PRIVATIZATION OF BUILDING CODE ENFORCEMENT: A COMPARATIVE STUDY OF REGIMES IN AUSTRALIA AND CANADA

WORKING PAPER

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Abstract
The paper documents the effects of the privatisation of building code enforcement regimes. It notes that privatization is generally accompanied by trade-offs between competing democratic values such as effectiveness, efficiency, accountability and equity and explores the extent to which particular trade-offs might be related to aspects of the design of the regimes in which they occur.

Key words
regulatory regime, regulatory enforcement, local government reform, comparative policy analysis
Privatization of building code enforcement: a comparative study of regimes in Australia and Canada

Introduction

Over the years we have witnessed increasing privatization of building code enforcement (Van der Heijden 2009b). This trend towards private sector involvement in regulatory governance is not unique to the regulation of the built environment and has increasingly been the subject of scholarly attention. In their analysis of such governance reforms, scholars sometimes find that privatization results in an increase in responsiveness to legitimate demands for the same or lower costs. However, these gains in effectiveness and/or efficiency appear to come at the price of a corresponding decline in accountability and in equity (the extent to which all clients are treated equally). Indeed, some degree of trade-off between these conflicting and competing democratic values is sometimes said to be inevitable (cf. Scholz and Wood 1999). This trade-off, and the way in which differences in private sector building code enforcement regimes influence it, is the central focus of this paper.

The first part of the paper examines the concept of regulatory enforcement regimes and discusses a number of potential trade-offs that might result from the privatization of building control. The second part describes some empirical research into private sector involvement in Australian and Canadian building code enforcement. The research examines four separate regimes, representing differing degrees of privatization, and differing relationships between the public and private sector agencies within them. Finally, conclusions are drawn on the impacts of these regimes on the trade-offs made between the competing democratic values.

Regulatory enforcement regimes: an analytical tool for comparative analysis

Public policy literature pays particular attention to “regulatory regimes”. A regulatory regime may be understood as the whole process of regulation and enforcement as a “means for achieving regulatory goals” (May 2007, 9). As enforcement is such an essential part of regulatory goal achievement (e.g. Bardach and Kagan 1982; Hutter 1997; Sparrow 2000), this paper pays particular attention to this aspect and introduces the concept of a regulatory enforcement regime. This is an organizational structure of actors, each having tasks and responsibilities relating to the enforcement of regulations, the relations between these actors, and the relation between the organizational structure and its context (Van der Heijden 2009b). This concept is used here as a tool for analysing and comparing private sector involvement in the Australian and Canadian regulatory governance of the built environment.

The paper analyses four cases of building regulatory enforcement regimes that were introduced in different Australian and Canadian jurisdictions in the 1980s and 1990s. The main differences between them relate to the extent to which certain tasks are privatized (regime type) and the relationships between the public and private actors involved. Within a privatized regime private sector actors can potentially be involved in the building code enforcement process itself as well as in the oversight of the process. The process consists of the assessment of building plans against applicable law, issuing building permits, the on-site assessment of construction work, follow-up
enforcement tasks if the assessment finds non-compliance with regulations, and the issue of occupancy permits.

**Potential regime trade-offs**

Private sector involvement in regulatory enforcement is sometimes found to be superior to public sector enforcement. Ayres and Braithwaite (1992, 104) found that “corporate inspectors are better trained and tend to achieve a greater inspectorial depth” than public inspectors. Furthermore, Baldwin and Cave (1999, 126) find that corporate bodies “can usually command higher levels of relevant expertise and technical knowledge than is possible with independent regulation”. It could be assumed that greater inspectorial depth will result in more regulatory compliance as more (potential) breaches of regulations might be found (and hence greater *effectiveness*).

Private sector involvement in regulatory enforcement is also found to result in more “bang for the regulatory buck” (cf. Gunningham 2002, 5; Sparrow 2000, 34). Due to a different approach to tasks and different organizational structures the private sector appears, without using more resources than its public counterparts, to carry out a cheaper or faster enforcement process. This technical *efficiency* is sometimes referred to as X-efficiency (cf. Leibenstein 1966). Gunningham and Grabosky (1998, 52), for example, find that private sector involvement “offers greater speed, flexibility, sensitivity to market circumstances, efficiency, and less government intervention than command and control regulation”. Note that these findings do not reflect the impact that private sector involvement has on *allocative efficiency* (cf. Leibenstein 1966) – are resources allocated optimally in such a way that society as a whole gains? The enforcement process might be sped up or become cheaper for the individual client, but what are the societal costs? This question anticipates possible trade-offs between individual gains and societal burdens.

The question is also relevant to another aspect of private sector involvement: the extent to which the business ethos conflicts with safeguarding the public interest. Under commercial pressure, private sector actors can potentially become subject to conflicts of interest (cf. Gunningham and Grabosky 1998, 52). This might result in public accountability shortfalls. In particular, competition for clients might make the system vulnerable to “regulatory capture” (cf. Baldwin 2005, 129-130) – a situation where regulators start to serve an industry, or commercial interests within it, rather than society at large. In order to keep the regime and its players accountable, an additional layer of supervision or oversight might be needed to monitor the enforcement by private sector actors. However, additional oversight could lessen efficiency when private sector actors have to spent much time on meeting administrative requirements (cf. Cohen and Rubin 1985): a likely trade-off between a more streamlined enforcement process versus accountability.

Finally, private sector involvement might result in a decline in “equity” (Burkey and Harris 2006). Although all regulatees should ideally be treated the same in similar circumstances, and should have similar access to the service provided, private sector involvement is likely to result in private sector agents preferring certain clientele. As Wilson (1989, 169) noted: municipal agencies “must cope with a clientele not of their own choosing” whereas private sector actors can choose who they want to work with. This suggests a potential trade-off between effectiveness and efficiency, and in the equal treatment of the regulatees subject to the regime.
These four criteria – **effectiveness, efficiency, equity and accountability** – can be seen to be central to the issues under consideration. In keeping with contemporary research practice in public policy analysis (c.f. Dunn 2003; Gunningham and Grabosky 1998; Stone 2002) they are also the main focus throughout the remainder of this article.

**Research design and methodology**

The central question of this paper is: how, and to what extent, do different regimes result in different trade-offs? In order to answer this question two Australian and two Canadian building regulatory enforcement regimes are analysed: South Australia and Victoria in Australia, and Vancouver and Alberta in Canada. These regimes are all characterized by some degree of privatization. The four regimes (the cases) were selected for their contrasting regime designs within the countries, and their similarities between the countries. Furthermore, the selected regimes have all replaced a former situation of pure public building control. The current state of affairs will be addressed as “new” regimes; the former pure public situation as “old” regimes.

The general outline of the analysis shares characteristics of policy as analysis described by Dunn (2003, especially chapters 6 and 7). The **nuances** of different contrasting regimes, and the actual **process** of implementation of the “new” regimes, were expected to provide particular insights into possible differences in trade-offs. For this reason a case study design was chosen for the research (cf. Brady and Collier 2004, part 3).

The cases were selected based on the available information. The primary instrument for collecting additional case information was a series of semi-structured, in-depth interviews (McCracken 1988). Interviewees were selected using “snowball” sampling (Longhurst 2003). This technique resulted in a pool of interviewees from various backgrounds, most having experience of both the old and the new regime in practice. These included public and private sector inspectors, those involved in setting up the new regimes, and those who are subject to the regimes – for instance architects, engineers, developers and contractors.

Australian interviews were carried out in March and April 2007, and Canadian interviews were carried out in February, March and April 2008. Table 1 (page 5) presents a brief insight into the pool of interviewees.

The interviews were carried out following a standardized interview protocol (cf. Fielding and Fielding 1986). The interview questions focused on comparing the outcomes of the old public regimes with those of the new regimes. The interview data were processed by means of a systematic coding scheme (cf. Seale and Silverman 1997). Data analysis software, the computer program “Atlas.ti”, was used for analysing the data.
Table 1 – Interviewees’ role in the regulatory enforcement regime

<table>
<thead>
<tr>
<th>Interviewees’ background</th>
<th>Regime design and oversight</th>
<th>Carrying out enforcement</th>
<th>Subject to enforcement**</th>
<th>Other</th>
</tr>
</thead>
<tbody>
<tr>
<td>Public official</td>
<td>15</td>
<td>10</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Private sector representative</td>
<td>6</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Private sector inspector</td>
<td></td>
<td>10</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Architect/engineer</td>
<td></td>
<td></td>
<td>5</td>
<td></td>
</tr>
<tr>
<td>Builder/contractor/developer</td>
<td></td>
<td></td>
<td>6</td>
<td></td>
</tr>
<tr>
<td>Other professions</td>
<td></td>
<td></td>
<td>3</td>
<td></td>
</tr>
<tr>
<td>Scholar</td>
<td></td>
<td></td>
<td></td>
<td>2</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>21</td>
<td>20</td>
<td>14</td>
<td>2</td>
</tr>
</tbody>
</table>

* Of these over 50 had experience with both the old and the new regime.

** For example: architects, engineers, builders and contractors.

Finally, additional case information was gathered via the collection and analysis of existing research reports on the subject. These data were obtained from different (governmental) inquiries in Australia and Canada. Contrary to expectations, it was not possible to obtain extensive quantitative data that would strengthen the experiences shared by the interviewees. Little or no records are kept on, for instance, building permits issued by the public and private sectors; process times; oversight actions; and the like.

It should be noted that the case studies presented have an explorative character. The lessons drawn from the study do not therefore have theory status. The research does not claim empirical generalization, but provides illustrations of the impacts that might result from privatizing building code enforcement (for a lengthy discussion of methodology of the presented research, see Van der Heijden 2009a, chapter 5).

Case studies: new building regulatory regimes in Australia and Canada

Introduction of the new regimes

In Australia private sector involvement through certified building control made its entry in the early 1990s (ABCB 1999, chapter 7; PC 2004). Different reasons underlay this introduction. The Commonwealth Government played a strong part in introducing private sector involvement through the implementation of the National Competition Policy. However, this “top-down” introduction appears to have been preceded by a “bottom-up” movement. When asked why the new regime was introduced in South Australia and Victoria, interviewees generally mentioned that, prior to the introduction of private sector involvement, local councils were cumbersome, non-proactive, monopolistic and sometimes had a bad name due to slow application processing times and dictatorial employees. The public sector was furthermore said to be insufficiently qualified to carry out specialized assessment and, as a result, the development sector demanded a better and faster service (cf. KPMG 2002; PC 2004; VCEC 2005).
In Canada, unlike the situation in Australia, there was no national “move” towards private sector involvement in Canada. Some provincial and local governments simply took initiatives to introduce it within their own jurisdictions. When asked why new regimes were introduced in Vancouver and Alberta, interviewees gave slightly different responses from those heard in Australia. The City of Vancouver faced difficulties meeting time frames and found that their building officials’ knowledge of the building regulations was poor. A strike of building officials made the City decide to introduce an alternative private assessment process (cf. Barrett Commission 1998; BCMH 2007). In the Province of Alberta building control authorities appeared to be unable to meet legal inspection criteria and time frames, or were not carrying out regulatory enforcement at all, so as to avoid issues of liability. The provincial government was looking for a regime under which a certain level of regulatory enforcement could be established throughout the province. As the municipalities are not required to enforce building regulations in Alberta, the private sector was regarded as necessary to fill in those areas in which municipalities were not taking responsibility enforcement (SCCA 2003).

With the introduction of the new regimes it was expected that the building regulatory enforcement process would become more efficient and effective, resulting in a speedier building process and a better overall quality of the built environment (ABCB 1999, 2003; Barrett Commission 1998; BCMH 2007; SCCA 2003). The new regimes were introduced in the early 1890s in the City of Vancouver, and the early 1990s in South Australia, Victoria and Alberta.

**Regime types**

Victoria was the first Australian state to introduce private sector involvement into the enforcement of building regulations (Nassau and Hendry 1997). Other jurisdictions followed and currently all jurisdictions have introduced it, or are considering introducing it. However, those jurisdictions that have implemented it have chosen different organizational arrangements with which to do so. Jurisdictional differences can be found in the statutory tasks private sector inspectors are allowed to carry out. Private sector involvement in Canadian building regulatory enforcement regimes shows similar differences amongst jurisdictions. In both Australia and Canada a range of regimes exists in which the private sector has more or less involvement, creating a sliding scale of involvement by the private sector.

This paper looks at two essentially different types of regime, which appear to be at each end of the sliding scale. The first type, currently implemented in South Australia and the City of Vancouver, is characterized by limited private sector involvement (limited PSI). Within this type private sector

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1 Currently four states have introduced private sector involvement – South Australia, Victoria, New South Wales and Queensland. Both territories – the Australian Capitol Territory and Northern Territory – and the remaining two states – Tasmania and West Australia – are considering its introduction.

2 From a study of secondary data it was found that only the provinces of Alberta and Ontario, and some cities in British Columbia, have so-far introduced private sector involvement into statutory building assessment – this was confirmed by the interviewees.

3 Note that the two regimes discussed in this paper are the “practical” ends of the sliding scale of private sector involvement. Theoretically more and less private sector involvement would be possible and the limits of that sliding scale can be stretched. However, the regimes discussed in this paper are the least and the most far-reaching building regulatory regimes actually implemented in Australia and Canada.
actors are only allowed to carry out assessment tasks. It is however the regulatory arrangement that differentiates this regime from “consultancy”: regulated private sector agents are authorized to carry out statutory enforcement tasks and to make binding decisions (cf. Saint-Martin 2000, 48). The second regime type, currently implemented in Victoria and Alberta, is characterized by general private sector involvement (general PSI). Within this regime type private sector actors are allowed to carry out all statutory assessment tasks, including the issue of permits. An overview of the key features is presented in table 2.

Table 2 – Overview of key features of the different regimes analysed

<table>
<thead>
<tr>
<th>Tasks</th>
<th>Regime type 1: Limited PSI</th>
<th>Regime type 2: General PSI</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>SA</td>
<td>VAN</td>
</tr>
<tr>
<td>Regulatory enforcement process:</td>
<td>pu</td>
<td>pu</td>
</tr>
<tr>
<td>- building plan assessment</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>- building permit issuance</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>- on-site assessment of construction work</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>- follow up enforcement tasks</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>- occupancy permit issuance</td>
<td>X</td>
<td>X</td>
</tr>
</tbody>
</table>

Abbreviations: SA = South Australia; VAN = Vancouver; VIC = Victoria; ALB = Alberta; pu = public sector responsibility; pr = private sector responsibility.

Types of relationship between public and private sectors

The new regulatory regimes in Australia and Canada are not intended to replace the former public regulatory enforcement regimes completely. In both countries the private sector has been introduced as an alternative route to public sector involvement. The actors in the two sectors therefore co-exist, with each having similar tasks and responsibilities. However, the relationship between the two sectors differs in each country.

In Australia the new regimes were introduced to generate competition (PC 2004). Clients – applicants of building permits and permit owners – are given a certain amount of freedom to choose which sector to involve in statutory building assessment when planning or constructing a building. The choice is between the municipal building control authority with authority in the relevant geographical area, or any of the authorized private sector agents. Under the new regimes municipalities therefore have to compete with the private sector for clientele.

In the two Canadian cases private sector involvement appears to have been introduced to complement the former public regime. In Vancouver the use of certified professionals⁴ (discussed below) is complementary to the City’s building control authority (BCMH 2007). Interviewees generally mentioned that the City recommends the involvement of certified professionals to

⁴ The term used in Vancouver for a private sector inspector.
applicants for building permits for complex buildings. In the Alberta regime private sector involvement has been introduced to fill in those areas in which municipalities do not take responsibility for the enforcement of building regulations (SCCA 2003). This includes those areas in which the municipalities do not take up building code enforcement at all. An overview of the key characteristics of the different cases is presented in table 3.

Table 3 – Characteristics of the cases

<table>
<thead>
<tr>
<th>Regime type</th>
<th>Relationship between public and private sector</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Competitive</td>
</tr>
<tr>
<td>1. Limited PSI</td>
<td>South Australia, Australia</td>
</tr>
<tr>
<td>2. General PSI</td>
<td>Victoria, Australia</td>
</tr>
<tr>
<td></td>
<td>Complementary</td>
</tr>
<tr>
<td></td>
<td>Vancouver, Canada</td>
</tr>
<tr>
<td></td>
<td>Alberta, Canada</td>
</tr>
</tbody>
</table>

Regime trade-offs identified

Potential trade-offs between competing democratic values following the involvement of the private sector in regulatory enforcement regimes were examined earlier in this paper. Having introduced the four case studies this section now considers the data collected from them in order to identify possible trade-offs that have occurred in each regime. For convenience, these are considered according to the two categories of regime types previously described. The following section then explores the extent to which particular trade-offs might be related to aspects of the design of the regimes in which they occur.

Type 1: Limited PSI

South Australia

In terms of assessment, about 70% of all applications are being processed by private certifiers under the new regime in South Australia. In general, interviewees stated that the preference for private certifiers comes from the level of service they provide — greater speed, availability and specialization — and the relationships they have built with clients. Little consistency was found in a perceived change in the level of compliance with building regulations following the introduction of the new regime. Based on Gunningham and Grabosky’s (1998, 52) previously mentioned claims about gains in technical efficiency, or X-efficiency, due to private sector involvement, it might be assumed that specialized private certifiers reach a greater inspectorial depth. However, some interviewees made reference to perceived disadvantages of the South Australian regime. By way of example, the private certifiers assessment process was described as “a cog in a large governmental machine” with the issuing of permits by the municipal building authority possibly undoing the time saved by private sector involvement — evidence of a trade-off between X-efficiency and allocative efficiency. Furthermore, private certifiers are only allowed to assess building plans on code compliance and not to act as advisors. As such the regime might suffer from general issues that are related to traditional command and control regimes (cf. Hawkins 1984; Kagan 1984) especially those relating to problems with enforcement due to aiming too much at end of pipe solutions (cf. Fairman and Yapp 2005, 493).

5 The Australian term for a private sector inspector.
Another trade-off within the regime appears to be one between X-efficiency and equity. A majority of the interviewees made reference to private certifiers’ preference for major – profitable – assessment jobs. Some interviewees, generally public sector representatives, stated that private certifiers have less preference for small construction work and non-professional ‘type-specific’ applicants, like the “mums-and-dads who built once or twice in their lives”. It has to be noted that under both the old and new regimes the fees the municipalities are allowed to charge are legally set, whereas private certifiers have the freedom to set fees. Municipal fees for minor construction work often do not cover the costs of the assessment work so major works have to cover losses. Private certifiers were generally said to charge lower fees for profitable major construction work than municipalities, and higher fees for type-specific or minor construction work: a situation that is sometimes referred to as “creaming” (e.g. Bailey 1988; Stoker 1998).

This “creaming” might result in a further trade-off: that between private gains and the societal burden of building regulatory enforcement. Municipalities in South Australia are responsible for the enforcement of building regulations. If municipal authorities lose profitable jobs to private certifiers and have to assess loss-making minor jobs (due to legalized fees) they face a loss of revenue. This loss is made up by general revenues from general taxes: the individual who involves private certifiers faces a speedier and cheaper assessment process than under the old regime, but the general taxpayer might face an increased burden. Furthermore, municipalities lose well-trained staff to private sector agencies as these appear to provide better terms of employment: “municipalities have become the breeding grounds of cadets”, a municipal official mentioned.

One final trade-off in the South Australian regime appears to be that between X-efficiency and accountability. Generally private certifiers were said to be subject to commercial pressure due to the client–contractor relationship they enter into. Representatives of the private sector generally mentioned that private certifiers are strong enough to deal with these pressures. However a majority of representatives of the public sector fear that private sector agents “bend to their client’s will”. In general, agreement existed amongst the interviewees that strong system oversight is needed to maintain the accountability of the regime. At the time of the interviews such a system was not in place in South Australia.

Vancouver

The role of certified professionals in Vancouver has already been referred to above. They are mostly involved in assessing complex building works, and process approximately 90% of such work under the new regime. It was found, in general, that clients choose certified professionals involvement as they are able to provide a higher level of service, and a speedier process, than their municipal counterparts. The City of Vancouver was said to be able to issue a building permit within a week of the certified professional confirming that a building plan complies with the regulations. Without certified professional involvement the permit process might take up to twelve weeks. This is a significant difference from the South Australian regime, under which municipalities are not bound to issue a permit within a set a time frame following receipt of a private certifier’s assessment report. The involvement of a certified professional was generally considered to be more expensive than
involving the City in the assessment process, although the time gain was regarded as making up for the additional costs incurred.

A majority of the interviewees were particularly supportive of the training programme provided by the City to train architects and engineers as certified professionals. The training can also be undertaken by other actors in the industry and, as a result, the general knowledge of building regulations was said to have improved in both the private and public sectors. However, some interviewees mentioned a difference that appears to exist in the way that certified professionals and municipal building officials carry out their tasks. Whilst the certified professional is trained in designing a building that complies with regulations, the building official’s emphasis is said to be more about looking for those aspects of a project that do not comply.

A major difference between the South Australian and the Vancouver regimes concerns the timing of the private sector involvement in statutory assessment. Under the Vancouver regime a certified professional joins the design team from the start of a project, and sometimes is even the designer or engineer of the work. The certified professional has a coordinative and an advisory role in the design team and is responsible for communication with the City. In this role he assesses the building plan and the work during construction, but is required to communicate with the City during the assessment process. A certified professional can therefore be considered an intermediary between the design team and the City (BCMH 2007). The City does not lose revenue to certified professionals as they still charge fees, comparable with those under the old regimes for the building regulatory enforcement process, for issuing permits and overseeing the work of certified professionals.

The certified professionals programme was generally experienced as a positive addition to the City’s building control department. The City does not have to maintain a large and specialized staff, peaks in permit applications can be levelled out, and the assessment of minor construction work can still be carried out as under the old regime. In addition, due to certified professional involvement, the City reduces its liability exposure as the more complex – the more risky – buildings are assessed by other actors.

Overall, interviewees assessed the accountability of the regime positively: a moderate number of interviewees made clear that the different levels of oversight in the regime guarantee the regime’s accountability. Every project assessed by a certified professional is overseen by the City and, as certified professionals are registered architects or engineers, they are also overseen by their own professional institutions. Furthermore, the City’s officials can be used as the stick sometimes needed to gain compliance – the benign big gun (cf. Ayres and Braithwaite 1992, chapter 2). As one CP observed, “in the case of difficult and powerful developers, the City can be an ally to the professionals”.

**Type 2: General PSI**

**Victoria**

Approximately 75% of all building permits are issued by private certifiers under the new regime in Victoria. In general the preference for private certifiers is considered to come from the relationship
that they can build up with their clients and the high level of service they can provide, including speed, specialization; broader knowledge; and accessibility. Councils might still be suffering from the stigma of being cumbersome and their employees being non-proactive. As with the South Australian regime, little consistency was found in perceptions about changes in the level of compliance due to private sector involvement under the new regime. Again it could be assumed that the private certifiers’ ability to specialize in certain complex building types might result in more inspectorial depth in those projects.

As in the South Australian regime, there appears to be a trade-off in the regime between X-efficiency and equity. Private certifiers in the Victorian regime also appear to prefer major construction work to minor or type-specific work. Indeed, some interviewees mentioned that non-professionals perceive that the council is the place to go to when it comes to applying for a building permit. Another similarity with the South Australian regime, concerns a likely trade-off between X-efficiency and accountability. Commercial pressure was generally mentioned as a possible obstacle on different levels. Firstly, as it is believed that private certifiers might be less fanatical about acting in the public interest than municipal building control surveyors, they are considered to have a business point of view. Secondly, client binding might be a risk when a private certifier becomes too dependent on a client or a small number of clients – as the certifier might choose to cut corners in order to keep his client. Finally, it was noted that competition might erode standards as margins are small.

It was often mentioned that a system of oversight is needed to deal with these accountability issues. Oversight is already part of the new regime as the Building Practitioners Board (BPB) has the authority to monitor and discipline a private certifier. However, a majority of interviewees considered this system to be insufficient. Most critics of oversight focus on the auditing system. Not only is the number of audits regarded as being too small – private certifiers interviewed recall being audited once every seven to ten years – but the audits are criticized for having too great a focus on procedures. The audits were said not to be focusing on the content of the building permits issued and controls performed on-site, but on ticking boxes and following procedures.

A moderate number of interviewees made clear that private certifiers seem to fear the measures the insurance industry can take even more than the measures the BPB can and does take. If a complaint is lodged against a private certifier it might take up to several years before the process of investigation is finished and often the penalty is relatively low. Baldwin, Hutter and Rothstein’s argument (2000, 9) that “Private or public insurers may operate to control risks by imposing conditions on the supply of insurance cover and by using economic incentives, such as deductibles, to encourage proper risk-reducing behaviour” appears to apply to the Victorian regime (cf. VCEC, 2005, p. 250). Measures taken by the insurance industry are often an increase in the private certifier’s insurance policy fees if an insurer has to pay out. Also, when insurers do have to pay out, often because of repetitive issues, all private certifiers’ fees are raised. Insurance fees thus appear to be a strong incentive - maybe even a stronger incentive than the audits or disciplining powers an oversight body has.

Alberta
Contrary to the other cases presented applicants subject to the Albertan regime do not have a choice between private or public sector involvement in the assessment process. Municipalities and accredited private agencies have to meet the same criteria in order to be allowed to enforce building regulations. The actual enforcers, whether they work for the municipality or a private agency, have to meet similar criteria relating to education and experience as well. In general the new regime was found to have resulted in more educated and experienced enforcers than under the old regime.

Especially in the smaller municipalities and the rural areas this was expected to have resulted in greater compliance with building regulations – regulations are enforced now, whereas under the old regime in some parts of Alberta regulatory enforcement was non-existent. Private sector involvement was generally valued as it provided service in those areas, without raising costs for municipalities.

However, for a majority of the interviewees, the private sector was considered to have a different incentive for regulatory enforcement from their municipal counterparts. A majority of interviewees made negative comments about municipalities having a choice on whether to take up building code enforcement or not. These interviewees would welcome a regime under which municipalities are required to take responsibility for regulatory enforcement. Here a trade-off between allocative efficiency and effectiveness appears to have occurred. Some interviewees mentioned that private agencies appear to cut costs by carrying out fewer inspections than the major municipalities: Edmonton, Calgary and Lethbridge. Furthermore, it was mentioned that private agencies are less stringent in carrying out follow-up enforcement tasks as this is not included in their contracts.

Another trade-off of the regime appears to that between X-efficiency and accountability. A moderate number of interviewees made clear that the provincial government has become too dependent on a small number of accredited private agencies to carry out regulatory enforcement in those areas where municipalities do not take responsibility. The disciplinary powers to take action against private agencies lie with the Safety Codes Council. However, if they withdraw a private agency’s licence, a large area of the province would face an absence of enforcement.

A notable insight into the private agencies was provided by some interviewees. After the introduction of the new regime, the provincial government stimulated its own building officials to start private agencies. Therefore, in the early years of the new regime, most private agencies were run by former public officials. After a number of years the ownership changed and “real” private actors took over. With this change a change in attitude also appears to have come into existence, which is likely to result in accountability issues. “Safety made way for money”, an accredited private agency’s representative mentioned.

Under the new regime the Safety Codes Council has authority to monitor both municipalities and private agencies and, as reported above, also has the power to take disciplinary action. A moderate number of interviewees looked upon this system as insufficient, especially as auditing is carried out with a low frequency and audits appear to be process audits only. It was furthermore noted that the regime would be strengthened if contractors were regulated as well. Currently issues with contractors have to go through court, which can turn out time-consuming cases for the participants involved.
Relationship between regime design and identified trade-offs

Trade-offs were thus found in all the cases presented. However, the nature of these varied amongst the new regimes analysed. In this section, inspired by Vogel (1996), the identified trade-offs are discussed according to regime types, the relationships between the private and public sector within them, and to other case-specific circumstances. Table 4 presents an overview of these trade-offs related to the regimes analysed.

Table 4 – Trade-offs in regimes analysed

<table>
<thead>
<tr>
<th>Regime type</th>
<th>Relationship within regime</th>
<th>Regime type</th>
<th>Relationship within regime</th>
</tr>
</thead>
<tbody>
<tr>
<td>Limited PSI</td>
<td>SOUTH AUSTRALIA</td>
<td>VANCOUNVER</td>
<td>X-efficiency vs. allocative efficiency</td>
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<td>- X-efficiency vs. equity</td>
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<td>- X-efficiency vs. allocative efficiency</td>
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<td>- X-efficiency vs. accountability</td>
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<td>General PSI</td>
<td>VICTORIA</td>
<td>ALBERTA</td>
<td>X-efficiency vs. allocative efficiency</td>
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<td>- X-efficiency vs. equity</td>
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In three out of the four cases presented, privatization appears to have resulted in a trade-off between X-efficiency and accountability. With the exception of the Vancouver case, interviewees in the other cases regarded oversight of the regime as insufficient to keep the system accountable. Criteria set for private sector actors relating to education, experience and insurance were generally experienced as sufficient. The actual monitoring of the private sector actors’ enforcement tasks appears to be the issue in these three cases. There were considered to be too little monitoring, or audits, in general. If monitoring was carried out it was found to focus too much on process instead of content – comparable with Power’s (1999) findings on audits as “rituals of verification”. If monitoring resulted in disciplining, this was regarded as too slow a process, and the actual disciplining measures too soft to bring enough awareness to those involved in the regime – as described by Bardach and Kagan in *Going by the Book* (1982; see also, Huber 1988). Again, comments were made in the Australian cases that, overall, the municipalities faced even less stringent oversight than the private sector actors.

In Vancouver this trade-off appears to have been balanced by stringent oversight. The city oversees every project where a certified professional is involved. However, another trade-off, also found in the South Australian regime, appears to be a result of the City’s involvement in the work of the private sector actors. In the *limited PSI* regime types, a trade-off appears to have occurred between X-efficiency and allocative efficiency. Private sector involvement has speeded up the assessment process for those who involve private sector actors in their projects, which in building development means saving money on interest. However, a municipal building authority still has to administer the
documentation generated by these private sector actors confirming that building plans and construction work comply with regulations. This appears partly to be a doubling of tasks – comparable with what Thompson (1980) characterizes as “the problem of many hands”. It furthermore obliges municipalities to maintain building control departments, which might have to be funded partly through general revenues.

Competition between the public and private sectors appears to have resulted in a trade-off between X-efficiency and equity in both Australian cases. This seems not have occurred in the Canadian cases, where the private sector stands in a complementary relationship with the public sector. Competition in the Australian cases has resulted in a situation in which different groups of applicants are treated differently. Municipalities also lose revenue and skilled staff to private sector agencies, but have to process non-cost-effective minor development – an issue already noted by Wilson in Bureaucracy (1989, especially chapters 7 and 9). In the long term, a loss of revenue and resources might therefore erode the quality of the public regulatory enforcement authorities. This might, in turn, endanger their ability to serve the public, and to protect the public interest.

Alberta showed a case-specific trade-off, which appears to come from the choice that municipalities have not to enforce building regulations in their jurisdiction: one between allocative efficiency and effective enforcement. Private sector actors were found to carry out regulatory enforcement tasks less stringently than their municipal counterparts, which might result in less intense, less effective enforcement. Municipalities were sometimes told not to take responsibility for regulatory enforcement as this might result in liability issues – due to the system of joint and several liability in Alberta, municipalities were regarded as having deep pockets (cf. Lee 1987). Choosing not to enforce building regulations keeps municipalities out of court cases that might result in penalties which would ultimately be paid for out of general revenues.

Conclusion

The introduction of the private sector into different building regulatory enforcement regimes in Australia and Canada appears to have resulted in trade-offs between competing democratic values such as effectiveness, efficiency, accountability and equity. This paper has found that some of these might be explained in terms of the extent of private sector involvement in a regime, or of the nature of the relationship between the public and the private sectors within a regime. However, as the Alberta case shows, not all trade-offs are necessarily related to these characteristics.

Overall, it was found that private sector involvement results in regimes that exhibit more effectiveness and greater X-efficiency compared with the former public regimes in all the cases analysed. However, in general, private sector involvement also appears to raise a number of accountability issues. The solution to these might involve more oversight, with a strong focus on the content of the private sector agents’ enforcement tasks, but also on those of the public sector agencies. However, oversight comes at a price and the question at hand is: who should pay that price?

In terms of the differences in relationships within the regimes analysed, it appears that a competitive relationship is more likely to result in equity issues than a complementary relationship. Nevertheless,
it should be noted that this research only addresses these two relationships and this may not therefore present the complete picture.

The roles and responsibilities of different combinations of actors in a “policy mix”, and its impact on regulatory governance has been the subject of much debate (e.g. Gunningham and Grabosky 1998). The empirical research presented in this paper gives valuable insight into how the concept of regulatory enforcement regimes can be used to itemize a “policy mix” of “ingredients” and “proportions” as a tool for comparative analysis. The nature of the trade-offs which come about when the private sector is introduced into regulatory governance has also been debated (e.g. Scholz and Wood 1999; Stone 2002; Winter 2005). What this paper adds to this debate is an understanding that similar regulatory enforcement regimes might result in different trade-offs, and visa versa. However, it appears that the direction taken by these trade-offs is affected, at least partly, by the amount of private sector involvement in a regime, and by the relationship between different sectors within a regime.

In a policymaking context the research shows that the privatization of building code enforcement should be performed with the utmost care. It suggests that providing private sector inspectors with the opportunity to specialize can have a positive impact on the effectiveness and efficiency of the enforcement process. Privatization also seems to be best suited to assessment tasks. In contrast the issuing of permits is generally regarded as an administrative task that does not need the private sector inspectors’ specialist knowledge. Maintaining the issuing of permits within the public sector also avoids potential conflicts of interest. Finally, when introducing private sector inspectors as an additional feature of a public regime, a complementary relationship appears advisable over a competitive relationship.

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6 It is expected that, for instance, the difference in liability between Australia and Canada also has a notable impact on the differences in trade-offs between the regimes as well. Under the Australian regimes actors are subject to proportionate liability; under the Canadian cases actors are subject to joint and several liability.
References


