UNLOCKING THE EMANCIPATORY POTENTIAL OF URBAN PLANNING:
A CASE STUDY OF THE ONTARIO MUNICIPAL BOARD

by

Laura Munn-Rivard

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ABSTRACT

The modernist planning theory of the Chicago School cannot effectively deal with the challenges presented by cities of diversity. Leonie Sandercock’s planning theory unlocks planning’s emancipatory potential by showing how urban planning bodies manage the different identities in cities. Using a case study of the Ontario Municipal Board, I will seek to apply Jane Jacobs’ invocation of people centered design using the particular framework provided by Sandercock; in this way, I will analyze the degree to which the OMB’s planning process and decisions reinforce existing power structures. I will be arguing that the process and decisions of the Ontario Municipal Board fail to reflect Sandercock’s proposal of a new emancipatory urban planning approach. First, I will examine the evolution from modernist planning to Sandercock’s planning theory. The OMB’s process and decisions will then be analysed, in light of these theories, which will lead to some concluding thoughts on how to renew the Board in the face of its failure to fit into the new urban planning theory. During this analysis, four ways emerge in which the OMB must change; there must be a greater focus on practical wisdom, there must be better acceptance of multiple publics, the OMB must use more mediation with a focus on history, and the guiding legislation for the OMB needs to be rewritten.
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Unlocking the Emancipatory Potential of Urban Planning:  
A Case Study of the Ontario Municipal Board

In 1968, the first influential critic of modernist planning, Jane Jacobs, moved from New York to Toronto. While Jacobs had moved to ensure that her sons would not be drafted for the Vietnam War, it was not mere accident that she chose to move to Canada. Jacobs admired the vitality of Canadian cities, citing them as international models, and she particularly praised the virtues of the city of Toronto. Jacobs became an important advocate against the construction of the Spadina expressway in the early 1970s; the success of Jacobs and other activists helped ensure the survival of inner city neighbourhoods (Ward, 2002, 289-291). In the 1960s and 1970s, American cities were plagued by rioting, racial tensions, rising crime rates and social problems; Canadian cities did not experience this to the same extent. According to Ward, this was in part because ‘white flight’ was not fuelled by the construction of freeways, there were fewer discriminatory practices by mortgage providers, and there was greater commitment to high density construction (Ward, 2002, 223). Canadian cities seemed to better understand Jacobs’ notorious declaration of “Design is people (1993).”

Leonie Sandercock, an Australian academic who is currently the Director of the School of Community and Regional Planning at the University of British Columbia, follows Jacobs’ people-oriented planning philosophy, but she sees the growing diversity of cities as the greatest challenge to planning theory and practice, and she believes that difference can be managed in a way that is transformative and not repressive (Sandercock, 2000, 13). In particular, Sandercock is concerned with the importance of examining current day planning practice, in order to “scrutinize the internal culture of planning (that is what goes on in planning agencies every day) for its reproduction of patriarchal and racist and homophobic culture (Sandercock, 1995, 80).”
Sandercock’s theory suggest that planning theory has an emancipatory potential; a new planning theory can both increase the diversity of voices in the processes and guide the building of more inclusive communities. Using the case study of the Ontario Municipal Board, I will seek to apply Jacobs’ invocation of people centered design, using the particular framework provided by Sandercock, in order to analyze the degree to which the OMB’s planning process and decisions reinforce existing power structures. I will be arguing that the process and decisions of the Ontario Municipal Board fail to reflect Sandercock’s proposal of a new emancipatory urban planning approach.

I will begin by describing the Ontario Municipal Board and its place in the modernist planning theory, before turning to examine the break from modernist planning, and finally Sandercock’s emerging planning theory. In the final section, I will examine the OMB’s process and decisions in light of these theories, which will lead to some concluding thoughts on how to restructure and renew the Board in the face of its failure to fit into the new urban planning theory that seeks to be fully inclusive of people and respectful of difference.

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1 In Ontario, Canada, the Ontario Municipal Board is a powerful planning organization, to which municipalities’ planning decisions can be appealed by residents, developers, and organizations.

2 While Sandercock never uses the term ‘emancipatory planning theory,’ her description of a planning theory for cities of diversity can be categorized as such. For this paper, the term will be coined in order to refer to this new planning theory.
1. The Ontario Municipal Board and Modernist Planning

Under the *Planning Act of Ontario*, the locally elected councils are the first to make the administrative planning decisions (Krushelnicki, 2007, 3). The Ontario Municipal Board is a quasi-judicial administrative tribunal established by the Province of Ontario as an independent adjudicator of local planning matters (Krushelnicki, 2007, 1). Its role is to make administrative decisions on local planning issues and community planning principles through impartial and fair hearings on given planning situations. Ontario is the only province in Canada to offer this kind of tribunal to individual citizens, developers, and others (‘Ontario Municipal Board: Home’).

The Board’s origins are unclear, but it seems to have begun as the Ontario Railway and Municipal Board, established at the beginning of the 20th century for the purpose of dealing with the administrative issues of railway construction and questions on local finances. The original Board members were all lawyers, and they established the Board’s court-like atmosphere and its use of the adversarial approach of the common law system of justice. With the financial troubles of the Great Depression in the 1930s, the province shifted the focus of the Board towards an examination of municipal finances and expenditures and renamed it the Ontario Municipal Board (‘Ontario Municipal Board: Home’).

The *1946 Planning Act* accumulated all local planning powers into one comprehensive piece of legislation and established the Ontario Municipal Board as the final arbiter for local planning decisions (Krushelnicki, 2007, 10-11). It was at this time, when the OMB had gained significant planning powers, that the Board was also being influenced by an emerging school of planning thought. In order to understand the theoretical basis of the OMB, it is critical to understand the evolution of the field of urban planning. Since the 1870s with Haussmann’s
renewal of Paris, urban planners have “viewed the space of the city as a territory to be bounded, mapped, occupied, and exploited, a population to be managed and perfected (Sandercock, 2000, 22).” The seminal school of thought in planning theory was the Chicago model, emerging in the post-1945 era at the University of Chicago. These urban planners were trusted with managing the chaos that existed in the organization of cities and to counter the influence of private interests. The Chicago model supported rational state intervention to fix the excesses of industrial capitalists and to arbitrate between capitalist interests (Sandercock, 2003, 31).

Sandercock explains that urban planners imagined the city as a machine and saw themselves as the engineers who would break the city down, redesign and then reassemble it. However, this vision of the planner as the central designer led to a disregard for existing urban, social and environmental conditions. This disconnect from existing neighbourhoods was reminiscent of the earlier totalizing planners (Sandercock, 2003, 30).

Jane Jacobs was the key critic of the Chicago model and she was particularly struck by the damage caused by its practitioners, like Robert Moses who worked in New York. In her 1962 book, Death and Life of Great American Cities, Jacobs argued in support of a New York that was diverse, complex and pleasantly chaotic; this was in stark contrast to modern planners’ vision of cities organized by reason, a reason defined as male, white, able-bodied and heterosexual.

One of the key problems with the Chicago school is its gendered nature; Barbara Hooper says “in the texts of planners, public hygienists, sanitation engineers, city fathers... female body became synonymous with that which disorders, threatens, undoes the work of Man, the idea of the plan (Sandercock, 2003, 30-31).” The safety and order of reason Hooper argues, was associated with men, who in this way were able to solidify their grip on the public space through
a particular kind of planning. As can be seen in the 1988 planning manual, entitled *The OMB: New Rules and New Power*, the language of the times was gendered: when referring to planning cases, the manual speaks of the ‘reasonable man’ as an ideal (1988, 3.11). Finally, the planners and related administrations (such as the members of the OMB) were mostly male. Therefore the Chicago school, and the planning institutions founded on this approach, were very male-focused and saw men as the rational thinkers in planning (Sandercock, 2003, 33).

According to planners of this era who followed the Chicago model, rational decision making and problem-solving would save society from disorder (Sandercock, 2003, 31). The OMB followed this model, and saw reason as associated with men, but with a very specific type of man; white, educated, able-bodied, heterosexual. The 1988 OMB manual is founded on this vision, as we can see when the Board presents a description of the ‘reasonable man,’ as described by Mr Justice Laidlaw, in *Arland v. Taylor*, [1955] O.R. 131 (Ont. C.A.):

A reasonable person is a mythical creature of the law whose conduct is the standard by which the courts measure the conduct of all other persons and find it to be proper or improper in particular circumstances as they may exist from time to time. *He* is not an extraordinary or unusual creature; *he* is not superhuman; *he* is not required to display the highest skill of which anyone is capable, *he* is not a genius who can perform uncommon feats, nor is *he* possessed of unusual powers of foresight. *He* is a person of normal intelligence who makes nothing that a prudent man would not do and does not omit to do anything that a prudent man would do. *He acts in accord with general and approved practice.* His conduct is guided by considerations which ordinarily regulate the conduct of human affairs. *His conduct is the standard,* adopted in the community by persons of ordinary intelligence and prudence (‘The Ontario Municipal Board’, 1988, 3.11). [emphasis added]

While the judge admits that a reasonable person is not ‘superhuman,’ he nevertheless qualifies a reasonable person as male (excluding women), as normal intelligence (excluding those with lower levels of education or mental impairments), and as a ‘prudent man’ who ‘acts with general and approved practice’ (thus excluding people judged to be social deviants).
Planning in the Chicago model was seen as leading towards progress and was thought to work in the public’s interest, since the educated planners were able to determine what was best for the general population. The planners favoured policies based in positivist science, which they claimed were gender-, race-, and value-neutral (Sandercock, 2003, 33). However, this planning theory based on evidence and science inevitably favoured ‘expert opinion’ and discarded the emotions and disorder of the general population. In *The Ontario Municipal Board: New Rules and New Powers*, the text explains that the Board hears from a variety of lawyers and other professional advocates, and that while some lay people present their cases eloquently, “many of the lay people appearing before the Board lack all those skills and have only their honestly held, but poorly presented fears and concerns about something to present to the Board (1988, 3.6).” This paternalistic attitude towards the general population, the non professionals, suggests that the public is emotion-laden (with ‘fears’), as opposed to rational, and that they are lacking the necessary ‘skills’ and expertise in relation to the more rational urban planner. In my later analysis of two OMB decisions, there is the same evidence of knowledge being dismissed because it is not from an ‘expert.’

This image of neutrality and ‘expertise’ in relation to the ‘lay people’ justified planners’ ‘rational’ planning actions, such as Robert Moses’ suggestion of hacking “your way through the city with a meat axe (Sandercock, 2003, 33).” The practitioners of the Chicago model saw modernization, industrialization and material growth as improvements. City planners who saw the city as a machine for living ignored the spirit of these urban centres and were in a complicit alliance with capital interests. These ‘neutral’ planners were often white, upper-class, able-bodied males, who reflected the views of the most privileged (Sandercock, 2003, 33).
Up until the 1970s, the OMB had the reputation of being a “faceless group of gray-haired men,” but this criticism became less apparent as the first women came to be appointed (Krushelnicki, 2007, 27-28). In the 1980s and 1990s, there was improved racial and ethnic diversity on the Board as the governments of the day appointed several visible minority members, all professionally distinguished. Krushelnicki explains that the Board is “more eclectic professionally, politically and in terms of the age, sex and the ethnic character of its membership. In short, the Board can no longer be held to the criticism that it is the refuge of gray-haired men filling out the last years of their career in the quiet sinecure (Krushelnicki, 2007, 28).” While there is more diversity in terms of gender and race and even professional occupations of the members (city planners and former mayors among them), many of the Board members have been trained as lawyers, and the court-room mentality continues to shape the hearings (Krushelnicki, 2007, 4). This adversarial approach favours ‘expert’ opinion and hard evidence; it does not often lead to mediation, cooperation or consultation. Additionally, many of the members had a planning background, and were trained at institutions that still followed the Chicago model of planning. Therefore, despite an increase in diversity on the Board, the adversarial approach and the training of the members point to a Board that is still guided by modernist planning principles.
2. The Critique of Modernist Planning Theory and Practice

The Chicago model of urban planning was the dominant school of thought as the OMB evolved after the Second World War. The OMB had the same kind of analytical reason found in courtrooms rather than in democratic forums, the same idea of planning as controlling the chaos of the city and the same notion that planning is for rational experts not emotion laden lay-people. Sandercock explains that the modernist model of city building “had turned their backs on the city of memory, the city of desire, and the city of spirit” and that they “were ripping the heart and soul out of cities and neighbourhoods in the name of progress (Sandercock, 2003, 33).” By the 1970s, socio-cultural change was significantly reshaping cities and beginning to undermine the Chicago model. Jane Jacobs was an initial advocate against the idea of the rational, ordered, homogenous city; she explained it was no longer realistic or desirable (1993). There was a growing need to recognize that the population differed in age, gender, culture, ethnicity, class, dis/ability, religion and sexual preference, and their needs would vary accordingly – there was no ‘neutral’ form of planning. To be more inclusive, the challenge was to give up this myth in the same way that the multicultural theory of political theorists like Will Kymlicka demanded that the liberal state give up its myth of ethnocultural neutrality (2002, 16).

In the 1990s, Sandercock was one of the first planning theorists to extend these new ideas with respect to difference in order to address the struggles of marginalized peoples for their “right to the city.” This extension of the planning theory was meant to include the most marginalized, such as First Nations peoples, women, gays and lesbians, and other “voices from the borderlands (Friedmann, 2008, 253).”
In Sandercock’s *Voices from the Borderlands*, she explains that planning theory and practice has been slow to move away from the reason and order of the Chicago model. She argues that the world of planning must open itself to contributions from cultural studies, ethnography, literature and history, and this will create an urban planning field with emancipatory potential (Sandercock, 1995, 78). As Sandercock explains, “If planning is theorized normatively as an emancipatory practice, as some theorists have recently argued it ought to be, then perhaps we have much to learn from these writings,” which come from other disciplines that speak to diversity and difference in a way that traditional urban planning theory does not (Sandercock, 1995, 80).

Building upon her earlier work described above, Sandercock’s 1997 *Toward Cosmopolis*, introduces in much greater detail the concepts of difference and identity. These ideas were placed on the agenda of urban planners by three converging socio-cultural forces; transnational migration, post-colonialism and the rise of civil society (Sandercock, 1997, 14-18). Sandercock wants to connect “planning theory with other theoretical discourses – specifically debates around marginality, identity and difference, and social justice in the city – because these are debates which empower groups whose voices are not often heard by planners (1997, 110).” Sandercock sees society as composed of relationships between culturally different groups, founded on sexuality, ethnicity, race and gender. Sandercock believes that this diversity must be celebrated, not repressed, and this requires the recognition and assistance of group claims. She does not promote difference in support of a procedural move towards a more homogenous and equal society; she supports diversity for its own sake (Watson, 2002, 32).

The planner is seen as responsible “to link knowledge to action to empower oppressed and marginalized groups, to resist exploitation and the denial of their authenticity (Watson, 2002,
In this theory, a socially just city requires a politics of difference. The relationship between planner and groups must include diverse ways of knowing (an epistemology of multiplicity) and ideas of justice that are culturally specific. In direct contrast to the quotation from the OMB manual above about the limitations of ‘laypeople’ in relation to experts, she supports local knowledge over the supposed superior expert knowledge of planners (Watson, 2002, 32). Sandercock explains that planners must now be prepared to handle the difference in cities:

A politics of difference has emerged, or what philosopher James Tully calls a politics of cultural recognition, the struggle for the right to difference, as well as the right to a voice in decisions affecting a wide range of groups, including indigenous peoples, migrants and refugees, women, and gays and lesbians. Each of these struggles and their associated claims has an impact on, and in, the sphere of the built environment (Sandercock, 2000, 15).

When planners fail to constructively navigate cross-cultural situations, often it is the minority group that suffers. The failures of planners to acknowledge difference can perpetuate the idea of certain groups as problems, even as the invasion of a dangerous Other. Planning approaches have been misguided in their attempts to respond to irrational fears by developing urban designs that create a defensible space to protect property and personal safety as a buffer to such fears (Sandercock, 2000, 18-22). Sandercock elaborates:

Racists and xenophobic panics are driven by this fear of the dissolving of boundaries, of disintegrating identity. In the face of this unsettling, the desire of the logic of order and identity is reasserted. ‘We’ must secure our centrality and ‘they,’ those who disrupt our homely space, must be pushed out from the centre. Yet, the very strangeness of strangers is not only frightening but also enticing. Our ambivalence towards strangers expresses fear and desire fused into one, and is thus doubly upsetting (Sandercock, 2000, 23).

Sandercock believes we must address the fear at its source and understand the process of ‘othering’.
To help understand the process of othering, Lilith Finkler, in *Re-Placing (In)Justice*, examines decisions by the OMB between January 2000 and August 2004 concerning disability-related facilities and the ways in which dis/abled persons are perceived in planning practice. She concludes that the OMB does counter the othering of the dis/abled and the ‘not in my backyard’ attitude during hearings regarding the placement of disability-related facilities. However, the OMB supports its decisions with stereotypical views of dis/abled persons, primarily as recipients of care. The OMB tends to demonstrate condescension towards dis/abled persons and fails to incorporate dis/abled persons’ perspective in planning decisions (Finkler, 2006, 95-96).

While Sandercock touches on the concept of the Other, it needs to be taken further to explain why the OMB has difficulty planning from the perspective of marginalized groups, like the dis/abled. By applying Chandra Mohanty’s work ‘*Under Western Eyes: ’Revisited* to Sandercock’s theory, we see that, whether consciously or not, planners begin from a privileged epistemological space; therefore, they have difficulty creating an inclusive vision of justice to address the needs of the most marginalized people in urban centres. As Finkler discussed in her aforementioned work, the members of the Board have difficulty understanding the perspective of both the mentally and physically dis/abled (2006, 95-96). As educated professionals, and many students of the traditional modernist planning approach, the planners in Canadian cities and other people working in related institutions, like the OMB, can be blinded by their privileged epistemological place and this challenges their ability to deal with the diversity of cities.

There are numerous ways in which dominant groups attempt to maintain power within the urban planning process; an analysis of these four challenges will be interwoven with an overview of how the OMB fits into each of these methods. Sandercock identifies four central ways in which procedures reinforce the perspective of the dominant group, leading to the
misrecognition of some identities as a ‘problem.’ The first challenge is that the legislative framework and planning system reflect the norms and values of the culturally dominant majority, and these norms are in turn defended by the courts and administrative tribunals (like the OMB). The legal framework of planning is seen as neutral, but is in reality underpinned by assumptions about the ‘normal household’ (the nuclear family), the ‘suitable housing structure’ (single family housing), and about gender and proper spatial separation (women in the domestic space, men in the public space) (Sandercock, 2000, 16). Even a city by-law guiding the upkeep of plants and trees on private property is based on one culture’s horticultural preference. The OMB interprets the planning legislation developed by the province of Ontario and the planning documents established by the municipalities; any problems in the legislative framework must be corrected by the province and the municipality (Krushelnicki, 2007, 112-135).

The second way that diverse cities are a challenge is that the norms and values of the dominant culture exist in the attitudes, behaviour, and procedures of the actual planners. Michael Burayidi describes six ways in which there can be a cultural misrecognition between minority residents and planners (who often belong to the dominant culture): “communication style, attitude toward disclosure, attitude toward conflict, approaches to accomplishing task, styles of decision making, approaches to knowing (Burayidi, 2000, 5).” This misrecognition becomes even more problematic if the planner believes in the superiority of his or her culture or believes that immigrants should be assimilated into the host society. Since the 1970s, the OMB’s membership has become more diverse, in terms of ethnicity, race and gender, and thus the members are less likely to reflect only the values of the dominant culture (Krushelnicki, 2007, 27-28). However, in the case of the OMB, it is professional diversity that is of equal concern; the ‘dominant culture’ is based on the traditional planning practices, founded in the
Chicago school and guided by an adversarial, law-based approach that in turn reinforces certain
gendered, racialized constructs of ‘reason’. The modernist planning practices, as discussed
earlier, are constructed by and for privileged, professional, white, middle-class able-bodied men;
therefore, diversity of identity groups may mean little, if all the members continue to subscribe to
a traditional planning attitude.

The third challenge is that xenophobia, racism, sexism, homophobia and other forms of
discrimination in communities can be expressed through the planning system, but under the guise
of a legitimate planning concern. As briefly discussed, the ‘fear of the other’ can express itself
in a variety of manners; residents can pretend to be concerned about the traffic problems caused
by the future construction of a Hindu temple, when they are in fact fearful of the intrusion of a
different type of people (Sandercock, 2000, 16). The planning system must find a way to
constructively respond to such fears and anxieties among residents. Some marginalized groups
have suggested that the OMB is used as a delay tactic so that members of a dominant community
can appeal a case relating to these marginalized groups in the hopes that it can dissuade the
minority group or that the OMB will side with the majority (‘Right at Home,’ 2008).

Finally, the fourth challenge is when Western planners encounter cultural practices and
views that are in opposition with their own values (Sandercock, 2000, 16). This is a difficult
situation for the urban planner who may have been trying to incorporate a more multicultural
approach to planning. In the following analysis of the OMB’s decisions, I will be focusing on
the first two challenges identified by Sandercock; those being the legislative framework that the
OMB references and the approach to planning that the members employ.
3. Sandercock’s Emerging Emancipatory Planning Theory and the OMB

While examining the challenges presented by these new cities of difference, Sandercock describes the six cornerstones of the emerging planning theory designed to respond to this diversity (2003, 33-34). By analysing Sandercock’s emancipatory planning approach, the process of the OMB will be examined to see the ways the Board has evolved and the ways in which it can further improve. To begin, the first cornerstone is that while means-ends rationality is a useful concept, there must be a stronger dependence on practical wisdom. The practitioners of the Chicago model believed that planning would make public and political decisions more rational. The focus on rationality led to advanced decision making and planned visions of the future, after consideration of alternatives (Sandercock, 2003, 31-35). Means-end rationality is employed in order to meticulously calculate what is necessary to attain a goal. This calculation means there should be no interference by unquantifiable elements, such as cultural beliefs or emotions. While cases in front of the OMB can become very emotional, the process of the OMB itself discourages this and encourages a more rational presentation of evidence and facts. David Berney, a lawyer retained by ON Nature Magazine, explains that evidence must be “strong, relevant and focused” because arguments based on emotions and passions do not convince the Board members (Pim, 2004-2005). Theresa McClenaghan, a lawyer at the Canadian Environmental Law Association, says “Community groups must understand the need for expertise to put them on an equal footing with the other parties... They need expert evidence, not just arguments at the end of the day (Pim, 2004-2005).” Therefore, the process of the OMB favours the more rational arguments geared towards the adversarial approach, rather than arguments based on practical wisdom and emotion.
The second cornerstone is that planning must become less document-oriented, and more people-focused, so that coordinated plans are replaced with negotiated planning. Instead of being comprehensive, planning needs to focus on the specifics of communities. The OMB’s hearings enable the two parties to ‘tell their side of the story,’ and the Board listens to oral testimony and will accept any document that is relevant to the focus of the hearing. Unlike the strict rules regarding evidence in courts, the Board’s hearings are more flexible and they will at times accept hearsay or second-hand evidence (Krushelnicki, 2007, 4-5). However, the Board remains overly focused on documents, and this is in part due to their mandate – which makes it clear that the Board is meant to interpret the already existing provincial legislation and policy, and municipal planning documents, such as official plans and zoning by-laws (Krushelnicki, 2007, 112-117).

Next, the planner must be willing to access different kinds of appropriate knowledge, based on the local manifestations. Planners following the Chicago model understood planning as founded on quantitative modelling and analysis. The knowledge they based planning upon was founded in positivist science, and was seen as a way to free societies from superstitions, ideologies and disorder (Sandercock, 2003, 31-35). Sandercock suggests examining different kinds of knowledge, as manifested through various mediums in local communities; they can be through speech, songs, stories, and visual art forms. The valuable experiential knowledge of communities is expressed through these mediums and must be accessed by the planners so they can gain a contextual understanding (Sandercock, 2003, 34-35). Sandercock says:

The social sciences have been dominated by a positivist epistemology which privileges scientific and technical knowledge over an array of equally important alternatives – experiential, intuitive, local knowledges; knowledges based on practices of talking, listening, seeing, contemplating, sharing; knowledges expressed in visual and other symbolic, ritual, and artistic ways rather than in quantitative or analytical models based
on technical jargons that by definition exclude those without professional training (2003, 6).

The OMB is adapting by allowing different kinds of knowledge. In a 1974 case, which pitted two municipalities against each other regarding a waste disposal site, the OMB stated that it could only listen to planning evidence, and that environmental evidence would not be accepted. The appellant took the decision to court, and the court ruled that environmental knowledge was inevitably linked with planning and thus it should be accepted; the OMB now consistently accepts environmental evidence (Krushelnicki, 2007, 86-87). Bruce Krushelnicki, a former Board member, explains that even if a member of the community has no professional expertise, they should bring their special knowledge about a subject since it may be valuable evidence; “People bring the human context, the character of the community, the value of a woodlot to the community (Pim, 2004-2005).” This seems to demonstrate a greater acceptance of different types of knowledge, and also shows a greater value placed on practical wisdom. However, in the upcoming evaluation of OMB decisions, it will be demonstrated that the Board has further to go in accepting different types of knowledge.

The fourth cornerstone is that the planner should not do away with state-directed planning, but should focus more on community empowerment and a bottom-up process. Practitioners of the Chicago model saw planning as a modernization project driven by the state. Sandercock’s goal is to build consensus between groups in order to establish and valorize difference, but this consensus can involve confrontation with the state (Watson, 2002, 32). Sandercock says the new urban movements challenge urban planning’s traditional top-down provision, design and delivery of services. This leads Sandercock to suggest that planners should adopt a bottom-up process to address the increasing diversity of cities (2003, 33-34). This aspect of Sandercock’s emerging planning theory is in direct contrast to the OMB’s existing principle; it
was created because there was the belief that local decisions made by municipalities required provincial oversight (Chipman, 2002, 26).

Fifth, the concepts of the public interest and the community must be deconstructed to recognize that there are multiple publics. Planners in the Chicago model of planning theory sees the ‘public’ as singular, and believe that a planner’s education enables them to understand what is in the public’s best interest. The claim was that planners knew what was best for the public because their planning policies were based in positivist science, which was gender and race neutral (Sandercock, 2003, 33-34). In Canada’s 21st century cities, there is no single public and the emerging emancipatory planning theory recognizes the existence of multiple publics. However, the OMB does not successfully deconstruct the public interest and instead sees the ‘public’ in a generally homogenous way. The result is that what is considered in the ‘public’s interest’ misrecognizes the different publics and the vast variety of interests that they have. The Board’s role is exigent; the OMB must “ensure that decisions are consistent with existing local planning policy, that they represent good planning in the interest of the public of the Province, and that they respect and balance the interest and rights of property owners with the rights of the public and the general public interest (Krushelnicki, 2007, 4).” By grouping all the citizens of the province into the category of the public, ‘inconvenient’ differences are erased; this leads to the incorrect belief that a planning decision can respond to the best interest of a divided, dissimilar and diverse public(s).

When the OMB does choose to deconstruct the public, it is only to determine which citizens fall into the category of the ‘concerned public’ – this determines which citizens must be notified about upcoming hearings. The OMB defines the ‘public’ as “any or all persons who have attended municipal council, committee meetings and/or OMB hearings on the subject
application (Syadel, 1995, 234-235).” Because of this restrictive view of the ‘public’, people who have not protested or supported the application may not be notified about the hearing. This demonstrates that while the OMB claims to look out for the public’s interest during a hearing, their view of the ‘public’ is very restricted.

Finally, the sixth cornerstone is that recognition of multiple publics means that democratic politics must become more participatory and agonistic, so that planners and residents work together. The practitioners of the Chicago model incorrectly believed that planning was independent from the chaos of politics and values; they viewed themselves as a neutral party guided by reason (Sandercock, 2003, 33-34). The OMB favours the adversarial approach typical to court proceedings, rather than a more participatory and cooperative process. After its creation in 1906, the Ontario Railway and Municipal Board was designed by its foster parents – the three original members who were all professional lawyers. These members helped mould the procedures of the Board into the adversarial court-like style (Krushelnicki, 2007, 9). In 1953, one of the Board members, C.W. Yates explained that practices were nearly identical to a court and that it employed the same rules of evidence. He stated “In any hearing before the Board, any lawyer with any experience in counsel work is perfectly at home since the same degree of proof is ordinarily required as in civil cases and the procedure to examination and cross-examination of witnesses is identical...(The Ontario Municipal Board, 1988, 2.17).” Therefore, the everyday ‘lay person’ will have difficulty participating in the process.

The OMB has evolved so that it still acts like the courts, but “is less rigid in its perspective of acceptable review, less formal in its proceedings, less complicated to the average citizen and less costly to those who come before it (Krushelnicki, 2007, 4).” During the hearings, each party has the chance to present their case supported by evidence and sworn
testimony, followed by a concluding argument where they can summarize their case. The Board does examine the case and if there is a chance of resolving the conflict before the hearing, the Board will offer mediation and arbitration to the parties (Krushelnicki, 2007, 4-5). Mediation and arbitration provide the benefit of a local discussion and debate of the situation leading to a compromise that satisfies the parties involved. This style of resolution would mean greater participation and interaction between planners and citizens; however, the majority of cases are deemed to require a hearing in front of the Board in order to obtain a final resolution.

After the OMB hearings, the general public is able to present comments once the two parties have been heard, but because of the adversarial nature of the hearing, individual citizens often feel uncomfortable; this restricts participation at the hearings. Often interested members of the public must voice their concerns through a citizen organization or a lawyer. The Sewell Commission has suggested that intervenor funding be offered to citizens and organizations for legal representation at the OMB hearings. While intervenor funding would lead to more costs and delays, one submission to the Commission said: “Intervenor funding is crucial if there is to be meaningful, objective public input into Municipal Board hearings (Syadel, 1995, 235).” Therefore, the OMB does not encourage a more participatory and agonistic style of planning; instead it supports adversarial hearings.
4. The Decisions of the OMB

Based on the above analysis of the process of the OMB, it can be determined that the OMB is having difficulty adapting to the emerging emancipatory planning theory. The following analysis of two decisions made by the OMB will further reveal that the OMB is attempting to control the chaos of the city in a manner that smothers diversity. Following a description of the two cases, an analysis of the decisions will reveal the ways the OMB is unable to meet the challenges of cities of diversity.

4.1 The Ottawa Funeral Home

Members of different cultural, social and religious groups will have differing understandings of the suitable use for urban space. Local citizenship can be challenged by such disputes over land use. In *Funeral and Burial Sites, Rites and Rights in Multicultural Ontario*, the authors explains that modern multicultural cities will experience the spatial manifestation of cultural and religious differences (Agrawal, 2007, 134). In 2000, the city of Ottawa made a decision to expand the commercial use of a site in order to add a funeral home, which was located next to a residential development. A group of residents appealed the rezoning to the Ontario Municipal Board, and received a hearing led by R.D.M. Owen to discuss several planning concerns. One central concern was that the funeral home would be culturally offensive to many residents (‘Re City of Ottawa,’ 217-218). The neighbourhood next to the proposed site was portrayed as very ethnically diverse, with immigrants from “countries such as China, India, Pakistan, Iran, Jamaica and Eastern Europe, as well as residents born in Canada (‘Re City of Ottawa,’ 217-218).”
The residents held a number of different views in relation to the funeral home. Many residents had recently moved from countries where funeral homes do not exist or are rare; as one member of the community, who had recently moved from China, explained “How would we ever think that a funeral home could be located near a residential area? It is completely unthinkable (Smith, 2004)!” Another member of the Chinese community said that if a funeral home were built nearby, he would always be concerned about the negative energy from the restless spirits and the impact on his family, his career and his health (Smith, 2004). A Muslim resident was also concerned; she did not like the idea of a funeral home holding a visitation because she believed a body should be buried immediately, otherwise the soul will never be at rest (Smith, 2004). According to interviews conducted, many of the residents felt uncomfortable with the funeral home, including Muslims from Pakistan, a Sikh family, a person from Czechoslovakia, and families from four different parts of Mainland China (Smith, 2004). The appellants explained that the residential community had five times as many Chinese citizens as the average for the regional population. The report explains that “These statistics were relied on to point out the need to acknowledge that the demographics of the Region as well as the Province and country were dramatically changing and land use planning should take this into account when considering how lands are developed and the uses that should be considered as compatible (‘Re City of Ottawa,’ 222).” However, the Board found that despite these cultural beliefs, the city had conducted a proper planning consultation and that the traditional planning principles had been respected. Therefore, the land use was deemed appropriate by the Board, although the OMB concluded that the city should alter the policies of their Official Plan if they want to encourage diversity in communities (‘Re City of Ottawa,’ 223).
4.2 Port Elgin’s Rail Trail and Wal-Mart

In Port Elgin, a community on the shore of Lake Huron, an OMB hearing regarding the construction of a Wal-Mart became a heated discussion focused on issues of safety for women and children, on the concerns of Aboriginal peoples, and on the responsibility of big box retailers. The hearing began on August 13, 2008, chaired by Susan Schiller of the OMB, and placed the appellant Friends of Saugeen Shores (FOSS) against the developer Shoreline Shopping Centres Ltd (‘Re Town of Saugeen Shores,’ 257-261). The Town of Saugeen Shores, formerly known as the Town of Port Elgin, had approved the development with the site specific Official Plan Amendment 13 and the Zoning By-law 44-2006 to allow major commercial uses. The Board addressed nine issues which related to four planning topics; safety, traffic and transportation, water and waste, and the weight to be given to the new Official Plan (‘Re Town of Saugeen Shores,’ 261). The case became focused on the question of big box development’s responsibility for the safety of female customers and staff. The first concern to be addressed by the OMB was whether the OPA 13 should not be approved and the By-law 44-2006 be repealed because the site plan is unsafe with regards to personal safety, excluding traffic concerns (‘Re Town of Saugeen Shores,’ 267). The FOSS identified the nearby Rail Trail, a recreational trail used by joggers, cyclists, and cross-country skiers, as a concern; the Wal-Mart was to be constructed at the far rear of the property, with the back of the store adjacent to the Rail Trail (‘Wal-Mart Site Plan...’ 2008). FOSS argued that this site plan will further isolate the quiet trail, endangering those who use the trail, especially women and children. As well, FOSS states that there is an increase danger because there is no public transportation provided by the community and the location of Wal-Mart on a highway will make it hard to access. Ms. Root-Anoquot explained in her testimony that:
The lack of general public transit creates a safety risk for those travelling between Saugeen First Nation and the subject site. She testified that in her view young people would be drawn to the subject site for possible jobs and shopping. With no public transit between the reserve and the subject lands she testified that she felt these young people would make poor choices in terms of when they returned to Saugeen First Nation in the evening, what route they would take, what form of transportation they would choose, and with whom they would choose to travel (‘Re Town of Saugeen Shores,’ 284-285).

A final concern was whether Aboriginal peoples, especially women, had been sufficiently consulted with regards to personal safety because they were likely to comprise a significant proportion of the customers and employees. The Board answered the question stating that the there was no evidence of problems with personal safety on the location, and thus approved OPA 13 and By-law 44-2006 (‘Re Town of Saugeen Shores,’ 290-291).

After looking at the impact on personal safety of the site, the OMB discussed the value of the Crime Prevention through Environmental Design (CPTED) audit. The three principles of the CPTED are natural surveillance, natural access control and territorial reinforcement; these planning principles, coupled with proper upkeep, help maintain the safety of sites (Jeffery, 1977). A CPTED audit had been conducted on the location by Emanual Jech, who is a Certified Level Two CPTED Practitioner and a Certified Protection Professional. After examining the site, Mr Jech came to the conclusion that “there is no inherent safety issue with regard to site layout or any causal relationship between these types of development and crimes against persons (‘Re Town of Saugeen Shores,’ 267-271).” However, Ms Narina Nagra, the Safety Director of the Metropolitan Action Committee on Violence Against Women and Children (METRAC), suggested coupling the CPTED audit with a safety audit pioneered by METRAC, used in the past to examine public, non-commercial facilities (‘Re Town of Saugeen Shores,’ 273-275).

However, the Board found that the METRAC audit did not assist in the examination of a
Highway Commercial use site. After addressing the other relevant concerns, the OMB approved the developer’s application (‘Re Town of Saugeen Shores,’ 291).

4.3 Analysis of Decisions

Upon reviewing the above OMB decisions, there are four themes that emerge that are holding back this planning process from meeting the challenges of diverse cities and preventing the evolution towards the new planning theory proposed by Sandercock.

The first central theme is that the OMB’s adversarial approach and court-like atmosphere tend to favour expert opinions, hard evidence and reason. The centrality of ‘reason’ is founded on the modernist planning practice, but Sandercock suggests looking beyond means-end rationality towards practical wisdom. The negative effects caused by the rezoning to allow for an Ottawa funeral home demonstrate how the OMB depends on rationality, and that the centrality of reason excludes consideration of related cultural or social factors. While the practitioners of modernist planning theory can reasonably understand an argument based on traffic use (which is based on quantifiable data), they are unsure what to do with members of a community referencing their long-held cultural belief. Cultural beliefs are not based on quantifiable data and are difficult to present as evidence at an OMB hearing. In the Ottawa funeral home decision, the OMB suggests that there may be a need to update the planning rules with regards to cultural accommodation. However, the Board member, Mr Owen, points to one final reason for denying the appeal:

The Board found that while some of the community held deep-rooted cultural beliefs that a funeral home near their residences was intolerable, the planning process had been thorough in its application of policies and considerations of traditional relevant matters (‘Re City of Ottawa,’ 216).
The OMB thus focused its examination of the situation on traditional planning concerns, such as adequate screening, buffering, physical separation, and design capability. Accordingly, “The Board found that planning based on cultural perceptions to justify restrictions governing adjacent land uses would be inappropriate (‘Re City of Ottawa,’ 216).” The appellants’ planning consultant stated that compatibility of the site depended on more than just screening, buffering, and other design measures. The Board member’s response was that:

I find that the issue of compatibility in this case is one of cultural concerns not traditional land use planning concerns. On the basis of traditional land use planning grounds, I find the funeral home use is compatible with the existing residential community (‘Re City of Ottawa,’ 220).

Therefore, in this decision, the OMB relies on traditional ideas of planning, and fails to accept cultural or social beliefs as justifiable reasons.

Furthermore, Mr Owen cited the remarks of a colleague, Mr Yao, who dealt with a funeral home issue:

If negative effects exist at all, they are not physical but psychological, social and cultural... An incompatibility that depends on perceptions is difficult to justify. It results in ‘people-zoning’ which depends on personal characteristics of the occupants of land to explain restrictions governing adjacent land uses (‘Re City of Ottawa,’ 223). [emphasis added]

Psychological, social and cultural effects are incompatible with land use planning because they are not based on the hard evidence that exists in cases with physical effects. Hard evidence suggests a case based on rationality; whereas cases with less tangible evidence lack the ‘reason’ required in traditional planning.

In the Port Elgin case, regarding the construction of the Wal-Mart, the value placed on ‘reason’ was obvious, and took on a gendered aspect. Witnesses were presented by both Friends of Saugeen Shores and the Shoreline Shopping Centres Limited, and this is where a clear divide
emerged as to the ‘professionals’ and the ‘lay people.’ As Sandercock explains, in modernist planning theory, rationality triumphs over practical wisdom. To begin, Mr Jech was hired by the developer to conduct a CPTED audit; in the report, the OMB lists his credentials as a Certified Level Two CPTED Practitioner and a Certified Protection Professional. The report clearly emphasized that “No other witness appearing before the Board in this proceeding has achieved this high level of certification (‘Re Town of Saugeen Shores,’ 267-269).” The Board accepted the audit and lauded Mr Jech’s qualifications.

Following Mr Jech, there were seven female and one male witnesses called by FOSS; the OMB’s response to each witness was that they could attach no weight to the evidence presented. Admittedly, some of the FOSS witnesses were not as well prepared as they should have been, but other witnesses seemed well-prepared and still little value was placed on their testimony. By examining the way that the Board responded to these witnesses, subtle elements of prejudice appear. Connie Guberman, who was also qualified under the CPTED but had not yet achieved Level 2, stated that she found the CPTED audit to be inadequate. However, the OMB Report disregarded Ms Guberman; rather than explain why Ms Guberman finds the CPTED assessment inadequate, the report lists her professional limitations in an advanced attempt to disqualify her (‘Re Town of Saugeen Shores,’ 276).

The Board also heard from Sarah Jones, who is a member of the Chippewas of Nawash First Nation and lives on a nearby reserve; Ms Jones hears stories dealing with sexual assaults that are alleged to have occurred around the area. In describing Ms Jones, the Board says:

Ms Jones has not been tendered as an expert witness. While the testimony of all witnesses is expected to be relevant, the testimony of lay witnesses is limited to direct evidence. The Board finds first that evidence regarding a rail trail at such distance from the subject site is not relevant and second finds that the intended evidence is hearsay, unreliable, and therefore will not be admitted (‘Re Town of Saugeen Shores,’ 272).
While Ms Jones had not examined witness statements, reports, studies or plans, and thus appeared truly unprepared to present in front of the Board, the OMB’s description of her remains paternalistic and condescending. More importantly, the above comment demonstrates the difference in value that the Board places on ‘experts’ and ‘lay people,’ and explains that the Board puts greater restrictions on lay people, than on experts, when it comes to presenting evidence.

Mary Eberts was presented by FOSS as an expert on the legal status of, and safety issues facing, aboriginal women in Canada. While the OMB accepted Ms Ebert’s qualifications as an expert on legal issues, the Board did not recognize her expertise on the implications of the legal status on the well-being of aboriginal women. The Board stated:

The Board had no doubts that Ms Eberts was familiar with questions of safety and risk and had occasion, through her legal research and legal advocacy to read and digest expert reports in this area and work with experts in the field. Working with experts in the field while undertaking legal research or advocacy may advance one’s understanding of the field but that does not make one an expert in that field (‘Re Town of Saugeen Shores,’ 279).

The Board seems to value the traditional definition of expert, guaranteed by a recognized certificate of some kind, rather than this more practical knowledge acquired through experience; the element of reason is once again central, as reason is associated with the order of professional experts.

The second central theme is the idea of multiple publics; the OMB has begun to recognize multiple publics, but must continue to push past the reliance on a singular homogenous public. In the Ottawa case, while the OMB approved the funeral home, the Board member Mr Owen seemed to recognize the multiple publics. He said: ‘I commend those residents that feel so strongly that the multicultural community that has grown up here over a few short years
should be maintained and oppose the funeral home as they fear some of their neighbours will leave and the community dynamics will suffer (‘Re City of Ottawa,’ 223).” He also states that there was a means by which the cultural impacts can be mitigated through the use of Feng Shui. However, it was not the Board who took the initiative to present the idea, but it was instead the funeral home who offered continued cooperation with the community to alleviate the problems (‘Re City of Ottawa,’ 223).

In the Port Elgin case, the OMB failed to acknowledge the idea of multiple publics when they were conducting the safety audit of the proposed site. The Board relied on CPTED, a planning approach formulated by criminologist C. Ray Jeffery in the 1970s, who founded his work in part on the ideas of Jane Jacobs. While CPTED is an internationally recognized approach, FOSS argued that it was not an appropriate process to assess safety issues in this case (‘Re Town of Saugeen Shores,’ 270). FOSS suggested using a safety audit process pioneered by METRAC; the process was primarily for use on existing public, non-commercial facilities, such as the Toronto Transit System. However, the METRAC audit focuses primarily on vulnerable societal groups; they define safety as “freedom from the threat, fear and experience of all kinds of violence, oppression, and discrimination (‘Re Town of Saugeen Shores,’ 275).” As well, Ms Nagra stated that to fully comprehend the danger and discrimination faced by Aboriginal women, who would both shop and work at the Wal-Mart, there should a consultative survey process that specifically includes them (‘Re Town of Saugeen Shores,’ 275). While there is clearly value in conducting the CPTED assessment, providing an additional audit based on METRAC’s principles could only benefit the site and perhaps reveal more gendered or racially specific concerns. Therefore, while the OMB is recognizing multiple publics to some extent, there needs to be more effort put into always considering the perspectives of these different publics. This is
related to the idea that planners, and others who work in this field, tend to begin from a privileged epistemological space – recognizing the diversity of the public will help to correct this exclusion of marginalized peoples.

The third theme that emerges upon analysis of the decisions above, is the idea that mediation is required in these communities, and would be a more helpful way to address the issues of the community that were brought out by the planning cases. While the OMB hearings offer final decisions on the planning questions, the issues that arose during these hearings are often left unaddressed; former Board member, Bruce Krushelnicki, incorrectly assumes that a community will find resolution once a public hearing is given and a final decision is taken (2007, 6).

In the community in Ottawa, many other members of the neighbourhood, of all different ethnicities, sympathized with their neighbours, and although they did not personally share their beliefs, they demanded that these views be considered when deciding land use. Many local residents appreciated the diverse cultural nature of the community and wanted to maintain that diversity; they argued that inclusiveness was a fundamental Canadian value (Smith, 2004). However, other members of the community fully supported the construction of the funeral home, and the Board member, Mr Owen, stated that “It is unfortunate that this issue has divided the community... (‘Re City of Ottawa,’ 223).” However, no suggestion was made by the Board as to how to rectify this divide, and once the decision was given, there was no mention of future mediation. The Board fails to recognize that the emotions stirred up by hearings will not disappear after the final decision is made.
For the people of Port Elgin, there was a clear divide in the community; while there were a number of different reasons for people to either support or oppose the development, the fight really centred on issues of safety. I would argue that the divide in the community necessitated mediation, especially with regards to the safety of Aboriginal women. Ms Root-Anoquot, an Aboriginal woman residing on Saugeen First Nation for most of her life, discussed what she perceived as a lack of consultation with First Nation women regarding the site development. With this case, there were histories at play that further complicated the hearing; Ms Root-Anoquot said that even if there was consultation with the Band Council, the Band did not necessarily represent the concerns of Aboriginal women (‘Re Town of Saugeen Shores,’ 281-283). For the OMB to properly include Aboriginal women they must establish consultation with a focus on the injuries of the past, such as the colonization and patriarchy that has relegated Aboriginal women to such a marginalized place in society.

The final theme to emerge is that the OMB’s guiding legislation needs to be reviewed and updated. As Sandercock explains, often the legislative framework and the planning system uphold the norms and values of the culturally dominant majority, and the courts and administrative tribunals support them in turn (2000, 16).

In the decision of the funeral home in Ottawa, the appellants’ planning consultant relied on the “Community Vision” document which had been approved by City Council and was referred to in the Region’s Official Plan. One of the strategic directions of the “Vision” is: “Respecting Bilingualism and Diversity. Ottawa-Carleton, as home of the National Capital of an officially bilingual country, will be a community which thrives on cross-cultural respect and understanding and which celebrates its aboriginal, bilingual and multi-cultural nature (‘Re City of Ottawa,’ 218).” The planning consultant argued that the cultural concerns of the residents
should be respected because of the multicultural nature of the community, and that the funeral
home should not be built. The city planner stated that the proper consultation process had been
followed and that there had been consideration of the cultural issues. The Board member went
on to suggest that it may be due to the changing demographics in Ontario’s cities, “the Official
Plans of both the Region and the City must have clearer actual policies if they seek to have the
culture of the diverse community represented in land use planning (‘Re City of Ottawa,’ 223-
224).” Therefore, for the OMB, facing the challenges of diverse cities requires an alteration of
the guiding legislation and by-laws.

With the case in Port Elgin, the OMB concluded that many of the concerns presented by
FOSS had some legitimacy, but that the concerns could not be addressed within the domain of
the OMB’s mandate (Snoes, 2008). While the OMB recognized the concern for the safety of
those travelling to and from the highway site, specifically for those who do not have access to a
vehicle, the Board explained that it had no jurisdiction to require Saugeen First Nation or the
Town of Saugeen Shores to provide transportation or transit service (‘Re Town of Saugeen
Shores,’ 283-285). With regards to the question of consultation with First Nations women,
FOSS and Ms. Root-Anoquot in their argument did not rely on a formal doctrine of duty to
consult; the OMB Report explains that “there is no formal planning requirement for notice or
consultation” with a First Nation reserve 14 kilometres from the site, even if many customers and
employees may be Aboriginal women (‘Re Town of Saugeen Shores,’ 282-283). Therefore, a
lack of guiding legislation once again allowed the OMB to neglect the concerns of marginalized
groups.
5. Conclusion

The analysis of the process and decisions of the OMB has uncovered a number of challenges as the Board attempts to manage cities of diversity using an outdated theoretical basis. Using Sandercock’s framework for a new emancipatory planning theory, I have demonstrated that the Board has adopted some aspects of the new theory, but that in many ways the Board clings to the familiar modernist planning theory. Therefore, the Board often unwittingly reinforces existing power structures and fails to embrace the diversity of Ontario cities. An examination of the OMB illustrates the evolution of planning theory in Canada, from the traditional planning theory based on rationality towards a planning theory that understands the centrality of identities. This study also reveals the difficulties that planning bodies, who are founded in the modernist planning theory, will confront as they stumble along a new planning path.

In the case of the OMB, an examination of the decisions reveals four ways in which the OMB must change in order to fit a new planning theory for cities of diversity. These four themes are that:

1) Practical wisdom must be accepted more often; there must be less of a dependence on ‘rational’ evidence.
2) There needs to be a greater recognition of multiple publics.
3) The OMB must make better attempts at orchestrating mediation between parties, with a focus on related histories.
4) There must be a review of the guiding legislation for the OMB, with special consideration of the legislation’s limiting abilities.

Sandercock explains that urban planning must include an open, communicative procedure, where understanding across identities can be fostered. The above changes are significant, but necessary; planning can be transformative and therapeutic if it is understood as a chance for
cathartic expression by residents (Sandercock, 2000, 23). As Mohanty explains, if those in
power (like urban planners) start from the epistemological space of the most marginalized, they
can “begin to theorize experience, agency, and justice from a more cross-cultural lens (2002,
523-524).” This consultation must also be shaped in a way that is dialogical and therapeutic, not
adversarial. Jacobs explains that, while consultation may be messy, it is the better option
because “There is a quality even meaner than outright ugliness or disorder, and this meaner
quality is the dishonest mask of pretended order, achieved by ignoring or suppressing the real
order that is struggling to exist and to be served (1993, 15).”

The above analysis also sheds light on one of the most common critiques of the Board;
academics and citizens argue that the Board is developer friendly and that it overturns the will of
the democratically elected and legitimate city councils. As discussed, the Board favours the
‘rational’ expression of evidence and the ‘reasonable’ man; established developers and
corporations have grown during the era of modernist planning theory and understand this
framework. They know how to gather and present the ‘proper’ evidence. Additionally,
developers are often able to afford the most experienced lawyers and experts; since the OMB is
founded with a preference for professionals, the developers’ are more likely to impress the
Board. Finally, developers often base their construction projects on economic rationales, which
are empirically verifiable and are understood by the dominant society. In contrast, marginalized
groups that oppose such development may rely on community-based knowledge, cultural beliefs,

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3 In John Ralston Saul’s *A Fair Country*, he describes the OMB as developer-friendly and as saboteurs of any
possible urban strategy for cities in Ontario. He describes the process of the OMB as “The city's official plan may
set building heights at fifteen stories on a street. The developer simply comes in and says he wants sixty. The city
knows the OMB will back him. So after an expensive fight, they settle for fifty-five and even then the OMB may
insist on sixty. And, if the complainant is a citizen body of volunteers, the OMB may insist that they pay the costs,
just to teach them a lesson for trying to interfere.” In Toronto, in 2008, the city council decided to name a city street
‘OMB Folly’ because the new street will lead to an unpopular, but OMB-approved, development.
and emotional pleas. Because the guidance offered to parties is limited (there is no intervenor funding as mentioned), the developer who understands the theoretical foundation of the Board is more likely to win the hearing.

On a larger scale, the analysis of the OMB has revealed a planning theory that is abandoning the planning bodies founded when the Chicago school was still king. Other administrative planning bodies in Canada, while not as powerful as the OMB, are possibly based on the same outdated theoretical model; further case studies may uncover this division in planning theory and practice. On a nationwide scale, the above analysis has revealed a need to rework provincial planning legislation and city by-laws so that they offer greater recognition of different identities. As the board member, Mr Owen, explained with regards to the Ottawa funeral home case, the city and province needed a clearer policy statement when discussing how diversity should be represented in planning. Therefore, while the OMB is unique to the province of Ontario, this problem with guiding legislation and by-laws is likely endemic throughout the country.

The OMB is not a dinosaur of the current planning era, since it has managed to evolve in some respects; however, it is clear that the OMB does not fit comfortably into the new emancipatory planning theory. Whether there is a will or a way to apply changes to the OMB, in order to transform the Board to fit the emancipatory planning model, is an unanswered question. The emancipatory potential exists; can it be unlocked within the restrictive design of the OMB?
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