ONE TASK, A FEW APPROACHES, MANY IMPACTS: PRIVATE-SECTOR INVOLVEMENT IN CANADIAN BUILDING CODE ENFORCEMENT

WORKING PAPER

Accepted for publication in:
International Political Science Review, 2013 vol. 34 no. 1 57-73

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Abstract
In response to issues about municipal-led regulatory enforcement, governments in Canada have been reforming their regimes of building regulation and control since the 1980s. As a result, private-sector inspectors were introduced as an alternative to local government control on the adherence to building regulations. However, this privatization has resulted in variations among jurisdictions. The main difference is the degree of private-sector involvement. Based on a series of interviews with forty-seven insiders, this article addresses the implications of such differences in privatization on the practice and process of building code enforcement. It draws some general lessons for the redesign of control over building regulations but at the same time warns against copy-pasting best practices.

Key words
regulation, enforcement, privatization

One task, a few approaches, many impacts: Private-sector involvement in Canadian building code enforcement

Introduction

Our built environment is strongly affected by building regulations and their enforcement. As in other policy sectors, a global trend in built environment policy is the introduction of private-sector actors in regulatory enforcement. Privatization of building code enforcement has been undertaken by governments in the U.S (LaFaive 2001), Australia (Australian Building Codes Board 1999), New Zealand (Hunn 2002), and different European countries (Meijer and Visscher 2006). The shift towards using private-sector actors is premised on the assumption that they are better than public-sector enforcement actors at effectively and efficiently enforcing building regulations.

Canada is no exception here. Interestingly, in Canada, building regulations are drawn up on a national level, but the introduction of privatization of regulatory control has proceeded with variations among different Canadian jurisdictions. These variations allow an exploration of the specific impacts of privatization in three contexts where building techniques and the (national) building code are broadly similar. We are also provided with a unique opportunity to empirically analyse multiple approaches to a single task. The aim of this article is to gain insight into the impacts of these three different approaches in different jurisdictions.

This study proceeds in four parts. First, since it is expected that privatization of Canadian building regulatory enforcement fits in a global trend of government reforms, the first section of this article questions what general impacts might be expected when regulatory tasks that were formerly a public responsibility are now privatized. The article then introduces and discusses three cases: building regulatory enforcement in the City of Vancouver, the Province of Ontario, and the Province of Alberta. Then, referring to testimonials from interviews with about fifty key actors, the substantive part of the article describes and evaluates the implications of private-sector involvement in building regulatory enforcement practice and process. Finally, I discuss some specific findings that add to existing knowledge on privatization of regulatory enforcement. Based on these findings, we can draw some lessons for the redesign of building regulatory enforcement in Canada.

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Regulatory enforcement regimes

In order to ensure that regulations are observed, they have to be enforced. Regulations and their enforcement as a "means for achieving regulatory goals" can be referred to as a "regulatory regime" (May 2007: 9). Enforcement itself is however often regulated and enforced as well. To provide clarity in terminology, the term "oversight" will be used for the enforcing of enforcement (for an overview of oversight literature, see Marvel and Marvel 2007). By combining the concepts of a regulatory regime and oversight, we can posit the concept of a "regulatory enforcement regime." This regulatory enforcement regime is defined as *an organizational structure of actors that have tasks and responsibilities regarding the enforcement of regulations, the relations between these actors, and the relation between the organizational structure and its context* (cf. Hood, Rothstein, and Baldwin 2001). As such, a regulatory

enforcement regime builds on three levels of responsibility: the responsibility for setting regulations; the responsibility for regulating and overseeing enforcement; and the actual enforcement of regulations.

Traditionally, all tasks and responsibilities regarding regulation, oversight and enforcement were carried out by governmental agencies (Baldwin and Cave 1999; Kagan 1984): we can refer to these as "pure public" regimes. Yet, from the 1970s onward, major criticism towards the ineffectiveness and inefficiency of this traditional structure (Hood 1995; Sparrow 2000) resulted in a new paradigm under which governments became more entrepreneurial (Osborne and Gaebler 1992). Under the phrase "from government to governance" (Rhodes 1997: 2007), non-governmental organizations were involved in governing, and former governmental organizations were privatized. In an illustrative work, Neil Gunningham and Peter Grabosky argue that those actors in the regulatory process who are best fit to take up certain tasks and responsibilities should be involved (1998). Sometimes this may be through traditional public agencies; sometimes through self-regulatory initiatives in which private-sector agencies enforce their own corporate bodies; and sometimes through a combination of both, in co-regulatory initiatives (1998: 106).

Interestingly, there is no obvious ready-made solution when changing regulatory enforcement regimes. A broad variance of such regimes can be found in countries across the world. These are often characterized by an arrangement of tasks and responsibilities among *both* public- and private-sector parties (Brandsen, van der Donk, and Putters 2005; Elsner 2004; Evers 2005; Lang 2001; Lehmkuhl 2008; Noorderhaven 1995).

General impacts of privatization of regulatory enforcement

Private-sector involvement in regulatory enforcement is sometimes found superior to public-sector enforcement. Robert Baldwin and Martin Cave find that corporate bodies "can usually command higher levels of relevant expertise and technical knowledge than is possible with [public] regulation" (1999: 126). And Ian Ayres and John Braithwaite find that "corporate inspectors are better trained and tend to achieve a greater inspectorial depth" than public inspectors (1992: 104). It is possible that greater inspectorial depth would result in more regulatory compliance because more (potential) breaches with regulations might be found, which would then be solved. The effectiveness of regulatory enforcement then would improve.

Private-sector involvement is furthermore found to result in more "bang for the regulatory buck" (cf. Gunningham 2002: 5; Sparrow 2000: 34). Due to a different approach to tasks, or different organizational structures, the private sector appears, without additional capital, to carry out a more efficient enforcement process. Gunningham and Grabosky, 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" (1998: 52).

However, it is not only gains that are ascribed to private-sector involvement. The introduction of private-sector involvement might introduce potential conflicts between private and public interests (cf. DeMarzo, Fishman, and Hagerty 2005: 688; Gunningham and Grabosky 1998: 52; Hodge and Coghill 2007). And a danger of regulatory capture becomes serious when enforcers become financially dependent on "their" regulatees (cf. Baldwin 2005: 129–30; Scholz 1984: 401). As a result, additional oversight might be needed to make and hold the private-sector actors accountable. Yet, additional oversight might lessen the effectiveness and efficiencies gained from private-sector involvement (cf. Cohen and Rubin 1985). Furthermore, the oft-chosen form of such oversight – auditing – is repeatedly

criticized as being a mere "ritual of verification" that only provides "comfort" instead of "proof" (Power 1999: 38).

Private-sector involvement in regulatory enforcement might also result in a decline of social equity (Burkey and Harris 2006). Where all regulatees should be treated likewise in similar circumstances and where all regulatees should have similar access to the service provided, private-sector involvement is likely to result in private-sector agents preferring certain clientele or in raising fees for profit. Due to such "creaming," regulatees may face differences in treatment (cf. Bailey 1988: 304; Stoker 1998: 23). Furthermore, not all regulatees may accept or be able to pay higher fees and may therefore be unable to get the service needed (cf. Stone 2002: 21).

Finally, the introduction of private-sector involvement might lack the general public's trust or it might not be regarded as legitimate. A general preference for organization and supply of public service in the hands of an elected council might then exist (cf. Baldwin and Cave 1999: 130; Stoker 1998: 19--20).

To conclude this brief literature review, private-sector involvement is expected to result both in intended impacts, such as gains in effectiveness and efficiency, and unintended issues, such as conflicting interests and a decline of social equity and accountability. In the following sections, the focus is on impacts that resulted from private-sector involvement in building code enforcement in Canada.

Towards private-sector involvement in Canadian building code enforcement

The responsibility for building regulations in Canada resides with the provinces and territories – except for federal government property and aboriginal lands. The provinces did not take up this authority until the 1890s. Yet, instead of establishing province-wide regulations, provinces delegated the power to write building bylaws to their incorporated municipalities. This resulted in a multiplicity of regulations being developed over time as each municipality tried to deal with its own needs: a patchwork of municipal bylaws came into existence. This patchwork made it very difficult for designers, product manufacturers, and contractors to conduct business in more than one region. It furthermore stood in the way of the implementation of national programs supporting housing and other construction (Legget 1965).

In order to overcome these issues, the National Research Council of Canada was, in 1937, asked to develop a model building code that could be adopted by all municipalities in Canada. This resulted in the publication of the first national building code, which is updated every five years (Hansen 1985). The code and building regulations come into effect only after provinces and territories implement these within their own jurisdiction. Currently, most provinces and territories have done this.

Enforcement of building regulations remains a responsibility of local authorities. Until the mid-1990s, this resulted in land-use, planning, development and building regulations being enforced – if enforced at all – by local councils only. Responding to issues with municipal enforcement or the absence of enforcement, some provincial governments tightened their grip on building code enforcement, or have tried to do so (British Columbia, Commission of Inquiry into the Quality of Condominium Construction in British Columbia [Barrett Commission] 1998: Chapter. 2.3, 2000: 126--31; British Columbia, Office of Housing and Construction Standard 2007; Canadian Home Builders Association 2000: 19; Ontario, Building Regulatory Reform Advisory Group 2000: Appendix 5)**.** This response by provincial governments mainly implies the introduction of private-sector involvement.

The new regulatory enforcement regimes

In the City of Vancouver, the Province of Ontario, and the Province of Alberta, a variety of enforcement tasks can be carried out by private-sector inspectors. Tasks relate to building plan assessment, building permit issuance, on-site construction work assessment, follow-up enforcement tasks, and occupancy permit issuance. These enforcement tasks can also be carried out by public agencies, often by municipal building departments. These departments have additional responsibilities, such as keeping records of construction and planning and land-zoning assessments. In order to be allowed to work as a private-sector inspector, individuals have to meet certain criteria. In all jurisdictions examined in this study, criteria relate to a required level of education and experience and the possession of professional indemnity insurance. These inspectors are furthermore subject to oversight. The number of tasks private-sector actors can carry out is the most important difference between the regimes. I will refer to this as "the amount of privatization". The differences between the regimes are clarified in Table 1.

In Vancouver, private-sector inspectors are only allowed to carry out assessments of building plans and construction work (Vancouver, Office of the Chief Building Official 2003). Clients can choose to have assessments carried out by Vancouver's building codes department or a private-sector inspector. Note that the City of Vancouver strongly advises involving private-sector inspectors in complex construction work. Under the Vancouver regime, oversight relationships exist between private-sector inspectors and their professional association, and between them and the city.

The Ontario regime is comparable, insofar as private-sector inspectors there are also only allowed to carry out assessments of building plans and construction work (Hemson Consulting 2008; Short 2005). In contrast to the Vancouver regime, municipalities in Ontario can enter into contracts with private-sector inspectors. Clients cannot choose a private-sector inspector but are assigned one by the municipality. Under the Ontario regime, private-sector inspectors are overseen by a public agency.

Finally, under the Alberta regime, private-sector inspectors are allowed to carry out all statutory assessment tasks and are allowed to issue permits (Safety Codes Council 2003, 2004, 2006). Inspectors are overseen by the Safety Codes Council – an independent statutory authority that consists mainly of private-sector stakeholders. The council is also authorized to discipline private-sector inspectors through cancellation or suspension of registration. The council is administratively supported by the Ministry of Municipal Affairs. At present, the council investigates complaints and monitors private-sector agents but relies on the Ministry of Municipal Affairs to carry this out.

Table 1. *Overview of Key Characteristics in the Different Building Regulation Enforcement Regimes of Vancouver, Ontario and Alberta*

Tasks	*Responsibilities (sector per case)*					
	Vancouver		*Ontario*		*Alberta*	
Sector	*Public*	*Private*	*Public*	*Private*	*Public*	*Private*
Setting building regulations	X		X		X	
Carrying out oversight	X	X	X		X	X
Regulatory enforcement process:						
- building plan assessment	X	X	X	X	X	X
- building permit issuance	X		X		X	X
- on-site assessment of construction work	X	X	X	X	X	X
- follow up enforcement tasks	X		X		X	X
- occupancy permit issuance	X		X		X	X

Research design

To understand the impacts of private-sector involvement in regulatory enforcement, I chose a qualitative intensive research approach, which typically focuses on a small number of cases that are examined in depth (cf. Ragin et al. 2003; Steinberg 2007). The units of analysis here are the new building regulatory enforcement regimes. I conducted a series of interviews and analysed interview data (following Dunn 2003, especially chapters 6 and 7). In addition, secondary data was analysed. This process, called triangulation, strengthens the validity of possible findings (Brady and Collier 2004: 18; Silverman 1993: Chapter 7).

Interviewees were selected using "snowball" sampling (Longhurst 2003), which resulted in a pool of interviewees – such as policy-makers, municipal officials, private-sector inspectors, architects, engineers, contractors, scholars and representatives of trade associations – from various backgrounds. More than ninety per cent of those interviewed had experience with both the *status quo ante* and the new situation. The pools of interviewees of all cases showed comparable characteristics in size and variation. A total of forty-seven semi-structured interviews were carried out in 2008. Table 2 provides an overview of the backgrounds of the interviewees and their roles within the regimes.

Table 2. *Overview of Interviewees, N = 47*

Interviewees' backgrounds	*Interviewees' roles in regulatory enforcement regime*		
	Involved in regime design and oversight	*Carry out enforcement*	*Subject to enforcement*
Public official	13	11	
Private-sector representative	3		
Private inspector		5	
Architect/engineer			5
Builder/contractor/developer			6
Other professions			4
Total	16	16	15

Questions focused on the reasons underlying the introduction of the new regimes, the operation of the new regimes in daily practice, the interviewees' valuation of the new regimes, and the achievement of regulatory goals as a result of the new regimes. The questions had a strong focus on comparisons, over time, of the different regimes (Lijphart 1971: 689). The appendix at the end of this article provides an overview of the main research questions. Interviews varied in length, between one and four hours, and were mostly carried out with a single interviewee, at the interviewee's office. Interviews were recorded and transcribed into an interview report that was returned to the interviewee for validation. Additional data, such as governmental inquiries, information booklets, and practitioner literature was collected. Contrary to expectations, extensive quantitative data that would have strengthened the experiences shared by the interviewees was not available. Few to no records appear to be kept, for instance, on building permits issued by the public and private sector, processing times, oversight actions, construction-related incidents, and the like.

The data was processed by means of a systematic coding scheme (cf. Seale and Silverman 1997), and qualitative data analysis software, the computer program "Atlas.ti", was used to run queries.

Through this program, data was systematically explored, and insight was gained in the aspects of "repetitiveness" and "rarity" of experiences shared by those interviewed.

This methodology results in a qualitative dataset. Interviewees have relayed their experiences with the new regimes as "informed insiders," and their stories, recounted in the remainder of this article, should be experienced as such.

Evaluating the new regimes

Vancouver

Private-sector involvement was introduced in Vancouver as a top-down initiative in 1981 (British Columbia, Commission of Inquiry into the Quality of Condominium Construction in British Columbia [Barrett Commission] 1998; Vancouver, Office of the Chief Building Official 2003). According to those interviewed, the catalysts of this implementation were the collapse of a shopping centre and a large strike by public officials in the 1970s and 1980s. Yet, it was mentioned as well that, at the same time, the city had a problem with staffing, both qualitatively and quantitatively speaking, and the building industry was putting pressure on the city to speed up processes.

About ninety per cent of all complex building works are assessed by private-sector inspectors under the new regime. In general, it was expected that clients would choose the involvement of private-sector inspectors because they are able to provide a higher level of service and, most especially, a speedier and more flexible regulatory enforcement process than officials from the city's building department. In this opinion, the interviewees' statements mirror findings by Gunningham and Grabosky, who note that private-sector involvement "offers greater speed, flexibility, sensitivity to market circumstances" – efficiency (1998: 52). Here it should be noted that officials from the building codes department advise their clients to involve private-sector inspectors in complex building works. The department furthermore aims to issue a building permit within a week of private-sector inspector providing sufficient proof of a building plan's compliance with regulations, but issuance of a building permit may take up to twelve weeks if the building plan assessment is taken up by the officials from the building codes department itself (Vancouver, Office of the Chief Building Official 2003). However, according to some, this one-week time-frame is often drawn out, because, as one private-sector inspector made clear, "wrinkles have to be worked out."

A majority of interviewees, from both public- and private-sector organizations, shared the opinion that the introduction of private-sector inspectors has resulted in more compliance with building regulations – but no data was provided to cross-check these claims. Private-sector inspectors were thought to have more knowledge and expertise than officials from the city. One engineer clearly expressed this, "It might be more a 'following rules for the sake of rules' attitude for some [officials from the building codes department]. [Private-sector inspectors] might have a more broad view and a better understanding of the important issues in the process."

This and comparable statements remind us of the previously mentioned assumption by Baldwin and Cave that corporate bodies "can usually command higher levels of relevant expertise and technical knowledge" (1999: 126) than public-sector agencies can. It could be also assumed that a higher level of expertise results in reaching greater inspectorial depth, which in turn, might result in improved compliance with regulations (cf. Ayres and Braithwaite 1992: 104).

Overlapping of tasks and responsibilities in regulatory enforcement was sometimes seen as a potential problem in the Vancouver regime. Liability might become an issue if the building department issues a building permit based on a faulty private-sector inspectors' assessment – an issue comparable

to Dennis Thompson's "problem of many hands": many hands may make light work but they scatter liability (1980). Furthermore it can be argued that the regime could be more efficient without such overlapping tasks as these partly offset the efficiencies gained from private-sector involvement because similar tasks are repeated – i.e. a municipal official has to carry out a number of administrative tasks in order to issue a permit based upon a private sector inspector's assessment report; tasks that partly are carried out by the private sector inspector as well. This doubling of tasks appears to conflict with the potential allocative efficiency of the regime (cf. Leibenstein 1966); resource maximization could be further optimized if the unique resources would be used for unique goals. However, the involvement of both private- and public-sector inspectors was nevertheless regarded as "a necessary check and balance to the system," a public official clarified. Public officials keep considerable control over the private sector inspectors' enforcement process.

Overall, the involvement of inspectors from the private sector was experienced as a positive addition to the city's building department. The city does not have to maintain a large and specialized staff, and peaks in permit applications can be leveled out. Furthermore, due to the involvement of private-sector inspectors, the city even reduces its liability exposure when more complex and more risky buildings are being assessed by other actors. A former official from the Office of the Chief Building Official in Vancouver said, "It's not competition; it's working side by side … Vancouver has had the [private-sector inspectors] program for so long now that it has been found that the initial fears did not materialize."

These initial fears came from officials in the city's building department, who feared losing their jobs to private-sector inspectors – which confirms findings in previous research (e.g., Price 2007: 1151). Another initial fear of this new regime came from the possibility of having architects and engineers in the role of designers and private-sector inspectors. As such, they would be in the position of assessing their own work, and this would result in issues of integrity. A moderate number of interviewees, however, made clear that different levels of oversight in the regime guarantee the integrity of private-sector inspectors.

Private-sector inspectors are subject to two models of oversight. First, every project assessed by these inspectors is overseen, as illustrated before, by officials from the city's building department. Private-sector inspectors have to follow prescribed procedures, which include formal meetings with department officials. If these meetings or a reassessment of building plans or construction work reveal discrepancies in the private-sector inspector's work, the city can begin a three-step process of remedial action: a formal meeting with the private-sector inspector is followed by a letter to the inspector, with a copy going to his or her professional association, and, finally, a formal complaint is made to his or her association. Another means is to send the application through normal city review. The inspector's client will face a longer assessment process. Notably, some interviewees made clear that private-sector inspectors value their cooperation with the city. Some inspectors said that they can use a city official as the "stick" that is sometimes needed to gain compliance. In the words of a private-sector inspector, "In the case of difficult and powerful developers, the city can be an ally of the [private-sector inspectors]."

Second, private-sector inspectors are subject to oversight by their own trade associations. These associations will carry out an investigation after receipt of a complaint – which can be lodged by, among others, the city and/or the inspector's clients. Professional associations have the power to discipline their members. The most severe measure is to drop the individual from membership, which implies that he or she must close his or her business.

Ontario

The introduction of private-sector involvement in Ontario was a top-down initiative by the provincial government (Ontario, Building Regulatory Reform Advisory Group 2000; Short 2005). In order to streamline the permit process, improve safety standards, and increase municipal accountability, the Building Code Statute Law Amendment Act, 2002 (S.O. 2002, c. 9) was passed (Ontario, Building Regulatory Reform Advisory Group 2000, Appendix 5; Hemson Consulting 2008).

Bill 124, the Fair Access to Regulated Professions Act, introduced an option to contract-out assessments of building plans and on-site construction work to private-sector inspectors. The new regime was put into practice between 2000 and 2006 in reaction to, according to some interviewees representing both public- and private-sector organizations, a slow and sometimes "unskilled" permit processes, red tape at the municipal level, and unfair liability exposure of municipalities (cf. Hemson Consulting 2008). Some interviewees noted that "top-down" here does not mean that Bill 124 was a "pure" provincial government initiative. A provincial official noted that "the entire Bill 124 initiative originated with industry and municipal stakeholders working with the ministry's building and development branch."

Interview data indicated that in practice private-sector inspectors are hardly being involved in building code enforcement in Ontario. A main cause for this can be found in the Ontario Building Officials Association's plea against allowing the involvement of private-sector inspectors (cf. Hemson Consulting 2008). Some public-sector representatives reported the fear that building officials would lose their jobs to private-sector inspectors. Also, the involvement of private-sector inspectors holds potential liability shortfalls when a municipal building codes department issues a permit based on an inaccurate building plan or construction work assessed by private-sector inspectors. A representative of the Ontario's Building Officials Association explained, "We were concerned an independent builder could have someone working for him, he's paying him, they review his plans, and bring them in rolled up and we have to issue a permit without opening them up. We were concerned that that's the 'fox looking after the henhouse' scenario. And we lobbied to have that removed."

But besides such situations of potential conflicting interests municipalities are also conserned about their liability exposure. Under the model of joint and several liability, minor involvement in a project may have major consequences. Although building owners often do not have a contractual relationship with a municipality, they can hold a municipality liable through its involvement in a building project as code inspector and thus might seek compensation for defects in their buildings (cf. Donnely 2000). Here a finding from a governmental inquiry, which was sometimes referred to as the catalyst for the new regime, is of particular interest: "Increasingly municipalities are paying damages assessed to other parties simply because the other parties do not have adequate liability insurance. Where the municipality is found even 1% liable, it may end up paying a much greater portion because of [the] so called "1% rule." Municipalities have therefore become favorite targets because of their deep pockets" (Cerminara 1995: 17).

In response to these fears, the original structure of the involvement by private-sector inspectors was changed to grant municipalities immunity from private-sector inspectors' work (Short 2005: 14—15). However, interviewees mentioned that the *potential* of conflicting interests was considered reason enough *not* to involve private-sector inspectors. Also, as some explained, in Ontario there is general disfavour for the involvement of the private sector in regulatory enforcement since the Walkerton incident. In this town, seven people died and 2,000 people got ill as a result of an *E. coli* contamination of the drinking water supply. It is sometimes pointed out that one of the major causes for this incident was the role of private-sector inspectors in inspecting and reporting on water quality (cf. Holme 2003).

But it is not only such municipal actions and fears that stand in the way of private-sector inspectors enforcing Ontario's building regulatory regime. Insurance appears to play a major part as well. One of the requirements for private-sector inspectors is that they hold professional indemnity insurance. Some interviewees mentioned that obtaining and holding such insurance is difficult in Ontario. This may be because insurance companies wish to know what type of work the private-sector inspector will get involved in before supplying an insurance policy, but such inspectors are required to hold an insurance policy to obtain work – a "Catch 22" situation. In Vancouver, for instance, this issue did not occur, interviewees explained, because the nature of the professional indemnity insurance required of architects and engineers already covers the work of private-sector inspectors. Those interviewed in that city explained that private-sector inspectors were introduced before the so-called "leaky condo crisis" and the resulting major shift in liability concerns (cf. Donnely 2000).[1] In short, in Vancouver, it was decided to place private-sector inspectors work under the professional indemnity insurance held by architects and engineers.

Accordingly, the requirements in Ontario compelling organizations representing private-sector inspectors to become registered and insured may also be too high, some interviewees stated. To provide service, these organizations would have to provide all levels of engineering – a holistic approach – and not many organizations in Ontario have this capability. Consequently, joint-ventures would have to be formed if organizations wish to become registered and insured. However, due to potential liability issues, the organizations representing private-sector inspectors appear to be less willing to form joint-ventures.

In Ontario, the wish to strengthen the regime by introducing strict entry and liability criteria may stand in the way of the participation of private-sector inspectors. As such, the criteria negatively affect possible efficiency gains of the new regime.

Alberta

The introduction of private-sector involvement in Alberta was a top-down initiative by the provincial government (Safety Codes Council 2003). The new regime was introduced in 1993 with the implementation of the Safety Codes Act (R.S.A 2000, c. S-1). Prior to the introduction of this regime, the major municipalities enforced building regulations in their jurisdictions. Outside of major municipalities, regulatory enforcement was taken up by the provincial government. With the introduction of the new regime, the province withdrew from actual enforcement tasks. Under the new regime, municipalities can choose whether to be involved in building regulatory enforcement. If the choice is made to be involved, a municipality can either set up a building codes department or contract out all tasks to an organization of private-sector inspectors. If a municipality chooses not to be involved in building code enforcement, the province enters into a contract with a private-sector inspector to have building code enforcement carried out in that municipality.

Overall, the involvement by private-sector inspectors was supported and valued by a moderate number of interviewees from both public- and private-sector organizations. Private-sector inspectors are understood to have experience with and knowledge of building regulations. They are also valued for their expertise and specialization in certain building types. More specialization might, as discussed before, result in better enforcement practices and, related, in more compliance. Some interviewees even stressed that compliance has improved. In smaller municipalities and remote areas, these interviewees said, compliance has especially improved because, under the current regime, building regulatory enforcement *is* being carried out. For the larger municipalities, little has changed, according to some interviewees. Furthermore, regulatory enforcement in major cities through municipal building

codes departments was generally valued positively by different actors in the building industry. Due to their large staffs, building codes departments appear to have the necessary experience and can keep process times reasonable. The major municipalities also appear to keep contact with the different actors in the building industry to sense what is going on. This "proactive approach towards the construction industry" was repeatedly cited during interviews.

Some interviewees made negative comments on the choice municipalities have to make about whether to be involved in building regulatory enforcement. These interviewees would welcome a regime under which municipalities are required to take responsibility for regulatory enforcement. If such municipalities do not want to set up a building codes department, they can enter into contracts with private-sector inspectors. Financial relationships under such an alternative regime would then exist between the municipality and a permit applicant, and between the municipality and a private-sector inspector. Under such a regime, one might expect that municipalities would be better placed "to steer" on aspects of quality. At the same time, it was mentioned, strengthening the municipalities' involvement in building regulatory enforcement might result in increased liability in the event of a crisis. In one interview with a head of a large city's building department, a story was told about a multi-million dollar condominium that burned down as a result of a roofer not paying attention to his gas burner. Given their statutory involvement, the building inspector and the department could be held liable, under the joint and several liability regime, for their involvement in the project. I was told that the same would have happened if a private-sector inspector had inspected the project. There is always a way to find little municipal involvement in a project, he explained – as in the "1% rule" discussed in the Ontario case.

Other questions were raised as well. Some of those interviewed, from public- and private-sector organizations alike, pointed out that private-sector inspectors appear to have a different approach to regulatory enforcement from those employed by their municipal counterparts – this in spite of the Safety Codes Council's efforts to equalize processes, for instance, through handbooks (Safety Codes Council 2004). For private-sector inspectors, regulatory enforcement is a business and, at a certain point in the enforcement process, a private-sector inspector has to look at this business from the point of view of profit. Consequently, private-sector inspectors might be less responsive to deficiencies and might try to save money by restricting the number or the quality of inspections, some interviewees explained (which stresses some of the general findings on privatization of regulatory enforcement discussed earlier, see also Imrie 2004). "When agencies don't get paid they don't do it," a provincial official made clear. This issue was clarified further by a municipal official from a large municipality:

> Our criticism on the private industry is that, because of time constraints, they sometimes say to the builder "correct and proceed." And on lesser issues, that is what our inspectors will do, but on more significant issues we'll say "correct and call us back." And as a result of that … trying to do a fine balance between "correct this and call us back" versus "correct this and proceed," we probably, in many cases, do sixteen or seventeen inspections on a house. And that includes gas and electrical and mechanical and building [envelope]. But that's way in excess of one inspection per major activity [as the private-sector inspectors do]. So, on a house [private-sector inspectors] might cut the inspections back to five or six inspections, and in some case the [private-sector inspector] will overlap the duties. In some cases, the [private-sector inspector] will do both building and plumbing …. So they might hit a house only once or twice and then it's finished.

But also in less evident situations, there appear to be differences between private-sector inspectors and their municipal counterparts, for instance, in the training of new staff. Within municipalities, some

interviewees explained, new staff is trained and overseen by senior staff for a period of time, whereas private-sector inspectors want to get their people "into the streets" as quickly as possible. The difference in attitude between officials from building departments and private-sector inspectors made a moderate number of interviewees question the overall integrity of private-sector inspectors.

Another issue mentioned is the provincial government's dependence on a small number of private-sector inspector organizations. When the regime was introduced, it was expected that private-sector inspectors would start small organizations, one-man or two-men offices that might be scattered around the province. It turned out that, because of competition, only a small number of large organizations exist – these bought out the smaller organizations. With only a small number of organizations in the field, the provincial government faces difficulties in "steering" the behaviour of these organizations. The strongest measure the provincial government can take is to withdraw licenses, which in practice means that the organization has to cease operations. However, taking an organization out of the regime would imply that building regulatory enforcement would no longer be carried out in parts of the province. A provincial official wondered, "What would we do if [private-sector inspectors organizations] close their doors?" This issue is strengthened because private-sector inspectors sell a package of enforcement tasks up-front to their clients. Taking out a private-sector inspector would therefore also mean that their clients lose their money.

Under the new regime, Alberta's Safety Codes Council has authority to monitor and discipline private-sector inspectors. In practice, the council monitors private-sector inspectors' practices every second year; this monitoring is sometimes referred to as "auditing." Some interviewees felt that this model was insufficient, especially since auditing is carried out on a low frequency, and these audits appear to be process audits only. These interviewees made clear that audits should focus on content and not on process only. These findings are in line with what Michal Power refers to as "rituals of verification" (1997). Then, when private-sector inspectors are found to have committed violations, interviewees made clear that these should be penalized. Currently, the Safety Codes Council appears to be too lenient when it comes to disciplining private-sector inspectors. As a result, their involvement might be viewed negatively: "A handful makes us all look bad and drag us all down," said a private-sector inspector.

Finally, a private-sector inspector had notable insight on a change that occurred over a longer period of time. After the introduction of the new regime, the Alberta government encouraged its own building officials to start such organizations. In the early years of the new regime, most private-sector organizations were run by former public officials. Although now working as private-sector inspectors, these former officials were regarded as being used to carrying out qualitatively sound inspections and still shared the ethical standards of public officials. After a number of years, ownership changed, and "real" private actors – for instance, a former car salesman – entered the business. With this change came a change in attitude towards the quality of building code enforcement, and this resulted in issues about integrity. "Safety made way for money," is the way this inspector, being a former public official himself, summarized the situation.

Conclusion and discussion

Before drawing conclusions and lessons from the previous section, a comment is warranted. This analysis is largely based a qualitative dataset, the strength of which is its ability to provide answers to the "how" questions, such as the ones posed at the beginning of this article (see also a variety of discussions in Brady and Collier 2004). No quantitative data was available for me to cross-check the validity of the data or to answer "how much" or "how often" questions, as such the lessons drawn do

not claim empirical generalizability. However, we can still surmise the impacts of private-sector involvement in regulatory enforcement of building regulations in Canada.

The main question in this study investigated the nature of the impact of private-sector involvement in different Canadian building regulatory enforcement regimes. In both the Vancouver and the Alberta regimes, the introduction of private-sector involvement was said to have resulted in improved efficiency and effectiveness because of the ability of private-sector inspectors to specialize (British Columbia, Commission of Inquiry into the Quality of Condominium Construction in British Columbia [Barrett Commission] 2000: 126--31; Canadian Home Builders' Association 2001: 7--8) – no direct data was, however, available regarding these claims. The gains appear most evident in the Vancouver regime, where private-sector inspectors seem to have become "complex building work specialists." In Alberta, private-sector inspectors can be essentially seen as substitutes for their public-sector counterparts, because they have less chance to specialize, compared to private-sector inspectors in Vancouver. Effectiveness and efficiency gains were not identified in Ontario because private-sector inspectors are hardly involved in building projects.

These findings underline conclusions in other policy areas that private-sector involvement has a positive impact on the effectiveness and efficiency of a regulatory enforcement regime (e.g., Bruzelius, Rothengatter, and Flyvbjerg 2002; Cheyne 2002; Christensen and Laegreid 2007). However, interviewees also discussed such negative impacts of private-sector involvement as conflicting interests, problems of accountability due to oversight deficits, and issues of liability due to overlapping tasks. Like the positive impacts, these negative impacts are also found when the private-sector is involved in other policy areas (Baldwin and Cave 1999; May 2007; Power 1999). And, although building regulatory enforcement has had little attention in regulatory literature yet, the findings reported here are in line with the limited studies on this topic (Hawkesworth and Imrie 2009; Imrie 2007; May 2003).

In addition to examples found in the literature, a number of specific conclusions drawn from the present analysis add to existing knowledge on privatization of regulatory enforcement. We can draw specific findings from the differences observed between the different regimes, and from these, we can draw some lessons (cf. Rose 2001) for redesign of building regulatory enforcement in Canada.

Specific conclusions from this study

First, "local attitude" towards either public- or private-sector involvement appears to have a strong impact on the success of a new regime. Overall, the introduction of private-sector involvement in building regulatory enforcement seems likely to encounter resistance from public officials involved in building regulatory enforcement. We have seen that, initially, officials in Vancouver's building department feared for their jobs, but over time they found that private-sector inspectors added to their own service. In this instance, it appears that having private-sector inspectors working under the new regime from the outset to prove their quality and possibly dispelling fears and prejudices – as happened in Vancouver – was very important. The Ontario regime suffered from the beginning; its strict entry and liability criteria, originally included to provide sufficient checks and balances, have now gridlocked the regime. This, in combination with the after-effect of the Walkerton incident, gave private-sector inspectors a subordinate starting position. Here the provincial government might actively support the involvement of private-sector inspectors, for instance by supplying them with the necessary insurance (this solution was chosen in the Australian State of Queensland, see Queensland, Department of Infrastructure and Planning 2002). A somewhat negative attitude towards public-sector involvement might have been an advantage to the introduction of private-sector inspectors in Alberta. As an Alberta

departmental official stated, "Over here they call us [public agencies] Communists, whereas in the east [of Canada] they see us as consumer-protection."

Second, gains in effectiveness and efficiency appear to be related to the technical tasks demanded by the enforcement process. The strength of private-sector inspectors was said to come from their professionalism and expertise, and they were found to have strengths and *skills* that actors from public-sector enforcement agencies lacked. This was most clearly found in the Vancouver regime. Other tasks, like permit issuance and follow-up enforcement, were not considered to be tasks requiring the specialist knowledge and expertise of private-sector inspectors. As such, privatizing these tasks does not add to regulatory effectiveness and efficiency. Moreover, it could be argued that a task such as permit issuance strengthens the negative impacts reported on. A permit allows the owner to start construction work, or to occupy a finished building. As such a permit is a highly valuable document in the building process. This high value might put pressure on a private-sector inspector not to "bite the hand that feeds." In short, a certain "tipping point" appears to exist after which more private sector involvement does not result in more regulatory effectiveness and efficiency. This tipping point may provide a valuable addition to the oft-cited enforcement pyramids (Ayres and Braithwaite 1992: 35; Gunningham and Grabosky 1998: 398).

Third, as found in other policy areas, the results of this analysis show that trade-offs occurred among the competing democratic values of effectiveness, efficiency and accountability. Yet, these trade-offs are less inevitable than some assume (cf. Amirkhanyan 2008; Scholz and Wood 1999; Winter 2005). The degree of private-sector involvement allows for a fine-tuning of the regulatory enforcement regime and thus of the trade-offs that occur. Given that the small differences among the regimes discussed here showed a potential for major impacts in regulatory practice, making small changes to a regime might very well have major impacts on regulatory goal achievement more generally. For policy-makers, this implies that fine-tuning an existing regulatory enforcement regime might be preferable to "copy-pasting" an "exotic" regime (cf. Czarniawska-Joerges and Sevon 1996) or "best practice" (cf. Rose 2001: 5).

Lessons for the redesign of Canadian building regulatory control

Private-sector involvement in building regulatory enforcement may result in effectiveness and efficiency gains. Yet, when trying to improve regulatory enforcement, the greatest chance for success appears to lie in combining public- and private-sector actors within a regime. The Vancouver regime provides an inspiring example of how the strengths of private-sector actors can be fully utilized without creating negative effects. Although the Vancouver regime might suffer from "the problem of many hands" and some overlapping of tasks between private- and public-sector actors, these issues may be preferable to the impacts of the Alberta regime in which private-sector actors were experienced to "guard their private interest first" and where the provincial government has become too dependent on a small number of private-sector agencies. At the same time, the Vancouver regime provides lessons of how to implement a level of checks and balances that does not create gridlock in the regime, as happened in Ontario.

Does this imply that all Canadian jurisdictions have to follow the Vancouver example? Certainly not. The Vancouver regime was often considered successful because of the city's relatively smaller size – compared to the provinces of Ontario and Alberta. As a result, the physical distance between the City of Vancouver's building codes department, private-sector inspectors and regulatees is relatively small. The city can easily keep an ear to the ground, whereas governments in larger jurisdictions face greater

obstacles. Then, the system of joint and several liability might make municipalities reluctant to involve the private sector (Cerminara 1995; Canadian Home Builders' Association 2001; Union of British Columbia Municipalities 2007). As we have seen, in Ontario, this provided reasons for municipalities to lobby against far-reaching involvement by private-sector inspectors. In Vancouver, there was a tradition of cooperation between the city and architects' and engineers; associations provided grounds for the introduction of private-sector inspectors. Although initial fears might have been overcome as a result of this traditional relationship, the city, however, can still be involved in claim cases because of the joint and several liability scheme (cf. Donnely 2000).

Furthermore, for different reasons, the first and third conclusions drawn above warn against "copy-pasting" best practices. At best, the general lessons from this study for Canadian building control can be summarized in a few statements: allow for private-sector involvement only where those particular skills are utilized; cooperate with professional associations to set up an oversight regime; and ensure that private-sector involvement is fully and actively supported by different levels of government. Note that these are only minimum requirements; they are not sufficient conditions for successful private-sector involvement. At the same time, this study stresses that likewise general lessons drawn from a comparative analysis should be treated with caution – even when the analysis is conducted in only one policy sector and one country.

Note

1 The "leaky condo crisis" refers to the situation in British Columbia in which "due to a number of factors, including faulty construction techniques and the use of questionable building materials, condominiums failed to remain watertight. Furthermore, due to building design there was no means for water to escape once inside the building structure. Buildings affected began to rot from the inside out … which has resulted in estimated costs to homeowners of between $500 and $800 million" (Donnely 2000: 74). The story on the "leaky condo crisis" shows striking similarities with a comparable situation in New Zealand, referred to as "the saga of leaky buildings" by Peter May (2003).

Appendix – Overview of main research questions

Introduction

1a What do you think about the quality of the building industry in [jurisdiction]?

1b To what extent is a certain development perceivable in the building industry?

Why was the new regime introduced?

2. Preceding this interview I sent you a short overview, my perception, of the [old and new regime] in [jurisdiction]. To what extent is this a proper description?

3a Why was the [new regime] introduced?

How does the regime operate in daily practice?

5a To what extent can [local government] interfere in the [private-sector] assessment process?

5b And to what extent does [local government]?

6 To what extent has compliance [with building regulations] changed after the introduction of [the new regime]?

7a To what extent can acceptable evidence be found for the achievement of regulatory objectives?

7b Could you point to web sites, research reports, articles that might be of help to further my research?
9a To what extent is building control performed equally among different groups?
9b To what extent is building control performed equitably by different sectors? (public- and private-sector enforcement actors)

How is the regime evaluated?

3b Do applicants show preference for either [public- or private-sector involvement]?
3c If so, why?
4a What criteria enforce building regulations? (for both public- and private-sector actors)
4b. Are these criteria realistic? (qualitative and quantitative)
10a What are the statutory responsibilities and liabilities of different enforcement parties? (public- and private-sector actors)
10b Are these realistic?
11a How are the different enforcement actors (public and private) overseen by [different levels of government]?
11b To what extent is this oversight realistic?

Why are goals that underpin the regime (not) achieved?

1c Why is building control needed in [jurisdiction]?
8a What is the most serious obstacle to achieving the objectives of building regulations? Why?
8b What is the second most serious obstacle to achieving objectives? Why?
8c [If interviewee mentions more objectives, try to have these ordered.]
12 If you were allowed to change one thing in the new regime, what would it be? And why?

Closing interview

13 Is there anything you think I have missed in this interview, and is there anything you wish to add?

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