



## **People Plan Toronto Submission to the Standing Committee on Government Agencies Review of the Ontario Municipal Board (OMB)**

People Plan Toronto (PPT) is pleased to submit its comments to the Standing Committee respecting the function, mandate and role of the Ontario Municipal Board (OMB). PPT is an ad hoc group of active citizens who have been advocating reform of Toronto's planning process since 2006. PPT conducted public forums in 2007 and 2008 and has identified common concerns and suggested solutions to planning issues in Toronto.

As detailed in the submissions that follow, PPT is of the view that the OMB's jurisdiction over planning decisions made by the City of Toronto should be abolished. In the alternative, PPT believes that a number of reforms would enhance the OMB's effectiveness and ensure more equitable citizen participation before the Board.

### The OMB should be abolished

In PPT's view, the OMB is fundamentally undemocratic in two ways. First, it undermines the legitimate decision-making power of elected municipal officials, placing appointees who may have little knowledge or understanding of Toronto in the position of reviewing decisions borne from a complex urban ecosystem in Canada's largest city. Moreover, the OMB is often perceived as acting as an independent decision-maker rather than as a true appeal tribunal, giving short shrift to municipal decisions and official plans in favour of its own fact-finding and interpretation of what constitutes good planning.

Second, while citizens theoretically have access to the OMB, the reality is that few independent citizens or community groups have the financial resources to participate fully in OMB hearings. In contrast, the other side generally has a battery of lawyers, planners and expert witnesses at their disposal. The spectre of SLAPP suits or costs awards, such as those sought in the recent Big Bay Point case, has also had a significant chilling effect. These factors act to discourage effective citizen participation at the OMB and promote cynicism about the process. Administrative tribunals are intended to be more flexible and accessible than the courts; but this is often not the case at the OMB. Due process – a fundamental tenet of democracy – is impoverished when parties and important stakeholders are unable or unwilling, because of either lack of funding or intimidation, to make their voices heard.

No other province in Canada has an equivalent tribunal with such a broad mandate.<sup>1</sup> Nor, to our knowledge, has any province or municipality seen the need to create such a tribunal. We recognize that the OMB's existence is a product of Ontario's history – an evolution of the Ontario Railway and Municipal Board, founded in the early part of this century. Today however, the province is very different and far more urbanized. Given the growth of Toronto in particular, PPT believes that the OMB's role has become anachronistic and unnecessary. To take but one example, PPT believes that the ability to directly appeal Official Plans has been a serious hindrance in Toronto. Indeed, many OMB decisions directly undermine Toronto's Official Plan - a document which reflects a broad community consensus on major land use development issues - despite the huge financial investment and high civic engagement in its creation and approval.

In short, while smaller centres with limited planning capacities may benefit from recourse to the OMB, there is no reason why a city the size of Toronto, with a large and sophisticated planning department, should not be able to function quite capably on its own.

The Liberal government took steps to improve the OMB when it passed the Planning and Conservation Land Statute Law Amendment Act, 2006. These improvements included requiring that complete applications be filed with municipalities early in the process before the clock would begin to tick on the decision-making period by municipal council; restricting evidence before the OMB to that which was placed before the municipal council before it rendered its decision; and requiring the OMB to have regard for local planning decisions.

Thus far, it appears that these changes have had little impact on the OMB, which continues to make decisions that conflict with the Official Plan, determinations of City Council, and the expressed wishes of communities. It remains to be seen, as more applications come forward under the revised statute, whether outcomes will differ as a result of the amendments.

Accordingly, PPT recommends that the Standing Committee support excluding the City of Toronto from the jurisdiction of the OMB.

In the alternative, further amend the OMB's powers and processes

Should the Standing Committee determine that reform of the OMB is warranted rather than wholesale exclusion of the City of Toronto from its jurisdiction, PPT believes a number of amendments to the OMB's powers and processes are merited. While the following recommendations are not intended to be comprehensive,<sup>2</sup> PPT believes that

---

<sup>1</sup> The OMB is referenced in more than 50 provincial acts, with commensurate powers that range from approving the issuance of municipal debt to approval of licenses to expand gravel pits, and from appeals dealing with minor variances to more complex land use, heritage and environmental issues.

<sup>2</sup> For example, these suggestions do not encompass substantive and detailed reforms that could be made, for example, to narrow the scope of the OMB's jurisdiction over municipal planning decisions; to revise the

they would represent a good start on enhancing the effectiveness of the OMB and ensuring greater equity of access:

- a) Statutory amendments should require the OMB to give greater weight to municipal Official Plans. The government should also consider eliminating any right to directly appeal an Official Plan at all. Toronto's Official Plan, which was adopted by City Council in November 2002, was the subject of more than 150 appeals despite having been preceded by three years of public consultation. It took until 2006 for the OMB to approve most of the plan, and appeals are still ongoing. Requiring the OMB to give greater weight to Official Plans, and eliminating the right of direct appeal of Official Plans, would allow this democratically developed document to fulfill its intended function and give more appropriate deference to the municipality.
- b) Full transcripts of every hearing should be made available to the parties as a matter of course, and should come out of the budget of the OMB.<sup>3</sup> As it stands, rule 95 of the OMB's *Rules of Practice and Procedure* allow a party to order a transcript – at its own expense – but do not require that the transcript ordered be shared with other parties. The result is that transcripts are often too expensive for citizens or community groups to acquire, while municipalities or developers can more easily afford to obtain them, thus reinforcing the advantage they already possess. Transcripts enhance the ability of all parties to bring forward evidence and test the case of the other side. They also play a key role in ensuring the transparency of tribunal proceedings, which is manifestly in the public interest.
- c) The provincial government should reinstate funding for intervenors in cases where the public interest is at stake, similar to that which was in place under the former *Intervenor Funding Project Act*.<sup>4</sup> As noted above, citizens and community groups face substantial financial barriers to participation at the OMB, particularly in long and complex cases. Several deputants before the Standing Committee noted that the OMB shows a marked preference for the testimony of paid professional or technical witnesses over “citizen experts” or community representatives. Intervenor funding would help redress the balance by ensuring that community groups have adequate legal representation and the ability to hire expert witnesses. The process would be served by having all sides more effectively represented, and a fundamental inequity of access would be at least partially redressed.
- d) The mediation program at the OMB should be further developed and fully funded by the government. In her presentation to the Standing Committee on September 8, the Chair of the OMB noted:

---

standard of review applied by the OMB to municipal decisions; or to address the merits of two or three-member panels over single member panels.

<sup>3</sup> A useful precedent is the Canadian Radio-television and Telecommunications Commission, which publishes daily transcripts from its hearings on its website, usually within 48 hours. Provincial tribunals such as the Ontario Energy Board also make their transcripts available online.

<sup>4</sup> R.S.O. 1990, C- I.13, repealed on April, 1, 1996

The Board's mediation program has been successful. Where parties agree to mediation, in many instances a full settlement is reached and lengthy and expensive hearings are avoided. The consultant interviewed our stakeholders and found a high level of satisfaction among participants and encouragement to offer more mediation. Even when a full settlement is not reached, mediation often helps to narrow the issues and streamline the hearing process.

Under questioning from the Committee, the Chair acknowledged that the OMB did not have as many trained mediators as she would like, and that having more mediators would lessen the expense of many hearings. Accordingly, PPT recommends that the government fund the training of more mediators at the OMB (ideally, all board members would be trained in mediation) and encourage the use of mediation as a tool both for settlement and case management.

e) The Board's understanding of and sensitivity towards heritage resources should be enhanced. Several recent OMB decisions that ruled against heritage conservation suggest that the Board does not have give sufficient weight to the Ontario Heritage Act.

We appreciate the opportunity to provide these comments.

On behalf of People Plan Toronto

Geoff Kettel

[www.peopleplantoronto.org](http://www.peopleplantoronto.org)