Title
Hybridization of governance: the challenge of balancing policy impacts

Key words
regulation & governance, hybrid public-private partnerships, regulatory enforcement

Abstract
This paper focuses on the impacts of hybrid forms of governance. Such hybrids are characterized by an arrangement of tasks and responsibilities, regarding regulatory governance, between public and private sector agencies. Empirically the paper is based on regulatory reforms in Australian and Canadian built environment policy. Within these countries building regulations are drawn up on Federal level, whilst the implementation and enforcement of these regulations comes to State, Territorial and Provincial governments. In order to speed up process times and lower administrative burden, private sector involvement was introduced in the 1980/1990s with differences amongst States, Territories and Provinces.

Based on a series of elite interviews and secondary accounts the impacts of these new hybrid forms of governance are discussed. It is found that a certain relationship appears to exist between the amount of private sector involvement in a hybrid and its impacts.

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Hybridization of governance: the challenge of balancing policy impacts

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1 Introduction

In reaction to problems in regulatory governance, governments have sought to involve the private sector in tasks such as public service delivery and regulatory enforcement. In practice, such private sector involvement has led to a large degree of variance of alternatives for regulatory governance, in which tasks and responsibilities are arranged between public and/or private sector parties: hybrid forms of governance.

Involving the private sector in regulatory governance has consequences. Governments often seek gains in effectiveness and efficiency. Private sector involvement then is expected, and sometimes found, to increase compliance with regulations, against the same or lower costs (cf. Baldwin and Cave, 1999, 126, Gunningham and Grabosky, 1998, 52). However, bringing in the private sector might result in unintended impacts, such as a decline of equity (cf. Lefeber and Vietorisz, 2007), credibility (cf. Baldwin and Cave, 1999, 130) or accountability (cf. May, 2007).

These policy impacts often do not come alone. Some scholars even warn us for unavoidable tradeoffs between different policy impacts. Scholz and Wood (1999), for example, expect that tradeoffs between efficiency and equity are inevitable. This classic “big tradeoff”, in short, implies that in political sphere all people are equal, whilst in the economic sphere differences amongst people that optimize resource allocation prevail (cf. Bader and Engelen, 2003, 388-389). Related to this big tradeoff recurring tradeoffs discussed in literature are efficiency versus accountability (e.g. Mulgan, 1997, 106), freedom versus equality (e.g. Stone, 2002, 128-130), accountability versus enterprise (e.g. Short et al., 1998, 153), or safety versus freedom (Boutellier, 2005, chapter 2). All these tradeoffs appear to address that depending on which goal is chosen, some people or groups lose, whilst others gain (cf. Stone, 2002, 62). The challenge for governments is to balance the different impacts; to compensate the disadvantages with advantages of private sector involvement.

This research empirically analyzes the impacts of hybridization of governance in Australian and Canadian built environment policy. The research aims at gaining a better understanding of how, as a result of hybridization, different policy impacts and tradeoffs play out in practice. The paper starts with a brief discussion of private sector involvement in regulatory governance and hybridization of governance. Then a series of semi-structured interviews and secondary data are used to identify the impacts of such hybridization in Australian and Canadian built environment policy. Finally conclusions are drawn on such

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1 This paper is based on the author’s doctoral thesis, Building regulatory enforcement regimes. Comparative analysis of private sector involvement in the enforcement of public building regulations. The author graduated, with highest honor, on March 9, 2009. The thesis is available from IOS Press, Amsterdam, the Netherlands. A digital version of the thesis can also be downloaded from www.jeroenvanderheijden.net.
hybridization. It is found that, with respect to built environment policy, a certain tipping point exists after which more private sector involvement does not result in more intended impacts.

2 Hybridization of governance

Influencing works on regulatory governance (cf. Ayres and Braithwaite, 1992, Gunningham and Grabosky, 1998) find that legal pluralism might very well be the key to ‘better’ or ‘optimal’ regulation. Yet, pluralism implies mixing different policy "ingredients" into a policy mix (Gunningham and Sinclair, 1999), or regulatory regime (May, 2007). When comparing a variance of works that address regulatory regimes it becomes clear that authors tend to focus on a structure of interrelated actors. For instance, Gunningham and Grabosky (1998: chapter 3) make a division in parties, their roles and their interactions; Midttun (2005) builds his models with actors, their roles and their exchanges; May (2007, 9) mentions an institutional structure, assignment of responsibilities, standards to measure compliance, and sanctions; and finally, Longo (2008, 194) distinguishes in structures, processes, players and their interrelationships, rules, control, enforcement and accountability mechanisms, and incentives.

By comparing these works also a structure of regulatory regimes becomes clear: regulations are drawn up to express policy goals and to put these into practice, enforcement is introduced to monitor regulatees’ compliance with these regulations, and oversight is introduced to monitor enforcement by enforcement actors – enforcement itself is often enforced as well; to avoid confusion in terminology the enforcing of enforcement is referred to as oversight (cf. Cohen and Rubin, 1985, 176).

This can be considered as a layered structure of elements; a hierarchy in which the different layers influence and are influenced by each other. The layers show particular characteristics: tasks and, with that, responsibilities. These tasks are put into practice by actors that are responsible for these tasks. Such actors are of course individuals, but as these are mostly members in the role of organization-representative, the actors can also be considered organizations. Actors are influenced by this structure, but through their acting influence the structure as well (cf. Parker, 2000). The actors’ relations are based on enforcement and oversight – both supervision relationships. This supervision relationship consists of the monitoring of actors’ conduct and the possibility to discipline noncompliant behavior (which relates to accountability relationships, see Bovens, 2007, 450). As such, through their relationships, the actors influence each other as well (cf. Dépelteau, 2008).

From government to governance

Traditionally all tasks and responsibilities regarding regulation, oversight and enforcement were carried out by governmental agencies (Baldwin and Cave, 1999, Kagan, 1984): ‘pure public’ regimes. Yet, from the 1970s onward major criticism towards the ineffectiveness and inefficiency of this traditional structure (Sparrow, 2000, Hood, 1995) resulted in a new paradigm under which governments became more entrepreneurial (Osborne and Gaebler, 1992). Under the phrase ‘from government to governance’
(Rhodes, 1997, Rhodes, 2007) non-governmental organizations were involved in governing, and former governmental organizations were privatized. An illustrative work here is Gunningham and Grabosky’s *Smart Regulation* (1998), which key idea is to have those actors involved in the regulatory process that are best fit to take up certain tasks and responsibilities. Sometimes this may be through traditional public agencies; sometimes through self-regulatory initiatives in which private sector agencies enforce their own body; and sometimes through a combination of both: co-regulatory initiatives (ibid., 106).

Interestingly, no ready made solution appears to be chosen when changing regulatory regimes. A broad variance of new forms of governance can be found in countries across the world. These are often characterized by an arrangement of tasks and responsibilities amongst both public and private sector parties: hybrid forms of governance (Brandsen et al., 2005, Elsner, 2004, Evers, 2005, Lang, 2001, Lehmkuhl, 2008, Noorderhaven, 1995). At question is: how do different arrangements, different hybrids, play out in practice? A better understanding of hybrids might give more insight into which impacts can be expected from what arrangement; why and how these impacts occur; and what the strengths and weaknesses of a certain hybrid might be.

### 3 A variety of hybrids

In order to gain a better understanding of the impacts of hybrid forms of governance a comparative analysis of different hybrids was carried out. It was expected that the differences between the hybrids might provide to be ‘powerful engines of causal analysis’ (Levi-Faur, 2004, 178). But what are these differences? When recalling the discussion above, it becomes clear that the differences are the way tasks and responsibilities are arranged between public and private sector parties.

**Heuristic framework**

If we now take together the concept of regulatory regimes, as discussed before, together with the notion that hybrid forms of governance in regulatory practice often consist of an arrangement of tasks and responsibilities amongst both public and private sector parties, we are able to picture to ourselves a heuristic framework. This heuristic framework, used throughout the remainder of this paper to guide the comparative analysis, is presented in figure 1 as a framework based on the ingredients that together make up a regulatory regime – structure, tasks and responsibilities, and actors.
Figure 1 – Regulatory regimes, a heuristic framework

<table>
<thead>
<tr>
<th>LEVEL</th>
<th>ACTORS</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Public</td>
</tr>
<tr>
<td><strong>REGULATION</strong> (arrangement of tasks and responsibilities regarding the setting of regulations)</td>
<td>-</td>
</tr>
<tr>
<td><strong>OVERSIGHT</strong> (arrangement of tasks and responsibilities regarding the monitoring of enforcement)</td>
<td>-</td>
</tr>
<tr>
<td><strong>ENFORCEMENT</strong> (arrangement of tasks and responsibilities regarding regulatory enforcement)</td>
<td>-</td>
</tr>
</tbody>
</table>

Policy sector approach
Comparing different real life hybrids is difficult given that in different policy sectors hybrids consists of different tasks and responsibilities (see for example, Vogel, 1996). In order to overcome such issues the focus of the analysis was limited to one policy sector, but in different countries (cf. Levi-Faur, 2004, 181-182). Given the author’s background, choice was made for built environment policy, and especially the enforcement of building regulations.

In most developed economies, building regulations are drawn up in order to regulate the design, construction and use of buildings (Van der Heijden, 2009, chapter 2). Mostly building regulations are implemented by (supra) national, regional or local governments. These regulations generally prohibit construction work, unless an authorized actor allows a building to be constructed. Often a building permit is needed in order to be allowed to do so.

Typical tasks in building regulatory enforcement are building plan assessment and assessment of construction work on-site. Building plan assessment is carried out in order to check if a proposed construction work complies with building regulations. This assessment might result in the issuance of a building permit. On-site construction work assessment is carried out in order to check if construction work is carried out according to the building regulations and the issued building permit. Upon completion of a building, often, a occupancy permit is issued after a final assessment. Specific enforcement tasks are follow-up enforcement when from on-site construction work assessment violations with regulations are found. This might imply sending a letter to a violator, requesting him to end the violation; or, the institution of proceedings against offenders (for different sanctions, see the 'pyramid of sanctions' in Ayres and Braithwaite, 1992, 35). These building regulatory enforcement tasks can, in many countries, be carried out by either public sector agencies, private sectors agencies, or both.
Finally, the execution of building regulatory enforcement is often overseen. Variances exist amongst countries in the parties that are involved in this oversight (Van der Heijden, 2009).

The cases
Two countries were selected for the comparative analysis: Canada and Australia. In Canada and Australia the regulation of safety, health, and amenity of people in buildings are deemed the responsibility of the provinces and territories in Canada (Hansen, 1985) and the states and territories in Australia (ABCB, 2002). In both countries the National Government has nevertheless drawn up (comparable) advisory National Building Codes. Currently all provinces, states and territories have implemented these National Codes, most adapting it to suit local geological and environmental needs through state and territory variations (Van der Heijden, 2009, chapters 6 and 7).

Responsibility for enforcement of the Building Codes lies with the provincial, state and territory governments. Traditionally, most of these governments have passed on many of their building regulatory powers to their municipal Councils (Hansen, 1985, Lovegrove, 1991). Until the 1980s in Canada and the 1990s in Australia this resulted in a situation in which land use, planning, development and building regulations were enforced by local Councils only: ‘pure public’ regulatory regimes.

In Canada the City of Vancouver was the first to introduce private sector involvement in building regulatory enforcement in 1981. This by allowing private sector inspectors (PSI) to, under specific conditions, carry out building plan assessment and on-site construction work assessment. These PSIs are overseen by City officials. In the provinces of Alberta and Ontario private sector involvement has been introduced as well, but different tasks have been granted to PSIs.

In Australia, the state of Victoria was the first to introduce private sector involvement in 1993 (Nassau and Hendry, 1997). Other jurisdictions followed and currently all jurisdictions have introduced private sector involvement or are considering introducing it. All jurisdictions have however implemented slightly different regulatory regimes.

The two countries thus provided a unique opportunity to analyze, within one policy sector and within a largely comparable environment, a variance of hybrid forms of governance: the building regulatory regimes. In total eight hybrids were selected: three Canadian, being to the author’s knowledge the only ones in Canada; and five Australian, representing an overview of different Australian hybrids currently in practice. The hybrids are represented as cases in table 1.
Table 1 – Overview of different hybrid forms of governance in Canada and Australia

<table>
<thead>
<tr>
<th>Tasks</th>
<th>Responsibilities (sector per case)</th>
<th>Canada</th>
<th>Australia</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>VC</td>
<td>Alberta</td>
</tr>
<tr>
<td></td>
<td></td>
<td>pr</td>
<td>pr</td>
</tr>
<tr>
<td>Setting building regulations</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Monitoring enforcement</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Regulatory enforcement tasks:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>- building-plan assessment</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>- building permit issuance</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>- construction work assessment</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>- follow up enforcement tasks</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>- occupancy permit issuance</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
</tbody>
</table>

Abbreviations: VC = Vancouver; SA = South Australia; ACT = Australian Capital Territory; NSW = New South Wales; QLD = Queensland; pu = public sector; pr = private sector

Table 1 indicates that in all cases building regulations are set by the public sector. Enforcement tasks are carried out by public and/or private sector parties. Oversight through monitoring is either solely carried by a public sector agency or a combination of public and private sector agencies.

The enforcement of regulatory enforcement tasks might need some explanation. In the Australian cases, with exemption of the ACT, private sector involvement is introduced as an alternative to public sector involvement. In all jurisdictions a variance of enforcement tasks can be carried out by PSIs. These enforcement tasks can also be carried out by municipal building control departments (BCD), as was the case under the pre-1990 ‘pure public’ regimes. Under the current regimes the public and the private sector have to compete for clientele, which have the choice to involve either public or private sector agencies in their construction projects.

In the Canadian cases private sector involvement was introduced to provide local governments the choice of carrying out building regulatory enforcement tasks by themselves, or to have these tasks carried out by private sector agencies. Here the private sector complements the public sector.

The main difference between the cases analyzed is the number of tasks PSIs are allowed to carry out, referred to as ‘the amount of private sector involvement’. The main difference between the countries is the relationship between the public and private sector: ‘competitive’ in Australia, ‘complementary’ in Canada.

Data collection and analysis
Given the aim of gaining an understanding of which and how impacts occurred due to private sector involvement, a qualitative intensive research approach was chosen. Such intensive research typically focuses on a small number of cases, and the researcher examines these in depth (cf. Ragin et al., 2003, Steinberg, 2007). The unit of analysis here are the new regulatory regimes, the hybrids. A series of interviews was undertaken and interview data was analyzed (following on from Dunn, 2003, especially...
chapters 6 and 7). In addition, to validate interview data, a survey was undertaken and secondary data was analyzed.

Interviewees were selected using ‘snowball’ sampling (Longhurst, 2003). This sampling resulted in a pool of over 100 interviewees from various backgrounds, such as policy makers, municipal officials, PSIs, architects, engineers, contractors, scholars, and representatives of trade associations. Most interviewees (> 90%) 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. Semi-structured interviews were carried out in March and April 2007 in Australia with a total of 56 interviewees; and in January and April 2008 with a total of 47 interviewees. Table 2 provides a brief insight in the pool of interviewees.

Table 2 – Background of interviewees

<table>
<thead>
<tr>
<th>Interviewees’ role in regulatory enforcement regime</th>
<th>Carry out oversight</th>
<th>Carry out enforcement tasks</th>
<th>Subject to enforcement</th>
<th>Other</th>
</tr>
</thead>
<tbody>
<tr>
<td>Public official</td>
<td>27</td>
<td>21</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Private sector representative</td>
<td>5</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Private sector inspector (PSI)</td>
<td></td>
<td>14</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Architect/engineer</td>
<td></td>
<td></td>
<td>11</td>
<td></td>
</tr>
<tr>
<td>Builder/contractor/developer</td>
<td></td>
<td></td>
<td>13</td>
<td></td>
</tr>
<tr>
<td>Other professions</td>
<td></td>
<td></td>
<td>5</td>
<td></td>
</tr>
<tr>
<td>Scholar</td>
<td></td>
<td></td>
<td></td>
<td>7</td>
</tr>
<tr>
<td>Total</td>
<td>32</td>
<td>35</td>
<td>29</td>
<td>7</td>
</tr>
</tbody>
</table>

Total number of interviewees: 103

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 regulatory goal achievement as a result of the new regimes. The questions had a strong focus on over-time comparisons of the different regimes (Lijphart, 1971, 689). 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 and analyzed. Contrary to expectations, extensive quantitative data that would strengthen the experiences shared by the interviewees was not available. Little to no records appears to be kept, for instance, on building permits issued by the public and private sector; processing time; oversight actions; and the like.

In order to check the consistency of interviewees’ responses and to get an indication of how interviewees reacted to recurring statements from the interviews, an additional survey was sent to the interviewees. The survey questionnaire provided 15 statements the interviewees were asked to react to, based on a four-point Likert scale. The questionnaire was filled out and returned by 23 interviewees in
Canada and 27 in Australia. A number of “non-respondents” made clear that they thought the statements were too slanted or offensive, and therefore did not return the questionnaire.

Interview 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. By using this program the data was systematically explored and insight was gained in ‘repetitiveness’ and ‘rarity’ of experiences shared by the interviewees.

4 Impacts of governance reform in Australia and Canada

Both in Australia and Canada hybrids were introduced aiming at an increase of the effectiveness of regulatory enforcement, in terms of compliance with building regulations; and an increase of the efficiency of regulatory enforcement, in terms of cost and speed. These are referred to as intended impacts. As expected from prior research, unintended impacts occurred as well. In this section first intended impacts will be discussed, followed by the unintended impacts.

Intended impacts

With exception of Ontario, where municipal officials effectively lobbied against the implementation of private sector involvement, in all cases a majority of interviewees’ accounts and returned additional questionnaires indicate a perceived gain in regulatory effectiveness due to private sector involvement. These claims could however not be backed up by, for example, information on a decline of construction related incidents. Where then does this perceived gain in regulatory effectiveness come from? Interview and secondary data discuss the advantages of PSIs’ ability to specialize (cf. EI, 2002, p. 40). A Victoria based PSI clarified:

[Compliance has improved] I think for the simple reason that you get the most appropriate building surveyor for the project with the private system; the private system shows the best compliance. That’s not to say that the Council guys aren’t good enough. If someone would say to me: ‘Hey, check a house’, I’d probably struggle; and if they would say to me: ‘Hey, check a hospital’ I wouldn’t have a problem. And if we [the PSI and the Council employee] swop around it probably be the same thing.

In Vancouver BCD officials even advice clients to involve private sector agents in complex construction work. This as the BCD lacks specialist expertise to assess complex construction work. Prior research finds that greater inspectorial depth is gained due to such specialist knowledge (cf. Ayres and Braithwaite, 1992, 104, Baldwin and Cave, 1999, 126). And greater inspectorial depth might result in finding more deviances, which then can be solved. As an NSW architect explained:

2 The possibility of private sector involvement exists, but is hardly used. See discussion under ‘unintended impacts’.
'Some of the [PSIs] do it better, because they are more qualified and better specialized. They would deal in specialized areas, whereas Council has to deal with everything; so Council officers come across stuff that they don’t know about.'

Here it should be noted that municipal BCDs often have a limited number of staff, but have to be able to deal with all assessment work provided. This makes that BCDs often hold staff that has general knowledge instead of specialist knowledge.

Interviewees indicated that especially assessment tasks, building plan assessment and construction work assessment, influence effectiveness gains. These are the tasks that were regarded as providing private sector agents the possibility to specialize. Case findings suggest that especially the combination of building plan assessment and on-site construction work assessment results in most effectiveness gains. Knowledge gained in the first phase can then be applied in the latter phase. In South Australia, for example, private sector involvement was experienced as 'a cog in a large governmental machine', since PSIs are only allowed to be involved in building plan assessment. Information is lost when a BCD takes over in a later phase of the enforcement process.

Other tasks in the enforcement process do not seem to add to effectiveness gains. Permit issuance was regarded a general administrative task; and, follow-up enforcement, such as issuing warning letters, or instituting proceedings against offenders, were regarded legal tasks. Both these administrative tasks and legal tasks are not related to the particular skills of PSIs. Even more, follow-up enforcement by PSIs might be counterproductive as the Queensland case learns.

In Queensland a PSI who finds a violation with regulations has to take up follow-up enforcement. This might, eventually, imply bringing the offender, who often is the PSI’s client, to court. Yet, a PSI who takes this measure has to pay for the trial himself. As different interviewees explained, to avoid ending up in expensive lawsuits PSIs take provisions in contracts to stay out of court issues by making it possible to end the contracts. If a contract is ended, the client has to search for a new PSI or turn to the BCD having jurisdiction. Finding another PSI is hindered since others know that ‘something is wrong’ when a client moves to another PSI halfway a project. The obvious choice then is to turn to the local BCD, which then finds a difficult case to solve and often has difficulty in obtaining, or understanding assessment documentation from the initial PSI.

Closely related to these effectiveness gains are efficiency gains. In all cases, again with exemption of Ontario, interviewees’ accounts and additional questionnaires indicate a perceived gain of efficiency as a result of private sector involvement in the new regimes. Private sector involvement was mentioned to have made the assessment and permit process more streamlined and resulted in time savings for applicants (underlining some prior findings, e.g. PC, 2004, p. 221). Again here case findings suggest that
the PSIs’ ability to specialize has a positive impact on efficiency: more knowledge of and experience with a certain construction type may result in a speedier assessment process since the PSI knows ‘where to look and what to look for’, as some interviewees indicated. A Vancouver based engineer told:

It might be more a “following rules for the sake of rules” attitude for some [municipal building officials]. [PSIs] might have a more broad view and a better understanding of the important issues in the process.

Yet, differences in incentives and administrative procedures were mentioned as well as reasons why PSIs could provide a speedier and less expensive service. A PSI might be willing to speed up a process when this results in more income, whereas a municipal BCD charges regulated fees and pays out its staff a regulated salary. Furthermore, the PSI might face less time delays in administrative procedures or channels. In short, as a Queensland state official mentioned:

[PSIs] just provide a better seamless service. They are more client focused, and I hate the term, but they are more of a one-shop-stop. (...) In essence that’s what it is.

As with effectiveness, the amount of private sector involvement appears related to the impact of efficiency gains. Interviewees mentioned that efficiency gains got lost due to overlapping tasks. Particularly the passing on of assessment documentation to municipal BCDs was regarded a loss of the advantages of private sector involvement. The loss here relates to, at least, a doubling of administrative tasks. Following on from Leibenstein (1966) it may be argued that welfare maximization could be optimized if unique resources would be used for unique goals.

Here we thus find a potential tradeoff. The most efficient regimes appear those with private sector involvement, little passing on of task, and little overlap of tasks. Maybe even those with no passing on and overlap of tasks at all – ‘pure private’ regimes. At the same time the most effective regimes appear those which allows for private sector involvement in all assessment tasks, but which keeps administrative and legal tasks with the government.

**Unintended impacts**

Not only intended outcomes and gains were identified from private sector involvement in the Australian and Canadian regimes. As expected, unintended impacts were traced as well. To start, case findings suggest a decline of equity, ‘treat like cases alike’ (cf. Stone, 2002, chapter 2), due to the competitive relationship between the public and private sectors in the Australian regimes.

Case data suggests that in building regulatory enforcement a broad distinction into two groups of regulatees can be made: professionals in the building industry such as developers, contractors, architects,
and engineers; and non-professionals, ordinary citizens, frequently referred to as ‘moms-and-pops’. The former group is professionally and frequently involved in construction works and building regulatory enforcement; the latter group is more personally and occasionally involved. This broad distinction resembles Marc Galanter’s typology of regulatees in legal systems and his expressive terminology, which clearly points to the distinctive characteristics of the two groups, is applicable to the respective groups as well: ‘repeat players’ and ‘one-shotters’ (Galanter, 1974, 97). Subsequently, a broad distinction may be made into the type of work provided by these groups: the repeat players are generally involved in major and often more complex construction works; the one-shotters are generally involved in minor and often less complex construction works. Major jobs are by and large more profitable to assess than minor jobs. Furthermore, Australian municipal BCDs face regulated fees under which the assessment of minor jobs is loss-making, whereas profitable fees for major jobs have to cover these losses. Besides, municipal BCDs are required to process all work supplied; whereas PSIs may choose who to work with – a distinctive characteristic of the sectors (Wilson, 1989, 169).

Interviewees’ accounts and returned additional questionnaires indicate that the Australian PSIs ‘cream’ the market for profitable jobs leaving less profitable jobs to municipal BCDs (see likewise findings in, Bailey, 1988, 304, Hawkesworth and Imrie, forthcoming 2009). A South Australian state official said:

> What you quite often find is that that twenty percent [of assessment work that is dealt with by] the Council will normally be composed of the small works: house extensions, alterations, and small structures – those sorts of things. (...) The [PSIs] don’t want to know [the small works], because they’re too messy and fiddly, and [they] would charge exorbitantly if you insisted them on doing [the small works]... They really don’t want the work.

However, a South Australian [PSI] made clear:

> It is not that we don’t like to do [the small works]. We’re doing anything if there’s a dollar at. But the way fees are based on area... If someone is doing a 50 square meter house addition and the [BCD] therefore has to do it for a hundred dollars; we just can’t do it for a hundred dollars.

In itself creaming does not appear to be a negative effect. As we have seen: PSIs have specialized in certain types of construction work and supply specialized service, sometimes even for a lower price that their public counterparts do. This makes PSIs the obvious choice when planning to construct a certain type of work – both in Australia and Canada.

Yet, the combination of competition between Australian PSIs and municipal BCDs, and the PSIs’ attitude to cream the market appears to have resulted in a decline of equity. Under the new regimes it appears that one-shotters face a lower level of service delivery than the frequent players. The frequent-
players, preferred by PSIs, appear to gain from private sector involvement: the quality of service delivery appears no longer ‘available on the basis of need [but] limited to those who can pay’ (Abramovitz, 1986, 259).

This particular situation did not appear to exist in the Canadian cases as a result of a different relationship between the public and private sectors. Under the new Vancouver regime, for example, the municipal BCD focuses on the less complex works, whilst PSIs are only allowed to assess complex construction works. By making this split it appears that the City of Vancouver has rightly estimated their own and the private sector’s strengths. A former Chief Building Official of Vancouver said: ‘It’s not competition; it’s working side by side.’ In the Albertan regime equity shortfalls appear forestalled by requiring PSIs to take up all clientele. In the Canadian not so much the creaming attitude of PSIs has been averted, but creaming at the expense of municipal BCDs and one-shotters.

On the side, one could argue that equity shortfalls traced in Australia are not an equity issue per se but an issue of willingness to pay. Yet, case findings suggest that this decline of equity may be strengthened. Now that choice exist between municipal BCDs and PSIs the frequent players move to the private sector – they show ‘exit’ behavior (cf. Hirschman, 1970). This leaves BCDs with assessing minor construction works that are often provided by one-shotters. BCDs face a decline of revenue and often resources when well-trained staff moves over to the more profitable private sector agencies as these appear to provide better terms of employment: ‘municipalities have become the breeding grounds of cadets’, a South Australian BCD official mentioned. As a result BCDs might, in the future, be less able to deliver service on a required level. Under the current situation this appears to have let to a situation in which assessment is not equitably available to all regulatees; on the long term this situation may be strengthened when BCDs end up in a spiral of loosing revenue and resources. Furthermore, the one-shotters may have little possibility to oppose against this situation since their possibilities to do so are little. The frequent-players have larger ‘voice’, but have no incentive to use it since they have moved to the private sector (cf. Hirschman, 1970, 45-46). Yet, ‘voice’, as Hirschman argues, only is effective when the possibility of ‘exit’ is present (ibid, 80).

The Albertan case provides an illustrative example of a lack of ‘exit’ possibilities, in which not so much the clients, the regulatees, but the provincial government has lost its ‘exit’. When the regime was introduced, it was expected that a large number small PSI agencies, one or two men offices, would be set up, scattered around the province. It turned out that due to competition a small number of large agencies ‘survived’ – these bought out the smaller agencies. With only a small number of agencies in the field the provincial government faces difficulties to ‘steer’ these agencies’ behavior. The strongest measure the provincial government can take is withdrawing their license, which in practice means that the PSI agency has to quit working. However, taking a PSI agency out of the regime would imply that building regulatory enforcement would not longer be carried out in parts of the province. A provincial official wondered: ‘What would we do if [the PSI agencies] close their doors?’.
Another frequently mentioned unintended impact of private sector involvement in the new Canadian and Australian hybrids can be summed up under the term ‘accountability issues’. In general interviewees expressed their concerns over PSIs being paid by their clients for carrying out building regulatory enforcement tasks. Questions were raised on the integrity of PSIs when a choice has to be made between their own private interest and guarding the public interest. Here the main difference described in literature between the public and private sectors (e.g. Supiot, 2007, 176, Wilson, 1989, chapter 17) manifests itself most clearly: the sectors have different goals – and interviewees experienced this as such.

Especially the issuance of permits was regarded a task that might give rise to conflicting interests. The building permit is, often, needed to be allowed to start construction work. The occupancy permit is needed to be allowed to occupy a building. Permits therefore can be seen as highly valuable, and getting that permit might be reason for clients to put pressure on the PSI. A Queensland based PSI explained:

There’s a lot of pressure on the [PSI] to circumvent the system, to speed up the process. (…) The developer and the engineer and the architect have had [years] to go over all the design and redesign that they’re familiar with. And a week before construction is supposed to start on site they lob eight inches of plans and paperwork on your desk and say: ‘We need this next week.’ (…) And if you find any faults in the design at that late state of the process, you are the worst bastard under the sun. You cost ‘m their money, you cost ‘m their time. ‘Who do you think you are? We don’t even need you in this process. We’ve got these top architects; they know what they’re doing. And you are just this lowly building inspector. And I wouldn’t even come to you if it wasn’t necessary. So what are you going to do for me? I’m paying you good money to do this and I need my plans approved by then.’

In Ontario this provided grounds for the Ontario Building Officials Association to, successfully, lobby against the implementation of private sector involvement. A representative of this association stated:

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.

In order to keep a finger at the pulse, an additional level of oversight was introduced in all regimes. Yet, it was exactly this oversight that was criticized by a majority of interviewees. Making and holding PSIs accountable for carrying out delegated tasks was one of the most serious obstacles interviewees mentioned (cf. Richard Mulgan, 2000, 87). Generally this related to two issues. First, the oversight models, auditing in general, were experienced to focus too much on PSIs’ enforcement processes instead
of the content of their work. This finding strengthens research by Power who notices that audits have become 'rituals of verification' which provide 'comfort' instead of 'proof' (Power, 1999, 38) that work is carried according to and in alignment with delegated tasks. A statement by a Queensland BCD official is exemplary here:

"The auditing is a joke! One of the problems is that is easy to nail somebody for something that is easy [to find]. It is hard to know if someone has done something wrong when it is hard to find what is wrong. (...) [The auditors] come up and say: 'Oh, look he didn't sign that form, we've got him!', or 'He didn't lodge on a certain day, we've got him!', or 'He didn't do this or that...'. I look at this plan that doesn't comply and have someone to technically check it. But that never happens. (...) They don't tackle the hard things."

Second, the lack of consequences from such auditing was generally regarded as bringing in too little awareness. In the Australian regimes criticism was expressed towards the penalties issued as being too low and often too late; in the Albertan regime we have already seen that disciplinary actions cannot, or hardly, be taken. These finding underlines that an essential part of the accountability relationship is the possibility and use of disciplinary action (cf. Mulgan, 2000, 555-556).

Then, a specific situation occurs in the regimes in which municipal BCDs have to issue permits based on PSIs' assessment reports – South Australia, the ACT, Ontario and Vancouver. Liability issues may occur due to overlapping tasks. In general liability law was regarded an incentive needed to maintain the PSIs' integrity (cf. Faure and Hartlief, 1998, 705). However, overlapping tasks might blur who is liable for what: 'the problem of many hands' (Thompson, 1980). At question is: to what extent is the BCD responsible when a permit is issued based on a faulty PSI's assessment? Especially under the model of joint and several liability Canadian municipalities face severe liability risks and are regarded as 'the deep pocket' (cf. Cerminara, 1995, 17). To date, interviewees made clear, this question has not been fully answered.

Finally, in all cases, the credibility of the public and private sectors was criticized in a moderate number of interviews. Interview accounts and secondary data indicate that credibility is interpreted differently by different interviewees and in different inquiries. Yet, especially in the Australian regimes it was explicitly stated in a number of interviews that ordinary citizens, the one-shotters, have more trust in municipal BCDs than in PSIs: 'there’s a perception amongst the public that the government always does things better. Because of the independence’, an ACT PSI told. At the same time however, professionals in the building industry, the frequent players, appear to have more trust in PSIs than their municipal counterparts: interviewees in all Australian cases indicate that 60-80% of all assessments, which roughly means all complex construction work, are carried out by PSIs.
This different perception of credibility might be related to exactly the plural meaning of the concept itself. Sometimes it is argued that credibility consists of ‘trustworthiness’ and ‘expertise’ (e.g. DeZoord et al., 2003, Nesler et al., 2006). In the Australian regimes it may be that one-shotters value the trustworthiness of municipal BCDs, while at the same time frequent players value the expertise of PSIs. The creaming attitude of PSIs here may strengthen the ordinary citizens’ distrust in PSIs, whilst the “stigma”, built up in the past, of municipal BCDs being cumbersome and having an almost dictatorial attitude may strengthen the professionals’ distrust in these departments. This reasoning can also be applied on the Vancouver case, where the credibility of PSIs was found to be a minor issue. Here the restricted choice between public and private sector involvement, the absence of competition, in building regulatory enforcement appears an answer to the different groups’ needs.

5 Conclusion and discussion

This analysis of reforms in Canadian and Australian built environment policy underlines findings in other policy sectors. Here hybridization of governance, by introducing private sector involvement, resulted in intended impacts, such as effectiveness and efficiency gains. Yet, also unintended impacts were reported upon, such as issues regarding equity, accountability and credibility. In short, tradeoffs between various policy impacts appear to have occurred.

What this paper has added to our general knowledge on such hybrid forms of governance is that, at least with respect to built environment policy, a certain ‘tipping point’ appears to exist after which more private sector involvement in a hybrid does not result in more intended impacts. Even more, assigning more regulatory tasks to private sector agencies might at a certain point result in strengthening unintended impacts. This tipping point seems to be located at the position where the strengths of the private sector are fully utilized: the tasks where their specialist expertise and experience outweighs that of public sector agencies. In building regulatory enforcement these are building plan assessment and on-site construction work assessment. Other tasks, administrative and legal tasks, do not require their specialism and as such do not add to regulatory effectiveness. These tasks, here permit issuance and follow-up enforcement, might add to regulatory efficiency, but were at the same time found potential causes of conflict of interest situations. As such these tasks might negatively impact upon accountability and credibility.

To conclude, introducing hybrid forms of governance implies making tradeoffs between various policy impacts. However, some “classic” tradeoffs appear less inevitable than is sometimes stated. The specific arrangement of tasks and responsibilities can be used to fine-tune policy impacts, and as such the tradeoffs that need to be made. The analysis shows, once more, that finding a balance between intended and unintended policy impacts is complicated. The tipping point addressed here might indicate those involved in finding that balance a direction to work towards to.
Literature


