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Reimagining Toronto's Community Councils

ALEXANDRA FLYNN*

Cet article étudie les conseils communautaires de Toronto, une création post-fusion visant à atténuer les effets d'une ville devenue beaucoup plus grande. En utilisant une approche méthodologique mixte pour comprendre leur rôle et leur fonction, cet article démontre que les conseils communautaires se concentrent fortement sur les questions d'aménagement local et d'utilisation des terres. Cependant, en vertu du droit applicable, les conseils communautaires de Toronto peuvent augmenter leur pouvoir délégué de prise de décision de façon à jouer un plus grand rôle de gérance relativement à certaines affaires préoccupantes des voisinages de la ville, telles que les effets « locaux » de questions qui surviennent « à l'échelle de la ville », et de façon à donner un rôle décisionnel aux membres non conseillers. Cet article avance que la ville de Toronto devrait revoir le concept de conseil communautaire pour que ces conseils puissent jouer un plus grand rôle dans le modèle de gouvernance de la ville, ce qui leur donnerait un rôle semblable aux organismes similaires d'autres villes de l'Amérique du Nord et ce qui créerait un gouvernement municipal plus accessible et participatif.

This article examines Toronto's community councils, a post-amalgamation creation meant to buffer the effects of a much larger city. Using a mixed methodology approach to understand their role and function, this paper finds that community councils largely focus on local planning and land use issues. However, under applicable law, Toronto's community councils have the capacity to increase their delegated and decision-making power to serve a greater stewardship role in matters of concern to the city's neighbourhoods, such as the "local" effects of "city-wide" issues, and to include non-councillor members as decision-makers. This paper argues that the City of Toronto should reimagine the design of community councils so that they may serve a stronger role in the city's governance model, bringing them in line with similar bodies in other North American cities and fostering a more accessible and participatory municipal government.

IN 1997, THE PROVINCE OF ONTARIO amalgamated six municipalities and one regional municipality to form the current boundaries of the City of Toronto. At the eleventh hour, to pacify residents' concerns that the amalgamated city would be less accessible, the enabling legislation provided for the creation of "community councils." Their boundaries were based on those of the pre-amalgamated municipalities, but their role and function were to be designed by the new city. As designed, community councils were meant to make decisions on issues such as local planning, on-street permit parking, and traffic calming, but neither on matters affecting more than one community council nor on matters determined to have "city-wide" significance.¹ Since their inception, City Council has tinkered only slightly with the model, reducing the

* Assistant Professor, Human Geography & City Studies, University of Toronto (Scarborough). Many thanks to Don Leffers for his thoughtful comments on an earlier draft, as well as to the meticulous editors of the *Journal of Law and Social Policy*. All errors and omissions are my own.

¹ City of Toronto, by-law No 27, *Council Procedures* (27 September 2006).

number of community councils from six to four, but has otherwise not significantly re-considered their stewardship role, structure, or delegated authority.

Almost twenty years post-amalgamation, the time is now ripe for a re-imagining of community councils in Toronto's local governance model. Toronto is North America's fourth-largest city with a vast scope of responsibility that has only increased following its amalgamation. Toronto's expanded powers are partially due to a richer set of responsibilities delegated to the city from the provincial government. Notably, these powers are also due to a philosophical shift in the role of large cities towards them being considered key players in the global economy and in matters beyond their formal jurisdictions.² At the same time, cities are comprised of neighbourhoods that have their own histories and practices, and residents who claim a place within the city's governance model. One way that other large cities have reacted to the complexity of interests within their boundaries is to create governance bodies, including community councils, that operate at a smaller scale than the city level and offer a forum to capture these local voices.

This paper sets out the legal history and mandate of Toronto's community councils, analyses their function under existing law, and assesses whether they can and should be reimagined. In carrying out this objective, the paper is divided into three sections. First, this paper reviews the academic literature on community councils, addressing the rationales for such bodies at the municipal level. The second section contextualizes these theoretical arguments with an overview of Toronto's community councils, setting out their history, function, and powers. As noted by scholars such as Ester Fuchs and Hoi Kong, law is critical to understanding how cities work through the design of their governance models.³ This section expands on the burgeoning literature on Canadian municipal law by detailing how community councils fit into the city's legal framework, including details of a recent move by one community council to leverage a little-used provision of the city's procedural by-law in order to expand its role in deliberating on the local effects of city-wide decisions. The third section concludes that applicable law permits Toronto's community councils to have a far more expansive role in local governance.

As Nicholas Blomley notes, the way in which laws are described by governments do not assist us in fully understanding the legal space in operation.⁴ To better understand the role and function of Toronto's local governance model, this paper goes beyond an examination of statutes, case law, and policy to include semi-structured interviews with senior staff members and councillors at the City of Toronto directly involved in community council creation, oversight, and decision-making. I also include an analysis of the types of decisions made by community councils over a calendar year.

Ultimately, I argue that the City of Toronto should consider the use of these local bodies as forums to foster participatory democracy at a greater scale, as has been done in other large cities. However, Toronto would need to confront its questionable demarcation of what is a "local" versus "city-wide" matter as the basis for community council authority, both legally and theoretically.

² Saskia Sassen, *Cities in a World Economy*, 4th ed (Thousand Oaks: Pine Forge Press, 2012).

³ Ester Fuchs, "Governing the Twenty-First Century City" (2012) 65:2 *J Intl Affairs* 43 at 45; Hoi Kong, "Toward a Federal Legal Theory of the City" (2012) 56:3 *McGill LJ* 473.

⁴ 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: <ssrn.com/abstract=2165083> [perma.cc/Z696-CBQ5].

I. AN OVERVIEW OF COMMUNITY COUNCILS: WHAT ARE THEY AND WHAT IS THEIR PURPOSE?

Under section 132 of the *City of Toronto Act, 2006* (COTA), “[t]he powers of the City shall be exercised by city council.”⁵ As in other Ontario municipalities, Toronto’s highest political unit is City Council, which includes 44 councillors and a mayor, and is responsible for determining policies, administration, and services.⁶ In addition, a city may also include other committees or entities within their governance models. Known by many names, including “community committees” or “borough councils,” community councils generally have a mandated set of responsibilities over a particular set of issues and represent a particular geographic area with a smaller-than-city space. Wards divide the city into electoral districts, each with a single elected official acting as a representative of the area’s residents. A community council may govern a larger or smaller physical area than wards and may even have conflicting physical boundaries. The creation and maintenance of community councils are premised on three rationales: the importance of local autonomy or “subsidiarity;” the desirability of civic engagement and participation; and the utilitarian need for further delegation at the municipal level.⁷

A. CIVIC ENGAGEMENT AND PARTICIPATION

Local institutions like community councils, as argued by Enid Slack and Richard Bird, allow large single-tier cities to have greater public access and accountability to residents.⁸ Access to municipal government is scaled to a smaller level than city council, allowing constituents to have their issues heard and feel that they have some agency over their interests.⁹ This argument may be particularly compelling for large urban centres on the basis that more populous and geographically widespread cities necessitate localized governance bodies in addition to a single city council in order to adequately consider the diverse range of needs or interests. In this context, community councils are a representative forum that rests between the ward and city council. It may also matter in the case of amalgamated cities with historical municipalities, boundaries, and cultures that were meaningful to residents wishing to maintain some degree of continuity.

Community councils may fulfill the democratic ideal of representation that is grounded in the community. In the 1950s, Jane Jacobs passionately advocated the importance of neighbourhoods in the built form and in the decision-making of urban areas. Her position was that local decision-making was more legitimately democratic and connected to the interests and desires of those within neighbourhoods. The fundamental question is the degree to which residents should have a role to play in the policies that affect them. In their seminal study on whether neighbourhood associations encourage more political participation, Berry, Portney, and

⁵ *City of Toronto Act, 2006* SO 2006, c 11, Sched A [*City of Toronto Act*]

⁶ *Ibid* at s 131.

⁷ But see Zachary Spicer, “A Patchwork of Participation: Stewardship, Delegation and 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 [Spicer].

⁸ Enid Slack & Richard Bird, “Does Municipal Amalgamation Strengthen the Financial Viability of Local Government? A Canadian Example” (2013) International Center for Public Policy Working Paper No 13-05.

⁹ Lionel D Feldman, Katherine Athol Graham & Susan D Phillips, *Governance Structures for the New City of Toronto* (Toronto: Toronto Transition Team, 23 September 1997).

Thomson argue that “the key to making America more participatory is maybe making political participation more meaningful in the context of the communities that people live in.”¹⁰ 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. Chemerinsky and Kleiner have argued the benefits of local councils, identifying the unique positioning that has allowed historically marginalized residents to engage in the political life of the city.¹¹ Fagotto and Fung have concluded that such bodies permit increased neighbourhood capacity for collective action and neighbourhood development.¹²

Many critics of this argument have focused on the uneven participation of residents. Gerald Frug and Robert Ellickson recognize that there are implications for those not included within neighbourhoods, which at its most extreme can create the “other,” or classes of “undesirable” people who neighbourhood decision-makers seek to exclude through policy.¹³ In advancing the argument that a stronger role for localized decision-making will enhance participatory democracy, the design, membership, and authorities of local bodies must be carefully considered by a broad range of stakeholders. Additionally, these local bodies must be regularly reviewed to ensure that they advance inclusion and meaningful participation.¹⁴

Critics have also commented on the challenges that come with the carving out of localized jurisdictions. Boundary lines are often tied to political objectives, and the creation of communities is subjective. 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.”¹⁵ These boundaries have consequences, especially if they result in institutions with decision-making power. Richard Ford notes that “the work that jurisdiction does is left largely unquestioned,” meaning that once jurisdictions are created, institutions and legal orders take on a life of their own.¹⁶ Fundamentally, this means there is no single set of boundary lines that necessarily make sense over others, but once drawn, these lines have real consequences.

Thus, even if the localized level allows for greater participation and engagement, this reorientation of political power must be balanced with a careful awareness of the possible exclusion of more vulnerable populations, as well as the politicized process of determining boundary lines.

B. THE PRINCIPLE OF SUBSIDIARITY

The local scale deserves protection based on legal principles. The principle of subsidiarity means, “the smallest possible social or political entities should have all the rights and powers they need

¹⁰ Jeffrey M Berry, Kent E Portney & Ken Thomson, *The Rebirth of Urban Democracy* (Washington, DC: Brookings Institution Press, 1993) at 4.

¹¹ Erwin Chemerinsky & Sam Kleiner, “Federalism from the Neighborhood Up: Los Angeles’s Neighborhood Councils, Minority Representation, and Democratic Legitimacy” (2013) 32:2 *Yale L & Policy Rev* 569 [Chemerinsky & Kleiner].

¹² Elena Fagotto & Archon Fung, “Empowered Participation in Urban Governance: The Minneapolis Neighborhood Revitalization Program” (2006) 30:3 *Intl J of Urban & Regional Research* 638.

¹³ Jerry Frug, “The Geography of Community” (1996) 48:5 *Stan L Rev* 1047.

¹⁴ Archon Fung, “Varieties of Participation in Complex Governance” (2006) 66:1 *Public Administration Rev* 66.

¹⁵ Richard Schragger, “The Limits of Localis” (2001) 100:2 *Mich L Rev* 371 at 462 [Schragger].

¹⁶ Richard T Ford, “Law’s Territory (A History of Jurisdiction)” (1999) 97:4 *Mich L Rev* 843.

to regulate their own affairs freely and effectively.”¹⁷ From a legal perspective, the idea of a more scaled forum is connected to the principle of subsidiarity, which provides that government powers should always reside at the lowest level possible.¹⁸ The roots of the term “subsidiarity” trace back to philosopher Thomas Aquinas, and invite fundamental questions about the relationship between political power and civil society.¹⁹ Subsidiarity can be conceived negatively, where the larger entity must not intervene when the smaller can manage its affairs on its own, or alternatively, positively, requiring that a larger entity must give powers to accomplish goals.²⁰ Subsidiarity is a dynamic rather than rigid principle, offering “a degree of flexibility to governance by striking a balance between respect for the diverse entities present and a level of state cohesion.”²¹ The dynamic, flexible nature of subsidiarity means that it cannot prescribe specific normative outcomes. As Alain Delcamp states, “[i]t is evident that the notion of subsidiarity is unfocused and cannot itself, except with great difficulty, generate legal effects.”²²

In Canada, the principle of subsidiarity has resulted in judicial deference to municipal decision-making. Municipalities are not a constitutionally recognized form of government.²³ Their authority emanates from provincial statutes.²⁴ Despite the fact that subsidiarity is entirely absent from the Constitution itself, the Supreme Court of Canada 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.²⁵ In the 2001 *Spraytech* decision, the Supreme Court considered the constitutionality of a municipal by-law that restricted the use of pesticides, a power that fell outside of the city’s authority. Justice L’Heureux-Dubé, writing for the majority, stated, “[t]he 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.”²⁶ The court ruled that matters related to the environment are not exclusive to any particular level of government, but instead require the intervention of all, thus permitting the by-law to stand.

Subsidiarity in the Canadian sense acts as a flexible legal principle that endorses the involvement of multiple scales in decision-making. This approach to subsidiarity differs from that of American scholar Gerald Frug, who argues, based on the subsidiarity rationale, that smaller bounded jurisdictions—such as neighbourhoods—have a right to exclusively govern themselves.²⁷ The Canadian notion has echoes in the work of legal pluralist Boaventura de Sousa Santos, who looks more broadly at the question of scale to ask how much one focuses in or out

¹⁷ Eugénie Brouillet, “Canadian Federalism and the Principle of Subsidiarity: Should We Open Pandora’s Box?” (2011) 54 SCLR: Osgoode’s Annual Constitution Cases Conference 601 at 605 [Brouillet].

¹⁸ Yishai Blank, “Federalism, Subsidiarity, and the Role of Local Governments in an Age of Global Multilevel Governance” (2009) 37:2 Fordham Urb L J 510 at 533.

¹⁹ Brouillet, *supra* note 17 at 604.

²⁰ *Ibid* at 604.

²¹ *Ibid* at 606.

²² Alain Delcamp, “Principe de subsidiarité et décentralisation” (1993) 23 Rev Fr Dr Constl 609 at 623, translated in Brouillet, *supra* note 17 at 611.

²³ *Constitution Act, 1867 (UK)*, 30 & 31 Vict, c 3, s 92(8) reprinted in RSC 1985, Appendix II, No 5.

²⁴ *Ibid*.

²⁵ *Canada Ltée (Spraytech, Société d’arrosage) v Hudson (Town)*, 2001 SCC 40 [*Spraytech*].

²⁶ *Ibid* at para 3.

²⁷ Jerry Frug, “Decentering Decentralization” (1993) 60:2 U Chicago L Rev 253.

of spaces in order to offer a more or less detailed perspective, applying this lens of scale to decision-making.²⁸ 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.²⁹ The scales are a lens by which information is presented, whether the degree of detail or relative positions, a “zooming in.” 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.”³⁰

The community council area 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.

C. DELEGATION AND LEGISLATIVE EFFICIENCY

Community councils should have responsibility for certain localized functions like planning, parking, and zoning decisions in order to give City Council the time and mandate to focus on issues that affect the city as a whole.³¹ Delegation need not be final decision-making power; it can also mean that a committee or body deliberate on a matter working out the relevant policy issues before it comes to City Council for final approval. In both cases, the objective is to reduce the large 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” (NIMBY) is often cited as a possible impact of delegated decision-making, with the idea that the historically marginalized are protected by larger scale decision-making. Schragger notes that it is difficult to differentiate between local decisions that are meant to affirm a way of life for one community and those that are meant to exclude, and they may in fact be the same decision.³² Mariana Valverde cautions against delegated decision-making to localized areas, arguing that such bodies may exclude certain voices, particularly those of vulnerable persons, and advances the notion that centralized planning may reduce inequality within Toronto.³³ Iris Marion Young and Richard Briffault have asserted that regional decision-making leads to more equitable decision-making, whereas the scale of the neighbourhood results in exclusionary policies.³⁴ There is an assumption that localized decision-making means more exclusive, less

²⁸ Boaventura de Sousa Santos, “Law: A Map of Misreading. Toward a Postmodern Conception of Law” (1987) 14:3 *J L in Society* 279.

²⁹ *Ibid.*

³⁰ *Ibid* at 287.

³¹ Interview, 10 December 2015.

³² Schragger, *supra* note 15 at 426.

³³ Mariana Valverde, *Everyday Law on the Street: City Governance in an Age of Diversity* (Chicago: The University of Chicago Press, 2012) [Valverde].

³⁴ 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); Richard Briffault, “Our Localism: Part II — Localism and Legal Theory” (1990) 90 *Columbia Law Review* 348.

equitable decisions, whereas regional or city-wide decisions will consider a broader range of residents.

This conclusion does not entirely ring true in the context of Toronto, where the past twenty years of greater centralized city council power have coincided with unprecedented social and income stratification across the city.³⁵ Moreover, this explanation simplifies the intergovernmental complexity of urban poverty. Vanessa Parlette and Deb Cowen note that the fixation on neighbourhood indicators for poverty reduction ignores the provincial and federal role, continuing the liberal rhetoric of neighbourhood-based responsibility.³⁶

Outside of these broad debates concerning the potential impacts of delegated decision-making to community council-level bodies, there are few studies that have reviewed the legal, administrative, and policy roles of community councils in the Canadian context. Zachary Spicer's novel and comprehensive study of Toronto, Ottawa, Sudbury, and Hamilton's community councils examined why municipalities implement community councils, what factors led to successful implementation, what factors encourage continued participation, and where such bodies fit within a post-amalgamated governance network. He concluded that community councils in Ontario were "victims of the restructuring experience," meant initially as conciliatory community entities to the pre-amalgamated municipalities that feared losing their identity, but ultimately have not achieved a place within their local government's governance structure.³⁷ In comparison, Montreal's governance model, which includes borough councils that retain municipal authority functions, has been critiqued on the grounds that it is difficult to understand which body does what; inefficiencies in service delivery; and deep fragmentation amongst the various councils, requiring a great deal of inter-municipal cooperation.³⁸

This paper seeks to contribute to this important conversation by detailing Toronto's experience with community councils and their role within the city's governance model. This information will help to broaden the theoretical debate on the purpose of such bodies.

II: THE LEGAL ORIGIN OF TORONTO'S COMMUNITY COUNCILS

A. THE UNLIKELY CREATION OF COMMUNITY COUNCILS

In 1997, the Province of Ontario introduced Bill 103, a controversial piece of legislation that would ultimately establish the new amalgamated City of Toronto (see figure 1). Prior to the introduction of this legislation, seven municipalities existed within the geographical boundaries of what would become the new City of Toronto: the upper-tier Municipality of Metropolitan Toronto or "Metro," which was responsible for "regional" issues like transit, social services, 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

³⁵ J David Hulchanski, "The Three Cities Within Toronto: Income Polarization Among Toronto's Neighbourhoods, 1970–2005" (Toronto: Cities Centre, University of Toronto, 2010) 1.

³⁶ Deborah Cowen & Vanessa Parlette, "Inner Suburbs at Stake: Investing in Social Infrastructure in Scarborough" (Toronto: Cities Centre, University of Toronto, 2011) 1.

³⁷ Spicer, *supra* note 7.

³⁸ Jean-Philippe Meloche & François Vaillancourt, "Public finance in Montreal: In Search of Equity and Efficiency" (2013) 15 IMFG Papers on Municipal Finance and Governance 1; Andrew Sancton & Robert Young, eds, *Foundations of Governance: Municipal Government in Canada's Provinces* (University of Toronto Press, 2009).

York.

Residents were concerned that the creation of a megacity through amalgamation would diminish meaningful political representation. The Province responded by introducing the requirement for community councils, which would map along the six pre-amalgamated municipalities but would give the city ultimate authority to decide whether to keep them as part of its governance model. *Globe & Mail* Journalist Colin Vaughan wrote: “[t]hose who fear their local neighbourhood will sink into the megacity morass should prepare themselves for more grim 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 “community councils” without a mention of powers and responsibilities.³⁹



Figure 1: City of Toronto: Map of the pre-amalgamated municipalities, 1967-1997⁴⁰

The Province appointed a transition team comprised of councillors from the former municipalities to address a number of key legislative and governance issues related to the amalgamation, including “community councils and neighbourhood matters” as one of less than a dozen governance issues to be studied in detail.⁴¹ The transition team undertook extensive

³⁹ Colin Vaughan, “Anomalies of amalgamation,” *Globe and Mail* (3 March 1997).

⁴⁰ City of Toronto, “Toronto Demographics,” online: <toronto.ca/demographics/profiles_map_and_index.htm> [perma.cc/4J6B-GK6J].

⁴¹ Alan Tonks et al, *New City, New Opportunities: Final Report* (Toronto: Toronto Transition Team, 1997).

consultations with residents, civil servants, and local politicians. They recommended that the six community councils with the boundaries of the former municipalities be retained, with stewardship as a primary responsibility, noting that,

[s]tewardship 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. If people are worried about safety on their streets, the community council can discuss what should be done and who can be brought to the table to discuss an action plan.⁴²

This stewardship role as conceived would be executed through three functions: local planning and development matters; other neighbourhood-related issues; and involving the community and monitoring its well-being.⁴³ 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.”⁴⁴

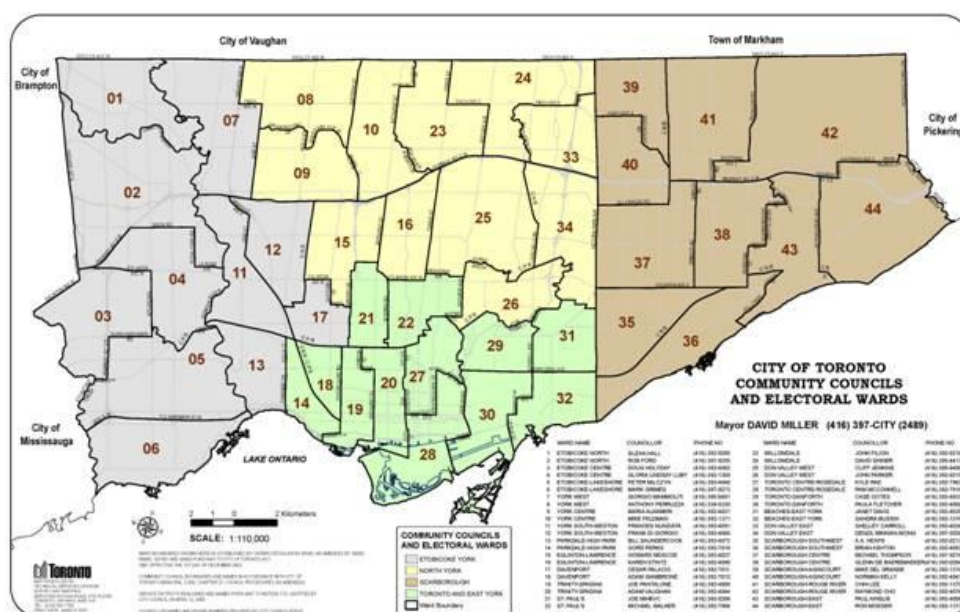


Figure 2: City of Toronto: Community council boundaries and electoral wards map⁴⁵

Thus, 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

⁴² *Ibid* at 65.

⁴³ *Ibid* at 66.

⁴⁴ *Ibid* at 65.

⁴⁵ City of Toronto, “Community Council Boundaries & Electoral Wards Map,” online: <toronto.ca/wps/portal/contentonly?vgnextoid=687c7d353c460410VgnVCM10000071d60f89RCRD> [perma.cc/2SLE-V453].

soften the negative response the government received from amalgamation and would provide for decentralized governance within the province's new, large municipality.⁴⁶ As Spicer writes, "community councils were drawn along the lines of former lower-tier municipalities, indicating they were designed more to placate those angry about amalgamation than to genuinely empower communities."⁴⁷

B. A GOVERNANCE REVIEW AND NEW LEGISLATION

For four years following amalgamation, the City of Toronto had six community councils. In 2003, the City of Toronto established a committee to review the form and function of these bodies, led by then-Councillor David Miller. This committee recommended a reduction in number to the current-day four: Etobicoke, North York, Toronto-East York, and Scarborough. The committee believed that community councils should be aligned with the city's service districts in order to provide better continuity between planning, building, licensing, and transportation functions.⁴⁸ They also believed that community councils would function better if there was a more even population distribution to each council, with approximately 600,000 people and eleven councillors on each.

In 2005, in anticipation of the introduction of the *City of Toronto Act, 2006*, city staff embarked on a governance review to redesign the city's governance model. The review was led by a three-person Governing Toronto Advisory Panel, which studied Toronto's existing governance model, undertook extensive consultations, and ultimately made a series of recommendations that were forwarded to City Council.⁴⁹ The Panel's task was monumental: it aimed to look critically at the existing governance model, eight years post-amalgamation, and consider how the model could be reformed given the potential of the new *City of Toronto Act, 2006*. In preparation for presenting its advice to City Council, the panel spent four months meeting with and talking to hundreds of people in scheduled meetings and interviews, including councillors, the Mayor, senior staff, representatives of various community groups and organizations, academic, and the public.⁵⁰

The Panel was given a four-part mandate. First, to provide information, findings, and options to Council so that it could debate and make decisions about its governance system in order to prepare for and exercise governmental powers. Second, to ensure an engagement process with Members of Council, citizens, civic leaders, and other stakeholders so that various points of view and ideas could be heard and discussed. Third, to encourage a civil, robust, and informed discussion of options among all sectors of Toronto society interested in a well-

⁴⁶ Andrew Sancton, *Canadian Local Government: An Urban Perspective* (Don Mills, Ont: Oxford University Press, 2011) at 155.

⁴⁷ Spicer, *supra* note 7 at 142.

⁴⁸ City of Toronto, *Culture Plan for the Creative City* (Toronto: Culture Division, City of Toronto, 2003).

⁴⁹ Governing Toronto, *The City We Want—The Government We Need: The Report of the Governing Toronto Advisory Panel* (Toronto: Governing Toronto, 2005), online: <toronto.ca/legdocs/2005/agendas/committees/pof/pof051129/it004att.pdf> [perma.cc/RW4E-JKBE]. 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 [Governing Toronto].

⁵⁰ *Ibid* at 39. We accessed the public information from the June 22 joint Toronto-Ontario consultation on the City of Toronto Act, which was attended by over 700 people in four locations and where many governance ideas were discussed. Over sixty people responded to our on-line citizen survey. We hosted a public session on November 15 at the St. Lawrence Market North, which was attended by approximately 150 people.

governed City. And fourth, to integrate related issues resulting from the *City of Toronto Act* review, the final report of the Bellamy Inquiry, and any recommendations pertaining to good governance and the ongoing procedures review.⁵¹

The Panel remarked that a strong city-wide agenda was necessary in order to achieve the purposes of the *City of Toronto Act, 2006*.⁵² It stated,

[t]he new City of Toronto Act will give Toronto, for the first time, 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.⁵³

The fundamental cause of the city's grave governance issues 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.⁵⁴ 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.

The Governing Toronto Advisory Panel made the following recommendations to "Empower Community Councils":

- Exercise delegated local transactional decision-making authority, governed by Council-approved policy
- Conduct a minimum of four public engagement sessions annually within their areas, to provide community input into key issues, such as the setting of strategic directions and budget
- Determine a more effective method of ensuring neighbourhood input using the City's 140 identified neighbourhoods,⁵⁵ to feed into local priority setting and service planning
- Meet in the evening, when more community members are able to attend.⁵⁶

In 2006, the provincial government enacted the *City of Toronto Act, 2006* (COTA). COTA states, "[t]he powers of the City shall be exercised by city council."⁵⁷ Unlike previous legislation itemizing what the City could and could not do, COTA gave authority for Council to delegate certain final decision-making powers to community councils. COTA also restricted any

⁵¹ City of Toronto, *Toronto Computer Leasing Inquiry & Toronto External Contracts Inquiry* (Toronto: City of Toronto, 2005) (Honourable Madam Justice Denise E Bellamy).

⁵² Governing Toronto, *supra* note 48 at 6.

⁵³ *Ibid* at 26.

⁵⁴ *Ibid* at 25.

⁵⁵ The City of Toronto's 140 neighbourhoods were identified in 2005 by staff in the Social Development and Finance Administration Division (SDFAD) to measure community well-being. SDFAD 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.

⁵⁶ Governing Toronto, *supra* note 48 at 8.

⁵⁷ *City of Toronto Act, supra* note 5, s 132(1).

delegated body (including community councils) from imposing taxes, adopting or amending the official plan, or adopting or amending the city budget.⁵⁸ To balance the competing demands of City Council authority and COTA's restrictions, city staff set out in a 2007 staff report the following principles to be considered in determining which issues should be delegated:

- local routine matters should be delegated to Community Council for final decision;
- only matters that can be legally delegated will be delegated;
- matters that are City-wide will not be delegated; and
- 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.⁵⁹

The justification by city staff for limiting the authority of community council focused on the distinction between what is a "city-wide" as opposed to a "local" matter.

C. PLANNING FOCUS OF COMMUNITY COUNCILS

Council approved the duties of community councils through the enactment of a by-law that sets out an itemized list of community council powers.⁶⁰ In addition to the detailed set of powers, the Toronto Municipal Code sets out a confusing description of when community councils may consider "neighbourhood," "local," or "city wide" matters. Community councils are given broad authority to make public presentations and recommendations on "neighbourhood" matters, including, "[r]equests for exemptions to ravine and tree by-laws" and "any matter ... which affects more than one Community Council." Community councils may only make recommendations to City Council on the City's official plan and zoning by-law amendments that concern a "local focus," and on other planning applications that are "not of City-wide interest." However, community councils may convene community meetings to inform the public of "city-wide" issues and make recommendations on "city-wide" planning reports.⁶¹ Although the procedural by-law permits community councils to consider "neighbourhood," "local," or "city wide" matters in circumstances outside its delegated authority, such exercises are rarely undertaken in practice.

Under the Toronto Municipal Code, community councils are responsible for a list of delegated duties in the urban areas that they represent. They also have decision-making power over a set of issues that ultimately go to City Council for approval, as well as a role in "community" and "neighbourhood" decisions. The specific powers can be roughly grouped into three categories: planning decisions; local land use; and community and neighbourhood

⁵⁸ *Ibid* at s 22(1).

⁵⁹ City Manager, "Report to Executive Committee: Delegation of Certain Matters to Community Councils" (City of Toronto: 2 January 2007) at 3, online: www.toronto.ca/legdocs/mmis/2007/ex/bgrd/backgroundfile-586.pdf, as appears in City of Toronto, By-law No 885-2007, (19 July 2007), online: toronto.ca/legdocs/bylaws/2007/law0885.pdf [https://perma.cc/5SFB-LA37].

⁶⁰ City of Toronto, "Toronto Municipal Code: Chapter 27, Council Procedures" (31 January 2017), online: toronto.ca/legdocs/municode/1184_027.pdf [perma.cc/E3PC-TWSB].

⁶¹ *Ibid* at Appendix B-IV.

matters.⁶²

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. These decisions involve specific amendments to the *Planning Act* and the city's zoning by-law. In evaluating local planning decisions, the members of community councils balance the following considerations:

- (1) whether proposed changes to lands located in areas designated as “neighbourhoods” in the City’s official plan are “sensitive, gradual and generally fit the existing physical character;”
- (2) the degree to which city-wide housing policies should be assessed in regard to individual neighbourhoods; and
- (3) the relationship between local zoning and the official plan in a rezoning application.⁶³

Community council decisions must then be approved by City Council, and may in turn be appealed to the Ontario Municipal Board.

Second, community councils are responsible for decision-making on specified activities and land use matters that affect neighbourhoods and local businesses. These include final delegated decision-making on street traffic regulation and permit parking, noise by-law exceptions, street food vending, liquor licenses, and boulevard café permit appeals. Community councils may also make decisions on exemptions to ravine and tree by-laws, although these issues will ultimately be directed to City Council for final approval.

Third, community councils can hear matters of “community interest.” In regard to local or neighbourhood issues, community councils are given broad authority to make public presentations and recommendations on “neighbourhood” matters, and appoint individuals to community boards, including local Business Improvement Areas. City Council did not implement the Panel’s recommendations related to community councils.⁶⁴ Community councils have neither conducted public engagement sessions annually within their areas nor incorporated neighbourhood input using the City’s 140 identified neighbourhoods, both of which feed into local priority setting and service planning.⁶⁵ The 140 neighbourhoods have not played a role in the City’s community councils.

The following chart sets out the activities of each community council in 2013 according to the three categories outlined above.

⁶² *Ibid* at s 27–152 & Appendix B-IV.

⁶³ *Leaside Property Owner’s Association (Re)*, 2015 CanLII 22087 (ON OMB); *Toronto (City) v R & G Realty Management Inc.*, 2009 CanLII 42397 (ON SCDC); *Toronto (City) v Romlek Enterprises*, 2008 CanLII 52618 (ON SCDC).

⁶⁴ City of Toronto, “City of Toronto Council Governance Review,”
online: <toronto.ca/involved/utilitystudy/pdf/govreview.pdf> [perma.cc/W5Y5-S3B7].

⁶⁵ City of Toronto, “Neighbourhood Profiles” (2016),
online: <toronto.ca/wps/portal/contentonly?vgnextoid=ae17962c8c3f0410VgnVCM10000071d60f89RCRD&vgnextchannel=cf8a42f18beb2410VgnVCM10000071d60f89RCRD> [perma.cc/Q5UP-G24U].

	Planning/ Zoning/Heritage	Land use	Community interest	Total
Etobicoke	77	258	38	373
North York	114	222	22	358
Scarborough	54	150	29	233
Toronto-East York	251	504	35	790

Chart 1: Community Council Decision-Making by Category, based on the subject matter of the decision document

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”⁶⁶ and further substantiated by Spicer’s recent study on the main activities coming before community councils.⁶⁷ Second, the community councils differ in the number and type of issues that they consider. The Toronto-East York Community Council handles twice the number of issues compared to any other community council. Proportionately, the Scarborough Community Council considers the largest number of community issues. Third, Toronto’s community councils do not generally consider community or neighbourhood matters and, of those that are considered, the bulk relate to the appointment of residents to local and community boards, rather than public presentations and recommendations on “neighbourhood” matters. There is initial evidence that, in the fifteen years since they were introduced, Toronto’s community councils have focused largely on local planning issues, with minimal attention to both the stewardship role originally intended by the 1997 provincial legislation and the community role recommended by the Governing Toronto Panel.

D. A SHIFTING FOCUS ACROSS GEOGRAPHIC LINES

There have been notable exceptions to this general focus on local planning. In 2012–13, the Toronto-East York Community Council 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.”⁶⁸ The Toronto-East York Community Council struck a subcommittee to consider the local impacts of a proposed casino within the downtown area. Under the Municipal Code, the community council can only make recommendations to 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. However, community councils may create subcommittees that report directly to City Council on public hearings or public presentations.⁶⁹ The subcommittee must have terms of reference, 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

⁶⁶ Enid Slack, “Assessing Municipal Amalgamation In Toronto, Canada: What Has it Achieved?” (2005) 11 National Security and Defence 49 at 57.

⁶⁷ Spicer, *supra* note 7 at 139.

⁶⁸ Interview, 10 December 2015.

⁶⁹ City of Toronto, “Toronto Municipal Code: Chapter 27, Council Procedures” (31 January 2017), s 27–131(A) & (D), online: <toronto.ca/legdocs/municode/1184_027.pdf> [perma.cc/4TEZ-DZCP].

and a statement that such resources are available.⁷⁰ The Clerk's Office did not push back against the move.⁷¹

One of the local councillors, who was involved in the decision to establish the Subcommittee, said:

I think the big thing was we 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 neighbourhoods, 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 really down into what planning implications, what traffic implications, what social development impacts would have on it, would a casino have on a neighbourhood.⁷²

A local councillor 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 approach was that it "allowed us to question staff in far greater detail and to scrutinize the assumptions that were being made by various actors and players."⁷³

Another councillor put it this way, "[w]hat we did have is the ability to create a forum for the casino exploration and use that forum to get the information we need, ... 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 it as a land use issue."⁷⁴

To some staff, this community-focused role was anticipated when the Toronto Municipal Code was amended following COTA's enactment. One of the City of Toronto staff members who helped design the community council model said: "[i]f you're going to say that we have segregated out a body, a committee which is geographically ward based, it has to be able to do some work, right, otherwise what is the point?"⁷⁵ In this staff member's view, the 2012–13 casino decision represents the community council having "stood the test of time."⁷⁶ By operating through a formal committee, the community council was able to engage directly with business improvement areas and resident associations, request staff reports on the impacts of a casino, and make recommendations directly to City Council. The community council's activities resulted in numerous reports with a focus on the planning, local transportation, local economic development, and health of this "city-wide" issue.

⁷⁰ *Ibid.*, s 27–130(b)(2)(e)–(f). No information could be located on the terms of reference of the Subcommittee or the details of the Clerk's impact statement.

⁷¹ Interview, 22 April 2015.

⁷² Interview, 5 July 2016.

⁷³ *Ibid.*

⁷⁴ Interview, 7 July 2016.

⁷⁵ Interview, 17 May 2016.

⁷⁶ *Ibid.*

The Toronto-East York has used this model for two other city-wide decisions.⁷⁷ Other community councils have considered “city-wide” issues as well, generally through information reports during meetings.⁷⁸ The examination by community councils of matters beyond local planning decisions, however, is limited.

III. GOING FORWARD: COMMUNITY COUNCILS BEYOND LOCAL PLANNING?

At the beginning of this paper, I set out the three arguments in favour of community council-like bodies: 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. To achieve these objectives in Toronto, the artificial binary of “local” and “city-wide” must be confronted. Having established that community councils largely serve as local planning committees, this section sets out the city’s legal options for moving forward with a more participatory model for community councils. This section also considers why such a move would be advantageous for Toronto.

A. DELEGATION AND COMMUNITY COUNCILS

Municipal governments can use delegation to balance what local forums can do. Delegation in its most formal sense means a transfer of final decision-making power. The *City of Toronto Act, 2006* provides the city with wide discretion as to how it may organize its decision-making model. According to a former senior staff member of the City of Toronto who was involved in governance during and after amalgamation, “[w]e 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.”⁷⁹ Under the City’s current organizational model, some matters like parking are “local” whereas others like housing are “city-wide.” The localness of, for example, parking is partly a question of subject, namely that certain types of decisions are reasonable to delegate to a smaller pool of decision-makers. But localness relates also to the geography of the City under the assumption that such decisions pertain only to a subsection of interests, namely residents of that particular section of the City, and therefore are appropriately determined by representatives within that area.

To one senior staff member, who used to work on “city-wide” strategic issues at the City of Toronto, delegation to a more localized committee or council is one way of managing the intense workload of City Council. This staff person explained that, at present, long debates can be held on any matter: “as long as council agendas look like they do, the size of council is a problem, because theoretically, on any given matter, you’ve got 45 people, any single one of them can ask questions of staff, every single one of them can speak, every single one of them can ask questions of any one of them who speaks and moves a motion. So, you can, you do have a debate that can go on for three days. But that debate, appropriately, can be about casino, or about

⁷⁷ The Toronto-East York Community Council has also introduced subcommittees to examine the local impacts of the possible expansion of the Billy Bishop Toronto Centre Airport runway and the future of the Toronto Exhibition Place.

⁷⁸ See especially the Scarborough Community Council, who include an information report on a matter of local interest which is otherwise considered to be a “city-wide” issue at the start of each meeting.

⁷⁹ Interview, 17 February 2016.

a tree.” To this staff member, “[t]here’s nothing wrong in having a long and fulsome and thorough debate, as long as it’s on matters of broad policy. ... [T]he menu of things that comes to full council should really be much smaller.”⁸⁰

Delegation may also be conceptualized as a process of urban maturity. Up until the last two decades in Ontario, provincial legislation was very prescriptive in regard to municipal powers, such that municipalities could only take action that was set out in the applicable legislation. Councillors and staff may be reluctant to push the boundaries and introduce laws that are not clearly spelled out in legislation due to the legacy of municipal power in Toronto. As a staff member involved in the design of the *City of Toronto Act, 2006* 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?’”

B. THE LIMITATION OF “LOCAL” AS THE BASIS OF COMMUNITY COUNCIL DELEGATION

The city’s current definitions of “local” and “city-wide” significantly limit what community councils may do. At present, the focus of community councils on “local” issues means that very little may be delegated to them for consideration. The bifurcation of “local” versus “city-wide” is flawed in three main ways. First, “city-wide” decisions affect local areas, too. For example, the introduction of a casino is a city-wide issue based on the City of Toronto’s definition because the project affects more than one community council area, impacts the city’s revenue and tourism, and implicates addiction and public health. Based on research on the NIMBY effects of decision-making, Toronto is right to ensure that such decisions are given a city-wide lens, particularly in regard to the implications for the city’s most marginalized residents.⁸¹ The concept of “local” 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 much about the scale of the neighbourhood as they are about the city as a whole. In the 2012–13 casino decision, the circumstance that made the matter local was the impact that the casino would have on the local community, not whether the subject matter itself was a local one.

Second, “local” decisions can also have significant effects on the city as a whole. For example, community councils have delegated authority to determine parking permitting, which, in addition to affecting the particular area, can have broader implications for initiatives like car sharing. Car sharing not only triggers parking permits in community council areas across the city, it implicates city-wide policies like the Climate Change, Clean Air, and Sustainable Energy Action Plan.⁸² Artificially distinguishing issues in such a manner produces a single lens and dismisses the consequences on other scales. Deb Cowen and Vanessa 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. Local and city-wide are not simply about the subject-matter, which is the basis upon which the city sets out the distinction. Instead, local and city-wide relate to consequences. As

⁸⁰ *Ibid.*

⁸¹ Valverde, *supra* note 33.

⁸² City of Toronto Staff Report, “Reserved On-Street Parking Spaces for Use by Car-Share Vehicles – Pilot Program in the Downtown Area” (21 August 2009).

raised by Cowen and Parlette, the creation of geographies of subject-matter problematize phenomenon in particular communities rather than highlighting systemic or higher-order causes and contributions.

Third, the binary has theoretical limitations. Nicholas Blomley writes, “[l]aw draws from and organizes space, and in so doing structures power relations in specific and highly consequential ways. The specificity of law is worth underscoring: if our focus is on the particular socio-technical practices that produce and sustain territory, we should anticipate that law in general structures territory in quite particular ways.”⁸³ Paul Berman’s “cosmopolitan approach” suggests moving away from the binary of local versus regional, or affiliation with a singular community, identity, or geography. Instead, identities and jurisdictions may overlap, compete, and conflict.⁸⁴ He suggests that there is no binary between local and other jurisdictional space, [a] cosmopolitan approach allows us to think of community not as a geographically determined territory circumscribed by fixed boundaries, but as “articulated moments in networks of social relations and understandings.” This dynamic understanding of the relationship between the “local” community and other forms of community affiliation ... helps to conceptualize legal jurisdiction in terms of social interactions that are fluid processes, not motionless demarcations frozen in time and space.”⁸⁵

C. OPTIONS FOR MOVING FORWARD

There are several options for how a more expanded delegation could work both within Toronto’s existing legislative constraints and through amendments to provincial legislation. First, the list of matters deemed “local” could increase and a local body, like a community council, could decide these matters. To execute this option, the definitions and content of “city-wide” and “local” as the basis for decision-making by governance bodies within the city need to be reviewed and amended. According to a veteran staff member who helped design the current structure and authority of community councils, including what specific powers should be delegated, one of the central criteria regarding the distinction between “local” and “city-wide” was based on differences in city policies such as four way stops, natural gardens, and the tree canopy that may be “tolerated” across the city.⁸⁶ This tinkering is the simplest way to rethink the function of community councils. This option would require no legal amendments to COTA, assuming that community councils were not delegated any of the powers set out in section 22(1), including acting as a final, budgetary decision-maker or making certain decisions related to the *Planning Act*.⁸⁷ For example, cycling lanes could be added to the “local” column, as they were prior to 2007.

Second, “local” and “city-wide” could be reimagined with City Council as the body that sets broad policy, whereas detailed decision-making may be given to community councils. In this option, City Council could articulate the principles on matters of “city-wide” importance, then grant power to community councils to decide the details. City Council could set out the policy frameworks. As one staff member emphatically stated, “[t]here’s not enough being delegated.”⁸⁸

⁸³ Nicholas Blomley, “The Territory of Property” (2015) 40:5 Progress in Human Geography 593 at 595.

⁸⁴ Paul Schiff Berman, “The Globalization of Jurisdiction” (2002) 151 U Pennsylvania L Rev 311.

⁸⁵ *Ibid* at 322.

⁸⁶ Interview, 10 December 2015.

⁸⁷ *City of Toronto Act*, *supra* note 5, s 22(1). See also *Planning Act*, RSO 1990, c P13.

⁸⁸ *Ibid*.

This second option is easier said than done. The changes in the city's governance structure were partially a shift to make City Council operate more efficiently, as Spicer has demonstrated. Another factor, however, was to include a possibility to look at the city-wide perspective, too.⁸⁹ Amalgamation ultimately eroded the two-tier perspective by integrating what was formally a metropolitan level with the municipal level.

As a former senior staff member, who worked in in various departments both pre- and post-amalgamation told me, amalgamation wasn't all bad: "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."⁹⁰ There are drawbacks, too, namely 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."⁹¹ Politically, councillors should have both a local and city-wide lens and "it's hard for them to do both, it really is, it's almost impossible."⁹² This second option would reduce the agenda at City Council, but may not practically change the perspective that city councillors bring to an issue.

Third, community councils could facilitate the consideration of "city-wide" matters, as the Toronto-East York Community Council first did with the 2012–13 casino decision and as the Governing Toronto Panel recommended. At the simplest level, staff and City officials could encourage widespread use of the current provisions of the Municipal Code, meaning the use of community councils as forums for public presentations and recommendations on neighbourhood matters, reporting on the local implications of the City's official plan, zoning by-law amendments and planning applications, and convening community meetings to inform the public on planning applications of city-wide interest.

While it is procedurally simple to consider the local effects of city-wide decisions, community councils are unlikely to adopt this third option beyond the limited uses to date. A senior City of Toronto staff member told me, "I tell this advice to people all the time and I hate to be the bearer of it, but, my cynical view of committees is that the number one objective that members share for a committee meeting is to get out of there as quickly as possible."⁹³ This has taken place in one particular community council, where "community" issues related to broad policy matters were added to the agenda for information only. The reaction of other councillors is evidence of disfavour for this approach:

Every month you'll be looking at the agenda, there are guests of the committee that are invited, they invite people to come in and brief the committee on what's going on in the fashion industry, or economic indicators, whatever. [This councillor's] committee members don't thank him for it, because the meetings go on, they're seen maybe as too abstract, they're not about making decisions, they don't lend themselves to motions and amendments, or whatever.⁹⁴

Councillors may also be hesitant to transfer any of their ward-based influence to a community council with greater authority.

⁸⁹ Spicer, *supra* note 7 at 144.

⁹⁰ Interview, 18 May 2016.

⁹¹ *Ibid.*

⁹² *Ibid.*

⁹³ Interview, 10 December 2015.

⁹⁴ *Ibid.*

A more deliberative approach to community councils is needed. Community councils could play an expansive role in augmenting participatory democracy in the city if they were expressly mandated to act as forums for considering the local effects of “city-wide” decisions and for advising City Council on neighbourhood issues. This option would mean opening the door to considering other configurations for Toronto’s community councils, including membership, number, and budget. Such a move may require amendments to the *City of Toronto Act, 2006*, for example, if budgetary decisions were delegated or if community councils were to be comprised of a significant number of non-City Council members.⁹⁵ It could also occur if the province mandated such bodies, as has taken place within Quebec’s municipal model.⁹⁶

This option requires confronting the tension between rational bureaucracy and messier forms of political action. Boaventura de Sousa Santos notes that the theoretical debates on the relationship between representative and participatory democracy often forget that these two concepts must work together.⁹⁷ He writes 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 in order to reflect the importance of overlapping, multifaceted, and 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.”⁹⁸ A rational system of decision-making misrepresents the messy reality of participatory democracy, which is interconnected with the 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 senior civil servant suggested, the local governance system “has to be more flexible and less rigid and the only way to make it less rigid would be [that] the government plays the role of a facilitator in the sense of setting up the mechanism, but not on running the mechanism.”⁹⁹ There would need to be less control of the forums of decision-making and of the conversations that will take place.

In New York, this option is at least partly achieved through community committees where anyone may attend a meeting and have a voice, where the members are not part of the local government, and where city staff attend to document and report on what is said. Moreover, any matter can be raised by the committee, whether or not it has to do with local planning or in relation to a city-wide issue. Community committees are well-known for raising opinions that are contrary to those of elected officials, which can lead to changes in proposed policies.¹⁰⁰ Los Angeles goes even further by letting the public set the boundaries for the local bodies, by providing some funding for organizational needs, and by encouraging greater representation

⁹⁵ See in particular *City of Toronto Act*, *supra* note 5, s 22(1)(8), which restricts delegation of adopting or amending the budget of City Council.

⁹⁶ Spicer, *supra* note 7 at 143.

⁹⁷ Boaventura de Sousa Santos, “Participatory Budgeting in Porto Alegre: Toward a Redistributive Democracy” (2008) 26 *Politics & Society* 461.

⁹⁸ *Ibid* at 324.

⁹⁹ Interview, 17 February 2016.

¹⁰⁰ Roshan Abraham, “Do New York’s Community Boards Need Veto Power?” *City Limits* (24 August 2016), online: <citylimits.org/2016/08/24/do-new-yorks-community-boards-need-veto-power/> [perma.cc/W5L7-XTSG].

from the applicable communities. Like New York, the councils do not have delegated power, but they serve as a crucial model for improving community connections and leading to opposition and change in city-wide policies.¹⁰¹ Numerous scholars have praised Los Angeles' councils as changing governance by expanding minority representation, reducing political segregation and exclusion, and improving political communication.¹⁰²

Efforts to reimagine community councils are already underway.¹⁰³ Toronto could adopt a model of delegated decision-making to an expanded set of community councils, with opportunity for residents to serve directly as decision-makers. Toronto could mirror New York's approach by also having community committees without delegated power. Organized by community council area, these committees can raise matters of community interest and these concerns could feed directly into community councils. These bodies would be larger in size than the ward, which would retain its focus as a representational boundary with which to elect councillors. The process of designing new community councils, and identifying the role of residents, should be a democratic exercise in itself. The premise of such a re-imagination should be the objective of including new, often excluded voices in the decision-making process.

This messier approach to community councils, which does not strictly demarcate what is "local" versus "city-wide" when it comes to localized institutions, leads to greater political legitimacy. Ultimately, this concept of delegation recognizes the importance of local autonomy and the desirability of civic engagement. It also permits more opportunity for local communities to debate the desirability of city-wide initiatives, potentially reducing the friction once matters reach City Council and thereby achieving the utilitarian end of delegation. To effectively reimagine community councils, room must be made to expand the existing practices of these bodies to allow for local conversations, abandoning the artificial categorizations of "local" and "city-wide."

IV. CONCLUSION

In his comprehensive study of Ontario's experiment with community councils, Spicer concluded that "when amalgamation was finalized, the opportunity to introduce strong community councils was lost."¹⁰⁴ This paper offers a somewhat more optimistic view that these unique bodies have the potential to alter the City of Toronto's governance model, and have already done so in limited ways.

At the beginning of this paper, I set out the three arguments in favour of community council-like bodies: the desirability of civic engagement and participation; the importance of local autonomy or "subsidiarity;" and the need for further delegation at the municipal level. This paper detailed the legal history and mandate of Toronto's community councils, and analysed how they may be reimaged under existing law. Community councils have historically focused on "local" planning issues, although some initiatives considered the impact of "city-wide" issues. I argue that the City of Toronto should use these local bodies as forums to foster participatory democracy at a greater scale, as has been done in other large cities. To achieve these objectives, the City can and should use its existing authority under COTA to encourage community councils

¹⁰¹ Chemerinsky & Kleiner, *supra* note 11.

¹⁰² Juliet Musso et al, "Neighborhood Governance Reform and Networks of Community Power in Los Angeles" (2006) 36:1 *The American Review of Public Administration* 79.

¹⁰³ City of Toronto Staff Report, "Five-Year Review of the *City of Toronto Act, 2006*" (30 September 2015).

¹⁰⁴ Spicer, *supra* note 7 at 145.

to consider a broader set of matters and to embrace the full scope of its powers. It also means recognizing that “local” and “city wide” are fluid concepts that move beyond strict boundaries and reveal the messy nature of local governance.