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Really? We need to talk. Now.

**“Be Careful What You Wish For”:
Sound Advice, or a Scare Tactic to Save the
Ontario Municipal Board from Termination?**

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1. Background and Context

For decades the Ontario Municipal Board (OMB) has been the subject of criticisms, challenges, and complaints in community association newsletters, newspaper editorials, letters, columns, and news stories, in discussions at community meetings, committee and council meetings of municipal governments, at election campaign meetings and all-candidates meetings at both the municipal and provincial levels, as well as in election campaign brochures.

And, as cases in point, the OMB was the subject of my keynote presentation at the 2009 Annual General Meeting of the Federation of Urban Neighbourhoods, and it was the subject of a question put to Glen Murray, MPP Toronto Centre, who was the keynote speaker at the 2010 Annual General Meeting of the Federation of Urban Neighbourhoods.

Seemingly in response to criticisms, challenges, and complaints about the OMB, candidates for provincial office, provincial political parties, and even governments of the day have pledged to “reform” the OMB. However, to the best of my knowledge little to nothing in the way of substantive change to Board operations has occurred in the last 30 years, which prompts the question:

Why have provincial governments represented by each of the three major political parties – Conservative, Liberal, New Democrat – all adopted a hands-off approach rather than effectively treating a provincial agency (and its officials) which has been referred to by such negative terms as antiquated, arbitrary, arrogant, biased, bungling, developers’ tool, dictatorial, dysfunctional, incompetent, interfering, meddling, “No friend of the little man”, obnoxious, outdated, out of touch, and pretentious?

For readers who are new to Ontario politics, this situation warrants a word of clarification. That is, the three political parties have very different ideologies, very different voter support bases, very different visions for Ontario, etc., etc., etc., yet they are unanimous in their agreement that despite decades of criticisms, challenges, and complaints which have been expressed in many municipalities across the province, the Ontario Municipal Board is not to be reformed.

Further, these same three political parties can disagree on just about any issue no matter how trivial, and propose all manner of remedies. However, to date none of them has done anything of consequence to deal with a longstanding issue that affects millions of Ontario residents on a daily basis. That is, all parties when in power have failed to reform the Ontario Municipal Board so that it is precluded from interfering in municipal land use planning and zoning actions which have no demonstrated provincial interest, and which should be solely within the purview of affected residents and their municipal governments.

It therefore appears fair to suggest that there is far, far more to this matter than meets the eye, which is in part why I do not subscribe to the reform notion. In brief, the reform process in government is too often a recipe for “Keep on talking to avoid doing anything”. Moreover, if the rot is sufficiently deep then reform will not fix the problem; rather, it merely serves as a means of life support that provides more time for the rot to deepen and spread, thereby making problem correction even more difficult, and round and round it goes.

Over the past decade I have given dozens of interviews and written dozens of articles, presentations, and reports in which I provide a number of reasons to [terminate](#) the Ontario Municipal Board (OMB). As for the timing for this action, I have repeatedly stated that it should be immediate. It is my opinion that termination of the Board in its present form and function is decades overdue, and the sooner that termination occurs the better it will be – socially, economically, environmentally, and financially – for approximately 99.99% of current and future residents of Ontario.

On the other side of the termination issue are what might be termed “Friends of the OMB”, including speculators, developers, speculators’ and developers’ agents (e.g., lawyers, consultants), as well as politicians at the provincial and municipal levels, and the occasional journalist. While there may be many things in common among the Friends of the OMB, my investigations reveal a seemingly amazing coincidence that would surely benefit from public discussion.

That is, despite sustained, often harsh criticism of the OMB and frequent calls for the termination of what has been referred to as an “abomination”, and a “dysfunctional entity”, it seems that

“Be careful what you wish for”

is the best argument that the Friends of the OMB can come up with in defence of their purportedly much-admired and much-respected provincial agency.

To the best of my knowledge this defence is devoid of evidence, facts, substantive if-then scenarios, or substantive comparative studies. Rather, the defence seems to consist of repeating the phrase, “Be careful what you wish for”, or words to that effect, over and over and over again.

Further, the seemingly agreed-upon strategy among the OMB defenders appears to be to use the phrase in a truth-without-proof manner as often as circumstances permit, and never, ever in the company of evidence or detail to support the phrase.

The purpose of this report, therefore, is to attempt to begin to shed light on various aspects of the phrase "Be careful what you wish for", as well as on the people using the phrase.

By way of illustration, questions about the phrase "Be careful what you wish for", and its uses and users include:

- Do all OMB defenders mean the same thing?
- Why, exactly, are they using the phrase?
- Who have they talked to about the phrase?
- Did anyone suggest that they use the phrase?
- Have OMB defenders who used the phrase "Be careful what you wish for" explained what they meant by it?
- Is the phrase intended to be good advice and, if so, how is it good advice?
- Why should the assertion "Be careful what you wish for" not be regarded as a threat?
- Is the phrase "Be careful what you wish for" intended to create a chill effect?

In section 2, I list of several of the public documents in which I called for termination of the Board, and I present some of the reasons that I have given for termination. I believe that the selected materials and reasons are sufficient to illustrate the argument made to terminate the OMB.

Additionally, the reasons also provide an indication of what terminators of the Board are wishing for in their quest to rid the province of the OMB. This listing will be especially useful if it induces defenders of the OMB to reveal which of the reasons in particular provoke them to say, "Be careful what you wish for".

For those who want to see materials beyond those that I have written about terminating the OMB, you may wish to contact your MPP, and/or the Attorney General of Ontario, and/or the Minister of Municipal Affairs. I would be very surprised if there are not many hundreds if not thousands of such documents – letters, petitions, submissions, newspaper items, campaign brochures, etc. – in the files which should be readily accessible to citizens.

Finally, with regard to the materials and reasons presented in section 2, they are an instructive benchmark against which to measure and assess the merit of

responses provided by the individual and collective users of the phrase, “Be careful what you wish for”. Simply put, if there are two substantive documents and ten sound reasons that support terminating the OMB, then it is reasonable to expect that OMB defenders with all their resources, and all their interests that are at stake, will put far more content on the table than just the naked phrase, “Be careful what you wish for”.

Section 3 is intended to be the basis of an accelerated process in which the users of the phrase “Be careful what you wish for” make up for lost time. That is, if all goes according to plan, OMB defenders and especially public officials such as municipal and provincial politicians will answer the questions completely, truthfully, directly, and in a timely manner. And, by timely manner I mean on the spot, with no bobbing and weaving, no delay tactics, no checking with “higher-ups”, no off-loading to staff, etc.

As for OMB defenders who choose to avoid answering, or try to engage in long, drawn-out exercises along the lines of the last OMB review that changed nothing of import, I refer the reader to the title of this report,

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We are not engaged in rocket science here, we are just trying to learn who and what is behind the use of the phrase “Be careful what you wish for”.

It seems clear to me that any elected official who uses the phrase, and then tries to avoid answering questions in that regard, is admitting that the phrase is used as a scare tactic. However, there may be other explanations, and I look forward to receiving these explanations from elected officials at both the provincial and municipal levels of government.

The questions in section 3 represent an attempt to ascertain what is meant and intended by the OMB defenders’ use of the phrase, “Be careful what you wish for”. I do not know with any degree of certainty what the OMB defenders are thinking and intending, of course, so my questions are at best approximations.

However, it is possible that OMB defenders themselves have already considered the kinds of questions that I raise, and other questions as well. That being the case, if any OMB defender has published answers to questions along the lines of those raised in section 3, then I would welcome receiving or learning how to obtain the questions and answers at the earliest opportunity, so that I may amend my report accordingly.

And, of course, it is possible and perhaps even likely that provincial ministers or MPPs, or municipal mayors and councillors, or other elected officials, or civil

servants for that matter, have received correspondence dealing with the “Be careful what you wish for” issue.

In the event that correspondence of this nature has been transmitted to public officials, it would be most gratefully received as well. Indeed, it would be a major public service to post these materials on websites, such as those operated by municipal and provincial government offices, agencies, and departments. (I emphasize for the record that “correspondence” includes all forms of text messages.)

Finally, I note in closing the background and context section that there may well be previous examinations of this topic. If I inadvertently overlooked any pertinent newspaper editorial, column, or story, thesis, government report, or other document, then I extend my apologies in advance for the oversight, and I welcome having the document(s) brought to my attention at the earliest moment.

2. A Selection of Publications and Reasons Which Call for Terminating the Ontario Municipal Board

Two OMB-related documents were prepared as part of my activity as Policy and Research Advisor, Federation of Urban Neighbourhoods. The first report, published in 2004, was titled *Fixing the Ontario Municipal Board: A Strategic Approach for Citizen Groups* (<http://www.urbanneighbourhoods.ca>). The report was designed to provide citizens and citizen groups with the reasons for terminating or radically transforming the OMB, and to outline a strategic approach to guide their participation in the impending OMB review by the Province of Ontario.

The second report, *Summary of Recommendations for Fixing the Ontario Municipal Board*, was prepared in 2009. The intent of this report was to highlight the recommendations made in the original report, and to thereby provide citizens and citizen groups with a “scorecard” for tracking changes to the OMB’s form and function as a result of the government’s so-called reform initiative. That paper is also available at the Federation’s website and can be accessed at <http://www.urbanneighbourhoods.ca/fixOMBSum.doc>.

In addition to the two reports, over the past 35 years or so I have participated in media interviews and talk shows, written newspaper and journal articles, made conference and meeting presentations, and communicated with elected officials at the municipal and provincial levels about terminating the OMB. The following nine communications are among those which contain one or more of the reasons that I have given to terminate the Board.

In the interests of space, the items which are arranged in chronological order are limited to post-2000. Further, and somewhat in the spirit of a bonus feature,

several of the items also include the names of elected officials who have expressed opinions about the Board, and are still active in politics.

- a. Letter to Rick Bartolucci, MPP, "Re: Fixing the OMB". March 18, 2002. (Immediately after the founding meeting of the Federation of Urban Neighbourhoods in 2001, I began working on various issues as the group's Policy and Research Advisor. An early communication was to Liberal MPP Rick Bartolucci in which I raised four concerns about the OMB: Preferential treatment; Bias; Absence of provincial interest; No Solomonesque decisions. All of those concerns are repeated in this report's short list of reasons to terminate the Board.)
- b. "Concerns don't address flaws in planning process", *Era-Banner* (Newmarket), August 22, 2002.
- c. "OMB interference must end." *Ottawa Citizen*, May 27, 2005.
- d. "Blunder places OMB in jeopardy." *Ottawa Citizen*, September 1, 2005.
- e. "OMB is no help at all." *Ottawa Citizen*, October 15, 2005.
- f. "Expert sounds alarm over OMB – Says province, minister have some explaining to do after board vetoes council on Manotick plan." *Ottawa Citizen*, April 14, 2009.
- g. "Watson calls for further changes at OMB". *Ottawa Citizen*, April 15, 2009.
- h. "Re: Taking the OMB out of the Urban Boundary Debate." Letter to mayor and council, City of Ottawa, May 24, 2009. (I am informed by the City of Ottawa that the communication was circulated to mayor and council, and staff, and was included in the City of Ottawa's Comprehensive Five-Year Review of the Official Plan (OPA 76) submission to the Ministry of Municipal Affairs and Housing.)
- i. "OMB appeals for urban expansion reflect nothing but greed: reader." *EMC* (Ottawa West), May 29, 2009.

There are several dozen arguments in the reports and other items from which the reasons to terminate the OMB are derived. However, given the abject failure of the recent "reform" by the provincial government to make any substantive changes to the form or function of the OMB, there is no apparent point in going to the effort re-listing all those reasons.

Instead, I am listing only six reasons, any one of which in my opinion should be more than sufficient to bring about the immediate termination of the Board. And, in my further opinion, each of the six reasons is a useful backdrop when deciding what to make of any responses to the questions in section 3.

Reason 1 to terminate the OMB. Absence of provincial interest.

The argument made eight years ago is that it is illogical for a provincial government agency comprised of non-elected officials to meddle in municipal matters of a strictly local nature. Over the past eight years the issue has gone beyond illogical to bizarre, with the current government failing to implement its highly-publicized election campaign pledge to allow municipalities and their citizens to chart their own destinies, free from provincial interference on matters of strictly local scope and consequence. This reason to terminate the Board has strengthened with time, and the core part in the 2002 Bartolucci communication is repeated as written.

"I am aware of concerns and complaints to the effect that for many planning, zoning and minor variance applications or actions, there is no demonstrated, substantive provincial interest.

The line of argument is that many applications or actions are purely local in scope or impact, that they should be resolved locally, and that the OMB is called on and used by developers as a tool to bypass or get around local councils, official plans, zoning by-laws, committees of adjustment, etc."

Reason 2 to terminate the OMB. Preferential Treatment. The view of preferential treatment for development interests appearing at OMB hearings was expressed on numerous occasions during the Federation of Urban Neighbourhood's founding convention and at subsequent meetings, and that criticism of the OMB has not waned over the past eight years. Indeed, it may be sharper now than then. The argument made in the 2002 Bartolucci communication has not been refuted or discounted to my knowledge, and is repeated as written.

"A number of municipal officials, community association representatives, and ordinary citizens have publicly criticized OMB panels for what has been characterized as imperious, rude and dismissive treatment of many participants who are not lawyers, or are not members of the 'OMB club of expert witnesses'.

I have a substantial number of newspaper articles which attest to that point of view. And I believe that was the general position held by the majority of community association representatives who were in attendance at a convention in Hamilton in May 2001.

It is my general impression, therefore, that a basis exists for a critical review of the conduct of Board members and, in particular, their seemingly disdainful treatment of 'non-club'

participants such as ordinary citizens, community association representatives, public interest group witnesses, and elected officials."

Reason 3 to terminate the OMB. Bias. The issue of bias in OMB rulings was expressed on numerous occasions during the Federation of Urban Neighbourhood's founding convention and at subsequent meetings, and that criticism of the OMB has not waned over the past eight years, indeed, it may be sharper now than then. The argument about bias that was made in the 2002 Bartolucci communication has not been refuted to my knowledge, and the core part is repeated as written.

"Numerous complaints have been communicated about pro-development bias in panel decisions. The approval of planning, zoning and minor variance applications in the pursuit of economic gain, without due regard to social or environmental costs and impacts, or to concerns about health, safety, amenity, welfare, etc., appears to be at the core of the complaints about bias.

Examination of my newspaper files indicates a very deeply-held and widely-held view as to Board bias, and that is also my impression of the sense of the meeting held in Hamilton."

Reason 4 to terminate the OMB. Lack of technical competency. The following argument was made in the 2002 *Era-Banner* article, "Concerns don't address flaws in planning process", and I have seen nothing to cause me to modify the statement.

"It is my experience that very few OMB members themselves have sufficient education or experience in statistics, mathematics, operations research, economics, environmental science, research methods, geography, pedology, hydrology, ecology, geology, sociology, biology, engineering, architecture, etc., to even begin to fully comprehend and synthesize the evidence presented at many hearings.

That being the case, who is kidding whom about the competency of the OMB to make judgments about sound planning principles? The time for the OMB to be abolished is long past, as whatever usefulness it once had is long gone."

Reason 5 to terminate the OMB. Perception of fraud. The following comment from the April 2009 Ottawa Citizen article, "Expert sounds alarm over OMB – Says province, minister have some explaining to do after board vetoes council on Manotick plan" raised questions about the integrity of governance in Ontario, and

perception of fraud is a reasonable caption for this argument to terminate the OMB.

"What Dalton McGuinty said a few years ago, what other ministers said, was that the government was going to reform the OMB and give cities the power to control their own futures. Then council makes a decision on how it wants to grow and the OMB comes to town and repudiates it", Wellar said.

"It seems like fraud. You are the government and you are saying to municipalities, 'Control your destinies, plan what you can afford', and then the OMB walks in and says, 'We don't care, we will do it our way. Jim Watson has to explain this'".

"If AMO, the Association of Municipalities of Ontario, is not worried about this, they should. It makes planning a waste of time".

Reason 6 to terminate the OMB. Lack of good sense. Beyond the matter of technical competency is the matter of having and using good sense when making decisions. The Ottawa area has been in the midst of urban boundary disputes for years and the battle continues, thanks in large part to the OMB. The September 2005 column in the Ottawa Citizen, "Blunder places OMB in jeopardy" outlines the Board's lack of good sense.

"As the recipient of draft official plans and sponsor of hearings, the OMB knew about, or should have known about, all those challenges to the projections when it was approving regional and city official plan revisions and amendments.

Surely area MPPs and Premier McGuinty must agree that it is bizarre for the OMB to first approve planning documents based on bungled projections, and then execute a 180-degree turn and rule against numbers that it previously accepted as expert-based evidence."

This short list of reasons to terminate the OMB is illustrative of the general body of criticism that has built up over the years about the agency's form and function. And, I believe the reasons given are sufficient to demonstrate why the time is long overdue to insist upon full disclosure by any public official, elected or appointed, who uses the phrase "Be careful what you wish for" to justify perpetuating rather than terminating the OMB.

In the next section I use the reasons as the bases of questions to put to public officials who use the phrase "Be careful what you wish for", when asked about terminating the OMB.

I hasten to add here that since the search for truth has no time limits, the questions are applicable to officials who used or use the phrase at any time, past, present, or future.

3. Questions to Put to Public Officials Who Use or Have Used the Phrase, "Be Careful What You Wish For" When Citizens Raise the Matter of Terminating the Ontario Municipal Board

The phrase "Be careful what you wish for" to justify perpetuating rather than terminating the OMB has been used by elected and appointed public officials, speculators, developers, speculators' and developers' agents, journalists, and other contributors to the OMB discourse.

While responses by "speculators, developers, speculators' and developers' agents, journalists, and other contributors to the OMB discourse" would no doubt be illuminating, the focus in this report is on public officials. As a result, the questions are designed to inquire about matters that are within the purview of public officials.

Complaints about the Ontario Municipal Board and calls for its termination have been around for years. It is therefore reasonable to expect that any public official who uses the phrase "Be careful what you wish for" knows what he or she is talking about, and is not just blowing smoke.

I believe that asking the kinds of questions presented in Table 1 will enable citizens to identify which public officials have substantive evidence to accompany the phrase, and which public officials use the phrase as a scare tactic to discourage efforts to terminate the Board.

Readers will no doubt have questions of their own, and I would welcome being apprised of those questions, and the responses to all questions asked of public officials who use the phrase, "Be careful what you wish for" when the discussion involves terminating the OMB.

These materials could be the basis of a subsequent report, or perhaps a publicly accessible database, so the names of the elected officials, as well as details about circumstances, issues, locations, dates, etc., are invited. Moreover, it occurs that as an interim measure the Federation of Urban Neighbourhoods could maintain a list of "Be careful what you wish for" players and events while the next report is in progress.

**Table 1. Twenty Questions to Ask of Public Officials
Who Say "Be Careful What You Wish For"
in Response to Calls to Terminate
the Ontario Municipal Board**

1. Have you ever used the phrase, or a variation of the phrase, "Be careful what you wish for" in regard to proposals, statements, etc., to terminate or radically reform the OMB? If so, please provide full details for all such occasions.
2. Which provincial governments in Canada do not have agencies similar to the OMB?
3. Which state governments in the U.S. do not have agencies similar to the OMB?
4. For each province in Canada which does not have an agency similar to the OMB, how many court cases have been held in each of the past 15 years to deal with the kinds of planning, zoning, and committee of adjustment issues handled by the OMB?
5. How many of those court cases in each year were initiated by citizens and/or community associations?
6. For each state in the U.S. which does not have an agency similar to the OMB, how many court cases have been held in each of the past 15 years to deal with the kinds of planning, zoning, and committee of adjustment issues handled by the OMB?
7. How many of those court cases in each year were initiated by citizens and/or community associations?
8. Do you have evidence which demonstrates that municipal councils in Ontario made planning decisions that citizens wanted to take to court but did not do so for financial reasons? If so, please provide full details.
9. Do you have evidence which demonstrates that municipal councils in Ontario made planning decisions that citizens wanted to take to the OMB but did not do so for financial reasons? If so, please provide full details.
10. Do you have evidence which demonstrates that municipal councils in Ontario made planning decisions that citizens wanted to take to the OMB but did not do so for non-financial reasons? If so, please provide full details.

**Table 1 (Continued)
Twenty Questions to Ask of Public Officials
Who Say "Be Careful What You Wish For"
in Response to Calls to Terminate
the Ontario Municipal Board**

11. Do you have evidence which demonstrates that municipal councils in Ontario made zoning decisions that citizens wanted to take to court but did not do so for financial reasons? If so, please provide full details.

12. Do you have evidence which demonstrates that municipal councils in Ontario made zoning decisions that citizens wanted to take to the OMB but did not do so for financial reasons? If so, please provide full details.

13. Do you have evidence which demonstrates that municipal councils in Ontario made zoning decisions that citizens wanted to take to the OMB but did not do so for non-financial reasons? If so, please provide full details.

14. Do you have evidence which demonstrates that committees of adjustment in Ontario made decisions that citizens wanted to take to court but did not do so for financial reasons? If so, please provide full details.

15. Do you have evidence to support the claim that going to court rather than to the OMB would reduce if not eliminate citizens' ability to challenge council decisions that favour developers? If so, please provide full details.

16. Do you have evidence which demonstrates that going to court to challenge council decisions that favour developers is too much of a financial burden for citizens and/or community associations to bear? If so, please provide full details.

17. For each of the past 15 years, what are the amounts of money that have been allocated from a Province of Ontario Intervenor Fund to support the participation of citizens in OMB hearings? Please provide full details on a case-by-case basis regarding the OMB file number and the amounts of assistance for each intervention.

18. Have you had meetings with or exchanged communications with speculators, developers, or the agents of speculators and developers regarding the OMB? If so, please provide full details.

19. Do you support terminating the OMB? Please provide reasons.

20. If your answer to Question 19 is Yes, please describe any effort(s) that you have made to terminate the OMB.

4. Closing Comment

Public officials who say "Be Careful What You Wish For" in response to requests to terminate the Ontario Municipal Board can intend the phrase to be good advice, or they can use it as a scare tactic. The questions in this report are designed to assist Ontario residents in their efforts to ascertain exactly what their public officials mean when they use the phrase, and the reasons behind the choice of words.

It is my expectation that the line of questioning developed in this report could be very illuminating, and possibly even very entertaining.

I am therefore suggesting that the Federation of Urban Neighbourhoods assign a portion of its website to communications from member associations which contain responses to any of the questions contained in Table 1, "Twenty Questions to Ask of Public Officials Who Say 'Be Careful What You Wish For' in Response to Calls to Terminate the Ontario Municipal Board".

5. References

Wellar, Barry. 2004. Fixing the Ontario Municipal Board: A Strategic Approach for Citizen Groups.

<http://www.urbanneighbourhoods.ca>

Wellar, Barry, 2009. Summary of Recommendations for Fixing the Ontario Municipal Board.

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