STRATEGIES FOR MORE INCLUSIVE MUNICIPAL PARTICIPATORY GOVERNANCE AND IMPLEMENTING UN-HABITAT'S NEW URBAN AGENDA: IMPROVING CONSULTATION AND PARTICIPATION IN URBAN PLANNING DECISION-MAKING PROCESSES THROUGH RAPID ETHNOGRAPHIC ASSESSMENT PROCEDURES

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Based on the findings of an urban legal anthropology project in Toronto, Canada that tracked municipal decision-making practices in relation to development, redevelopment, and heritage preservation in the city and the often unforeseen and unacknowledged effects these can have on marginal, transgressive, and subaltern (subcultural) communities and their community cultural spaces and practices, this article will first turn to a few neighbourhood examples of public consultation processes underway in Toronto and observations of visual (vocal) resistance to faulty consultation practices. These examples reveal some of the realities of public consultation design in Toronto and how it is experienced on the ground where not all segments of a neighbourhood, community, or those who use a space targeted for (re)development are effectively included or accessed. This article will also examine an example of urban artistic protest to current consultation and development practices before turning to existing sustainable (re)development frameworks, theory, and best practices. Finally, the paper will engage with Sherry Arnstein's ladder of citizen participation to move towards an argument for the application of Rapid Ethnographic Assessment Procedures to municipal public and community consultation practices as a means of effective citizen engagement in municipal (re)development and local cultural heritage preservation decision-making processes that are in line with the principles of the New Urban Agenda.

À la lumière des conclusions auxquelles est parvenu un projet d'anthropologie juridique urbaine réalisé à Toronto, Canada, qui a effectué un suivi des pratiques décisionnelles municipales connexes à l'aménagement, au réaménagement et à la préservation du patrimoine dans la ville et les effets souvent imprévus

et passés sous silence qu'elles peuvent avoir sur les communautés marginales, transgressives et subalternes (sous-cultures) et leurs lieux et pratiques culturels communautaires, cet article examine tout d'abord quelques exemples de processus de consultation en cours dans certains quartiers de Toronto et les constatations de résistance visuelle (vocale) face à des pratiques consultatives défectueuses. Ces exemples révèlent certaines des réalités de la conception des consultations publiques à Toronto et de la façon dont elles sont vécues sur le terrain où certaines parties de la population d'un quartier, d'une communauté ou d'un lieu visé par l'aménagement ou le réaménagement ne sont pas, tout compte fait, consultées ou incluses dans le processus. Cet article étudie en outre un exemple de contestation urbaine artistique des pratiques actuelles de consultation et d'aménagement avant de se pencher sur les cadres durables actuels d'aménagement ou de réaménagement, la théorie et les meilleures pratiques les concernant. Enfin, l'auteure utilise l'échelle de participation citoyenne conçue par Sherry Arnstein pour introduire un argument prônant l'application des procédures d'évaluation ethnographique rapide (Rapid Ethnographic Assessment Procedures)aux pratiques décisionnelles municipales de consultation publique et communautaire comme moyen de promouvoir la participation effective des citoyens à l'aménagement ou au réaménagement urbain et aux processus décisionnels relatifs à la préservation du patrimoine culturel qui sont en accord avec les principes du Nouvel agenda urbain.

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1. Introduction: Unseating Dominant Parties from Public Consultation Processes and Arnstein's Ladder of Citizen Participation

In the wake of the October 2016 official adoption of the *New Urban Agenda* ("NUA")[1] that took place during the United Nations Conference on Housing and Sustainable Development (Habitat III), which occurs only once every 20 years, a new framework for sustainable urban development was set for the next two decades. Moving beyond Habitat III and the fruitful discussions that took place, those engaged in urban law, policy- and decision-making, advocacy, research, planning, design, and (re)development must now turn to how the NUA will be meaningfully put into practice by cities and local governments and within municipal legal frameworks. Improving social justice within cities requires municipal legal complexes and urban (re) development design to more inclusively represent, sustain, and celebrate the distinctive cultures and communities that make up a city.[2]

Contained within cities is the high concentration of individuals needed for the flourishing of a vast spectrum of culture ranging from vocal and well represented iterations of culture, cultural practices, and communities, to more transgressive, marginalized, subcultural, and voiceless iterations.[3] When all of these actors and their associated cultural interests, practices, and allegiances are superimposed within city spaces, the reality of coexisting use interests and patterns can result in unequal treatment by a city's legal complexes. As the UN's Habitat III Issue Papers explain, urban law "often has

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1   *Draft Outcome Document of the United Nations Conference on Housing and Sustainable Urban Development (Habitat III)*, UNGAOR, 71st Sess, 68th Mtg, Annex, Agenda Item 10, UN Doc A/Conf.226/4 (2016) [NUA].

2   Iris Marion Young, *Justice and the Politics of Difference* (Princeton: Princeton University Press, 1990) at 227, 240 [Young, *Justice*]. See also Boaventura de Sousa Santos, *Epistemologies of the South: Justice Against Epistemicide* (Boulder: Paradigm, 2014) at 219: "the ideal of equality is the ideal of equal differences."

3   One way to think about "culture" is as "the set of distinctive spiritual, material, intellectual and emotional features of society or a social group, and that … encompasses, in addition to art and literature, lifestyles, ways of living together, value systems, traditions and beliefs." *Universal Declaration on Cultural Diversity* GA Res 25, UNESCOR, 31st Sess, Annex 1, UN Doc 31C (2001) [UNESCO *Declaration on Cultural Diversity*]. See also Young, *Justice*, *supra* note 2 at 238.

a dual character with an apparently neutral technical nature accompanied by a complex social aspect including the potential for differential impact on different groups within the urban environment."[4] Leading up to the adoption of the NUA, the Habitat III Issue Papers also highlight that the "[s]ocial inclusion of disadvantaged groups, particularly in the redevelopment of urban areas and cultural spaces, can be facilitated through wider recognition of their cultural identity" as well as the recognition of the internal fabric and nuanced composition of these groups.[5] The right to culture and the importance of spaces for cultural activities and communities are also highlighted in a number of city-oriented human rights charters such as the *European Charter for the Safeguarding of Human Rights in the City* at Article XV and XXI,[6] alongside various other UNESCO and international regulatory frameworks that deal with the importance of culture and cultural diversity.[7]

Points 124 and 125 of the NUA emphasize the importance of prioritizing culture and local community engagement within municipal legal complexes and the planning instruments that shape sustainable urban plans and strategies. Here, the NUA notes that this prioritization is especially important where the "potential disruptive impacts of urban development"[8] affect the use and value of intangible and tangible cultural heritage spaces for groups, individuals, and community members.[9]

Sherry Arnstein's seminal article, "A Ladder of Citizen Participation", lays out a spectrum of eight types of citizen and community member participation

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[4]   UN Conference on Housing and Sustainable Urban Development, Habitat III Issue Paper, No 5, "Urban Rules and Legislation" (New York: UN-Habitat, 2015) at 1.

[5]   UN Conference on Housing and Sustainable Urban Development, Habitat III Issue Paper, No 4, "Urban Culture and Heritage" (New York: UN-Habitat, 2015) at 4.

[6]   "European Charter for the Safeguarding of Human Rights in the City", *UCLG Committee on Social, Inclusion, Participatory Democracy and Human Rights* (2000), online: <www.uclg-cisdp.org/en/right-to-the-city/european-charter>. See also "Global Charter-Agenda for Human Rights in the City", *UCLG Committee on Social, Inclusion, Participatory Democracy and Human Rights* (2011), online: <www.uclg-cisdp.org/en/right-to-the-city/world-charter-agenda>; "Montreal Declaration for Cultural Diversity and Inclusion", *Montreal City Council* (2004), online: <ville.montreal.qc.ca/pls/portal/docs/PAGE/CHARTE_MTL_FR/MEDIA/DOCUMENTS/Declaration_diversite_inclusion_2004_en.pdf>.

[7]   *Convention Concerning the Protection of the World Cultural and Natural Heritage*, 16 November 1972, 1037 UNTS 151 (entered into force 17 December 1975); *Convention on the Protection and Promotion of the Diversity of Cultural Expressions,* 20 October 2005, 2440 UNTS 311 (entered into force 18 March 2007); *Convention on the Safeguarding of the Intangible Cultural Heritage*, 17 October 2003, 2368 UNTS 3 (entered into force 20 April 2006); *Declaration on the Principles of Tolerance* (adopted 16 November 1995 by UNESCO, 28th Mtg, 1995); UNESCO *Declaration on Cultural Diversity*, *supra* note 3.

[8]   NUA, *supra* note 1 at para 124.

[9]   *Ibid* at para 125.

that range from "nonparticipation" on the lower rungs of the ladder, to "tokenism" in the middle, and on to "citizen power" on the upper rungs.[10] Within "nonparticipation" we find "manipulation" and then "therapy"— essentially created as an illusion to genuine participation.[11] Within the "degrees of tokenism", we find three levels of increasing participation: "informing", "consultation", and "placation"—where participants are heard but there is no mechanism to ensure that their views will be accounted for in decision-making processes.[12] At the top of the ladder we find increasing "degrees of citizen power" that begin with "partnership"—where there is room for negotiation between traditionally dominant/non-dominant parties in decision-making processes—and then on to "delegated power", and the uppermost rung of "citizen control".[13] Within these two top rungs, the power, or centrality, of dominant values and opinions have been displaced to the extent that marginalized values and opinions are at the center of decision-making processes.[14] Arnstein acknowledges that these divisions are certainly flexible, but function as general categories.[15]

In applying the NUA's focus on promoting participatory urban policies, civic engagement, and people-centered approaches to development and striving for the top rungs of Arnstein's ladder,[16] seeking first to meaningfully involve and consult local groups, individuals, and practising communities in redevelopment related decision-making processes that affect the city spaces they use can provide the necessary intermediaries, or access points, to reveal more of who should be consulted, how and when to access them, and displace the dominance of already-empowered voices within public consultation processes.[17] Displacing the centrality of dominant actors in terms of who is consulted speaks to an approach to development and preservation in the city where no (or, at least, less) portions of the city's diverse groups, communities, cultural practices, and spaces are devalued or ignored.[18] This unseating of traditionally dominant actors in consultation processes also strives for a better balance amongst the competing interests

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[10]   Sherry R Arnstein, "A Ladder of Citizen Participation" (1969) 35:4 J American Planning Assoc 216 at 217 [Arnstein].

[11]   *Ibid* at 217, 218–19.

[12]   *Ibid* at 217, 219–21.

[13]   *Ibid* at 217, 221–22.

[14]   *Ibid* at 217, 222–24.

[15]   *Ibid* at 217–18.

[16]   See e.g. NUA, *supra* note 1 at paras 13(b), 14(a), 16, 26, 31, 33, 41, 48, 61, 72, 81, 86, 92, 97, 138, 148, 155–56.

[17]   See also Mariana Valverde, "How to Consult in Gentrifying Neighbourhoods", *Spacing: Canadian Urbanism Uncovered* (17 November 2015), online: <spacing.ca> [Valverde, "How to Consult"].

[18]   See also Patrick McAuslan, *The Ideologies of Planning Law* (Oxford: Pergamon Press, 1980) at 6 [McAuslan].

and power dynamics in a city.[19] Here, more nuanced consultation practices and methodology should also seek to account for subalternity as well as inter- and intra-generational dynamics within marginalized, peripheral, and non-dominant groups—acknowledging that initial access points into local, community, and subcultural knowledge must not be taken to represent a uniform whole.[20]

Equitably acknowledging the intangible culture, cultural heritage, and community cultural wealth that is generated within community and neighbourhood spaces begins with an understanding of what is valued and why. But even more importantly, this understanding must effectively engage the rich strata of those who use and/or cherish the neighbourhood spaces in question in order to better structure local and municipal decisions that ultimately shape the use, preservation, and (re)development of our city spaces.[21] While ineffective consultation practices may occur due to a variety of underlying reasons—not least of which include outdated, ineffective, or misapplied consultation methods and design—they lead to a sense of mistrust and disengagement, even where the initiation of the process by the city may have grown out of the intention to address urban citizen and community member concerns.

Based on the findings of an urban legal anthropology project in Toronto, Canada that tracked municipal decision-making practices in relation to development, redevelopment, and heritage preservation in the city and the often unforeseen and unacknowledged effects these can have on marginal, transgressive, and subaltern (subcultural) communities and their community cultural spaces and practices, this article will first turn to a few neighbourhood examples of public consultation processes underway in Toronto and observations of visual (vocal) resistance to faulty consultation practices. These examples reveal some of the realities of public consultation design in Toronto and how it is experienced on the ground where not all segments of a neighbourhood, community, or those who use

19   *Ibid.*

20   Boaventura de Sousa Santos, *Toward a New Legal Common Sense: Law, Globalization, And Emancipation*, 2nd ed (London, UK: Butterworths LexisNexis, 2002) at 473. See also David Throsby, "Cultural Capital and Sustainability Concepts in the Economics of Cultural Heritage" in Marta de la Torre, ed, *Assessing the Values of Cultural Heritage: Research Report* (Los Angeles: Getty Conservation Institute, 2002) 101 at 107, 109; *The Burra Charter: The Australia ICOMOS Charter for Places of Cultural Significance*, 2013. See generally Gayatri Chakravorty Spivak, "Can the Subaltern Speak" in Cary Nelson & Lawrence Grossberg, eds, *Marxism and the Interpretation of Culture* (Illinois: University of Illinois, 1988) 271.

21   Harriet Deacon et al, *The Subtle Power of Intangible Heritage: Legal and Financial Instruments for Safeguarding Intangible Heritage* (Cape Town: HSRC Publishers, 2004) at 42 [Deacon et al].

a space targeted for (re)development are effectively included or accessed. This article will also examine an example of urban artistic protest to current consultation and development practices before turning to existing sustainable (re)development frameworks, theory, and best practices. Finally, the paper will engage with Arnstein's ladder of citizen participation to move towards an argument for the application of Rapid Ethnographic Assessment Procedures to municipal public and community consultation practices as a means of effective citizen engagement in municipal (re)development and local cultural heritage preservation decision-making processes that are in line with the principles of the NUA.

2. Toronto Neighbourhoods, Redevelopment, the Realities of Public Consultation Practices, and Resistance

A) Keele Finch Plus

In 2015, neighbourhood planning consultations began in my own Toronto neighbourhood (the Finch corridor on the eastern border of Jane-Finch and the southern border of the York University campus) in relation to the new Keele-Finch (Finch West) subway stop that was projected for completion by the end of 2017, along with the new Metrolinx Finch West Light Rail Transit (LRT) line set to begin construction in 2017 with completion projected for 2021.[22] The purpose of the first "Keele Finch Plus Planning Study" consultation was to get a feeling for what the community envisioned for itself once the subway stop opened:[23] Should there be intensification? How should the neighbourhood grow? What should change? What should stay the same? What kinds of future sidewalks are preferred? What should they look like? What about the inclusion of green spaces? What kind of a green space did the community envision?

I attended the first open house workshop and public consultation and the one that would follow, which were both held in the late afternoon to evening portion of the day spanning a period of about four hours. In observing the 60 to 70 attendees, there was an absence of the families that lived near me—a visually striking gap where the majority of the neighbourhood is racialized, and yet those attending to make their views known were almost entirely white individuals and middle-aged or older. Additionally, many concerns represented were those strongly associated with property ownership, leading to another less visually striking but nonetheless obvious gap in representation of the many tenants who live in the neighbourhood. Regardless, both official consultation summaries released after the first two events blandly

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22   See e.g. "Keele Finch Plus", *Toronto*, online: <www.toronto.ca/city-government/planning-development/planning-studies-initiatives/keele-finch-plus/>.

23   See e.g. *ibid.*

and simplistically summarized that "[y]ounger and older people attended, as well as renters and homeowners, business people, [students,] community organizations, architects and developers, and people of diverse cultural and linguistic backgrounds."[24] The same verbatim statement also appeared in the consultation summary released after the third open house workshop and public consultation event that occurred in September 2017.[25]

In addition to poster displays relating to future developments in the area and the brief and tightly managed presentations on plans for the Keele-Finch corridor as well as the purpose of the consultations, various activities were used to gather the views of those attending. The first consultation had, among a few other similar activities, participants place sticky notes on important local areas with their descriptions of aspects of the neighbourhood they liked and thought should be known. At the second consultation, the majority of the time was spent with attendees participating in what is known as a "design charrette". This involved small group roundtable discussions where the focus for each table was to create a series of overlays on maps that represented where participants saw possible additions such as roads, traffic lights, and paths.

At this consultation, participants created other overlaid drawings to map out how and where they viewed appropriate future intensification in the neighbourhood—what kind of buildings should be built in the future, their locations, and the appropriate height restrictions. The significant percentage of those at the roundtable I participated in were not neighbourhood residents. Rather, the table was comprised of a few planning students who lived elsewhere, an individual from an environmental conservancy group who lived elsewhere, a representative of a local grassroots community coalition working to address poverty in the neighbourhood (Jane Finch Action Against Poverty), an individual who used to live in the neighbourhood, myself, and another local resident who accompanied me. While the table worked at creating these overlaid drawings, the table's facilitator urged us to

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24   City of Toronto, Keele Finch Plus, *Keele Finch Plus: First Open House & Public Consultation: Consultation Summary* (Toronto: City of Toronto, 2016) at 1, online: <www.toronto.ca/wp-content/uploads/2017/10/876d-city-planning-keele-finch-plus-June21-2016-consultation-summary.pdf> [Keele Finch Plus, 21 June 2016]; City of Toronto, Keele Finch Plus, *Keele Finch Plus: March 7, 2017 Open House & Public Workshop: Consultation Summary* (Toronto: City of Toronto 2017) at 2, online: <www.toronto.ca/wp-content/uploads/2017/10/95ee-city-planning-keele-finch-plus-March7-2017-consultation-summary.pdf> [Keele Finch Plus, 7 March 2017] ("students" are included in the attendee list in the 2017 summary).

25   City of Toronto, Keele Finch Plus, *Keele Finch Plus: September 28, 2017 Open House & Public Workshop: Consultation Summary* (Toronto: City of Toronto, 2017) at 2, online: <www.toronto.ca/wp-content/uploads/2017/10/96fd-city-planning-keele-finch-plus-Sept28-2017-consultation-summary.pdf> [Keele Finch Plus, 28 September 2017].

"think big" in terms of intensification. The overarching focus the facilitator kept alluding to was that intensification was inevitable and that all that could really be done at this point was to attempt to shape how we preferred the intensification to occur—along which roads, intersections, and so on. At the end of the roundtable period, hours into the consultation that wound up lasting an extra hour into the evening, many in the room had already left, but those remaining then took part in a debriefing session where each table presented their work. All of the consultations provided loose-leaf half-page comment sheets for additional comments as well as a comment section in the Discussion Guide. A survey was also made available at the second consultation, which resulted in 21 completed surveys out of the estimated 60 who had attended at some point in the four-hour meeting period.[26]

As the consultations progressed and the opinions of the community were gathered and began shaping the plans for the neighbourhood, it was impossible not to wonder about meaningful neighbourhood representation and whether there were any additional efforts being made to ensure the effective engagement of the missing balance of the neighbourhood. As a tenant in the neighbourhood, I only found out about the consultation during my daily social media forays on Twitter. Somehow this was the only outreach attempt that effectively reached me, even though I was actively seeking out information and occasions to become more involved. After the consultations, the official summaries revealed that promotion initiatives for these events had involved a few ads posted in two local neighbourhood and community newspapers; information through electronic and social media means, like the previously noted Twitter, as well as through the website dedicated to the Keele Finch Plus project and its listserv; a flyer strategy where flyers were initially distributed to rental units, homes, and businesses, and then were sent out again to re-engage those who had attended the first and second consultations if the attendee had provided a physical address; and encouragement that local "centres of influence" like community organizations and groups, the local BIA (Business Improvement Area), and the local city councillor's office share news of the consultation events. But, as in-person observation at the events revealed, these promotion initiatives were not translating into consultation attendance from a full spectrum of the neighbourhood. The lack of familiarity with the neighbourhood was highlighted further when representatives from the City, there to facilitate the neighbourhood consultation, were not even familiar with the name of the local school where the consultation was in the process of being held.

Some additional efforts to engage with the community's desires for the neighbourhood once the subway stop would be completed gestured

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26   Keele Finch Plus, 21 June 2016, *supra* note 24 at 2, 6; Keele Finch Plus, 7 March 2017, *supra* note 24 at 2, 3, 12; Keele Finch Plus, 28 September 2017, *supra* note 25 at 2, 9.

positively towards the development of more effective consultation practices, such as the application of Toronto's "PiPS" (Planners in Public Spaces, #TOPiPS) initiative in the months following each open house and public consultation. As part of the Keele Finch Plus Study, a series of three "pop-up" style consultations took place that were in line with the PiPS mandate to "*bring planners to the people* and provide opportunities for the public to engage with City Planners, one-on-one, on issues that affect the City and specific concerns they may have about development and policy in the city."[27] These pop-ups first occurred in three different locations—at the local community center (about a 20-minute walk from Keele and Finch), the local community public library (about a 20-minute walk from Keele and Finch, and the front of the Tim Hortons closest to where the new Keele-Finch subway stop would be located—in order to engage with the community as they went about their everyday lives.[28]

The pop-up in front of the Tim Hortons sought to engage those en route to work who might not live in the community but would nonetheless be affected by the Jane Finch Plus developments. A later pop-up at York University attempted to engage with those who would frequent that subway stop (the next stop after the Keele-Finch stop along the new subway extension), although this pop-up took place on May 27, 2017, during the summer when most students are not on campus, and it also occurred on a Saturday afternoon, when the vast majority of both York University staff and students would never be passing through the space.

The third series of pop-ups occurred about a year-and-a-half into the planning study after the third public workshop and consultation event. These pop-up-style consultations took strides towards better and more nuanced location selection in terms of daily patterns of local everyday life and errands. They took place at the Jane Finch Mall in front of the local chain drugstore Shoppers Drug Mart (about a 30-minute walk from Keele and Finch) and at a small local grocery store (about a ten-minute walk from Keele and Finch). While initiatives and strategies like PiPS and pop-up style consultations are heading in the right direction towards more meaningful public consultation, as we will see below, more must be done to further engage with subalternity in the city and with those who continue to fall between the cracks in current public consultation efforts.

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27   *Toronto*,   online: <www.toronto.ca/city-government/planning-development/ outreach-engagement/planners-in-public-spaces/>.

28   See also "Get Involved: Keele Finch Plus", *City of Toronto*, online: <www.toronto. ca/city-government/planning-development/planning-studies-initiatives/keele-finch-plus/ keele-finch-plus-get-involved/>.

In terms of the intangible culture and community cultural wealth existing within community and neighbourhood spaces, trying to determine what to preserve versus what to develop, and trying to determine what the community values within the existing space and why, effectively engaging a rich strata of the local practising community is essential.[29] Someone with a more nuanced knowledge of the neighbourhood and community might have identified more effective and efficient access points for better community engagement beyond the public library, community center, and Tim Hortons, such as those going about their days and nights in the neighbourhood within spaces like the local community garden; the neighbourhood pubs and bars; the hair salons and barber shops; the numerous family-owned takeout joints; or the little community grocery store. About a year-and-a-half into the Keele Finch Plus Planning Study, and after comments highlighting this oversight, one PiPS pop-up-style consultation finally took place near this grocery store for a three-hour period on a Tuesday afternoon in early October 2017.

B) Moss Park

Numerous other illustrations of this kind of ineffective sampling appear in neighbourhoods around Toronto. Closer to the urban core of Toronto and away from Toronto's inner suburbs, in 2016, an ongoing consultation process was underway in Moss Park, a traditionally LGBTQ-friendly community that serviced working class individuals that could not afford to live elsewhere in the downtown core of Toronto. Despite the traditional character of the neighbourhood, and the stated resistance of the community and the Queer Trans Community Defence to its gentrification, similar complaints as to what I had observed in the Keele Finch Plus consultation arose regarding the lack of effective consultation, where the representation of marginalized groups and subgroups "tend[ed] to get lost in [a] classless notion of 'community.'"[30]

As the Queer Trans Community Defence Fund asked about the redevelopment of Moss Park: "Whose 'Redevelopment'" was the city talking about, and "Whose 'Consultation'" were they seeking?[31] When ineffective consultation takes place, whether or not this is the case, it can often seem as if the city is doing it on purpose, rather than due to outdated or ineffective consultation methods. The mistrust that can grow from weak consultation design or a misapplication of consultation practices often further adds to the

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29   Deacon et al, *supra* note 21 at 42.

30   Queer Trans Community Defence—Toronto, "Moss Park: Whose 'Redevelopment'? Whose 'Consultation'?" (17 September 2016), posted on *Queer Trans Community Defence—Toronto*, online: Facebook <www.facebook.com/queertranscommunitydefence/> [Queer Trans Community Defence —Toronto].

31   *Ibid*. See also their blog focusing on resistance to gentrifying forces in Moss Park: *No Pride in Gentrification* (blog), online: <queertranscommunitydefence.blogspot.ca/>.

issues the city initially sought to address. Instead of making things better (or equitable), badly done consultations can actually make things worse.

3. Fantastical Buildings, Artistic Protest, and the Visual Manifestations of Faulty Attempts to "Consult"

One of the telltale visual indications of the public consultation process used in Toronto is the posting of black and white "Development Proposal" signs at sites under consideration for development or redevelopment. These are ubiquitous in the city; they appear across Toronto and are intended to solicit public participation in upcoming rezoning hearings. They are so much a part of the urban landscape of Toronto that they blend into the background. The proliferation of these bland signs, however, was spiced up in October 2016 when they were transformed into artistic expressions of protest against what they represent by two self-described Toronto-based urban interventionists, Glo̓erm and Tuggy.[32]

Glo̓erm and Tuggy noted, in the explication of their work, that there is a sense of finality to these development proposal signs—a sense that "this is happening" and that the sign advertising public consultation is merely a formality.[33] At the bottom of each sign is the announcement of an upcoming statutory meeting, but this oftentimes simply reads that the meeting date is yet to be announced. Other times, the date will have already passed. In their work, Glo̓erm and Tuggy threw these issues into stark relief. They created mock and outrageous development proposal signs that they then proceeded to place in front of key Toronto landmarks. The first sign that went viral and captured the attention of the public was the mock black and white "Development Proposal" at 60 Queen Street West—Toronto's Old City Hall.[34]

The realistic looking sign announced an upcoming statutory public meeting for which further information would be posted once the meeting was scheduled. It detailed the supposed plans for the Toronto heritage landmark: "An application to amend Zoning By-law 204-86 to construct a 90-storey residential tower with 1198 units. The application proposes to

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[32]   Email from Glo̓erm & Tuggy (23 October 2016) (artists' real names excluded per their request) [Email from Glo̓erm & Tuggy]. See also Laura Howells, "Condos in the CN Tower? Why Artists Are Trolling Toronto with Fake Development Proposal Signs: Satirical Signs Ask Toronto to Take 'Critical Look' at Recent Development Projects", *CBC News* (23 October 2016), online: <www.cbc.ca> [Howells].

[33]   Daniel Rotsztain, "Why I Pranked Torontonians with Fake Condo Signs", *The Globe and Mail* (27 October 2016), online: <www.theglobeandmail.com> [Rotsztain].

[34]   Howells, *supra* note 32; Derek Flack, "Someone is Hilariously Trolling Toronto Condo Proposals" (23 October 2016), *BlogTO* (blog), online: <www.blogto.com/city/2016/10/someone_is_hilariously_trolling_toronto_condo_proposals/> [Flack].

convert the existing heritage building into a 4-storey parking garage and incorporate its façade into the tower. The front plaza would be managed as a Privately Owned Public Space (POPS)."[35]

Considering that redevelopment into a condo building seems to increasingly be the fate of many of Toronto's heritage and otherwise valuable properties, that this fate would now befall Toronto's historic Old City Hall actually seemed plausible. But besides the tellingly satirical nature of the details of the proposal, a few other distinguishing elements betrayed its inauthenticity, such as the plain wooden posts holding it up and the Tumblr link at the bottom of the sign where the City of Toronto's website would usually appear.[36]

Similar signs designed by Glo'erm and Tuggy began to pop up with outrageous proposals for redevelopment projects targeting other cherished Toronto heritage properties and landmark buildings, such as the CN Tower, Casa Loma, and the Rogers Center.[37] The development proposal targeting the CN Tower at 301 Front Street West moved into particularly extreme territory.[38] The drafted image of the proposal portrayed a condo tower construction sprouting out from a new platform addition that jutted out from the CN Tower's observation deck. The "Development Proposal"

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35   Howells, *supra* note 32. See also the artists' Tumblr page: Glo'erm & Tuggy, "Development Proposal: An Application to Permit Consideration of the Development of the City of Toronto", online: Tumblr <developmentproposal.tumblr.com> [Glo'erm & Tuggy, "Development Proposal"]. The mention of POPS (privately owned public spaces) cleverly appears and was particularly poignant at the time as it called to mind a recent controversy in Toronto over these spaces for the public to use, congregate, and enjoy, but which are privately owned and subject to the rules of the operating private interests—thus often over-representing the private interests of those who own or control the space over the public accessing the space. In addition, the mention of the parking spaces to be included in the project recalls the many important cultural spaces (of nighttime music or disruptive culture, and others) that have been lost over the years to parking lots (as we have seen previously): see e.g. Luke Simcoe, "'We Want our Space Back': Toronto Restaurant Faces Backlash for Public Space Patio", *Metro* (14 August 2016), online: <www.metronews.ca> [Simcoe]; Andrea Janus, "Table for Everybody: City Says La Carnita Patio 'Not Acceptable,' Must Ensure Public Access", *CBC News* (13 August 2016), online: <www.cbcnews.ca> [Janus]; Geoffrey Vendeville, "La Carnita's Private Patio on Public Space Angers Condo Owners", *Toronto Star* (16 August 2016), online: <www.thestar.com> [Vendeville]. See generally Mariana Valverde, "Taking 'Land Use' Seriously: Toward an Ontology of Municipal Law" (2005) 9:1 Law Text Culture 34 [Valverde, "Land Use"]. See also Bradley L Garrett, "The Privatisation of Cities' Public Spaces is Escalating. It is Time to Take a Stand", *The Guardian* (4 August 2015), online: <www.theguardian.com> [Garrett].

36   Howells, *supra* note 32; Flack, *supra* note 34.

37   Howells, *supra* note 32; Glo'erm & Tuggy, "Development Proposal", *supra* note 35.

38   Howells, *supra* note 32. See also Glo'erm & Tuggy, "Development Proposal", *supra* note 35.

was accompanied by the following description: "An application to amend Zoning By-law 201-A6 to construct a 40-storey residential tower including a 4-storey parking podium. The existing tower will remain open during construction, and its south-west quadrant will be permanently converted into the condominium's entrance lobby and gym, and one elevator bank will be dedicated to residential use."[39] So many people were confused (and genuinely concerned) by the signs that the City had to issue a statement that these signs were not real.[40]

As Glo'erm and Tuggy explained during an email exchange I had with them, their urban art interventions helped demonstrate the reality of how these development proposal signs intended to notify and engage affected or concerned Torontonians in the decision-making processes ultimately wind up blending into the urban environment and do not effectively accomplish their purpose.[41] While these signs are only in English, skew towards pedestrian traffic, and presume literacy, whether or not those passing by will even be able to attend the one-time upcoming consultation meeting that will be eventually announced is perhaps an even more pressing concern. Thinking about the many assumptions that these development signs are premised on in order to apparently achieve engagement and consultation with affected urban citizens foreshadows the reality of their utility.

In this way, the urban art interventions by Glo'erm and Tuggy call out the reality behind a lot of development projects that have resulted from these seemingly innocuous black and white signs—developments that have led to replaced historic sites or replaced sites of high community value (without a meaningful consultation as to heritage merit), which have often occurred with a dearth of *effective* engagement with the community as to the community importance of the space. As one of the artists asked, "How many of us are meaningfully included in the shaping of Toronto?"[42] In unpacking a few more of the elements of the mock sign in front of the Old City Hall in particular, there is also the allusion to a common strategy that maintains the built heritage merit of the façade of the building, but ultimately alters the use of the space and key characteristics that brought meaning to a space beyond its visible aesthetics.[43]

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[39]   Howells, *supra* note 32. See also Glo'erm & Tuggy, "Development Proposal", *supra* note 35.

[40]   See e.g. Faiza Amin, "Outrageous (and Fake) Condo Development Proposals Causing a Stir Across Toronto", *City News* (23 October 2016), online: <www.citynews.ca>.

[41]   Email from Glo'erm & Tuggy, *supra* note 32; Rotsztain, *supra* note 33.

[42]   *Ibid.*

[43]   See e.g. Simcoe, *supra* note 35; Janus, *supra* note 35; Vendeville, *supra* note 35. See generally Valverde, "Land Use", *supra* note 35. See also Garrett, *supra* note 35.

As Glo'erm and Tuggy explained about the work put into their project and the meaning behind it, "The aim is to spark conversation about the kind of city we are building and whose voice counts in this process."[44] They echoed the sentiments of many Torontonians and the urban citizens of many other cities undergoing similar processes when they stated further, "We want the city to go beyond a sign when it comes to development proposals."[45]

4. Decolonial Sustainable Development Theory for Better Public Consultation Practices in Urban (Re)Development Processes

Effectively consulting affected parties requires moving beyond a focus on the primary "practising community" affected ("a community that has created and/or practised an intangible cultural form"),[46] in order to actively and diligently seek out additional practising communities—especially those that may be overlooked by an outside eye in order to ensure they too are consulted in decision-making processes.[47] A better understanding of internal community and group composition is also essential. Here, professional consultants or city employees involved in governance or planning processes are unlikely to have the nuanced context-specific knowledge to effectively identify the additional practising communities and subcommunities to be consulted in decision-making processes.[48] For this reason, it is important to turn to the mechanics of what meaningful community participation could look like in (re)development and heritage preservation decision-making processes that occur at the city and neighbourhood level in order to work towards a bottom-up approach that focuses on partnerships with communities in making these decisions that ultimately affect the daily-lived experience of city and neighbourhood life.

A) A *Buen Vivir* Approach to Consultation and Citizen Participation: Unseating the Dominance of Property Owners over Tenants

The unseating of the traditionally dominant in public consultation processes speaks to a *buen vivir* approach to development in the city where dominant groups or individuals would be decentered from public consultation and citizen participation processes, thus redistributing power to those

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[44]   Email from Glo'erm & Tuggy, *supra* note 32.

[45]   Rotsztain, *supra* note 33.

[46]   Deacon et al, *supra* note 21 at 42.

[47]   See also Valverde, "How to Consult", *supra* note 17.

[48]   See also *ibid*.

often invisible or unaware of public consultations during redevelopment decisions.[49]

Patrick McAuslan describes three different and competing ideological approaches to planning law: 1) the "traditional common law approach to the role of law" where the law is seen to exist for the purpose of protecting private property and the institutions associated with private property; 2) "the orthodox public administration and planning approach to the role of law" where the law is seen to exist for the purpose of advancing public interest, even if this is done to the detriment of private property interests; and 3) what McAuslan suggests might be labelled "the radical or populist approach to the role of law" where the law is seen to exist for the purpose of "advanc[ing] the cause of public participation against both the orthodox public administration approach to the public interest and the common law approach of the overriding importance of private property."[50] McAuslan reminds us that these three ideologies shape planning law and the legal complexes that govern space, buildings, people, and property in the city and materialize in three key areas of the planning system that intersect with the law and "legal input": "public participation and debate, public development and initiatives and public regulation of private development and activities."[51]

Of particular relevance to a *buen vivir* approach to consultation in planning processes is the third ideology that focuses on the importance of participation. In line with neighbourhood nuisance management that is suggested in Quebec's *Civil Code* at Article 976 where the rights and interests of ownership are not privileged over those of non-owning residents, the ideology of public participation seeks to balance the interests of all of those invested in a space that is the subject of redevelopment interests, which is the kind of balance called for by the case studies canvassed above and their resistance to the lack of acknowledgment of their interests in spaces targeted by (re)development initiatives.[52] As McAuslan asserts, the law is seen "as the provider of rights of participation in the land use planning process not

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[49]   For a more detailed discussion of this topic, see Sara Gwendolyn Ross, "*Buen Vivir* and Subaltern Cosmopolitan Legality in Urban Cultural Governance and Redevelopment Frameworks: The Equitable Right to Diverse Iterations of Culture in the City and a New Urban Legal Anthropological Approach" (2015) 5:1 City U Hong Kong L Rev 55.

[50]   McAuslan, *supra* note 18 at 2.

[51]   *Ibid.*

[52]   See generally Sara Ross, "Legislating Tolerance: Article 976 of the Civil Code of Quebec and its Application to Mixed-Income and Mixed-Use City Redevelopment Projects" (2016) 62:3 Loy L Rev 749; Adrian Popovici, "La poule et l'homme: sur l'article 976 C.c.Q." (1997) 99 R du N 214.

by virtue of the ownership of property but by virtue of the more abstract principles of democracy and justice."[53]

McAuslan explains that the right of participation in redevelopment and planning decisions and proposals should be extended to "*all* who are likely to be affected by or who have, for whatever reason, an interest or concern in a proposed development of land or change in the environment … just because they might be affected or are interested."[54] It is, however, important to understand that the ideology of *public participation* is distinct from a pure focus on *public interest* by, as McAuslan explains, "denying that the public interest can be identified and acted upon by public servants on the basis of their own views and assumptions as to what is right and wrong."[55] As a result, consultation processes are crucial in order to effectively engage the views of those affected by decisions—not only the traditionally dominant voices, as we will see below with different strategies that seek to engage the diversities of groups and individuals affected by redevelopment decisions regarding spaces of high community value and intangible cultural heritage. McAuslan also warns that "[p]ublic servants should act only after full public debate (and by public debate is meant a debate in which the general public can take a direct part) and subject always to continuous consultation with the public."[56]

In line with the strategies outlined below, the ideology of public participation described by McAuslan manifests both *procedurally* in terms of how consultations are designed and carried out as well as *substantively* in terms of developing the appropriate frameworks and decision-making processes within which social, community, and cultural interests in the city can be more equally valued and better balanced with economic interests.[57] As a result, a focus on public participation, both procedurally and substantively, works towards better establishing a balance between competing and overlapping use-values and exchange-values within city spaces, which is especially relevant when dealing with spaces of high community cultural and subcultural wealth that simultaneously house a high potential exchange-value where redevelopment interests are concerned.

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53   McAuslan, *supra* note 18 at 5. Written as it was in 1980, McAuslan points us to JR Lucas, *Democracy and Participation* (Penguin Books, 1976) "for the best modern statement of this position" (McAuslan, *supra* note 18 at 5, n 15).

54   *Ibid* at 5 [emphasis added].

55   *Ibid.*

56   *Ibid.*

57   *Ibid* at 6.

B) Arnstein and the Mechanics of Citizen Participation and Consultation

Arnstein's ladder of citizen participation discussed at the outset presents a similar rationale to approaching citizen participation and consultation. Engaging with Arnstein's work, Julie-Anne Boudreau, Roger Keil, and Douglas Young's study of urban governance and neoliberalism in Toronto further affirm Glo'erm and Tuggy's observation that the black-and-white development proposals seem merely to announce what is inevitably happening rather than meaningfully engaging the community: "Much so-called participation is little more than a token gesture of informing without actually involving the citizenry in any significant way in decision-making."[58] As Arnstein argues, "There is a critical difference between going through the empty ritual of participation and having the real power needed to affect the outcome of the process."[59] Mariana Valverde also notes that Toronto's consultation processes have a tendency to simply reinforce existing power structures.[60] While Toronto has acknowledged and attempted to address the lack of effective engagement with the diversity of its residents—the latest example being the creation of the Toronto Planning Review Panel—these initiatives speak to larger redevelopment and planning projects in Toronto rather than the many consultations that occur daily in relation to particular spaces and neighbourhoods, and the nuanced micro-contextual knowledge needed to determine the value of specific spaces and venues.[61]

To guard against the manifestations of Arnstein's tokenism at play in cities like Toronto, decisions affecting communities and heritage require active negotiation in undertaking community consultation. In order to move away from tokenism and work towards an equality of differences in the city space, more active community negotiation, participation, and consultation is required for communities, cultural, and subcultural groups associated with a space of high cultural and community wealth when the space is targeted for redevelopment. But, as Arnstein suggests, while no one is really against the notion of citizen participation, the reality of effective citizen participation may not be as palatable to relationally dominant individuals and groups whose views and preferences are unseated and

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[58]   Julie-Anne Boudreau, Roger Keil & Douglas Young, *Changing Toronto: Governing Urban Neoliberalism* (Toronto: University of Toronto Press, 2009) at 110.

[59]   Arnstein, *supra* note 10 at 216.

[60]   Valverde, "How to Consult", *supra* note 17.

[61]   The creation of this 32-person panel is an experiment designed to supplement public consultation and has gone to great strategic lengths to select a random yet adequate representatively diverse sampling of Toronto's population to serve for a two-term period. See the [City's website for the Toronto Planning Review Panel](#), online: <www.toronto.ca/ city-government/planning-development/outreach-engagement/toronto-planning-review-panel/>.

diluted by effective citizen participation that engages relationally non-dominant individuals and groups in decision-making processes.[62]

Arnstein's proposal for the ladder of citizen participation is useful because it "juxtaposes powerless citizens with the powerful in order to highlight the fundamental divisions between them."[63] This is important where values of different groups and stakeholders within a space of culture can overlap and clash within the same space, and there is a tendency to lump those with a different opinion into just one category. For example, oftentimes those who value a cultural space and view it as an asset of community cultural wealth, along with those who may wish to preserve the space for another use or reason, can be lumped together as preservationists resisting change, which is an oversight, and vice versa for those interested in the exchange-value merits of the space.

The ladder of citizen participation breaks down "homogenous blocs" and enables a more nuanced understanding of the group with the "opposite" opinion and acknowledges that there are various reasons and motivations behind different ways of valuing a space of culture in the city.[64] Again, Arnstein's ladder is particularly relevant to city redevelopment approaches where clashing values in terms of preservation/non-preservation and use-value/exchange-value occur; however, the next task is to think about strategies for finding, listening to, documenting, and incorporating displaced marginalized values and interests within redevelopment processes that target spaces of high community cultural wealth—and, first, determining the existence of these spaces.

5. Applying Arnstein's Ladder of Citizen Participation

A) Developing a Complete and Meaningful Understanding of the Affected Space and Community Through Access Points

Similar to the Keele Finch Plus consultation, Valverde observes of Toronto that "Every municipal planner knows that when the City convenes a public meeting to consult a community about a proposed project, the people who tend to show up are well-educated, middle-aged, home-owning residents. Young people, tenants of all ages, newer immigrants, and those who are marginally housed, often stay away. If a young person of colour shows up at a meeting, the odds are that s/he is a planning student."[65] In dealing with the question of transgressive cultural spaces, the compounding reality is that

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62   Arnstein, *supra* note 10 at 216.

63   *Ibid* at 217.

64   *Ibid.*

65   Valverde, "How to Consult", *supra* note 17; see also Mariana Valverde, "A Tale of Two—or Three—Cities: Gentrification and Community Consultations" in Jay Pitter & John

those who are affected often do not have any ownership stakes in the space, as we are dealing with community cultural value in a space *used* by attendees and where, additionally, the operators of the space usually do not own the venue and it can be redeveloped or sold out from under them.[66]

In terms of the mechanics of engaging groups that may use and occupy a space at unconventional times or in unconventional ways, an investigation of a space to determine local communities and stakeholders that use a space must first be done in order to develop an access point, group, or individual into local knowledge. Subsequently, a more inclusive and encompassing consultation design can be developed with guidance from *within* communities in designing and deploying an effective consultation strategy.

While initial access points can be difficult to determine, locating effective access points is essential to determining what practising communities exist within the space, and to pinpoint methods of communication and engagement with these practising communities, in order to determine where, when, and with whom consultations might best be organized. As the Queer Trans Community Defence group asserted in relation to the Moss Park redevelopment, and what they identify as gentrification: "Any real process of 'consultation' must be open-ended and up to people in the local community to define."[67]

The logical overarching first step in this process is for the actual space in question to be observed at different periods of the day/night continuum. The next step is to engage those using the space in order to access information about the space and its use. The key points here are the importance of "going to" the site at *different* points during its use-pattern—both day and night—and engaging the practising community. As we will see in the example below, the utility of engaging local, community, cultural, and subcultural actors is an invaluable knowledge resource from which to shape equitable decision-making processes. These "knowledges" and values are often made known when the community mobilizes to have itself heard, such as the Queer Trans Community Defence in advocating against gentrifying forces in Moss Park and ineffective consultation processes, or when a local councillor effectively represents the interests of a space they

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Lorinc, eds, *Subdivided: City-Building in an Age of Hyper-Diversity* (Toronto: Coach House Books, 2016) 199 [Valverde, "A Tale"].

66   Sara Ross, "Development Versus Preservation Interests in the Making of a Music City: A Case Study of Select Iconic Toronto Music Venues and the Treatment of Their Intangible Cultural Heritage Value" (2017) 24:1 Intl J Cultural Property 31; Sara Ross, "Protecting Urban Spaces of Intangible Cultural Heritage and Nighttime Community Subcultural Wealth: A Comparison of International and National Strategies, The Agent of Change Principle, and Creative Placekeeping" (2017) 7:1 Western J Leg Studies, Article 5.

67   Queer Trans Community Defence—Toronto, *supra* note 30.

have been made aware of. However, as we will see, other mechanisms, such as Rapid Ethnographic Assessment Procedures ("REAP"), are available to design and crystalize these processes and formally institute them within redevelopment decision-making processes in order to ensure that spaces of high community cultural wealth and intangible cultural heritage have a better chance to be considered for protection regardless of whether the community or local councillor mobilizes.[68]

B) An Example of Engaging with Access Points: Planning South Riverdale in Action

Two kilometres east of Moss Park, down Queen Street East, the work of Planning South Riverdale (an independent volunteer community-based group) provides a pertinent counterpoint to the case studies canvassed above. Planning South Riverdale illustrates a community consultation design that sought to include and gather meaningful information from marginalized neighbourhood residents who the group of Planning South Riverdale volunteers knew were unlikely to attend a public meeting regarding the closure of the infamous and historical strip bar called Jilly's, the old hotel/ living space above, and the resulting changes to the neighbourhood.[69]

Originally constructed as Dingman's Hall in 1891–1892, the landmark property at 704 Queen Street East served as an important community social gathering space, and was then transformed into a hotel in 1907.[70] Not unlike other recently closed historic spaces in Toronto such as the Waverly Hotel and the space above Brunswick House, since its time as a hotel, the Broadview Hotel had gradually shifted into use as a boarding house/SRO (Single Room Occupancy) and housed the Jilly's strip club on its main floor.[71] The Broadview Hotel was listed as a heritage property on December

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68   See Setha M Low, "Anthropological-Ethnographic Methods for the Assessment of Cultural Values in Heritage Conservation" in Marta de la Torre, ed, *Assessing the Values of Cultural Heritage: Research Report* (Los Angeles: Getty Conservation Institute, 2002) 31 [Low, "Anthropological-Ethnographic Methods"].

69   Valverde, "How to Consult", *supra* note 17; Valverde, "A Tale", *supra* note 65; Planning South Riverdale, "Supporting a Main Street for Everybody: A Report on the Loss of Inclusive and Affordable Retail on Queen St E" (2015) [Planning South Riverdale, "Supporting"]; Planning South Riverdale, "Results of Consultations About Local Development Issues with Marginalized Community Members" (2014), online: <spacing.ca> [Planning South Riverdale, "Results"].

70   City of Toronto, by-law No 605-2015, *To designate the property at 704 Queen Street East (Dingman's Hall) as being of cultural heritage value or interest* (12 June 2015) [By-law No 605-2015]; Jamie Bradburn, "From Dingman's Hall to Jilly's", *Torontoist* (13 May 2014), online: <torontoist.com>.

71   By-law No 605-2015, *supra* note 70; see also Jamie Bradburn, "Scenes from the Brunswick House", *Torontoist* (30 November 2015), online: <torontoist.com>; "Is Hotel

10th, 1975, and received official designation for its (tangible) cultural heritage value or interest on June 12th, 2015.[72]

The Planning South Riverdale initiative took shape after the City had held an open house and other public meetings that, like the Keele Finch Plus open houses, were held at a local school.[73] Also similar to the Keele Finch Plus study, an array of technical information was presented to attendees that can be hard to engage with unless one has a background, or well-developed personal hobby, in city planning or architecture.[74] Noticeably, these open houses and public consultations had a gap mirroring what I observed during the Keele Finch Plus consultation processes—the many low-income tenants living in the area were not represented and their opinions were not sought.[75] Despite being open to all, public consultations are not necessarily accessible for many, including shift workers, parents without childcare, and non-English speakers.[76]

As opposed to the city-generated community engagement, Planning South Riverdale actually went to the places in the neighbourhood frequented by the most marginalized community members rather than expecting them to show up to public meetings if they wanted to make their views heard.[77] Additionally, Planning South Riverdale shifted the questions being asked of participants. Similar to the questions asked at the Keele Finch Plus consultations that focused generally on what participants liked best about their neighbourhood or what they wanted to see improved, Planning South Riverdale also asked community members more nuanced questions about existing services and businesses in the neighbourhood.[78]

This initiative by Planning South Riverdale is in line with McAuslan's point that true public participation is distinct from a focus on the public interest that public servants might assess based on their own understandings and assumptions about a space that is targeted for (re)development and the groups and individuals who value the space.[79] Planning South Riverdale

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Waverly's Lurid Past Keeping it from Heritage Designation?", *CBC News* (19 July 2014), online: <www.cbc.ca>.

[72]   By-law No 605-2015, *supra* note 70; City of Toronto, *Staff Report Action Required: Alterations to a Designated Heritage Property and Authority to Enter into a Heritage Easement Agreement: 704 Queen Street East (Broadview Hotel)* (Toronto: City of Toronto, 2015), online: <www.toronto.ca/legdocs/mmis/2015/pb/bgrd/backgroundfile-80143.pdf>.

[73]   Valverde, "A Tale", *supra* note 65 at 201.

[74]   *Ibid.*

[75]   *Ibid* at 202.

[76]   *Ibid* at 203.

[77]   *Ibid* at 207.

[78]   *Ibid* at 204.

[79]   McAuslan, *supra* note 18 at 5.

also demonstrates the kind of access point necessary to be established in order to carry out effective consultations that target affected marginalized communities and groups who, as Planning South Riverdale's work reveals, do not always "feel welcome" in the spaces and businesses that arise as the neighbourhood shifts, redevelops, and gentrifies.[80] A community, culture, and subculture "creates its own geography, a set of places or sites … through which it gains cohesion and identity," and a spirit of community and belonging can be generated by attending and participating within a space, a venue, or spaces like a store catering to repeat attendees with shared cultural reference points, preferences, and tastes.[81] Spaces and venues, regardless of any merit housed within their built-structure, can serve as a "community center". Even small businesses or leisure spaces, for example, can provide vital *de facto* social and cultural space for communities as well as cultures and subcultures.[82] Spaces and venues thus play a key role as a safe space and a nucleus for the development and flourishing of friendships, relationships, and community connections.[83] As such, it is important that redevelopment decisions that affect these spaces take them into account but, as we can see, the engagement of the community is often necessary to identify these spaces in the first place. Planning South Riverdale's access to and consultation with the individuals and groups that frequent the neighbourhood spaces reveals the kind of richly nuanced opinions and views of the kinds of spaces and the characteristics of different spaces that are valued and why—the kind that is sorely needed when redevelopment decisions are made so that dominant and traditionally vocal views can be displaced and equitably take into account with the often overlooked.[84]

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80   Valverde, "How to Consult" *supra* note 17; Planning South Riverdale, "Supporting", *supra* note 69; Planning South Riverdale, "Results", *supra* note 69; Valverde, "A Tale", *supra* note 65.

81   Ken Gelder, *Subcultures: Cultural Histories and Social Practice* (Abingdon, UK: Routledge, 2007) at 2. See Katherine N Rankin, Kuni Kamizaki & Heather McLean, "Toronto's Changing Neighborhoods: Gentrification of Shopping Streets" in Sharon Zukin, Philip Kasinitz & Xiangming Chen, eds, *Global Cities, Local Streets: Everyday Diversity from New York to Shanghai* (New York: Routledge, 2016) 140 at 154, 159 (where Katherine N Rankin, Kuni Kamizaki, and Heather McLean demonstrate this in their interaction with shopkeepers in a study of Toronto's Bloordale and Mount Dennis neighbourhoods). See also James Michael Buckley & Donna Graves, "Tangible Benefits from Intangible Resources: Using Social and Cultural History to Plan Neighborhood Futures" (2016) 82:2 J American Planning Assoc 152 at 160–61 [Buckley & Graves]. See also Jane Jacobs, "The Missing Link in City Redevelopment", *Architectural Forum* (June 1956) 132.

82   Buckley & Graves, *supra* note 81 at 160–62.

83   See e.g. Benjamin Boles, "Fight for Your Right to Party", *NOW* (15 May 2014), online: <nowtoronto.com>.

84   See e.g. Valverde, "How to Consult", *supra* note 17: "The most frequent complaint was the absence of any Tim Horton-style coffee shop: the residents reported that they felt alienated not only by the high price of lattes but by the feel of upmarket espresso bars. Someone noted that a small park behind the Jilly's hotel had been used to socialize and smoke

As Valverde suggests, "In an increasingly unequal city, planners need to find new ways to ensure that those most at risk of being displaced and disempowered have their voices heard—even if that means going to where they are, and relying on intermediaries who have the right local knowledge."[85] On that note, in terms of new approaches to equitably accounting for the diversity of views, opinions, and values in a city—and where access points to these views and opinions is crucial but can be difficult to locate— Valverde suggests that "parts of some planning consultations could be contracted out to community groups and centres, rather than professional consultants."[86] These groups, like Planning South Riverdale, whether linked to a neighbourhood community or a subcultural community, often have access to the knowledge and kind of public participation needed to make well-informed redevelopment decisions that engage more than outside views of what the public interest may be, and these groups often also have a better sense of how to access those that should be consulted in attaining this knowledge.[87] As key access points, a more effective exploration and encouragement of similar groups in other neighbourhood spaces would provide a better strategy in working towards the more meaningful consultation needed in the examples above of Keele Finch Plus, the Moss Park's LGBTQ community, and the protest and resistance to current development consultation processes expressed in Glo'erm and Tuggy's urban art interventions.

C) Rapid Ethnographic Assessment Procedures ("REAP"): An Effective Application of Social Science Research Methods to Public Consultation Practices

REAP methodology provides a tested model for effectively weighing clashing values and interests in decisions relating to cultural heritage, preservation, and redevelopment interests. In addition to its potential to crystallize key elements of the Planning South Riverdale approach to consultation and address McAuslan's description of the ideology of public participation, as Setha Low describes in a seminal report out of the Getty Conservation Institute, REAP is in line with the effective application of social science research methods in order to address the kind of social inclusion described

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by people living in nearby supportive housing, but when condo owners with dogs pressured the city to create a fenced-in dog park, an important public space was lost"; Planning south Riverdale, "Results", *supra* note 69; Valverde, "A Tale", *supra* note 65. See also McAuslan, *supra* note 18 at 6.

    [85]   Valverde, "How to Consult", *supra* note 17. See also Valverde, "A Tale", *supra* note 65 at 207.

    [86]   Valverde, "How to Consult", *supra* note 17. See also, Valverde, "A Tale", *supra* note 65 at 207.

    [87]   Valverde, "How to Consult", *supra* note 17; Valverde, "A Tale", *supra* note 65.

by the NUA and the Habitat III Issue Papers that led up to its adoption.[88] Extoling the merits of qualitative methods in anthropology for what they can provide for assessing the sociocultural values found within (e.g., cultural heritage spaces), Low suggests that ethnographic approaches in particular are best for understanding the current users of a space or site.[89] As Low summarizes, "Ethnographic and observational approaches seem most appropriate to the heritage conservation task because of their individual and group level analysis."[90] As such, Low proposes REAP methodology as "the most inclusive and useful for solving heritage conservation problems."[91] The fundamentals of REAP transport us back to early examples of mapping and observation of how space is used in terms of behaviour and activity patterns.[92] Low asks us to recall the observational films of William "Holly"

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[88]   Low, "Anthropological-Ethnographic Methods", *supra* note 68. See also Dana E Taplin, Suzanne Scheld & Setha M Low, "Rapid Ethnographic Assessment in Urban Parks: A Case Study of Independence National Historical Park" (2002) 61:1 Human Organization 80 [Taplin, Scheld & Low]; NUA, *supra* note 1; UN Conference on Housing and Sustainable Urban Development, Habitat III Issue Paper, No 1, "Inclusive Cities" (New York: UN-Habitat, 2015) at 5. REAP methodology also bears similarities in purpose and design to strategies deployed successfully in pilot programs that have explored a more meaningful operationalization of international legislation, such as the *Recommendation on the Historic Urban Landscape* (UNESCOR, 36th Sess (adopted on 10 November 2011)), in managing urban change affecting urban heritage and citizens, and doing so through action-oriented research that seeks to unseat the dominance of existing practices and assumptions in development decisions affecting cultural and heritage places in order to build a broader citizen consensus of "limits of acceptable change." Strategies have included a central focus on bottom-up local community inclusion and consultation balanced with a lessened reliance on heritage practitioners, an enhanced collaborative focus incorporating academics, consultants, planners, community organizations, and consultants, attempts to better work across different silos within municipal governance frameworks, and the welcoming of innovative approaches to large-scale data collection and synthesis of diverse data mapping of the more broadly defined heritage interests and values of local citizens. See Kristal Buckley, Steven Cooke & Susan Fayad, "Using the Historic Urban Landscape to Re-Imagine Ballarat: The Local Context" in Sophia Labadi & William Logan, eds, *Urban Heritage, Development and Sustainability: International Frameworks, National and Local Governance* (Abingdon, UK: Routledge, 2016) 93 at 107; World Heritage Institute of Training and Research in Asia and the Pacific, "The Historic Urban Landscape" (2014), online: <historicurbanlandscape.com>; City of Ballarat, "Ballarat and UNESCO's Historic Urban Landscape Approach" (Ballarat: City of Ballarat, 2013), online: <www.ballarat.vic.gov.au/sh/heritage/historic-urban-landscape-approach. aspx>. See also ICOMOS, *The Florence Declaration on Heritage and Landscape as Human Values: Declaration of the Principles and Recommendations on the Value of Cultural Heritage and Landscapes for Promoting Peace and Democratic Societies*, 18th GA (adopted October 2014), art 2.1, 4.1–4.2, online: <www.icomos.org/images/DOCUMENTS/Secretariat/2015/ GA_2014_results/GA2014_Symposium_FlorenceDeclaration_EN_final_20150318.pdf>.

[89]   Low, "Anthropological-Ethnographic Methods", *supra* note 68 at 31, 32.

[90]   *Ibid* at 31. See also *ibid* at 33.

[91]   *Ibid* at 31.

[92]   *Ibid* at 32.

Whyte's Street Life Project taken from atop the Rockefeller Center, the analysis of which shaped the urban design principles of New York City and were used to structure how the zoning of urban public space was governed, and continue to inform placemaking strategies (and, arguably, placekeeping) in cities across the world.[93]

REAP methodology is distinct in its utilization of a team approach in order to better collate, discuss, and understand the nuances of a space and situation as information is gathered.[94] Some of its key characteristics and attributes are the speed at which the qualitative data can be collected and potential for applicability to small social and urban spaces to gather local knowledge.[95] In the urban redevelopment and planning context, and in line with McAuslan's concerns about public participation versus outside views of what the public interest might be,[96] REAP can displace the primacy of outside views of what the public interest might be in relation to local spaces. This methodology can also displace historical (and tangible cultural heritage) focuses in order to reveal the contextual and contemporary cultural importance and intangible heritage of spaces to groups, communities, and individuals and moves away from "privileging historical meanings over those of the geographically and/or culturally associated communities."[97] The nuanced local knowledge produced by REAP methodology can serve to mitigate and balance conflicts—local and otherwise—pertaining to the redevelopment or replacement of spaces with high community use-values and intangible and/or tangible heritage merit. REAP methodology is additionally useful for first *identifying* these conflicts between parties with competing interests and/or values within the same space in order to seek out possible compromises as well as to ideally generate a collaborative approach between the affected community and decision-makers/decision-making entities.[98] It is this kind of identification that is sorely needed in the context of Keele Finch Plus, the Moss Park LGBTQ community, and dissatisfaction and resistance to current development consultation processes highlighted in the urban interventions by Glo'erm and Tuggy.

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[93]   *Ibid* at 32; William H Whyte, *The Social Life of Small Urban Spaces* (Ann Arbor, Michigan: Project for Public Spaces, 2001). See also *Project for Public Spaces* (PPS), online: <www.pps.org>. For a discussion of placekeeping versus placemaking, see Roberto Bedoya, "Spatial Justice: Rasquachification, Race and the City", *Creative Time Reports* (15 September 2014), online: <creativetimereports.org>; Interview of Tom DeCaigny by Cy Musiker (27 November 2015) in "How to Keep a City's Economic Growth from Destroying its Cultural Soul?", *KQED Arts*, online: <ww2.kqed.org>.

[94]   Low, "Anthropological-Ethnographic Methods", *supra* note 68 at 36.

[95]   *Ibid* at 33, 35; Taplin, Scheld & Low, *supra* note 88. Certainly, the speed at which data is collected may have disadvantages, which would have to be accounted for.

[96]   *Supra* note 18 at 5.

[97]   Low, "Anthropological-Ethnographic Methods", *supra* note 68 at 37.

[98]   *Ibid* at 36.

In applying REAP, a variety of methods are drawn on in order to generate a diversity of data, which can then be cross-verified and triangulated in order to validate the data collected and develop a full assessment of the site in question.[99] These methods, slightly adapted here for the sake of the present subject matter, would be useful in determining the existence of community cultural and subcultural wealth and contemporary urban intangible cultural heritage merits and values within spaces and/or venues slated for redevelopment or targeted by zoning by-law amendments and development proposals. These methods would include:

1. "physical traces mapping"—these maps of the targeted space or venue would be based on data, or traces of activity, collected early each morning;

2. "behavioural mapping"—these maps would locate people and their activities within the targeted space or venue as well within different points in time;

3. "transect walks"—these would document the descriptions, observations, and remarks of an access-point individual or individuals identified for their membership in the affected community or group as they navigate the space in question and guide the researcher(s) through the space;

4. "individual interviews"—conducted with identified individuals who use the space in question;

5. "expert interviews"—conducted with those identified as leaders or key individuals within a group or community;

6. "impromptu group interviews"—these would be open-ended, inclusive, and seek discussion within the space in a group context as individuals who use the space are gathered there during a time (or times) when they frequent the space in question;

7. "focus groups"—these would comprise groups of about six to ten and would be constructed in order to attempt to represent the various sub-interests identified within a group, especially more relationally vulnerable sub-groups, and would likely be optimally facilitated by an individual familiar with the interests and "language" of the community or group;

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99   *Ibid* at 37.

8. "participant observation"—which would record the descriptions and thoughts of a researcher as they observe the everyday and everynight life of the space or venue in question in order to provide context to the other data gathered; and

9. historical, archival, and other documents—in addition to "official" historic information, as well as newspapers and magazines, this would include the gathering of unconventional written sources and information such as attendee reviews of the venue(s) associated with the space and online and social media commentary pertaining to the space or venue.[100]

This data would then be gathered together through the coding of responses, comparing and combining these with the various maps that have been developed and the transect walks data, and utilizing ethnographic data, interviews, and observations to provide the necessary context for nuanced interpretation of information collected.[101]

Low suggests that subsequent analysis within this kind of REAP methodology would proceed in four steps: 1) overlaying the different maps; 2) gathering the general observations noted by the researchers about the information learned in the interviews in order to hone the particular coding strategies and theoretical approaches to be used; 3) applying the coding strategy to these general observations, the interview questions themselves, and the other data gathered from interviews and maps (after coding them) in order to analyze the field notes of the researchers; and 4) triangulating all of this information in order to seek out patterns, common elements, and conflicts in the data.[102]

6. Conclusion: Drawing Together Arnstein, Local Community Groups, and REAP

While the public consultation approaches outlined above begin with the idea that it is first necessary to physically *go to* the neighbourhood or community to seek to understand and seek participation, this is only the first step in teasing out who is being omitted from consultation processes before being able to determine how to include them. Where REAP methodology seeks to involve those who use and value the space or building in question and identified community leaders alongside local elected officials and researchers,[103] this speaks to the importance of identifying the access

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100 *Ibid* at 37–38.
101 See also *ibid* at 38.
102 *Ibid*.
103 *Ibid* at 36.

points needed in order to know who is affected by redevelopment decisions and how to engage them. This also reflects Valverde's observation of how community groups provide access-point partners for better understanding community space. As Low notes and Valverde alludes to, outside researchers and professional consultants are unlikely to "know the right questions in advance."[104] Low suggests that "most preservation problems in cultural landscapes … could be prevented with more dialogue between the community and the governmental agency," and this is where the REAP focus on active listening and discussion carries great potential in decision-making and public engagement in urban redevelopment processes.[105]

REAP, alongside Valverde's discussion of the importance of engaging local community groups (or access points and knowledge bearers) in guiding consultation processes, works towards breaking down the tendency that consultation processes have in simply reinforcing existing power structures within planning law and the legal complexes that shape the design and experience of city life and culture.[106] They also both reflect McAuslan's description of the ideology of public participation in planning law in terms of how this could play out meaningfully in consultation practices that actually engage groups, individuals, and the membership of practising communities, which might include physically proximate users of a space in the immediate neighbourhood as well as remote users who visit the space from elsewhere in the city—a concern that arose within the Keele Finch Plus study and consultation processes.[107] Unseating dominant voices in consultation processes leading up to redevelopment and cultural heritage preservation decisions is also crucial for effectively acknowledging the *in*tangible cultural heritage of groups in the city since "the historic resources of marginalized populations are often more 'intangible' than traditional landmarks."[108]

Awareness of the high use-value and intangible cultural heritage of spaces in the city requires effective engagement with the community knowledge(s) of these spaces. Otherwise, the intangible merits of culture and heritage spaces can be easily overlooked when the high exchange-value of a space is engaged and there is a reliance on outside understandings generated by, for example, public servants or city employees of the public interest in relation to spaces, properties, and their use by a city's populace. Further, meaningful engagement with the full strata of a city's urban citizenry speaks not only

104   *Ibid*.

105   *Ibid* [footnotes omitted].

106   Valverde, "How to Consult", *supra* note 17; Valverde, "A Tale", *supra* note 65.

107   McAuslan, *supra* note 18 at 2; Deacon et al, *supra* note 21 at 42.

108   Buckley & Graves, *supra* note 81 at 152, note this barrier in their study of the recent efforts in San Francisco of planners and preservationists to "protect cultural practices that contribute to the city's diversity" and "encourage greater participation of marginalized populations in the local planning process".

to the upper rungs of Arnstein's ladder of citizen participation, bottom-up people-centered *buen vivir* approaches to urban development, but also to what is necessary for cities to implement in the focus on participatory urban policies and social inclusion called for by the NUA, and to avoid the fantastical, precariously-constructed and out-of-touch buildings depicted by Glo'erm and Tuggy's urban art interventions.