) Leading the New City: Political Structure, (3) Stewardship of Toronto’s Communities, (4) Building a Strong City-Region, (5) Encouraging Citizen Involvement, (6) A New City Administration, (7) Local Agencies, Boards and Commissions, and (8) Improving Services to the Public (Toronto Transition Team, *New City, New Opportunities* (Toronto, Clerk’s Department, 1997).

<sup>491</sup> Alan Tonks was a member of the 1997 City of Toronto Transition Team.

<sup>492</sup> Anonymous interview with City of Toronto staff member #2, Shelter, Support and Housing Administration Division Toronto, Ontario, Canada (2 February 2016) – author conducted.

touch with citizens and their concerns” and that “community councils should be a focal point for involving people in community affairs.”<sup>493</sup> This stewardship would be executed through three functions: local planning and development matters, other neighbourhood-related issues, and involving the community and monitoring its well-being.<sup>494</sup> The transition team ultimately concluded that: “people want to be able to influence what happens in their neighbourhoods” with a government “that understands local community matters.”<sup>495</sup> Under the Transition Team’s recommendation, community councils were meant to act as the voice of the former local municipalities. It was believed that these councils would soften the negative response the government received from amalgamation and would provide for decentralized governance within the province’s new, large municipalities.<sup>496</sup> Ultimately, community councils were not given budgets, and roles for community and neighbourhood organizations were not included as part of their function. A senior staff member at the City, who helped design the community council model, said, “community councils were a last minute addition, they were thrown in as a softening blow to amalgamation.”<sup>497</sup>

At the core of the governance review was the notion of “local” and “city-wide.” These concepts were both a question of jurisdiction (where the matter would be decided) and content (what matters apply only to localized areas as opposed to the city as a whole). Under city rules, “local” issues may be determined by the ward or community council, but the “city-wide” issue may only be decided by City Council.

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<sup>493</sup> Transition Team, *supra* note 489.

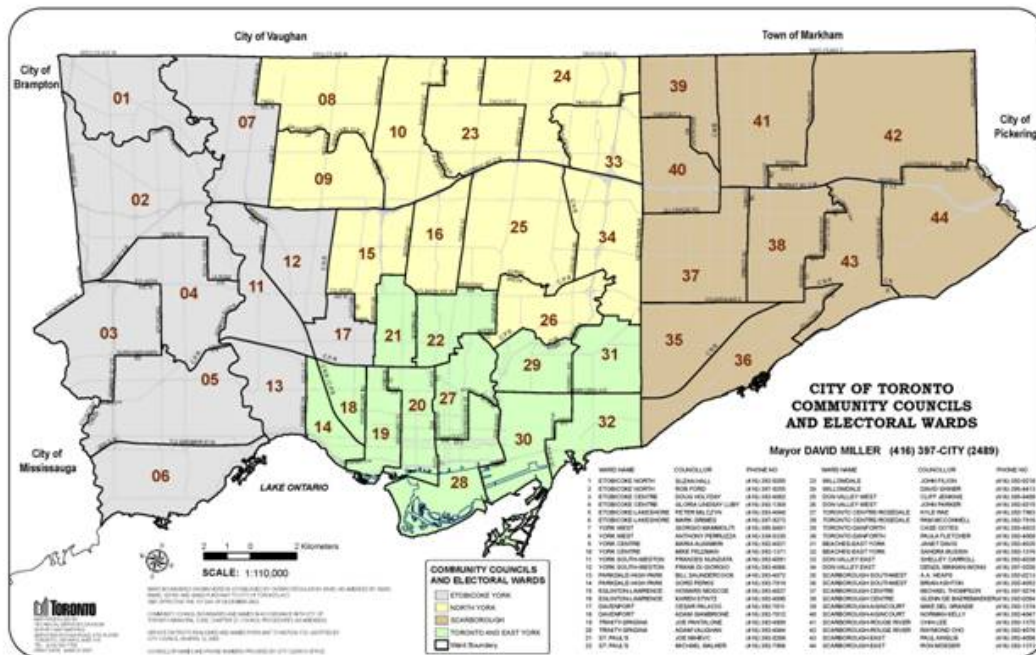
<sup>494</sup> *Ibid.* at 66.

<sup>495</sup> *Ibid.* at 65.

<sup>496</sup> Andrew Sancton, *Canadian Local Government: An Urban Perspective* (New York, Oxford University Press, 2011) at 155.

<sup>497</sup> Anonymous interview with City of Toronto staff member #1, City Clerk’s Office, Toronto, Ontario, Canada (18 December 2015) – author conducted.





**Illustration 3.3: Map of City of Toronto wards and community council boundaries**<sup>498</sup>

Illustration 3.3 shows the City of Toronto’s ward and community council boundaries. In 1999, the City of Toronto had six community councils – Etobicoke, Toronto, East York, Midtown, Humber, and Etobicoke. Their boundaries were based on those of the former municipalities, and their members were those councillors whose wards existed within the boundaries. In 1999, shortly after the amalgamated city was created, the Province of Ontario introduced the *Fewer Municipal Politicians Act*.<sup>499</sup> As detailed in Part II of this chapter, under this legislation, the Province mandated that the ward boundaries within the new City of Toronto be reduced from 57 to 44.<sup>500</sup> The City of Toronto was required to quickly undertake a ward boundary review that would divide each electoral district in two to create 44 wards. The result was that the membership of some of the six community councils became very small. For example, only two councillors served on the East York

<sup>498</sup> City of Toronto, “Community Council Boundaries & Electoral Wards Map” (2015), online: <<http://www1.toronto.ca/wps/portal/contentonly?vgnextoid=687c7d353c460410VgnVCM10000071d60f89RCRD>>.

<sup>499</sup> *Fewer Municipal Politicians Act*, 1999, c. 14, S.O. 1999.

<sup>500</sup> At the time of amalgamation, there were 107 councilors serving the seven municipalities. See Alan Redway, *Governing Toronto: Bringing Back the City that Worked* (Victoria: Friesen Press, 2014).

Community Council.<sup>501</sup>

In considering the role and mandate of Toronto's community councils at the time of amalgamation, the transition team concluded that: "people want to be able to influence what happens in their neighbourhoods" with a government "that understands local community matters."<sup>502</sup> Their view was that stewardship was crucial: "Stewardship of the community implies more than making decisions on local planning matters. It means keeping in touch with citizens and their concerns. The community councils should be a focal point for involving people in community affairs. It also means understanding how the community is doing."<sup>503</sup> This stewardship was intended to be executed through three functions: local planning and development, other neighbourhood-related issues, and involving the community and monitoring its well-being.<sup>504</sup> More than fifteen years after amalgamation, one of these three functions does not occur at the community council level in Toronto. Local planning decisions are at the core of the core the community council's mandate, while neighbourhood-related issues, and involvement of the community and monitoring its well-being instead form part of the mandate of other standing committees.

In 2003, City Council reduced the number of community councils to the current-day four: Etobicoke, North York, Toronto-East York and Scarborough.<sup>505</sup> Other than in Scarborough, community council boundaries only roughly match those of the pre-amalgamated cities and towns. At present, each community council is aligned with the city's service districts (planning, building, licensing and transportation functions) and represents close to the same number of City of Toronto residents, similar to the current average ward population size of 61,000, as noted in Table 3.1.<sup>506</sup>

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<sup>501</sup> *Ibid.* at 226.

<sup>502</sup> Transition Team, *supra* note 489 at 65.

<sup>503</sup> *Ibid.*

<sup>504</sup> *Ibid.* at 66.

<sup>505</sup> Enid Slack and Richard Bird, "Merging Municipalities: Is Bigger Better?" IMFG Papers on Municipal Finance and Governance, no. 14 (Toronto: Institute on Municipal Finance and Governance, University of Toronto, 2013) at 28.

<sup>506</sup> City Clerk, Staff Report: City Governance Review, City of Toronto (24 April 2003), online: <<http://www.toronto.ca/legdocs/2003/agendas/committees/pof/pof030508/it001.pdf>>.

Name	Councillors	2011 Population	Representation (councillors/population)
Etobicoke	11	620,180	56,380
North York	11	667,840	60,713
Scarborough	10	624,675	62,468
Toronto-East York	12	701,145	58,429

**Table 3.1: Population and representation of City of Toronto community councils**<sup>507</sup>

In 2005, in anticipation of COTA's introduction, city staff embarked on a governance review to redesign the city's governance model. The governance review was led by a three-person Governing Toronto Advisory Panel (the "Panel"), which embarked on a detailed study of Toronto's existing governance model, undertook extensive consultations, and ultimately made a series of recommendations that were forwarded to City Council for review.<sup>508</sup> The Panel's task was monumental: it aimed to look critically at the existing governance model, eight years in from amalgamation, and consider how the model could be rethought given COTA's potential. Specifically, the Panel was given the mandate to provide information, findings, and options to Council to make decisions about its governance system; to ensure "a civil, robust and informed discussion of options among all sectors of Toronto society interested in a well governed City"; and to integrate related issues resulting from the final report of the Bellamy Inquiry.<sup>509</sup>

The Panel remarked that a strong city-wide agenda was necessary to achieve COTA's purposes.<sup>510</sup> It stated: "The new *City of Toronto Act* will give Toronto, for the first time,

<sup>507</sup> Original research (October 29, 2015). Data drawn from City of Toronto, Community Council Area Profiles (last retrieved: 29 October 2015), online: <<http://bit.ly/1a3RHt2>>.

<sup>508</sup> Governing Toronto Advisory Panel, *The City We Want—The Government We Need: The Report of the Governing Toronto Advisory Panel* (November 2005), online: <<http://www.toronto.ca/legdocs/2005/agendas/committees/pof/pof051129/it004att.pdf>>. The three members of the Panel were: Ann Buller - President of Centennial College (Panel Chair), Sujit Choudhry - Associate Professor, Faculty of Law, University of Toronto and Martin Connell - ACE Bakery Ltd. co-owner/co-founder and Toronto Community Foundation Chair.

<sup>509</sup> Denise E. Bellamy, Denise E. 2005. *Toronto Computer Leasing Inquiry / Toronto External Contract Inquiry Report* (Toronto: City of Toronto, 2005).

<sup>510</sup> Governing Toronto Advisory Panel, *supra* note 508 at 6.

the power to choose how it governs itself. Torontonians will have the power to choose the system that will deliver the city we want. Toronto's system of democratic self-government was designed for a different era. It is inherently unable to cope with the policy challenges of the 21st century, or to wield the promised new powers to address those challenges under a revised City of Toronto Act."<sup>511</sup> The fundamental cause of the city's governance issues, the Panel felt, was that City Council had two roles: as a legislature, whereby broad planning, social policy and taxation issues needed to be decided; and as an administrative decision-maker, which involved the implementation of policies already decided.<sup>512</sup> The latter types of decisions dominated City Council's agenda leading to long meetings and insufficient time to focus on city-wide matters. As such, the Panel recommended that the City introduce a governance model that delegated more powers to the local level.

In regard to governance in smaller-than-city areas, the Governing Toronto Advisory Panel recommended an empowered set of community councils, with delegated functions, at least four annual engagement sessions, the role of interfacing with neighbourhoods, meeting in the evening to ensure greater public attendance of meetings, and incorporating neighbourhood input using the City's 140 identified neighbourhoods.<sup>513</sup> They also identified the need for greater citizen engagement and recommended the retention of wards "to help ensure that marginalized communities are not further disadvantaged."

The proposed changes were an opportunity for councillors to demarcate the forums in which they were to examine issues from a localized or city-wide perspective.

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<sup>511</sup> *Ibid.* at 26.

<sup>512</sup> *Ibid.* at 25.

<sup>513</sup> The City's 140 neighbourhoods were identified in 2005 by staff in the Social Development and Finance Administration Division (SDFA) to measure community well-being. SDFA has used the neighbourhood delineation to further identify "neighbourhood improvement areas" (NIAs), which are the city's most economically and socially marginalized neighbourhoods, as a means of prioritizing infrastructure and social programs. The 140 neighbourhoods and NIAs have not generally played a role in the City's community councils. See e.g.

<http://www1.toronto.ca/wps/portal/contentonly?vgnextoid=ae17962c8c3f0410VgnVCM10000071d60f89RCRD&vgnextchannel=cf8a42f18beb2410VgnVCM10000071d60f89RCRD>;

<http://www1.toronto.ca/wps/portal/contentonly?vgnextoid=4ea8f40f9aae0410VgnVCM10000071d60f89RCRD>; <http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2014.CD27.5>;

<http://www.toronto.ca/legdocs/mmis/2014/cd/bgrd/backgroundfile-67382.pdf>; and

<http://www.toronto.ca/legdocs/mmis/2014/cd/bgrd/backgroundfile-67350.pdf>.

Amalgamation ultimately eroded the two-tier perspective but integrated large parts of what were regional issues to the municipal level. As a senior staff member told me that “the two-tier did give you the ability for different people to look at things differently. Either from a sort of citywide, or region-wide perspective and a local perspective.”<sup>514</sup> Now, politically, councillors have to look at both a local and city-wide lens and “it’s hard for them to do both, it really is, it’s almost impossible.”<sup>515</sup>

The City considered the Panel’s recommendations and ultimately introduced significant changes in the City’s governance model.<sup>516</sup> One of the main objectives of the new governance structure was to reduce the number of days that councillors say in City Council meetings, which required delegation to committees. The new governance model introduced an Executive Committee and seven city-wide standing committees.<sup>517</sup> However, City Council did not implement the recommendations related to community councils.<sup>518</sup>

In 2007, City staff set out the following principles to determine which issues should be considered “local” and “city-wide”:<sup>519</sup>

1. local routine matters should be delegated to Community Council for final decision;
2. only matters that can be legally delegated will be delegated;

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<sup>514</sup> Anonymous interview with City of Toronto staff member #4, City Manager’s Office, Toronto, Ontario, Canada (7 May 2016) – author conducted.

<sup>515</sup> *Ibid.*

<sup>516</sup> City Manager, Staff Report: Implementation of a new Council Governance model for the next term of Council, City of Toronto (7 June 2006), online: <[https://portal.publicpolicy.utoronto.ca/en/ContentMap/citiesandcommunitydevelopment/UrbanPolicyandMunicipalGovernance/Practice%20Area%20Library/City%20of%20Toronto%20-%20Implementation%20of%20New%20Council%20Governance%20Model%20-%20staff%20report%20\(June\\_2006\).pdf](https://portal.publicpolicy.utoronto.ca/en/ContentMap/citiesandcommunitydevelopment/UrbanPolicyandMunicipalGovernance/Practice%20Area%20Library/City%20of%20Toronto%20-%20Implementation%20of%20New%20Council%20Governance%20Model%20-%20staff%20report%20(June_2006).pdf)>.

<sup>517</sup> The committees are: Economic Development Committee, Community Development and Recreation Committee, Public Works and Infrastructure Committee, Planning and Growth Management Committee, Licensing and Standards Committee, Parks and Environment Committee, Government Management Committee (§ 27-126).

<sup>518</sup> See Part III.

<sup>519</sup> City Manager, Report to Executive Committee: Delegation of Certain Matters to Community Councils, City of Toronto (2 January 2007) at 3, online: <<http://www.toronto.ca/legdocs/mmis/2007/ex/bgrd/backgroundfile-586.pdf>>.

3. matters that are City-wide will not be delegated; and
4. Community Councils should not have final decision-making powers on matters that fetter Council's subsequent decision on a City-wide matter or on a matter that cannot be delegated.

According to a senior staff member who made recommendations on which powers should be delegated, one of the central criteria regarding the distinction between “local” and “city-wide” was the notion of “tolerance” for different rules across the city. As this interviewee states, “What tolerance do we have for things evolving in a different approach? Can we tolerate the approach to four-way stop signs being different?” City Council decides what matters may be “tolerated” as being different across the city and which ones should have uniform applicability. This has resulted in the tree canopy as a “city-wide” issue, whereas cycling lanes have gone back and forth between local and city-wide.<sup>520</sup>

Now, the procedural by-law sets out a confusing description of when community councils may consider “local” or “city-wide” matters. The term “city-wide” has no definition in the staff report or in Chapter 27, other than in Appendix B-IV (5), where community councils are given authority to make recommendations on policy and research about “local” matters, tautologically suggested to be matters that are “not of city-wide interest.”<sup>521</sup> Community councils may also get involved in “city-wide” interests, but only those involving recommendations to the Planning and Growth Management Committee (PGMC)<sup>522</sup> on reports of the Chief Planner about planning applications of city-wide

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<sup>520</sup> Anonymous interview with City of Toronto staff member #1, City Clerk's Office, Toronto, Ontario, Canada (18 December 2015) – author conducted.

<sup>521</sup> Toronto Municipal Code Chapter 27, Appendix B, IV, 5 §27-152 states that community councils have: “The authority to make final decisions with respect to the following matters, to the extent that the authority has not already been delegated to staff, is delegated to the Community Councils, with the exception of matters affecting more than one Community Council, and matters that, in the opinion of the City Manager, have City-wide significance.”

<sup>522</sup> Planning and Growth Management Committee [hereinafter “PGMC”] is a standing committee of City Council as set out in Toronto Municipal Code § 27-126 (B)(4).

interest,<sup>523</sup> and convening community meetings to inform the public of planning applications of city-wide interest and to hear public presentations.<sup>524</sup>

Regarding local or neighbourhood issues, community councils are given broad authority to make public presentations and recommendations on “neighbourhood” matters, including exemptions to ravine and tree by-laws<sup>525</sup> and any matter “which affects more than one Community Council.”<sup>526</sup> Community councils may only make recommendations to City Council on City's official plan and zoning by-law amendments that concern a local focus,<sup>527</sup> and make recommendations to City Council on other planning applications that are not of City-wide interest (emphasis added).<sup>528</sup>

In practice, “local” issues end up as whatever matters fall under the laundry list of powers delegated to community councils. The specific powers are set out in § 27-152 of the Toronto Municipal Code and its Appendix B-IV, and can be roughly grouped into three categories: planning; community land use; and community interest. To better understand what kind of matters community councils considered, I reviewed all community council decisions in 2013, counting what kinds of decisions community councils were making based on these three categories.<sup>529</sup> The objective was to understand how community councils were fulfilling their delegated duties and to understand what other kinds of decisions, if any, they might be playing, to better understand their local role. The following chart sets out the decisions of each community council according to the three categories outlined above.

	<b>Planning/ Zoning/Heritage</b>	<b>Land use</b>	<b>Community interest</b>	<b>Total</b>
Etobicoke	77	258	38	373

<sup>523</sup> Toronto Municipal Code Chapter 27, Appendix B, IV, 6

<sup>524</sup> Toronto Municipal Code Chapter 27, Appendix B, IV, 7

<sup>525</sup> Toronto Municipal Code Chapter 27, Appendix B, IV, 1.1(1)

<sup>526</sup> Toronto Municipal Code Chapter 27, Appendix B, IV, 1.1(4)

<sup>527</sup> Toronto Municipal Code Chapter 27, Appendix B, IV, 8

<sup>528</sup> Toronto Municipal Code Chapter 27, Appendix B, IV, 9

<sup>529</sup> This analysis was conducted in October 2015. The year 2013 was selected as it was the most recent full year of meetings that was not an election year.

North York	114	222	22	358
Scarborough	54	150	29	233
Toronto-East York	251	504	35	790

**Table 3.2: Number of community council decisions by category (2013)<sup>530</sup>**

Table 3.2 presents the number of community council decisions by category of activity and yields the following observations. First, community councils may hold quasi-legislative hearings on matters within the urban area the Community Council represents unless the subject matter is of city-wide interest or is within an area represented by more than one Community Council.<sup>531</sup> These decisions involve amendments to the *Planning Act* and the city's zoning by-law, but not "minor variances" which are the responsibility of the four committees of adjustment, whose boundaries align with those of the community councils.

In evaluating local planning decisions, the members of community councils balance the following considerations: whether proposed changes to lands located in an areas designated as "neighbourhoods" in the Official Plan are "sensitive, gradual and generally fit the existing physical character;"<sup>532</sup> the degree to which city-wide housing policies should be assessed in regard to individual neighbourhoods;<sup>533</sup> and the relationship between local zoning and the Official Plan in a rezoning application.<sup>534</sup> Community councils may make decisions related to heritage matters. In this category of authority, community council decisions are not final. Local planning decisions are subject to the review of the applicable committee of adjustment where proposed developments do not adhere to the city-wide Official Plan. Community Council decisions must then be approved by City Council, and may, in turn, be appealed to the OMB. When community councils consider these issues, the committee room in which the hearings are held

<sup>530</sup> Original research (November 2, 2015).

<sup>531</sup> Toronto Municipal Code s. 27-129 (C).

<sup>532</sup> Leaside Property Owner's Association (Re), 2015 CanLII 22087 (ON OMB).

<sup>533</sup> Toronto (City) v. R & G Realty Management Inc., 2009 CanLII 42397 (ON SCDC).

<sup>534</sup> Toronto (City) v. Romlek Enterprises, 2008 CanLII 52618 (ON SCDC).



transforms dramatically into a quasi-judicial forum. One staff member described them as, “more like attending court than a meeting.”<sup>535</sup> Community councils act almost as mini-courtrooms, with a large degree of formality, rather than sites where the public can come with community issues for discussion and resolution.

Second, community councils are responsible for the regulation of specified activities and land use matters which affect neighbourhoods and local businesses. These include on-street traffic regulation and permit parking, noise by-law exceptions, street food vending, liquor licenses and boulevard café permit appeals.<sup>536</sup> City Council has delegated final decision-making authority for most of these powers, but not others. Through my observations of community council meetings held in 2015, the environment is far more casual when these decisions are heard. There is an exodus of about half of the audience, suit jackets are removed, and there is far more movement of councillors throughout the committee room. The environment comes closer to what the Transition Team imagined as a community forum for hearing “local” issues.

Third, under the procedural bylaw, community councils can hear matters of “community interest.” By this, I mean presentations on matters taking place within the community council boundaries, appointments to community bodies such as Business Improvement Areas, requests for staffing at meetings, and community matters like the siting of rooming houses and casinos.

The findings conclude, first, that the vast majority of community council decisions relate to planning, zoning, heritage and land use matters. This is consistent with Enid Slack’s observations in 2005 that community councils are essentially “local planning committees.”<sup>537</sup> Rather than serving as forums for the consideration of neighbourhood issues, their major function is as a councillor-led body making quasi-judicial decisions under the *Planning Act*. This perspective was affirmed by a senior staff member at the

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<sup>535</sup> Anonymous interview with City of Toronto staff member #1, City Clerk’s Office, Toronto, Ontario, Canada (18 December 2015) – author conducted.

<sup>536</sup> Toronto Municipal Code s. 27-129 (E).

<sup>537</sup> Enid Slack, *Assessing Municipal Amalgamation In Toronto, Canada* (2005) 11: 71 Nat’l Sec & Def 49, online: <[http://www.razumkov.org.ua/eng/files/category\\_journal/NSD71\\_eng.pdf](http://www.razumkov.org.ua/eng/files/category_journal/NSD71_eng.pdf)> at 57.

City of Toronto, who said, “The term ‘council’ ascribes more ... autonomy, or more of governance role than I think in reality. ... I just see them as geographic standing committees of council.”<sup>538</sup>

Second, Toronto’s community councils do not generally consider neighbourhood or community issues and, of those that are considered, the bulk relate to the appointment of residents to museum and community boards rather than public presentations and recommendations on “neighbourhood” matters. The exception to this general finding is the Scarborough Community Council, which opens each of its meetings with a presentation on a community issue that is affecting Scarborough.<sup>539</sup> Community council members hear the presentations, ask questions and, at times, pass motions related to the issue. In the fifteen years since community councils were introduced, Toronto’s community councils have focused largely on local planning, with minimal attention to “community” issues that the Transition Team and Governing Panel considered integral for Toronto’s local governance model.

Third, little authority is delegated to community councils, despite municipal power to do so. As a senior staff member of the City of Toronto told me, “We actually have the tools and the legislation to further empower the community councils. We can delegate more to the community councils than we have delegated. And you leave the big council to deal with policy frameworks, strategic things. There’s actually very little legislation that cannot be delegated. It’s the official plan, it’s the budget, it’s things like that, which should not be delegated, they’re the framing things.”<sup>540</sup> In this staff member’s view, not only can the city delegate, they should: “The city council should set the broad policy framework ..., the measures to protect, and what is the decision making process,” then

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<sup>538</sup> Anonymous interview with City of Toronto staff member #1, City Clerk’s Office, Toronto, Ontario, Canada (18 December 2015) – author conducted.

<sup>539</sup> See e.g. update on the services offered by Variety Village, the University of Toronto – Scarborough Master Plan (June 18, 2013), and the Rouge Valley Health System and The Scarborough Hospital (November 19, 2013).

<sup>540</sup> Anonymous interview with City of Toronto staff member #2, Shelter, Support and Housing Administration Division Toronto, Ontario, Canada (2 February 2016) – author conducted.

delegate decision-making to a local body.<sup>541</sup> Put simply, “There’s not enough being delegated.”<sup>542</sup>

Thus, in the fifteen years since they were introduced, Toronto’s community councils have focused largely on local planning issues, with minimal attention to the stewardship role originally intended. Wards and community councils, as the city’s formal local governance model, include limited participatory spaces for residents to engage in decision-making. Community councils do not include residents as representatives, nor do they allow for residents to raise issues related to their neighbourhoods. Little is delegated to community councils, other than certain powers under the *Planning Act*, and these decisions include considerable deference to the local councillor and minimal opportunities for the public to engage beyond giving deputations.

Thus, community councils do not serve the purpose they were original intended: as stewards of a local spaces larger than the ward, but smaller than the city. Instead, they have limited delegated powers and do not act as spaces for civic participation. In the absence of a formal local body, the next section considers the overlapping roles of wards, BIAs and neighbourhood associations in local decision-making.

## **II. The governance of Toronto’s local legal spaces**

Wards and community councils are the two formal articulations of local governance in Toronto, each with their own histories and authorities as smaller-than-city entities. Building on the earlier part of this chapter, this section outlines the role of ward councillors and community councils, concluding with the argument that this formal local framework has resulted in a local governance model that prioritizes the ward, with community councils serving a different role than is articulated under the city’s procedural bylaws.

This section builds the foundation of the next section of this chapter, which adopts legal

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<sup>541</sup> *Ibid.*

<sup>542</sup> *Ibid.*

pluralism as a lens to look beyond formal law, as chiefly described in provincial laws and municipal codes, to understand how local is governed and the many levels of norm creation.<sup>543</sup> I later argue that, in reaction to this formal model, two chief bodies – the BIA and the neighbourhood association, have asserted themselves as representative bodies within this framework.

## **1. Formal spaces: wards and community councils**

Under the law, wards serve a two-fold function in the City – as demarcated boundaries that define particular communities, some of which have historical significance as distinct villages or towns. They define the spatial areas with communities or histories, which are in turn represented by a councillor that assists them with day-to-day matters, providing information, and helping to resolve neighbourhood disputes.<sup>544</sup> Second, wards act as a unit of representation for city-wide decision-making, whereby the councillor represents the interests of his or her residents as located within particular spatial boundaries. However, in practice, wards serve as a crucial foundation for local governance in Toronto by asserting an enormous degree of power in the mediation and exercise of local power. This section builds on the early information in this chapter by setting out the power of the ward in law and practice.

Wards are empowered by their election of councillors who serve as a Member of Council, each of which has the power of a single vote on City Council. In law, wards act as demarcated boundaries and as a unit of representation for city-wide decision-making, whereby the councillor represents the interests of his or her residents as located within particular spatial boundaries.<sup>545</sup> In practice, wards serve as a crucial foundation for local governance in Toronto, exercise a considerable degree of power. The overwhelming sentiment in my interviews from municipal staff members and councillors alike was the extent to which councillors hold local decision-making power.

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<sup>543</sup> Zumbansen, *supra* note 74 at 326.

<sup>544</sup> Governing Toronto Advisory Panel, *supra* note 508 at 11.

<sup>545</sup> *Ibid.* at 11.

Wards have been described as “fiefdoms,” with one senior City of Toronto staff member affirming this point by stating, “Oh yeah, absolutely, it’s characteristic of our system, for sure.”<sup>546</sup> Staff acknowledged the advantages of this model, namely that “there actually is someone to go to and somebody who can convey a geographic area’s interest. It’s not a bad thing,” however, “the ward is not the government.”<sup>547</sup> Another senior staff member told me, “so much does depend on the councillor and they provide the leadership on a lot of projects and issues at a local level.”<sup>548</sup> This contact later characterized councillors as, “The ward boss.”<sup>549</sup> Another staff member said, regarding the power exerted by councillors, “This is supposed to be a democracy? No, it’s a fiefdom.”<sup>550</sup> This power may be even handed down to the next generation. As one person said, referring to the three councillors who are the children of previously-elected Members of Council, “Look what has happened in terms of the children of ward councillors getting into power. How many sons of former politicians are coming into power? It’s a complete fiefdom.”<sup>551</sup>

Councillors agree with this characterization, with some questioning the extent to which such power was appropriate. In affirming the ward councillor as having considerable power, one councillor told me that it is, on the one hand, “democracy with all its foibles.”<sup>552</sup> This same councillor said, “The doorway to make something a bigger deal is the councillor – “inevitably, you’ve got to go through that doorway,” and “There’s a lot of power with the local councillor in the City of Toronto, especially around planning matters.”<sup>553</sup> Later, this same councillor said, “One of the consequences of having a relatively weak civil society in certain large geographies in the city is, is that the guys

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<sup>546</sup> Anonymous interview with City of Toronto staff member #1, City Clerk’s Office, Toronto, Ontario, Canada (18 December 2015) – author conducted.

<sup>547</sup> Anonymous interview with City of Toronto staff member #2, Shelter, Support and Housing Administration Division Toronto, Ontario, Canada (2 February 2016) – author conducted.

<sup>548</sup> Anonymous interview with City of Toronto staff member #5, City Planning, Toronto, Ontario, Canada (18 May 2016) – author conducted.

<sup>549</sup> *Ibid.*

<sup>550</sup> Anonymous interview with City of Toronto staff member #3, City Manager’s Office, Toronto, Ontario, Canada (17 February 2016) – author conducted.

<sup>551</sup> *Ibid.*

<sup>552</sup> Anonymous interview with City of Toronto councillor #3, Toronto, Ontario, Canada (18 July 2016) – author conducted.

<sup>553</sup> *Ibid.*

who get elected can get away with murder”<sup>554</sup> One councillor went even farther, saying that the authority held over spending from development monies meant that, “I had way too much power,” and concluding, “it’s a terrible thing.”<sup>555</sup>

The interviewees noted some of the drawbacks of the power held by councillors. First, it limits the extent to which changes to governance are possible. As one staff member told me, “[Councillors] want to be the ones who are the white knights who are the fixers ... maybe that’s one of the limitations of having a ward system”<sup>556</sup> As a result, individual councillors “are very resistant to giving up control of individual, on-the-ground decisions.”<sup>557</sup> One concrete example of limits to change was the inability to create neighbourhood committees following amalgamation: “[T]he politicians would not allow that to happen, because they want to be ward bosses.”<sup>558</sup> This characteristic of local governance is important as there tends not to be a lot of councillor turnover. For example, in the 2014 municipal election, all but one of the 37 councillors who ran for office again were re-elected.<sup>559</sup> As one person I interviewed said, “There has to be some shift, and legislative shift, in terms of the power of the incumbent. The power of incumbency is just too much, it does not allow for new blood in it.”<sup>560</sup>

A second issue is the extent to which “city-wide” issues can be adequately addressed. As one staff member told me, “The two-tier [metropolitan government] did give you the ability for different people to look at things differently. Either from a sort of city-wide, or region-wide, perspective, and from a local perspective. Whereas now, politically, [councillors] have to do both and it’s hard for them to do both, it really is, it’s almost

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<sup>554</sup> Anonymous interview with City of Toronto councillor #3, Toronto, Ontario, Canada (18 July 2016) – author conducted.

<sup>555</sup> Anonymous interview with City of Toronto councillor #2, Toronto, Ontario, Canada (7 July 2016) – author conducted.

<sup>556</sup> Anonymous interview with City of Toronto staff member #2, Shelter, Support and Housing Administration Division Toronto, Ontario, Canada (2 February 2016) – author conducted.

<sup>557</sup> *Ibid.*

<sup>558</sup> *Ibid.*

<sup>559</sup> McGregor, R. Michael, Aaron A. Moore and Laura B. Stephenson, “Incumbency and the Importance of Campaigns” in *The Toronto Election Study* (2015).

<sup>560</sup> Anonymous interview with City of Toronto staff member #3, City Manager’s Office, Toronto, Ontario, Canada (17 February 2016) – author conducted.

impossible”<sup>561</sup> This means a focus on localized effects rather than the implications from the city-wide level, “We have too many people on council who are very quick to take positions [on city-wide issues], without taking any responsibility for the consequences of those positions.”<sup>562</sup> Put another way, councillors “have a tendency to look at the issues in a very isolated way; they don’t connect it to the larger whole.”<sup>563</sup>

A third issue concerns the extent to which councillors serve as “brokers” of other governance bodies, both formal and informal. Regarding the councillor role in decisions regarding his or her ward, councillors will not trump other councillors’ decisions at community council: “for sure the councillor wins.”<sup>564</sup> One staff member told me that the relationship between the city and residents is “brokered through the councillor,”<sup>565</sup> which can also mean that councillors pick and choose how they engage with the community.<sup>566</sup> In some cases, “councillors have been in their wards for so long and they’ve been in power for so long that they’ve created pockets of interest groups.”<sup>567</sup> This means that some councillors will help to form some interest groups like business improvement areas and neighbourhood associations, canvassed in the next section, “because it makes our lives easier. Because if I have to consult ... on a change in traffic, or in the on-street parking, I’d have to go and consult every single business. Whereas with the BIA, the BIA does it. And [neighbourhood associations] are the same thing.”<sup>568</sup> The councillor role in creating them is crucial: “if the councillor’s offices don’t see value in it and don’t put the time in then they’re never going to happen.”<sup>569</sup> The brokered relationships between the

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<sup>561</sup> Anonymous interview with City of Toronto staff member #4, City Manager’s Office, Toronto, Ontario, Canada (7 May 2016) – author conducted.

<sup>562</sup> Anonymous interview with City of Toronto staff member #2, Shelter, Support and Housing Administration Division Toronto, Ontario, Canada (2 February 2016) – author conducted.

<sup>563</sup> Anonymous interview with City of Toronto staff member #3, City Manager’s Office, Toronto, Ontario, Canada (17 February 2016) – author conducted.

<sup>564</sup> Anonymous interview with City of Toronto staff member #1, City Clerk’s Office, Toronto, Ontario, Canada (18 December 2015) – author conducted.

<sup>565</sup> *Ibid.*

<sup>566</sup> Anonymous interview with City of Toronto councillor #4, Toronto, Ontario, Canada (5 August 2016) – author conducted.

<sup>567</sup> Anonymous interview with City of Toronto staff member #3, City Manager’s Office, Toronto, Ontario, Canada (17 February 2016) – author conducted.

<sup>568</sup> Anonymous interview with City of Toronto councillor #1, Toronto, Ontario, Canada (5 July 2016) – author conducted.

<sup>569</sup> *Ibid.*

councillors and residents, “depends on their own style and electoral prospects.”<sup>570</sup>

In short, the amalgamation of the City of Toronto led to what was “regional” to become “city-wide” without the introduction of a “local” level of governance. When the province amalgamated seven municipalities to form the current-day City of Toronto, it included in the legislation a requirement to consider the introduction of “community councils.” As detailed in this section, their roles, boundaries, and mandates have since been reviewed several times. Despite provisions that enable them to have a more participatory, inclusive role in local decision-making, community councils remain disempowered local planning committees with few delegated powers.

Ward councillors thus serve a leadership role in formal determinations of local governance, with community councils acting under a limited mandate rather than as spaces for inclusive, participatory governance. This reinforces the notion that local governance is comprised of formal and informal spaces that, as Santos asserts, normative orders seek exclusivity and control within their legal territory.<sup>571</sup> As noted in Chapter 1, legal spaces refers to notions of space that have been given formal legal meaning, as well as an articulation of alternative norms, rules, customs and practices within these same spaces. While individual understandings of legal space can differ, such spaces are replete with a complex range of interconnecting institutions and entities that have been given social meaning, which in turn affect individual understandings of space.<sup>572</sup> We now turn to a study of other competing bodies – BIAs and neighbourhood associations – to better understand local governance in Toronto.

## **2. BIAs and Neighbourhood Associations as competing spaces of local governance**

The previous sections outlined the City of Toronto’s local decision-making as it pertains to formal city bodies. It identified the ward as the locus of local representation and community councils as geographically-based committees that largely conform to

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<sup>570</sup> *Ibid.*

<sup>571</sup> Santos, *supra* note 85 at 458.

<sup>572</sup> *Ibid.* at 31-32.



Toronto's pre-amalgamated boundaries. While wards and community councils are the state bodies that purport to represent groups of Toronto's residents based on geographic areas, BIAs and neighbourhood associations purport to be representative of particular members within their boundaries based on this geographic affiliation and claim that they are inclusive of and beneficial for their residential populations broadly speaking. They exist unevenly across the city and work together with ward councillors as pivotal institutions in defining local boundaries and influencing decision-making. My defence of BIAs and NAs to the exclusion of other local bodies in Toronto was outlined in Chapter 2. I also set out details of the primary research that I conducted on the organization and geography of these bodies in Toronto.

A core goal of this dissertation is to understand the role of state and non-state actors within Toronto's local governance model and how they inform the local legal spaces of the city. Their presence helps to reveal what other interests are excluded or included in decision-making. This dissertation advances the argument that BIAs and neighbourhood associations affect Toronto's local governance model, both as non-state actors involved in ward-based decision-making and as bodies that unevenly map within the city, leading to differences in representation.

As a study rooted in legal pluralism, this dissertation suggests that the governance of local legal spaces is not merely about the bodies that are created by municipal governments, nor are these bodies fixed in time or geography. Other studies have similarly concluded that non-state bodies affect local decision-making processes, in particular through their emphasis on political participation within localized areas of urban spaces. In their seminal study on neighborhood associations, Berry, Portney and Thomson argue that the "key to making America more participatory is by making political participation more meaningful in the context of the communities people live in" by looking at the depth and breadth of democratic bodies.<sup>573</sup> Thomson articulates that small-scale decision-making bodies are fundamental to civic participation, but that there must be a link between these bodies and the public and these groups must have a link to

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<sup>573</sup> Berry, Portney & Thomson, *supra* note 157 at 4 and 54-55.

political decision-making.<sup>574</sup> Put another way, these small-scale bodies are “brokers” between the public and democratic institutions. This section asks how BIAs and neighbourhood associations assert their own boundaries and roles in governance in smaller-than-city spaces in the city. Based on their legal structures, degree of formal connection to city councillors and staff, and geographies, are BIAs and neighbourhood associations “brokers” meant to represent local interests? Do they govern exclusively the private interests of their constituents, or are they part of the larger fabric of public governance?<sup>575</sup>

BIAs and neighbourhood associations each play a role in local governance in Toronto. Each use geographically demarcated boundaries to determine and represent their members. Neighbourhood associations serve largely to shape planning decisions, while BIAs actively aim to change the public realm. Both types of organizations may carry out roles typically reserved for municipal governments, namely graffiti removal, street beautification and consultations with residents. At times, the functions of these bodies overlap, with some neighbourhood associations purporting to represent business interests and BIAs permitting non-business owning residents to sit on their boards.<sup>576</sup>

There are also important distinctions between these two forms of bodies. BIAs have institutional support from the City of Toronto. This support includes collecting information on the city’s 81 BIAs and storing it in a publicly accessible website; providing training and support to their organizations in regard to their governance; collecting and remitting a levy which enables BIAs to hire staff and consultants, hold events in their neighbourhoods, and promote local business; and councillor membership on every board. From a legal perspective, BIAs are bound by the requirements of

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<sup>574</sup> Ken Thomson, *From Neighborhood to Nation: The Democratic Foundations of Civil Society* (Hanover: Tufts University Press, 2001) at 5.

<sup>575</sup> Lorlene Hoyt & Devika Gopal-Agge, "The Business Improvement District Model: A Balanced Review of Contemporary Debates" (2007) 1:4 *Geography Compass* 946 at 955.

<sup>576</sup> Note also that residents’ associations and BIAs have sometimes clashed over the management of the city centre, with residents wanting to have some voting power on the BIA Board. In some cases BIAs have asked residents in the area to contribute towards BIA costs on the grounds that residents are benefiting from enhanced security provision and landscaping (Mark Steel, & M. SYMES, *The Privatisation of Public Space? The American Experience of Business Improvement Districts and their Relationship to Local Governance* (2005) 31:3 *Local Government Studies*, 321 – 334 at 326).

Toronto's procedural bylaw and must adhere to strict accountability and representation requirements.

In contrast, neighbourhood associations do not have institutional support beyond the assistance that local councillors and planning staff may provide. Their budgets rely on donations and membership fees and are typically limited.<sup>577</sup> As a result, there are significant differences in the mandates, memberships and practices of neighbourhood associations across the city, and an absence of clear information on elections and other internal practices that could shed light on their adherence to principles of democracy and meaningful representation, and their commitment to accountability practices. The only legal requirements to which neighbourhood associations must adhere are those contained in legislation where such bodies are incorporated.<sup>578</sup> Such legislation, however, does not concern any responsibilities relating to the associations viz the public, including accountability.<sup>579</sup> To staff, however, there may not be significant differences between BIAs and neighbourhood associations. When asked the difference, a senior staff planner told me, "they're stakeholder groups, I wouldn't weigh one over the other necessarily. I'm very interested in making sure that we hear from them both."<sup>580</sup>

To understand the role that BIAs and neighbourhood associations play in local governance, I first set out the legal status of and data on BIAs and NAs. I drew from provincial legislation, city bylaws and policies, and decisions of the City of Toronto's Committees of Adjustment and the OMB, as well as COTA's key provisions. I also set out the findings of primary research that I conducted aimed at understanding the range of BIAs and neighbourhood associations in Toronto. Next, I draw on the academic literature referenced in Chapter 1 to analyze the role and significance of BIAs and neighbourhood associations in conceptualizing local governance in Toronto.

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<sup>577</sup> For example, FoNTRA's annual budget is based on a levy from its neighbourhood association members.

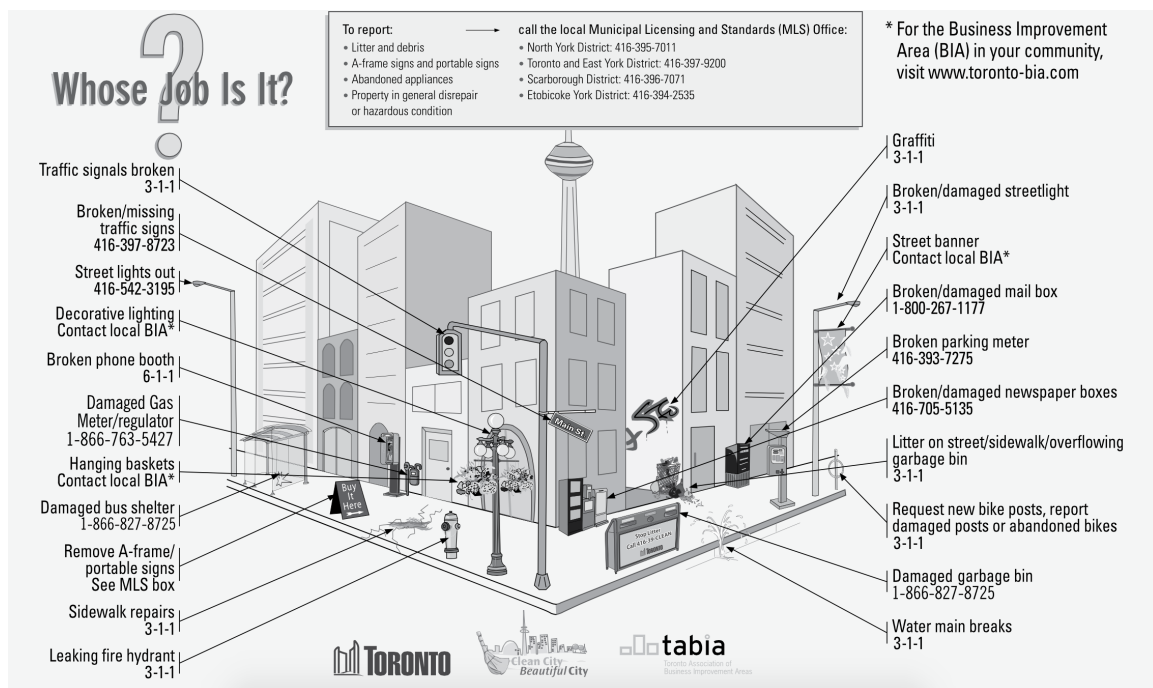
<sup>578</sup> See e.g. *Corporations Act*, R.S.O. 1990, c. C.38.

<sup>579</sup> *Ibid.*

<sup>580</sup> Anonymous interview with City of Toronto staff member #5, City Planning, Toronto, Ontario, Canada (18 May 2016) – author conducted.

## a) Business Improvement Areas

The Waterfront BIA created the “Whose Job Is it?” poster reproduced in Illustration 3.4.<sup>581</sup> Alongside City departments, BIAs play a role in maintaining the public realm. The poster suggests that BIAs see themselves as reflecting more than just the interests of their direct stakeholders (local businesses and property owners), but the public as well, in maintaining city streets and the flourishing of the built environment. This poster encapsulates the questions of the role of BIAs in local governance: where are they located, who do they represent, and how does their power and authority differ across the city?



**Illustration 3.4: “Whose Job is it?”**

There is no single, uniform definition of BIAs.<sup>582</sup> Other terms have been used to describe the construct, including “Business Improvement District” or BID, which is often used in

<sup>581</sup> City of Toronto, “Clean City, Beautiful City”, online: [http://www.waterfrontbia.com/pdf/Who\\_Does\\_What.pdf](http://www.waterfrontbia.com/pdf/Who_Does_What.pdf).

<sup>582</sup> As this dissertation focuses on this organizational form in the Toronto context, focusing in particular on their legal structure and implications, I will use the term “Business Improvement Area” and the acronym,

the United States and the United Kingdom, and “City Improvement District,” the name adopted in South Africa.<sup>583</sup>

Toronto defines a BIA as an association comprised of commercial and industrial property owners and business tenants within a specified geographic area district, which is officially approved by the City to stimulate business and improve economic vitality.<sup>584</sup> I prefer Gopal-Agge’s definition of BIAs, which are “privately directed and publicly sanctioned organizations that supplement public services within geographically defined boundaries by generating multiyear revenue through a compulsory assessment on local property owners and/or businesses.”<sup>585</sup> Hoyt and Gopal-Agge’s definition encompasses three crucial features that are not necessarily made clear under Toronto’s meaning: first, the BIA is meant to provide a specific set of powers to business and property owners in order to achieve their mandate, most notably an organizational structure and direct access to the local councillors who serve on their boards. Second, BIAs are funded through a required levy against local property owners or businesses, which functions as a form of taxation. Local businesses cannot back out of paying even if they voted against forming a BIA or disagree with their activities.<sup>586</sup> Third, the definition acknowledges that BIAs supplement public services offered by the City, which more broadly defines their entrenched governance role.

Toronto was the first city in the world to create a BIA, introduced in Bloor West Village in 1970. The BIA advocated in favour of an independent, privately managed body that would have the power to impose an additional tax on all commercial property owners in the area to be directed to local revitalization initiatives.<sup>587</sup> Local business leaders believed

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BIA, when referring to the Toronto context specifically. However, I use the term, “Business Improvement District” or BID where used in research.

<sup>583</sup> Elisabeth Peyroux, Robert Pütz & Georg Glasze, “Business Improvement Districts (BIDs): The internationalization and contextualization of a ‘travelling concept’” (2012) 19:2 *European Urban and Regional Studies* 111 at 118.

<sup>584</sup> City of Toronto, “Business Improvement Areas (BIAs) – Board Governance Structure” (2016), online: <<http://bit.ly/1QORKKe>>. See also Lorlene Hoyt & Devika Gopal-Agge, “The Business Improvement District Model: A Balanced Review of Contemporary Debates” (2007) 1:4 *Geography Compass* 946.

<sup>585</sup> Gerald Frug, “The Seductions of Form” (2010) 3 *Drexel L. Rev.* 11.

<sup>586</sup> *Ibid.*

<sup>587</sup> Hoyt & Gopal-Agge, *supra* note 575 at 947.

that a stable and effective funding source, drawn from member businesses, would help with beautification and improvement, promote urban business areas, and ultimately allow them to compete with suburban malls, which were increasingly replacing traditional business areas in localized areas.<sup>588</sup>

The Province of Ontario passed the enabling legislation as an amendment to the then-Municipal Act, authorizing the City of Toronto to pass a bylaw to establish BIAs.<sup>589</sup> Through the provincial legislation, Toronto and other municipalities were legally permitted to require the payment of a levy by the businesses in the area, with the levy then directed to the BIA as a steady source of revenue. The organizational form has not changed substantially in the 45 years since it was introduced.

The following details are meant to illustrate the extent to which they are regulated in Toronto. Section 8(2) of COTA broadly enables the City to establish BIAs as they concern the “Economic, social and environmental well-being of the City.” Under COTA, BIAs are defined as “local boards,” which has been affirmed under Chapter 19 of the Toronto Municipal Code and in case law.<sup>590</sup> Their purposes are to oversee the improvement, beautification, and maintenance of municipally-owned land, buildings and structures in the BIA beyond City standard levels; streetscaping; promotion; graffiti removal services; safety and security measures; strategic planning; and advocating on behalf of the interests of the BIA.<sup>591</sup> The establishment of BIAs is set out in detail in the Procedural Bylaw and their funding is collected through the city’s formal levying authorities, coordinated through an office dedicated to supporting their operations.

BIAs are subject to strict requirements under COTA, and are highly regulated, but empowered local bodies. To one staff member, they are “self-funding, defiant

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<sup>588</sup> *Pivot Legal Society v. Downtown Vancouver Business Improvement Association and another* (No. 6), 2012 BCHRT 23 (CanLII), online: <<http://canlii.ca/t/fq493>> retrieved on 2016-03-03 at para 26.

<sup>589</sup> City of Toronto By-law no. 170-70.

<sup>590</sup> COTA, *supra* note 11 at sections 189-190. Toronto (City) (Re), 2009 CanLII 45432 (ON IPC), <<http://canlii.ca/t/25fhp>> retrieved on 2016-01-06

<sup>591</sup> Toronto Municipal Code Chapter 19-3.

organizations that operate in neighbourhoods” that “aren’t very democratic.”<sup>592</sup> A councillor called them, a “little tiny city.”<sup>593</sup> BIAs must pass a procedure bylaw for governing the calling, place, and proceedings of meetings.<sup>594</sup> All meetings must be open to the public unless the subject matter of the meeting falls within one of the enumerated exceptions.<sup>595</sup> Whether or not the meeting is closed, the BIA must record all resolutions, decisions and other proceedings at a meeting of the body.<sup>596</sup> The city may appoint an investigator to review whether a BIA has properly complied with COTA’s requirements where it opts to close all or part of a meeting to the public.<sup>597</sup> BIAs must also retain and preserve their records in a secure and accessible manner.<sup>598</sup>

The Municipal Code sets out further procedures guiding the establishment and operation of BIAs and are detailed here to illustrate the extent to which BIAs are municipally regulated.<sup>599</sup> Many steps are required for City Council to pass a by-law designating a BIA.<sup>600</sup> The first step is for local business and property owners to form a steering committee that, together with city staff, defines the boundaries of the BIA area and creates a communication strategy for businesses in the area.<sup>601</sup> Next, city staff conducts a formal public consultation meeting with all commercial and industrial property owners.<sup>602</sup> If there is sufficient interest, the General Manager then recommends that Council enacts a by-law to establish a new BIA.<sup>603</sup> “Sufficient interest” is determined by a secret ballot at the formal public consultation meeting, whereby 50 percent plus one of

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<sup>592</sup> Anonymous interview with City of Toronto staff member #1, City Clerk’s Office, Toronto, Ontario, Canada (18 December 2015) – author conducted.

<sup>593</sup> Anonymous interview with City of Toronto councillor #1, Toronto, Ontario, Canada (5 July 2016) – author conducted.

<sup>594</sup> Toronto Municipal Code Chapter, s. 189(2).

<sup>595</sup> *Ibid* at s. 190(1).

<sup>596</sup> *Ibid* at s 190(8).

<sup>597</sup> *Ibid* at s 190.2(1).

<sup>598</sup> *Ibid* at s 200(1).

<sup>599</sup> Toronto Municipal Code, "Chapter 19, Business Improvement Areas" (2016), online: <[http://www.toronto.ca/legdocs/municode/1184\\_019.pdf](http://www.toronto.ca/legdocs/municode/1184_019.pdf)>.

<sup>600</sup> City of Toronto, “City of Toronto Procedural Bylaw”, section 19-4. These provisions also apply to the expansion of a BIA if the expansion is not considered to be minor. A minor expansion is defined in section 19-7(A) as a change that represents an increase of total commercial and industrial property assessment value of less than ten percent of the existing assessment value of properties within the existing BIA boundary.

<sup>601</sup> *Ibid.* at 19-4 (A).

<sup>602</sup> *Ibid* at s 19-4 (D).

<sup>603</sup> *Ibid* at s 19-4 (E).

those potential BIA members in attendance must agree to proceed with the creation of the BIA.<sup>604</sup> The next step is to proceed to the polling of BIA members. A minimum of 30% - or 100 - of businesses and commercial or industrial property owners must reply. And, of the parties that reply, at least 50% must agree to the creation of the BIA.<sup>605</sup>

Once a BIA is established by bylaw, a Board of Management for the BIA is created.<sup>606</sup> The Board of Management is considered to be “a City board and is an agent of the City.”<sup>607</sup> The directors of a board are appointed under delegated authority by the community council within whose geographic area the BIA is located.<sup>608</sup> The number of directors is fixed by bylaw<sup>609</sup> and, as an exception to the City's Public Appointments Policy, directors are not required to be residents of the City of Toronto.<sup>610</sup>

Each director and the board must operate in compliance with all applicable law and City policies including, but not limited to, COTA, the Municipal Freedom of Information and Protection of Privacy Act, the Municipal Conflict of Interest Act, and Public Appointments Policy.<sup>611</sup> This means that BIAs have significant limitations in the exercise of their authority, including a requirement that it does not borrow or lend money, pass a resolution or take a position contrary to any Council-approved policy or decision, support political candidates, or participate in OMB or committee of adjustment hearings unless members agree.<sup>612</sup>

Once a BIA is approved by City Council, every business within its boundaries

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<sup>604</sup> *Ibid* at s 19-4 (F). If the potential business improvement area members decide not to proceed with the notification process set out in Subsection F, another formal public consultation meeting relating to any part of the same area shall not be held for at least one year from the date of the formal public consultation meeting at which the decision was made (§ 19-4 (G)).

<sup>605</sup> *Ibid* at s 19-5 (H). A repeal of a BIA bylaw is substantially more difficult. If a BIA is to be repealed, the number of accepted ballots must be the lesser of 66% of the notices mailed and 200 ballots. And, of the parties that reply, 40% or more may not respond in the negative (§ 19-9(I)).

<sup>606</sup> *Ibid* at s 19-13(A).

<sup>607</sup> *Ibid* at s 19-13(B).

<sup>608</sup> *Ibid* at s 19-15(A).

<sup>609</sup> *Ibid* at s 19-15(G).

<sup>610</sup> *Ibid* at s 19-15(E).

<sup>611</sup> *Ibid* at s 19-15(K).

<sup>612</sup> *Ibid* at s 19-14. Despite these limits, courts have acknowledged the right of BIAs to challenge Council decisions if they negatively affect the BIA. See e.g. *Ontario Inc. v. City of Toronto*, 2013 ONSC 5697 28 (CanLII).



automatically becomes a member. Once designated, any and all businesses within the BIA boundary area are required to pay BIA levies.<sup>613</sup> The City collects an annual levy from local businesses and forwards it directly to the BIA, which becomes its budget for the year.<sup>614</sup> All members of the BIA are legally obligated to pay the municipality their portion of the levy, which is based on the assessment values of the individual and neighbourhood properties. The levies are collected by the City through the property tax billing process and remitted in full to the BIA. No remuneration is paid to members of the Boards of Management.<sup>615</sup> BIAs may also raise funds and eligible for City of Toronto grants. Lower courts have affirmed the legality of municipalities establishing a BIA and imposing a BIA levy that all member businesses must pay.<sup>616</sup>

Appendix B sets out data regarding Toronto's 81 BIAs. The budget amounts under the authority of BIAs are considerable. Collectively, BIAs levy approximately 35 million per year for commercial area improvements, marketing and promotion, and other economic development initiatives.<sup>617</sup> There is wide variation in the amounts of levies in individual BIAs across the city, from a few thousand dollars to \$2,508,760 for the Bloor-Yorkville BIA.<sup>618</sup> Some BIAs operate with volunteers, while other BIAs require paid staff to run day-to-day operations. The size of the BIA budget is largely a function of the assessment base in the area; BIAs with large assessment bases are often able to levy more funds from its members at the same tax rate as a smaller BIA with smaller assessment base. In practice, BIAs receive considerably more from their member businesses in the Toronto-East York community council area than BIAs receive from their members in other parts of the city.<sup>619</sup>

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<sup>613</sup> *Ibid* at 795.

<sup>614</sup> COTA, *supra* note 11 at s. 329(12).

<sup>615</sup> City of Toronto, "Business Improvement Areas (BIAs) – Board Governance Structure, online: <<http://www1.toronto.ca/wps/portal/contentonly?vgnextoid=0e53811db1704410VgnVCM10000071d60f89RCRD>>.

<sup>616</sup> *City of Brandon v. Artistic Tattoo*, 2003 MBQB 133 (CanLII).

<sup>617</sup> *Ibid*.

<sup>618</sup> City Council, Business Improvement Areas (BIAs) – 2015 Operating Budgets - Report No. 1 ED1.5 (December 14, 2014) and City Council, Business Improvement Areas (BIAs) - 2015 Operating Budgets - Report No. 2 ED2.5 (March 31, 2015), with additional BIA budgets to be approved in supplementary reports.

<sup>619</sup> The average amounts received by BIAs from member businesses across the city are: Toronto-East York (\$1,585.03), Scarborough (\$936.19), North York (\$863.44), and Etobicoke (\$897.83).

In practice, there is wide variation in the budgetary power of BIAs, largely along geographic lines. Most represent under 500 businesses and have budgets of under \$400,000 per year. In respect of the 2016 budgets, most or all of Etobicoke, North York and Scarborough's BIAs have budgets under \$400,000. The vast majority of Etobicoke BIA budgets are under \$200,000. In contrast, almost all of the BIAs with budgets over \$700,000 are located in the Toronto-East York community council area, with three of these BIAs having annual budgets over \$2,000,000.<sup>620</sup> The largest BIAs are located in the Toronto-East York Community Council area and have budgets of over \$1,500,000. This is significant because it means that not all sections of the city have these bodies taking part in governance or municipal service delivery, nor are all BIAs playing the same role in local governance based on their size and locations.

The City's bureaucratic structure includes oversight over and partnerships with BIAs, housed within the same office. The City of Toronto has a BIA Office in the Economic Development & Culture Division, which provides professional operational and administrative support to BIAs to ensure compliance with the Municipal Code and other relevant City policies.<sup>621</sup> The BIA Office oversees partnership projects with BIAs, including a BIA capital cost-share program, which includes approximately 100 streetscape improvement projects per year with an annual value of approximately \$5 million. These revitalization and street beautification initiatives are implemented at half the cost to the City through the 50% cost-share formula with BIAs. The BIA Office also administers the Commercial Façade Improvement Program, where the City provides approximately \$500,000 per year in grants to commercial property owners within BIAs across the City to upgrade the physical appearance of their buildings.

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<sup>620</sup> The three BIAs in the Toronto-East York area with budgets over \$2,000,000 are: Toronto Entertainment District (\$2,079,199), Downtown Yonge (\$2,583,899), and Bloor Yorkville (\$3,019,696). Emery Village, located in Etobicoke, has a budget of \$2,500,034.

<sup>621</sup> City of Toronto, Business Improvement Areas, online:  
<<http://www1.toronto.ca/wps/portal/contentonly?vgnextoid=93782a481057b410VgnVCM10000071d60f89RCRD&vgnextchannel=3426ea64460b3410VgnVCM10000071d60f89RCRD>>.

In contrast to neighbourhood associations, BIAs have strong connections to city government, both through the involvement of the local councillor in setting up and serving on BIA boards, and within the administrative structure of the city. Ward councillors may be deeply involved in setting up a BIA, with the rationale that having the organization allows the councillor to work more effectively when it comes time for consultation. That said, helping to set up BIAs may have “a lot to do with the councillor’s own priority,” as one councillor told me. “If the priorities aren’t organizing businesses, and maybe that they’re just not aware of how important a vehicle it can be, or just not have the experience of how you go about a project like this, going from point a to point b from a community organizing standpoint.” The desire to set up BIAs may also speak to the style of representation of particular councillors. One councillor helps to create BIAs within their ward to “strengthen the voice of our neighborhoods, to make them a player and active in the organized, political structure, rather than just be ambivalent and not know what’s going on.”<sup>622</sup>

## **b) Neighbourhood associations**

Neighbourhood associations are defined as, “a civic organization oriented towards maintaining or improving the quality of life in a geographically defined residential area.”<sup>623</sup> They are also known by such terms as “resident,” “ratepayer” or “homeowner” associations or organizations. In this section, the term “neighbourhood association” is broadly used to include all such organizations. One Toronto councillor described them this way:

[T]here is no sort of legal, or political structure around what [neighbourhood associations] are. And so you have different models, there’s the ratepayer association, the resident’s association, and the community association. Ratepayer being property owners, or residential property owners. Resident being residents, so tenants are included. And community association, which from time to time will take

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<sup>622</sup> Anonymous interview with City of Toronto councillor #1, Toronto, Ontario, Canada (5 July 2016) – author conducted.

<sup>623</sup> Logan & Rabrenovic, *supra* note 139 at 68.

in, say, a representative of a hospital that's in the neighborhood, or some businesses. So there are no clear boundaries in terms of who is allowed in and who isn't.<sup>624</sup>

Toronto's South Rosedale Residents Association (SRRA) is one of Canada's oldest ratepayer groups.<sup>625</sup> It was incorporated in 1931 to represent the residents of South Rosedale, an affluent neighbourhood. Some neighbourhood associations have been enormously successful in shifting political debates in the city, the most famous of which are the lobby efforts of the Annex Residents' Association (ARA), which resulted in the defeat of the proposed Spadina Expressway. The legacy of this involvement is the view that neighbourhood associations "can be a tremendous force for improvement, and for creativity," according to a staff member in the city's planning department interviewed for this project.<sup>626</sup>

Very little is documented regarding the sizes, geographical boundaries, objectives and sources of revenue of the city's neighbourhood associations. One councillor affirmed that there is, "no sort of legal or political structure around what those things are."<sup>627</sup> Toronto has hundreds of neighbourhood associations, which differ dramatically in their size, structure, formality, history and involvement in local governance. Neighbourhood associations are not formally embedded within the City's bureaucratic structure and, therefore, data collection is difficult, as neighbourhood associations come and go over time and the organizations generally have limited resources. However, there is no official list of neighbourhood associations. Unlike New York's community committees<sup>628</sup> or Los

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<sup>624</sup> Anonymous interview with City of Toronto councillor #3, Toronto, Ontario, Canada (18 July 2016) – author conducted.

<sup>625</sup> South Rosedale Residents, "about us" (2016), online: <<http://southrosedale.org/about-us/>>. South Rosedale Residents Association (SRRA) is one of Canada's oldest ratepayer groups and certainly one of the most active and influential.

<sup>626</sup> Rachel Mendleson, "Big Ideas: Why residents' associations are making a comeback", The Toronto Star (2 September 2014), online: <[http://www.thestar.com/news/gta/2014/09/02/big\\_ideas\\_why\\_residents\\_associations\\_are\\_making\\_a\\_comeback.html](http://www.thestar.com/news/gta/2014/09/02/big_ideas_why_residents_associations_are_making_a_comeback.html)>.

<sup>627</sup> Anonymous interview with City of Toronto councillor #3, Toronto, Ontario, Canada (18 July 2016) – author conducted.

<sup>628</sup> City of New York. "About Community Boards" (17 January 2017), online: <http://www.nyc.gov/html/cau/html/cb/about.shtml> (New York has five borough presidents, one for each of the amalgamated boroughs. There are 59 community boards across the city, each with 50 members appointed by borough presidents and based on nominations. and are comprised of civic leaders who reside,

Angeles' neighbourhood councils,<sup>629</sup> there are no departments within the City of Toronto tasked with assisting or otherwise keeping track of neighbourhood associations. The only formal interface with the city is the retention of an outdated consultation list. In Toronto, the only way to understand or contact the city's neighbourhood associations was to engage in a scavenger hunt, identifying how many there are, their geographic placement, and the roles they play in local government. This information was necessary in order to understand what role they play in local governance. There is considerable contrast with the accessibility of neighbourhood association and City of Toronto's support of the 81 BIAs, which are listed with contact information, offered training and given other forms of institutional support.

To understand more about neighbourhood associations, including their location within the city, I decided to create a detailed list of each organization. I took the following steps to do so. First, I started with a map created by a David Topping, a city resident<sup>630</sup> who created the map because, "I moved to a new neighbourhood and couldn't figure out where I could go if I wanted to get more involved. I figured other people might benefit from the same information for their neighbourhoods. And so it went. That was four years ago and I'm still updating this damned map every month or so."<sup>631</sup> Asked how he updates the information, Topping remarked, "The data comes from each organization's website, for the most part, if they have one—or from members if they don't have a website. Some organizations I knew about and found information about myself; others came from people who saw the map and wanted to help make it as up to date and accurate as it could be."<sup>632</sup> I used Topping's map as a starting point for my data collection.

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work or have an interest in the community. Anyone may attend community board meetings. Community boards have minimal budgets, and play an advocacy role on local and city-wide issues).

<sup>629</sup> City of Los Angeles, "Neighbourhood Councils Empower LA" (16 May 2017), online: <<http://empowerla.org>> (The City of Los Angeles funds 96 neighbourhood councils, whose members are elected by residents. Councils must establish bylaws and go through the certification process with the Board of Neighborhood Commissioners and the Department of Neighborhood Empowerment before they can operate. The public sets the boundaries for the local bodies and serves an advocacy role by meeting with the Mayor, and receiving advance notice of issues of concern to residents).

<sup>630</sup> David Topping, "Toronto Residents' Associations & Neighbourhood Groups Map" (2015), online: <<http://davidtopping.tumblr.com/torontoresidents>>.

<sup>631</sup> David Topping, Correspondence (March 31, 2016).

<sup>632</sup> *Ibid.*

After comparing Topping's map to lists of neighbourhood associations elsewhere, I prepared a "master list" of Toronto's neighbourhood associations.<sup>633</sup> I took the master list to create a chart with each of Toronto's neighbourhood association, including columns for the association name, date of establishment, its geographic boundaries, eligibility for membership, whether the association charged a membership fee, its mandate, its community council and ward locations, and a section for any addition information. I reviewed the neighbourhood association websites, where available. Where the information was incomplete or unavailable, I conducted extensive online searches for contact information for the applicable neighbourhood associations. In many cases, I was unable to locate the information needed to complete the chart.

Based on this research, 184 neighbourhood associations in Toronto, scattered throughout the city, are listed in Appendix C to this dissertation. I was able to find comprehensive information on 100 of these organizations. As set out in Appendix D, I recorded their year of creation, their locations within Toronto, whether they collect dues, who may be a member, whether they were incorporated, and the purposes of the organization. These categories relate to the overall purposes of this chapter of the dissertation, which seeks to understand how organizations exercise and assert themselves within the notion of Moore's semiautonomous social fields with different strengths and powers, and which are more or less bound by the formal rules within localized areas of the city.<sup>634</sup> To what extent are neighbourhood associations self-contained organizations with power to make decisions, versus connected to or reliant on state-based decision-making?

Notwithstanding thorough online searches for websites and active contact information, such as the email account of a member of the association. In some cases, websites and

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<sup>633</sup> Federation of North Toronto Residents Associations, "Member Associations" (2016) FONTRA, online: <<http://fontra.com/member-associations/>>; Confederation of Resident & Ratepayer Associations in Toronto, "MM7.1 Request to Protect 250 year old Red Oak Tree at 76 Coral Gable Drive City Council Meeting No. 7: June 10, 2015" (2015) CORRA 1, online: <http://www.toronto.ca/legdocs/mmis/2015/mm/comm/communicationfile-53063.pdf>; Federation of Urban Neighbourhoods (Ontario), "Members and Their Affiliates By Municipality" (2016) 1, online: <<https://urbanneighbourhoods.files.wordpress.com/2010/11/2013-federation-of-urban-neighbourhood-inc-membership.pdf>>.

<sup>634</sup> Merry, *supra* note 73 at 879.

email addresses were located, but attempts to confirm information with the associations revealed that email addresses were defunct. There are countless possible explanations - the neighbourhood association may be dormant, defunct, led by someone without computer access, or the association may conduct its work offline. This may be the result of neighbourhood associations forming as a result of some sort of planning controversy or development, then become dormant once the issue had concluded.<sup>635</sup> For example, the Victoria Village Ratepayers Association operated for forty years as a robust, incorporated association.<sup>636</sup> However, in the early 2000s the association unincorporated due to volunteer apathy and stopped asking for membership revenue, and they now serve as a forum for community news and information, and advocate for or on community issues as needed. Similarly, the Woodbine Park Residents Association was formed in the late 1990s due to concerns about the impact of new developments on basement flooding.<sup>637</sup> The organization had major achievements, including the introduction of new City of Toronto policies regarding the monitoring of melt water and rain water, safety issues, and the development of Woodbine Park. After about fifteen years of work, the association retracted its functions, took down their website, and no longer collects dues. For this study, the absence of a formalized governance role means that definitive information is not available on all of the city's neighbourhood associations.

Based on the data in Appendix D, neighbourhood associations vary widely in their legal structures, membership requirements and fee structures. Based on this data, I analyzed how pre- and post-amalgamated neighbourhood associations differ. More than half of Toronto's neighbourhood associations were established following amalgamation. Post-amalgamation associations differ in their functions, with more a greater emphasis on community events, environmental objectives, safety, and information dissemination. By contrast, pre-amalgamation associations placed a greater emphasis on planning and concerns regarding the economy within their spaces of the city. Another key difference

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<sup>635</sup> This dissertation does not consider the evolutionary paths of neighbourhood associations, nor their emergence, institutionalization/consolidation, and termination.

<sup>636</sup> Toronto Neighbourhood Guide, "Welcome to Victoria Park Village" (2016), online: <<http://www.torontoneighbourhoods.net/neighbourhoods/north-york/victoria-park-village>>.

<sup>637</sup> See e.g. Woodbine Park Residents Association, "Group Description", online: <<https://ca.groups.yahoo.com/neo/groups/WPRA/info>>.

between pre- and post-amalgamation neighbourhood associations is that the latter are far less likely have a resident-only policy; instead, non-residents and businesses may also serve as members. Post-amalgamation associations are also significantly less likely to collect a membership fee.

However, for both pre- and post-amalgamation neighbourhood associations, 83% of neighbourhood association cite planning as a core function. In addition, 52% are incorporated either provincially or federally, as non-profits or for-profit corporations, which means they can participate in OMB hearings. Participation in OMB hearings is an important aspect of planning. As such, this data supports the findings that 83% of neighbourhood associations are created to impact planning and land use in the area. This is consistent with Moore's conclusions that Toronto's neighbourhood associations may have broad or general mandates, but their predominant function is to represent their members in regard to planning.<sup>638</sup>

### **c) BIAs, neighbourhood associations and local legal spaces**

The following section analyzes the data above to analyze the roles played by BIAs and neighbourhood associations in the local governance model.

#### **The geographies of BIAs and neighbourhood associations**

As noted, Toronto has 81 BIAs.<sup>639</sup> There are several observations to be made about the locations of these bodies. First, BIAs are not uniformly located across the city. The Toronto-East York Community Council area has the vast majority of BIAs and neighbourhood associations, as seen on Illustration 3.5. Etobicoke and North York are next with a roughly equal number of BIAs, while Scarborough has the least, at 7%. In some cases, the boundaries of the associations overlap, whereby multiple neighbourhood

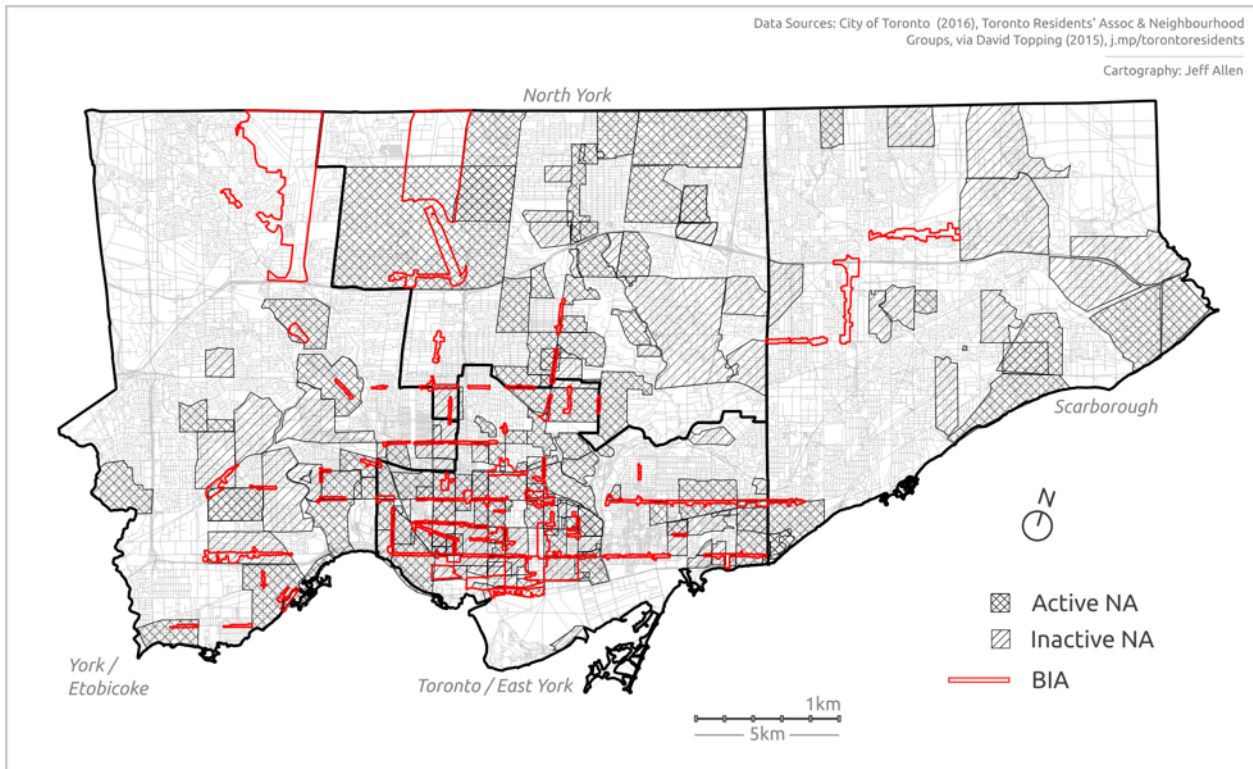
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<sup>638</sup> Moore, *supra* note 202.

<sup>639</sup> Rebecca Melnyk, BIAs drive ethnic retail neighbourhoods (Tuesday, April 7, 2015) Canadian Property Management, online: < <https://www.reminetwork.com/articles/bias-face-change-in-ethnic-retail-neighbourhoods/>>.



associations claim to represent a particular area.<sup>640</sup> Illustration 3.5 shows the locations of BIAs and neighbourhood associations in Toronto. The map indicates which neighbourhood associations are inactive.



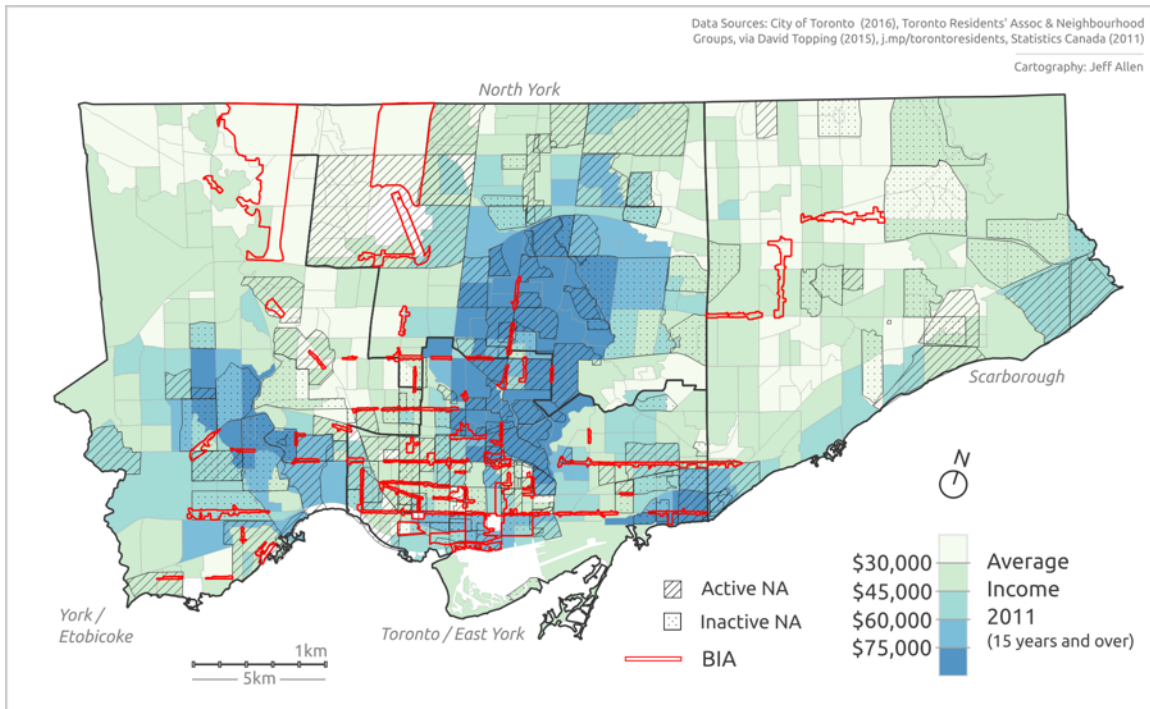
**Illustration 3.5: Locations of BIAs and neighbourhood associations<sup>641</sup>**

Also, BIAs and neighbourhood associations are located in similar parts of the city. This means that certain sections of the city have representation from both BIAs and neighbourhood associations. As seen in Illustration 3.6, the locations of BIAs and neighbourhood associations lie alongside the areas of the city with the highest income

<sup>640</sup> See e.g. a block of Marion Street, a one-way street near High Park, that is represented by at least three neighbourhood associations. It is within the stated boundaries of the Sunnyside Community Association, the Roncesvalles-Macdonell Residents' Association, and the Parkdale Residents Association (David Topping, "Toronto Residents' Associations & Neighbourhood Groups Map" (2015), online: <<http://davidtopping.tumblr.com/torontoresidents>>).

<sup>641</sup> Original research (Alexandra Flynn).

levels.<sup>642</sup> This means that some parts of the city have overlapping bodies representing residents, while other parts are representing only by wards and community councils.



**Illustration 3.6: BIAs and neighbourhood associations, and income levels<sup>643</sup>**

Examining the map alongside the data gathered on neighbourhood associations, just two of Toronto's neighbourhood associations are located in the city's vulnerable areas.<sup>644</sup> Rather than focusing on planning issues, these two neighbourhood associations instead collaborate with social providers. For example, the Bathurst Finch Network (BFN), which began in 2009, describes itself as “a group of community residents and workers from community agencies and the City of Toronto in the Bathurst-Finch neighbourhood. We work together to plan community-based programs and make positive change in our neighbourhood and our city.”<sup>645</sup> The BFN is located in one of the City of Toronto's 13

<sup>642</sup> The areas noted darker blue are the more affluent areas of the city, meaning locations where residents have an annual income greater than \$75,000 based on the 2011 Census. BIAs and neighbourhood associations are disproportionately located in these higher income areas.

<sup>643</sup> Original research (Alexandra Flynn).

<sup>644</sup> These two organizations are the Bathurst Finch Network and the Mount Dennis Community Association.

<sup>645</sup> Bathurst Finch Network, “Welcome to the Bathurst Finch Network!”, online: <<https://sites.google.com/site/bathurstfinchnetwork/home>>.

priority neighbourhoods, and currently one of the eight transitioning neighborhood under Toronto Strong Neighbourhood Strategy.<sup>646</sup> It uses participatory processes to create and run community-based programs, including a monthly community women's dinner; a monthly 'free school' exploring topics of interest in a community setting; a talent night; a monthly immigration legal clinic; and a weekly English conversation circle.<sup>647</sup>

### **Post-amalgamation role in local governance**

BIAs and neighbourhood associations have each doubled in number since amalgamation. Their increased presence suggests a replacement for a direct connection to local government. In their evaluation of changes in the City of Toronto's approach to governance given COTA and other legislative and policy initiatives, Meghan Joy and Ronald K. Vogel reference "the ascendance of neoliberalism as the governing philosophy." They posit that federal, provincial, and city governments have each adopted "a neoliberal policy agenda grounded in austerity policies that include lower taxes, greater reliance on market processes, scaling back or dismantling the welfare state, and embracing new public management policies."<sup>648</sup> They state: "Post-amalgamation Toronto operates like a private corporation and participatory processes often appear as an afterthought rather than a space to let citizens proactively bring their issues to city staff before policies and plans are made."<sup>649</sup>

BIAs can be characterized as forms of organization that allows the state to govern at a distance, characterized as a form of neoliberal management meant to "compensate for declining public resources" in increasingly privatized economies.<sup>650</sup> BIAs reflect an "ethos of low taxation" in an era of "if you want it, you're going to have to fund it yourself."<sup>651</sup> On the other hand, councillors help to form and further the involvement of

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<sup>646</sup> *Ibid.*

<sup>647</sup> Bathurst Finch Report, "The Real BFN report" (2013) 1, online: <<https://sites.google.com/site/bathurstfinchnetwork/home/the-real-bfn-report>>.

<sup>648</sup> Meghan Joy & Ronald K. Vogel, "Toronto's governance crisis: A global city under pressure" (2015) 49 *Cities* 35.

<sup>649</sup> *Ibid* at 49.

<sup>650</sup> Lewis, *supra* note 217 at 187.

<sup>651</sup> *Ibid.*

BIAs and neighbourhood associations in their wards, as “the glue between different neighbourhoods,”<sup>652</sup> bodies that allow councillors to have “greater reach within a community,”<sup>653</sup> and that serve as “citizen experts.”<sup>654</sup>

However, these bodies may exacerbate socioeconomic inequalities within and between neighbourhoods.<sup>655</sup> BIAs contribute to increased space-based tension both in areas with and without BIAs.<sup>656</sup> This tension is especially prevalent in economically and ethnically mixed neighbourhoods, and where access to decision-making processes varies.<sup>657</sup> The result is a limit to democracy and the exclusion of particular perspectives of residency and public space.<sup>658</sup> In Washington, BIAs have purportedly contributed to racial and cultural inequality by favouring the views of mostly white property owners in their decision-making.<sup>659</sup> Some question whether the organizations emphasize the power of affluent neighbourhoods in comparison to more vulnerable parts of the city, in part because poor sections of the city do not have BIAs despite the existence of commercial areas supporting residents.<sup>660</sup> This dynamic enhances Washington’s support of vocal and well-organized areas, rather than poorer, largely African American neighbourhoods.<sup>661</sup>

There are three chief concerns relating to inclusivity in the context of Toronto’s BIAs. First, BIAs exacerbate inclusivity issues through their internal governance model. Areas with BIAs may advocate for particular kinds of inclusivity. There is little question that

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<sup>652</sup> Anonymous interview with City of Toronto councillor #2, Toronto, Ontario, Canada (7 July 2016) – author conducted.

<sup>653</sup> Anonymous interview with City of Toronto councillor #1, Toronto, Ontario, Canada (5 July 2016) – author conducted.

<sup>654</sup> Anonymous interview with City of Toronto councillor #3, Toronto, Ontario, Canada (18 July 2016) – author conducted.

<sup>655</sup> Lewis, *supra* note 217 at 205. But see Richard Schragger, “Does Governance Matter: The Case of Business Improvement Districts and the Urban Resurgence” (2010) 3 Drexel L. Rev. 49, who advocates for caution in drawing connections between such bodies and negative effects on inequality.

<sup>656</sup> Susanna Schaller and Gabriella Modan, “Contesting Public Space and Citizenship Implications for Neighborhood Business Improvement Districts” (2005) 24:3 Journal of Planning Education and Research 94.

<sup>657</sup> Richard Briffault, “A Government for Our Time? Business Improvement Districts and Urban Governance” (1999) 99:2 Columbia Law Review 365 at 394.

<sup>658</sup> *Ibid.* at 395.

<sup>659</sup> Lewis, *supra* note 217 at 206.

<sup>660</sup> Ward, *supra* note 225.

<sup>661</sup> Lewis, *supra* note 217 at 206.

BIAs themselves do not represent the overall community, as residents have few if any votes on BIA boards.<sup>662</sup> Some argue that this organizational structure leads to undemocratic practices where power is concentrated amongst property and business owners. This undemocratic structure is called into question because BIAs play a role in the management of public space.<sup>663</sup> BIAs both shape boundaries and affect who may participate in governance.<sup>664</sup>

Second, Toronto's large BIAs go beyond representing businesses through activities like street fairs and marketing and instead play an active advocacy role for the benefits of their members.<sup>665</sup> For example, one of the largest of Toronto's BIAs is the Toronto Entertainment BIA. It was created in 2008 and is located in the Toronto-East York Community Council area. It straddles two wards, owing to its large size of 156 blocks. It represents over 1,800 businesses and had a budget in 2016 of \$2,079,199. In 2013, it funded a Master Plan drafted by consultants, setting out in over 100 pages the BIA's proposals for the public realm, focusing on details such as streetscaping, planters, cycling lanes and other matters squarely within the jurisdiction of the City of Toronto.<sup>666</sup> Regarding any city proposals relating to the BIA area, the Master Plan outlines in what circumstances the BIA should provide "official written endorsements," only where "the BIA is assured that the spirit and intent of the Master Plan are respected." It proposes a

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<sup>662</sup> But note that, in contrast, BID boards in New Jersey (Freehold Center Partnership and the Union Center Special Improvement District) have granted residents voting power by including residents in the governing structure (J. B. Justice and R. S. Goldsmith, "Private governments or public policy tools? The law and public policy of New Jersey's special improvement districts" (2006) 29(1-3) *International Journal of Public Administration* 107; Richard Briffault, "A Government for Our Time? Business Improvement Districts and Urban Governance" (1999) 99:2 *Columbia Law Review* 365; Göktug Morçöl and Patricia Patrick, "Business Improvement Districts in Pennsylvania: Implications for Democratic Metropolitan Governance" (2006) 29 *International Journal of Public Administration*; Susanna Schaller and Gabriella Modan, "Contesting Public Space and Citizenship Implications for Neighborhood Business Improvement Districts" (2005) 24:3 *Journal of Planning Education and Research* 94.

<sup>663</sup> Hoyt & Gopal-Agge, *supra* note 575 at 951.

<sup>664</sup> John Paul Catungal, Deborah Leslie & Yvonne Hii, "Geographies of Displacement in the Creative City: The Case of Liberty Village, Toronto" (2009) 46:5-6 *Urban Studies* 1095; Lewis, *supra* note 219.

<sup>665</sup> See Appendix D.

<sup>666</sup> Toronto Entertainment District BIA Master Plan at 105, online: <<http://www.torontoed.com/wp-content/uploads/2015/06/TED-MasterPlanUpdate-March4-2015.pdf>>. Note other BIA Master Plans in Toronto, including: St. Lawrence Market Neighbourhood BIA Public Realm Master Plan (May 2015), online: <[http://www.stlawrencemarketbia.ca/images/01\\_SLMNBIA-Final-Report\\_full\\_Edited%20June%208%202015%20Optimized.pdf](http://www.stlawrencemarketbia.ca/images/01_SLMNBIA-Final-Report_full_Edited%20June%208%202015%20Optimized.pdf)>; The Kennedy BIA Project Re-Kennedy (November 12, 2013), online: <<http://www.oliviatruong.ca/workshop/img/design/projectrekennedy.pdf>>

set process for councillor and staff review of the Master Plan in connection with proposed developments. The Master Plan further states that, “Where proposals are deemed to be fundamentally at odds with the spirit and intent of the Master Plan, the BIA reserves its right to voice its opposition to the application to the City and/or Ontario Municipal Board.”<sup>667</sup>

Third, BIAs call into question inclusivity in their attempts to influence local governance more broadly, for example, to influence social policy. As one staff member I spoke with said, BIAs “have, sometimes at their peril, weighed into the geopolitics of the area” because of their site-specific private interests.<sup>668</sup> For example, in 2015, Toronto’s Chinatown BIA objected to the plan to introduce a youth homeless shelter within the boundaries of the BIA.<sup>669</sup> The BIA noted a lack of consultation on the proposal and the negative impact on the area, stating: “the BIA had worked hard for a decade to ‘clean up’ the area, and business owners are worried the facility will turn Spadina into a ‘centre of homelessness’.”<sup>670</sup> The protest culminated in placards within member businesses, as well as a demonstration of over 50 people at City Hall.<sup>671</sup> The BIA suggests that it is sympathetic to the need for having soup kitchens and drop-in centres, but argues that they should not be located in tourist areas, even though numerous homeless and vulnerable people call such “tourist areas” home.<sup>672</sup> In this case, as Schragger advances, BIAs affirm recognition of their members’ business interests in priority to others.<sup>673</sup>

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<sup>667</sup> *Ibid.* Note, however, that under the Procedural Bylaw, BIAs – as City boards – may not oppose City policy, including by appearing against the City at OMB hearings.

<sup>668</sup> Anonymous interview with City of Toronto staff member #5, City Planning, Toronto, Ontario, Canada (18 May 2016) – author conducted.

<sup>669</sup> Kendra Mangione, “We don’t need any more grit’: Chinatown BIA on street youth centre” CTV News (December 30, 2015), online: <<http://toronto.ctvnews.ca/we-don-t-need-any-more-grit-chinatown-bia-on-street-youth-centre-1.2718615>>.

<sup>670</sup> *Ibid.*

<sup>671</sup> Connie Wardle, “Toronto BIA Protests Street Mission’s Plans to Move into the Neighbourhood” Presbyterian Record (February 1, 2016), online: <<http://presbyterianrecord.ca/2016/02/01/toronto-bia-protests-street-missions-plans-to-move-into-the-neighbourhood/>>.

<sup>672</sup> Desmond Cole, “Chinatown should welcome homeless youth with open heart: Cole” The Toronto Star (7 January 2016), online: <<http://www.thestar.com/opinion/commentary/2016/01/07/chinatown-should-welcome-homeless-youth-with-open-heart-cole.html>>.

<sup>673</sup> Schragger, *supra* note 193 at 426.

Likewise, researchers have observed that neighbourhood associations are positioned to exercise a tremendous amount of power within local decision-making as compared to other stakeholders, exemplified by their access to councillors to the exclusion of other local actors. As Logan & Rabrenovic note, while other kinds of civic organizations may play a role in representing resident interests, the neighbourhood association “is commonly the vehicle through which neighbors learn about problems, formulate opinions, and seek to intervene in the political process to protect their local interests.”<sup>674</sup> Such communities have a very strong identification with their neighbourhood, and the neighbourhood association representing their interests should be listened to and involved in the development process.<sup>675</sup> This may be due, in part, to the presence of neighbourhood associations in predominately wealthy neighbourhoods, as individuals and households with higher incomes are more likely to be engaged in civic participation.<sup>676</sup> Similarly, Toronto’s neighbourhood associations are seen as dominated by homeowners who are white and middle class, who do not reach out to other members of the communities, and focus largely on land use rather than social issues.<sup>677</sup> Not all neighbourhood associations are created equal: organizations with expertise, institutional memory, and neighbourhood self-governance capacity are better able to achieve results.<sup>678</sup>

### **The false dichotomy of “public” and “private”**

Neither BIAs nor neighbourhood associations are easily classified as “public” or “private” bodies, meaning the distinction between their role as representing their members and serving as a unit in a larger local governance system. The extent to which they may be characterized is informed by many factors, including the financial power of

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<sup>674</sup> Logan & Rabrenovic, *supra* note 139 at 69.

<sup>675</sup> *Ibid* at 323.

<sup>676</sup> Oren M. Levin-Waldman, “Income, civic participation and achieving greater democracy” (2013) 43 *The Journal of Socio-Economics* 83.

<sup>677</sup> Amalia Alarcon De Morris & Paul Leistner, “From Neighborhood Association System to Participatory Democracy: Broadening and Deepening Public Involvement in Portland, Oregon” (2009) *National Civic Review* 47 at 48.

<sup>678</sup> Andre Sorensen & Lake Segaris, “From Participation to the Right to the City: Democratic Place Management at the Neighbourhood Scale in Comparative Perspective” (2010) 25:3 *Planning Practice & Research* 297.

the organization, their connection to city and business leaders as important players in local decision-making, and their transformation over time.

Regarding BIAs, one councillor said, “They have a ... board of directors, supported by city staff, who are at every one of these meetings, and an employee who can manage the back office stuff. You have this institutional stuff and a source of money, and that’s great. But, we have to be very careful to constrain them.”<sup>679</sup> BIAs have a direct relationship with local governments. Their establishment is sanctioned through municipal law; they are partners in the delivery of some governmental services; the government has accountability mechanisms to oversee their conduct; and their fees. However, despite these formal connections with municipal governments, studies have shown that BIA staff do not believe they have any close identification with governmental institutions and see themselves as firmly part of the private sector rather than any form of government.<sup>680</sup>

Randy Lippert and Mark Sleiman describe BIAs as “ambassadors,” serving as a “knowledge brokers within a broader urban governance assemblage.”<sup>681</sup> Lippert and Sleiman suggest that BIAs are not simply private actors seeking additional power and they do not fit easily within particular descriptions as exclusionary or inequality-enhancing. Instead, they are more complex organizations that defy easy categorization. Richard Briffault suggests that the “public” and the “private” spheres are interconnected in relation to BIAs.<sup>682</sup> Briffault states, “... the public’s use and enjoyment of the streets, parks, squares and other public spaces that are at the heart of urban living, BIAs—whatever their place on the public-private continuum—can enhance the public environment and contribute to an enrichment of the public life.”<sup>683</sup> Similarly, Wolf emphatically states that BIAs are “a part of urban governance and public

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<sup>679</sup> Anonymous interview with City of Toronto councillor #3, Toronto, Ontario, Canada (18 July 2016) – author conducted.

<sup>680</sup> James F. Wolf, “Urban Governance and Business Improvement Districts: The Washington, DC BIDs” (2006) 29 *Intl Journal of Public Administration* 53 at 70; Hoyt and Gopal-Agge, *supra* note 581 at 955.

<sup>681</sup> Randy Lippert & Mark Sleiman, “Ambassadors, Business Improvement District Governance and Knowledge of the Urban” (2012) 49:1 *Urban Studies* 61 at 62.

<sup>682</sup> Richard Briffault, “A Government for Our Time? Business Improvement Districts and Urban Governance” (1999) 99:2 *Columbia Law Review* 365 at 365.

<sup>683</sup> *Ibid.*



administration.”<sup>684</sup> He argues that BIAs must be placed within the public administration context, even if their objectives focus on the “private” concerns of their members.<sup>685</sup>

In a comprehensive study of the nature of BIA governance, researchers Göktug Morçöl, Triparna Vasavada and Sohee Kim studied BIAs in Center City, Pennsylvania to evaluate the role of BIAs in urban governance, concluding involvement in the city’s governance became “deeper and wider” over the years.<sup>686</sup> In particular, BIAs began to advocate on positions that went beyond the BIA to citywide matters like land-use planning, zoning, and intergovernmental funding for infrastructure repair.<sup>687</sup> Similarly, a study of Toronto’s Downtown Young BIA, researchers observed that the objectives of BIAs tend to evolve from basic operational and tactical tasks to more strategic tasks. This requires improved data, cost-effective decision support, and increased coordination at the city, regional, provincial and national levels.<sup>688</sup> Put another way, the longer they are in operation, the more they exert a role in local governance.

It remains uncertain the extent to which BIAs cooperate with other neighbourhood organizations. For example, in his study of the development of the “creative city” in one of Toronto’s largest BIAs, the Entertainment District BIA, Sébastien Darchen observed the tension between the local planning process, whereby the BIA carried a far stronger voice in community deliberations and their interests were specific to the advantages for the member businesses.<sup>689</sup> While council ultimately supported a mixed use neighbourhood which includes a diverse range of economic activities than those proposed by the BIA, including an environment where emerging artists can live and work in the neighbourhood, Darchen concluded that the promotion of arts and culture as imagined by the BIA will lead to revitalization of the area: “The creative city is used to legitimize a set of objectives — put forward by key stakeholders — to transform the space into an

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<sup>684</sup> Wolf, *supra* note 680 at 74.

<sup>685</sup> *Ibid.*

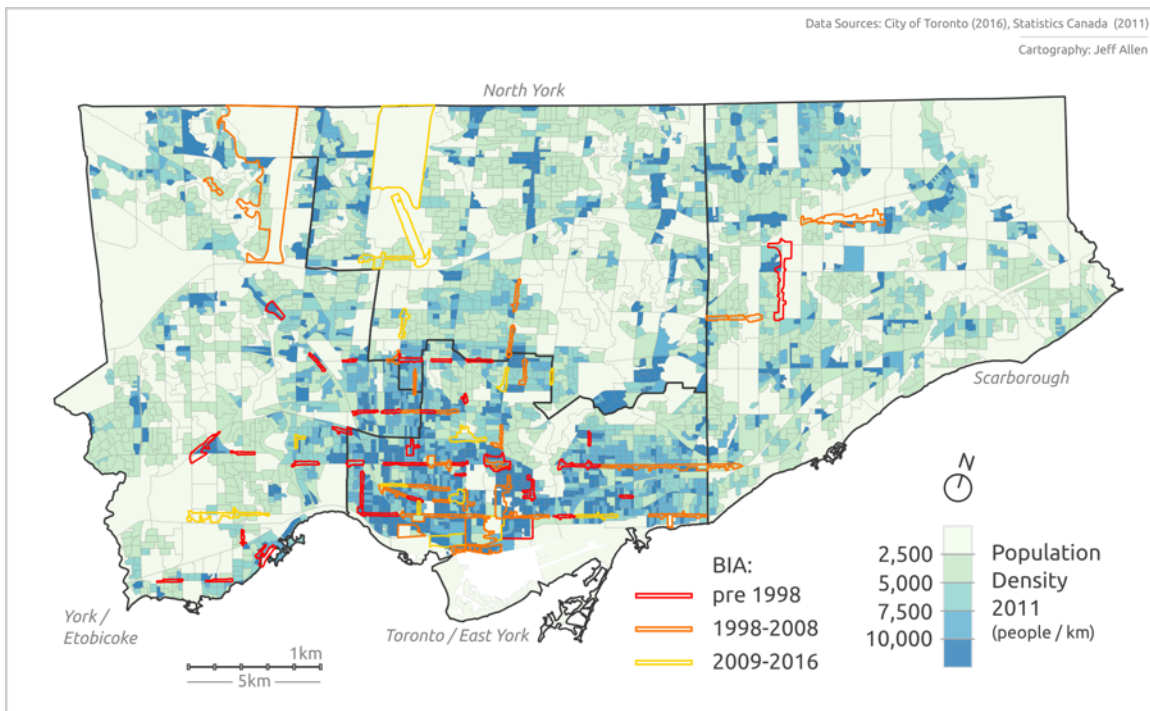
<sup>686</sup> Göktug Morçöl, Triparna Vasavada & Sohee Kim, “Business Improvement Districts in Urban Governance: A Longitudinal Case Study” (2014) 46:7 *Administration & Society* 796.

<sup>687</sup> *Ibid* at 814.

<sup>688</sup> *Ibid* at 802.

<sup>689</sup> Sébastien Darchen, “The Creative City and the Redevelopment of the Toronto Entertainment District: A BIA-Led Regeneration Process” (2013) 18:2 *Int’l Planning Studies* 188 at 197.

appealing urban environment conducive specifically to investment for residential and business development.”<sup>690</sup> The BIA articulated “already packaged regeneration processes,” whereby the creative city concept does not result in a neighbourhood balance or representation. Instead, only the particular interests of those with a vested stake are promoted.”<sup>691</sup> Illustration 3.7 shows Toronto BIAs mapped alongside population density and their year of establishment, showing that amongst areas where these bodies exist, density is greater the earlier that the BIA was established.



**Illustration 3.7: Map of BIAs, neighbourhood associations and density**

Neighbourhood associations, too, have been described as having an “insider/outsider” status in local governance. Miller suggests that this characterization is greatly informed by whether the neighborhood council or association is officially sanctioned or “certified” by the city; if not, the neighborhood associations are simply private organizations comprised of neighborhood residents.<sup>692</sup> Related questions include the degree of financial support, whether they have final decision-making powers or a predominantly advisory

<sup>690</sup> *Ibid.* at 201.

<sup>691</sup> *Ibid.*

<sup>692</sup> Stephen R. Miller, “Legal Neighborhoods” (2013) 37 Harv. Envtl. L. Rev. 105 at 145.

role, and the extent to which the decisions of such bodies are respected.<sup>693</sup> Chaskin and Greenberg believe that neighbourhood associations, regardless of affiliation with municipal governments, are central to local governance, through fostering collective decision-making and encouraging civic engagement.<sup>694</sup> While they are not part of formal processes, they are embedded in governance mechanisms by leveraging relationships with allies and partners, and negotiating on behalf of their membership.<sup>695</sup> In Chicago, they have been able to use this “interstitial” space to successfully shape policy and allocate resources in the public realm, ultimately playing a more direct roles in governance.<sup>696</sup> Chaskin and Garg suggest viewing the neighbourhood association along a spectrum, where they serve as parallel institutions providing an alternative form of provision of public good; as separate but complementary institutions to local government, offering goods and services beyond the scope of local government; as incorporated into local government as formal methods of representation and action; or in opposition to local government, meant to advocate for change.<sup>697</sup>

In Toronto, this “insider/outside” characterization has been influenced by amalgamation. As noted earlier, the number of neighbourhood associations has increased steadily over the years, with more than half of the city’s active neighbourhood associations having been created since amalgamation. This means that neighbourhood associations are asserting themselves in local governance to a greater degree than they did prior to amalgamation. Like BIAs, some neighbourhood associations seem to have taken on functions that would normally fall to the municipal government or to a BIA. Based on the data collected for this dissertation, post-amalgamation neighbourhood associations are more likely than those established prior to 1998 to assert a role in bringing the community together, protecting the environment, disseminating information, and addressing safety. For example, the Trefann Court Residents Association, established in 2008, sidewalk and pothole repair, addressing graffiti removal, and working directly with

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<sup>693</sup> *Ibid* at 146.

<sup>694</sup> Robert J. Chaskin & David Micah Greenberg, “Between Public and Private Action: Neighborhood Organizations and Local Governance” (2015) 44:2 Nonprofit and Voluntary Sector Quarterly 248.

<sup>695</sup> *Ibid* at 264.

<sup>696</sup> *Ibid* at 265.

<sup>697</sup> Robert J. Chaskin and Sunil Garg, “The issue of governance in neighborhood-based initiatives” (1997) 32:5 Urban Affairs Review 631 at 640.

the police.<sup>698</sup> The Swansea Area Ratepayer's Association offers public forums, ensuring the Town Hall is managed according to neighbourhood needs, and collaborating with the City of Toronto to ensure safe and well-designed pedestrian and cycle paths along the lakeshore and Humber River.<sup>699</sup>

Neighbourhood associations exercise a range of authority and power in local areas. In their famous study of neighbourhood associations in five American cities, Berry, Portney and Thomson also observed that strong neighbourhood associations are chiefly focused on mobilizing civic participation, through demand from residents, legitimacy from local government.<sup>700</sup> However, as Chaskin and Garg note, there is no clear system to determine how neighbourhood associations will be incorporated into the overall governance model.<sup>701</sup> On one hand, they may be vehicles to enhance civic participation in local government and planning decisions, thus promoting democracy. On the other, they may help with service delivery or other tangible functions. Either way, “they are neither politically nor administratively independent.”<sup>702</sup>

In summary, while BIAs are, as one councillor called them, bodies that “create their own little tiny tax base and they tax and spend on themselves, and they all act in self-interest,”<sup>703</sup> neighbourhood associations are more likely to react to local politics and determine their activities accordingly, rather than have stand-alone missions separate from what the city does. In turn, “city administrators and elected officials respect the neighbourhood associations ... because of the authority they have within the structure of government.”<sup>704</sup> Together, neighbourhood associations and BIAs have dual roles: on the one hand, they are created and reinforced by ward councillors, and privileged in their participatory role in local decision-making in order to mitigate opposition within the

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<sup>698</sup> Trefann Court Residents Association, "About" Trefann Court, online: <[www.trefann.org/about/](http://www.trefann.org/about/)>.

<sup>699</sup> Swansea Area Ratepayers' Association, "Main Page" (2016), online: <<http://swansearatepayers.ca>>.

<sup>700</sup> Robert J. Chaskin and Sunil Garg, “The issue of governance in neighborhood-based initiatives” (1997) 32:5 Urban Affairs Review 631 at 655.

<sup>701</sup> *Ibid.* at 637.

<sup>702</sup> *Ibid.*

<sup>703</sup> Anonymous interview with City of Toronto councillor #2, Toronto, Ontario, Canada (7 July 2016) – author conducted.

<sup>704</sup> Kent E. Portney & Jeffrey M. Berry, “Mobilizing Minority Communities: Social Capital and Participation in Urban Neighbourhoods” (1997) 40:5 American Behavioural Scientist 632 at 634.

ward. On the other hand, they are not representative of the diversity of residents. The local governance model includes the formal and informal sanctioning of neighbourhood associations and BIAs by elected officials and staff. The implications for local governance are discussed in the next section.

### **III. Conclusion**

This dissertation examines Toronto's local boundaries and overlapping governance bodies to query the meaning of local governance, balancing representation and fairness in decision-making. Building on legal geography and legal pluralism, I assert that local legal spaces comprise state law and other norms, orders, rules and practices. Although state and non-state co-exist and, indeed can be thought of as mutually constitutive, the naming of norms, orders, rules and practices outside of state law helps to identify the dynamics of these interlegal spaces, including what state law has not included in its articulation of local governance.

However, wards are not the only component of local governance. As Santos asserts, there are a multiplicity of laws, institutions, and boundaries operating formally and informally.<sup>705</sup> This combination of laws creates literal and metaphorical boundaries, manifesting in Ford's conclusion that jurisdiction is left largely unquestioned. When applied to Toronto, we see that the ward serves a central role. In interviews with staff and councillors, the councillor was informally referred to as the "ward boss," with wards as the "fiefdom." Beyond these characterizations, wards are the basis of representation in Toronto, with COTA setting out that all decisions are to be made by "City Council," meaning (at present) the 44 councillors and mayor. Wards also serve as the chief intermediary between residents and local government.

In Toronto, while wards serve a privileged role in the formal local governance model, community councils, BIAs and neighbourhood associations assert competing claims that may reinforce or contradict the boundaries and representation of wards. Some wards and

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<sup>705</sup> Santos, *supra* note 85 at 472.

neighbourhood associations act as ongoing expressions of communities that predated confederation, yet which reinforce the ghosts of previous towns and villages. Community councils largely and symbolically reflect the pre-amalgamated municipalities. These boundaries reflect multiple conceptions of local legal spaces in the Toronto context, each created with their own independent objectives and claims to representation based on the asserted boundaries, working like an accordion to reorient the scale of interest and decision-making. They embody what Habermas observes as the ongoing negotiation between and within groups regarding the boundaries of “neighbourhood” or “community.”<sup>706</sup>

Within this model, BIAs and neighbourhood associations have transformed since amalgamation. From a legal perspective, there are significant differences between these bodies. BIAs are “local boards” of municipal government, with delegated powers, city assistance, and direct involvement of councillors. While neighbourhood associations are informal bodies, they have transformed since amalgamation from largely focused on planning to taking on other functions, including stepping into local government provision of services. However, there are important similarities: both of these bodies have doubled in number since amalgamation, are unevenly scattered across the city, and are generally situated in the city’s most affluent areas. Their creation and involvement in local governance is perpetuated by the city councillor.

Local legal spaces are thus comprised of geographic and participatory characteristics, both of which assert norms of inclusion and exclusion. Boundary lines have consequences.<sup>707</sup> Participation in local governance is contingent on the legitimization of the geographic boundary, either because a councillor has determined their interests in considering a particular matter, or a BIA or neighbourhood association exists in a specific part of the city. The boundaries of the local legal spaces are plural and overlapping.

In Toronto, local governance is dominated by the ward, with BIAs and neighbourhood

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<sup>706</sup> Jurgen Habermas, *The Structural Transformation of the Public Sphere* (1962).

<sup>707</sup> Ford, *supra* note 187.

associations asserting significant influence. This model calls into question the degree to which Toronto's local governance model is inclusive and participatory, as neighbourhood associations and BIAs represent economically privileged residents,<sup>708</sup> with neighbourhood associations, in particular, dominated by homeowners who are white and middle class, who do not reach out to other members of the communities.<sup>709</sup> Like the observations of Gerald Frug that neighbourhood-based governance can have significant implications on inclusivity, including the creation of the "other," the data collected in this chapter shows that BIAs and neighbourhood associations perpetuate decision-making that is disproportionately focused on the interests of certain residents to the exclusion of other voices.<sup>710</sup>

Like Young and Valverde, this dissertation focuses on scale and, in particular, the appropriate scale of local decision-making. This chapter concludes that community councils were intended to and could be designed to play a pivotal role in local governance, unsettling the power of the ward councillor and shifting the focus away from BIAs and neighbourhood associations to a broader public, which other scholars have suggested may be a positive contribution to the governance structures of amalgamated city governments.<sup>711</sup> Chapter 1 presented three rationales for the establishment of delegated "local" bodies like community councils. First, as argued by Slack and Bird, local institutions like community councils may allow pre-amalgamated communities to maintain a sense of their earlier identities and to govern particular affairs independently. This has also been referred to as "stewardship," whereby a community has autonomy to manage its own affairs and promote well-being while insulating itself from conflicting city-wide decisions.<sup>712</sup> Second, community councils may fulfill the democratic ideal of representation that is closer to the community. Jane Jacobs passionately advocated the

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<sup>708</sup> Oren M. Levin-Waldman, "Income, civic participation and achieving greater democracy" (2013) 43 *The Journal of Socio-Economics* 83.

<sup>709</sup> Amalia Alarcon De Morris & Paul Leistner, "From Neighborhood Association System to Participatory Democracy: Broadening and Deepening Public Involvement in Portland, Oregon" (2009) *National Civic Review* 47 at 48.

<sup>710</sup> Frug, *supra* note 7 at 1053.

<sup>711</sup> Igor Vojnovic, "Municipal Consolidation, Regional Planning and Fiscal Accountability: The Recent Experience in Two Maritime Provinces" (2000) 13:1 *Canadian Journal of Regional Science* 49.

<sup>712</sup> Lionel D. Feldman, Katherine Athol Hamilton Graham & Susan D. Phillips, "Governance Structures for the New City of Toronto" (1997) A report prepared for the Toronto Transition Team.

importance of neighbourhoods in the built form and in the decision-making of urban areas.<sup>713</sup> Her position was that local decision-making was more legitimately democratic and connected to the interests and desires of those within neighbourhoods. A third argument concerns the efficient operation of government committees through the use of delegation. The suggestion is that community councils should have responsibility for certain localized functions like minor planning, parking or zoning decisions in order to give City Council the time and mandate to focus on issues that affect the city as a whole.<sup>714</sup>

Chapters 4 and 5 offer case studies to apply the claims made here. A reimagination of local governance within the context of the urban commons is explored in Chapter 6.

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<sup>713</sup> Jacobs, *supra* note 154.

<sup>714</sup> Zachary Spicer, "A Patchwork of Participation: The Search for Community Representation in Post-Amalgamation Ontario" (2016) 49:1 Canadian Journal of Political Science 129.



## **Chapter 4 – The Local Claims and Competing Forums of Toronto’s Casino Decisions**

This chapter provides an analysis of two related case studies: the 2012-13 casino decision, which involved four potential options for casino placement in the City of Toronto; and the 2015 casino decision, where the expansion of the Woodbine casino in the northwest part of the city was considered.<sup>715</sup>

These case studies query how local spaces in the City of Toronto are created, imagined and governed by law. In Chapter 3, I examined the governance of Toronto’s local legal spaces, including how their overlap impacts inclusive participation. This dissertation now turns to an application of the framework outlined in Chapter 1. The cases here and in the following chapter were chosen on the basis of four criteria: first, that Toronto’s local governance bodies, meaning wards (as represented by councillors), community councils, BIAs and neighbourhood associations, did or could have played a role in decision-making. Second, the cases considered matters that were deemed under the City of Toronto’s procedural bylaw to be city-wide issues. Third, the cases tested the geographic boundaries of local, meaning that the spatial aspects were considered alongside governance. Fourth, each of these cases concerned distributive justice, in that the city-wide issues to the decided would have localized implications for residents.

This chapter makes two conclusions regarding the overlap of the four bodies that form Toronto’s local governance model and how they govern the smaller-than-city areas of the city. First, community councils were used as a forum for the consideration of “local” issues in the city-wide debate, with “local” referring to the matters of concern to the community where the casino would be located. In 2015, the matter proceeded through the existing process for “city-wide” deliberations, namely through Executive Committee and then City Council, with staff-led consultation, and the local councillor acting as the local gatekeeper. In the 2012-13 decision, the Toronto-East York Community Council

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<sup>715</sup> This chapter does not reference the debates held in 2008 regarding the potential expansion of the Woodbine Racetrack to create a casino. For more information on these debates, see Steven Tufts, “Schumpeterian Unionism and ‘High-Road’ Dreams in Toronto’s Hospitality Sector” in Ann Cecelie Bergene et al, *Missing Links in Labour Geography* (Surrey: Ashgate, 2010).

("TEYCC") was used as a forum for deliberation, whereby the local aspects of a city-wide issue were directly considered by staff, formal procedures and greater opportunities for civic engagement. The use of the community council in the 2012-13 casino debate was a powerful tool to shift the debate of this city-wide issue to the local community. Second, these case studies demonstrated that the city's distinction between local versus city-wide decisions, based exclusively on subject matter, does not necessarily correspond to what communities deem to be of concern. Instead, the city-wide matters of casino development, the job and the economy and tourism are also local matters.

## **I. The 2012-2013 casino decision**

In 2012, the Ontario Lottery and Gaming Corporation (OLG), a provincial corporation of the Province of Ontario, announced that it would expand gaming sites in the province. At the request of the City of Toronto's Executive Committee, city staff spent months reviewing the pros and cons of having a casino in the City of Toronto, and the ideal location for such a casino.<sup>716</sup> This review, which ultimately comprised more than a dozen staff reports and consideration by two committees and City Council, was articulated by city staff as a city-wide issue, with a focus on the city's operating budget, jobs and tourism impacts. While city staff were conducting this official review, ward councillors and other parties, including BIAs and neighbourhood associations, played a role.<sup>717</sup> As this section will show, these local entities negotiated their way into official processes - including the use of city staff, resources and governance entities - forcing consideration of the local effects of a casino.

Ultimately, City Council decided not to permit the creation of a casino in Toronto's downtown core. This case study examines the role that wards, community councils,

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<sup>716</sup> City Manager, Staff Report: Considering a New Casino in Toronto, City of Toronto (22 October 2012), available online: <<http://www.toronto.ca/legdocs/mmis/2012/ex/bgrd/backgroundfile-51514.pdf>>.

<sup>717</sup> Hamutal Dotan, "Duly Quoted: Paul Godfrey on a Downtown Casino", Torontoist (9 January 2013), online: <<http://torontoist.com/2013/01/duly-quoted-paul-godfrey-on-a-downtown-casino/>>) where the OLG chair states that casinos should be downtown, not where residents live. See also Mike Adler, "Scarborough councillors have mixed views on Toronto casino plan", Inside Toronto (16 January 2013) (available at: <<http://www.insidetoronto.com/news-story/1491405-scarborough-councillors-have-mixed-views-on-toronto-casino-plan/>>), which notes that Scarborough councillors weigh their approval of a casino based on its location.

neighbourhood associations and BIAs played in the process, and what this reveals about the construction of the local and the meaningful, inclusive participation of people in local governance in this city-wide debate.<sup>718</sup>

## 1. The legal context and history of gambling law in Toronto

The history of gambling legislation in Canada assists in appreciating events related to the 2012-13 casino debate. Until 1969, gambling was illegal across Canada under the Criminal Code of Canada.<sup>719</sup> Gambling provisions, found in Part V of the Criminal Code (“Disorderly Houses, Gaming and Betting”), had origins in English Law, enacted in the 14<sup>th</sup>-century<sup>720</sup> in response to monarchs fearing that their archers “could be lost to ‘idle’ games of dice.”<sup>721</sup> This legislation found its way into Canada’s first Criminal Code in 1892 and prohibited the keeping common gaming houses, conducting lotteries, gambling at public conveyances and cheating at play.<sup>722</sup> These “piecemeal” provisions more or less stayed the same until the striking of a joint committee of both houses of Parliament in 1952, which noted that existing laws suffered from a lack of clarity making enforcement impossible, did not have the support of the public, and led to fraudulent activity that authorities were unable or unwilling to control.<sup>723</sup> The committee ultimately recommended relaxing and clarifying criminal law provisions, but not without offering the following proviso regarding its moral concerns with gambling activity:

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<sup>718</sup> Due to constraints in scope, there are important legal and social dimensions related to casinos that are not considered in this paper, including the accountability of governments in proposing new government sites and the effects of gambling addictions on families and communities. For more information on these issues see esp. Colin S. Campbell, “Canadian Gambling Policies,” in *Casino State: Legalized Gambling in Canada*, James F. Cosgrave & Thomas R. Klassen (eds.), (Toronto: University of Toronto Press Incorporated, 2009).

<sup>719</sup> Ayesha Kapadia, *The Issue of Legalized Gambling in Canada* (2012), 1 J. HPS at 1, online: <<http://pi.library.yorku.ca/ojs/index.php/hpsj/article/viewFile/36240/32983>>. See also Colin S. Campbell, “Canadian Gambling Policies,” in *Casino State: Legalized Gambling in Canada*, James F. Cosgrave & Thomas R. Klassen (eds.), (University of Toronto Press Incorporated, 2009) at 79–80.

<sup>720</sup> *Gaming Act, 1388* (12 Ric. 2, Eng.), c. 6.

<sup>721</sup> Judith A. Osborne & Colin S. Campbell, *Recent Amendments to Canadian Lottery and Gaming Laws: The Transfer of Power between Federal and Provincial Governments* (1988), 26:1 OHLJ 19 at 22, online: <<http://digitalcommons.osgoode.yorku.ca/ohlj/vol26/iss1/2>>.

<sup>722</sup> 55-56 Vict. C. 29.

<sup>723</sup> Canada, *Reports of the Joint Committee of the Senate and House of Commons on Capital Punishment, Corporal Punishment and Lotteries* (Queen's Printer, 27 June, 11 July, & 31 July 1956) at 65-66, online: <<http://www.lareau-legal.ca/JCSHCapital.pdf>>.

The Committee does not wish in any way to give countenance to or encourage widespread organized gambling through lotteries or other means. It recognizes that unrestrained gambling would produce grave moral, social and economic effects in the community and it is of the opinion that the duty of the state is to ensure that lotteries and other forms of gambling are kept within limited bounds. This desirable result has not been achieved and, in the Committee's opinion, cannot be achieved within the framework of the present law.<sup>724</sup>

In 1969 and 1985, considerable changes were made to gambling, in no small part related to the Committee's conclusions. While there remain federal prohibitions against gaming and betting, section 207 of the Criminal Code carves out an important exception which permits provinces to conduct activities broadly defined as "lottery schemes".<sup>725</sup>

**207.** (1) Notwithstanding any of the provisions of this Part relating to gaming and betting, it is lawful

(a) for the government of a province, either alone or in conjunction with the government of another province, to conduct and manage a lottery scheme in that province, or in that and the other province, in accordance with any law enacted by the legislature of that province;

Since these changes to the Criminal Code were introduced, the Province of Ontario has introduced sweeping reforms relating to gambling.<sup>726</sup> As noted by scholars Colin Campbell and Gary Smith: "Legal gambling in Canada now operates on a scale that was unimagined thirty years ago."<sup>727</sup> From 1993 to 1997, the Province of Ontario provided licenses to charities to run temporary casinos as fundraisers. As a result of technical challenges associated with licensing, the Province then developed permanent charity gaming clubs. In 1997, the Province announced that it would develop a certain number of

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<sup>724</sup> *Ibid.* at 68.

<sup>725</sup> Under the Criminal Code of Canada, "lottery scheme" means a game or any proposal, scheme, plan, means, device, contrivance or operation described in any of paragraphs 206(1)(a) to (g), whether or not it involves betting, pool selling or a pool system of betting

<sup>726</sup> Judith A. Osborne & Colin S. Campbell, *Recent Amendments to Canadian Lottery and Gaming Laws: The Transfer of Power between Federal and Provincial Governments* (1988), 26:1 OHLJ 19 at 22, online: <<http://digitalcommons.osgoode.yorku.ca/ohlj/vol26/iss1/2>> at 37.

<sup>727</sup> Colin S. Campbell & Gary J. Smith, "Gambling in Canada-From Vice to Disease to Responsibility: A Negotiated History" (2003), 20:1 CBMH/BCHM 121 at 123.

permanent charity gaming clubs and introduce video lottery terminals, first at charity gaming clubs and racetracks and then in bars and restaurants. However, under the applicable legislation at the time, the host municipality was required to approve the operation of a casino following public consultation.<sup>728</sup> In response, the former City of Toronto, along with each of the other former municipalities of Metro Toronto held a referendum in tandem with the 1997 municipal election, where 67% of citizens in each of the former municipalities voted against the establishment of permanent charity casinos.<sup>729</sup> As such, there are currently no charity casinos or video lottery terminals in the City of Toronto.

In Ontario, gambling activities are subject to a complex regulatory regime.<sup>730</sup> The OLG sits within this regulatory framework. The OLG is a Provincial Crown Corporation reporting to the Minister of Finance. Since 2000, OLG has been responsible for the province's lotteries, casinos, and slot facilities. OLG operates 24 gaming facilities within the Province, which include 14 slot facilities at racetracks, five casinos offering both table games and slot machines, one charity casino, four resort casinos, and dozens of retail ticket games. It has authority under section 207 of the Criminal Code to conduct and manage lottery schemes pursuant to its mandate under the *Ontario Lottery and Gaming Corporation Act, 1999* (“OLGCA”), including the establishment of a “gaming site” in any municipality located in Ontario.<sup>731</sup> The OLGCA regulation provides for a number of preconditions to OLG authorization, including a municipal council resolution supporting the establishment of a gaming site within the applicable municipal boundaries.<sup>732</sup> The municipality must also seek “public input into the establishment of the

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<sup>728</sup> *Ontario Casino Corporation Act, 1993*.

<sup>729</sup> City Council Agenda (February 4, 1998), online: <<http://www.toronto.ca/legdocs/1998/agendas/council/cc/cc980204/agenda.pdf>>.

<sup>730</sup> *Gaming Control Act, 1992*, online: [http://www.e-laws.gov.on.ca/html/statutes/english/elaws\\_statutes\\_92g24\\_e.htm](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_92g24_e.htm); *Alcohol and Gaming Regulation and Public Protection Act, 1996*, online: <[http://www.e-laws.gov.on.ca/html/statutes/english/elaws\\_statutes\\_96a26\\_e.htm](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_96a26_e.htm)>; *Good Government Act, 2011*; The adjudicative functions were transferred from the Alcohol and Gaming Commission of Ontario to the Licence Appeal Tribunal effective July 1, 2011, online: <[http://www.agco.on.ca/pdfs/bi/imp\\_notice/notice\\_mar11.pdf](http://www.agco.on.ca/pdfs/bi/imp_notice/notice_mar11.pdf) Last visited: October 2011>.

<sup>731</sup> *Ontario Lottery and Gaming Corporation Act, 1999*, S.O. 1999, c. 12, sch L.

<sup>732</sup> O. Reg. 81/12: Requirements for Establishing a Gaming Site (2012) under the *Ontario Lottery and Gaming Corporation Act, 1999*, S.O. 1999, c. 12 subsection 2(3).

proposed gaming site and give the Corporation, in writing, a description of the steps it took to do so and a summary of the public input it received.” Two factors help to contextualize the presence of gambling sites and public consultation. First, legislation now repealed previously required that a municipality hold a referendum to ensure public approval of a casino within local government boundaries, as illustrated in the following section. Second, the OLG itself is not obligated to seek public opinion or demonstrate to any government entity the process it undertook on casino-related decisions.

Leading up to the 2012-13 casino debate, there were three kinds of venues available for gambling in the City of Toronto: a racetrack and slot machines at the Woodbine Racetrack,<sup>733</sup> a temporary casino held each summer at the two-week Canadian National Exhibition (CNE), and charity gaming venues licensed by OLG, such as bingo halls.

## **2. Genesis of the debate**

In July 2010, the Government of Ontario directed OLG to raise its revenue in the areas of commercial and charitable gaming. On February 1, 2012, the Province of Ontario announced that it would be closing Ontario Place, a 96-acre public and family friendly space located in the City of Toronto’s waterfront, a destination for mainly Greater Toronto Area (GTA) residents since 1971. The City of Toronto’s Executive Committee speculated at this time that Ontario Place would ultimately be used as a casino.<sup>734</sup> Even without formal notice from OLG or the province, the City Manager was asked to report back on the pros and cons of hosting a commercial casino in Toronto.<sup>735</sup>

In March 2012, OLG delivered a report to the Minister of Finance following a Strategic Business Review of its operations, which outlined a plan to “modernize” lottery and

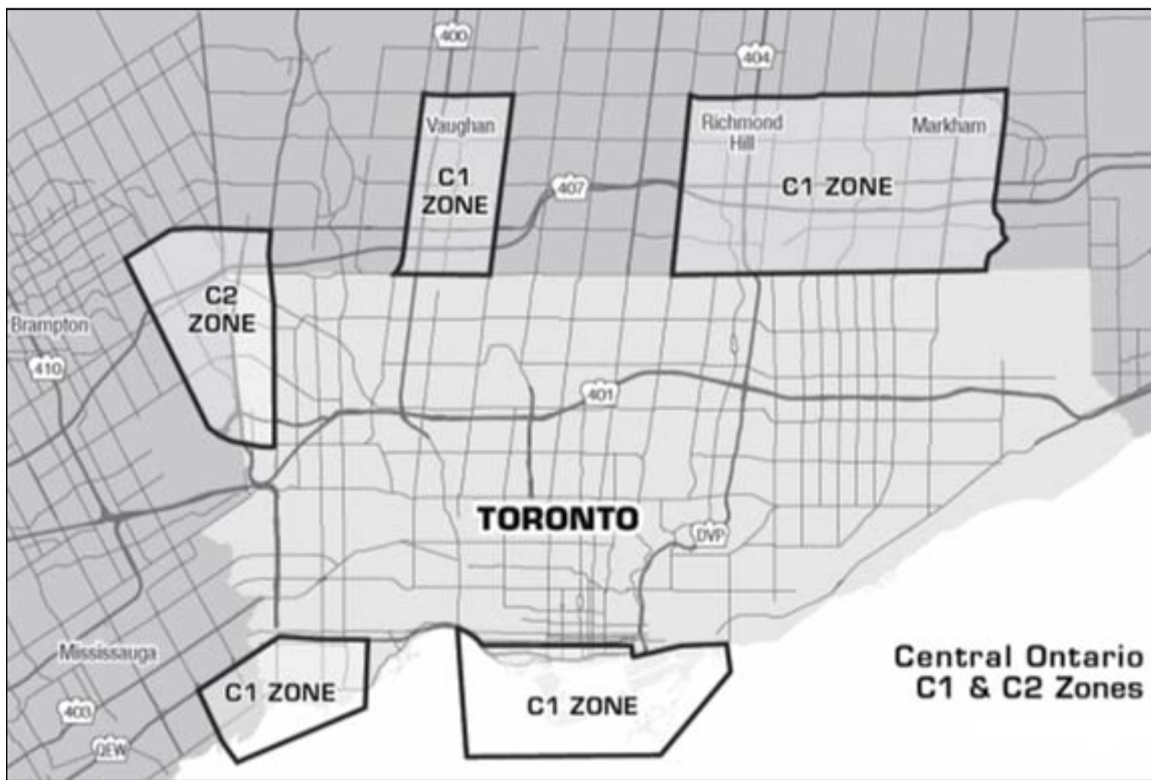
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<sup>733</sup> City Manager, *supra* note 716. Note that horsetrack racing has existed in what is now the City of Toronto since 1874. The existing Woodbine Racetrack opened in 1956.

<sup>734</sup> Member Motion, *Ontario Place: A Place for Families and a Public Space*, MM22.7 (City of Toronto, 10 & 11 April 2012) at s. 1(i)(ii) (the motion stated “It has been rumoured that the Provincial Government is considering building a new casino in the GTA and that Ontario Place is being considered”).

<sup>735</sup> *Ibid.*

gaming in Ontario.<sup>736</sup> OLG identified 29 zones across Ontario for locating gaming facilities, of which 24 already housed an existing slot or casino gaming facility. OLG's intention was to issue a request for proposal for a private sector provider to develop or operate a casino in each zone. OLG would regulate the types and number of games offered, betting limits, and responsible gambling policies. Two gaming zones were proposed within the City of Toronto's boundaries.<sup>737</sup> Illustration 4.1 shows the OLG's preferred zones for a new casino, called "C1."



**Illustration 4.1: Map of Preferred OLG Casino Zones**<sup>738</sup>

Before the development of any new gaming sites, OLG required under provincial legislation the explicit consent of a municipality, which in Toronto is the passing of a resolution by City Council.<sup>739</sup> The City of Toronto's procedural bylaw considered this to

<sup>736</sup> City Manager, Staff Report: New Casino & Convention Development in Toronto, City of Toronto (5 April 2013), online: <<http://www.toronto.ca/legdocs/mmis/2013/ex/bgrd/backgroundfile-57336.pdf>>.

<sup>737</sup> *Ibid.* at 27.

<sup>738</sup> *Ibid.* at 27.

<sup>739</sup> *Ibid.* at 3.

be an issue of city-wide consequence, meaning that it affected the city as a whole, not a single community council area.<sup>740</sup> As such, City Council approval was necessary to expand or construct gaming sites within the city's boundaries.<sup>741</sup>

### 3. Distinction between a “city-wide” and “local” process

The 2012-13 casino debate took place over a single year and included three overlapping events and actors: the formal process as set out by City Council; the steps taken by the ward councillors and the Toronto and East York Community Council (TEYCC); and the role played by BIAs, neighbourhood associations, and other groups.<sup>742</sup> Key decisions were also made at the provincial level, which impacted OLG's negotiations with the City of Toronto over the 12-month period.<sup>743</sup>

The City of Toronto's Executive Committee is made up of the Mayor and hand-picked members from amongst the city's 44 councillors. The Executive Committee is required under COTA.<sup>744</sup> The City's procedural bylaw sets out the terms of reference for the Executive Committee.<sup>745</sup> Its mandate is to “monitor and make recommendations on the priorities, plans, international and intergovernmental relations, and the financial integrity of the City” including “Council's strategic policy and priorities in setting the agenda.”<sup>746</sup>

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<sup>740</sup> *Ibid.* at 1, explicitly stated: “Should Council consider new casino development, a citywide perspective should be taken to support the potential that exists in both the C1 and C2 zones

<sup>741</sup> *Ibid.*

<sup>742</sup> Note that this paper does not include ethnographic information – in particular interviews – with relevant municipal and provincial officials, nor with members of social movements, BIAs, neighbourhood associations and others. Data is drawn from reports on the public record and popular media.

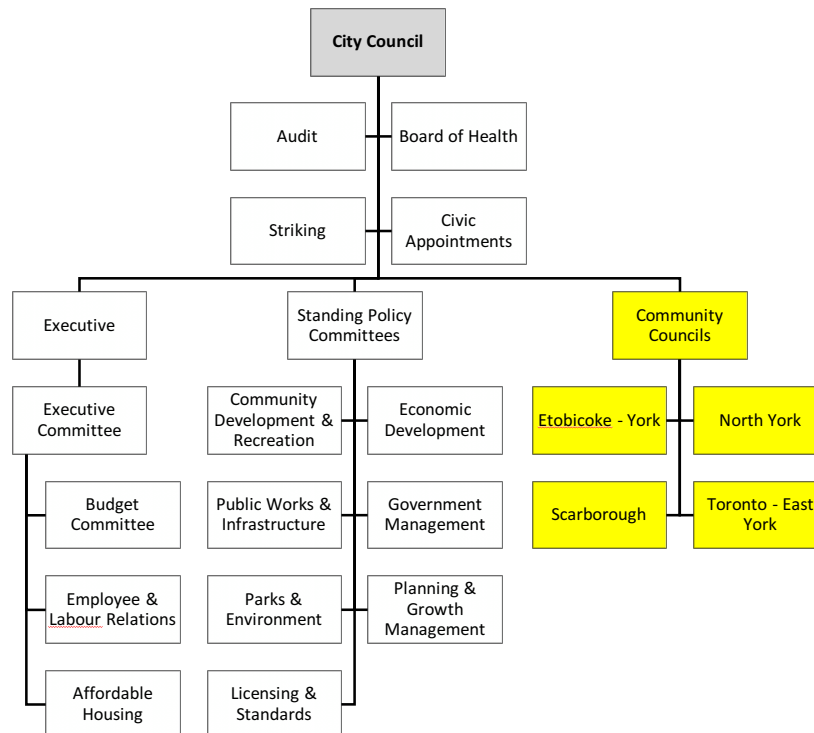
<sup>743</sup> While it is outside the scope of this paper, it is important to note that the role played by City of Toronto staff is complex and worthy of independent study. In the Final Report, distinct sections included the analysis of particular city departments, and the content of sections suggests that the departments had different perspectives on the value of a casino.

<sup>744</sup> Under the Act, “committee” means any advisory or other committee, subcommittee or similar entity of which at least 50 per cent of the members are also members of one or more municipal councils or local boards other than a police services board or public library board (City of Toronto Act, section 189 (1).

<sup>745</sup> City of Toronto Procedural Bylaw, Chapter 27, Appendix B-1.

<sup>746</sup> City of Toronto Procedural Bylaw, Chapter 27, Appendix B-1 at (I)(1) and (2)(A)(1).





**Figure 4.1: Organizational Structure of the City of Toronto**<sup>747</sup>

The City's organizational structure, shown in Figure 4.1, was introduced following the 2005 governance review was outlined in Chapter 3. The governance structure was intended to reduce the number of days that councillors say in City Council meetings through enhanced delegation to committees. The new governance model introduced an Executive Committee; seven city-wide standing committees,<sup>748</sup> six special committees, which are sub-committees of the Executive Committee,<sup>749</sup> and four community councils.<sup>750</sup> These bodies are set out and described in the Procedural Bylaw,<sup>751</sup> which comprehensively sets out the rules for all Council and committee meetings and the

<sup>747</sup> City of Toronto, "City Council and its Committees", online: <http://www1.toronto.ca/wps/portal/contentonly?vgnextoid=762b6804e1f22410VgnVCM10000071d60f89RCRD&vgnextchannel=9632acb640c21410VgnVCM10000071d60f89RCRD>.

<sup>748</sup> The committees are: Economic Development Committee, Community Development and Recreation Committee, Public Works and Infrastructure Committee, Planning and Growth Management Committee, Licensing and Standards Committee, Parks and Environment Committee, Government Management Committee (§ 27-126).

<sup>749</sup> They are: Audit Committee, Striking Committee, Civic Appointments Committee, Budget Committee, Affordable Housing Committee, Employee and Labour Relations Committee (Appendix B (II)).

<sup>750</sup> Community council powers are described in detail in Part II of this Chapter.

<sup>751</sup> *City of Toronto Municipal Code*, Chapter 27, Council Procedures.

Council Committees.<sup>752</sup> The provisions in the procedural bylaw are very detailed. They prescribe exactly how the meetings should be conducted, which committees there should be, and what may be delegated to community councils.<sup>753</sup> City Council also delegated limited powers to the City's four community councils, highlighted in yellow in Figure 4.1, as outlined in Chapter 3.

The City Manager is the city's most senior staff member, appointed by City Council. COTA states that the City Manager (referred to as a "chief administrative officer" in the Act) is responsible for: "exercising general control and management of the affairs of the City for the purpose of ensuring the efficient and effective operation of the City; and performing such other duties as are assigned by the City."<sup>754</sup> The City Manager provides advice and information to the Executive Committee.<sup>755</sup>

The changes in the city's governance structure were in part a shift to make City Council more efficient, but another aim was to include in the model possibilities to look at the city-wide perspective, too. Amalgamation ultimately eroded the two-tier perspective, but integrating what was formally a metropolitan level with the municipal level. As a former senior staff member told that, in general, "there is something to be said for just coordinating better and putting in place mechanisms that make sure you were to cross boundaries that were kind of arbitrary to serve the people as a whole."<sup>756</sup> But the thing that is lost is that "the two-tier did give you the ability for different people to look at things differently. Either from a sort of citywide, or region-wide perspective and a local

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<sup>752</sup> *City of Toronto Municipal Code*, Chapter 27 § 27-2.

<sup>753</sup> Council and Committee Meetings (Article V), Roles and Conduct (Article VI), Council Meeting's Agenda (Article VII), Adding New Business to Council Meetings (Article VIII), Motions (Article IX), Points of Order and Privilege and Chair's Rulings (Article X), Rules of Debate for Council (Article XI), Voting (Article XII), Rules for Committee of the Whole (Article XIII), Minutes (Article XIV), Bills (Article XV), Committees of Council (Article XVI), Rules for Committees (Article XVII), Delegation to Council Committees (Article XVIII); Order of Business and Balloting (Appendix A); and Committees (Appendix B).

<sup>754</sup> COTA, *supra* note 11 at s. 140.

<sup>755</sup> City of Toronto, "City Manager's Office" (last retrieved: April 1, 2017), online: <<http://www1.toronto.ca/wps/portal/contentonly?vgnextoid=56f632d0b6d1e310VgnVCM10000071d60f89RCRD>>.

<sup>756</sup> Anonymous interview with City of Toronto staff member #4, City Manager's Office, Toronto, Ontario, Canada (7 May 2016) – author conducted.

perspective.”<sup>757</sup> The Executive Committee was meant to be a “kind of proxy for two-tier in a kind of way.”<sup>758</sup>

In the process outlined by the City of Toronto’s Executive Committee, staff was asked to examine the “city-wide” effects of a casino, rather than the effects within the immediate area in which a potential casino would be located.<sup>759</sup> In a report submitted to the Executive Committee and City Council summarizing the effects on communities and neighbourhoods, city staff did not report on the effects on neighbourhoods adjacent to one of the proposed casino sites: “To date, the City has not formally received a specific proposal for the establishment of a standalone casino gaming facility and/or integrated entertainment complex in Toronto. As such, City staff cannot provide a full analysis of the social impacts and opportunities a new casino gaming facility may have on the neighbourhood(s) adjacent to such a facility at this time.”<sup>760</sup>

On May 14, 2012, the Executive Committee considered two other member motions referred by City Council related to casinos, in addition to the Ontario Place Motion that was introduced the previous month. The Executive Committee referred both items to the City Manager requesting that he consult with the OLG on the process for the selection of future casino locations in the Greater Toronto Area (GTA). The City Manager was also asked to report back to Executive Committee at its October 9, 2012 meeting on the pros and cons of hosting a commercial casino in Toronto, “including projected job creation, revenue to the City, tourist attraction, and social impact”<sup>761</sup> and the effects of casinos on neighbourhoods.<sup>762</sup>

On November 5, 2012, the City Manager reported back to the Executive Committee with

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<sup>757</sup> *Ibid*

<sup>758</sup> *Ibid*.

<sup>759</sup> City Manager, *supra* note 736.

<sup>760</sup> City of Toronto, Appendix E to the Final Report, Social Considerations of Establishing a New Casino in Toronto, City of Toronto (n.d.), online: <<http://www.toronto.ca/legdocs/mmis/2013/ex/bgrd/backgroundfile-57342.pdf>>.

<sup>761</sup> Executive Committee, *No Casino without a Referendum*, (2015) EX 20.15, online: City of Toronto <<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2012.EX20.15>>.

<sup>762</sup> Member Motion, *Ontario Place: A Place for Families and a Public Space*, MM22.7 (City of Toronto, 10 & 11 April 2012).

a preliminary report, “Considering a New Casino in Toronto,” and was directed to conduct a public consultation, provide further analysis, and report back with recommendations in Spring 2013. The Committee authorized the City Manager to conduct public consultations based on the staff report and technical report prepared by consultants. The direction was also given to report on a temporary casino, establishing a “social contract” (undefined in the motion) and developing recommendations on preferred locations, size, and type of facility and potential revenues from a hosting arrangement. No additional directions were provided on the effects of a potential casino on neighbourhoods.

The City of Toronto identified three “study areas” as potential sites for a downtown casino, as well as analysis of the effects of an expansion of the Woodbine Racetrack.<sup>763</sup> As documented in its final report, the City undertook a “detailed review” of the study areas to provide advice on possible locations that “may or may not be appropriate for a new casino” and to give advice to City Council on the conditions it may wish to impose if Council proceeded with a casino in the C1 zone, which were OLG’s preferred areas for a casino development.<sup>764</sup> The City identified the “opportunities and challenges” of a casino in this area based on five themes: the existing planning framework, urban fabric, place making/public realm, transportation, and infrastructure.

The three areas chosen for closer study were the Ports Lands, Exhibition Place, and the downtown core. The proposed downtown locations were all within the boundaries of the TEYCC, which has representatives from 12 wards. The Port Lands were ultimately rejected as a suitable area for a casino, thus leaving Exhibition Place and the downtown core, which lie within Wards 19 and 20.<sup>765</sup> Councillor Mike Layton was the Ward 19 councillor and then-Councillor Adam Vaughan represented Ward 20.

From a planning perspective, planning staff noted that “casino uses have significant city building implications which have to be understood both at a citywide level and an area

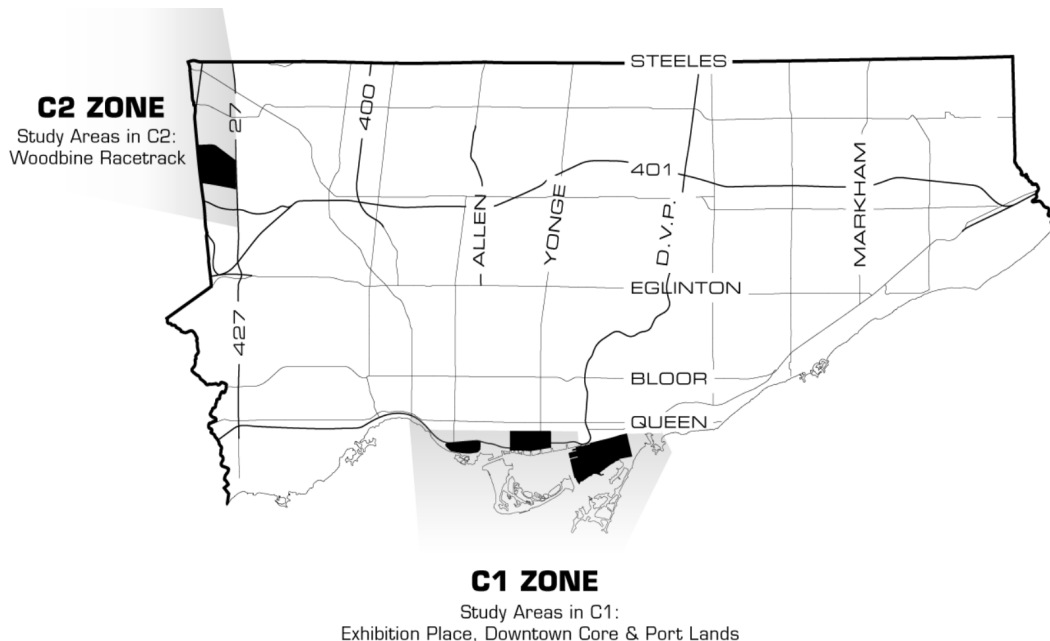
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<sup>763</sup> Executive Committee, *No Casino without a Referendum*, (2015) EX 20.15, online: City of Toronto <<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2012.EX20.15>>.

<sup>764</sup> *Ibid.*

<sup>765</sup> *Ibid.*

specific basis” (emphasis added).<sup>766</sup> Normally, city planners are given “a detailed proposal for a specific site accompanied by development applications submitted under the Planning Act with supporting documentation,” which is then assessed.<sup>767</sup> This information helps staff in making recommendations to City Council on “the appropriateness of a proposal (proposed uses, scale, form, density, etc.) for a specific site.” Here, the casino was to be located within the zones identified in Illustration 4.2, with uncertain, unpolished details regarding the precise location and square footage, interfering with staff’s ability to assess the local implications of the casino, on top of the “complicated” and “significant” city-wide “economic, financial and social considerations around casino uses.”<sup>768</sup>



**Illustration 4.2: Map of Toronto’s Study of Casino Locations**<sup>769</sup>

Within the city’s decision-making process, individual ward councillors and community councils did not have a formal role to play in the casino deliberations. The councillors

<sup>766</sup> City Manager, *supra* note 736 at 2.

<sup>767</sup> *Ibid.*

<sup>768</sup> *Ibid.*

<sup>769</sup> Executive Committee, *No Casino without a Referendum*, (2015) EX 20.15, online: City of Toronto <<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2012.EX20.15>>.

were meant to fulfill their role as local representatives on City Council. The casino was seen as a “city-wide” issue given the magnitude of the financial consideration and because it involved more than one community council area.

The consultation process, mandated by the Executive Committee and overseen by the City Manager’s Office, was one of the ways that the local impacts were assessed. Throughout the month of January 2013, City of Toronto staff and consultants oversaw five public consultations throughout the city.<sup>770</sup> Consultants also conducted a poll and stakeholder interviews to understand whether the public supported the introduction of a casino.<sup>771</sup> The format of the public consultations changed throughout the process. The initial open house took place in the City Hall Rotunda on January 9, 2013, with a series of information boards setting out the decision process; revenue, financial and economic development information; social and health considerations; and planning and site area information. City staff was available to answer questions. A feedback form and two online terminals were available for participants to provide their input. Hundreds of people showed up for the consultation, demanding more than information. Councillor Gord Perks, who represented a ward in the Toronto-East York Community Council area, stood on a chair and invited participants to an upstairs committee room to “have an actual conversation.”<sup>772</sup>

Following the first meeting, the format for the remaining Community Open House events held between January 12 and 19, 2013 was changed to include presentations by City staff, more formal facilitated discussion groups and the opportunity to make statements during an open microphone session.<sup>773</sup> I spoke to a former city staff member about the civic engagement process during the 2012-13 casino debate. For this former staff member, the

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<sup>770</sup> Glyn Bowerman, “Toronto When The Chips Are Down” (16 April 2013) *YYZ Magazine*, online: <<http://humberjournalism.com/yyz2013/toronto-when-the-chips-are-down/>>.

<sup>771</sup> The Environics poll was a telephone survey of 902 Torontonians, with representation from across the City of Toronto. See City Manager, Staff Report: New Casino & Convention Development in Toronto, City of Toronto (5 April 2013).

<sup>772</sup> Staff, “Anti-casino side hijacks first public consultation on Toronto casino plan” (9 January 2013) *Metro News*, online: <<http://metronews.ca/news/toronto/503047/anti-casino-side-hijacks-first-public-consultation-on-toronto-casino-plan/>>.

<sup>773</sup> City Manager, *supra* note 736.

casino debate was “one of the most difficult kinds of topics and situations.”<sup>774</sup> The staff member noted, “In the end, you know, we had a legislative requirement to do civic engagement, and so we had to have some kind of process. We didn’t want to have it seen to be just ticking a box, so we wanted to do it properly, as much as we could, given the topic. And the first one went badly, but the rest went reasonably smoothly.”<sup>775</sup>

The prevailing position of members of the Toronto public who attended the Community Open House Discussions or completed a Feedback Form was opposition to a new casino in Toronto. Among the 17,780 completed Feedback Forms, 66.3% indicated they were “strongly opposed” to a casino in Toronto and another 5% “somewhat opposed.” Those “strongly in favour” or “somewhat in favour” of a casino represented 21.2% and 4.5% respectively. Another 3.1% indicated they were neutral or had mixed feelings.<sup>776</sup> As the staff member interviews above noted, it was uncertain whether any of these public participation efforts “really had an impact on where it was going to go anyway.”<sup>777</sup>

The councillors in the Toronto-East York Community Council area thought that the consultation process was inadequate for consideration of the local impacts.<sup>778</sup> They advocated for a more formalized local consideration of the issue. The councillors used the authority of Toronto Municipal Code’s Chapter 27 to argue that, “community councils are entitled to hear from the public about local needs and neighborhood issues.”<sup>779</sup> As noted in Chapter 3, all four of Toronto’s community councils have the authority to strike subcommittees under §27-131 of the Toronto Municipal Code. The TEYCC could, therefore, convene community meetings to “inform” (rather than consult) the public of the casino issue. Under Chapter 27, TEYCC could only make recommendations to

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<sup>774</sup> Anonymous interview with City of Toronto staff member #4, City Manager’s Office, Toronto, Ontario, Canada (7 May 2016) – author conducted.

<sup>775</sup> *Ibid.*

<sup>776</sup> DPRA, *City of Toronto Casino Consultation Report* (22 February 2013), online: City of Toronto <http://www.toronto.ca/legdocs/mmis/2013/ex/bgrd/backgroundfile-57343.pdf>.

<sup>777</sup> Anonymous interview with City of Toronto staff member #4, City Manager’s Office, Toronto, Ontario, Canada (7 May 2016) – author conducted.

<sup>778</sup> Anonymous interview with City of Toronto councillor #3, Toronto, Ontario, Canada (18 July 2016) – author conducted.

<sup>779</sup> Anonymous interview with City of Toronto staff member #1, City Clerk’s Office, Toronto, Ontario, Canada (18 December 2015) – author conducted.

Council on “local” official plan and zoning by-law amendments, or planning applications that “are not of city-wide interest,” neither of which applied in this case. Nor could TEYCC make recommendations at the committee level, as there was no planning report and no involvement for the committee.<sup>780</sup>

On November 6, 2012, the TEYCC established the subcommittee to “undertake public consultation with BIAs and local business representatives in the casino zones identified by OLG in the Toronto and East York District regarding the impact of a casino on parking and other business infrastructure in the Toronto and East York District, with a request that the subcommittee report on the outcome of such consultation to the January 22, 2013 meeting of the Toronto and East York Community Council.”<sup>781</sup> The TEYCC could not use its authority under Appendix B-IV (5) to make recommendations on policy and research about local matters. In the case of the casino, the City Manager had identified that the decision was one of City-wide interest.<sup>782</sup> As such, there was no capacity for the TEYCC to assume authority under that provision. However, under §§27-131(A) and (D), community councils may create subcommittees that report directly to Council on public hearings or public presentations. The subcommittee must have terms of reference in accordance with § 27-130B, including details as to why an existing committee or public advisory body cannot do the work; and a Clerk's impact statement identifying the staff and other resources the committee or public advisory body needs for support and a statement that such resources are available.<sup>783</sup> No information could be located on the terms of reference of the subcommittee or the details of the Clerk's impact statement beyond what was in the motion, illustrating perhaps that this was a novel use of the TEYCC.

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<sup>780</sup> *Ibid.*

<sup>781</sup> Toronto-East York Community Council Subcommittee, “Public Consultation with Business Improvement Areas and Local Business Representatives in the Casino Zones Identified in the Toronto and East York District” (2013) TZ1.2, online: <<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2013.TZ1.2>>; Toronto and East York Community Council, “Response to Various Motions Respecting Casinos in Toronto and East York District” (2012) TE20.47 at 2, online: City of Toronto <<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2012.TE20.47>>.

<sup>782</sup> See City Manager, *supra* note 736 at 1, where the City Manager states: “Should Council consider new casino development, a citywide perspective should be taken to support the potential that exists in both the C1 and C2 zones.”

<sup>783</sup> City of Toronto, *Toronto Municipal Code* s 27-130(b)(2)(e) & (f).



The use of TEYCC to deliberate on the local effects of a downtown casino impacted how the meanings of “local” and “city-wide” were constructed by different city actors. To some, the TEYCC legitimized the city’s decision-making process. A senior staff member explained the striking of the subcommittee as a means to “create a legitimate ... political entity that would become a place of energy for the counter argument, the anti-casino voice.” To others, it was used as a forum for an oppositional process. As another staff member said, the Subcommittee became a “theatre.”<sup>784</sup> Either way, the role of neighborhood associations and BIAs was to ensure that “traditional voices are a part of the process” and were part of a genuine, but strategic effort to hear from everybody, even those who might be strongly in favour of casino. The strategic element was to loop them in, as “they would be delegitimized if they didn’t come across as wanting to hear from everybody.”<sup>785</sup>

I interviewed one of the City of Toronto staff members who helped to design the community council model. The staff argued that the community council as a “segregated out a body, a committee which is geographically ward based,” needs to have a clear function, “otherwise what is the point?”<sup>786</sup> In this staff member’s view, the evolution of the community council from a body primarily focused on planning issues to one that considered the neighbourhood effects of city decisions, like the 2012-13 casino decision, indicates that the community council mandate “stood the test of time.”<sup>787</sup>

There was a disconnect between the view of councillors in the TEYCC area and city staff working on the city-wide issue. To one of the main city staff members working on the matter, “we were really honest about trying our best... [I]t’s one of the most difficult kinds of topics.”<sup>788</sup> However, to one of the local councillors involved in the decision to establish the subcommittee, the impetus for the TEYCC’s involvement was the lack of

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<sup>784</sup> Anonymous interview with City of Toronto staff member #5, City Planning, Toronto, Ontario, Canada (18 May 2016) – author conducted.

<sup>785</sup> *Ibid.*

<sup>786</sup> Anonymous interview with City of Toronto staff member #4, City Manager’s Office, Toronto, Ontario, Canada (7 May 2016) – author conducted.

<sup>787</sup> *Ibid.*

<sup>788</sup> *Ibid.*

staff reports available on the local effects of the casino, which needed to be requested by elected officials:

[W]e didn't feel like we were getting enough of an opportunity to evaluate what the impacts were on a local level of a citywide decision. The decision was very specific, about two neighborhoods, but, with respect to the Toronto East York Community Council district, there was no member of the Community Council on executive where the item was being debated. And we wanted to get ... down into what planning implications, what traffic implications, what social development impacts would have on it, would a casino have on a neighbourhood.<sup>789</sup>

One of the local councillors involved in the issue describes the goals of the subcommittee as “specific to the planning and transportation impact, which are squarely within the purview of Toronto East York Community Council.” The main benefit of the subcommittee approach was that and it “allowed us to question staff in far greater detail and to scrutinize the assumptions that were being made by various actors and players.” Another councillor put it this way, “What we did have is the ability to create a forum for the casino exploration and use that forum to get the information we need, under sort of requirement to get staff in front of us and push them on things like parking requirements and cost of parking spaces, and vehicle studies and do all the stuff from the areas where community council had jurisdiction to deal with is as a land use issue.”<sup>790</sup>

The TEYCC was thus able to leverage the subcommittee to engage with BIAs and resident associations, request staff reports on the impacts of a casino, and make recommendations directly to City Council. Numerous reports were requested from or submitted to the Subcommittee, all with a focus on planning, local transportation, local economic development, and health, as summarized in Table 4.1.

TEYCC Subcommittee Meeting date	City unit authoring the report	Issues considered
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<sup>789</sup> Anonymous interview with City of Toronto councillor #1, Toronto, Ontario, Canada (5 July 2016) – author conducted.

<sup>790</sup> Anonymous interview with City of Toronto councillor #2, Toronto, Ontario, Canada (7 July 2016) – author conducted.

October 10, 2012	City Planning <sup>791</sup>	<ul style="list-style-type: none"> <li>• Zoning regulations governing casinos, actions to prohibit casinos under the zoning by-laws, parking standards, parking capacity within the Front Street and John Street precinct</li> </ul>
	Transportation <sup>792</sup>	<ul style="list-style-type: none"> <li>• Traffic operation issues arising from large casino/resorts in downtown locations in similar-sized cities</li> <li>• Traffic conditions, capacity constraints and other operational issues on the highways and arterial roads in the vicinity of the Exhibition/Ontario Place grounds</li> </ul>
November 6, 2012	City Planning <sup>793</sup>	<ul style="list-style-type: none"> <li>• Land uses, transportation, and the Port Lands</li> </ul>
February 26, 2013	City Planning <sup>794</sup>	<ul style="list-style-type: none"> <li>• Existing, approved and anticipated population densities and growth within 10 km of each of the proposed casino sites within the TEY district</li> <li>• Transportation and parking issues, character of the local neighbourhood, economic impacts on local businesses, local property assessment impacts and local safety and security impacts in the TEY district</li> </ul>
	City Solicitor <sup>795</sup>	<ul style="list-style-type: none"> <li>• The use of the Exhibition Place lands for parks and industrial purposes</li> </ul>
	City Manager and City Solicitor <sup>796</sup>	<ul style="list-style-type: none"> <li>• Legal or other mechanisms for securing any conditions requested by the City</li> </ul>
	Economic	<ul style="list-style-type: none"> <li>• Economic and employment losses as a result of</li> </ul>

<sup>791</sup> See Toronto-East York Community Council, *Zoning Status of Casinos in Toronto and East York* (11 September 2012), online: <<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2012.TE18.55>>; Toronto-East York Community Council, *Zoning Status of Casinos in Toronto and East York*, (2012) TE19.19, online: <<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2012.TE19.9>>.

<sup>792</sup> Toronto-East York Community Council, *Response to Various Motions Respecting Casinos in Toronto and East York District* (2012), online: <<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2012.TE20.47>>.

<sup>793</sup> Toronto-East York Community Council, *Response to Various Motions Respecting Casinos in Toronto and East York District* (2013), online: <<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2013.TE21.29>>.

<sup>794</sup> Toronto-East York Community Council, *Response to Various Motions Respecting Casinos in Toronto and East York District - Fifth Supplementary Report*, Report from the Director, Community Planning, Toronto and East York District (14 February 2013), online: City of Toronto <<http://www.toronto.ca/legdocs/mmis/2013/te/bgrd/backgroundfile-56318.pdf>>

<sup>795</sup> City Solicitor, *Casino in Toronto and East York District - Exhibition Place, Report from the City Solicitor* (6 February 2013), online: City of Toronto <<http://www.toronto.ca/legdocs/mmis/2013/te/bgrd/backgroundfile-55991.pdf>>.

<sup>796</sup> City Manager and City Solicitor, *Response to Motion Respecting a New Casino - Securing Conditions from OLG*, City of Toronto (20 February 2013), online: <<http://www.toronto.ca/legdocs/mmis/2013/te/bgrd/backgroundfile-56324.pdf>>.

	Development & Culture <sup>797</sup>	the elimination of the exhibition place grounds as a public event space
	Medical Officer of Health <sup>798</sup>	Provided two reports to the Board of Health and then to the TEYCC, Executive Committee and City Council on the health impacts of gambling, focusing on social and community impacts. <sup>799</sup>

**Table 4.1: Reports requested by the TEYCC Subcommittee related to the 2012-13 Casino Debate**

When asked how the Subcommittee was distinct from practices aimed at gathering public input, one of the local councillors described the forum as, “a more formal place to provide feedback and I think that’s where it helped with collecting information, but not giving out information.” In public consultations, by contrast, “nothing that you say is really on the record, you submit your comments on a little form, you stuff them in a box and there you go.” The councillor cited this as relevant in the 2012-13 case, as “the first set of public consultations [were] disappointing. [They were] held in City Hall, so not in the communities that would have been impacted. It was ‘here’s the pretty picture of what can happen, here’s the economic benefit’ [yet in fact] says nothing about the economic impact, [just] everything that the casino operators are promising.”<sup>800</sup>

This novel use of the procedural bylaw to create the TEYCC subcommittee was perhaps anticipated. As affirmed by a senior city staff member, this provision of the Municipal

<sup>797</sup> General Manager, Economic Development & Culture, *Use of Exhibition Place Grounds as a Public Event Space* (25 February 2013), online: City of Toronto: <<http://www.toronto.ca/legdocs/mmis/2013/te/bgrd/backgroundfile-56371.pdf>>.

<sup>798</sup> Board of Health, *The Health Impacts of Gambling Expansion in Toronto* (7 November 2012), online: City of Toronto <<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2012.HL18.1>> and Board of Health, *Community Health Impacts of a Casino in Toronto* (28 January 2013), online: City of Toronto <<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2013.HL19.4>>. Note that The Medical Officer of Health does not have explicit authority to assess the health effects of planning decisions such as casinos. The involvement of the Medical Officer of Health in matters that tangentially relate to the health of Toronto residents is not new: previously, he has contributed to debates with arm’s length relevance to the Board of Health, such as the extension of the runway at Billy Bishop Centre Island Airport.

<sup>799</sup> Note that the Board of Health endorsed the Medical Officer of Health’s proposed Dr. McKeown’s proposed *Toronto Public Health Position Statement on Gambling and Health*, recommended against City Council expanding gambling in Toronto, urged Toronto Public Health’s participation in the City Manager’s public consultation process, and made recommendations to support research on problem gambling.

<sup>800</sup> Anonymous interview with City of Toronto councillor #1, Toronto, Ontario, Canada (5 July 2016) – author conducted.

Code was included in 2006, when the city's committee system was restructured.<sup>801</sup> As this staff person conceded: "We put a backdoor in that might support community councils developing more of that local council role. ... We needed to have something in there that would support that, because the rest of the description of community councils is really a laundry list."<sup>802</sup>

Thus, the TEYCC was able to use the creation of the Subcommittee to engage squarely in local decision-making in the 2012-13 casino debate, using a little-known provision in the Toronto Municipal Code setting out community council authorities. A councillor described it as "a tool of extraordinary importance," stating that the Subcommittee "gave us ... space to think out loud" in contrast to City Council, which had become "a decision-making body and not a debating and research body."<sup>803</sup> This was the first time the community council had been used for this purpose. Ultimately, the subcommittee was able to speak the language of local on a city-wide matter by considering specific matters of relevance to the TEYCC boundaries.

#### **4. BIAs, neighbourhood associations and other iterations of "local"**

The casino opposition was described in the *Globe and Mail* as follows: "Apart from the mayor, a union or two and the developers and casino operators who stood to benefit, the casino lacked powerful champions. Its opponents, by contrast, were articulate and well-organized."<sup>804</sup> The main community group involved in the 2012-13 was "No Casino Toronto," a grassroots group started in the spring of 2012 by three women in Etobicoke, one of Toronto's suburbs.<sup>805</sup> Maureen Lynett, Peggy Calvert, and Sheila Lynett headed No Casino Toronto. Maureen Lynett objected in particular to Ontario Finance Minister

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<sup>801</sup> Anonymous interview with City of Toronto councillor #1, Toronto, Ontario, Canada (5 July 2016) – author conducted.

<sup>802</sup> *Ibid.*

<sup>803</sup> Anonymous interview with City of Toronto councillor #2, Toronto, Ontario, Canada (7 July 2016) – author conducted.

<sup>804</sup> Marcus Gee, "Toronto casino was always a long shot", *The Globe and Mail* (17 May 2013), online: <<http://www.theglobeandmail.com/news/toronto/toronto-casino-was-always-a-long-shot/article11986713/>>.

<sup>805</sup> Elizabeth Church, "Anti-casino lobby ramps up campaign", *The Globe and Mail* (13 April 2013), online: <<http://www.theglobeandmail.com/news/toronto/anti-casino-lobby-ramps-up-campaign/article11181058/>>.

Dwight Duncan's vision of a casino-anchored "golden mile on Toronto's waterfront, stating: "Dwight Duncan's idea of a jewel, a golden mile, to me was a nightmare," that would ruin the waterfront, harm neighbourhoods and send a terrible international message about what Toronto considers "iconic."<sup>806</sup> It is interesting to note that No Casino Toronto was not in any way connected with BIAs or neighbourhood associations in the TEYCC area; instead, they comprised elite and well-connected people and organizations outside of these organizations.<sup>807</sup> However, the involvement of No Casino Toronto was facilitated and enabled by the local councillors involved in the issue.<sup>808</sup> This is consistent with the findings reached in Chapter 3, that councillors are the chief facilitators and enablers of BIAs and neighbourhood associations in local matters.

Of key significance was the close working relationship between No Casino Toronto and councillors in the Toronto-East York district. The trio approached downtown councillors very early in the debate for advice, even before the OLG announced its expansion plan.<sup>809</sup> They were described as "relentless" at contacting the local councillor and mobilizing support against a casino anywhere along the waterfront.<sup>810</sup> Their intention in reaching out to councillors was to understand the process for decision-making at City Hall and to coordinate their efforts outside of the formal institutions.<sup>811</sup>

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<sup>806</sup> David Rider, "Grassroots campaign opposing a Toronto casino draws influential members", *The Toronto Star* (16 November 2012), online: <[http://www.thestar.com/news/gta/2012/11/16/grassroots\\_campaign\\_opposing\\_a\\_toronto\\_casino\\_draws\\_influential\\_members.html](http://www.thestar.com/news/gta/2012/11/16/grassroots_campaign_opposing_a_toronto_casino_draws_influential_members.html)>.

<sup>807</sup> Interview with members of No Casino Toronto, Toronto, Ontario, Canada (11 May 2015) – author conducted.

<sup>808</sup> *Ibid.*

<sup>809</sup> Anonymous interview with City of Toronto councillor #1, Toronto, Ontario, Canada (5 July 2016) – author conducted.

<sup>810</sup> *Ibid.* See also No Casino Toronto, "Don't Gamble with our City" (8 April 2013), online: <<https://www.youtube.com/watch?v=UaKMOF2-6UA>>; Glyn Bowerman, "Toronto When The Chips Are Down" (16 April 2013) *YYZ Magazine*, online: <<http://humberjournalism.com/yyz2013/toronto-when-the-chips-are-down/>>.

<sup>811</sup> Anonymous interview with City of Toronto councillor #1, Toronto, Ontario, Canada (5 July 2016) – author conducted. See also City Council, "Petitions" (21 May 2013) RM35.3, online: <<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2013.RM35.3>>.

No Casino Toronto was effective at bringing together multiple voices, including other activists<sup>812</sup> and high-profile members from the arts, business and academia like Ken Greenburg, Jack Diamond and Richard Florida who gathered weekly to discuss strategy in an unnamed downtown office. This suggests that No Casino Toronto, rather than acting as a “grassroots” organization as characterized in the news, was instead a highly mobilized, elite organization.<sup>813</sup> They collaborated with the Martin Institute, a think-tank affiliated with the University of Toronto, who opposed the casino on business and economic grounds.<sup>814</sup> No Casino Toronto had a steering committee who met regularly to discuss their strategy and included an emphasis on messaging and social media.<sup>815</sup> They also used a range of canvassing and media techniques, including Facebook,<sup>816</sup> building a website, attending meetings and debates, contacting other organizations, handing out buttons, creating an online petition, actively using a twitter account to report the news and to live-tweet key City of Toronto meetings), and helped distribute lawn signs.<sup>817</sup> They used innovative approaches like setting out exactly how residents could sign up to depute at Executive Committee and what individuals could say<sup>818</sup> and distributing a youtube video explicitly for sharing on social media.<sup>819</sup> The result was over 250

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<sup>812</sup> Glyn Bowerman, “Toronto When The Chips Are Down” (16 April 2013) *YYZ Magazine*, online: <<http://humberjournalism.com/yyz2013/toronto-when-the-chips-are-down/>>.

<sup>813</sup> David Rider, “Grassroots campaign opposing a Toronto casino draws influential members”, *The Toronto Star* (16 November 2012), online: <[http://www.thestar.com/news/gta/2012/11/16/grassroots\\_campaign\\_opposing\\_a\\_toronto\\_casino\\_draws\\_influential\\_members.html](http://www.thestar.com/news/gta/2012/11/16/grassroots_campaign_opposing_a_toronto_casino_draws_influential_members.html)>. See also Richard Florida, “Casinos Ruin Cities”, *Huffington Post* (17 April 2013), online: <[http://www.huffingtonpost.ca/richard-florida/toronto-casino-rob-ford\\_b\\_2164882.html](http://www.huffingtonpost.ca/richard-florida/toronto-casino-rob-ford_b_2164882.html)>.

<sup>814</sup> David Olive, “In Toronto casino debate, it’s time to walk away from the table”, *The Toronto Star* (29 March 2013), online: <[http://www.thestar.com/business/2013/03/29/in\\_toronto\\_casino\\_debate\\_its\\_time\\_to\\_walk\\_away\\_from\\_the\\_table\\_olive.html](http://www.thestar.com/business/2013/03/29/in_toronto_casino_debate_its_time_to_walk_away_from_the_table_olive.html)>.

<sup>815</sup> Anonymous interview with City of Toronto councillor #1, Toronto, Ontario, Canada (5 July 2016) – author conducted.

<sup>816</sup> No Casino Toronto Facebook Page, online: <<https://www.facebook.com/NoCasinoToronto?fref=ts>>. The Facebook page had 15,326 likes. The Twitter feed had 1,189 followers.

<sup>817</sup> Those who believe a casino could be great thing for the city have noticed the building opposition visible in the city’s east end, thanks to more than 100 “No casino” lawn signs distributed by Toronto-Danforth MPP Peter Tabuns.

<sup>818</sup> No Casino Toronto, “Why is MGM Betting on You Sleeping on Monday?” (n.d.), online: <<http://us6.campaign-archive2.com/?u=8b04c2e2b0af73d1226a1c173&id=89b6463dd3>>.

<sup>819</sup> *Ibid.*

deputants at Executive Committee, and 20 out of 22 petitions at the final City Council meeting where the casino issue was heard.<sup>820</sup>

Religious leaders also played an important role, with 268 faith leaders signing a petition on April 5, 2013 that they could not support a casino.<sup>821</sup> This group did not appear to have a direct relationship with No Casino Toronto.<sup>822</sup> According to one councillor, getting the faith community on board was a strategic decision: “We knew that to win the casino fight, we had to win the vote of council. We knew that we had to get to those communities somehow, we were not going to get to them through neighborhood associations very easily, so we went through different organizations. ... one of the critical ones is getting to the Baptist churches.”<sup>823</sup> John Sewell, former mayor of Toronto, found few civic leaders who would speak publicly in favour of a casino. He wrote: “[F]ew community leaders favour a large casino in downtown Toronto. As one can see from the ads placed in the daily papers by No Casino Toronto, virtually everyone who cares about the city and participates in its public life is opposed. They come from every sector. When faith leaders made their public announcement of opposition, they proved a lively crew in their different religious outfits and said this was one of the first times they had spoken out as a group.”<sup>824</sup>

In contrast to these other key advocates, BIAs and neighbourhood associations played a less obvious role in the debate. As noted earlier, the TEYCC established the subcommittee to “undertake public consultation with BIAs and local business representatives in the casino zones identified by OLG. The motive behind the explicit naming of BIAs over other local interests was unclear. A former staff member ruminated

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<sup>820</sup> City Council, *Petitions* (RM35.3) (21 May 2013), online:

<<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2013.RM35.3>>.

<sup>821</sup> Margaret Wentz, “Dead man’s hand: Just say no to casinos”, *The Globe and Mail* (11 April 2013), online: <<http://www.theglobeandmail.com/globe-debate/dead-mans-hand-just-say-no-to-casinos/article11017537/>>.

<sup>822</sup> Anonymous interview with City of Toronto councillor #1, Toronto, Ontario, Canada (5 July 2016) – author conducted.

<sup>823</sup> Anonymous interview with City of Toronto councillor #2, Toronto, Ontario, Canada (7 July 2016) – author conducted.

<sup>824</sup> John Sewell, “Sewell: casino divides city, fight takes flight”, *Post City Toronto* (6 May 2013), online: <<http://www.postcity.com/Eat-Shop-Do/Do/May-2013/Civic-war-Casino-divides-city-fight-takes-flight/>>.



that, “I guess they were getting lots of pressure from [BIAs]... This was ... about the Metro Convention Centre site mostly, right? That whole area and the Entertainment district... [S]o I guess that’s why ... because there would have been an impact on them.”<sup>825</sup>

One of the councillors who initiated the subcommittee thought that it might have had to do with the impacts on local businesses in favour of “large multinationals” who were concerned that “a lot of money would be coming out of that very local community and what impact that would have on local businesses.”<sup>826</sup> When asked why other parties weren’t named specifically as bodies to consult, the councillor said, “I can’t remember why, but it may have been that at that point in time was the most pressing, seemed the most pressing of issues. And because of how quickly [the debate] was going, we didn’t really sit down amongst the colleagues to say let’s draft out this long list, laundry list of groups to consult. It was, who’s missing at the table?”<sup>827</sup>

Although BIAs and NAs didn’t lead the charge in the casino opposition, they contributed to the debate, mainly via the city’s formal committee process. Toronto’s BIAs and NAs were among the hundreds of submissions and deputations to the Executive Committee in April 2013.<sup>828</sup> Some of their concerns centred on neighbourhoods, like the impact on traffic and local planning. For example, the York Quay Neighbourhood Association was very active, submitting letters,<sup>829</sup> deputing at meetings<sup>830</sup> and appearing in media including Metro Morning.<sup>831</sup> They state that they are a, “RESIDENTIAL community

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<sup>825</sup> Anonymous interview with City of Toronto staff member #4, City Manager’s Office, Toronto, Ontario, Canada (7 May 2016) – author conducted.

<sup>826</sup> Anonymous interview with City of Toronto councillor #1, Toronto, Ontario, Canada (5 July 2016) – author conducted.

<sup>827</sup> *Ibid.*

<sup>828</sup> Executive Committee Meeting, *New Casino and Convention Development in Toronto* (15 April 2013) EX30.1 [hereinafter “Executive Committee meeting”], online: <<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2013.EX30.1>>.

<sup>829</sup> Braz Menezes, *Correspondence to Toronto City Council* (15 January 2013), online: <<http://www.toronto.ca/legdocs/mmis/2013/ex/comm/communicationfile-35545.pdf>>.

<sup>830</sup> Executive Committee Meeting, *New Casino and Convention Development in Toronto* (15 April 2013) EX30.1 [hereinafter “Executive Committee meeting”], online: <<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2013.EX30.1>>.

<sup>831</sup> Metro Morning (April 15, 2013).

organization,” representing a population “expected to top 120,000 by 2015.”<sup>832</sup> The York Quay Neighbourhood Association emphasized that “a mega-casino anywhere downtown that increases congestion and threatens the city’s economic and social fabric,” and had issues with the consultation process adopted by city staff. The Wellington Place Neighbourhood Association stated, “WPNA represents the area bounded by King, Spadina, Front and Bathurst Streets and is most concerned with the negative economic and urban planning effects that this proposal presents... In the case of downtown Toronto, the King-Spadina area is already overwhelmed by the impact of nightclubs on the residential community.”<sup>833</sup>

However, many did not expressly reference local concerns, instead emphasizing the city-wide effects of a casino. For example, the Federation of North Toronto Residents Association (FoNTRA), an important umbrella organization of resident associations in northern Toronto, stated: “casinos do not contribute positively to city-building and their social impact affects the quality of place. By their nature, casinos are inward-facing, aiming to keep the client contently in one place, depleting the life of the street, and giving little or nothing back to the public realm.”<sup>834</sup> FoNTRA’s rejection of the downtown casino was considered to be a very important catalyst in mobilizing North York councillors to the “no” side.<sup>835</sup>

While the “no” side was engaged in a fulsome campaign and bringing together BIAs, NAs and other parties, pro casino advocates did not appear to have such a unified voice outside of City Hall, nor did they have BIAs and NAs on side. Early in the debate, lobbyists formed a critical part of the “yes” side campaign. Even before the decision was made by the Executive Committee to study the issue, lobbyists began approaching city councillors to garner their support for a casino in the city’s downtown or waterfront areas. These practices resulted in a review by the Lobbyist Registrar, who found that

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<sup>832</sup> Menezes, *supra* note 836.

<sup>833</sup> Scott James, *Correspondence to Mayor Rob Ford and City Councillors* (5 February 2013), online: <<http://www.toronto.ca/legdocs/mmis/2013/ex/comm/communicationfile-35551.pdf>>.

<sup>834</sup> Peter Baker & Geoff Kettel, *Correspondence to Executive Committee* (13 April 2013), online: <<http://www.toronto.ca/legdocs/mmis/2013/ex/comm/communicationfile-35949.pdf>>.

<sup>835</sup> Anonymous interview with City of Toronto councillor #1, Toronto, Ontario, Canada (5 July 2016) – author conducted.

MGM had breached the Lobbying By-law<sup>836</sup> by failing to register in the Lobbyist Registry before lobbying public office holders at the City. The “yes” side also had a public campaign, which began on April 26, 2013, less than a month before the crucial City Council vote.<sup>837</sup> Other proponents included downtown restaurant owners, real estate developers, and brokerage companies, and all focused on the development of jobs and revenue opportunities for the city.<sup>838</sup> They did not have BIAs or NAs on side.

## **5. The Final Report and Executive Committee’s Decision**

The City Manager’s final report was first delivered to a special meeting of the Executive Committee held on April 15-16, 2013, with options on how City Council could proceed.<sup>839</sup> The meeting included hundreds of deputations and submissions, including from BIAs and NAs. City staff reviewed the issue of a new downtown casino and expanded gaming at the Woodbine site by evaluating key economic, city building, social, health, and fiscal criteria. The 84-page report (not including attachments) provided a detailed analysis of specific study areas in the Port Lands, Exhibition Place, downtown core, and Woodbine. In the report, the City Manager provided two options: first, not grant approval for a casino. And, second, that City Council grant approval for the City Manager to continue discussions with OLG, with a recommendation that City Council select a mixed-use site in the downtown core for a casino, rather than selecting a site in the Port Lands, Exhibition Place and Woodbine.<sup>840</sup> Although then-Mayor Rob Ford’s Executive Committee struggled to approve a casino without assurances that the hosting fee, the annual amount to be paid to the City of Toronto by OLG in return for having a casino without its boundaries, would be at least \$100 million, which city staff were

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<sup>836</sup> City of Toronto, *Toronto Municipal Code*, ch. 140, s. 10.

<sup>837</sup> See tweet dated 26 April 2013 noting the start of the 10,000 Jos Now Coalition, online: <<https://twitter.com/10000jobsnow>>.

<sup>838</sup> See esp Toronto Life, “The definitive guide to the supporters and opponents of a Toronto casino”, *Toronto Life* (10 April 2013), online: <<http://www.torontolife.com/informer/toronto-politics/2013/04/10/toronto-casino-yes-versus-no/>>.

<sup>839</sup> City Manager, *supra* note 736 at 1.

<sup>840</sup> The City Manager also provided City Council with several options in respect of a new gaming facility in the C2 zone: Maintain the current gaming use at Woodbine (no Council approval needed); expand the Woodbine gaming facility into a casino by adding live dealer table games; and attach conditions to a resolution supporting the establishment of a gaming site.

unable to secure from OLG,<sup>841</sup> the Executive Committee voted overwhelmingly in favour of a downtown casino, conditional on 47 requirements including a minimum annual hosting fee of \$100 million.<sup>842</sup> The hosting fee was consistent with the Executive Committee's construction of the casino as a city-wide issue, one meant to address the city's operating revenue.

The casino issue was scheduled for a City Council deliberation on May 21, 2013. However, in between the Executive Committee and Council meetings, a significant change in OLG's position took place in respect of hosting fees.<sup>843</sup> At the initial stages of the negotiation between the City of Toronto and OLG, it was suggested that the City would obtain a special hosting fee of between \$50-million to \$100-million, as estimated by OLCG, "in recognition of the size and scale and job opportunities promised by casino operators fighting for the opportunity to build casino-anchored complexes worth \$2 billion to \$3 billion." The City of Toronto-commissioned report forecasted annual hosting fees of up to \$168 million in addition to property taxes.<sup>844</sup> However, following her win of the Liberal leadership race, Premier Kathleen Wynne advised Ontario's gambling agency that it would not give the city any extra fees for hosting a downtown casino. The *Globe and Mail* reported that Premier Wynne was "no fan of the proposal to build a downtown Toronto casino" and that she had "raised concerns about several key OLG decisions and ordered the Crown agency to nix plans to cut Toronto a special financial deal, if city councillors voted for a casino."<sup>845</sup> OLG Chief Executive Officer Paul Godfrey was fired

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<sup>841</sup> Elizabeth Church, "Casino Approval Becoming a Long Shot", *The Globe and Mail* (10 April 2013), online: <<http://www.theglobeandmail.com/news/toronto/casino-approval-becoming-a-long-shot/article11044013/>>.

<sup>842</sup> City Manager, *supra* note 736.

<sup>843</sup> Elizabeth Church, "Anti-casino lobby ramps up campaign", *The Globe and Mail* (13 April 2013), online: <<http://www.theglobeandmail.com/news/toronto/anti-casino-lobby-ramps-up-campaign/article11181058/>>

<sup>844</sup> Editor, "Toronto casino: No special deal, OLG chair says", *Toronto Star* (20 March 2013), online: <[http://www.thestar.com/news/gta/2013/03/20/toronto\\_casino\\_no\\_special\\_deal\\_olg\\_chair\\_says.html](http://www.thestar.com/news/gta/2013/03/20/toronto_casino_no_special_deal_olg_chair_says.html)>. But see John Lorinc, "The Casino Debate and Non-Fiction Numbers", *Spacing Magazine* (16 January 2013), online: <<http://spacing.ca/toronto/2013/01/16/lorinc-the-casino-debate-and-non-fiction-numbers/>>, who noted that the consultant report used as the basis for economic analysis suggested a range of possible revenues from hosted fees, some as low as \$18 million.

<sup>845</sup> Karen Howlett *et al*, "Wynne seeks successor for OLG chair Godfrey amid questions over strategy", *The Globe and Mail* (13 May 2013), online: <<http://www.theglobeandmail.com/news/national/wynne-seeks-successor-for-olg-chair-godfrey-amid-questions-over-strategy/article11882130/>>.

by Premier Wynne on May 16, 2013.<sup>846</sup>

Mayor Ford delayed and then cancelled the special City Council meeting scheduled for May 21, 2013, declaring the proposals to build a casino in downtown Toronto “dead” unless OLG could guarantee \$100 million annually in hosting fees.<sup>847</sup> Councillor Mike Layton, one of the councillors within the TEYCC area, pursued a petition to hold the meeting on May 21, 2013, gathering 24 signatures pursuant to Section 27-30 of the Council Procedures, driving throughout the city over the weekend and reaching the Clerk’s Office as the bells at Old City Hall rang in order to obtain the signatures in time.<sup>848</sup> At the meeting, City Council rejected the option to have a casino in the downtown core by an overwhelming majority.<sup>849</sup>

In summary, the 2012-13 casino decision reflected what Santos observed as the tension between rational bureaucracy and messier forms of political action. He notes that the relationship between representative and participatory democracy often forget that these two concepts must work together and that participatory democracy in complex political environments always presupposes opportunities for delegation and representation. Indeed, the model for this public engagement and involvement should be complex and sophisticated to reflect the importance of an overlapping, multifaceted, multiplayer decision-making at the municipal level. Here, the “rational” system of decision-making, meaning the city-wide characterization of the casino decision and the Executive Committee forum, misrepresented the messy local reality of the issue, which was

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<sup>846</sup> Robert Benzie & Richard J. Brennan, “Paul Godfrey fired as head of OLG, board of directors resign”, *The Toronto Star* (16 May 2013), online:

<[http://www.thestar.com/news/queenspark/2013/05/16/paul\\_godfrey\\_fired\\_as\\_head\\_of\\_olg.html](http://www.thestar.com/news/queenspark/2013/05/16/paul_godfrey_fired_as_head_of_olg.html)>.

<sup>847</sup> Hamutal Dotan, “Rob Ford Proclaims Toronto Casino ‘Dead’”, *The Torontoist* (16 May 2013), online: <<http://torontoist.com/2013/05/rob-ford-proclaims-toronto-casino-dead/>>. See also, Elizabeth Church, “Special meeting for Toronto casino debate scheduled for May 21”, *The Globe and Mail* (1 May 2013), online: <<http://www.theglobeandmail.com/news/toronto/special-meeting-for-toronto-casino-debate-scheduled-for-may-21/article11650673/>>.

<sup>848</sup> City Council, *Petition* (19 May 2013), online:

<<http://www.toronto.ca/legdocs/mmis/2013/rm/bgrd/backgroundfile-58463.pdf>>. See also Interview with Councillor, *supra* note 57.

<sup>849</sup> City Manager, *supra* note 743. Ultimately, the final presentation by the City Manager suggested that the new hosting fee formula proposed by OLG would result in between \$55 and \$61 million in annual revenue: see City Manager, Presentation to City Council: New Casino and Convention Development in Toronto, City of Toronto (21 May 2013) at 16, online:

<<http://www.toronto.ca/legdocs/mmis/2013/cc/bgrd/backgroundfile-58464.pdf>>.

interconnected with tugs and pulls of representation and delegation. In the end, the councillors in the TEYCC were able to mobilize the casino opposition with a city committee that could serve as a legitimized forum to receive information on the local effects of the issue.

However, amidst this final decision to disallow a casino in the city's downtown core, another matter was being considered, too. As part of this motion, City Council also rejected the expansion of the Woodbine Racetrack to a casino. In addition to prohibiting a new casino in the downtown core, the Port Lands or Exhibition Place in 2013, City Council also opposed the expansion of existing gaming sites in the C2 Zone, where the Woodbine casino was located.<sup>850</sup> This meant that an expansion of the Woodbine Racetrack was not permitted. However, while City Council narrowly voted against a Woodbine expansion, all 11 councillors in the Etobicoke York Community Council area voted against the motion disallowing a Woodbine gaming expansion to create a casino, as noted in the chart below.<sup>851</sup> During the 2012 debate, Councillor Crisanti noted the importance of considering the local voice in any casino deliberations.<sup>852</sup> As can be seen in Table 4.2, where green marks support of a casino and red marks opposition, the councillors within the Woodbine area were unequivocal in their desire to expand Woodbine to create a casino, even though they opposed the creation of a new casino in downtown Toronto. The reorientation of the 2012-13 casino debate as a local issue by the councillors in the TEYCC area did not negate the desire of councillors in the Etobicoke-York area of the city to frame a Woodbine expansion as a local issue, too. Thus, councillor support for a casino was contingent on the local area of the city, not a principled decision about casinos.

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<sup>850</sup> Toronto City Council, "New Casino and Convention Development in Toronto" (2013) City Council Decision, online: <<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2013.EX30.1>> at resolution 2.

<sup>851</sup> *Ibid.*

<sup>852</sup> Councillor Vincent Crisanti, "Casinos in Toronto" (2012) Marilyn Toft - Casinos in Toronto 1, online: <<http://www.toronto.ca/legdocs/mmis/2012/ex/comm/communicationfile-29803.pdf>>.

	2013 Council motion to expand Woodbine <sup>853</sup>	2013 Council motion to create new casino <sup>854</sup>
Ward 1 (Vincent Crisanti)	In favour of Woodbine expansion	In favour of downtown casino
Ward 2 (Doug Ford)	In favour of Woodbine expansion	Against downtown casino
Ward 3 (Doug Holyday)	In favour of Woodbine expansion	Against downtown casino
Ward 4 (Gloria Lindsay Luby)	In favour of Woodbine expansion	Against downtown casino
Ward 5 (Peter Milczyn)	In favour of Woodbine expansion	Against downtown casino
Ward 6 (Mark Grimes)	In favour of Woodbine expansion	Against downtown casino
Ward 7 (Giorgio Mammoliti)	In favour of Woodbine expansion	In favour of downtown casino
Ward 11 (Frances Nunziata)	In favour of Woodbine expansion	Against downtown casino
Ward 12 (Frank Di Giorgio)	In favour of Woodbine expansion	Against downtown casino
Ward 13 (Sarah Doucette)	In favour of Woodbine expansion	Against downtown casino
Ward 17 (Cesar Palacio)	In favour of Woodbine expansion	Against downtown casino

**Table 4.2: Etobicoke councillor votes in 2012-13 casino decision**

The decision to reject the expansion of the Woodbine Racetrack would come to City Council a short time later, as we will see in the next section.

<sup>853</sup> Toronto City Council, *supra* note 850.

<sup>854</sup> *Ibid* at 1.

## II. The 2015 Casino decision

The 2015 casino decision concerned only one site in the City - the Woodbine Racetrack, located in Rexdale, one of the City's most economically vulnerable areas.<sup>855</sup> More than half of Rexdale residents are first-generation Canadians.<sup>856</sup> About a quarter of families are poor and nearly 40 percent of working adults have low-wage, part-time jobs without benefits or security. High school dropout rates are 50%, double the Toronto average.<sup>857</sup> At the time that the decision was made, the Woodbine Racetrack was responsible for the employment of more than 7,500 people in Toronto, with approximately 5,000 of jobs located in Rexdale. The Woodbine Racetrack stated that this represented 10% of the workforce in a community that had seen a 26% decline in jobs over the last 10 years.<sup>858</sup>

During the 2015 debate, community advocates located in Rexdale suggested that the community should have the final say on an issue that has many pros and cons.<sup>859</sup> However, in the end, community advocates played a limited role and the decision-making process proceeded through the Executive Committee to City Council without the involvement of the Etobicoke York Community Council (EYCC) as a forum for consideration of local effects. All of the adjacent councillors and the polling data affirming support for an expanded casino. BIAs and neighbourhood associations were absent from decision-making, as few such bodies exist in the Etobicoke-York Community Council area and none in Rexdale. However, in contrast to the 2012-13

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<sup>855</sup> Christopher Hume, "Casino suddenly seems respectable — in Rexdale: Hume" (28 June 2015) The Toronto Star, online: <<https://www.thestar.com/news/gta/2015/06/28/casino-suddenly-seems-respectable-in-rexdale-hume.html>>.

<sup>856</sup> City of Toronto, *Rexdale-Kipling, Social Profile #4 - NHS Languages, Immigration, Income* (2011), online: <<https://www1.toronto.ca/City%20Of%20Toronto/Social%20Development,%20Finance%20&%20Administration/Neighbourhood%20Profiles/pdf/2011/pdf4/cpa04.pdf>>.

<sup>857</sup> Bob Hepburn, "Rexdale hub a beacon for area hurt by poverty and crime," Toronto Star (27 June 2012), online: <[https://www.thestar.com/opinion/editorialopinion/2012/06/27/rexdale\\_hub\\_a\\_beacon\\_for\\_area\\_hurt\\_by\\_poverty\\_and\\_crime.html](https://www.thestar.com/opinion/editorialopinion/2012/06/27/rexdale_hub_a_beacon_for_area_hurt_by_poverty_and_crime.html)>.

<sup>858</sup> Nick Eaves, "Re: Woodbine Racetrack", (2015) Woodbine Entertainment 1 at 2, online: <[www.toronto.ca/legdocs/mmis/2015/ex/bgrd/backgroundfile-77988.pdf](http://www.toronto.ca/legdocs/mmis/2015/ex/bgrd/backgroundfile-77988.pdf)>.

<sup>859</sup> Laura Armstrong, "Is the third time a charm for Rexdale revitalization?" (15 March 2015) The Toronto Star, online: <<https://www.thestar.com/news/gta/2015/03/15/is-the-third-time-a-charm-for-rexdale-revitalization.html>>.



casino decision where the focus of advocacy organizations, BIAs and neighbourhood associations was on traffic, local planning and the impact of addiction on nearby residents, the local considerations in the 2015 debate were jobs and the economy, typically framed as city-wide considerations.

This section provides an overview of process and the roles of the ward, community councils, BIAs and neighbourhood associations. It concludes that “local” in the 2015 casino debate concerned a singular issue – jobs– with a lack of tension between this issue and the city-wide agenda. While the City’s consultation processes did not reveal overwhelmingly different results in 2015 than during the 2012-13 casino debate, the data was used to reinforce the ward councillor perspectives, without more nuanced intervention of other participants in the decision-making process.

## **1. Resurgence of the debate**

The municipal election was held on October 25, 2014, a little over one year after the 2012-13 casino decision. The election brought in a few changes. First, Mayor John Tory replaced Mayor Rob Ford, promising a more economically stable, professional and transparent government.<sup>860</sup> Second, Rob Ford replaced his brother, Doug Ford, as councillor for Ward 2. Third, three new councillors were elected: John Campbell replaced Gloria Lindsay Luby, who had decided not to run again; and both Doug Holyday and Peter Milcyn ran for provincial office, resulting in new councillors, Stephen Holyday and Justin Di Ciano.

On March 18, 2015, Councillor Cristanti, whose ward is adjacent to the Woodbine area, and who sits on the Etobicoke York Community Council, re-opened the expansion debate.<sup>861</sup> Councillor Crisanti had been named as deputy mayor, with the task of

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<sup>860</sup> Hamutal Dotan, “Toronto Election 2014: John Tory on Seven Key Issues,” *Torontoist* (22 October 2014), online: < <http://torontoist.com/2014/10/toronto-election-2014-john-tory-on-seven-key-issues/>>.

<sup>861</sup> Natalie Alcoba, “Deputy mayor wants Toronto to reopen casino debate with report on Woodbine Racetrack expansion”, *National Post* (18 March, 2015), online: < <http://news.nationalpost.com/toronto/deputy-mayor-wants-toronto-to-reopen-casino-debate-with-report-on-woodbine-racetrack-expansion>>.

increasing economic growth in Etobicoke-York area of the city.<sup>862</sup> Mayor John Tory affirmed Councillor Crisanti's proposal, saying, "I have said all the way along that I support us taking a second look at casino gambling at Woodbine provided it is part of a much larger vision, that we're not doing it just for sake of allowing a casino out there where there are already slot machines and horse racing. It's all about jobs for me. It's all about jobs and economic development, not gambling."<sup>863</sup>

Councillor Crisanti distinguished the 2015 Woodbine proposal from the earlier debate. He suggested that the May 2013 vote against the Woodbine expansion occurred at the same time as the controversial proposal to build a casino in the city's downtown core and, therefore, the Woodbine casino idea did not get the full attention it deserved.<sup>864</sup> "In essence, what we're doing now is dusting off that information we had two years ago," Deputy Mayor Vincent Crisanti later stated at a Woodbine public consultation meeting.<sup>865</sup> "Unfortunately that [2013] vote for Woodbine was a very, very tight vote. I think it just got convoluted and mixed up in the major fight, which was the downtown issue. But now we're focused on Woodbine and Woodbine only. And I can tell you that Woodbine has been a great community partner, they do a wonderful job, and they employ about 7,500 people – and this is also about protecting the jobs that are currently there."<sup>866</sup>

The Woodbine proposal was re-opened in 2015 without the controversy of a suggested downtown casino, and with a new scandal-free mayor committed to economic development. However, many councillors objected to reopening the debate. Councillor Josh Matlow stated, "I am surprised that we would want to reopen such a divisive and

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<sup>862</sup> Staff, "Toronto casino debate could focus on expanded gaming at Woodbine racetrack", *Toronto Metro* (11 March 2015), online: < <http://www.metronews.ca/news/toronto/2015/03/11/toronto-casino-debate-could-focus-on-expanded-gaming-at-woodbine-racetrack.html>>.

<sup>863</sup> Chris Fox, "Ford says expanded gaming at Woodbine would benefit Toronto as a whole", *CP24.com* (24 June, 2015), online: <<http://www.cp24.com/news/ford-says-expanded-gaming-at-woodbine-would-benefit-toronto-as-a-whole-1.2437623>>.

<sup>864</sup> Chris Fox, "Tory open to restarting debate on expanded gaming at Woodbine", *CP24.com* (11 March, 2015), online: <<http://www.cp24.com/news/tory-open-to-restarting-debate-on-expanded-gaming-at-woodbine-1.2273986>>.

<sup>865</sup> Cynthia Reason, "Woodbine Racetrack employees say 'get the shovel in the ground' on casino expansion", *Etobicoke Guardian* (12 May 2015), online: < <http://www.insidetoronto.com/news-story/5614095-woodbine-racetrack-employees-say-get-the-shovel-in-the-ground-on-casino-expansion>>.

<sup>866</sup> *Ibid.*

difficult debate that we just had.”<sup>867</sup>

## 2. The “local” in a “city-wide” decision

In early 2015, the Executive Committee requested that the City Manager study the planning implications of a casino, the economic impact, employment issues, social costs, incremental costs associated with expanded gaming, like police, fire and emergency medical services costs. The local effects that had dominated the 2012-13 debate, namely traffic – were not included in the laundry list of public input items that the Executive Committee asked the City Manager’s Office to obtain in its public consultation process.<sup>868</sup> Council also asked that consultation efforts include a public meeting in Etobicoke, an online questionnaire promoted on the City's website and via social media, a city-wide public opinion poll, and a presentation at Executive Committee.<sup>869</sup> Council allocated \$75,000 from the City Manager’s budget for this review.

The 2013 review had included an analysis of the economic benefits, planning implications, social costs, and other aspects of an expanded casino. In regard to economic gains, the Final Report suggested that a standalone casino would generate \$32 million to \$95 million in hosting fees at Woodbine and up to \$10 million in increased property taxes.<sup>870</sup> In 2015, this figure was changed to an increase of \$14 million (a total of \$29.5 million) in hosting fees and up to \$5.5 million in property taxes, an increase from the existing \$1.7 million received at the Woodbine Racetrack.<sup>871</sup>

As with the previous casino debate, an external firm was hired for part of the consultation process, although unlike the 2013 decision, a consulting company, Ipsos, managed all

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<sup>867</sup> Chris Fox, "Tory open to restarting debate on expanded gaming at Woodbine", *CP24.com* (11 March, 2015), online: <<http://www.cp24.com/news/tory-open-to-restarting-debate-on-expanded-gaming-at-woodbine-1.2273986>>.

<sup>868</sup> City of Toronto, “Backgrounder: Woodbine Racetrack Casino Consultation” (n.d.), online: <<http://www1.toronto.ca/City%20Of%20Toronto/City%20Managers%20Office/Civic%20Engagement/Woodbine%20Casino%20Consultation/Woodbine%20Casino%20Consultation%20Backgrounder.pdf>>.

<sup>869</sup> *Ibid.*

<sup>870</sup> Joseph P. Pennachetti, "Considering a New Casino in Toronto" (2012) Staff Report Action Required 1, online: <[www.toronto.ca/legdocs/mmis/2012/ex/bgrd/backgroundfile-51514.pdf](http://www.toronto.ca/legdocs/mmis/2012/ex/bgrd/backgroundfile-51514.pdf)>.

<sup>871</sup> "Municipal Contribution Agreement" (2015) Appendix B – Financial Considerations 1, online: <[www.toronto.ca/legdocs/mmis/2015/ex/bgrd/backgroundfile-81785.pdf](http://www.toronto.ca/legdocs/mmis/2015/ex/bgrd/backgroundfile-81785.pdf)>.

aspects of the consultation process.<sup>872</sup> This meant that detailed notes were available on the process followed and the information gathered. The results of the public consultation showed substantially different results based on the form of engagement. In respect of the telephone poll, Ipsos conducted 701 interviews, including 200 with residents who live in North Etobicoke in order to boost the sample size of local residents.<sup>873</sup> Initially, 34% of individuals supported the expansion and 25% opposed, with the remaining (42%) having mixed feelings. Support was significantly higher among North Etobicoke residents (50% support, 34% mixed feelings and 16% oppose).<sup>874</sup> Once residents are told the estimated possible number of additional slots and video tables and new live tables that could be added with the expansion, support remains steady, but many of those who initially have mixed feelings shift to opposition.<sup>875</sup>

The most compelling reasons that responders supported casino expansion were the creation of 2,600 new jobs and the promise of a community benefits agreement with the City of Toronto.<sup>876</sup> Indeed, support increased to 72% when it was suggested that expansion would bring new commercial development such as hotels, restaurants or entertainment venues (21% support regardless, 51% support on the condition of new commercial development).<sup>877</sup> However, 70% of responders were dubious that expansion would lead to full-time, permanent jobs, and worried that expansion would contribute to an increase in problem gambling.<sup>878</sup>

The results from the telephone poll were not hugely different than in 2013, when 55% of Torontonians supported an expansion of the Woodbine casino.<sup>879</sup> No data was available as to the breakdown of residents by community council area, therefore, we do not know

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<sup>872</sup> City of Toronto, "Woodbine Racetrack Casino Public Consultation" (2016) Page Menu, online: <<http://www1.toronto.ca/wps/portal/contentonly?vgnextoid=4ae8359fa7e9c410VgnVCM10000071d60f89RCRD>>.

<sup>873</sup> Frances Nunziata, "Expanded Gaming at Woodbine Racetrack" (2015) City Council Decision 1 at 3, online: <<http://www.toronto.ca/legdocs/mmis/2015/ex/bgrd/backgroundfile-81786.pdf>>.

<sup>874</sup> *Ibid* at 5.

<sup>875</sup> *Ibid* at 5.

<sup>876</sup> *Ibid* at 6.

<sup>877</sup> *Ibid* at 6.

<sup>878</sup> *Ibid* at 5.

<sup>879</sup> Environics Research Group, "Toronto Resident Casino Survey" (2013) Summary 1 at 26, online: <<http://www.toronto.ca/legdocs/mmis/2013/ex/bgrd/backgroundfile-57344.pdf>>.

the geographic distribution of this support. This same study found that 45% of residents in Etobicoke strongly or somewhat supported “the possibility of a new casino in Toronto.”<sup>880</sup> Over one-third of respondents (38.5%) indicated that expanded gaming at Woodbine Racetrack was strongly unsuitable, compared to 21.2% who felt it was highly suitable.<sup>881</sup> Those with neutral or mixed feelings indicated a preference for leaving the facility as is (28.1) compared to expanding the gaming opportunities (18.2%). Overall, there was more support for an expanded gaming facility at the Woodbine Racetrack than for the introduction of a new casino in Toronto’s downtown core.<sup>882</sup> It is difficult to arrive at concrete numbers related to support for a Woodbine expansion, as a total of 55.4% or 9,852 respondents checked the box “I do not support a new casino under any conditions.”<sup>883</sup>

Ipsos also conducted an online survey and hosted a public consultation meeting, both of which suggested overwhelming support for an expanded casino. Almost five hundred people completed the survey.<sup>884</sup> Overall, 65% indicated support for the expansion, 24% opposed it and the remainder had mixed feelings or didn’t know (11%).<sup>885</sup> The strongest levels of support came from non-Toronto residents (85%), Etobicoke/York residents (74%), Scarborough residents (65%) and North York residents (61%).<sup>886</sup> The reasons for support were: an increase in the number of employment opportunities (38%), economic activity (17%), tourism (17%) and entertainment in the area (15%). Several (18%) also felt that it was a good location for expanded gaming.<sup>887</sup>

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<sup>880</sup> *Ibid* at 8.

<sup>881</sup> DPRA, “City of Toronto Casino Consultation Final Consultation Report” (2013) Toronto Casino Consultation 1 at 52, online: <<http://www.toronto.ca/legdocs/mmis/2013/ex/bgrd/backgroundfile-57343.pdf>>.

<sup>882</sup> *Ibid* at 6.

<sup>883</sup> *Ibid* at 54.

<sup>884</sup> Ipsos, “Public Consultation on the Woodbine Racetrack Casino” (2015) City-Wide Telephone Poll 1 at 3, online: <[www.toronto.ca/legdocs/mmis/2015/ex/bgrd/backgroundfile-81786.pdf](http://www.toronto.ca/legdocs/mmis/2015/ex/bgrd/backgroundfile-81786.pdf)>. Ipsos noted that, “the survey was open to anybody who chose to complete it and therefore, the sample of those who completed it and their opinions should be not be viewed as statistically representative of the residents of Toronto. This information is collected to assist the City to better understand the positions and interest of Torontonians”.

<sup>885</sup> *Ibid* at 6.

<sup>886</sup> *Ibid* at 10.

<sup>887</sup> *Ibid* at 11.

Likewise, the public consultation meeting hosted by Ipsos suggested overwhelming support.<sup>888</sup> Approximately 80 people attended the community meeting,<sup>889</sup> although newspaper reports suggested 100.<sup>890</sup> The notes of the Woodbine casino consultation meeting state that the public meeting included an open microphone, where approximately 20 community members spoke; that Ipsos researchers spoke with attendees one-on-one to gather reactions, whereby 19 people provided feedback; and anonymous feedback was immediately uploaded and projected in the room via a live feed.<sup>891</sup> In addition, 51 community members provided feedback via a distributed form.

Of the 51 community members who completed feedback forms, 48 either somewhat or strongly supported the possible expansion. Only one had mixed feelings, and one person was somewhat opposed.<sup>892</sup> No one who completed the feedback form expressed strong opposition to the expansion. Support for the expansion was based largely on the creation of new jobs, securing existing jobs, and generating revenue for the City. Residents expressed concern over increased traffic congestion, revenue coming from a source some don't agree with, and concerns about gambling addiction, but overall, those attending expressed that a casino would bring greater benefits than problems for the community.<sup>893</sup>

The support is the potential increase in jobs and the promise – however dubious residents are – of economic development in an area of the city that badly needs it.<sup>894</sup> As a former city staff member noted, “nobody really cared, because for them out there it was about jobs, it wasn't about quality of life next door and all these things that come into play

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<sup>888</sup> *Ibid* at 8. The meeting was open to anyone who wished to attend. There were no requirements for registering in advance or on arrival. Attendees could enter or leave the meeting as desired over the 3 hour session.

<sup>889</sup> City of Toronto, "Woodbine Racetrack Casino Public Consultation" (2016) Page Menu, online: < <http://www1.toronto.ca/wps/portal/contentonly?vgnextoid=4ae8359fa7e9c410VgnVCM10000071d60f89RCRD>>.

<sup>890</sup> Cynthia Reason, "Woodbine Racetrack employees say 'get the shovel in the ground' on casino expansion", *Etoibicoke Guardian* (12 May 2015), online: < <http://www.insidetoronto.com/news-story/5614095-woodbine-racetrack-employees-say-get-the-shovel-in-the-ground-on-casino-expansion>>.

<sup>891</sup> City of Toronto, *supra* note 896.

<sup>892</sup> *Ibid* at 10.

<sup>893</sup> *Ibid* at 11.

<sup>894</sup> Anonymous interview with City of Toronto councillor #2, Toronto, Ontario, Canada (7 July 2016) – author conducted.

down here, or at Exhibition [Place].”<sup>895</sup> A councillor described it differently, that ultimately this was the decision that the local community wanted: “if the folks in Rexdale want a casino, let them have it.”<sup>896</sup>

Ultimately, City Council voted in favour of expanded gambling with limited opposition or fanfare. The small dissent came largely from the Toronto-East York and North York councillors.<sup>897</sup> As part of this decision, City Council sought mechanisms to improve the economic circumstances in Rexdale, including a further review of whether additional revenues from expanded gaming at Woodbine could form part of a “City of Toronto Community Benefits Fund,” where funds would be allocated to Neighbourhood Improvement Areas and other lower income communities for capital or operating projects aimed at improving the quality of life for local community members.<sup>898</sup>

### **3. BIAs and neighbourhood associations**

A key difference between the 2012-13 and 2015 casino case studies was the lack of involvement from local BIAs or neighbourhood associations in the 2015 debate. In the former the BIAs and the neighbourhood associations were important participants, including such bodies from outside the TEYCC. In the latter, there was no mention at all of these informal governance bodies, either through a newspaper search of key terms during the six-month period of the debate, nor in listings of deputants on City of Toronto decision documents. The reason is simple: Rexdale does not have any BIAs or neighbourhood associations. Nor are there BIAs or neighbourhood associations in all of North Etobicoke. Illustration 4.3 shows the locations of BIAs and NAs in comparison with the proposed casino sites.

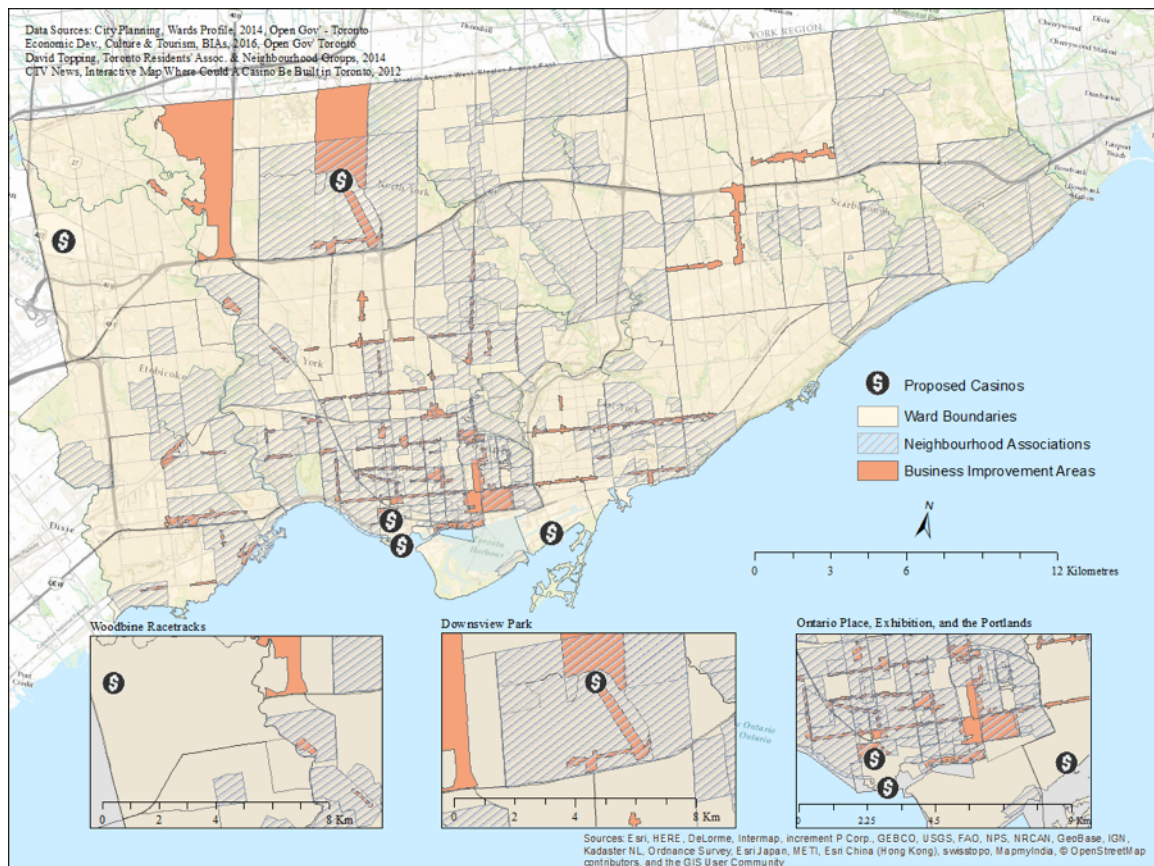
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<sup>895</sup> Anonymous interview with City of Toronto staff member #4, City Manager’s Office, Toronto, Ontario, Canada (7 May 2016) – author conducted.

<sup>896</sup> Anonymous interview with City of Toronto councillor #2, Toronto, Ontario, Canada (7 July 2016) – author conducted.

<sup>897</sup> City of Toronto, "Health Impacts of Expanded Gambling at Woodbine Racetrack" (2015) City Council Consideration, online: <<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2015.HL4.2>>.

<sup>898</sup> City of Toronto, "Expanded Gaming at Woodbine Racetrack" (2015) Executive Committee Consideration, online: <http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2015.EX7.4>.



**Illustration 4.3: Map of proposed casino sites, with BIAs and NAs**

The difference in consultation practices in the 2012-13 and 2015 casino processes was stark, particularly in regard to the role of BIAs and community councils. In the 2012-13 debate, the purported reason for the creation of the TEYCC subcommittee was to consult with BIAs. Thus, the subcommittee institutionalized the importance of further consultation with key stakeholders in the governance model – the local businesses.

Without neighbourhood association or BIA involvement, it is difficult to know what residents in the area thought about an expanded casino. In the 2012-13 debate, the neighbourhood associations and BIAs brought added information to residents and another opportunity to learn about the effects of a casino and were a catalyst for the creation of the Subcommittee. This contribution was even more crucial in the 2015 debate, as far fewer residents were aware that the issue was before City Council. The lack of



neighbourhood association involvement may also mean that a broader range of resident perspectives were not included in the debate. While the information is incomplete and anecdotal, popular media accounts noted discord with the proposal to expand Woodbine from those who lived nearby.<sup>899</sup> As one resident noted, “If you get on building the LRT, we can bring condo development; we can bring retail development, all sorts of development. I don’t think we need a casino to be the catalyst for that.”<sup>900</sup>

Community advocates in Etobicoke, suggested that the community should have the final say on the expansion of Woodbine, given the many different benefits and drawbacks that require consideration.<sup>901</sup> It is impossible to know whether the presence of BIAs and neighbourhood associations would have led to a different result. As one columnist said, “Rexdale had two options in the casino debate: Take it or leave it. It’s easy for a councillor to say a casino will bring the wrong kinds of jobs when the neighbourhood that councillor represents is chock full of them. In Rexdale, almost any job is better than none.”<sup>902</sup> Likewise, another writer stated, “Gambling is a rotten way for governments to make money, if you ask me. But that’s the province we live in. As such it would take some balls to look Woodbine, and its employees, both extant and potential, in the eye and tell them they can’t partner with Queen’s Park to provide a perfectly legal product on private land.”<sup>903</sup>

However, without any formal organizing by neighbourhood associations and BIAs, it is harder to know what members of the residential and business community believed. As noted in Illustration 4.4, although there are no BIAs in Rexdale, there are numerous local

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<sup>899</sup> Natalie Alcoba, "Deputy mayor wants Toronto to reopen casino debate with report on Woodbine Racetrack expansion", *National Post* (18 March, 2015), online: <<http://news.nationalpost.com/toronto/deputy-mayor-wants-toronto-to-reopen-casino-debate-with-report-on-woodbine-racetrack-expansion>>.

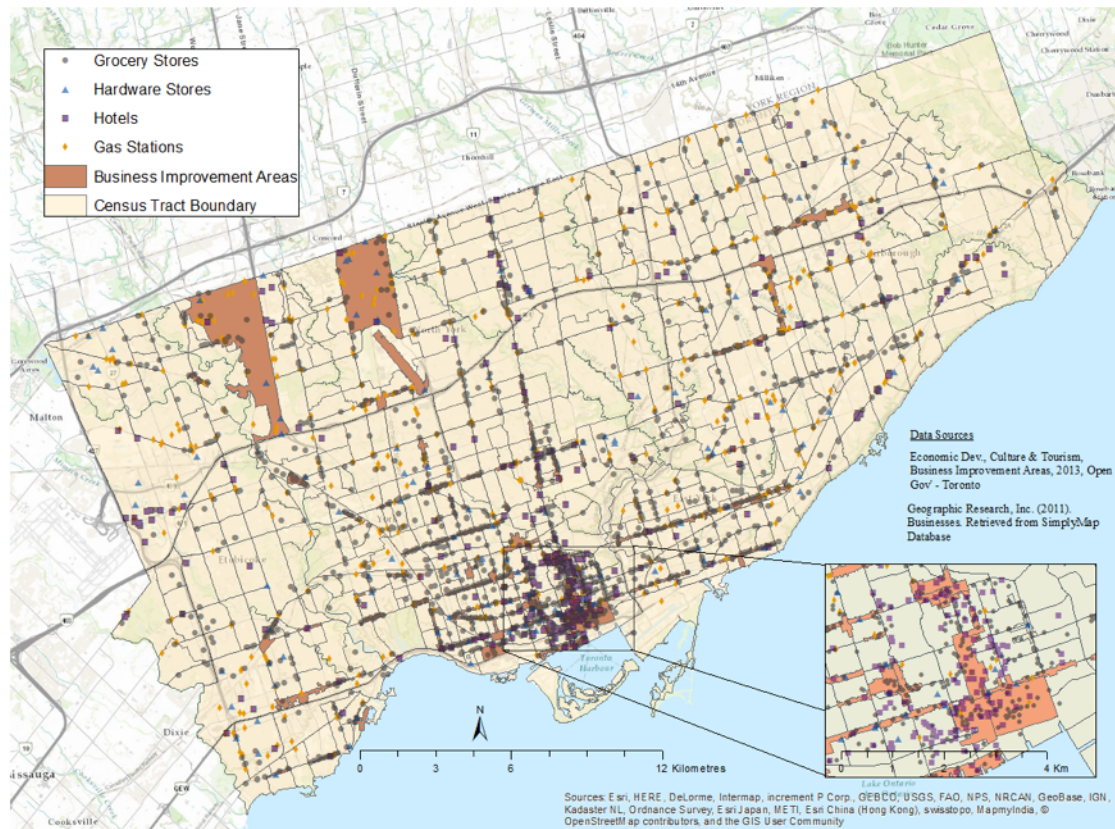
<sup>900</sup> Laura Armstrong, "Is the third time a charm for Rexdale revitalization?" (15 March 2015) *The Toronto Star*, online: <<https://www.thestar.com/news/gta/2015/03/15/is-the-third-time-a-charm-for-rexdale-revitalization.html>>.

<sup>901</sup> *Ibid.*

<sup>902</sup> Andray Domise, “Woodbine casino would be good for Rexdale”, *Toronto Sun* (9 July 2015), online: <<http://www.torontosun.com/2015/07/09/woodbine-casino-would-be-good-for-rexdale>>.

<sup>903</sup> Chris Selley, "Chris Selley: Toronto council can score only a symbolic blow against gambling — and cost hundreds of jobs", *National Post* (2 July 2015), online: <<http://news.nationalpost.com/posted-toronto/chris-selley-toronto-council-can-score-only-a-symbolic-blow-against-gambling-and-cost-hundreds-of-jobs>>.

businesses. Unlike in the 2012-13 casino debate, the views of these local entities were entirely absent, with no challenge made of Woodbine’s information on local jobs and the economy.



**Illustration 4.4: Map of BIAs and local businesses<sup>904</sup>**

But what can be done if the organizations don’t exist? One councillor said, “If you don’t build the association, if you don’t build the activity, if you don’t engage in that front, you get what you deserve. So if you’re complacent about it, or apathetic, or disengaged, or marginalized, there’s a price to pay for that.”<sup>905</sup> To this councillor, it is up to the local community and its councillors to “make its own mistakes.” There is no point in having outside voices help them to organize or “colonize” the area: “I’m not going to have time to go up there and orchestrate the neighbourhood for them. But I have seen people try and

<sup>904</sup> Original research (Alexandra Flynn).

<sup>905</sup> Anonymous interview with City of Toronto councillor #2, Toronto, Ontario, Canada (7 July 2016) – author conducted.

do that, it's sort of like they're missionaries going into the suburbs to try and urbanize somebody. [They have] to make their own mistakes." The councillor said, "They will build a casino and realize it's wrecked their city and there will be nothing they can do about it."<sup>906</sup>

There are few jobs in Rexdale, very high unemployment rates, and bleak signs of economic development initiatives coming from either the City or the Province of Ontario. It may well be that the ward councillors and the Etobicoke York Community Council fully represented the views of their residents in opting to the promise of new employment to the area. However, it may also be that the absence of these voices diminished the nature, amount and depth of engagement opportunities, representation, and contribution to decision-making for Rexdale residents and businesses.

### **III. Conclusion**

These very different outcomes on a similar issue tell us that the governance of different local legal spaces is spatially and substantively different across Toronto, without strict categories of participants, uniform forums of deliberation, and with meanings of "local" that comply with the categories of "city-wide" and "local" advanced in the City of Toronto's bylaws. These case studies affirm the pluralistic nature of local governance, both geographically and based on representation, with bodies articulated in provincial law (community councils) and bylaws (BIAs) interacting with those operating through custom (wards) and outside formal law (neighbourhood associations). The 2012-13 and 2015 casino decisions also provided crucial insight into the use of community councils as an appropriate forum to consider the nuance of "local" versus "city-wide" and the privileging of BIAs as consultative participants in the City of Toronto's governance model.

First, the case studies tell us that the landscape of local governance looks different across the city. This is in part due to very different levels of involvement of BIAs and

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<sup>906</sup> *Ibid.*

neighbourhood associations. In the 2012-13, the creation of the TEYCC was motivated in part by having appropriate consultation with BIAs. BIAs and neighbourhood associations from across the city ended up playing an important role in the decision-making process, beginning initially with those located within the area of the casino development and concluding with FoNTRA, which strongly opposed the creation of new casino.<sup>907</sup> Their involvement – together with that of other advocates – augmented the controversy of the issue. In the 2015 debate, there were no BIAs or neighbourhood associations involved in casino decision-making in either Toronto-East York or in Etobicoke-York. In the latter, the reason was simple: there are no such bodies located in the area, despite there being many residents and businesses. The former is a more confusing phenomenon, given the depth and intensity of the involvement just two years before. While there continued to be some ward councillor opposition in the 2015 decision on the same grounds as the 2012-13 debate, in general the expansion passed with little fanfare or opposition, and with no involvement of any BIAs or neighbourhood associations, nor any other advocacy groups.

Santos remarked that there is a multiplicity of laws, institutions and boundaries operating formally and informally, and that formal law may be rejected if it differs too dramatically from informal notions of representation and space. In the 2015 casino decision, the local formal forum was not the community council, it was exclusively the ward, not the broader, multi-party scale of local governance that we saw in the 2012-13 decision. Notwithstanding the presence of some neighbourhood associations in neighbourhood improvement areas (as Rexdale is), the absence of such bodies in the 2015 decision reinforces the extent to which neighbourhood associations, in particular, are dominated by privileged homeowners.<sup>908</sup> The articulation of local legal spaces includes insiders and outsiders, including who is eligible to participate, in what manner, and with what power, but the context for these spaces is not geographically uniform across the city. Moreover, if we believe, as Dahl, Stone, Leo, Cobban and Good, among others, do, that non-state

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<sup>907</sup> Peter Baker & Geoff Kettel, "EX 30.1 New Casino and Convention Development in Toronto" (2013) FONTRA 1, online: <[www.toronto.ca/legdocs/mmis/2013/ex/comm/communicationfile-35949.pdf](http://www.toronto.ca/legdocs/mmis/2013/ex/comm/communicationfile-35949.pdf)>.

<sup>908</sup> Amalia Alarcon De Morris & Paul Leistner, "From Neighborhood Association System to Participatory Democracy: Broadening and Deepening Public Involvement in Portland, Oregon" (2009) National Civic Review 47 at 48.

actors are involved in municipal decision-making, the question is how non-state bodies are reflected at the local level outside of BIAs and neighbourhood associations.<sup>909</sup>

Second, the advocates who rallied in opposition to a downtown casino did not object to the Woodbine expansion. One of the local councillors involved in the 2012-13 decisions did speak in opposition in the 2015 debate, but this activity did not manifest in the mobilization of BIAs or NAs outside the area of the applicable ward or faith communities, as had occurred in the 2012-13 debate. An explanation from NIMBY literature is that a downtown casino would negatively colour the “playground” of the more privileged residents of the city, who may not go to or care about Rexdale. This explanation has merit: as the *Toronto Star* reported in regard to the Woodbine expansion, “most Torontonians couldn’t care less. Unaware and indifferent, we are happy with it as long as it won’t be in our backyard. Let Rexdale enjoy what the rest of us don’t want.”<sup>910</sup>

Adding to this inequality, I argue, is the absence of any bodies speaking for the residents of Rexdale. This further exacerbates the powerful role played by the local councillor who, in the 2015 debate, did not object to the Woodbine expansion. In the 2012-13 debate, the downtown elite were able to take control of the formal local governance model in a manner that Rexdale residents were not – by using community councils to consult with BIAs, mobilizing residents beyond the usual engagement processes, and using staff resources to examine the local effects of this city-wide decision. This affirms the data from Chapter 3 that local governance is dominated by the ward councillor without a local governance model to challenge the councillor’s position.

The third conclusion to be drawn concerns the potential for a greater role for community councils in the decision-making process. Although the casino results were markedly different from one another, despite their having taken place less than two years apart,

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<sup>909</sup> Robert A. Dahl, *Who governs? Democracy and power in an American city* (New Haven: Yale University Press, 1961); Nelson W. Polsby, *Community Power and Political Theory* (Yale University Press, 1963); and Clarence N. Stone, *Regime Politics: Governing Atlanta 1946- 1988* (University Press of Kansas, 1989).

<sup>910</sup> Christopher Hume, “Casino suddenly seems respectable — in Rexdale,” *Toronto Star* (28 June 2015), online: <<https://www.thestar.com/news/gta/2015/06/28/casino-suddenly-seems-respectable-in-rexdale-hume.html>>.

both illustrate the community council as an important site for local decision-making. While each of the Toronto-East York and Etobicoke-York community councils approached their role and the issue differently, both made a decision to include this body in the decision-making process. During the 2012-13 debate, the TEYCC was able to assume jurisdiction of the matter under the procedural bylaw. For the first time since the creation of these bodies, it struck a subcommittee to engage directly with BIAs and to solicit eight detailed staff reports on local matters that it considered important. Ultimately, the community council became a forum to contemplate the issues deemed crucial from a local perspective that had been sidelined in the city-wide debate. During the same debate, in Etobicoke-York, the community council voted to endorse a report entitled “Support for a Casino at Woodbine Racetrack.” This action from the 2012-13 debate carried over to the 2015 decision, where each one of the ward councillors again endorsed the expansion of the Woodbine racetrack. The councillors in the TEYCC, but not EYCC, shifted the community council mandate towards local consideration of city-wide issues.

Thus, consideration of local legal spaces means questioning the extent to which they intersect with formal bodies. We see here that community councils as formal bodies have broad mandates that can be exercised differently, depending on the will of the councillors that serve on them. In the 2015 casino debate, we see the standard expression of the local voice in city-wide issues, whereby the councillor represents the voices of those in the area where the development will take place, the community council backs up or reinforces this councillor position, and City Council votes on the proposal as a whole. By contrast, in the 2012-13 debate, councillors used the TEYCC to create a local forum to consider the local effects of a city-wide decision. The effect was a shift away from the power of the ward councillor to a more participatory and visible forum, which included opportunities for staff support, city reports and public meetings. Community councils could be used more broadly to serve this function under their existing legal framework.

Fourth, the decisions demonstrate the relevance of the local lens on city-wide issues. In both the 2012-13 and 2015 decisions, all of the ward councillors in the Toronto-East

York and Etobicoke-York areas supported the decisions. Ward councillors, BIAs, and NAs raised and engaged in these local issues, with differing levels of involvement among the two different community council areas. In the case of the 2012-13 decision, the factors were traffic, threats to local businesses, quality of life for nearby residents, and the health effects on nearby vulnerable populations. In the 2015 decision, the major consideration was the employment of local residents. It was these local issues that framed the debates and the eventual decisions, with the content of local meaning the economic, logistical and social needs of the geographically-proximate community.

These case studies also challenge the distinction made by the City of Toronto between what are considered to be local versus city-wide issues. Those issues considered to be “local” may be considered by community councils, but otherwise they are to be decided by City Council and its standing committees only. This distinction brings to mind Santos’ notion of scale, where a large-scale map shows a smaller area but with far more detail (a zooming in or “miniaturized version of reality”), whereas a small-scale map shows a larger area, but less detail.<sup>911</sup> Under Santos’ conception of scale, a community council could be thought of as a zooming in on a smaller area to study the localized effects, as occurred in the 2012-13 casino debate. This framing instead suggests that smaller-than-city bodies can examine the localized effects of city-wide issues, as city-wide issues are relevant to local communities, too. A casino, labelled “city-wide,” cannot be set aside from other scales, including local.<sup>912</sup>

To further evaluate the conclusions drawn regarding the nature of local governance in Toronto, the next chapter examines another case study: the ward boundary review.

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<sup>911</sup> Santos, *supra* note 12.

<sup>912</sup> Blomley, *supra* note 56 at xix (the artificial distinction between “local” and “city-wide” highlights Blomley’s notion of a “Russian doll-like conception of spatial order,” whereby scale nest within another).

## Chapter 5 – The Spaces of Local in Toronto’s Ward Boundary Review

In 2013, the City of Toronto embarked on its first post-amalgamation ward boundary review under the authority of yet-unused COTA provisions. The review began amidst a body of case law that required a process meant to achieve “effective representation” for Toronto residents.<sup>913</sup>

A ward boundary review triggers many legal questions, including administrative law requirements, compliance with applicable legislation, and provincial-municipal division of powers. At the same time, the review raises questions regarding the “social orders” or rules and norms outside of state law that contribute to a plurality of ideas regarding boundaries and notions of “community,” all of which came into play in Toronto’s ward boundary review.<sup>914</sup> The review attempted to frame the local legal spaces that would subsequently determine the prime determinant of local governance: the ward councillor.

This chapter sets out the context for the review, including the interplay of Supreme Court of Canada (SCC) and OMB requirements. Second, this chapter outlines the process used in the City of Toronto ward boundary review (WBR), including the use of consultants meant to emulate the arm’s length review process used by the federal government in its decennial electoral boundary reconfiguration. The meaning of “local” alongside the concept, “communities of interest,” a feature of the WBR, is examined in the third section.

This case study makes three conclusions regarding local governance. First, ward councillors were the predominant participants in the review process, interviewed individually by the consultants on numerous occasions and were decision-makers in the ultimate results, partly due to COTA provisions, but also because of the power retained by councillors over the process. Second, BIAs and neighbourhood associations were

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<sup>913</sup> See e.g. Ron Levy, "Regulating Impartiality: Electoral-Boundary Politics in the Administrative Arena" (2008) 53 R.D. McGill 1, online: <<http://lawjournal.mcgill.ca/userfiles/other/8981234-Levy.pdf>>. (arguing that administrative design of electoral boundary reviewers can be redesigned to address the perception of impartiality).

<sup>914</sup> Moore, *supra* note 72 at 357.



given favourable consideration in the review as “communities of interest.” The results triggered questions about other boundaries and conceptions of community, in particular those local legal spaces not represented by BIAs or neighbourhood associations. Third, the WBR led to the creation of wards aligned with existing notions of power. As set out in Chapter 1, local governance comprises an overlapping set of formal and informal bodies. Ultimately, the WBR reinforced and privileged councillor-led perceptions of “local” in the creation of new boundaries.<sup>915</sup>

## **I. Context for the ward boundary review**

As noted in Chapter 3, Toronto has had geographically-based electoral districts called wards since its inception as a municipality in 1834. As detailed in Chapter 3, the wards have endured as the City’s boundaries shifted and changed over the years owing to annexations and amalgamations, and despite other Canadian provinces having rejected their use. Some former municipal entities continue to have defined identities in Toronto, as reflected in the city’s wards. The current ward structure has been in place since 2000, shortly after amalgamation, and is based on the 22 federal ridings or electoral districts that covered Toronto at the time. Each riding was split to create the current system of 44 wards. Wards are a crucial element of Toronto’s governance model, described in this dissertation and elsewhere as “fiefdoms.”<sup>916</sup>

### **1. Disparity in ward population size across Toronto**

In 2010, the City Clerk’s Office reported to City Council on the discrepancy among ward populations, noting: “The inequities in ward population and number of households place some Ward Councillors at a disadvantage in communicating with and representing a larger number of residents when compared to other Councillors. This could potentially raise the issue of whether certain constituents are fairly and adequately represented

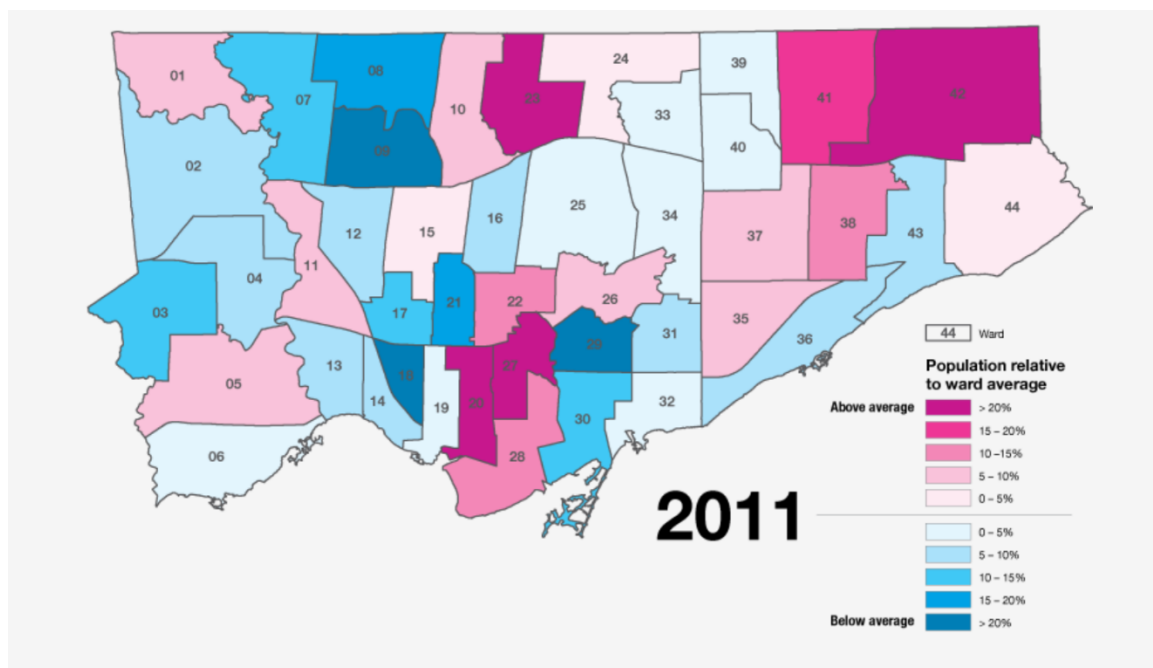
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<sup>915</sup> Zumbansen, *supra* note 74 at 326.

<sup>916</sup> Moore, *supra* note 202 at 154.

among all wards.<sup>917</sup> City Council decided to allocate an additional staff member to the councillor in question, in which the population and typical household size were more than 50 percent higher than the average.<sup>918</sup> The city announced that any other ward in similar circumstances would also be entitled to an additional staff member, too.<sup>919</sup>

By 2013, when the City's WBR process began, the populations of Toronto's wards were widely unequal, with some wards having twice the population of others.<sup>920</sup> For example, ward 18 (located in the former City of Toronto) and ward 29 (in the former Borough of East York) each contained fewer than 45,000 residents, about half of the population of ward 23 (in the former City of North York), which had almost 90,000 residents. Illustration 5.1 1 shows the discrepancy in population amongst the City of Toronto's wards.



**Illustration 5.1: Map of 2011 Population Differences Among Wards<sup>921</sup>**

<sup>917</sup> City Manager and City Clerk, Staff Report to City Council: Equalizing constituency support issues arising out of uneven population growth in some city wards, City of Toronto (2010), online: <<http://www.toronto.ca/legdocs/mmis/2010/cc/bgrd/backgroundfile-29379.pdf>>.

<sup>918</sup> *Ibid.*

<sup>919</sup> *Ibid.*

<sup>920</sup> Zack Taylor, Analysis and Commentary: City of Toronto Ward Boundary Review (2012).

<sup>921</sup> *Ibid.*

Notwithstanding the SCC's requirements that electoral districts consider "communities of interest," the OMB's trigger for a review of ward boundaries is based exclusively on voter disparity. These inequalities have legal consequences for Toronto's decision-making authority. Under COTA, 500 electors could petition the OMB for new, more equitable ward boundaries in exactly these circumstances. As described next, this approach to a review of electoral boundaries differs significantly from the federal approach, where the number of electoral boundaries is predetermined and reviews take place every ten years.

## **2. Federal and provincial electoral reviews**

The process of electoral boundary review differs among governments. At the federal level, federal commissions are established in each of Canada's ten provinces every ten years to recommend changes to electoral boundaries. The commissions are independent bodies and make all final decisions as to the federal electoral boundaries following a robust public participation process.<sup>922</sup> The province's chief justice appoints a judge to chair the commission, and the Speaker of the House of Commons appoints the other two members from among the province's residents.<sup>923</sup> The commissions are "radically" decentralized, with each of the 10 commissions operating independently.<sup>924</sup>

After engaging in a public consultation process, each commission submits a report on what it considered in revising the boundaries and proposes an electoral map to the House of Commons. Each commission then considers any objections and recommendations received from Members of Parliament and prepares a final report, which outlines the final electoral boundaries for the respective province. The process is set out in the *Electoral Boundaries Readjustment Act*,<sup>925</sup> which was introduced to address problems associated with electoral redistribution in Canada, including "the tendency for the exercise to be

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<sup>922</sup> City Clerk and City Solicitor, Staff Report to City Council: Petition to redivide ward boundaries, City of Toronto (2013), online: <<http://www.toronto.ca/legdocs/mmis/2013/cc/bgrd/backgroundfile-60165.pdf>>.

<sup>923</sup> Levy, *supra* note 913 at 10.

<sup>924</sup> *Ibid.* at 54.

<sup>925</sup> *Electoral Boundaries Readjustment Act*, R.S.C. 1985, ss. 4-6.

overly partisan and the frequent discrepancies in the geographic size and population of constituencies at the federal level.”<sup>926</sup>

The provincial review process differs from that of the federal government. The Province of Ontario had previously aligned its electoral districts with those of the federal government and required that a provincial electoral district review follow a federal review. The Province of Ontario has not yet announced its intentions for its next review, although 10 years have passed since the last one, so it may happen soon.<sup>927</sup> There are indications that the Province will adopt the new federal riding boundaries within the Toronto area before the next provincial election.<sup>928</sup>

Just as Toronto’s WBR process was beginning, federal electoral districts across the country were realigned. In 2013, the Federal Electoral Boundaries Commission for Ontario held two days of public hearings in Toronto, where it received more than 100 submissions each day.<sup>929</sup> The principal focus of the submissions was the location and boundaries of the applicable “communities of interest.”<sup>930</sup> The Federal Electoral Boundaries Commission for Ontario increased the number of electoral districts within the City of Toronto’s boundaries from 22 to 25. As a result, federal boundaries and Toronto’s wards no longer overlap, as shown in Illustration 5.2.

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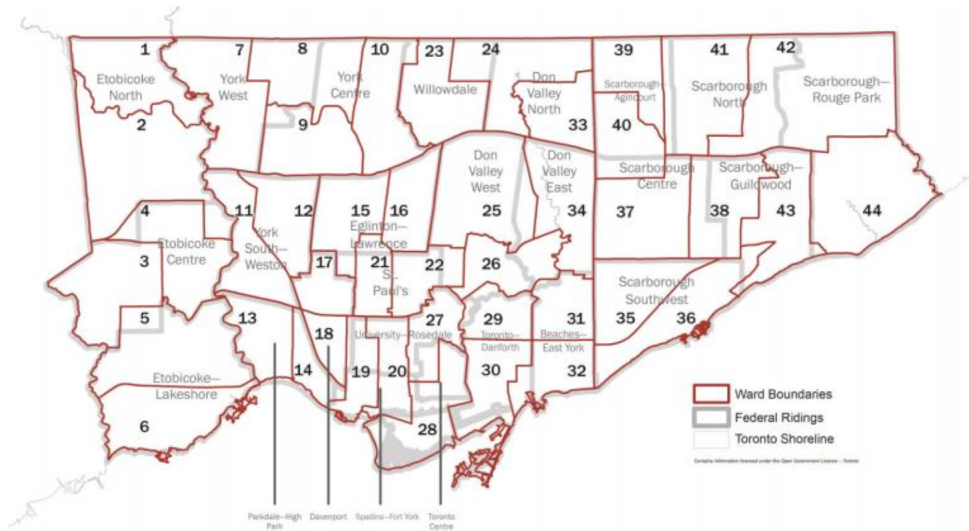
<sup>926</sup> Canadian Urban Institute, et al. *supra* note 414 at 3.

<sup>927</sup> *Ibid.* at 3.

<sup>928</sup> Canadian Urban Institute, Beate Bowron Etcetera Inc., The Davidson Group Inc., & Thomas Ostler, *Why is Toronto drawing new ward boundaries? - Ward population background brief* (2016c), online: <<https://static1.squarespace.com/static/53bc0914e4b0eb57996e4dee/t/56215fb0e4b06680fc6a6dcf/1445027760330/TorontoWardBoundaryReview.OptionsReport.Aug11-RevOct16.pdf>> at 4.

<sup>929</sup> Canadian Urban Institute et al, *supra* note 414 at 36.

<sup>930</sup> J. Preston, J., *Report of the federal electoral boundaries commission for Ontario 2012* (Standing Committee on Procedure and House Affairs No. 61 (2013), online: <<http://www.parl.gc.ca/HousePublications/Publication.aspx?DocId=6223962&Lang>>.



**Illustration 5.2: Map of Federal Electoral Districts and Toronto Ward Boundaries**<sup>931</sup>

Toronto's WBR was the first undertaken without the provincial government dictating any required geographical boundaries. Even so, the WBR included legislative and judicial constraints, as we will see next.

### 3. A complex legal arena

Ontario municipalities have broad discretion to determine the number of electoral districts they wish to have within their municipal boundaries. Since COTA's introduction, Toronto can exercise its powers with respect to "establishing, changing or dissolving wards." The Act clarifies this power in section 128(1), where it states: "Without limiting sections 7 and 8, those sections authorize the City to divide or redivide the City into wards or to dissolve the existing wards" and are able to eliminate wards altogether. The city – like other Ontario municipalities – is empowered to determine its manner of representation, whether through the election of councillors based on ward, elected at-large, or some combination of the two. Examined under the lens of subsidiarity, Ontario municipalities have been given the ability to regulate this aspect of

<sup>931</sup> Canadian Urban Institute et al, *supra* note 414 at 37.

their affairs freely. However, a closer look reveals constraints and impediments amidst this power.

#### **a) Legislative constraints**

The city's authority over its system of representation is not absolute. As noted earlier, COTA empowers 500 electors in the City of Toronto to petition City Council to pass a bylaw dividing or redividing the City into wards or dissolving existing wards.<sup>932</sup> If the City does not pass a bylaw within 90 days after receiving the petition, any of the electors may apply to the OMB to divide, redivide, or dissolve the wards, upon which the OMB may hear the application and make an order. Ironically, city staff estimate that the timeline required for the introduction of new ward boundaries is at least two years, far more than the 90 days prescribed in the Act.<sup>933</sup> This means that while the process for conducting a ward boundary review is long and complex, with numerous required rounds of public consultation, it may in turn be appealed to and annulled by the OMB.<sup>934</sup>

While COTA does not set out the process that must be followed to designate new ward boundaries, nor does the city's procedural bylaw, the legislation does require that the powers of the City be exercised by City Council.<sup>935</sup> This suggests that an independent body like the federal commission would not be able to make the final decision on the placement of ward boundaries, although the City has never tried nor tested this approach.

#### **b) Judicial constraints**

As Sancton notes, there are no SCC decisions that apply to the drawing of municipal boundaries.<sup>936</sup> In practice, however, Ontario municipalities observe the common-law requirements related to electoral districts set out in the landmark Supreme Court of

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<sup>932</sup> COTA, *supra* note 11 at s. 129(3) defines "elector" as "a person whose name appears on the voters' list, as amended up until the close of voting on voting day, for the last regular election preceding a petition being presented to council under subsection (1)."

<sup>933</sup> City Manager, *supra* note 438 at 4.

<sup>934</sup> *Ibid.* at 3.

<sup>935</sup> COTA, *supra* note 11 at s. 132.

<sup>936</sup> Andrew Sancton, "Commentary" in J. Courtney, P. MacKinnon, and D. E. Smith (Eds.), *Drawing Boundaries: Legislatures, Courts and Electoral Boundaries* (Saskatoon: Fifth House Publishers, 1992).

Canada case, *Reference Re Provincial Electoral Boundaries (Sask.)*, known colloquially as the “Carter decision.”<sup>937</sup> This case considered the meaning of the “right to vote” in section 3 of Canada’s Charter of Rights and Freedoms. Section 3 grants every citizen the right to “vote in an election of members of the House of Commons or a legislative assembly and to be qualified for membership therein.” The case was brought by lawyer and resident, Rogers Carter, who observed that the electoral boundaries (or ridings) approved in the Province of Saskatchewan led to significant deviations in population across the province. The result was that, “a single vote in the smaller riding carried 63.5% more electoral weight than a single vote in the larger riding.”<sup>938</sup>

In affirming that there may be population differences across ridings, the SCC clarified that voter parity was only measure to assess effective representation, but not the only criterion by which boundaries should be evaluated. In considering electoral boundaries, the first criterion is that approximately the same numbers of voters are represented in each electoral area, a criterion known as “voter parity.” However, to achieve “effective representation,” other criteria are also important, namely geography, community history, community interests, minority representation, and other factors.<sup>939</sup> These other criteria justify a departure from strict voter parity; however, the courts have said that the population of each electoral district should not deviate by more than 25 percent.

The SCC explicitly rejected the “one person, one vote” principle which guides electoral district decisions in the United States. In *Baker v Carr*, the United States Supreme Court considered whether electoral redistricting should be subject to judicial review and coined the term “one person, one vote,” meaning that the sizes of wards or ridings should be equal, and roughly equivalent to the principle of voter parity.<sup>940</sup> The equal population

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<sup>937</sup> *Reference Re Provincial Electoral Boundaries (Sask.)*, *supra* note 48.

<sup>938</sup> David Johnson, “Canadian Electoral Boundaries and Courts: Practices, Principles and Problems” (1994)

39 McGill L.J. 224 at 227.

<sup>939</sup> *Reference Re Provincial Electoral Boundaries (Sask.)*, *supra* note 48.

<sup>940</sup> *Ibid.*

requirement has been strictly interpreted in subsequent cases “as requiring that districts be as close to exactly equal in population as possible.”<sup>941</sup>

The SCC characterized effective representation as “the less radical, more pragmatic approach which had developed in England,” in contrast to the U.S. approach. The SCC’s consideration of voter parity largely focused on the legislative intent of section 3 of the Charter: “In the absence of any supportive evidence to the contrary ... it would be wrong to infer that in enshrining the right to vote in our written constitution the intention was to adopt the American model. On the contrary, we should assume that the goal was to recognize the right affirmed in this country since the time of our first Prime Minister, Sir John A. Macdonald, to effective representation in a system which gives due weight to voter parity but admits other considerations where necessary.”<sup>942</sup>

### **c) Previous Ontario Municipal Board decisions**

Unlike the courts, the OMB’s decisions do not follow *stare decisis*, meaning that adjudicators are not bound by previous OMB decisions. Therefore, for any municipality undertaking a ward boundary review, it is important to understand how the OMB has decided past cases. The OMB has applied the Carter decision to evaluate the effectiveness of representation based on the following factors, referred to as the Carter criteria:<sup>943</sup>

- Does it equitably distribute the population and the electors?
- Does it respect identifiable communities of interest?
- Does it utilize natural, physical boundaries that are locally recognized?
- Does it serve the larger public interest of all electors of the municipality in contrast to the interest of a small group?

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<sup>941</sup> See *United States Constitution*, Art. I, §2. See also Jeffrey D. Colman and Julie L. Bentz, “Redistricting and Reapportionment” (Illinois Institute for Continuing Legal Education, 2002).

<sup>942</sup> *Reference Re Provincial Electoral Boundaries (Sask.)*, *supra* note 48.

<sup>943</sup> *Teno v Lakeshore (Town)*, 51 OMBR 473, 2005 CarswellOnt 6386.



Because OMB decisions are not binding on subsequent hearings, there is no single set of prescribed rules that municipalities must follow to prevent the OMB from overturning a ward boundary review. The OMB has stated that ward boundary decisions are amended or repealed only if there is a compelling reason to do so.<sup>944</sup> That said, certain guidelines may help insulate a municipality from challenge.

First, the OMB has overturned ward boundary reviews in which the outcome was predetermined. This includes ones for which a City Council had specified the final number of wards before the review process began or had mandated that the number of wards could not increase from the existing number.<sup>945</sup> The OMB has also determined that a WBR process must be approached from an unbiased perspective and must include public consultation.<sup>946</sup> For example, Ottawa's 2001 ward boundary review prescribed the number of new wards in advance. The review was overturned by the OMB in 2003 on the basis that "Council did not give sufficient weight to communities of interest and, in particular, rural communities of interest."<sup>947</sup> Ottawa was required to conduct a second ward boundary review.

Second, the meaning of the term "communities of interest" is contested. In the City of Toronto's WBR, the term "communities of interest" was linked to the idea of "neighbourhoods," suggesting that the neighbourhood is a crucially important and identifiable geographic point in most people's lives and frames how people experience their city.<sup>948</sup> The alignment of the term "communities of interest" with that of "neighbourhood" also underscored a belief that the role and responsibilities of a municipality are closely linked to neighbourhoods, including how people get around; the social, cultural, and recreational services that are available; and the provision of utilities and public spaces.

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<sup>944</sup> Hambly, Re, 64 OMBR 36, 2009 CarswellOnt 7748.

<sup>945</sup> Ottawa (City) v Osgoode Rural Community Assn, 39 MPLR (3d), 2003 CarswellOnt.

<sup>946</sup> Hambly, *supra* note 944.

<sup>947</sup> Ottawa (City) v Osgoode Rural Community Assn, *supra* note 945.

<sup>948</sup> Canadian Urban Institute, et al. *supra* note 414 at 16.

In the City of Kingston's 2013 ward boundary review process, City Council's ward boundary decision was appealed to the OMB on the basis that it did not provide effective representation, in part because the bylaw failed to recognize communities of interest, by splitting up an area represented by a single neighbourhood association.<sup>949</sup> The OMB sided with the appellant (although the decision rested largely on the lack of inclusion of postsecondary students and the inclusion of non-voters in population counts when determining electoral districts), and amended the bylaw to account for the Sydenham Neighbourhood Association.<sup>950</sup> In Kitchener, the city's 34 neighbourhood associations were the "communities of interest" used to inform its ward boundaries.<sup>951</sup>

Third, even though public consultation is not set out as a requirement under applicable legislation, the OMB has made it clear that it expects municipalities to include public consultation in the review process.<sup>952</sup> In the *Town of Innisfil v Hambly, 2009*, the OMB stated: "[T]he common practice of holding public meetings on a variety of matters that come before a municipal council creates an environment and reasonable expectation that the municipality will hold a public meeting to hear from residents on a ward boundary proposal."<sup>953</sup>

In the City of Ottawa's 2001 WBR, the OMB held that the public was not sufficiently engaged. It also noted that the public process had been too limited and that, in particular, there had been no opportunity for the public to discuss options for specific ward boundary proposals.<sup>954</sup>

Fourth, the OMB has stated that population deviations in rural and urban areas may differ.<sup>955</sup> In rural regions, the OMB has determined that up to 33 percent of a deviation in voter parity may be allowed, if based on the Carter criteria.<sup>956</sup> This means that the

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<sup>949</sup> *Ibid.* at 24.

<sup>950</sup> *Ibid.* at 25.

<sup>951</sup> *Ibid.* at 16.

<sup>952</sup> *Ibid.* at 21.

<sup>953</sup> Hambly, *supra* note 944.

<sup>954</sup> Canadian Urban Institute et al, *supra* note 414 at 28.

<sup>955</sup> *Ibid.* at 11.

<sup>956</sup> *Ibid.* at 28.

populations of wards may vary by up to 33 percent if the boundaries were drawn with the intention of keeping communities of interest together, respecting relevant geographic boundaries, or otherwise upholding the principles set out in the Carter decision.

### **Other municipal approaches**

Appendix E compares nine municipalities from Ontario, elsewhere in Canada, and the United States. The data show that there are no firm rules when it comes to ward-based representation. Cities vary widely in the number of wards, the populations represented by councillors, and the approach to ward boundary reviews. For example, Halifax and London (Ontario) councillors represent approximately 25,000 people each, while Calgary and Edmonton's numbers are about 70,000. New York, which has a City Council close in size to that of Toronto (51 members), has more than 160,000 residents per electoral district, although it also has five borough presidents and 59 community boards.<sup>957</sup> James Lightbody has noted, in reference to Winnipeg's preference for ward sizes of approximately 50,000 residents that, "Their purposely artificial construction transcended any bounds of neighbourhood or community."<sup>958</sup>

The approaches to ward boundary reviews also differ from city to city. Canada does not have a country-wide approach to the timing of electoral boundary reviews at the municipal level, although mandatory federal electoral district reviews take place every 10 years following the decennial census. As such, the rules differ by jurisdiction. For example, in London (Ontario), staff are required to review ward populations each term, while in Halifax, Nova Scotia, wards are considered every eight years. In the United States, the federal *Voting Rights Act of 1965* requires that local governments remap their wards following the decennial census to meet federal "one person one vote" guidelines.<sup>959</sup> Deviations may be acceptable to respect established communities of

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<sup>957</sup> City of New York. "About Community Boards" (17 January 2017), online: <<http://www.nyc.gov/html/cau/html/cb/about.shtml>>.

<sup>958</sup> James Lightbody, "Electoral reform in local government: the case of Winnipeg" (1978) 11:2 *Canadian Journal of Political Science / Revue Canadienne de Science Politique* 307.

<sup>959</sup> *Gray v. Sanders*, 372 U.S. 368 (1963), online: <<https://supreme.justia.com/cases/federal/us/372/368/case.html>>. Note also relevant state laws, e.g. Article

interest or to achieve other legally valid and permissible objectives.<sup>960</sup>

Two other differences related to accountability are noteworthy. First, independent consultants and commissions are sometimes, but not always, retained or appointed to carry out the review. Second, City Council is not always the final decision-maker on boundaries. In New York, the United States Department of Justice must endorse the Council's decision. In Halifax, final approval rests with the Nova Scotia Utility and Review Board.

With the threat of a resident petition and, at worst, an OMB order that would impose new ward boundaries, the city embarked on its review. With the legal background in mind, we examine the details of Toronto's multi-year WBR process.

## **II. The City of Toronto's ward boundary review process**

The 2013 ward boundary review was Toronto's first municipal-led ward boundary review since amalgamation. Any WBR process is a legal minefield, with broad principles but no clear rules, the potential for residents to appeal proposed boundaries to the OMB, and a lack of precedent in OMB decisions. This results in considerable difficulty in setting out a process that will withstand quasi-judicial scrutiny.

### **1. Design of the WBR process**

In June 2013, City Council approved a WBR process.<sup>961</sup> City staff recommended that consultants be retained to conduct the review, independent from staff and councillors. The objective was to keep the process at arm's-length from the City Manager's Office, who would oversee the WBR, as the consultants would make the final recommendations.

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21 of the *Revised Cities and Villages Act* of 1941, 65 ILCS 20/21-0.01, *et seq.*, which require the City of Chicago to be divided into 50 wards of "nearly equal" populations. 65 ILCS 20/21-36.

<sup>960</sup> Office of the City Clerk, Special meeting - redistricting of city wards, City of Chicago (2012), online: <<https://chicago.legistar.com/MeetingDetail.aspx?ID=182369&GUID=64006609-9A98-4137-86CF-8A00FE2C1539&Search>>.

<sup>961</sup> City Clerk, Executive Committee Decision: Committee decision on final report - Toronto ward boundary review, City of Toronto (2016), online: <<http://app.Toronto.ca/tmmis/viewAgendaItemHistory.do?item=2016.EX15.2>>.

Careful attention was placed on avoiding language that would limit the consultants' options, in particular by setting out in advance the number of wards.

Staff also required two rounds of public and stakeholder consultation. The first set would allow the public and select groups (including councillors) to give general input; the second would allow the public to comment on the options identified by the consultants. This requirement was rooted in applicable law.<sup>962</sup>

The timeline was set on the assumption that the results would likely be appealed to the OMB, but the timing would allow the Clerk's Office at least a year from the end of all appeals to prepare for the 2018 municipal election. Staff designed the process to conclude in fall 2017, OMB appeals included, to give the Clerk's Office the time needed to implement the results.<sup>963</sup> This three-year process meant that the consultants could carry out extensive background research and analysis, making it one of the longer processes followed in Ontario.

On June 27, 2013, shortly after City Council approved the ward boundary review process, a petition under COTA section 129 was filed with the City Clerk's Office by the Toronto Taxpayers Coalition. The petition asked City Council to pass a bylaw redividing the City of Toronto into wards, and that such wards "be based on the new boundaries for the federal electoral districts located in Toronto proposed by the 2012 Federal Electoral Boundaries Commission for Ontario in its Report in either its current form or as amended after receiving objections from the House of Commons. We further request that these new wards be in place for the 2014 Toronto Municipal Election."<sup>964</sup> The appeal was withdrawn, pending the conclusion of the WBR.<sup>965</sup>

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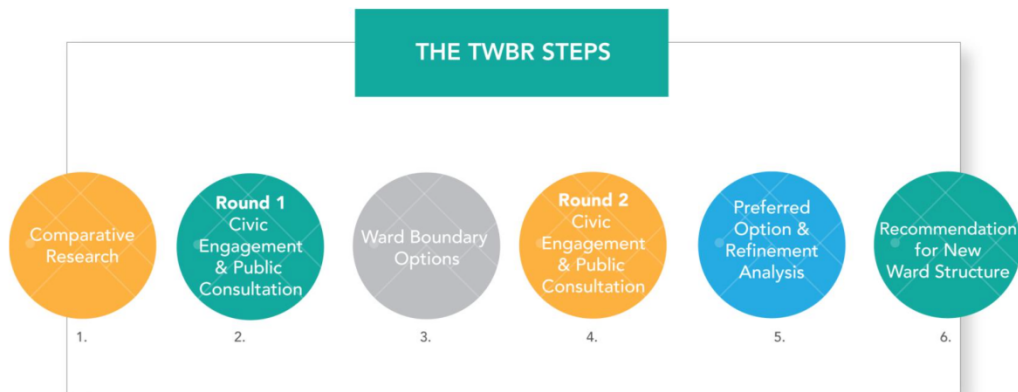
<sup>962</sup> City Clerk, City Council Decision: Consideration of a ward boundary review for Toronto, City of Toronto (2013), online: <<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2013.EX32.2>>.

<sup>963</sup> City Manager, *supra* note 438 at 4.

<sup>964</sup> City Clerk, Staff Report to City Council: Petition received under section 129 of the City of Toronto Act, 2006 – request for ward boundary changes, City of Toronto (2013), online: <<http://www.toronto.ca/legdocs/mmis/2013/cc/bgrd/backgroundfile-60118.pdf>>.

<sup>965</sup> Canadian Urban Institute et al, *supra* note 933 at 41.

The WBR process was approved by City Council in June 2013.<sup>966</sup> The process taken by the consultants followed the requirements approved by City Council. Figure 5.1 depicts the process.



**Figure 5.1: Toronto Ward Boundary Review Steps<sup>967</sup>**

The consultants conducted two rounds of consultations, first on wards generally, and the next on five proposed options. They included “web-based activities (including social media platforms), communication and outreach to educate the public about the purpose of the ward boundary review, keep the public informed about the process and provide a range of opportunities for the public to get involved, including two online surveys.”<sup>968</sup> The consultant team also solicited input from Members of Council, school board representatives, neighbourhood associations, other stakeholder groups and members of the public.<sup>969</sup>

<sup>966</sup> City Clerk, Executive Committee Decision: Committee decision on final report - Toronto ward boundary review, City of Toronto (24 May 2016), online: <<http://app.Toronto.ca/tmmis/viewAgendaItemHistory.do?item=2016.EX15.2>>.

<sup>967</sup> Canadian Urban Institute, Beate Bowron Etcetera Inc., The Davidson Group Inc., & Thomas Ostler, “Toronto ward boundary review: final report” (2016), online: <<https://static1.squarespace.com/static/53bc0914e4b0eb57996e4dee/t/5739fe5022482e97a8591392/1463418450864/TWBRFinalReportMay2016.pdf>> at 6.

<sup>968</sup> City Clerk, “Committee decision on final report - Toronto ward boundary review, Executive Committee Decision (2016), online: <<http://app.Toronto.ca/tmmis/viewAgendaItemHistory.do?item=2016.EX15.2>>.

<sup>969</sup> Canadian Urban Institute et al, *supra* note 967.

The consultants explicitly set the target year for voter parity at 2026, so that the new ward structure would last for the next four municipal elections.<sup>970</sup> This meant that the proposed wards would be based on projections for the vast growth anticipated in the downtown and other growth centres designated in the Official Plan, and data suggesting that most of Toronto’s other communities would remain stable. The use of projected figures meant a continued discrepancy in ward populations, with six wards having variances of over 20 percent in 2018, and one having a variance of over 37 percent.<sup>971</sup> Finally, the proposed ward populations were to be based on the number of residents, not simply the number of electors, a point that had been raised in a previous OMB decision, but perhaps drew inspiration from the City of Toronto’s recent decision to ask the provincial to extend voting rights in municipal elections to permanent residents.<sup>972</sup>

Based on these principles, five options were offered, ranging in size, geography, and historical connection (see Table 5.1).<sup>973</sup> Each option sought to balance all the components of effective representation.<sup>974</sup>

Option	Name	Avg Ward Population	Ward Population Range	No. of Wards
	Current	60,000	45,000–90,000	44
1	Minimal Change	61,000	51,850–70,150	47
2	44 Wards	70,000	63,000–77,000	44
3	Small Wards	50,000	45,000–55,000	58
4	Large Wards	75,000	67,500–82,500	38
5	Natural or Physical Boundaries	70,000	63,000–77,000	41

**Table 5.1: Ward Boundary Review Options Presented in the Final Report**<sup>975</sup>

<sup>970</sup> 2018, 2022, 2026 and 2030.

<sup>971</sup> Canadian Urban Institute, *supra* note 935.

<sup>972</sup> Canadian Urban Institute, Beate Bowron Etcetera Inc., The Davidson Group Inc., & Thomas Ostler, “*Supplementary report: Toronto ward boundary review - New wards for Toronto*” (2016), online: <<https://static1.squarespace.com/static/53bc0914e4b0eb57996e4dee/t/5807a5ef200999ecb24249b07/1476896247228/TWBR.SupplementaryReport.161014.pdf>>. “Electors” refers to those entitled to vote, while “residents” are those who reside in the area in question.

<sup>973</sup> For further detail on each of the five options, please see Canadian Urban Institute, Beate Bowron Etcetera, The Davidson Group, and Thomas Osler, *Toronto Ward Boundary Review: Options Report*, August 11, 2015.

<sup>974</sup> Canadian Urban Institute et al, *supra* note 972.

The consultants solicited feedback on the five options and opted for an innovative way to assess the feedback. They asked Councillors and the public to rank the options by selecting their first, second, third, fourth, and fifth choices. Four dimensions were then assessed: first-place choices, ranked scores, last-place choices, and a comparison of first and last choices. The rationale was that: “a new ward structure is not just about which option places first but just as much about which option a consensus can be built around. That is why it is important to know which option placed last and can be considered a “no way” option. Also, a comparison between first and last can assist in revealing options around which a consensus may be difficult to achieve.”<sup>976</sup>

For example, Option 3 (Small Wards), saw a high degree of first and last choices from the public and Members of Council. Option 3 is the “love-it-or-hate-it” option. The consultants assess that, “It would be the option that would be the most difficult to form a consensus around, because of the strong positive and negative reactions to it.”<sup>977</sup>

Ultimately, the consultants recommended the Minimal Change – 47 Ward option with refinements. The refinements, drawn from public and councillor input, were meant to improve the recommended ward structure with regard to communities of interest, ward history, and other factors. The result was an increase in the number of wards to 47 from 44 while maintaining the current average ward population size of approximately 61,000.<sup>978</sup> Of the 44 existing wards, 38 would experience some changes in their boundaries; only six existing wards would stay the same. Also, three new wards were recommended for the Toronto–East York community council area and an additional ward for North York. The Etobicoke-York Community Council area lost one ward.

## **2. Role of the Executive Committee and City Council in WBR Design**

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<sup>975</sup> *Ibid.*

<sup>976</sup> *Ibid.*

<sup>977</sup> *Ibid.*

<sup>978</sup> *Ibid.*



Toronto's Executive Committee considered the ward boundaries on two occasions. First, the Final Report, together with a cover staff report, was delivered to the Executive Committee for discussion and debate on May 24, 2016. The item was the second on a very full agenda and was heard at 8 p.m.<sup>979</sup> After a brief period of questions and answers, a motion was introduced, asking the consultants to review Option 1 (47 wards) by focusing only on wards with the highest population discrepancies and leaving the other wards intact; and to examine the possibility of having only 46 wards, 44 wards, or wards that aligned with federal and provincial electoral boundaries, all while achieving the objective of effective representation.<sup>980</sup> Mayor Tory cautioned the councillors about "getting into the weeds" for fear of "tainting the process."<sup>981</sup>

The Final Report, written together with a cover staff report endorsing the recommendations, was delivered to the Executive Committee for discussion and debate on May 24, 2016. The item was the second on the agenda, right after another contentious matter.<sup>982</sup> I watched the meeting online from 9:30 am, waiting for the item to be heard, which finally occurred just after 8 pm. The Executive Committee members decided to forego the presentation of the consultants and to limit all speaking times to three minutes. By this point, all but one of the eight listed deputants had left the meeting, meaning that this form of civic engagement was therefore not utilized.

At the meeting, various councillors weighed in, suggesting new boundaries on the grounds that communities could be divided and noting the difficulty in dealing only with boundaries, rather than other relevant governance issues. A councillor noted other objection to any changes to his ward on the grounds that it split a "community of interest" – a BIA. Another speaker, a councillor from the Scarborough area, wondered why the review had only focused on boundaries and not on other aspects of representation. "Unfortunately," the consultants stated, "those questions were not part of our terms of reference." Another councillor came up to the screen with a map in hand, pointing to

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<sup>979</sup> Personal observation (Alexandra Flynn).

<sup>980</sup> Canadian Urban Institute et al, *supra* note 972.

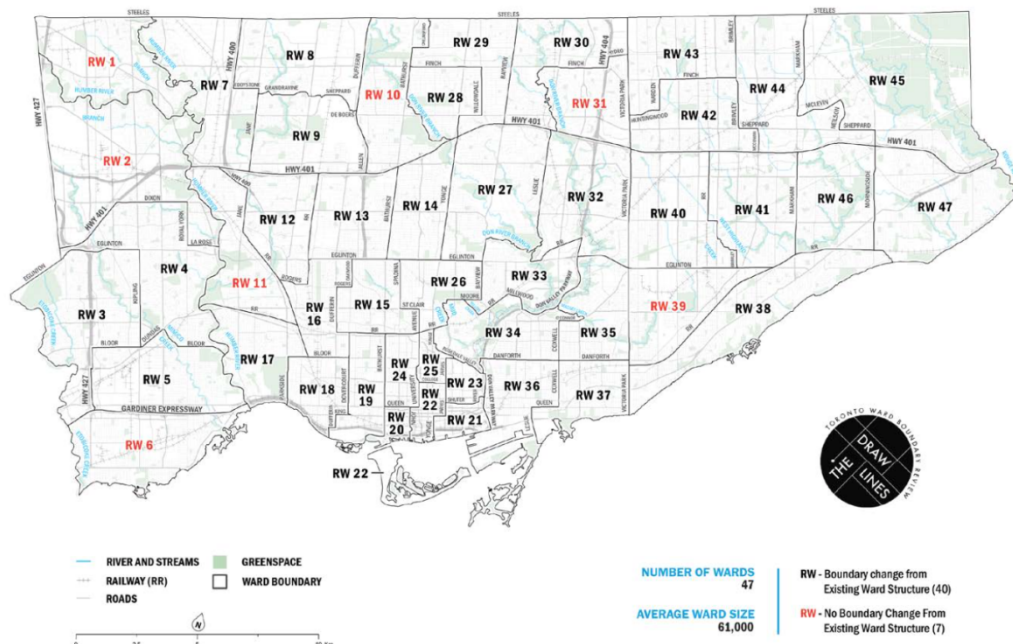
<sup>981</sup> Personal observation (Alexandra Flynn).

<sup>982</sup> City of Toronto Council, "The City of Toronto's Long-term Financial Direction" (2016) City Council Decision, online: <[app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2016.EX15.1](http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2016.EX15.1)>.

non-arterial roads and mapping how they could be changed to accommodate “a community now broken in half.” At this May meeting, the Executive Committee sent the Final Report back to the consultants to consider a recommendation with fewer wards.

Second, the Executive Committee met on October 26, 2016, to consider the consultants’ further review. In their Supplementary Report, the consultants concluded in part that a 44-ward option achieves excellent voter parity among the 44 wards, but has significant challenges for maintaining existing geographic communities of interest and, in particular, keeping the boundaries of Scarborough intact; and using federal riding boundaries as a basis for ward boundaries raises significant concerns for voter parity, a prime component of effective representation, and would require altering “natural and historical” ward boundaries.<sup>983</sup>

The consultants recommended proceeding with the 47 wards option previously recommended, as depicted in Illustration 5.3, but with minor changes.<sup>984</sup>



<sup>983</sup> Canadian Urban Institute et al, *supra* note 972.

<sup>984</sup> *Ibid.*

### **Illustration 5.3: Map of Recommended Wards With Refinements (47 Wards)<sup>985</sup>**

The proposal was debated for close to four hours. Many issues were raised, including the appetite of Toronto residents to have more councillors; whether the WBR should be connected to a more comprehensive governance review; and if the options satisfied the goal of keeping “communities of interest” together.<sup>986</sup> After a number of failed motions, the Executive Meeting vote 7–6 to forward the “Recommended Wards with Refinements – 47 Ward Option” to City Council for approval at its November 2016 meeting.<sup>987</sup>

Two weeks later, on November 8, 2016, the 47-ward option was approved by a 28–13 vote of City Council; the Mayor voted against the proposal.<sup>988</sup> A proposed amendment – to consider the impacts to governance and structure changes to the authority, duties, and function of community councils, as well as the establishment of new committees and a board of control to focus on citywide issues – failed.<sup>989</sup>

The next section uses the analogy of Santos’ lens of scale to focus more specifically on the notion of local governance raised in the WBR. It concludes that the judicial requirement of consideration of “communities of interest” reflect the conflict between how state-based law, and the norms and rules of other actors or bodies regarding the meaning of local governance in Toronto.

### **3. The meaning of “local” in the ward boundary review process**

This section brings together the WBR details presented earlier to analyze the implications for local governance. First, I examine the meaning of “communities of interest,” one of the chief criteria of the Carter test, alongside Toronto’s WBR. Next, this section explores

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<sup>985</sup> Canadian Urban Institute et al, *supra* note 972.

<sup>986</sup> Personal observation (Alexandra Flynn).

<sup>987</sup> *Ibid.*

<sup>988</sup> City Clerk, Committee decision on final report - Toronto ward boundary review, Executive Committee Decision (24 May 2016), online: <<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2016.EX15.2>>.

<sup>989</sup> City Clerk, “Motion to amend item moved by Councillor Stephen Holyday - Toronto ward boundary review” (24 May 2016), online: <<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2016.EX15.2>>.

the involvement of ward councillors, community councils, BIAs and neighbourhood association. This section concludes that councillors were the principal determinants of local boundaries, with BIAs and neighbourhood associations playing a central role. The WBR also raised the need for a governance review to address the lack of local forum beyond the ward.

#### **a) Definitions and applications of the “communities of interest” criterion**

This section provides background on this criterion and a description of how the concept, “communities of interest” was engaged in the WBR.

The focus on “communities of interest” was profoundly important in the Carter decision and in the Toronto WBR. One of the underlying tenets in the Carter decision ensuring the representation of minorities in the electoral model.<sup>990</sup> In applying the Carter principle to the WBR, the consultants state, “As a rule, lines are drawn around communities, not through them. Wards should group together communities with common interests, where there is some identifiable similarity such as age, assessed value and configuration of housing, the life-stage and demographics of the residents, and municipal service provisions and amenities.”<sup>991</sup> Put another way, this WBR should ensure that communities of interest are not be divided into separate wards.

Providing some forum for “communities of interest” when drawing ward boundaries is a common standard in Canada and other commonwealth cities in the UK and Australia.<sup>992</sup> The view is that it is both fair and logical to group communities together, and can also encourage participation in civic life. This sentiment was echoed in Toronto’s ward boundary review where the consultants wrote:

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<sup>990</sup> John C., Courtney, *Commissioned Ridings: Designing Canada’s Electoral Districts* (McGill – Queen’s University Press: 2001) at 167-169.

<sup>991</sup> *Ibid.* at 225.

<sup>992</sup> Canadian Urban Institute et al, *supra* note 972.

A great number of individuals identify with geographically defined communities of some sort. It is natural to want to extend that sense of being part of a community to ensuring that that community becomes a part of a larger electoral district with which there is also some affinity. A community of interest can enhance citizen involvement in politics. It has been demonstrated that voter turnout is positively affected when boundaries are redrawn in such a way as to place voters in a riding with they share a strong community of interest.<sup>993</sup>

However, “communities of interest” leaves considerable room for interpretation, largely in terms of which communities of interest to consider. “Communities of interest” has no rigorous definition, is vague, and is applied inconsistently.<sup>994</sup> The practice of identifying such communities is that it biases “the very system of representation from the outset by providing special status to particular communities over others.”<sup>995</sup>

In practice, there are contested meanings for the term “communities of interest.” In the City of Barrie’s Ward Boundary Review Final Report, the term “communities of interest” was linked to the idea of “neighbourhoods,” suggesting that the neighbourhood is a crucially important and identifiable geographic point in most people’s lives and substantially frames how people experience their city. The alignment of the term “communities of interest” with that of “neighbourhood” also underscored a belief that the role and responsibilities of a municipality are closely linked to neighbourhoods, including how people get around; the social, cultural, and recreational services that are available; and the provision of utilities and public spaces.

Another potential issue in regard to “communities of interest” is the difficulty in locating them geographically through a ward system. Like-communities are not neatly divided into the wards of the City of Toronto. There can be overlaps amongst communities, communities may be larger than a single ward, or the placement of a single community within a ward may conflict with other ward boundary review principles.

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<sup>993</sup> Courtney, *supra* note 990.

<sup>994</sup> David Johnson, “Canadian Electoral Boundaries and Courts: Practices, Principles and Problems” (1994) 39 McGill L.J. 224 at 237

<sup>995</sup> *Ibid.* at 244.

As noted earlier in this chapter, the connection between neighbourhood associations and “communities of interest” has arisen in other ward boundary reviews. In the City of Kingston’s 2013 ward boundary review process, City Council’s ward boundary decision was appealed to the OMB on the basis that it did not provide effective representation, in part because the by-law failed to recognize communities of interest by splitting a neighbourhood association area.<sup>996</sup> The OMB sided with the appellant, amending the bylaw so that the Sydenham Neighbourhood Association was not divided.<sup>997</sup> In Kitchener, the city’s 34 neighbourhood associations that operate across the city were the “communities of interest” used to inform its ward boundaries.<sup>998</sup>

The consultants in Toronto’s WBR were broad in their depiction of “communities of interest.” The consultants stated that they are “difficult to define precisely.”<sup>999</sup> They note of the term: “Sometimes it refers to ethno-cultural commercial areas such as Chinatown, Little Italy or Little India. The term is also used to define neighbourhoods such as The Annex, Rexdale, Malvern, Mimico, Mount Dennis or St. Lawrence...”<sup>1000</sup> They also noted that “there is no comprehensive list or map of Toronto’s communities of interest or neighbourhoods with precise boundaries. Some areas of the city have strong neighbourhood groups and residents associations with well-defined boundaries, while other areas do not”<sup>1001</sup>

The consultants offered their guidelines to capture as many “communities of interest” as possible in the new ward boundary configuration: first, communities of interest must be geographically contiguous, meaning that there must not be a gap in their physical location. Second, communities of interest should not be divided, although this may be

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<sup>996</sup> Canadian Urban Institute et al, *supra* note 928 at 24.

<sup>997</sup> *Ibid.*

<sup>998</sup> Williams, Dr. Robert J., “City of Kitchener Ward Boundary Review Final Report” (2008) 1, online: <<http://imis.amcto.com/imis15/CMDownload.aspx?ContentKey=dc05f78a-6402-427c-ae31-47207091054c&ContentItemKey=97e9cfd4-472e-4ca5-8bec-a178f1727485>>.

<sup>999</sup> Canadian Urban Institute, Beate Bowron Etcetera Inc., The Davidson Group Inc., & Thomas Ostler, “Toronto ward boundary review: final report” (2016), online: <<https://static1.squarespace.com/static/53bc0914e4b0eb57996e4dee/t/5739fe5022482e97a8591392/1463418450864/TWBRFinalReportMay2016.pdf>>.

<sup>1000</sup> *Ibid.*

<sup>1001</sup> *Ibid.*

unavoidable, such as the Jane/Finch area or Malvern, due to the size of these communities and the location of natural boundaries. The consultants did not identify communities of interest in advance, nor did they solicit specific feedback from neighbourhood associations, although they did reach out specifically to BIAs. The next section details how local participants were engaged in the WBR and what this involvement tells us about “communities of interest.”

#### **b) “Local” participants in the WBR process**

The ward councillor played a crucial role in the WBR, together with input from BIAs and certain neighbourhood associations. First, councillors had multiple entryways into the review process: one-on-one consultations with the WBR consultants, involvement in the public consultation sessions, and decision-making at the Executive Committee and City Council. Second, unlike neighbourhood associations, BIAs had direct involvement as stakeholders, perhaps due to the existence of a BIA umbrella organization representing all BIAs in the city. Third, community councils were not involved in the process, in part because of city staff concern that their input could ultimately weaken the city’s position in the event of an OMB appeal. Notwithstanding their formal role in the process, the boundaries of the community council areas formed part of the ward boundary review, as a proxy for the identities of the formal municipalities.

Table 5.2 illustrates the involvement that ward councillors, community councils, BIAs and neighbourhood associations played in WBR design, consultation and decision-making, further explained below.

	<b>Design</b>	<b>Specifically consulted</b>	<b>Part of public consultation</b>	<b>Decision-making role</b>
Ward councillors	Yes	Yes	No	Yes
Community councils	No	No	No	No
Business improvement areas	No	Yes	Yes	No

Neighbourhood associations	No	No	Yes	No
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**Table 5.2: Involvement of local actors in the WBR process**

### **Ward councillor**

The ward was of acute importance in the WBR. Not only was the subject matter of the review the meaning and boundaries of the ward, but the ward councillors as prime stewards of the ward were disproportionately engaged compared to other local actors. In the first consultation stage, the consultants individually interviewed all 44 members of the 2010-2014 City Council and seven new 2014-2018 Members of Council to solicit their perspective on the issues related to the current Toronto ward configuration.<sup>1002</sup> In stage 2, the consultants had meetings with 42 members of Council and three members of the Mayor's staff.

The privileging of the councillor voice revealed itself in the review of the options, as explained in the Final Report, which specifically set out the ranked order of each of the public, the councillors, and the results of surveys.<sup>1003</sup> The consultants recommended the “minimal change” option preferred by the councillors, even though this option ranked fourth (of five options) in a public survey.<sup>1004</sup>

Councillors also had decision-making power at the Executive Committee and City Council, which enabled them to advance their views on the proper boundaries of the ward. As mentioned earlier in this chapter, the WBR process was designed by staff and approved by the Executive Committee and City Council based on a model that would try to emulate the federal government's electoral boundary review approach given legislative constraints. Neither city staff nor councillors attempted to introduce a model like the one used at the federal level. Instead, staff recommended an arm's length process that involved hiring external consultants to develop a set of recommendations, following

<sup>1002</sup> Canadian Urban Institute et al, *supra* note 928 at 7.

<sup>1003</sup> Canadian Urban Institute et al, *supra* note 999.

<sup>1004</sup> *Ibid.*



extensive public and stakeholder consultations, which would then go to Executive Committee and City Council for approval.<sup>1005</sup> Staff advised councillors many times that an OMB review could be successful if the review were overly limited or prescribed, so the hope was that this fear would further protect the process from undue political influence.<sup>1006</sup> Councillors were given many opportunities to advance their own perceptions of the appropriate ward boundaries. Their role embodied what a City staff member whom I interviewed told me, “in the end, [councillors] decide where the boundaries are.”<sup>1007</sup>

### Community Councils

Community councils did not assume a formal role in the ward boundary review. A senior City of Toronto staff member told me, in regard to the Etobicoke-York Community Council, “[A]t their last meeting, they decided they wanted to have this briefing on the ward boundary review and my staff gave advice: this is within executive committee’s mandate, not community council.”<sup>1008</sup> When I asked why, my contact told me, “I think we kind of realized that there would end up being motions attached and that had the potential to contaminate the process, in terms of future appeals and all that kind of stuff, so that’s why we were trying to influence in that case.”<sup>1009</sup> As we know from Chapter 3, a community council can proceed with an issue even where city staff disagree. I heard from this staff member that, “there are lots of examples where we’ve given advice that we think something is a city-wide matter, that community council has considered anyway.”<sup>1010</sup> However, in this case, perhaps due to the emphasis on mitigating an OMB appeal, the community councils backed off from involvement.

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<sup>1005</sup> Anonymous interview with City of Toronto staff member #4, City Manager’s Office, Toronto, Ontario, Canada (7 May 2016) – author conducted.

<sup>1006</sup> Anonymous interview with City of Toronto staff member #1, City Clerk’s Office, Toronto, Ontario, Canada (18 December 2015) – author conducted.

<sup>1007</sup> Anonymous interview with City of Toronto staff member #4, City Manager’s Office, Toronto, Ontario, Canada (7 May 2016) – author conducted.

<sup>1008</sup> Anonymous interview with City of Toronto staff member #1, City Clerk’s Office, Toronto, Ontario, Canada (18 December 2015) – author conducted.

<sup>1009</sup> *Ibid.*

<sup>1010</sup> *Ibid.*

The politicking related to community council boundaries plays out on the floor of City Council. This issue came up at the ward boundary review, where many comments were made as to the groupings of wards and affiliations with former municipalities as relevant to ward boundaries generally. The groupings of wards to form community councils is not new. As my former City staff colleague told me, “[W]hen we went from six to four, you know we had to break the boundaries of the old municipalities and so Etobicoke and York community council is an interesting one, because it’s really got some of North York, York and Toronto attached to it.” I learned that the Etobicoke-York community council area was created as a result of a trade. When staff originally designed that boundary, “we basically said we’ll take all the wards on the other side of the Humber and join them up.” One councillor didn’t want to sit on the Etobicoke York Community Council, so engineered a trade with another councillor, originally in the Toronto-East York Community Council area. The trade was engineered on the floor even though, to my contact, “that makes no sense to me, geographically.”<sup>1011</sup> The community councils still serve as a proxy for the pre-amalgamated municipalities. As my contact said, “I mean this to me seems like the issue, not just for this representation, but also the identity of the old municipalities. Which, even if we don’t want them to exist and we don’t want it to be true, is still percolating under the surface, so it’s there if we want it or not.”<sup>1012</sup>

In my own observation, while attending the public consultation sessions, the location of wards was not neatly separated from the location of community councils. At the public meetings, many participants were frustrated that governance, electoral reform or the operations of community councils were outside the scope of the review.<sup>1013</sup> Thirteen comments were raised as to a New York-style community board system with appointed volunteers, specified responsibilities and separate staff and budget. Eight participants were in favour of stronger community councils with greater delegated authority and propose the creation of a Midtown community council. And, there was widespread concern in regard to Option 5, whereby the old Scarborough boundary would be shifted.

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<sup>1011</sup> Anonymous interview with City of Toronto staff member #1, City Clerk’s Office, Toronto, Ontario, Canada (18 December 2015) – author conducted.

<sup>1012</sup> *Ibid.*

<sup>1013</sup> Canadian Urban Institute et al, *supra* note 928 at 36.

Even though the WBR did not concern itself with community councils, they were relevant to notions of “communities of interest.”

### **BIAs and neighbourhood associations**

BIAs and neighbourhood associations were identified as important stakeholders by the consultants. BIAs – but not neighbourhood associations – were one of the stakeholder groups singled out for direct consultation via the umbrella organization, Toronto Association of Business Improvement Areas (TABIA).<sup>1014</sup> In regard to “BIAs and Resident Associations,” the consultants stated, “In partnership with Toronto City Council, local commercial property owners and tenants can work together to form a Business Improvement Area (BIA) to enhance the safety, look and feel of their neighbourhoods to attract more visitors to shop and dine, as well as to draw new businesses to their area.”<sup>1015</sup> The statement did not mention why this description was relevant to the WBR, nor why BIAs were to be consulted, but not neighbourhood associations. No other mention was made of neighbourhood associations, or how they would be consulted.<sup>1016</sup>

Neighbourhood associations were actively involved in other aspects of the review, namely the public consultation sessions. The Final Report states that the involvement of BIAs and NAs made a difference in how the ward boundaries were crafted.<sup>1017</sup> For example, the Finch-Bathurst BIA, located in North York, is a large, influential BIA and, as a result of their input, the consultants tried to keep it within a single ward. Likewise, the boundaries of the Junction and the Waterfront were influenced by the involvement of these organizations.<sup>1018</sup> In the Scarborough consultation meeting that I observed, a neighbourhood association suggested revisions to proposed boundaries so that their

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<sup>1014</sup> The other individual meetings were held with Civic Action (Emerging Leaders Network); Ontario Council of Agencies Serving Immigrants; Social Planning Toronto; and United Way at 7, online: <<http://static1.squarespace.com/static/53bc0914e4b0eb57996e4dee/t/552e670ce4b01067ad03cbac/1429104396257/RoundOneReport.TWBR.150402.pdf>>.

<sup>1015</sup> Canadian Urban Institute et al, *supra* note 928.

<sup>1016</sup> *Ibid.*

<sup>1017</sup> Canadian Urban Institute et al, *supra* note 999.

<sup>1018</sup> *Ibid.*

community would have a single councillor, making it easier for their interests to be heard. This recommendation ultimately found its way into the final report.<sup>1019</sup>

In addition to influencing the location of specific boundaries, the involvement of these bodies raised important information about the meaning of “communities of interest.” First, BIAs and neighbourhood associations include boundaries that they argue delineate a community of interest. These boundaries may be larger or smaller than, and may conflict with, those of wards. Thus, wards are not meant to accurately map communities of interest – one goal of the ward boundary review is to minimize, as much as possible, their separation. Second, these bodies help facilitate the process by providing necessary input. The consultants did not create wards based on other notions of communities of interest like neighbourhood improvement areas or demographic information. Instead, they relied on the feedback of these stakeholders. Third, the involvement of BIAs and neighbourhood associations was uneven across the City. Certain areas, particularly those without such organizations, did not give input.

Thus, BIAs and neighbourhood associations reveal themselves as key participants in the WBR process. Chapter 1 described the debate as to whether BIAs and neighbourhood associations are important actors in local decision-making. Asserting that some of these bodies were able to influence the design and location of ward boundaries, the next section examines more deeply the way in which these bodies, as Toronto’s version of communities of interest, were specifically engaged.

#### **4. Engaging communities of interest**

The engagement of communities of interest was built into the WBR in five ways.<sup>1020</sup> First, the consultants specifically engaged seven Toronto “stakeholder groups,” which included the Toronto Association for Business Improvement Areas (TABIA), the umbrella organization for Toronto’s BIAs. Second, the consultants held face-to-face discussions with councillors on two occasions. Third, opportunities were provided to any

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<sup>1019</sup> Canadian Urban Institute et al, *supra* note 999.

<sup>1020</sup> *Ibid* at 21.

interested person or organization to participate to engage in the review by attending one of the 24 consultations, with six held in each of the four community council areas. These consultations were held in two stages – the first to obtain feedback from residents prior to the drafting of proposed boundaries and the second following the identification of five options. Fourth, the consultants provided a survey for any person to complete and forward to the consultants. Fifth, individuals were able to attend the Executive Committee meeting and give a five-minute deputation with their thoughts on the review.

Interestingly, while TABIA (the umbrella organization for the city’s BIAs) was consulted directly as a “key stakeholder,” neighbourhood associations were not. This may be due to the absence of comprehensive contact information, as detailed in Chapter 3. In addition, unlike TABIA, there is no single umbrella organization that represents the 180+ neighbourhood organizations. However, the consultation sessions provided a forum for neighbourhood associations to comment on the review process and proposed boundaries.

Table 5.3 sets out the number of people who participated in each of these engagement exercises.

Public engagement exercise		Number of Participants
1.	Stakeholder groups	59 (Round 1) <sup>1021</sup>
2.	Councillor meetings and meetings with Mayor's staff	51 (Round 1, includes existing and new councillors), <sup>1022</sup> 45 (Round 2) <sup>1023</sup>
3.	Public meetings, information sessions and webinar	192 (Round 1), <sup>1024</sup> 115 (Round 2) <sup>1025</sup>
4.	Website survey and general submissions	608 (Round 1), <sup>1026</sup> 732 (Round 2) <sup>1027</sup>
5.	Deputations at Executive Committee	1 <sup>1028</sup>

**Table 5.3: Public engagement in the ward boundary review**

To better understand the degree of engagement provided in the sessions, I attended consultation sessions at Metro Hall and in Scarborough, using the method of participatory observation, as explained in Chapter 2.

#### **a) Observation of downtown WBR consultations**

I arrived for a ward boundary review consultation at Metro Hall on October 7, 2015. It was a brisk fall day. I arrived about ten minutes early and found the room already filled with about 30 mostly white men and women in their 50s. The entrance way boasted a table with a calm, unsmiling consultant sitting behind it. On the table was a sign-in sheet, a survey, pens, and WBR buttons.

<sup>1021</sup> *Ibid* at 24.

<sup>1022</sup> *Ibid* at 24.

<sup>1023</sup> *Ibid* at 28.

<sup>1024</sup> *Ibid* at 24.

<sup>1025</sup> *Ibid* at 28.

<sup>1026</sup> *Ibid* at 24.

<sup>1027</sup> *Ibid* at 28.

<sup>1028</sup> City Clerk, Executive Committee Decision: Committee decision on final report - Toronto ward boundary review, City of Toronto (24 May 2016), online: <<http://app.Toronto.ca/tmmis/viewAgendaItemHistory.do?item=2016.EX15.2>>.

In the room, people were speaking to one another enthusiastically. I chose a table near the middle, where a gentleman in his sixties was looking in detail at the six maps on the table. One map was of the existing ward structure; the other five each presented a different ward configuration option. We smiled at each other as I got out my computer to type. A few minutes later he passed the maps over to me. A man in his late 20s sat down next to me just before the meeting started. Several other people trickled in around this time. One could hear a low hum of talking, including some animated discussion at the table to my right.

The room was very bright, with halogen lights in the ceiling. There were posters in the back of the ward boundary options, overlaid with the current ward boundaries. The room felt crowded with many tables and chairs, but not too full or empty for the number of people who ultimately came, which was 21. The meeting started about ten minutes late. The consultants introduced themselves. They noted that this was the fifth of twelve public meetings and that this was the second of two rounds of consultations that would take place on the WBR. They had a dry, clear tone as they described the scope of their mandate. The presentation was very succinct, setting out the reason for the review and the process they had followed to date, together with a timeline for the future. Half way through, the presenter switched with another member of the team. They laid out the five options. They articulated that the fifth option – which was to abandon historical boundary lines and draw new ones according to the city’s environmental geography – would be a fresh start.

They then opened the room to questions. There were about fifteen questions from the floor. The main focus of questions was on the scope of the review – that is, whether other issues beyond the boundaries would be considered, like the role and function of community councils, and with having councillors ultimately approve the option, given the concern that there would be a conflict of interest in them doing so. The consultants were firm about their mandate as not including anything beyond “drawing lines on a paper.”

Next, the consultants asked everyone at each table to discuss the options and to comment on them. Some participants raised concerns that there were people at each table who were not from the same sections of the city. The consultants responded that this was the task at hand and that participants were free to give any comments that they wanted. Our table, which was a group of three, started talking. The first comments came from the younger person, who was wearing a suit and was a very articulate member of a racialized minority (which stood out given the backgrounds of those in the room), said that he lived in East York. He expressed that he did not feel at all attached to the historical connections some felt to their neighbourhood, although noted that he knew that many people in his ward did. He felt that the best option was the fifth, arguing that there was no need to cling to historical boundaries. The middle-aged man at the table disagreed, stating that “social geography” mattered as much as physical geography. He revealed that his interest in the ward boundaries was due to his involvement in the ranked ballot initiative. He noted that he lived in Cabbagetown and felt that some of the options would cut through his neighbourhood. We all looked at the maps in detail and noticed that the fifth option kept what he understood as his community intact. He seemed to like the fifth option more after his realization. We continued to have a lively discussion about the review process.

We were given a five-minute warning and then a two-minute warning. Then each table announced their views. Most of the comments focused in detail on how the proposed boundaries supported or conflicted with those of neighbourhood associations. Five speakers focused on the Yonge/Eglinton boundaries and the explosive condo development over the last decades. They spoke of the three councillors and three planners involved in local decisions. The preference of the speakers was to have this area located within a single ward. The St. Lawrence area and Merton Street were also singled out as areas with strong neighbourhood associations and BIAs, with residents asking that the boundaries of such organizations be considered when crafting the new wards. Residents also noted that some areas should be located within multiple wards, for example: “The waterfront affects everyone in the city. It belongs to Torontonians and all people in Ontario.”



The consultants were clear and firm, again, in what feedback they were looking for, which was essentially comments on the suggested lines themselves, not on the process or on anything unrelated to the project. It felt a little like it was “business as usual” for the consultants, that there wasn’t a lot of passion for the exercise. The meeting ended 10 minutes late at 9:10. The participants trickled out slowly, saying goodbye to one another. I had the impression that many of them would have liked to have continued talking about the issue.

#### **b) Observation of Scarborough WBR consultations**

By contrast, the consultation held in Scarborough about a week later had a very different feel. The meeting took place in the basement of a local church, in a space that felt considerably smaller than Metro Hall. The same three consultants were present. I walked down several stairs into the room. I signed in with my name, address, phone number and email address. Several round tables were set up with the option maps placed on them and large versions of the maps were at the back of the room. Two of the tables had other participants and I joined three of them at the farthest table on the left front side. The session started very shortly after I got there.

The consultants introduced themselves and gave a presentation exactly like the one that had taken place at Metro Hall. Afterwards, the consultants opened the floor to questions, but there were none from the crowd. The consultants asked where everyone was from. The other two or three participants at the adjacent table noted that they were university researchers and I acknowledged the same. At the table where I was sitting, one of the people introduced herself as a member of the consultant team, while the other two people said they were members of a resident association in southern Scarborough and looked to be in their late 20s or early 30s and were members of a racialized group. Their ethnicity stood out because everyone else in the room was white. Otherwise, there were no other people attending the session.

The consultants asked if there was any feedback on the boundaries. The other researchers and I didn't have anything to say about the Scarborough options or how the lines had been drawn in the five different maps. However, the members of the resident association were there to help craft new boundaries for their community, which was split into at least two wards in each of the five options. These participants stated that their community did not have many resources and having the voice of the ward councillor really mattered. That is why they were there. The consultants seemed very eager to hear more and came close to the table to get a look at precisely where the community was and where the boundaries should be. They were patient as the two residents drew on the maps and asked specific questions to ensure that they understood exactly which streets were important, as the maps did not provide enough detail to show them.

Afterwards, the consultants asked again if there was any more feedback or comments. No one had any, so the meeting ended. The consultants thanked everyone for coming and the four other participants gathered their things. The two members of the resident group left quickly, but the other researchers chatted with the consultants and it seemed that they knew each other. I also lingered and asked the consultants how the sessions had been going. The consultants said that the meeting at Metro Hall had been very well attended, but not so much the others. However, they were happy to have received many completed surveys. I asked how much other governance issues (like community councils) had come up during the consultations, and the consultants acknowledged that they had many times, but that it was not their role to consider the structure or role of these bodies.

My observations of the two open sessions revealed vastly differently kinds of community involvement. Those at Metro Hall were seemingly middle class and white, generally representing an association of some kind, within a vibrant meeting that extended beyond the appointed hour. Scarborough, by contrast, suggested a scantily attended meeting, with just two participants who were not researchers. The attendees were also representing an organization that did not fit the typical profile of neighbourhood associations.

The consultations highlighted ongoing negotiation between and among groups regarding the boundaries of “community.”<sup>1029</sup> In the consultation sessions, I witnessed how the proposed wards came into conflict with neighbourhood and community level bodies who had crafted their own boundary lines around particular geographies, forming associations to reflect their interests. In both situations, neighbourhood associations wanted the legitimacy and security of ward boundaries to reinforce their own iterations of belonging. These sessions reinforced, as Schragger and Martin state, that communities are the products of contested political norms dependent on borders to define them, and the political actions of those that define where those boundaries should lie.<sup>1030</sup>

The next section further explores more broadly how neighbourhood boundaries did – and did not – conform to the geographic framing of proposed wards and what these contestations meant for representation.

## **5. Contested “Local” Boundaries**

In the consultants’ Options Report and the Final Report, the consultants detailed the feedback they had received on the contested boundaries raised during the ward boundary review. By “contested boundaries,” I mean the way in which boundary lines were crafted in relation to disputed locations of the applicable communities of interest. Unlike some reviews, the City of Toronto did not independently identify the locations of communities of interest based on any demographic data. Instead, the process assumed that residents and others would inform the consultants using or more of the public engagement exercises that were conducted. The reports did not identify whether the contested boundaries were raised at the stakeholder meetings, consultation sessions, surveys or other means.

The contested boundaries can be roughly grouped into three categories. First, there are those communities of interest which are divided amongst two or more wards. Second, there were disputes over how communities of interest should be grouped with others.

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<sup>1029</sup> See also Jurgen Habermas, *The Structural Transformation of the Public Sphere* (1962).

<sup>1030</sup> Schragger, *supra* note 193; Martin, *supra* note 128 at 362.

Third, there were strong sentiments regarding the groupings of wards and their corresponding boundaries.

#### **a) Communities of interest in a single ward**

The WBR reports included many comments as to communities of interest that were purportedly small enough to be placed in a single ward, which were currently divided amongst two or three wards. The communities mentioned in the reports included the Yonge/Eglinton area, the High Park community (Runnymede, Annette, Bloor West Village, Swansea, High Park and Parkdale are said to have “great affinity with each other” but are currently divided, Liberty Village, Toronto’s Waterfront, the Junction, Victoria Park, and the Kingston-Galloway/Orton Park). In each, the existing boundary lines were said to divide well-established communities of interest.<sup>1031</sup>

At the consultation session that I attended, there was substantial commentary on the Yonge-Eglinton area, which is currently split among three councillors, two community council areas, and two sets of planning staff.<sup>1032</sup> Participants noted that there are issues with the Yonge and Eglinton street boundaries, which currently divide wards, because of all the development, and that both sides of Yonge are affected.<sup>1033</sup> That the Yonge and Eglinton area is a growth centre exacerbates the difficulty in coordinating amongst different planning and political actors, thus the ward placement matters. Yonge Street also divides a strong retail strip and the local BIA. Other residents spoke about the appropriateness of Yonge as a separation. For example, the Yonge Street boundary fits with school boundaries, and “nobody” east of Yonge goes to school west of Yonge.

When the last ward boundary review took place in 2000, some of Toronto’s neighbourhoods did not exist. The consultant reports note concerns from respondents

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<sup>1031</sup> Canadian Urban Institute et al, *supra* note 999 at 45.

<sup>1032</sup> Note that the City of Toronto’s Division of Planning groups services along the same lines as the community council boundaries.

<sup>1033</sup> Canadian Urban Institute et al, *supra* note 999 at 46.

regarding new built areas like Liberty Village, Fort York and City Place.<sup>1034</sup> The reports also cite ward divisions in the Waterfront and Entertainment District areas, and the desire to shift ward divisions so that the BIA community would not be split.<sup>1035</sup> Residents also noted communities of interest that are too large to fit within a single ward and, therefore, a dispute over how the boundary lines should be drawn to divide them. They include the Jane-Finch area; the University of Toronto and York University; the Danforth and the Beaches. Malvern in Scarborough has a small enough population to fit into a single ward, but is divided by a natural boundary.

#### **b) Multiple communities of interest in a single ward**

Second, the consultant reports noted contested boundaries regarding the groupings of communities of interest. For example, Ward 32 currently includes Thorncliffe and Flemingdon Park, which are racially diverse and two of the least wealthy communities in the city, together with the affluent neighbourhood of Leaside. The Options Report noted resident feedback that, “Leaside, Bennington Heights and Wynford Heights [the latter two of which are affluent like Leaside] and the severely disadvantaged, more populous and [ethnically diverse and racialized] neighbourhoods of Thorncliffe Park and Flemingdon Park. Demographically, they are very different – can create issues for representation and equitable distribution of recreation and cultural facilities in the ward.”<sup>1036</sup>

Multiple comments focused on the placement of the Leaside community alongside other communities. For example, that Leaside could be added to Ward 29 as “historically they were one community,” and that Leaside and Bennington Heights belong in a ward that includes some, or all, of Davisville Village, Moore Park and North Toronto, which are amongst Toronto’s more affluent communities. There was great objection to dividing Leaside boundaries in any way, as “it is a community.”<sup>1037</sup>

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<sup>1034</sup> *Ibid.* at 49.

<sup>1035</sup> *Ibid.* at 50.

<sup>1036</sup> Canadian Urban Institute et al, *supra* note 928 at 57.

<sup>1037</sup> *Ibid.* at 37.

The grouping of Leaside, Flemington Park and Thorncliffe Park were mentioned by multiple commentators. Some said that these three communities of interest “need to stay together.” Others thought that Flemington Park and Thorncliffe were areas that “have many issues that would benefit from a smaller ward and personalized treatment.” There were also many comments that Flemington Park and Thorncliffe Park should be set within a single ward and noting that the new federal riding had inappropriately divided them. Another contested set of boundaries which fall into this category is a downtown ward that combines the “very disparate socio-economic status between neighbourhoods” like Rosedale, Yorkdale, Moss Park and St. Jamestown that “would be better served if separated.”<sup>1038</sup> This claim of being “better served” is unsubstantiated by those who made the claim.<sup>1039</sup>

The desire to separate communities of interest along economic lines could be seen as its own brand of NIMBY by trying to reframe whose “backyards” should be invited to stay in the new ward. Cheryl Teelucksingh writes of the divided community of Parkdale, where spatial and environmental justice are evident in micro-spaces of a single ward.<sup>1040</sup> Teelucksingh observed the separation of the ward into North and South, whereby the North was characterized as safe, clean and more European, while the South had greater numbers of visible minorities and new immigrants; lower incomes, crime and poorer housing stock.<sup>1041</sup> These perceived differences were replicated by the City of Toronto’s planning processes, which divided North and South Parkdale for planning purposes, including different policies or one-way streets in the more affluent North Parkdale despite the closer siting to highways in the south.<sup>1042</sup> The social and spatial distinctions in Parkdale were also noted by the location of “locally undesirable land uses” in the south.<sup>1043</sup> Similarly, the cases of contested claims over whether affluent and poorer,

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<sup>1038</sup> *Ibid.* at 59.

<sup>1039</sup> One potential loss to the less affluent areas within the ward would be section 37 funding, which the councillor is able to allocate within the ward.

<sup>1040</sup> Cheryl Teelucksingh, “Spatiality and Environmental Justice In Parkdale (Toronto)” (2002) 24:1 *Ethnologies* 119.

<sup>1041</sup> *Ibid.* at 131.

<sup>1042</sup> *Ibid.* at 132.

<sup>1043</sup> *Ibid.* at 135.

racialized communities should remain in a single ward clarified that such distinctions and borders existed and continued to separate ward residents. Despite almost twenty years of co-existence in a ward, Thorncliffe Park, Flemingdon Park and Leaside remain distinct communities, with Leaside's long-ago "ghost" status as its own independent municipality given dominating the dialogue on its "community of interest" boundaries.

The divisions within the ward also point to the representation of more affluent or middle class residents. Teelucksingh states: "[T]he interests of residents who are able to exercise power become packaged as collective interests, whereas the interests of the marginalized residents are localized to their own homes and limited spheres of interest. Marginalized residents, who represent the majority stakeholder in Parkdale, often do not have the resources or opportunity to participate in advocating their interests."<sup>1044</sup> Maps of residents associations show one in Leaside, but not Flemingdon Park or Thorncliffe Park. The "many issues" of Flemingdon Park or Thorncliffe Park by neighbourhood associations who participated in the WBR were not characterized as issues of concern across the ward, but of only those residents in the applicable communities.

This raises a deeper question of how we characterize the participation of those who belong to neighbourhood associations. As McClymont and P. O'Hare write, assertions of NIMBYism mean that there are "good" and "bad", "welcome" and "unwelcome" forms of democratic participation. To dismiss groups as NIMBY, or to critique their rationality as being entirely self-interested or even malevolent, may, therefore, be misplaced or misleading.<sup>1045</sup> These comments point not simply to some residents wishing to displace other, more vulnerable people within their ward, but also to spatial inequalities in representation generally. In other words, understanding the role of neighbourhood associations in representing the interests of a narrow set of residents, how can a more inclusive "local governance" model be crafted?

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<sup>1044</sup> *Ibid.* at 133.

<sup>1045</sup> K. McClymont and P. O'Hare, *supra* note 184 at 135.

### c) Communities of interest as groupings of wards

A third focus were the groupings of wards and their corresponding boundaries. At the consultation session that I attended at Metro Hall, a suggestion was made that downtown councillors should represent the Downtown as designated in the Official Plan. In addition, there were strong sentiments about Option 5, which attempted to redraw the wards based on natural boundaries; as the consultants put it, “as though we were drawing the wards for the first time.” Residents suggested that, instead, Scarborough should be “kept intact,” noting its distinct pre-amalgamation identity. Participants also spoke about the locations of wards within community council boundaries. Members from a North York neighbourhood association noted that the community near Lawrence and Yonge identifies more with the Toronto-East York Community Council area. The Southeast Asian (Filipino, Vietnamese) and Black (Jamaican, West African) community at the south-east corner of Ward 7, the southwest corner of Ward 8, the northwest corner of Ward 12 and the northeast corner of Ward 11 were noted as having been divided in the existing wards.<sup>1046</sup>

Two of the options split the University of Toronto’s campus in a way that residents objected to. In particular, there was concern about separating St. Michael’s and Victoria College, which were said to be “cohesive communities” and that it is “important for political activity, community organizing, etc. to keep these communities together.”<sup>1047</sup> Other suggestions included coming up with a way for the university to remain in one ward and shifting the ward locations of university residences.<sup>1048</sup>

These categories of communities of interest reflect the conflict between how state-based law, and the norms and rules of other actors or bodies. The creation of local legal spaces includes insiders and outsiders, a set of norms that determines who is eligible to participate, in what manner, and with what power. The WBR process was defined narrowly, without considering whether the ward model should be maintained or the

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<sup>1046</sup> Canadian Urban Institute et al, *supra* note 928 at 42.

<sup>1047</sup> *Ibid* at 42.

<sup>1048</sup> *Ibid.* at 58.



system of governance more broadly. This meant that some communities of interest were able to conform their version of boundaries within those of wards, due to their size or locations, and based on their ability to access city processes to assert their interests.

The ward as the prime local legal space in law was not fundamentally challenged in the WBR, although tensions were raised. A summary of the overlapping role of wards, community councils, BIAs and neighbourhood associations in the process, and how this overlap informs the meaning of local governance in Toronto is described next.

### **III. Conclusion**

The WBR case study was an opportunity to study the boundaries and governance of Toronto's "local legal spaces." It illustrated the scholarship of Frug and Young, who argue that legal boundaries are borne of political decision-making that ultimately creates boundary lines that exclude and embrace particular communities. It also affirmed the conception of "legal ghosts," drawn from Valverde's contribution of time within governance, that remain components of the boundaries and governance of local legal spaces regardless of formal law. The WBR highlighted the challenges of decision-making, affirming the primacy of the ward councillor and the privileged role of BIAs and NAs. The review neither questioned the primacy of the ward as the dominant representational unit of local governance, nor challenged the dilemma of fitting communities of interest within the ward, notwithstanding their differences in size. In this case study, the pluralistic nature of local governance is revealed through the many representations of local both within and outside of formal law, but which may not have recognition in the formal local governance model. In particular, the WBR highlighted the privileged role of BIAs and NAs whose communities of interests are of the right size and location to rest within the ward, as well as the primacy of the ward councillor as decision-maker.

In the WBR, the City of Toronto queried the boundaries and representation of its local government, and was empowered under COTA to significantly alter its local spaces with latitude to design an inclusive, participatory approach to decision-making. The study leads to two important conclusions: In regard to decision-making, the WBR case study demonstrates that the ward councillor played the most important role in decision-making. The centrality of the councillor role is enabled by the terms of the *City of Toronto Act, 2006*, which requires that all decisions be made by City Council, meaning the 44 councillors and mayor who comprise the body. However, councillor importance was also facilitated by the design of the WBR, crafted and approved by councillors so as to require that the final decision come back to them. While BIAs and neighbourhood associations both engaged in the review, those areas without BIAs and neighbourhood associations are reliant on individual community members or existing ward councillors to advance their interests.

Ward councillors held many roles in the review (designing the process, providing input through direct consultations, final decision-makers) and did not engage in a broader review of the city's local governance model. As a representational unit, the ward councillor was given a significant role during consultation, recommendation and decision-making. As a geographic concept, the ward is meant to enable but not contradict the communities of interest, which includes the BIAs and neighbourhood associations to the extent that such boundaries fit neatly within ward boundaries.

Second, the meaning of “communities of interest” was a crucial component of the WBR. BIAs and neighbourhood associations – but not community councils – were recognized as proxy communities of interest in the WBR and in the final outcome of ward design. BIAs and neighbourhood associations include boundaries that they argue delineate a community of interest. These boundaries may be larger or smaller than, and may conflict with, those of wards. Thus, wards are not meant to accurately map communities of interest although a goal of the ward boundary review is to minimize, as much as possible, their fracture and separation. These bodies help to facilitate the process by providing necessary input. The consultants did not create wards based on other notions of

communities of interest like neighbourhood improvement areas or demographic information, even though such data was available. Instead, they relied on the feedback of these stakeholders. The involvement of BIAs and neighbourhood associations is uneven across the City, which impacts the degree to which all communities of interest are able to give input and engage in existing and proposed ward boundaries. Other communities of interest may not be identified because of the absence of neighbourhood associations and BIAs in all parts of the City, and because neighbourhood associations in particular may not have the capacity to gather all information on such communities.

The sum of these conclusions reinforces that local legal spaces are defined and defended in relation to the ward, with BIAs and neighbourhood associations generally accommodated where their boundaries did not contradict or challenge the existing ward model. In addition to influencing the location of specific boundaries, the involvement of these bodies raised important information about the meaning of “communities of interest” and other boundaries and decision-making bodies in the city, in particular community councils, although such examinations were deemed outside of the WBR scope. The next chapter builds on these case studies to ask how a local governance model could be conceived if crafted within the theoretical lens of the urban commons.

## Chapter 6 – Road-mapping the new theoretical territory of local governance

The central question that the dissertation seeks to answer is what “local governance” means within the City of Toronto as a result of the overlap of various governance bodies, each with their own set of geographic boundaries and assertions of representation. In Toronto, these overlapping bodies are wards (as represented by councillors), community councils, business improvement areas and neighbourhood associations, each of which claim geographical boundaries as justification for the representation of locally-based populations, play a role in local governance and claim to be open to participation to some degree. This research asks whether the overlap of these bodies has unrecognized consequences and how these consequences affect marginalized peoples.

In Chapter 1, I justified a conception of local governance grounded in legal pluralism, property law and legal geography. I referenced the scholarship of Frug and Young, who argue that local boundaries are the products of political decision-making and may privilege certain communities over others.<sup>1049</sup> These scholars acknowledge that room must be made for a broader range of communities to participate in decision-making through the use of planning charrettes and other engagement practices.<sup>1050</sup> Building on the work of Valverde, Santos and Blomley, who have studied the overlapping nature of boundaries and governance, I focus specifically on the vertical tensions and interlegalities about the smaller-than-city scale itself. I argue that this scholarship has framed the central tension of local governance as between the city and region or province, rather than centred on the smaller-than-city bodies that are unequally embedded and privileged within the governance model.

The early part of this dissertation outlined the legal basis for decision-making under applicable provincial legislation and municipal bylaws. Against these formal rules, the dissertation next examined the history, roles and interplay of wards, community councils, BIAs and neighbourhood associations as bodies that purport to represent the local

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<sup>1049</sup> Frug, *supra* note 7; Young, *supra* note 141.

<sup>1050</sup> *Ibid.*

interests of those located within overlapping smaller-than-city geographical spaces in Toronto. Through this study, wards constitute a historical relic dating back to the establishment of the City of Toronto in 1834 as part of a representative model inherited from the United Kingdom without serious reflection.

In the current model, wards emerge as the dominant actor in local governance, with councillors asserting a representative role for residents and an oversight role for planning and other decisions within their boundaries. Toronto's four community councils are a post-amalgamation phenomenon, a collective of 10-12 councillors tasked with a role as local planning committees, rather than exercising the broader mandate outlined in the procedural bylaw. BIAs and neighbourhood associations also claim to represent interests within bounded communities. While BIAs are local bodies of the city, with bylaws that clarify their boundaries and permit the collection of a levy from members, a dedicated city staff office assisting them with their affairs, and requirements that they follow accountability requirements, neighbourhood associations are not integrated in the city's operations. The city's 184 neighbourhood associations have a variety of forms, levels of activity, and purposes.

What emerges from these early sections is a clearer picture of local decision-making than the "law in the books" might suggest. Toronto's governance model focuses largely on ward-based planning processes rather than mechanisms for inclusive participation in city-wide decisions, with only a few mandated engagement processes. In some areas of the city, councillors and staff rely on BIAs and neighbourhood associations to encourage community acceptance for proposed developments. However, while wards and community councils are present in all areas of the city, BIAs and neighbourhood associations are not, leaving many areas unrepresented by such bodies. Even where they do exist, generally in the city's more affluent areas, they do not represent a broad range of identities and interests. While initially conceived as deliberative spaces akin to New York's community boards, community councils largely serve as forums for rubber-stamping local planning decisions made by ward councillors.

Chapters 4 and 5 set out case studies examining the boundaries of overlapping local legal spaces, the bodies and contestations of local governance, and the localized effects of “city-wide” decisions. Chapter 4 analyzes the 2012-13 decision regarding the introduction of a casino in four parts of the city, including the downtown core. After a contentious, year-long debate, City Council voted against the proposal by a vote of 40-4, together with a motion to restrict the expansion of the Woodbine Racetrack, located in an economically struggling areas in Rexdale, located in Toronto’s northwest. In 2015, this latter decision was revisited with little opposition and the expansion was permitted. These cases reflect three different conceptions of local governance. First, while the downtown casino debate encompassed a more expansive geography with several sites across Toronto, both decisions ultimately focused on “local” concerns. In the 2012-13, these concerns were expansive and included traffic, health, parks and planning, while in Rexdale the decision focused exclusively on jobs and economic impacts. Second, the councillors in the downtown casino debate were able to mobilize little-known procedural bylaw provisions to have the matter debated at the community council level. This permitted downtown councillors, who were not part of the Executive Committee and therefore did not have a voice in the “city-wide” process other than via City Council, to seize control of the debate. In contrast, the Woodbine expansion became a pro forma agenda item with little consideration outside the walls of the Executive Committee and City Council. In both cases the ward councillors exercised considerable control over the process and the outcome, affirming the central role played by these “local” actors. Third, the two casino debates suggest very different engagement roles for BIAs and neighbourhood associations, with organizations from across the city heavily involved in the downtown debate and not at all involved in Woodbine.

Chapter 5 detailed the city’s ward boundary review, which sought to review the number and boundaries of electoral districts, the first review full review since amalgamation. The case studies set out the overlapping roles of wards, community councils, BIAs and neighbourhood associations in these debates and the ways in which these bodies purported to represent local interests. The ward emerges as the critical feature of local governance, both in its representational and geographic form. First, the review did not

question whether the ward should remain the representational unit of the city. Second, councillors were given a privileged role during all of the consultation, recommendation and decision-making phases of the review, far more than riding representatives would have in provincial or federal electoral redistricting. Third, as a geographic concept, the WBR was meant to legitimize as many communities of interest (ostensibly BIAs and neighbourhood associations) as possible within the constraints of the existing ward model and judicial parameters, but was not designed for other notions of local governance. BIAs and neighbourhood associations, disproportionately located across the city, were heavily invested in the process highlighting the degree to which these organizations can play an important role in local governance.

This last chapter now seeks to synthesize this data. I first apply the conception of local governance developed in Chapter 1 as a framework to explore the themes raised throughout this dissertation by situating the theoretical boundaries of local governance. The final section of this chapter offers an ambitious agenda for conceptualizing local governance in Toronto, together with concrete recommendations for legal and policy changes within the normative framework of the urban commons, allowing for a more inclusive and participatory model. I conclude with a proposed set of questions for future research.

## **I. Conceptualizing local governance: lessons learned**

Chapter 1 sets out a conception of local governance grounded in legal pluralism and legal geography. I set out a two-part conceptualization of local governance in Chapter 1 that first, recognizes the pluralistic and interlegal nature of local legal spaces and, second, is framed by the state in political and spatial terms without necessarily incorporating other norms, orders, rules and practices, and may ultimately include and exclude certain people and communities through the setting of boundaries and participation rules. In Chapter 1, I argue that a normative reimagining of local governance based on the framework of Foster and Iaione's urban commons would lead to a more inclusive, participatory local governance model in Toronto. This first section integrates the findings made earlier in

this dissertation with both the conceptualization of local governance and the normative reimagination.

### **1. Understanding local governance in the Toronto context**

I locate local governance foremost as a pluralist concept. This means that local governance cannot be understood as self-contained and autonomous. Conceptions of local governance can be singular or multiple, and may even compete with one other. Plural notions of local may be articulated with legal language, yet may also be created informally, thus requiring an examination that looks outside the strict contours of law to understand the boundaries and governance of local legal spaces.

Chapters 3 set out the tensions of how local governance is situated within the city's broader governance model, as comprised of community councils, wards and smaller-than-ward boundaries and representatives, BIAs and neighbourhood associations. These entities, while each claiming governance roles, may be legally reflected in different sections of provincial acts (initially, wards and communities) and municipal bylaws (community councils and BIAs), or may not be recognized in law at all (neighbourhood associations). Even where these bodies are individually set out in law, their relationships with other local governance bodies may be unclear.

The law provides a seemingly coherent structure for municipal government generally. The *Constitution Act* articulates that municipalities are within the provincial domain, which the Province of Ontario in turn executes through COTA and other pieces of legislation and regulations. The law thus sets out a ladder or hierarchy of power, with the federal government on top, leading downwards towards the municipality, which in strict constitutional terms may not even be considered a government.<sup>1051</sup> But, the reality of law's relations, the "law on the street," tells a different story. First, this hierarchical notion of municipal authority is in tension with the shifting intergovernmental relations, whereby cities and their mayors are increasingly important players within the country.

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<sup>1051</sup> Blomley, *supra* note 54.



This is reflected in funding decisions, whereby the federal government transferred billions to municipalities to make final spending decisions;<sup>1052</sup> political agency, whereby the provincial government refused to step in to remove Toronto's mayor;<sup>1053</sup> and the accountability model, whereby the City successfully argued that more expansive provincial ombudsman powers should not apply to Toronto's affairs.<sup>1054</sup> The courts, too, have stepped in to recognize the principle of subsidiarity as underpinning municipal power, meaning that cities should be given wider latitude to make decisions in the best interests of their residents. Scholars including Levi and Valverde have noted that this increasing recognition by senior governments and the courts speaks to the power of local residents, in that municipalities have the ears, perhaps better than any other government, of the many people that reside within their boundaries.<sup>1055</sup> Thus, local governance (in this case, local meaning municipal) has shifted from a non-governmental, prescriptively managed entity to a government that is not entirely explained by the legal codes that profess to govern.

Second, while the law doesn't accurately speak to the municipal role in the overall governmental hierarchy and is silent on key areas of governance,<sup>1056</sup> it is clear that Toronto has a general capacity to decide the structure and operation of its governance model.<sup>1057</sup> The ward is in one sense an organizational unit, sectioning the city into neatly divided groups. These carved sections serve to install councillors who oversee the affairs within the ward and speak for their constituents in the larger context of City Council.

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<sup>1052</sup> See e.g. the Federal Gas Tax Fund, a now-permanent federal infrastructure funding program that gives funding directly to municipalities, including \$152 million per year to the City of Toronto (Government of Canada, "The Federal Gas Tax Fund: Permanent and Predictable Funding for Municipalities" (12 April 2017), online: <<http://www.infrastructure.gc.ca/plan/gtf-fte-eng.html>>.

<sup>1053</sup> Adrian Morrow, "Ontario Minister says stripping Ford of mayoralty powers was legal, appropriate" *The Globe and Mail* (19 November 2013).

<sup>1054</sup> In 2014, the Ontario Ombudsman proposed an expansion of their scope of powers to include oversight over municipal actions. Initially, this included the power to investigate Toronto decisions, but following this proposal was dropped following objections from the City of Toronto (see Adrian Morrow, "Ontario set to strengthen Ombudsman's powers" *Globe and Mail* (6 March 2014), online: <

<http://www.theglobeandmail.com/news/politics/ontario-set-to-strengthen-watchdogs-powers/article17339860/>> and Ontario Ombudsman, "Who we oversee: Municipalities" (17 April 2017), online: <  
<https://www.ombudsman.on.ca/About-Us/Who-We-Oversee/Municipalities.aspx>>.

<sup>1055</sup> Valverde, *supra* note 189.

<sup>1056</sup> COTA, *supra* note 11 at s. 8.

<sup>1057</sup> I say "general capacity," as there are some limits as to which powers may be delegated. See e.g. restrictions on delegation (COTA, *supra* note 11 at s. 21).

This local role of ward councillors is largely unwritten and historical, a set of relations left over from centuries of governance evolution. Thus, the law acts as an unwritten set of norms. Wards ensure that each part of the city has a representative at City Council and that residents have a point of contact. While the law does not explicitly define how local governance functions in Toronto, the ward and its councillor emerge as profoundly important in their organizational, representative and coercive capacities. The ward is the basis upon which local governance is negotiated in formal and informal law, by enabling institutional voices to be heard and acting as a gateway into the City's governance structure.

Wards emerge as a formal mechanism to geographically carve sections in the city, even though COTA does not require this manner of city organization. The historical legacy of the ward and, until recently, the provincial power to determine city boundaries, has arguably contributed to the City's persistent emphasis on wards as the spokespersons of "local" since amalgamation. The ward need not embody this role. The relationship between wards and community councils, BIAs and neighbourhood associations are entirely within the City's authority. Despite the challenges that this relationship poses for representation, the ward has remained at the centre of governance as a result of political choices, incremental decision-making, and the absence of a holistic governance review.

Community councils have not challenged the power of the councillor. Their genesis was a provincial commandment meant to soften the blow of a forced amalgamation. They were initially conceived as bodies to emulate the former functions of the local municipalities, as forums to gather community input on matters of neighbourhood concern. While committee councils are largely used as a committee to make routine planning decisions, the procedural bylaw also sets out a back door for them to provide a forum for neighbourhood affairs, a largely unused and little discussed provision that remained dormant until the 2012-13 casino debate. Efforts to use community councils in a similar manner during the WBR process were discouraged. While no longer part of provincial legislation, community councils ostensibly serve as an efficient means to handle mundane city business and reduce the burden at City Council, and to keep

meddling councillors busy, rather than fulfilling this originally-conceived governance function until commanded by councillors aware of their existence.

Both wards and community councils embody the notion of “law on the books” versus “law in action.” Wards are not legally required under provincial legislation, yet no reviews during or following amalgamation have questioned their use. The ward councillor role exists via custom, but any effort to change their function or activities would need to be approved by organs empowered under the existing system. Similarly, community councils may serve a deliberative role in local decisions beyond planning, but this function rarely takes place. In this way, community councils do not marry their actual affairs, which for the most part are local planning functions that could either be delegated to staff or that must be sent to City Council for approval, to those laid out in legal codes.<sup>1058</sup>

In regard to other local bodies, the ward’s relationship with community councils is the most explicit, in that 10-12 wards are grouped together to form the community council area, with only councillors serving as representatives. The will of the ward councillor, in tandem with others within the same community council area, determines whether the community council may be used as a forum to bring neighbourhood actors together, as occurred in the 2012-13 casino decision.

Wards can also act as a focal point or enabler for BIAs and neighbourhood associations. Some ward councillors help create these smaller-than-city bodies, consult them as sounding boards for policy decisions, or use them to further their individual and collective agendas. The councillor may be seen to represent their residents by responding to BIA and neighbourhood association concerns. Without any clear entryway into the city’s local governance model, the ward can be a door to BIAs and neighbourhood associations, letting them in when it serves a councillor’s interest (for example the promotion of certain ward boundaries in North York in the ward boundary review).

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<sup>1058</sup> Enid Slack, “A Preliminary Assessment of the New City of Toronto” (2000) XX111(1) Can J of Reg Sc 13.

From a local planning perspective, this messy, plural model has an internal coherence, albeit with notable socio-economic exclusion. The “local” includes varying legal and non-legal claims by many entities, with contested meanings of local governance presented by the ward, community councils, BIAs and neighbourhood associations, each with their own set of boundaries and members. Wards and community councils have clear lines of authority and involvement in relation to the planning process. As noted in Chapter 3, BIAs and neighbourhood associations, although they play out differently in various parts of the city, feed into local planning by way of their involvement with ward councillors. The procedural bylaw also sets out a series of consultation requirements, which include the power of BIAs and neighbourhood associations (and any other member of the public) to depute at community councils and committees of adjustment meetings.<sup>1059</sup> The mandates of community councils are thus understood within this model as forums for deliberation. This geographically overlapping set of bodies, each with their own iteration of local governance, has a messy but coherent framework in the planning context.

However, when looking at the model from a city-wide perspective, the meaning and facilitation of local governance is less clear. As defined, a city-wide issue concerns more than one community council area and therefore applies to the city as a whole. This means that the Executive Committee and then City Council will consider the issue. However, in some city-wide decisions, like the 2012-13 casino decision, “local” may be negotiated by one or more ward councillors. In this issue, they were able to shift the theatre of decision-making to the community council area using a little-known provision of the procedural bylaw.<sup>1060</sup> This “local” included the proposed areas of possible casinos, but more broadly it meant the spaces where the casino would be felt. It meant the spaces of businesses and residents throughout the downtown core and down to the waterfront, but also the areas of addiction, which extended to vulnerable neighbourhoods nearby. A city-wide issue may also focus on smaller geographic units, for example the ward boundary review decision,

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<sup>1059</sup> Toronto Municipal Code Chapter § 27-12

<sup>1060</sup> Anonymous interview with City of Toronto staff member #1, City Clerk’s Office, Toronto, Ontario, Canada (18 December 2015) – author conducted.

where BIAs and neighbourhood associations played a crucial role in defining the “communities of interest” meant to reflect the wards.

Thus, Toronto’s governance model operates within the law (wards) and outside it (neighbourhood associations), or as bodies that have competing conceptions depending on how they are used by stakeholders (community councils, BIAs). The next section explores how these notions of local include and exclude particular communities.

## **2. The implications of local exclusion**

The following section analyzes how the construction of “local” excludes, though geography and in representation, and the resulting implications.

### **a) How law excludes**

The overlap of local governance in Toronto reveals two ways in which the model excludes: geography and representation.

#### **Based on geography**

Creating local legal spaces necessarily means the creation of boundary lines.<sup>1061</sup> These lines may be created formally through a municipality’s establishment of electoral districts or wards, and by the creation of other representational units, for example New York’s community committees or Toronto’s BIAs. Such bodies may co-exist as what Moore calls semiautonomous social fields, rather than being meant to fit into a coherent governance structure.<sup>1062</sup> Other organizations may also create versions of local that have boundary lines, without such bodies being in any way related to a municipal government and therefore subject to oversight. Boundaries also have the effect of classifying

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<sup>1061</sup> Frug, *supra* note 7.

<sup>1062</sup> Merry, *supra* note 73.

particular members of the community into one area or another.<sup>1063</sup> This means that all of these lines necessarily create an “inside” and an “outside.”<sup>1064</sup>

Some scholars believe that residents often create boundaries based on notions of community that exclude people along racial lines and ultimately exacerbate a “who is in and who is out” notion of belonging.<sup>1065</sup> This is evidenced in Toronto by the significant differences in spatial poverty and race across the city.<sup>1066</sup> Neighbourhood associations, in particular, are said to exacerbate exclusionary notions of community in order to maintain a narrow understanding of who is included. As presented in Chapter 1, Alexander and Peñalver believe that neighbourhood associations are the new “community” and base their commonality on factors like housing values.<sup>1067</sup> Frug argues that local should be formed as a “togetherness of strangers” without regard for demographics, where people regardless of their backgrounds would be brought together through the use of charettes and other community building exercises.<sup>1068</sup>

Three geographic exclusions are evident. First, neighbourhood associations and BIAs do not have objective measures in how they draw the lines around their communities. It is impossible to definitively find that a community exists “here” rather than “there.” Boundaries may be arbitrary or imposed in law without recognition of who resides within them. In the case of neighbourhood associations, they are largely drawn in a box or rectangle for simplicity, not because those specific lines are the exact markers of who belongs and who doesn’t. Some associations permit residents from outside the boundaries to become members, as if to understand that strict geographic lines may leave relevant people out. Neighbourhood associations may also reflect the “ghost” villages of legal boundaries that existed in the past. In the case of BIAs, the lines that are drawn have political ends as well, in that they need to be endorsed by local councillors, and therefore should not exist outside of the applicable ward, and because the levy is contingent on the

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<sup>1063</sup> Ford, *supra* note 187 at 1859 and 1873.

<sup>1064</sup> David Delaney, *Territory: A Short Introduction* (Oxford: Blackwell Press, 2005) at 14.

<sup>1065</sup> Ford, *supra* note 187.

<sup>1066</sup> See Introduction.

<sup>1067</sup> Alexander & Peñalver, *supra* note 144.

<sup>1068</sup> Frug, *supra* note 7.

approval of the applicable property owners and businesses. Therefore, the drawing of lines is not an objective statement of which businesses “belong,” but on political, social or historical placement.

Second, the drawing of lines is supported by Toronto’s decision-making context. In the WBR, councillors had their own views on where the boundary lines of wards should be located. When councillors on the Executive Committee sent the recommendations back to the WBR consultants for consideration, some councillors did so on the basis that the drawing of the lines did not incorporate their own views of where “communities” should be, whereby communities were a proxy for maintaining the boundaries as they were. These political aims of councillors ultimately shaped notions of community that differed in some cases from the perspectives of BIAs and neighbourhood associations.

Third, the lines setting community councils are perhaps the best reflection of how boundary lines are politically motivated. Toronto’s community councils were created in 1998 to mirror the boundaries of the former municipalities and were a political reaction to the forced amalgamation. As a senior staff member advised, “community councils were kind of a last minute addition, they were thrown in as a softening blow to amalgamation.”<sup>1069</sup> In 2000, Toronto staff introduced an initiative to reduce the number of community councils from six to four in order to keep the councils approximately the same size and to align service district areas. As noted in Chapter 5, the location of the Etobicoke-York Community Council boundary was politically driven, with councillors making a trade on the floor of City Council.<sup>1070</sup>

Community council boundaries were a factor in the WBR. One of the options presented by the consultants disrupted the conception of Toronto’s wards by redrawing them as if they had never been drawn before, based on the city’s physical geography. The result of this exercise was a disruption of the Scarborough boundary, which was represented as a community council boundary following amalgamation. This was deemed to be a highly

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<sup>1069</sup> Anonymous interview with City of Toronto staff member #1, City Clerk’s Office, Toronto, Ontario, Canada (18 December 2015) – author conducted.

<sup>1070</sup> *Ibid.*

contentious proposal, one that the public seemed to “love or hate.” Those that hated it did so on the grounds that it interfered with the “ghost” of the former Scarborough. The Executive Committee requested that “in conducting the review the consultants consider the Committee’s preference for maintaining the Community Council boundaries given their historical significance reflecting communities of interest.”<sup>1071</sup> The “historical significance” meant at least one of the boundary lines of the pre-amalgamated municipalities.

In summary, local legal spaces, which form the foundation of my conception of local governance, exclude based on geography. Boundary lines themselves represent particular versions of community. Councillors, with the input of BIAs and neighbourhood associations, play a dominant role in crafting how boundary lines in the formal governance model are drawn. In addition, the “ghosts” of previous municipalities factor into their placement. The result is local legal spaces with particular perspectives of belonging.

### **Based on representation**

In addition to geographic boundary lines, local legal spaces include and exclude based on representation. The ward system is based on the idea that geographic representation is the best way by which the interests of residents will be served. There is no consensus that an electoral boundary-based model is the only means by which representation can be achieved; there are examples of other municipal governments where councillors are elected at large, not based on wards.<sup>1072</sup> Still, in Toronto, this is the fundamental premise of the ward system: that the ward councillor represents their residents within its respective boundaries. And, in practice, this representation may mean that only particular perspectives are given weight. The exclusion is thus two-fold: the exclusion of voices or interests considered important by the ward councillor, and the exclusion of other representations of local.

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<sup>1071</sup> City of Toronto Executive Committee, Final Report - Toronto Ward Boundary Review (May 24, 2016), online: <<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2016.EX15.2>>.

<sup>1072</sup> See e.g. “Vancouver City Council,” The City of Vancouver (12 May 2017), online: <<http://vancouver.ca/your-government/vancouver-city-council.aspx>>.



A councillor may understand the interests of the residents and businesses within his or her ward based on the interests articulated by smaller-than-city bodies located within the ward. BIAs and neighbourhood associations can have a big impact on local debates, as is well documented in major decisions in Toronto, particularly in the planning context.<sup>1073</sup> This was also demonstrated in my case studies. The 2012-13 and 2015 casino decisions point to the differences where wards include BIAs and neighbourhood associations. In the 2012-13 decision, councillors in wards that could have had a downtown casino had frequent meetings with BIAs and neighbourhood associations, even creating a subcommittee to ensure adequate consultation with BIAs. This contrasts with the 2015 casino decision, where there were no BIAs or neighbourhood associations located in the ward where the Woodbine Racetrack would be expanded. In the 2012-13 casino decision, BIAs and neighbourhood associations helped in shaping a new use of the Toronto-East York Community Council in city-wide decisions. For the first time, the community council used a subcommittee to permit greater consultation of BIAs and to allow for deeper consideration of community impacts. In the WBR, neighbourhood associations were the main bodies that used the consultation process and gave input on proposed boundaries.

While there are well-founded concerns regarding the role of BIAs and neighbourhood associations as representative of interests within urban spaces, they may also serve as a helpful tool in understanding the power dynamics within urban governance. The WBR demonstrated that the creation of boundaries was undertaken with a particular set of principles based on what the court has set out as priorities for determining how boundary lines should be drawn. Neighbourhood associations are recognized as “communities of interest,” or the embodiment of belonging.<sup>1074</sup> However, the consultants were not able to maintain all communities (as defined by BIAs and neighbourhood associations) intact, often with the argument that keeping such communities together would negate having the

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<sup>1073</sup> Moore, *supra* note 202.

<sup>1074</sup> Alexander & Peñalver, *supra* note 144.

same approximate sized wards across the city.<sup>1075</sup> For example, the Jane-Finch neighbourhood association identified community boundaries that the consultants thought would not fit within a single ward. The consultants recommended keeping other communities together within a single ward, including the North York BIA or keeping together communities that had previously been separated.<sup>1076</sup>

Unlike existing scholarship suggesting that neighbourhood associations focus solely on utilitarian objectives such as property values, my observations of Toronto's BIAs and neighbourhood associations point to varying objectives and purposes. These associations are not exclusively located within affluent neighbourhoods, nor are their members solely comprised of homeowners. In the ward boundary review, organizations from economically challenged areas attended public consultation meetings to argue that their residents, currently divided amongst three wards, should be kept intact, a proposal that was ultimately accepted by the consultants and incorporated into their recommendations. In the 2012-13 casino debate, resident associations located across various downtown wards framed their concerns on the basis of addiction and mental health issues experienced by their members, rather than the financial effects of having a casino nearby. The data on neighbourhood associations affirms this assertion: while associations are disproportionately within affluent neighbourhoods and are formed to address local planning proposals, the organizations exist throughout the city, often reflecting members with a range of ethnicities, and have purposes beyond planning matters.

A second kind of representational exclusion is the prioritization of city-wide decision-making by the ward councillor. As one city staff member told me, "They have a tendency to look at the issues in very isolated ways sometimes, they don't connect it to the larger whole."<sup>1077</sup> This approach disproportionately affects the most marginalized of Toronto's residents, whose needs are not isolated to a particular geography. This same staff member

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<sup>1075</sup> Canadian Urban Institute et al, *supra* note 999.

<sup>1076</sup> Canadian Urban Institute, Beate Bowron Etcetera Inc., The Davidson Group Inc., & Thomas Ostler, "Round Two: Civic Engagement and Public Participation" (2016), online: <<https://static1.squarespace.com/static/53bc0914e4b0eb57996e4dee/t/56b4f6dbc2ea514e40c85edc/1454700254510/TWBR+Round+2+Consultation+Report+FEB+2016.pdf>> at 35-52.

<sup>1077</sup> Anonymous interview with City of Toronto staff member #3, City Manager's Office, Toronto, Ontario, Canada (17 February 2016) – author conducted.

said, “What is it that the city needs, who are the people that are disenfranchised and marginalized, irrespective of where they are living. Of course they happen to be geographically located in certain areas. What is the best way of connecting them to jobs and connecting them to opportunities? How can we build capacities of those communities to be able to influence decision making that actually has a negative impact on them, as opposed to those who already have influence and have greater influence?”<sup>1078</sup> The ward councillor may be the sole representative of local governance within the ward, where they politicize the debates and promote the perspective of those within the area to the possible detriment of effective and inclusive city-wide decision-making. The views of the public, or BIAs and neighbourhood associations, can be highly influential in councillor decision-making where only the ward councillor is tasked with representation.

Delaney wrote that the boundaries of one territorial unit often clash with those of another.<sup>1079</sup> The boundaries separating territorial units are not merely about the lines themselves, but also the distribution of power.<sup>1080</sup> This is evident in the politics of local and city-wide decision-making in Toronto. A study of the former Metro government suggested that one advantage of a two-tier municipal model was the separation of the “local” from the “regional.” This separation meant that a local councillor did not bear the burden of a regional decision that was disfavoured by residents. In Toronto’s case, this necessitates a clearer distinction between “local and “city-wide” issues and the creation of a governance model that liberates the councillor from such strict allegiance to local interests in making city-wide decisions.

In addition, representation is connected to the accountability that bodies have to the public, as accountability validates and disciplines governance bodies. Accountability measures operate differently amongst wards, community councils, BIAs and neighbourhood associations. Wards emerge as the chief site of representation, tested during elections, but with few opportunities in between to keep these bodies accountable to residents as there are limited means by which a political representative in Toronto may

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<sup>1078</sup> *Ibid.*

<sup>1079</sup> Delaney, *supra* note 1064 at 13.

<sup>1080</sup> *Ibid.* at 33.

be removed.<sup>1081</sup> Even then, the stark rates of incumbency re-election challenge the degree to which elections serve as an accountability check on councillors. As local boards, BIAs are bound by the strictest accountability requirements, but there are no documented cases of BIAs having been removed by City Council. In the case of BIAs, the lack of accountability is attributed to their focus on business interests rather than other aspects of the neighbourhood. Neighbourhood associations fulfill a participatory and representative role, but are not formally accountable to the city or its residents. The accountability of neighbourhood associations is questioned on the basis that they favour the interests of homeowners and privileged members of the community.

The overlay of these exclusions in representation was evident in the casino debates, particular as observed by the votes of councillors across the city. Many of the councillors who voted “no” to a downtown casino approved the Woodbine expansion eighteen months later, even without a localized forum to study its implications. No BIAs, neighbourhood associations or other bodies within or outside the area of the applicable ward mobilized, as had occurred in the 2012-13 debate, even where issues of concern like health and addiction remained the same. While NIMBYism offers part of the explanation, the exclusion of residents was exacerbated by a lack of access to a deliberative local governance body. Local governance is dominated by the ward councillor without a local governance model to challenge the councillor’s position.

## **b) The implications of exclusion**

Local legal spaces may be constituted by legal rules. Even so, this legal reality is only one iteration of the “local,” in what Boaventura de Sousa Santos calls the distinction between formal and organic law.<sup>1082</sup> Under this view, formal local governance reflects top-down, government-imposed boundaries which create the rules and standards by which the public is meant to comply. Organic law, by contrast, is the bottom-up,

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<sup>1081</sup> *Municipal Elections Act*, 1996, S.O. 1996, Ch. 32.

<sup>1082</sup> Santos & Rodríguez-Garavito, *supra* note 94.

community-created legal understandings which can operate alongside or may end of coming into conflict formal rules.

Like other laws, organic or informal notions of local governance may or may not have community legitimacy. This research has demonstrated that formal law sets the ward as the primary site of local governance, both in the creation of boundaries and the designation of councillors as representatives. The degree to which councillors engage with residents is up to them. The legal rules in regard to planning consultations are limited. Planning staff, developers and councillors have consultations to the extent needed to advance the matter through the political process. Other bodies disrupt the ward as local in three main ways: first, by articulating a different geographic notion of local that may extend beyond the “usual suspects” in neighbourhood representation; second, through rejecting existing practices and proposing new landscapes of local; and third, by proposing a new forum or “theatre” where local matters can be heard.

First, neighbourhood associations and BIAs have different, smaller geographic boundaries than those of a ward. In some cases, neighbourhood associations exist exclusively to contest planning proposals. Others are created to articulate a different version of local, focusing on neighbourhood cohesion. While existing research imagines neighbourhood associations in particular to reflect a particular constituency of residents – homeowners, white, male, middle aged – the research shows more nuanced representation in the city. For example, as presented in Chapter 3, post-amalgamation neighbourhood associations focus less on planning disputes, have broadened their memberships, and in a limited number of cases have partnered with local social service agencies.

Second, neighbourhood associations and BIAs may serve a reactionary role to proposed policies (whether planning related or otherwise) and may propose new landscapes of local. They may serve as a check on councillor authority and power by forcing themselves into planning processes as one of the main participants within consultations. This model of contestation and rejection of city decision-making processes gained

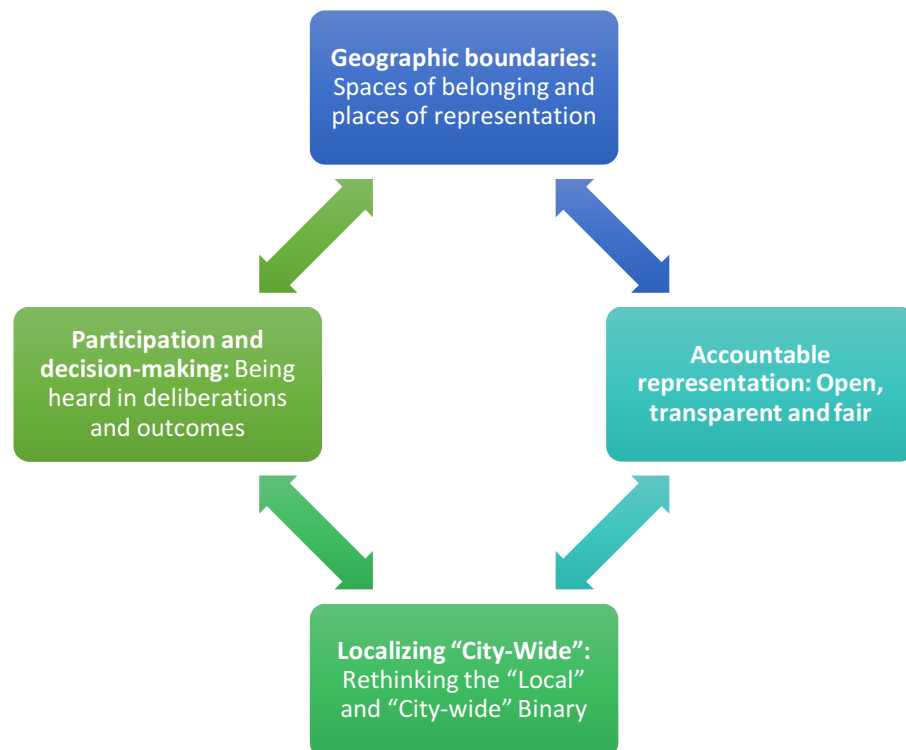
traction following amalgamation, when the number of BIAs and neighbourhood associations increased substantially. On the other hand, these bodies may participate as the go-to parties when planning staff want input on proposals, on stakeholder groups, and in targeted sessions where they are consulted on planning initiatives. They may show up at community council meetings, City Council, and may launch appeals to the OMB. As such, they are both within and outside of decision-making, as parties included in consultation exercises, but as rejecters and testers according to their own versions of local. In the WBR, neighbourhood associations and BIAs revealed themselves as crucial actors in the consultation process, essentially defining the “communities of interest” within wards.

Third, community councils serve as a contestation to the existing decision-making model, one that rejects the existing distinctions between “local” and “city-wide,” and asserts a local role that encompasses the breadth of the procedural bylaw. While community councils are legally embedded within the formal framework of city governance, their mandate has been limited to final approval of a limited number of delegated matters deemed “local” and a first round of decision making on some planning and heritage issues. Until they were seized as forums in the 2012-13 casino issue, community councils had little interaction with residents other than through deputations. While councillors worked with the Clerk’s Office to have community councils used in this capacity, they ultimately proved themselves as a meeting place within the official city process as another forum for local governance. This chapter later considers principles for such a model.

Taken together, we see that the governance of Toronto’s local legal spaces are broader than, but eclipsed by the ward. BIAs and neighbourhood associations create alternative imageries of local through different versions of boundaries and memberships, some taken from a legal past, as seen during the WBR. More importantly, they reveal the gaps of inclusion of other iterations of local governance – those that fall outside the tidy confines of the ward. The next section asks how a local governance model premised on the urban commons could reimagine smaller-than-city governance.

## II. Core principles in designing local governance

This next section articulates how Toronto could craft a local governance model that adopts the normative framework of the urban commons, as asserted by Foster and Iaione. These principles affirm the plurality of local boundaries and bodies, while at the same time minimizing the effects of exclusion and tensions. I propose that the four principles depicted in Figure 6.1 form the basis of a more inclusive, participatory local governance model in the City of Toronto. These principles are, first, that the geographic boundaries of local legal spaces are both spaces of belonging and places of representation. Second, the bodies that represent local governance must be open, accountable and fair. Third, that the terms “local” and “city-wide” are inadequate in framing which issues should be brought to localized populations for consideration. Fourth, Toronto’s local governance model must offer opportunities for community members to influence decision-making.



**Figure 6.1: Principles of Local Governance Rooted in the “Urban Commons”**

## **1. Geographic boundaries: distinguishing spaces of belonging and places of representation**

In this study, geographic boundaries are relevant because they demarcate the legal spaces to be governed. This dissertation has demonstrated that ward boundaries are the basis of Toronto's formal local legal spaces. As seen in Chapter 5, a central tension in the WBR was between the need for wards to be roughly the same size as one another and the recognition that communities come in all shapes and sizes.

This section considers how the urban commons framework can help rethink these spaces. The first principle of local governance advances that new spaces of local governance are needed, that such spaces must be collaborative, and the reimagined community councils may hold promise as new, collaborative spaces.

### **a) New spaces of local governance**

Local legal spaces differ in size and scale. Meaningful boundaries are not created from cookie-cutters; they do not fit neatly and with identical sizes alongside one another. Boundaries may not be contiguous but instead, exist as pockets here and there. As such, a conflicting boundaries of local do not negate the possibility of representation, but require a more multidimensional governance model.

This means that wards, with their intended equal-sized boundaries across the city, should not serve as the sole vehicle for representation in local decision-making; more, not fewer, spaces of dialogue are needed. The 2012-13 casino debate emerged as an important lesson for this perspective. While councillors pushed to have the TEYCC as the venue for debate within the city's formal governance structure, the community council took on a life of its own from an institutional perspective. It served as the main forum for debate and deliberation, in particular for those against the proposed development. It also led to the writing of numerous staff reports exposing deeper local effects, like pedestrian and vehicle traffic.



Just as community councils emerged as a potential for larger boundaries of local governance, the WBR demonstrated that local legal spaces may exist at a smaller scale. For example, the Kingston-Galloway/Orton Park neighbourhood association in Scarborough appealed to the WBR consultants about keeping their boundaries intact. In addition, the Jane-Finch area has straddled three wards over the last two decades and, in the proposed configuration, must still exist within two.<sup>1083</sup> There are no other state-based iterations of local governance open to this community. Thus, the key point regarding boundaries of local is that a sense of belonging does not always match up with the institutional structures that are established to represent smaller-than-city spaces of representation.

In Toronto, wards are used as boundaries of functional representation. Ward councillors coordinate for those within their boundaries, but communities may find themselves outside of or in conflict with the ward structure. As a senior staff member told me, “I think our problem is we have structures ... And, structures by their definition have a tendency to develop a life of their own.”<sup>1084</sup> Wards may be rigidly maintained for those who are reluctant to see innovation or change. In the WBR, ward councillors fiercely defended the existing ward model and boundaries, in part to maintain the life of their own of such institutions. In each of the case studies, the critical tension of the relative size and boundaries of local governance was whether that iteration connected to the decision-making process.

Particular geographies can also serve as spaces of time and memory. Temporality attaches meaning to particular spaces as sites of belonging. The meaning is not simply historical in nature; these spaces of memory are maintained as crucial in contemporary debates, too. These nostalgic connections to geographic lines differ from the technocratic

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<sup>1083</sup> Canadian Urban Institute, Beate Bowron Etcetera Inc., The Davidson Group Inc., & Thomas Ostler, “*Toronto ward boundary review: final report*” (2016), online: <<https://static1.squarespace.com/static/53bc0914e4b0eb57996e4dee/t/5739fe5022482e97a8591392/1463418450864/TWBRFinalReportMay2016.pdf>>.

<sup>1084</sup> Anonymous interview with City of Toronto staff member #3, City Manager’s Office, Toronto, Ontario, Canada (17 February 2016) – author conducted.

nature of BIA and ward boundaries, and the functional, staff-driven lines of Neighbourhood Improvement Areas.

The WBR revealed many examples of meaningful boundaries, areas of the city that created attachments due to past identities as towns or villages. In reviewing the WBR consultant reports, the names of decades-old entities appear again and again as boundaries worth maintaining within wards, with pleas to “keep them together” as though an electoral line dividing them would erase their presence altogether. Likewise, there was considerable negative public sentiment to erasing the former boundary of Scarborough through the placement of wards. To those who spoke out in opposition, Scarborough still has meaning as a place, and the maintenance of formal boundaries keeps relevance to that space even though the City of Scarborough no longer exists in any formal, legal sense.

These former villages, towns, and cities are a form of ghostly presence that continues to frame local governance in Toronto. These ghost cities are contemporaneously embodied in many of the city’s older neighbourhood associations, for example, Swansea, the Annex, Rosedale and York Mills, four of the oldest organizations, were each once distinct municipal corporations. In addition to their current-day advocacy efforts, each of these organizations maintains historical records of the community.<sup>1085</sup> The Scarborough Community Council, too, is a remnant of its pre-amalgamation history. This clinging to historical spaces is not exclusive to Toronto. As observed in Chapter 3, New York borough councils and community boards reflect pre-amalgamated spaces. Their presence is maintained by contemporary legal codes that set out the city’s local governance model.

Some neighbourhood associations look backwards nostalgically at history, but also towards the future. They aim to have a continued presence in the governance of the city.

Boundaries for belonging are not necessarily, and need not be, the same as the lines of institutional representation. There may be a plurality of local bodies that may overlap and

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<sup>1085</sup> Not all neighbourhood associations have sentimental attachments; some neighbourhood associations organize to contest a proposed city development, to build infrastructure in and around a park, or to help bring social services together for local residents.

conflict, and they may not all neatly integrate with electoral boundaries. The key is to understand and respect the difference between boundaries of community belonging and those of institutional representation and, ideally, to provide opportunities for input for those who do not fall within the dominant framework. As such, reflection must be given to the interrelationships of these multiple boundaries of local, and the degree to which they have access to formal channels of local governance.

#### **b) A collaborative local legal space as the basis for local governance**

As detailed in Chapter 1, Foster and Iaione's urban commons framework set out that, regardless of whether spaces are privately or publicly owned, the city is a territorial space in which citizens claim to have a role or stake, a norm which is reinforced in law.<sup>1086</sup> In this account, Foster and Iaione apply Ostrom's thesis, which challenged the assumption that common property cannot be governed collectively without substantial waste and inefficiency to the urban form. The common pool resources in the city context are particular urban spaces, which then becomes the sites of governance. Public-private organizations can work together to effectively play a role in governing specific city areas, but to do so they must incorporate "bottom-up" governance. The city as commons is thus a system of governance over particular city spaces, which incorporates subsidiarity, or delegated authority, and polycentrism, meaning multiple parties are working together.

Foster and Iaione highlight that urban governance arrangements are voluntary and bind only those involved in the governance scheme. They note that such arrangements can have effects on many beyond the actors that are specifically involved: "[I]n the case of urban commons governance institutions the governance arrangement may affect the everyday life of all city inhabitants that fall within the boundaries of the governance scheme (think of the [BIAs], the decisions of which can have an impact also on those who are not part of the [BIA] governance)."<sup>1087</sup> They do not attempt to solve this issue but encourage questions of accountability and legitimacy to be "raised and constantly

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<sup>1086</sup> Foster & Iaione, *supra* note 44.

<sup>1087</sup> *Ibid.*

invoked” when querying collaborative governance in the urban commons.<sup>1088</sup>

I suggest that local legal spaces may also be conceived as a common pool resource, with polycentric governance and boundaries that differ from those of the ward. Conceived of in this way, decision-making includes a broader range of voices. In such a model, no single party can be understood as the privileged local governance body within a specific geography, but one of many actors with a stake. Foster and Iaione use the term subsidiarity to “re-orient public authorities away from the central state to an active citizenry willing to cooperatively govern common resources.”<sup>1089</sup> As detailed in Chapter 3, the SCC ruled that the principle of subsidiarity enables broad deference to municipal governments based on their closeness to the residents that they represent.<sup>1090</sup> While subsidiarity was invoked in this context in favour of enhanced authority for city governments, it applies equally to a more localized level.<sup>1091</sup>

In Toronto, the ward is the main locus of local governance. Ward councillors are also the arbitrators of the use of community councils for measures beyond local planning and heritage matters. Ward councillors may help to drive the formation of BIAs and neighbourhood associations, and enable access to decision-making within the ward. Neither community councils nor the ward level provides for active decision-making by BIAs or neighbourhood associations; these bodies are instead discretionary stakeholders in local decisions. From an urban commons perspective, this approach mirrors the chief dilemma of Hardin’s tragedy of the commons, where actors may take action without regard for the effects on others.<sup>1092</sup> Wards may have many bodies advocating on behalf of residents, businesses and other stakeholders, especially BIAs and neighbourhood associations, with varying degrees of formal connection to the city. Ward councillors have discretion over many issues, including local planning, spending on local development, and bringing together the various representatives to resolve conflicts and initiate projects. Put another way, while some councillors open the ward to involvement

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<sup>1088</sup> *Ibid.* at 340.

<sup>1089</sup> *Ibid.*

<sup>1090</sup> *Spraytech*, *supra* note 177 at 3.

<sup>1091</sup> *Frug*, *supra* note 42

<sup>1092</sup> *Foster & Iaione*, *supra* note 44.

by a broader set of stakeholders, there is no institutional requirement that such practices take place. Local governance within the framework of an urban commons implies a polycentric and more participatory approach to local governance, challenging the councillor as the main arbitrator of decision-making.

As detailed earlier in this dissertation, NIMBY concerns prompted academics Valverde and Young to point to the regional scale as a political level that can safeguard the interests of the most vulnerable.<sup>1093</sup> However, since amalgamation, the emphasis on “city-wide” level decision-making at the formerly regional scale has not led to a better quality of life for the city’s marginalized populations. Indeed, income disparities have widened across the city.<sup>1094</sup> Clearly, another approach is needed.

The question, then, is how to ensure inclusivity when micro-scales may focus on narrow interests to the detriment of a broader population? American scholars Richard Ford Thompson and Richard Schragger challenged the sacredness of the “local” as the ideal scale for the face-to-face interactions necessary for democratic dialogue and suggested that local decision-making has negative implications for historically disenfranchised groups, particularly those outside of the area in question. Critics of localized governance look mainly at the regional level to address inequality. American scholar Young concluded that, to promote the normative ideal of city life, cities themselves “should cease to have sovereign authority.”<sup>1095</sup> Instead, “the lowest level of governmental power should be regional.”<sup>1096</sup> She believed that local governments will act selfishly without regard for the needs of their neighbours, and that only through the adoption of regional policy will a more fair distribution of urban resources result.<sup>1097</sup> Interestingly, Young’s critiques of the municipal level mirror those of Frug, Thompson, and Schragger regarding neighbourhood-based decision-making, suggesting that there is no ideal location or site of decision-making that can remedy issues of exclusion.

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<sup>1093</sup> Young, *supra* note 141; Valverde, *supra* note 189.

<sup>1094</sup> Hulchanski, *supra* note 25.

<sup>1095</sup> Young, *supra* note 141.

<sup>1096</sup> *Ibid.*

<sup>1097</sup> *Ibid.* at 252-3.

How can a local governance framework incorporate multiple voices, broader than BIAs and neighbourhood associations, in what Foster and Iaione call “a visible, equal, contestable, and legitimate manner”?<sup>1098</sup> I argue that the “city-wide” scale should not imply that the local community has no say over or involvement in decision-making. Scholars have proposed variations on how such involvement could look, including charrettes,<sup>1099</sup> opportunities for deliberative participation,<sup>1100</sup> and community-level institutions grounded in group-based “differentiated solidarity.”<sup>1101</sup> In Toronto, this means opening space to local actors beyond the ward councillor, BIAs and neighbourhood associations in a more collaborative framework that includes decision-making power. As Foster and Iaione put it, “thinking of the city as an institution that promotes collaboration all the way across and down as a way to ‘share’ the resources it controls can spur a host of innovative and progressive policies that address the social and economic inequality that is becoming a feature of 21st century urbanization.”<sup>1102</sup>

### **c) Reimagined community councils as spaces for “local governance”?**

A Toronto councillor put the central issue of this dissertation this way, “Well, there you go, right, that’s the question all of this begs. The question all of this begs is, what are the conditions that lead to a large majority of the population both having good reason, like rational reason to be engaged in government, and the means and opportunity to do so. And until you solve that one, the rest is deck chairs.”<sup>1103</sup> Reimagined community councils may hold promise as a better space for local governance.

There is great potential for actualizing a more inclusive, participatory local governance framework within the existing legislative structure of Toronto’s community councils. As outlined in Chapter 3, until COTA’s introduction, provincial legislation was prescriptive

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<sup>1098</sup> *Ibid.* at 252-3.

<sup>1099</sup> Frug, *supra* note 7 at 1104.

<sup>1100</sup> Fagotto & Fung, *supra* note 157.

<sup>1101</sup> Iris Marion Young, *Inclusion and Democracy* (Oxford: Oxford University Press, 2000) at 9.

<sup>1102</sup> Foster & Iaione, *supra* note 44.

<sup>1103</sup> Anonymous interview with City of Toronto councillor #3, Toronto, Ontario, Canada (18 July 2016) – author conducted.

in relation to municipal authority, meaning that the city could only take action that was set out in the applicable legislation. COTA offers far broader powers. However, the legacy of municipal power in Toronto is such that councillors and staff may be reluctant to push the boundaries and introduce laws which are not clearly spelled out. As a staff member involved in the design of COTA told me, “[When you ask] ‘Are we allowed to do that? Can we do it?’ It’s pushing off responsibility, as opposed to ‘How can we?’ [O]ne thing to this day that I always say to my staff: if you ever go to legal to get advice, never ever, ever ask the question ‘Can we?’”<sup>1104</sup> When I asked what questions should be asked instead, this staff member told me, “What outcomes do we as a government want to achieve and then how do we get to those things, so what legislative measure do we need to put in place, what resources do we need to allocate, what programs do we need to put in place.”<sup>1105</sup>

Under COTA, the City of Toronto can create a plurality of community councils with greater authority, non-councillor members, and a mandate to consider the localized effects of “city-wide” decisions. Such bodies would shift the balance of power from the ward to the community. One councillor, in discussing the immense amount of power held by a ward councillor, told me: “I’d like to think I used it for benevolent good. But I also think that you’ve got to get out. Anybody that’s there for more than two terms I get very nervous about. Because they play to the same crowd and you get elected by talking to the same people and you know, you’re protected by the things you did well and you’re inoculated from the things you did badly.” The answer, this councillor believes lies in further decentralization to the community, “The solution is to give the citizens more power. ... If you want to limit the power of a local councillor, find a way to invest even stronger powers into the local community.”<sup>1106</sup>

The case studies take a new form when seen through the lens of an urban commons. Applying the lens of an urban commons to the WBR, the following dynamic emerges.

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<sup>1104</sup> Anonymous interview with City of Toronto staff member #2, Shelter, Support and Housing Administration Division Toronto, Ontario, Canada (2 February 2016) – author conducted.

<sup>1105</sup> *Ibid.*

<sup>1106</sup> Anonymous interview with City of Toronto councillor #2, Toronto, Ontario, Canada (7 July 2016) – author conducted.

First, the relations at stake were the communities of interest versus the ward. BIAs and neighbourhood associations serve as the main determinants of communities of interest in consultation meetings. Other approaches to solicit input were used, such as surveys, but in general, the consultants referenced the commentary from those who attended meetings. The determination of local was linked to the meaning of “community of interest.” While the input extends beyond the “usual suspects” to areas of the city that are more politically and economically marginalized, the overall effect was limited to commentary on communities of interest. It was also curious that the consultants singled out direct consultation with BIAs, but not neighbourhood associations. On the one hand, this approach confirms the importance given to BIAs and neighbourhood associations as other parties with a claim to local representation. However, the use of BIAs and neighbourhood associations as the basis to craft boundaries also points to the dependence on these organizations to the exclusion of other notions of local and a more holistic process to determine local governance. By excluding consideration of other aspects of local governance, the review emerges as a “business as usual” exercise, one that affirms the existing model of local governance.

At the time that the 2012-13 casino debate emerged, it struck councillors as a “done deal.”<sup>1107</sup> The mayor was in agreement and there was sufficient City Council support for the matter to sail through approval. The opposition from outside City Hall actively pursued support from the local councillors.<sup>1108</sup> Already, the plurality of local voices emerged, all focused on the downtown casinos as the main point of objection. Thus, the spaces of local were the proposed casino sites and the areas that would be affected by a casino. They were the local boundaries in question.

These sites as local thus reoriented local issues like traffic and effects on neighbours as equally important questions to the city-wide factors like tourism, the hosting fee, and jobs, as the Executive Committee had set out. In response, the TEYCC, as a governance

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<sup>1107</sup> Anonymous interview with City of Toronto councillor #1, Toronto, Ontario, Canada (5 July 2016) – author conducted.

<sup>1108</sup> Interview with members of No Casino Toronto, Toronto, Ontario, Canada (11 May 2015) – author conducted.



body, became the voice of the local boundaries, replacing the usual centrality of the councillor with the “theatre” of the subcommittee, a forum with more councillors, staff support, and formalized mechanisms for public participation. The reorientation of the site of the debate also shifted the lens of public participation. The 2012-13 review initially approached civic engagement through a city-wide lens, but the TEYCC took over as the chief vehicle to consult with BIAs and other stakeholders, suggesting that these parties had not been adequately included in the process. This shift also signaled that decision-making was not merely a matter for politicians, but the necessary inclusion of a more institutionalized, polycentric governance model.

By contrast, in 2015, the casino decision remained a city-wide issue, with no use of the community council as a forum for deliberation. In 2015, the ward councillor and the councillor adjacent were the major proponents of the casino, in their capacities as representative of the ward and as the deputy mayor responsible for economic development in this economically marginalized area of the city. No local BIAs or neighbourhood associations participated in the city-wide forums. There was no change in the geography of local, nor in the foci of debate, nor in the forums used to assess and mediate the issue.

The 2012-13 casino decision showed the capacity for incrementally modifying local governance based on the existing model – to nudging rather than revolutionizing governance – through reorienting the forum of local governance. The 2012-13 casino debate offered an example of community councils as a new local legal space, querying how a more formalized role for the plurality of other actors, beyond the usual forums for public participation.

Imagine, then, a community council model that draws from Foster and Iaione’s urban commons framework, yet is available to a broader range of residents, both as participants and deliberators. Community councils could expand their memberships to include an “active citizenry” willing to “cooperatively govern” localized spaces of the city.<sup>1109</sup>

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<sup>1109</sup> Foster & Iaione, *supra* note 44 at 326.

Rather than having an uneven local governance model that privileges “a patchwork, instead of a network” of BIAs and neighbourhood associations as the local voice, these reimagined community councils could provide a more inclusive space for voices currently unheard in the model.<sup>1110</sup>

## **2. Accountable representation: accessibility and fair process for local residents and businesses, and to the broader vulnerable public**

A second principle that emerges from this research is the necessity of accountability in representation. In adapting an urban commons framework to a reimagined local governance model, governance forums and the model more broadly must be transparent, accessible and fair. As stated in Chapter 3, the Bellamy Inquiry in 2005 exposed weaknesses in the governance structure of the City of Toronto.<sup>1111</sup> At that time, the Chief Administrative Officer (now called the City Manager) detailed the measures that would be taken to address the governance issues and strengthen accountability.<sup>1112</sup> The measures included “citizen-focused” principles and assessment criteria, including a governance model that “reflects the services that are important to the citizens of Toronto” and is “easily understood by the public.”<sup>1113</sup> The report also noted the need for structures to be “adaptable, flexible, and innovative,” to promote effective inter-program and cross-discipline collaboration, to adapt to changing public needs and service priorities, and to reduce barriers to innovation.<sup>1114</sup>

One councillor explained their support of more community involvement in decision-making as follows: “When local communities know they have responsibility, they take responsibility and they make rational decisions. When they don’t think they have a say, they take extreme positions in order to force the extreme position, or opposing, into sort

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<sup>1110</sup> *Ibid.* at 336.

<sup>1111</sup> The Honourable Madam Justice Denise E., Bellamy, “Toronto Computer Leasing Inquiry Toronto External Contracts Inquiry Report” (2004) 4 Executive Summary 1, online:

<[https://www1.toronto.ca/inquiry/inquiry\\_site/report/pdf/TCLI\\_TECI\\_Report\\_Executive\\_Summary.pdf](https://www1.toronto.ca/inquiry/inquiry_site/report/pdf/TCLI_TECI_Report_Executive_Summary.pdf)

<sup>1112</sup> City Manager, Staff Report: Letter to Commissioner Bellamy on the Status of City of Toronto Initiatives, City of Toronto (11 April 2005), online:

<[www.toronto.ca/legdocs/2005/agendas/committees/adm/adm050426/it028.pdf](http://www.toronto.ca/legdocs/2005/agendas/committees/adm/adm050426/it028.pdf)>.

<sup>1113</sup> *Ibid.* at 17.

<sup>1114</sup> *Ibid.* at 17.

of beaten into submission.”<sup>1115</sup> The councillor believes that, ultimately, more participants are ultimately better: “when you bring a hundred and fifty people around a table to try and make a decision about what’s best for the community, you end up with a decision, ultimately, which is best for the city. When you try to bring fifteen people from across the city to decide what works in a local community, the chances are you’re going to make a mistake.”<sup>1116</sup>

In Toronto, accountability issues are three-fold: the dominance of the ward councillor, the confusion relating to BIAs, and the role of neighbourhood associations. While these measures focus on the administrative functions of city government (meaning the internal organizational structures and conduct of city staff), they apply to reflections on local governance.

Ward-level representation as the formal arena of local governance creates a lack of accessibility and clarity. A foundational requirement of governance is that the public easily understand how forums may be accessed. As it stands, the ward-based governance model is unclear. It is not evident how a member of the public would engage in a local matter beyond contacting the ward councillor. Where a councillor is not approachable or responsive, a member of the public may be left with uncertainty as to how they may initiate change. The ward level does not provide a forum for clear access by residents or members of the public. The councillor has discretion to decide the extent to which engagement and community forums will take place. A model that doesn’t enable the public to engage in a democratic forum at the local level challenges the principle of fairness. As Grainger and Greene write:

The cornerstones of government ethics rules – the rule of law, honesty, the prohibition of conflicts of interest, the prohibition against using public office for personal gain, the rules preventing undue influence, the promotion of fair procedures and objectivity, the promotion of accountability and openness – all stem from the principle of mutual respect. As human beings, we get used to carrying out

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<sup>1115</sup> Anonymous interview with City of Toronto councillor #2, Toronto, Ontario, Canada (7 July 2016) – author conducted.

<sup>1116</sup> *Ibid.*

our work the way we have learned to do it, and most of us think of ourselves as ethical without stopping to examine whether the way things are usually done might contradict the principle of mutual respect and the sub-principles that derive from it. Leaders who want to introduce real and lasting reforms to ethics in government need the ability to be able to examine carefully whether business as usual is really meets the ethical standards they claim to espouse.<sup>1117</sup>

The problem with the dominance of the ward councillor extends more deeply than simply access; the larger issue is the extent to which councillors control innovation in local governance. As noted in an interview with a senior staff member who was involved in the two major governance reviews involving the possible inclusion of localized governance: “I think inertia kind of sets in. I think, I don’t know that the neighbourhood council idea ever got very far, because there was just so much political resistance.”<sup>1118</sup> This dynamic was observed as well in the WBR process, where the Executive Committee’s reluctance to approve the external consultant’s recommendations reflected an inertia and contrariness to change.

BIAs emerge as an uncertain arena of local governance. On the one hand, they are woven into city administration through the existence of a dedicated office, an approved budget, and accessible information on how they may be contacted. This suggests that they are like any other local board of the City, with the responsibility to deliver a set of services and accountability for how they use their funds. On the other hand, in local planning and other debates, they act as an interest group to be consulted, like neighbourhood associations. This dual role creates confusion as to what role they serve (local board or interest group) and to whom they are accountable (the public or their members). This confusion played out in both the casino debate and the ward boundary review, where a privileging of the BIA voice happened. In the 2012-13 debate, the BIAs were named as the parties requiring particular consultation. In the ward boundary review, the BIAs were also singled out as a key stakeholder group to be consulted directly.

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<sup>1117</sup> Brian Grainger & Ian Greene, "The Level of Political Leadership Required to Implement the Gomery and Bellamy Recommendations" (2006) *Presented to the Annual Meeting of the Canadian Political Science Association York University* 1 at 13, online: <<https://www.cpsa-acsp.ca/papers-2006/Grainger-Greene.pdf>>.

<sup>1118</sup> Anonymous interview with City of Toronto staff member #2, Shelter, Support and Housing Administration Division Toronto, Ontario, Canada (2 February 2016) – author conducted.

Neighbourhood associations serve as an impromptu force in local decision-making, which is often contingent on the councillor or staff engaged, but also dependent on the degree of influence of the association itself. There is understandable reluctance on the part of the City as to how they may be folded within its formal structure. The research in Chapter 3 showed that neighbourhood associations vary widely across Toronto. There are no clear standards for their organization or representation, which means uncertainty as to the legitimacy of the representational voice.

The following quote, from an interview with a City of Toronto official, sums up the two possible iterations of neighbourhood associations: “[R]epresentation should be an outcome of communities self-organizing and creating that space for themselves. Or demanding that space for themselves where they need to be, no matter who speaks, that their voices need to be heard. As opposed to organized, rather dodgy groups, dodgy agendas, claiming representation on behalf of people. Be it individuals, or organizations from the NGO sector or social justice sector.”<sup>1119</sup> Are neighbourhood associations self-organized bodies demanding voice, even where they represent a very narrow set of interests, like BIAs?

Neighbourhood associations would need modification to become more robust, reliable organizations across the city to meet the standard of accountable representation. At minimum, the city could provide information and training to neighbourhood associations, as it does with BIAs, to provide capacity on organizational structures, decision-making, and fairness. The city could also require that neighbourhood associations register as an interest group, as some staff have recommended, in a manner that does not result in an unfair degree of work for these small, sparsely funded organizations.

A third option is to weave neighbourhood associations into the City’s governance structure in a more formalized way, as New York or Los Angeles does, with staff

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<sup>1119</sup> Anonymous interview with City of Toronto staff member #3, City Manager’s Office, Toronto, Ontario, Canada (17 February 2016) – author conducted.

support, operational funding, and space to weigh in on City policy.<sup>1120</sup> Under this approach, the city could have a relationship with the neighbourhood associations that better mirrors what it has with BIAs. It could also monitor the composition of neighbourhood associations to understand whose voices are heard and to develop capacities for new voices to join the conversation.

It is important to note that in all three of these options, there would be greater oversight of the organizations. As one councillor told me, in contrasting the funding received by BIAs and the corresponding accountability rules: “So, yes [BIAs] do have access to resources, but they’re legislatively restrained in very, very significant ways, about how they can deploy those resources. And I think providing resident associations with some kind of institutional money, or staff support would require putting rules in place.”<sup>1121</sup> What might be the results of such action? “There’s always a trade off, right? Use of public money requires constraint, that I think would effectively demobilize them, or constrain them to the point where you’d have other organizations pop up anyway.”<sup>1122</sup> The goal instead is to provide more accountability between these organizations and the public so that those who profess to “represent” are indeed doing so. Given the privileged role of neighbourhood associations in the overall governance model, and in particular in planning issues, fairness and accountability should not be disregarded.

### **3. Localizing “City-Wide”: Rethinking the “Local” and “City-wide” Binary**

The City of Toronto distinguishes between “local” and “city-wide” in determining what matters may be delegated to community councils. The city views some issues, such as parking pads and speed limits, as “local” issues, while any matter that has implications beyond a single community council is a “city-wide” matter. In its categorization, the City of Toronto only delegates decision-making and deliberation on “local” issues to

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<sup>1120</sup> Chemerinsky & Kleiner, *supra* note 156; Gregory Perrotta, “A Case for and Against the Borough President in Twenty-First Century New York” City (2013-14) 58 N.Y.L. Sch. L. Rev. 193.

<sup>1121</sup> Anonymous interview with City of Toronto councillor #3, Toronto, Ontario, Canada (18 July 2016) – author conducted.

<sup>1122</sup> *Ibid.*

community councils. Any matter deemed “city-wide” must be considered by City Council.

This dissertation argues that the current distinction between local and city-wide is artificial as it does not consider the interests of local residents in its categorization. The current model does not provide deliberative forums that allow residents to remain connected to city government, as community councils were created to do. Instead, I advance the third component of local governance that “city-wide” decisions have local implications and, therefore, Toronto’s local governance model must make room for consideration of city-wide issues. Put another way, rather than conceptualizing a municipal issue as residing at a singular scale, a better approach is to acknowledge the localized effects of “city wide” issues.

The mythology of the “local” issue suggests that certain matters are inherently smaller or larger scale and that governance forums should be divided on that basis. The reality is that transit systems, affordable housing, and casinos are as “local” in scope as they are “city-wide.” Cowen and Parlette write about the pitfalls of directing resources – and therefore responsibility – at the neighbourhood scale, particularly in economically disadvantaged communities, without recognizing that the remedies to neighbourhood matters are only really solvable at the municipal, provincial or even federal levels.<sup>1123</sup> This idea was echoed during an interview that I had with a senior city staff member, who said: “You can have a neighborhood lens, but it cannot be isolated to the neighborhood, because a neighborhood is part of a global supply chain.”<sup>1124</sup> In this study, we see that “local” and “city-wide” are not simply about the subject-matter, which is the basis upon which the distinction is made now. Instead, “local” and “city-wide” may relate to the consequences of an issue. For example, in both the 2012-13 and 2015 casino decisions, the circumstances that made the matter “local” were the localized effects of a casino, not whether the subject matter itself was a local one.

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<sup>1123</sup> Cowen & Parlette, *supra* note 153.

<sup>1124</sup> Anonymous interview with City of Toronto staff member #3, City Manager’s Office, Toronto, Ontario, Canada (17 February 2016) – author conducted.

As raised by Cowen and Parlette, geographies of subject-matter problematize phenomena in particular communities rather than highlighting systemic or higher order causes and contributions.<sup>1125</sup> The same dynamic can be said to take place in calling an issue city-wide. This kind of articulation leads to a concentration on particular aspects of issues over others as evidenced in both of the casino debates, where the city-wide focus highlighted the economic implications above all others. In using the community council forum, city staff reports focused on local implications became part of the decision-making discourse.

The City of Toronto may consider multiple options in operationalizing this notion. First, City Council can set the broad, strategic policy frameworks of city-wide issues, while decision-making can be delegated to a smaller-than-city level. As one senior staff member from the City of Toronto told me, “[I]f you look at a city council agenda and you have on the same agenda the casino debate, which is a strategic city-wide ... issue of huge policy significance [that] the council should be paying attention to. The same agenda is whether or not to cut down a tree in Mrs. Jones’s backyard.”<sup>1126</sup> Likewise, local governance conceived as an urban commons would have some delegated powers. Areas of “huge policy significance,” including matters like housing and infrastructure, must have room for localized debate, even where ultimate decisions are maintained at the city-wide level.

As one councillor told me, the decision over a governance model comes down to the degree to which you want local government run by the public versus councillors: “If you want citizens to run the place, get rid of the party politics, let citizens choose their own representatives, and let citizens organize their decision making mechanism. You’ve gotta give away the power in order for the power to become effective.”<sup>1127</sup> To this councillor, the casino debate showed the power of public involvement: “part of what the casino fight showed us, is that you can push back into the community to figure out political strength

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<sup>1125</sup> Cowen & Parlette, *supra* note 153.

<sup>1126</sup> Anonymous interview with City of Toronto staff member #2, Shelter, Support and Housing Administration Division Toronto, Ontario, Canada (2 February 2016) – author conducted.

<sup>1127</sup> Anonymous interview with City of Toronto councillor #2, Toronto, Ontario, Canada (7 July 2016) – author conducted.



and you will win those fights. And I don't think there's a fight that was more city-wide, broad base, more effective, in actually flipping local voters and local communities' minds than this one was."<sup>1128</sup>

Other jurisdictions provide institutional support for local governance bodies, with non-councillor representatives, spaces for such bodies to deliberate and debate, and staff support. For example, New York's community committees have the authority to vote on matters that will ultimately be decided by City Council, but these votes are non-binding.<sup>1129</sup> Borough Presidents have also played a crucial role in city-wide decisions, both historically and at present.<sup>1130</sup> Although a constitutional challenge in 1989 led to sweeping changes in New York City's governance model by removing the Board of Control – where Borough Presidents had been key members – these local actors continue to exert substantial influence on city-wide decisions.<sup>1131</sup>

Matters that on their face appear to be city-wide may have disparate, specific and localized effects for local communities. Artificially distinguishing issues as “local” and “city-wide” produces a single and limited lens, dismissing scalar consequences.

#### **4. Decision-making: participation as deliberation or outcome?**

To Tina Nabatchi and Matt Leighninger, “public participation” is an umbrella term that describes the activities by which people's concerns, needs, interests, and values are incorporated into decisions and actions on public matters and issues.<sup>1132</sup> They write that cities, in particular, are crucial and optimistic spaces of participation: “Cities, due to their compact size and contiguity, offer the greatest potential for the development of inclusive institutions for managing political conflict, create critical spaces for institutionalized forms of political debate and participation and facilitate new forms of political

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<sup>1128</sup> *Ibid.*

<sup>1129</sup> Perrotta, *supra* note 1120.

<sup>1130</sup> *Ibid.*

<sup>1131</sup> *Ibid.*

<sup>1132</sup> Tina Nabatchi & Matt, Leighninger, *Public Participation for 21st Century Democracy* (Jossey-Bass, 2015).

representation through civil society actors, operating within participatory governance mechanisms.”<sup>1133</sup> Nabatchi and Leighninger endorse Sherry Arnstein’s conception of participation as a “ladder” with information dissemination on one end of the spectrum and direct decision-making on the other.<sup>1134</sup>

As demonstrated in this dissertation, BIAs and neighbourhood associations have played a central role in local governance in Toronto and elsewhere. As noted in Chapter 1, Schragger Ford, Frug and Briffault have noted the concerns with this model of participation, in particular, the issues of fairness and exclusion. As a response, Young and Valverde advocate for the shift in decision-making to a regional level body.<sup>1135</sup>

In Toronto, the ward is the main locus of local governance. Ward councillors are also the arbiters of the use of community councils for measures beyond local planning and heritage matters. Ward councillors may help to drive the formation of BIAs and neighbourhood associations, and enable access to decision-making within the ward. Neither community councils nor the ward level provides for active decision-making by BIAs or neighbourhood associations; these bodies are instead discretionary stakeholders in local decisions. From an urban commons perspective, this approach mirrors the chief dilemma of Hardin’s tragedy of the commons, where actors may take action without regard for the effects on others.<sup>1136</sup> Wards may have many bodies advocating on behalf of residents, businesses and other stakeholders, especially BIAs and neighbourhood associations, with varying degrees of formal connection to the city. Ward councillors have discretion over many issues, including local planning, spending on local development, and bringing together the various representatives to resolve conflicts and initiate projects. Put another way, while some councillors open the ward to involvement by a broader set of stakeholders, there is no institutional requirement that such practices take place. Local governance within the framework of an urban commons implies a

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<sup>1133</sup> *Ibid.*

<sup>1134</sup> Sherry Arnstein, “A Ladder of Citizen Participation” (1969) 35:4 *Journal of the American Institute of Planners* 216.

<sup>1135</sup> Young, *supra* note 141.

<sup>1136</sup> Foster & Iaione, *supra* note 44.

polycentric and more participatory approach to local governance, challenging the councillor as the main arbitrator of decision-making.

Neighbourhood associations have not always been seen as oppositional towards progressive city planning. Indeed, they were at the forefront of pushing for a more inclusive planning model, one which considered the interests of the community. Up until the 1960s, experts made planning decisions without any public input.<sup>1137</sup> This changed when neighbourhood associations began opposing planners, often because they disagreed with the vision that planners had for their neighbourhoods.<sup>1138</sup> However, the views brought to bear on local planning were very much tilted towards those representing the associations, meaning those with political, social and economic capital.<sup>1139</sup> In practice, the voices of renters, the less affluent, and underserved are unheard in local decision-making forums.

Scholars have written about the impact of BIAs and neighbourhood associations that represent affluent, white residents and businesses. What is less considered are the outcomes of participation efforts of neighbourhood associations in underserved areas. The focus on neighbourhood-based consultation also masks that many local matters that disproportionately affected poorer residents are rarely solvable by the municipal government alone. Unlike zoning or minor planning issues, matters of social justice, including homelessness and lack of affordable housing, cannot be meaningfully addressed and resolved by municipalities alone; it requires the cooperation and active involvement of all levels of government.

If a model predicated on neighbourhood associations is fraught with issues, then what else? As one of the senior city staff members opined on the ideal model of consultation, “[Y]ou need to create a pipeline, you need to create mechanism for people to be able to

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<sup>1137</sup> John Sewell, *The Shape of the City: Toronto Struggles with Modern Planning* (University of Toronto Press, 1993).

<sup>1138</sup> For more recent trends, see Hume, 2005; for similar trends in the U.S., see for example, Arnstein, 2003.

<sup>1139</sup> J. David Hulchanski, Philippa Campsie, Shirley B.Y. Chau, Stephen W. Hwang, Emily Paradis, “Homelessness: What’s in a Word?” In Hulchanski, J. David et al. (eds.) *Finding Home: Policy Options for Addressing Homelessness in Canada* (Cities Centre, University of Toronto, 2009) at 3.

express themselves and have influence on public policy and programming in a meaningful way and the voices be diverse and the voice be organized and all of that.”<sup>1140</sup> But how? In Toronto’s case, the traditional vehicles of engagement – online surveys, public meetings held in communities, and deputations at committee and community council meetings – bring in a small minority of residents.<sup>1141</sup> Since 2013, the City Planning department introduced new measures to solicit input from a wider range of residents, recognizing that the existing engagement mechanisms are not reaching those who are impacted by local planning decisions. For example, City Planning now has “pop up planners” (POPs) who appear in areas across the city to get input from the public on particular policy proposals; has an advisory panel comprised of randomly selected Toronto residents; and relies increasingly on Twitter and other social media for feedback.<sup>1142</sup> The initiative is noted in particular for generating far more feedback than typical engagement exercises.<sup>1143</sup>

However, it remains uncertain the extent to which these new consultation efforts resulted in vastly different voices being heard, especially in the case of social media commentary. In the case of POPs and the advisory panel, there appear to be underserved constituents targeted for feedback. However, it is unclear whether this form of consultation has an impact on the ultimate decisions made. As noted in Chapter 1, scholars Cowen & Parlette undertook an expensive study of consultation efforts in one of Toronto’s poorest communities, concluding that such exercises can lead to “consultation fatigue.”<sup>1144</sup> They observed significant fatigue when the same people are consulted again and again but are not given any decision-making power. The time consuming and ineffectual results of constant consultation are frustrating and difficult, and tax the time of already overstretched people working largely in precarious and low-paying jobs. Cowen and Parlette suggest that the weakness with current consultation methods is that they are distinct and disconnected from decision-making power. Besides, participation efforts do

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<sup>1140</sup> Anonymous interview with City of Toronto staff member #3, City Manager’s Office, Toronto, Ontario, Canada (17 February 2016) – author conducted.

<sup>1141</sup> Anonymous interview with City of Toronto staff member #5, City Planning, Toronto, Ontario, Canada (18 May 2016) – author conducted.

<sup>1142</sup> *Ibid.*

<sup>1143</sup> *Ibid.*

<sup>1144</sup> Cowen & Parlette, *supra* note 153.

not include skills building and leadership opportunities or other intangible benefits, making the process one-sided in favour of city departments, who engage to meet statutory or City Council requirements, but do not necessarily weave broader perspectives into their final reports.

Part of the reason for this fatigue is that those conducting consultations expect such conversations to take place in the forums of their choosing, in a manner that conforms to their notions of consultation. What is missing from the research and analysis is the existing conversations on local issues that are already taking place. One of the people I spoke with, who is familiar in particular with the organizing of Punjabi and Sikh populations in Toronto, told me that those looking to engage these particular communities might not see the engagement already taking place. When reflecting on a question received from a colleague on how to consult communities and get people engaged, my contact said:

Well, communities are actually pretty engaged, it's just that you're not in those engagement mechanisms... [T]hey are having conversations in communities where you don't listen, or go, or understand what they're talking about. Either you have a language difficulty of your own, or you just don't understand what drives their thinking. So, it's not that the communities are not politicized and particularly engaged, it's just they're engaged in ways that you don't understand and you are not plugged into. [Rather than saying] "communities are not engaged," ... say, "communities are engaged in ways that I'm not familiar with, so how can I find out where those communities' conversations are taking place, whether they are in mosques or community centers, or, you know, people's living rooms, wherever." Because I know they're happening, I live it on a daily basis, I can't go anywhere without people having a political conversation. It's just that none of the decision makers ever, ever, sit there and listen to us.<sup>1145</sup>

This notion of existing conversations speaks to the tension between rational bureaucracy and messier forms of political action. Santos notes that the theoretical debates on the relationship between representative and participatory democracy often forget that these

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<sup>1145</sup> Anonymous interview with City of Toronto staff member #3, City Manager's Office, Toronto, Ontario, Canada (17 February 2016) – author conducted.

two concepts must work together.<sup>1146</sup> He writes that participatory democracy in complex political environments always presupposes opportunities for delegation and representation.<sup>1147</sup> Indeed, the model for this public engagement and involvement should be complex and sophisticated to reflect the importance of an overlapping, multifaceted, multiplayer decision-making at the municipal level. He favours this decisional complexity in contrast to the approach of Weber, who argues instead for rational bureaucracy.<sup>1148</sup> Santos proposed the following hypothesis: “in internally differentiated societies, the stronger the bond between democracy and distributive justice, the more complex the methodology that guarantees such bond tends to be. The decrease of complexity that bureaucracy allows for cannot but bring about the loosening of the bond between democracy and distributive justice.”<sup>1149</sup> Thus, a rational system of decision-making misrepresents the messy reality of participatory democracy, which is interconnected with tugs and pulls of representation and delegation.

The messiness that Santos speaks of requires the city to move back, to listen and to let other voices in. As one interviewee suggested, the local governance system “has to be more flexible and less rigid and the only way to make it less rigid would be the less the government plays a role, the government plays the role of a facilitator in the sense of setting up the mechanism, but not on running the mechanism.”<sup>1150</sup> There would need to be less control of the forums of decision-making and of the conversations that will ultimately take place. In New York, this is at least partly achieved through the community board model, where anyone may attend a meeting and have a voice, where the members are not part of the government, and where city staff attends to document and report on what is said. Community boards raise opinions that are contrary to those of elected officials, which can lead to changes in proposed policies.<sup>1151</sup> Los Angeles goes

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<sup>1146</sup> Boaventura de Sousa Santos and César A. Rodríguez-Garavito, *Law and Globalization from Below: Towards a Cosmopolitan Legality* (New York: Cambridge University Press, 2005).

<sup>1147</sup> *Ibid.*

<sup>1148</sup> *Ibid.*

<sup>1149</sup> *Ibid.* at 324.

<sup>1150</sup> Anonymous interview with City of Toronto staff member #3, City Manager’s Office, Toronto, Ontario, Canada (17 February 2016) – author conducted.

<sup>1151</sup> Richard C. Bass and Cuz Potter, “A Tale of Three Northern Manhattan Communities: Case Studies of Political Empowerment in the Planning and Developing Process” (2004) 31 *Fordham Urban Law Journal*

even farther by letting the public set the boundaries for the local bodies, by providing some funding for organizational needs, and by encouraging greater representation from the applicable communities. While some scholars laud this purported delegation to the local level as supporting communities to build capacity and encourage a broader range of participants, others suggest that these bodies attract people with the same demographics as neighbourhood associations, meaning unrepresentative of the populations they serve.<sup>1152</sup>

In sum, these four principles – flexible boundaries, greater accountability, consideration of the “local” effects of “city-wide” decisions, and enhanced participation – point to the need for reimagined local governance in Toronto based on the urban commons framework. The City of Toronto has the legal authority to reimagine community councils within the inclusive, participatory framework of the urban commons.

### **III. Conclusion**

The reimagination of local governance in the context of the urban commons is at the core of the dissertation. I asserted that local as an urban commons marries property, governance, and inclusivity. Local legal spaces must have room for the plurality of voices that have an interest in policies and decisions made at this level. At present, Toronto’s local governance model privileges the geography of the ward as the representative unit, with councillors serving a dominant role. BIAs and neighbourhood associations participate unevenly and with considerable dependence on councillor interests. Looking at local through the lens of the urban commons allows us to see the vast array of voices that are not typically seen and heard when decisions are made.

The urban commons, ultimately, recognizes the messy nature of property. Progressive property theorists have struggled to identify the definitive qualities of this form of interest. What is clear is that the urban commons reflects an overlapping, polycentric set

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285; Peter Marcuse, “Neighborhood Policy and the Distribution of Power: New York City’s Community Boards” (1997) 16(2) Policy Studies Journal 277.

<sup>1152</sup> Chemerinsky & Kleiner, *supra* note 156 at 571.

of interests that legitimize a shared authority to govern, regardless of the property rights held by those engaged in the debate.<sup>1153</sup> The urban commons, rooted in property law, speaks to the relationships at the core of a governance model.

What, then, does this mean for local governance? First, local decision-making needs to be acknowledged as a legitimate site of governance. Neighbourhoods can trigger a sense of belonging and agency that lead to the creation of organizations. As a senior staff member that I interviewed told me, “[I]f a community, if there’s a neighborhood where people have been living there for thirty years, it doesn’t matter if they’re Italians, Ukrainians, and Polish. They’ve been living in the same community for thirty years, they’re likely to find something in common.”<sup>1154</sup> Local governance should be acknowledged as an arena for public participation, not just for some local planning decisions, as exists now, but where “city-wide” matters are heard, too. The current approach of ward dominance over the local conversation gives far too much authority to the councillor and includes too few voices. In Toronto, this means re-imagining local governance. A new vision means incorporating a wider range of community members, an acknowledgment of the “messy” nature of local governance, and a way of hearing hard questions and sticky answers.

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<sup>1153</sup> Ranasinghe & Valverde, *supra* note 47, at 329.

<sup>1154</sup> Anonymous interview with City of Toronto staff member #3, City Manager’s Office, Toronto, Ontario, Canada (17 February 2016) – author conducted.



## **Conclusion - Re-imagining Local Governance**

This dissertation was born from enthusiastic conversations with fellow municipal law nerds over the meaning of “local governance” in Toronto. What are the institutions that the public can access to create change in their communities? Is “local governance” geographically or subject based? My gut feeling was that, unlike in many other large metropolises, there was no clear answer to these questions. As such, I started this dissertation asking how the four main bodies that form Toronto’s local governance model – wards, community councils, neighbourhood associations and business improvement areas – overlap, and the effect of this overlap on inclusive participation.

Informed by a mixed methodology that included case studies, document analysis, semi-structured interviews, GIS mapping, basic descriptive statistics and participatory observation, this dissertation sought to test a conceptualization that, first, local governance is pluralistic and recognizes the interlegality of multiple normative orders known as “local legal spaces,” which cannot be considered self-enclosed, autonomous units; and second, that state iterations of local governance bodies create political, social, and spatial realities, through multiple overlapping institutions; incorporate other norms, orders, rules and practices; and include and exclude certain people and communities through the setting of boundaries and participation rules. This project advances the legal geography project by conceptualizing localized areas of the city as multiscalar and interlegal in themselves, with a local governance model that is inclusive of a plurality of formal and informal bodies and geographies. The dissertation also asserts a normative argument, that a local governance model that is based on the urban commons framework of Sheila Foster and Christian Iaione would provide a road map for more inclusive, participatory local governance.

The conclusions that emerge from this dissertation are set out below, together with suggestions for future research.

## **I. Summing up: Toronto's local legal spaces**

This dissertation is organized around three broad propositions. First, Chapter 3 demonstrated that wards are a necessary, but not a complete account of local legal spaces in Toronto. Under COTA, certain decisions must be made by City Council, meaning (at present) the 44 councillors and mayor. Under this model, ward councillors exercise a considerable degree of power. However, wards are not the only means of conceptualizing local governance. As Santos asserts, there is a multiplicity of laws, institutions, and boundaries operating formally and informally. In Toronto, while wards serve a privileged role in the formal model, local legal spaces include the overlap and competing claims of community councils, BIAs and neighbourhood associations. Some wards and neighbourhood associations act have the same names and boundaries of towns and villages going back to 1834, the genesis of Toronto as a city. Community councils largely and symbolically reflect the pre-amalgamated municipalities. These boundaries reflect multiple conceptions of local legal spaces in the Toronto context, each enacted or governed with independent objectives and claims to representation based on the asserted boundaries, working like an accordion to reorient the scale of interest and decision-making. They embody what Habermas observes as the ongoing negotiation between and within groups regarding the boundaries of “neighbourhood” or “community.”<sup>1155</sup>

Thus, local legal spaces are both geographic and participatory, both of which assert norms of inclusion and exclusion. Boundary lines have consequences. Participation is contingent on the legitimization of the geographic boundary, either because a councillor has determined their interest in considering a particular matter, or a BIA or neighbourhood association exists in a specific part of the city. The boundaries of the local legal spaces include multifarious and overlapping bodies, marking who is and is not included within literal lines, but also regarding participation, as residents are less able to access or influence decision-making based on the state or non-state body in question.

Second, as demonstrated in Chapter 3, BIAs and neighbourhood associations are more numerous and broader in their scope since the 1997 amalgamation. There appear to be

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<sup>1155</sup> Habermas, *supra* note 195.

significant differences between these bodies, especially from a legal perspective. BIAs are local boards of municipal government, with delegated powers, city assistance, and direct involvement of councillors. While neighbourhood associations have no formal connection to the City of Toronto, they have transformed since amalgamation from largely focused on planning to take on other functions, including stepping into local government provision of services. However, there are important similarities between these bodies: both have doubled in number since amalgamation, are unevenly scattered across the city, and are disproportionately situated in the city's most affluent areas. Their creation and involvement in local governance are perpetuated by the city councillor. Like the observations of Gerald Frug that neighbourhood-based governance can have significant implications on inclusivity, including the creation of the "other," the data collected in this chapter shows that BIAs and neighbourhood associations perpetuate decision-making that is disproportionately focused on the interests of certain residents to the exclusion of other voices.<sup>1156</sup>

BIAs and neighbourhood associations may conceal other "local" iterations or participants.<sup>1157</sup> In Chapter 4, the 2012-13 casino debate, BIAs, and neighbourhood associations were engaged and involved, but the crucial advocates were instead No Casino Toronto, which triggered a major local opposition to a downtown casino. In the ward boundary review case study outlined in Chapter 5, the consultants did not create wards based on other notions of "communities of interest" like neighbourhood improvement areas or demographic information, instead relying on stakeholders to come forward with that information. Other communities of interest may not be identified based on the absence of neighbourhood associations and BIAs in all parts of the City. Thus, the focus on BIAs and neighbourhood associations may leave wanting other local groups who have less access to ward councillors or the mechanics of city decision-making. While an expansive review of the other local bodies was beyond the scope of this

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<sup>1156</sup> Frug, *supra* note 7 at 1053.

<sup>1157</sup> Robert A. Dahl, *Who governs? Democracy and power in an American city* (New Haven: Yale University Press, 1961); Nelson W. Polsby, *Community Power and Political Theory* (Yale University Press, 1963); and Clarence N. Stone, *Regime Politics: Governing Atlanta 1946- 1988* (University Press of Kansas, 1989).

dissertation, a further study could focus specifically on such bodies, including the nature of their access to city decision-making.

Third, as explored in Chapter 6, this dissertation argues that principles drawn from Foster and Iaione's version of the urban commons have the potential for creating a more inclusive local governance. Minor changes to the city's governance structure could unsettle the power of the ward councillor and shifting the focus on participation from BIAs and neighbourhood associations to a broader public. Igor Vojnovic has concluded that community councils can be successfully used in the governance structures of amalgamated city governments.<sup>1158</sup> This reimagined view of local governance is contingent on broad participation and inclusivity, empowered to consider the "local" effects of "city-wide" issues, rather than distinguishing them. The power of the ward, coupled with the narrow scope of BIAs and neighbourhood associations, undermines the flourishing that Foster and Iaione assert. Redesigned local governance offers an opportunity to realize an accessible entry to decision-making that avoids both the singular discretion of councillors and the narrow interests of BIAs and neighbourhood associations. Fundamentally, this reimagination means experimenting with a governance model that includes a wider range of voices and disrupting existing practices of a councillor-focused model.

The principles underpinning this reimagined local governance model were sketched in Chapter 6. The City of Toronto has created a distinction between "local" and "city-wide" decision-making, with one route for each kind of decision. This dissertation queried this distinction in Chapters 3, 4 and 5, asking instead whether local issues may be city-wide, and vice versa. In the 2012-13 decision, the local issues were traffic, threats to local business, quality of life for nearby residents, and the effects on nearby vulnerable populations. In the 2015 decision, the local issue was the employment opportunities of residents.

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<sup>1158</sup> Igor Vojnovic, "Municipal Consolidation, Regional Planning and Fiscal Accountability: The Recent Experience in Two Maritime Provinces" (2000) 13:1 *Canadian Journal of Regional Science* 49.

This challenges the “local” versus “city-wide” distinction present in the city’s procedural bylaw, the basis of which determines what may be delegated to community councils for deliberation or decision-making. In Santos’ conception of scale, a large-scale map shows less land but far more detail (“a miniaturized version of reality”) and small-scale more land, showing relative positions, but ultimately less detail.<sup>1159</sup> The scales are a lens by which information is presented, whether the degree of detail or relative positions, a “zooming in.” Under Santos’ conception of scale, a ward or community council could be thought of in the context of large-scale law, where there is a zooming in on the localized area to study the effects on the community. “Local” issues may thus be “city-wide” issues, too. Transforming Jacobs’ notion that localized bodies fulfill the democratic ideal of representation that is closer to the community, suggesting separate, delegated powers, this framing instead suggests that smaller-than-city bodies can examine the localized effects of city-wide issues. A casino labelled “city-wide,” cannot be set aside from the local governance scale.

A next step would be to put these principles into practice, sketching out the legal model that would result in these reimagined community councils. This dissertation began with an example of a live issue in Toronto: the local impacts of the city-wide Scarborough subway project. The reimagined community councils, premised on the urban commons, would provide an opportunity to give residents a voice.<sup>1160</sup>

## **II. The limits of “local” literature**

In addition to practical implications of municipal governance, this dissertation illustrated some of the theoretical challenges of a review of the governance of local legal spaces. First, this dissertation revealed the need for more theoretical work, both diagnostic and normative, on the legal foundations of city governance tailored to the Canadian experience. An assertion raised in this project was the extent to which history matters, as illustrated in Chapter 3, whereby the city’s wards, community councils, and

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<sup>1159</sup> See e.g. Santos, *supra* note 12.

<sup>1160</sup> Jennifer Pagliaro, “Scarborough residents question why subway plan gives them just one new stop,” *Toronto Star* (10 May 2017).

neighbourhood associations continue to reflect the towns and villages that used to lie within its borders. Likewise, the dissertation demonstrated that provincial action – and especially the spelling out of community councils at the time of amalgamation – mattered in the development of the city’s local governance model.

However, much of the theory that seeks to explain local governance is drawn from American scholars. As argued in Chapter 1, the analysis from legal scholars Frug, Alexander, Schragger, and others focus on city governance from the perspective of American cities which have their legal histories of annexations and amalgamations, spatial inequality, and municipal responses unique to their jurisdictions. Moreover, relationships between cities and state governments differ than those of Canadian urban areas. These distinctions are relevant as applied to the structure of local governance in Canadian cities, whose legal models are constitutionally structured to allow for provincial determination and oversight over their affairs. In the American literature, regional governance is advanced as a model by which municipal power can be tempered, whereas in the Canadian case, regional governance is equally at the discretion of provincial governments. As such, the arguments of Young, Frug, and Ford that regional governments are the model by which “local” control can be dovetailed are less relevant in Canadian cities. It would be helpful to have further applications from the Canadian legal context to nudge and mold these theoretical frameworks.

Second, and related, the notion of subsidiarity as a tool for understanding local governance should be further explored. This dissertation only touched on the relevance of subsidiarity as a further model for understanding delegation. Just before COTA’s introduction, Levi and Valverde wrote on the impact of subsidiarity in advancing municipal authority in the Canadian context. As noted in Chapter 3, after a decade of case law affirming this principle favourably for municipal governments, recent lower court decisions have begun to decide differently, narrowing the scope of what might rightly be within their authority. Two possibility future applications include the extension of subsidiarity to smaller-than-city areas of the city, applying Frug’s notion of “neighbourhood constitutionalism” in the Canadian context and examining how

subsidiarity should be applied to particular municipal governance decisions, especially where councillors benefit from the existing model.<sup>1161</sup>

Third, this dissertation suggests further contributions to the emerging field of the urban commons, including how this theoretical framework may be used as a lens through which participatory governance can be normatively evaluated. Chapter 1 set out three rationales for the establishment of local governance bodies like community councils, including the retention of pre-amalgamation boundaries; the creation of government decision-making that is closer to the community; and a greater degree of efficiency in local governance, by allowing more delegation to local bodies. While each of these rationales are valid, I argue that recrafted community councils allow for local legal spaces that are molded by all residents, leading to a more inclusive, participatory governance framework.<sup>1162</sup> The urban commons is a notion with many definitions, although in the context of legal theory is very much in the early stages of theoretical analysis. One possible inquiry could be the development of a typology for the application of the urban commons to types of property ownership, for example the private ownership claims of BIAs. A further study could involve the establishment of principles that would underpin localized areas operating within the context of an urban commons, including how such areas differ in their governance models and how these models may be evaluated.

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<sup>1161</sup> Frug, *supra* note 7.

<sup>1162</sup> Nicholas Blomley, *Unsettling the city: Urban land and the politics of property* (Routledge, 2004) at 154; Bruun, *supra* note 249; and Foster & Iaione, *supra* note 44.

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## **Appendix A – List of Interviews**

Interview with members of No Casino Toronto, Toronto, Ontario, Canada (11 May 2015) – author conducted.

Anonymous interview with City of Toronto staff member #1, City Clerk's Office, Toronto, Ontario, Canada (18 December 2015) – author conducted.

Anonymous interview with City of Toronto staff member #2, Shelter, Support and Housing Administration Division Toronto, Ontario, Canada (2 February 2016) – author conducted.

Anonymous interview with City of Toronto staff member #3, City Manager's Office, Toronto, Ontario, Canada (17 February 2016) – author conducted.

Anonymous interview with City of Toronto staff member #4, City Manager's Office, Toronto, Ontario, Canada (7 May 2016) – author conducted.

Anonymous interview with City of Toronto staff member #5, City Planning, Toronto, Ontario, Canada (18 May 2016) – author conducted.

Anonymous interview with City of Toronto councillor #1, Toronto, Ontario, Canada (5 July 2016) – author conducted.

Anonymous interview with City of Toronto councillor #2, Toronto, Ontario, Canada (7 July 2016) – author conducted.

Anonymous interview with City of Toronto councillor #3, Toronto, Ontario, Canada (18 July 2016) – author conducted.

Anonymous interview with City of Toronto councillor #4, Toronto, Ontario, Canada (5 August 2016) – author conducted.

## Appendix B - Toronto's Business Improvement Areas

Name of BIA	# of Mem- bers	# of Cllrs	Ward	CC area	Yr Created	Before Amalga- mation	Blocks	Businesses	2015 Budget	Budget / Business	Admin	Marketing	Maintenance	Festivals	Total vs. Budget	Admin %	Marketing %	Maintenance %	Festivals %	Advocacy
Albion IslingtonSquare	12	1	1	Etobicoke	2006	FALSE	4	167	197,261	1,181	\$64,435	\$63,000	\$50,000	\$45,000	113%	33%	32%	25%	23%	
Baby Point Gates	9	1	13	Etobicoke	2010	FALSE	8	83	50,000	602	\$8,838	\$5,000	\$17,900	\$19,078	102%	18%	10%	36%	38%	
Bayview Leaside	9	2	22, 26	Mixed	2015	FALSE	3	170	190,033	1,118	\$64,497	\$47,250	\$33,000	\$35,000	95%	34%	25%	17%	18%	
Bloor By The Park	7	2	13, 14	Mixed	1987	TRUE	4	118	83,354	706	\$8,200	\$1,900	\$35,400	\$17,000	75%	10%	2%	42%	20%	
Bloor Street	5	1	27	TEY	2006	FALSE	7	89	1,650,000	18,539	\$7,000	\$10,000	\$30,000	\$62,700	7%	0%	1%	2%	4%	
Bloor West Village	9	1	13	Etobicoke	1970	TRUE	12	400	387,898	970	\$35,728	\$79,000	\$113,000	\$96,000	83%	9%	20%	29%	25%	
Bloor Yorkville	15	1	27	TEY	1985	TRUE	125	2,500	3,019,696	1,208	\$539,950	\$125,400	\$1,044,500	\$538,500	74%	18%	4%	35%	18%	
Bloor-Annex	8	1	20	TEY	1995	TRUE	7	109	239,892	2,201	\$37,283	\$21,882	\$49,846	\$20,800	54%	16%	9%	21%	9%	
Bloorcourt Village	14	2	18, 19	TEY	1979	TRUE	12	302	185,000	613	\$48,900		\$100,100		81%	26%	0%	54%	0%	
Bloordale Village	8	1	18	TEY	1976	TRUE	7	122	92,278	756	\$9,580	\$5,500	\$8,000	\$38,000	66%	10%	6%	9%	41%	
Cabbagetown	12	1	28	TEY	1982	TRUE	11	200	195,626	978	\$92,355	\$6,500	\$49,300	\$53,000	103%	47%	3%	25%	27%	
Chinatown	20	1	20	TEY	2007	FALSE	13	411	437,830	1,065	\$162,627	\$36,200	\$78,300	\$139,000	95%	37%	8%	18%	32%	
Church-Wellesley Village	17	1	27	TEY	2002	FALSE	6	125	242,008	1,936	\$85,424	\$30,000	\$65,293	\$109,000	120%	35%	12%	27%	45%	Pships
College Promenade	10	2	18, 19	TEY	2005	FALSE	7	100	151,153	1,512	\$5,694		\$7,000		8%	4%	0%	5%	0%	
College West	7	1	18	TEY	2013	FALSE	8	93	20,476	220	\$3,423	\$7,500	\$750	\$2,000	67%	17%	37%	4%	10%	
Corso Italia	10	1	17	Etobicoke	1984	TRUE	7	174	221,164	1,271	\$60,267	\$67,100	\$79,100	\$60,000	120%	27%	30%	36%	27%	
Crossroads of the Danforth	8	1	35	Scarborough	2008	FALSE	14	112	169,766	1,516	\$40,825	4,700	\$26,500	\$72,000	85%	24%	3%	16%	42%	
Danforth Mosaic	21	4	30, 31, 32	TEY	2008	FALSE	25	500	332,681	665	\$76,057	\$61,000	\$125,000	\$40,000	91%	23%	18%	38%	12%	
Danforth Village	9	2	31, 32	TEY	2006	FALSE	16	200	426,787	2,134	\$67,868	\$39,500	\$203,500	\$35,000	81%	16%	9%	48%	8%	
Dovercourt Village	8	2	18, 19	TEY	1984	TRUE	8	25	7,055	282	2,239	\$5,250	\$4,000	\$0	163%	32%	74%	57%	0%	
Downtown Yonge	13	2	27, 28	TEY	2001	FALSE	42	750	2,583,899	3,445	\$1,063,869	\$266,080	\$500,000	\$508,500	91%	41%	10%	19%	20%	
Dufferin-Wingold	11	1	15	North York	2015	FALSE		120	100,000	833	\$51,769	\$24,700	\$2,800	\$10,000	89%	52%	25%	3%	10%	
DuKe Heights	14	1	8	North York	2014	FALSE	70	1,321	1,159,368	878	\$290,535	\$107,000	\$260,000	\$0	57%	25%	9%	22%	0%	Y (mx)
Dundas West	9	1	18	TEY	2006	FALSE	10	166	207,624	1,251	\$63,672	\$10,800	\$99,300	44,500	105%	31%	5%	48%	21%	
Dupont by the Castle	7	3	20, 21, 22	TEY	2009	FALSE	20	60	84,108	1,402	\$25,294	\$2,160	\$6,236	\$3,700	44%	30%	3%	7%	4%	
Eglinton Hill	7	1	12	Etobicoke	1997	TRUE	5	81	26,123	323	\$9,877	\$3,650	\$5,250	\$6,500	97%	38%	14%	20%	25%	
Emery Village	13	1	7	Etobicoke	2003	FALSE	70	2,500	2,500,034	1,000	\$586,442	\$1,052,000	\$303,094	\$131,000	83%	23%	42%	12%	5%	
Fairbank Village	9	2	15, 17	Mixed	2007	FALSE	10	115	240,682	2,093	\$62,439	\$3,505	\$31,393	105,250	84%	26%	1%	13%	44%	
Financial District	12	2	20, 28	TEY	2013	FALSE	46	1200	1,543,714	1,286	\$386,116	\$562,803	\$105,250		68%	25%	36%	7%	0%	Y
Forest Hill Village	7	2	21, 22	TEY	1979	TRUE	9	68	195,859	2,880	\$55,678	\$38,500	\$36,500	\$31,500	83%	28%	20%	19%	16%	
Gerrard India Bazaar	13	2	30, 32	TEY	1981	TRUE	12	100	133,386	1,334	\$48,317	\$7,500	\$20,500	\$143,000	164%	36%	6%	15%	107%	
Greektown on the Danforth	15	2	29, 30	TEY	1972	TRUE	13	400	424,297	1,061	\$121,839	\$62,000	\$172,500	\$888,000	293%	29%	15%	41%	209%	
Harbord Street	6	1	20	TEY	1985	TRUE	8	49	34,739	709	\$2,872	\$6,530	\$12,300	\$4,800	76%	8%	19%	35%	14%	Pships
Hillcrest Village	12	1	21	TEY	1984	TRUE	7	100	96,088	961	\$24,805	\$10,500	\$13,400	\$46,500	99%	26%	11%	14%	48%	
Historic Queen East	16	1	28	TEY	2006	FALSE	20	159	0	0										
Junction Gardens	11	2	13, 14	Mixed	1973	TRUE	9	220	275,434	1,252	\$121,217	\$49,400	\$47,200	\$82,500	109%	44%	18%	17%	30%	
Kennedy Road	13	2	37, 40	Scarborough	1980	TRUE	10	300	255,816	853	\$27,627	\$37,500	\$129,500	\$0	76%	11%	15%	51%	0%	
Kensington Market	11	1	20	TEY	2009	FALSE	20	240	135,667	565	\$50,267	\$9,750	\$15,200	\$45,000	89%	37%	7%	11%	33%	
Korea Town	14	2	19, 20	TEY	2004	FALSE	9	148	93,283	630	\$26,389	\$8,732	\$33,482	\$40,000	116%	28%	9%	36%	43%	
Lakeshore Village	11	1	6	Etobicoke	1973	TRUE	11	150	98,446	656	\$14,457	\$7,700	\$45,600	\$26,700	96%	15%	8%	46%	27%	
Leslieville	12	2	30, 32	TEY	2013	FALSE	19	36	110,000	3,056	\$52,067	\$13,423	\$2,500	\$30,000	89%	47%	12%	2%	27%	

Name of BIA	# of Mem- bers	# of Cllrs	Ward	CC area	Yr Created	Before Amalga- mation	Blocks	Businesses	2015 Budget	Budget / Business	Admin	Marketing	Maintenanc e	Festivals	Total vs. Budget	Admin %	Marketing %	Maintenanc e %	Festivals %	Advocacy
Liberty Village	15	2	14, 19	TEY	2001	FALSE	28	500	291,658	583	\$169,145	\$50,000	\$53,500	\$60,000	114%	58%	17%	18%	21%	
Little Portugal	8	2	18, 19	TEY	2007	FALSE	6	132	54,500	413	\$22,822	\$2,000	\$11,500	\$41,950	144%	42%	4%	21%	77%	
Little Italy	12	1	19	TEY	1985	TRUE	14	178	379,928	2,134	\$55,000	\$42,000	\$52,000	\$234,000	101%	14%	11%	14%	62%	
Long Branch	15	1	6	Etobicoke	1987	TRUE	6	113	63,793	565	\$22,081	\$3,000	\$51,300	\$24,000	157%	35%	5%	80%	38%	
Midtown-Yonge	12	1	22	TEY	2015	FALSE	9	140	149,443	1,067	\$34,677	\$20,000	\$3,000	\$20,000	52%	23%	13%	2%	13%	
Mimico by the Lake	8	1	6	Etobicoke	1985	TRUE	10	51	53,842	1,056	\$18,711	\$8,462	\$14,000	\$8,000	91%	35%	16%	26%	15%	
Mimico Village	7	1	6	Etobicoke	1997	TRUE	6	39	32,420	831	\$2,528	\$7,900	\$3,035	\$15,000	88%	8%	24%	9%	46%	
Mirvish Village	9	2	19, 20	TEY	2005	FALSE	6	97	0	0	\$8,977	\$2,000	\$10,500	\$6,500						
Mount Dennis	7	1	11	Etobicoke	1974	TRUE	7	61	15,948	261	\$7,440	\$300	\$11,750	\$950	128%	47%	2%	74%	6%	
Mount Pleasant	10	1	22	TEY	2008	FALSE	7	200	157,512	788	\$58,507	\$25,100	\$44,500	\$35,000	104%	37%	16%	28%	22%	
Oakwood Village	8	2	15, 17	Mixed	2008	FALSE	9	106		0										
Ossington Avenue	11	1	19	TEY	2014	FALSE	4	126	54,012	429	\$4,627	\$13,475		\$30,000	89%	9%	25%	0%	56%	
Pape Village	6	1	29	TEY	1986	TRUE	4	80	88,700	1,109	\$18,757	\$500	\$22,300	\$40,750	93%	21%	1%	25%	46%	
Parkdale Village	12	1	14	TEY	1978	TRUE	11	340	237,159	698	\$111,353	\$10,500	\$91,906	\$48,330	111%	47%	4%	39%	20%	
Queen Street West	10	1	20	TEY	2008	FALSE	11	300	277,180	924	\$80,082	\$15,500	\$21,900	\$54,500	62%	29%	6%	8%	20%	
Regal Heights Village	10	1	17	Etobicoke	2000	FALSE	8	120	72,352	603	\$20,083	\$8,000	\$26,500	\$17,000	99%	28%	11%	37%	23%	
Riverside District	11	1	30	TEY	1980	TRUE	10	120	186,120	1,551	\$94,119	\$8,500	\$35,450	\$21,732	86%	51%	5%	19%	12%	Pships
Roncesvalles Village	10	1	14	TEY	1985	TRUE	16	270	235,529	872	\$55,582	\$7,500	\$64,950	\$276,100	172%	24%	3%	28%	117%	
Rosedale Main Street	13	2	22, 27	TEY	2000	FALSE	8	193	262,796	1,362	\$66,781	\$7,000	\$87,800	\$90,000	96%	25%	3%	33%	34%	
Sheppard East Village	10	2	41, 42	Scarborough	2007	FALSE	10	500	177,230	354	\$32,427	\$92,900	\$37,850	\$0	92%	18%	52%	21%	0%	
shopthequeensway.com	10	1	5	Etobicoke	2012	FALSE	27	300	125,000	417	\$28,477	\$1,000	\$12,000	\$25,000	53%	23%	1%	10%	20%	
St. Clair Gardens	9	1	17	Etobicoke	1985	TRUE	7	125	67,776	542	\$9,463	\$1,500	\$42,300	\$14,085	99%	14%	2%	62%	21%	
St. Lawrence Market Neigh	11	1	28	TEY	1994	TRUE	20	1200	1,014,120	845	\$246,067	\$103,000	\$231,000	\$150,000	72%	24%	10%	23%	15%	
The Beach	9	1	32	TEY	2004	FALSE	26	390	235,328	603	\$79,127	\$20,500	\$47,500	\$67,050	91%	34%	9%	20%	28%	
The Danforth	11	2	29, 30	TEY	1986	TRUE	8	350	297,539	850	\$109,477	\$37,500	\$85,828	\$104,500	113%	37%	13%	29%	35%	
The Eglinton Way	11	2	16, 22	Mixed	1987	TRUE	9	121	310,271	2,564	\$141,580	\$78,500	\$81,900	\$60,000	117%	46%	25%	26%	19%	Y (Mx)
The Kingsway	12	1	5	Etobicoke	1973	TRUE	6	250	346,190	1,385	\$79,622	\$21,200	\$80,500	\$305,900	141%	23%	6%	23%	88%	
The Waterfront	15	2	20, 28	TEY	2004	FALSE	9	255	704,100	2,761	\$330,827	\$102,000	\$20,500	\$255,000	101%	47%	14%	3%	36%	
Toronto Entertainment Dist	22	2	20, 28	TEY	2008	FALSE	156	1,800	2,079,199	1,155	\$429,211	\$537,300	\$360,331	\$46,700	66%	21%	26%	17%	2%	Y
Trinity Bellwoods	9	1	19	TEY	2007	FALSE	9	108	51,603	478	\$10,515	\$20,250		\$18,489	95%	20%	39%	0%	36%	Y
Upper Village	6	1	21	TEY	1983	TRUE	9	139	99,388	715	\$11,137	\$2,800	\$74,600	\$3,000	92%	11%	3%	75%	3%	Y (Mx)
Uptown Yonge	19	2	16, 25	North York	2005	FALSE	9	400	212,130	530	\$68,359	\$43,855	\$34,770	\$47,500	92%	32%	21%	16%	22%	
Village of Islington	7	1	5	Etobicoke	1986	TRUE	8	198	100,249	506	\$26,967	\$40,700	\$42,400	\$4,600	114%	27%	41%	42%	5%	
West Queen West	17	2	18, 19	TEY	2005	FALSE	20	400	308,303	771	\$87,095	\$19,800	\$135,000	\$19,100	85%	28%	6%	44%	6%	
Weston Village	6	1	11	Etobicoke	1979	TRUE	8	160	105,529	660	\$74,874	\$3,800	\$32,600	\$38,600	142%	71%	4%	31%	37%	
Wexford Heights	11	1	37	Scarborough	2004	FALSE	12	245	199,506	814	\$69,797	\$12,000	\$55,950	\$228,200	183%	35%	6%	28%	114%	
Wilson Village	16	1	9	North York	2013	FALSE	12	200	275,169	1,376	\$73,288	\$26,500	\$102,200	\$11,000	77%	27%	10%	37%	4%	
Wychwood Heights	9	1	21	TEY	2002	FALSE	8	124	75,377	608	\$21,675	\$34,200	\$27,030	\$6,500	119%	29%	45%	36%	9%	
Yonge-Lawrence Village	7	2	16, 25	North York	2000	FALSE	12	314	201,927	643	\$72,327	\$42,950	\$53,000	\$30,700	99%	36%	21%	26%	15%	
York-Eglinton	8	1	15	North York	1981	TRUE	7	200	257,492	1,287	\$129,427	\$20,000	\$31,000	\$109,500	113%	50%	8%	12%	43%	

Key: # - number; Cllrs – councillors; CC - community council; Yr – year; % - percentage

Sources: City of Toronto. Business Improvement Areas (2017); Original research (Alexandra Flynn).

## **Appendix C - Toronto's Neighbourhood Associations**

ABC Residents Association (ABC)  
5 Greencrest Circuit/70 Stevenvale Road  
Aberdeen Avenue Residents Group  
Active18  
Annex Residents' Association  
Ashdale Village Residents Association  
Atkinson Housing Co-op/Alexandra Park Residents' Association  
Avenue Road - Eglinton Community Association (ARECA)  
Avondale Community Condominium Association  
Balmy Beach Residents Association  
Bathurst Finch Network  
Bathurst Quay Neighbourhood Association  
Bay Cloverhill Community Association  
Bayview Cummer Neighbourhood Association  
Bayview Village Association (BVA)  
Beach Hill Neighbourhood Association  
Beach Lakefront Neighbourhood Association  
Beaconsfield Village Residents' Association  
Bedford Park Residents Association  
Bedford-Wanless Ratepayers Association  
Bloor Street East Neighbourhood  
Bloor West Village Residents Association  
Bloordale CIA  
Brockton Triangle Neighbours  
Cabbagetown South Resident's Association  
Carleton-Davenport Village Residents Association  
Casa Loma Residents Association  
Castle Hill Neighbourhood Association  
Centennial Community and Recreation Association  
Christie Pits Residents' Association  
Church Wellesley Neighbourhood Association  
CityPlace Residents' Association  
College–Ossington–Dufferin–Argyle  
Collier Asquith Neighbourhood Association  
Concerned Citizens of Quarry Lands Development  
Connaught/Lonsmount Area Ratepayers Association (CLARA)  
Corktown Residents [and Business?] Association  
Coronation Community of West Hill  
Cottingham Square Community Association

Curran Hall Community Association  
Danforth East Community Association (DECA)  
Davenport Neighbourhood Association (DNA)  
Deer Park Residents Group Inc.  
DIGIN  
Don Mills Residents Inc.  
Don Vale Cabbagetown Residents Association  
Don Valley East Residents Association  
Dovercourt College Residents' Association  
Dovercourt Park Community Association  
Downsview Lands Community  
Dufferin Grove Residents' Association  
East Beach Community Association  
East Rouge Old Lansing Community Association  
Edithvale-Yonge Community Association  
Edwards Gardens Neighbourhood Association  
Eglinton Park Residents Association  
Fifeshire Road Area Community Association  
Forest Hill Homeowners Association  
Fort York Neighbourhood Association  
Friends of Kensington Market  
Garden District Residents Association  
Garment District Neighbourhood Association  
Gerrard East Community Organization  
Glen Agar Residents Association  
Glen Andrew Community Association  
Glenorchy Residents Association  
Gooderham & Worts Neighbourhood Association  
Governors Bridge Ratepayers Association  
Grange Community Association  
Greater Yorkville Residents' Association  
Greenwood Community Association  
Guildwood Village Community Association (GVCA)  
Harbord Village Residents' Association  
Heathwood Ratepayers Association  
Henry Farm Community Interest Association  
Highland Creek Community Association  
High Park Residents Association  
Hillcrest Ratepayers Association  
Homewood Avenue Neighbourhood Association

Humber Bay Shores Condominium Association  
Humber Valley Village Residents' Association  
Huron-Sussex Residents Organization  
Islington Ratepayers and Residents Association  
Junction Residents Association  
Kensington Market Action Committee  
Kensington Residents Association  
King Spadina Residents Association (possibly succeeded by TEDRA)  
King West Residents Association  
Kingsway Park Ratepayers Inc.  
Lansing Community Association  
Lawrence Park Ratepayers Association  
Leaside Property Owners' Association (LPOA)  
Liberty Village Residents Association  
Long Branch Residents Association  
Lytton Park Residents' Organization (LPRO)  
Malvern Community Coalition  
Markland Wood - Markland Homes Association (MHA)  
Maryvale Community Association  
McGill-Granby Village Residents' Association  
Midland Park Community Association  
Mimico Residents Association  
Moore Park Residents Association  
Morningside Heights Residents Association  
Mount Dennis Community Association  
Mulock Avenue Residents' Association  
New Toronto Good Neighbours  
Niagara Neighbourhood Now  
North Bendale Community Association  
North Rosedale Ratepayer's Association (NRRA)  
Northcliffe Village Residents' Association  
Norwood Park Neighbourhood Association  
Oakwood Village Community Association (5 Points Community Action)  
Old Mill Community Association  
Old Millside Residents' Association  
Old Orchard Grove Ratepayers Association  
Oriole Park Association  
Ossington Community Association  
Palmerston Area Residents Association  
Parkdale Residents Association

Parkview Hills Community Association  
Parkway Forest Community Association  
Playter Area Residents' Association  
Queen-Beaconsfield Residents' Association  
Queen Street West Residents Association  
Queensway Residents' Association  
Rathnelly Area Residents Association  
Regal Heights Residents' Association  
Regent Park Network  
Residents Rising Community Association  
Richmond Gardens Ratepayers and Residents Association  
Ritchie–Herman–Golden–Silver  
Rockcliffe Smythe Community Association  
Roncesvalles-Macdonell Residents' Association (RMRA)  
Scarborough Village Neighbourhood Association  
Seaton Village Residents' Association  
Sheppard-Leslie Homeowners Association (SLHA)  
Sherwood Park Residents Association  
Silverview Community Association (SCA)  
South Armour Heights Residents Association  
South Corso Italia Neighbourhood Association  
South Eglinton Ratepayers' and Residents' Association (SERRA)  
South Perth and Sterling Road Residents Association  
South Rosedale Ratepayers' Association (SRRA)  
St Clair West Village Residents' Association  
St. Andrews Ratepayers Association  
St. Jamestown Network  
St. Lawrence Neighbourhood Association  
Summerhill Residents Association  
Sunnyside Community Association  
Swansea Area Ratepayer's Association (SARA)  
Teddington Park Residents Association  
The Beach Triangle Residents Association  
The Crescent Town Tenants Association  
The Goldhawk Community Association  
The Kew Beach Neighbourhood Association  
The Pocket  
The West Kingsway Ratepayers' Association  
Thorncrest Homes Association Inc.  
Toronto Beach East Residents' Association

Toronto Entertainment District Residents' Association (TEDRA)  
 Toronto Harbourfront Community Association  
 Toronto Islands Community Association  
 Trefann Court Residents Association  
 Trinity Bellwoods Community Organization  
 Upper Jarvis Neighbourhood Association  
 Upper Middle Gainsborough Residents' Association  
 Uptown Yonge Neighbourhood Alliance  
 Victoria Village Ratepayers Association  
 Village at York Residents Association  
 Wellington Place Neighbourhood Association  
 West Bend Community Association  
 West Lansing Homeowners Associations  
 West Rouge Community Association WRCA  
 Weston Village Residents' Association  
 Willowdale N.E. Neighbourhood Association  
 Winchester Park Resident Association  
 Woodbine Park Residents' Association  
 Yonge Corridor Condominium Association  
 Yonge Ridge Homeowners Association  
 York Mills Gardens Community Association  
 York Mills Heights Residents Association  
 York Mills Valley Association  
 York Quay Neighbourhood Association

Sources: Topping, David. "Toronto Residents' Associations & Neighbourhood Groups Map" (2015);  
 Federation of North Toronto Residents Associations, "Member Associations" (2016) FONTRA;  
 Confederation of Resident & Ratepayer Associations in Toronto, "MM7.1 Request to Protect 250 year old  
 Red Oak Tree at 76 Coral Gable Drive City Council Meeting No. 7: June 10, 2015" (2015) CORRA;  
 Federation of Urban Neighbourhoods (Ontario), "Members and Their Affiliates By Municipality" (2016).



## Appendix D - Data on Neighbourhood Associations

Name	Origin	Before Amalgamation	Incorporated	Residents	Fee	Planning and land use	Community	Social programs	Traffic	Environment	Information	Advocacy	Safety	Economic	Priority Area	Coop/Condo
Huron-Sussex Residents Organization	1968	Y	Y	Y	Y	Y										
Junction Residents Association	1999				Y	Y				Y		Y	Y			
Kensington Market Action Committee	1997	Y		Y		Y	Y					Y				
Lawrence Park Ratepayers Association	1956	Y		Y	Y	Y	Y			Y		Y				
Leaside Property Owners' Association LPOA	1950	Y		Y	Y	Y			Y			Y				
Long Branch Residents Association	2015			Y		Y	Y									
Lytton Park Residents' Organization LPRO	1970	Y	Y	Y	Y	Y										
Markland Wood - Markland Homes Association	1962	Y	Y		Y		Y									
McGill-Granby Village Residents' Association	1978	Y	Y	Y	Y	Y										
Mimico Residents Association	2005		Y		Y	Y	Y			Y	Y	Y	Y	Y		
Mount Dennis Community Association	1975	Y	Y			Y	Y								Y	
North Bendale Community Association	1961	Y	Y	Y		Y	Y				Y					
North Rosedale Ratepayer's Association	1949	Y	Y	Y	Y	Y	Y			Y		Y	Y	Y		
Northcliffe Village Residents' Association	2008			Y	Y	Y	Y					Y				
Norwood Park Neighbourhood Association	2007									Y		Y	Y			
Oakwood Village Community Association	2005			Y		Y	Y						Y	Y		
Old Orchard Grove Ratepayers Association	1985	Y	Y		Y	Y	Y				Y	Y				
Oriole Park Association	1954	Y	Y	Y	Y	Y	Y									
Ossington Community Association	2012		Y			Y	Y				Y	Y				
Palmerston Area Residents Association	1985	Y		Y		Y					Y	Y				
Parkdale Residents Association	2005				Y	Y	Y					Y				
Playter Area Residents' Association	1972	Y														
Queen-Beaconsfield Residents' Association	2005					Y										
Rathnelly Area Residents Association	1963	Y	Y	Y	Y		Y					Y		Y		
Roncesvalles-Macdonell Residents' Association	1973	Y	Y			Y										
Sheppard-Leslie Homeowners Association	2004					Y										
Silview Community Association SCA	1974	Y	Y	Y	Y	Y						Y		Y		
South Armour Heights Residents Association	1988	Y	Y			Y	Y				Y	Y				
South Corso Italia Neighbourhood Association	2009					Y	Y									
South Eglinton Ratepayers' and Residents' Association	1065	Y	Y	Y	Y	Y						Y		Y		
South Rosedale Ratepayers' Association	1931	Y	Y	Y	Y	Y				Y		Y	Y	Y		
St. Andrews Ratepayers Association	1988	Y	Y	Y	Y	Y						Y				
Swansea Area Ratepayer's Association - SWANA	1929	Y		Y	Y	Y										
The Beach Triangle Residents Association	1985	Y		Y		Y										
The Pocket	2012					Y	Y					Y				
The West Kingsway Ratepayers' Association	1950	Y	Y	Y		Y						Y				
Thorncrest Homes Association Inc.	1975	Y				Y	Y									Y
Toronto Beach East Residents' Association	2008		Y	Y		Y						Y				
Toronto Islands Community Association	2005			Y		Y						Y				
Trefann Court Residents Association	2008					Y				Y		Y	Y			
Uptown Yonge Neighbourhood Alliance	2013				Y	Y	Y					Y		Y		
Victoria Village Ratepayers Association	1960	Y		Y		Y					Y	Y				
West Bend Community Association	1990	Y		Y	Y	Y						Y				
West Rouge Community Association WRCA	1983	Y			Y	Y						Y				
Willowdale N.E. Neighbourhood Association	2008		Y	Y	Y	Y										
Winchester Park Resident Association (see also 1975)	1975	Y		Y		Y						Y		Y		
Yonge Corridor Condominium Association	2000		Y	Y	Y	Y			Y			Y				Y
York Mills Gardens Community Association	1975	Y	Y		Y	Y						Y				
York Quay Neighbourhood Association	2003		Y	Y		Y					Y	Y				

Name	Origin	Before Amalgamation	Incorporated	Residents	Fee	Planning and land use	Community	Social programs	Traffic	Environment	Information	Advocacy	Safety	Economic	Priority Areas	Coop/Condo
ABC Residents Association ABC	1957	Y	Y	Y		Y			Y							
Balmy Beach Residents Association	2004				Y	Y			Y							
Bathurst Finch Network	2009			Y	Y		Y	Y			Y				Y	
Bathurst Quay Neighbourhood Association	2000		Y	Y	Y		Y				Y	Y				
Bay Cloverhill Community Association	1995	Y	Y	Y			Y									Y
Bayview Cummer Neighbourhood Association	1978	Y	Y		Y	Y										
Bayview Village Association BVA	1956	Y	Y	Y	Y	Y	Y									
Beach Hill Neighbourhood Association - H	2012				Y		Y				Y					
Beach Lakefront Neighbourhood Association	2007		Y			Y										
Bedford-Wanless Ratepayers Association	2011		Y	Y	Y	Y				Y		Y	Y			
Bloor Street East Neighbourhood	2002		Y	Y		Y	Y									
Bloor West Village Residents Association	2005		Y	Y	Y	Y					Y	Y	Y			
Bloordale CIA	2013					Y				Y	Y					
Brockton Triangle Residents Association	2006										Y					
Cabbagetown South Resident's Association	2002					Y				Y			Y			
Casa Loma Residents Association	2009		Y		Y	Y										
Castle Hill Neighbourhood Association	1990	Y	Y	Y	Y	Y										Y
Centennial Community and Recreation Association	1949	Y	Y	Y	Y	Y					Y					
Christie Pits Residents' Association	2012						Y	Y					Y			
Church Wellesley Neighbourhood Association	2011		Y		Y	Y			Y		Y	Y	Y			
College-Ossington-Dufferin-Argyle	2011										Y					
Concerned Citizens of Quarry Lands Development	2003		Y		Y	Y				Y						
Connaught / Lonsmount Area Ratepayers Association	1998		Y		Y	Y										
Corktown Residents [and Business?] Association	1975	Y	Y	Y		Y					Y					
Coronation Community of West Hill	2005			Y	Y	Y						Y	Y			
Danforth East Community Association - Danforth	2007		Y	Y	Y	Y					Y					
Davenport Neighbourhood Association Danforth	2007					Y	Y			Y						
Deer Park Residents Group Inc.	2008		Y	Y		Y			Y							
DIGIN	2002					Y	Y			Y	Y					
Don Vale Cabbagetown Residents Association	1975	Y	Y		Y						Y	Y				
Dovercourt College Residents' Association	2015		Y	Y	Y											
Dovercourt Park Community Association	2013						Y									
Downsview Lands Community	1995	Y	Y		Y	Y	Y				Y					
Edwards Gardens Neighbourhood Association	2005		Y		Y	Y	Y	Y			Y	Y	Y			
Eglinton Park Residents Association	2007			Y	Y	Y						Y				
Forest Hill Homeowners Association	1947	Y	Y	Y	Y	Y						Y				
Fort York Neighbourhood Association	2012			Y			Y									
Friends of Kensington Market	2013		Y			Y					Y					
Garden District Residents Association	1989	Y				Y						Y	Y			
Garment District Neighbourhood Association	2015					Y	Y				Y	Y				
Glen Agar Residents Association	2014		Y		Y	Y										
Glen Andrew Community Association	1960s			Y	Y		Y					Y				
Gooderham & Worts Neighbourhood Association	2001		Y		Y	Y				Y	Y	Y				
Governors Bridge Ratepayers Association	1980	Y		Y	Y	Y										
Grange Community Association	2008				Y	Y	Y					Y				
Greater Yorkville Residents' Association	1990	Y		Y		Y					Y	Y				Y
Guildwood Village Community Association	1958	Y	Y	Y	Y	Y	Y					Y				
Harbord Village Residents' Association	1999					Y	Y			Y	Y	Y				
Heathwood Ratepayers Association	1985	Y		Y	Y		Y					Y				
Henry Farm Community Interest Association	1978	Y		Y	Y	Y	Y			Y	Y					
Humber Bay Shores Condominium Association	1997	Y	Y			Y			Y	Y						

Sources: Topping, David. "Toronto Residents' Associations & Neighbourhood Groups Map" (2015); Federation of North Toronto Residents Associations, "Member Associations" (2016) FONTRA; Confederation of Resident & Ratepayer Associations in Toronto, "MM7.1 Request to Protect 250 year old Red Oak Tree at 76 Coral Gable Drive City Council Meeting No. 7: June 10, 2015" (2015) CORRA; Federation of Urban Neighbourhoods (Ontario), "Members and Their Affiliates By Municipality" (2016); Original research (Alexandra Flynn).

### Appendix E - Comparison of ward/electoral boundary approaches of other municipalities

<b>Municipality</b>	<b>Population</b>	<b>Councillors</b>	<b>Average ward pop.</b>	<b>Last review</b>	<b>Consultant /commission?</b>	<b>Final ward decision-maker</b>
Ottawa, ON	883,391	23	38,408	2005	Yes	City Council*
London, ON	366,150	14	26,154	2005 (as of 2011, required every term of council)	No	City Council*
Mississauga, ON	713,443	11	64,858	2005	No	City Council*
Halifax, NS	390,095	16	24,395	2014 (required every 8 years)	No	Nova Scotia Utility and Review Board
Winnipeg, MB	663,617	15	44,421	2009 (required every 10 years)	Information unavailable	City Council*
Regina, SK	193,100	10	19,310	2014 (required at least every 3 election cycles)	Independent commission	Independent commission
Edmonton, AB	812,201	12	67,683	2016	No	City Council
Calgary, AB	1,096,833	14	78,345	2016	Ward Boundary Commission	City Council
Vancouver, BC	603,500	10	Councillors elected at large	N/A	N/A	N/A
New York, USA	8,406,000	5 borough presidents; 51 councillors	164,824	2013 (required every 10 years)	Independent commission	United States Department of Justice
Chicago, USA	2,719,000	50 aldermen	54,380	2012 (required every 10 years)	No	City Council
Los Angeles, USA	3,884,000	15 councillors	252,847	2011 (required every 10 years)	Independent commission	City Council

\* Ward decisions made by City Council may be appealed to a quasi-judicial municipal board.

Source: Alexandra Flynn, “(Re)creating Boundary Lines: Assessing Toronto’s Ward Boundary Review Process” (2017) 32 IMFG Papers on Municipal Finance and Governance 1 at 12.