

JEROEN VAN DER HEIJDEN\*  
29 April 2008

## **Building new regulatory regimes: Enforcing building regulations in Australia and Canada**

*Facing comparable issues in the regulation of the built environment, governments in Australia and Canada have reformed the enforcement of public building regulations. In both countries private sector involvement has been introduced in regulatory enforcement with differences amongst jurisdictions within and between these countries. The main differences are the amount of private sector involvement and the relationship between the public and private sector within the regimes. This paper examines the trade-offs that have resulted from the introduction of these new regimes.*

### **Introduction**

Facing comparable issues and pressures in the enforcement of building regulations governments worldwide have sought to introduce private sector involvement in building regulatory enforcement regimes. These reforms have been undertaken to different degrees in the US (LaFaive 2001, Schmit 2001); Australia (ABCB 1999); Canada (BCMH 2007, BRRAG 2000); New Zealand (Hunn 2002); and different European countries (Imrie 2004, Meijer and Visscher 2006). In general, the private sector is introduced given the expectation that this will make these regimes more effective and more efficient. New regulatory enforcement regimes then become organizational arrangements of public and private sector actors that have tasks and responsibilities regarding the enforcement of building regulations.

This trend towards private sector involvement in regulatory governance is not unique to the regulation of the built environment. Analysing governance reform, an increase in responsiveness to legitimate demands, or compliance with regulations, against the same or lower costs due to private sector involvement is sometimes found (cf. Baldwin and Cave 1999, 126, Gunningham and Grabosky 1998, 52). But these gains in effectiveness and/or efficiency appear to come with a certain price: a decline of accountability (cf. Hodge and Coghill 2007, May 2007) and/or equity (cf. Burkey and Harris 2006, Lefeber and Vietorisz 2007). Even more, a trade-off between these conflicting competing democratic values appears inevitable (cf. Scholz and Wood 1999). In past research often the impact of governmental reform on one or more of these values had central focus (cf. Gunningham and Grabosky 1998: 25-32, Rowe and Frewer 2000, Runhaar et al. 2006). In this paper I consider not the individual values, but the trade-off itself. In particular, I will analyse how differences in the design of new building regulatory enforcement regimes, which allow for private sector involvement, influence these trade-offs.

The main question that underlies the research presented in this paper is to what extent differences in regime design result in differences in trade-offs. This question deals with both over-time, or longitudinal, variation of the regimes – the variation in outcomes of the regime currently employed compared to the regime previously employed – and deal with between-regime variation – the variation of outcomes of the regimes related to their key conceptual features.

In the next part of this paper I look upon the concept of “regulatory enforcement regime” and present expectations regarding trade-offs due to private sector involvement in regulatory enforcement regimes. Following this, I discuss the methodology I have used to carry out the research I present in the remainder of this paper. I then briefly discuss the introduction of new building regulatory enforcement regimes in Australia and Canada; and introduce the four cases that are the subject of analysis in this paper. Special attention is given to categorizing the four cases in a heuristic typology of regulatory

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\* Delft University of Technology  
OTB Research Institute for Housing, Urban and Mobility Studies  
P.O. Box 5030, 2600 GA Delft, The Netherlands  
phone: +31 (0) 15 278 1658  
mobile phone: +31 (0) 6 1677 0907  
e-mail: j.j.vanderheijden@tudelft.nl

enforcement regimes, and to two types of relationships between the public and the private sector within these regimes. Subsequently I evaluate the different regimes based on both primary data – interviews – and secondary data – existing government reports, published papers, and information from relevant websites. Finally, over-time and between-case conclusions are drawn on the impacts of the new regimes on trade-offs between different democratic values.

### **Regulatory enforcement regimes: an analytical tool for comparative analysis**

It is generally understood that in order to make regulation work, it has to be enforced (e.g. Giddens 1984, p. 18, Weber 1964 [1921], pp. 126-153). The whole of regulation and enforcement as a ‘means for achieving regulatory goals’ can be referred to as ‘regulatory regime’ (May 2007, p. 9). Enforcement itself is however often regulated and enforced as well – an “enforcement regime”; to avoid confusion of terminology I will refer to the enforcing of enforcement as ‘oversight’ (cf. Cohen and Rubin 1985, p. 176). As enforcement is an essential part in regulatory goal achievement (e.g. Bardach and Kagan 1982, Hutter 1997, Scholz 1984, Sparrow 2000), I prefer to pay particular attention to this enforcement regime. Combining the concepts of a regulatory regime and an enforcement regime I come to what I further refer to as “regulatory enforcement regime”. Valuable work on regulatory regimes as analytical tool for comparative policy analysis was carried out by Hood, Rothstein and Baldwin (2001, cf. Levi-Faur 2006, 514-520). Following these authors I will use the concept of regulatory enforcement regime as an analytical tool for analyzing and comparing private sector involvement in Australian and Canadian regulatory governance of the built environment.

In this paper I will comparatively analyse four cases of building regulatory enforcement regimes that have been introduced in different Australian and Canadian jurisdictions in the 1980s and 1990s. The main differences between the cases are the type of regime and the relationships between public and private actors involved. Respectively two types of regimes and two types of relationships will be analyzed. The differences between these types is the amount of private sector involvement in the regulatory regimes. In the regimes, private sector actors can be involved in the building regulatory enforcement process – assessment of building plans against applicable law; issuance of building permits; on-site assessment of construction work; follow-up enforcement tasks if the assessment finds non-compliance with regulations; and, issuance of occupancy permits – and private sector actors can be involved in overseeing this enforcement process.

Although building regulatory enforcement appears a neglected subject in studies on regulatory governance (cf. May and Burby 1998: 162, McLean 2003: 50), private sector involvement in regulatory governance in general has gained a prominent position in studies on governance reform. These studies do show a variance of impacts that can result from this type of governance reform. By overviewing a number of these studies, a certain ‘direction’ of consequences, or regime impacts, might be expected from the private sector involvement in regulatory enforcement regimes.

### **Potential regime trade-offs**

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

Private sector involvement in regulatory enforcement is furthermore found to result in more ‘bang for the regulatory buck’ (cf. Gunningham 2002, 5, Sparrow 2000, p. 34). Due to a different approach of tasks and different organizational structures the private sector appears, without additional capital, to carry out a more efficient process. This technical efficiency is sometimes referred to as X-efficiency (cf. Leibenstein 1966). Gunningham and Grabosky (1998, 52), for example, find that private sector involvement

in a regulatory regime ‘offers greater speed, flexibility, sensitivity to market circumstances, efficiency, and less government intervention than command and control regulation’. Note that these findings do not reflect on the impact private sector involvement has on allocative efficiency (cf. Leibenstein 1966); the enforcement process might be sped up or become cheaper for the individual client, but what are the societal costs? This predicts possible trade-offs between individual versus societal burdens.

The question relates to another expectation regarding private sector involvement in regulatory enforcement: a business attitude is likely to conflict with guarding the public interest. Private sector actors might become subject to potential conflicts of interest (cf. DeMarzo et al. 2005, 688, Gunningham and Grabosky 1998, 52, Hodge and Coghill 2007, May 2007). Especially competition for clientele might make the system liable to capture (cf. Baldwin 2005, 129-130, Núñez 2001, 210, Scholz 1984, 401). An additional layer of supervision or oversight might be needed to monitor the enforcement by private sector actors, which could lessen (allocative) efficiency gains (cf. Cohen and Rubin 1985). A likely trade-off between a more streamlined enforcement process versus accountability.

Finally, private sector involvement in regulatory enforcement might result in a decline of equity (Burkey and Harris 2006). Where all regulatees should be treated the same in similar circumstances, and all regulatees should have similar access to the service provided, private sector involvement is likely to result in private sector agents preferring certain clientele. As Wilson (1989, 169) noted municipal agencies ‘must cope with a clientele not of their own choosing’ whereas private sector actors can choose who they want to work with. This predicts a potential trade-off between more inspectorial depth and a more streamlined enforcement process versus equal treatment of regulatees subject to the regime.

### **Research design and methodology**

Given the trade-offs discussed, at question in this paper is to what extent differences in regime design result in differences in trade-offs. I expect to find trade-offs due to the introduction of a new regime from an over-time analysis; from comparing the situation prior to the introduction of a new regime with the situation after its introduction. I expect to get insight into possible differences in trade-offs due to regime design by comparatively analysing regimes that show differences in their over-all design.

The unit of analysis is the regulatory enforcement regime. The general outline of the analysis shows characteristics of ‘monitoring policy outcomes’ and ‘evaluating policy performance’ as described by Dunn (2003, especially chapters 6 and 7). As I expect that the *nuances* of different contrasting regimes and the actual implementation *process* of ‘new’ regimes provide insight in possible differences in trade-offs, I have chosen a case-study design for my research (cf. Brady and Collier 2004, part 3). As case-study research might be prone to criticism on the generalisability of findings (ibid, Silverman 1993, 161) I have chosen a multiple case-study design for my research (Yin 2003).

‘New’ regimes were introduced in statutory building assessment in Australia and Canada in the 1980/1990s. In this paper I present a comparative analysis of two Australian and two Canadian building regulatory enforcement regimes. I have chosen these four regimes, the cases, for their contrasting regime designs within the countries, but their similarities in contrasting designs between the countries. I have chosen these cases furthermore as I expect that the growing pains of the regimes have been overcome, but still much knowledge on both the ‘old’ regimes and the ‘new’ regimes can be found on the regulatory shop floor: many people who work under or are affected by the ‘new’ regime were so under the ‘old’ as well.

I have used different methods to analyse experiences with the regimes; triangulation to strengthen the validity of possible case findings (Brady and Collier 2004, 18, Dunn 2003, 6, Silverman 1993, chapter 7).

The cases were selected based on available information (cf. Ragin 2004, Yin 2003). My primary instrument for collecting additional case information was a series of semi-structured in-depth interviews based on an interview protocol with a series of open-ended questions (Dunn 2003, 367-368, Silverman 1993, chapter 4). Following Dunn I have carried out a ‘user survey analysis’ to involve multiple stakeholders that are affected by the new regimes. Interviewees were selected using ‘snowball’ sampling

(Longhurst 2003). This sampling resulted in a pool of interviewees from various backgrounds; most having experience with both the old and the new regime in practice. In appendix A I present a brief insight in the pool of interviewees – organization; current position; and experience with old, new, or both regimes. In appendix B I have included the basic outline of my interview questionnaire (based on, Dunn 2003, McCracken 1988).

As the validity and reliability of interview data is sometimes under debate and occasionally accused for being ‘anecdotal’ (cf. Silverman 1993, chapter 7) I will give some insight on how I collected and processed interview data. The Australian research was carried out in March and April 2007, the Canadian research was carried out in January and March 2008. On average interviews took 90 minutes. Interviews were recorded and transcribed in a structured interview report and sent to the interviewees for validation and comments (cf. Fielding and Fielding 1986). Based on the validated interview reports I have drawn up a comparative research report and sent this to the interviewees for comments and observations once more. In order to validate my interviewees responses I accompanied the research report with an additional questionnaire – 15 statements the interviewees were asked to react onto, based on a four-point forced Lickert-scale<sup>1</sup>. I have included the information from questionnaire and the additional information gained from my interviewees’ comments and observations in my data-set.

I have processed this data-set by means of a systematic coding scheme (cf. Seale and Silverman 1997). By coding the data I was able to tread pieces of information in a comparable and systematised manner; it furthermore ‘anonymised’ data from the interviewee, which prevented that I might treat some interviewees statements as more valuable than others based on, for example, the interviewee’s position or the ‘relationship’ that might exist between me, the interviewer, and the particular interviewee. To analyze obtained data I have used qualitative data analysis software, the computer program ‘Atlas.ti’, to run queries. By using this program I was able to systematically explore my data and gain insight in ‘repetitive’ and ‘deviant’ experiences shared by the interviewees. It furthermore gave me insight in recurrence of these experiences – i.e. the number of people that told similar stories. Without adding value to this recurrence I wish to share these insights as it might add to the validity of the data I present in this paper. To give insight in the repetitive and deviant experiences I will use the word ‘general’ to indicate similar statements or answers amongst over 75% of the interviewees; ‘majority’ to indicate 50-75% similarity; ‘moderate’ to indicate 25-50% similarity; and ‘little’ or ‘some’ to indicate less than 25% similarity.

Then, the final instrument for collecting additional case information was collecting and analysing existing research reports on the subject (ibid). This data was obtained from different (governmental) inquiries in Australia (e.g. Allan 2002, KPMG 2002, PC 2004, VCEC 2005) and Canada (e.g. Barrett Commission 1998, BCMH 2007, OHCS 2007, SCCA 2003). Contrary to my expectations I could not obtain extensive quantitative data that would strengthen the experiences shared by the interviewees. Little to no records appear to be kept on, for instance, building permits issued by the public and private sector; process times; oversight actions; and the like.

### **New building regulatory regimes in Australia and Canada: types and relationships**

The regulation of safety, health, and amenity of people in buildings is deemed the responsibility of the states and territories in Australia (ABCB 2002) and the provinces and territories in Canada (CCBFC 2005, Hansen 1985). In both countries the national government has nevertheless drawn up advisory building regulations: respectively the Building Code of Australia (BCA) and the National Building Code of Canada (NBC). Currently all Australian states and territories have adopted the BCA and most Canadian provinces and territories adopted the NBC. In both countries the national building regulations are adapted by state, territory and provincial governments to suit local geographical and environmental needs. Responsibility for enforcement of the BCA and NBC lies with the state, territory and provincial governments. Traditionally most Australian states have passed on many of their building regulatory powers to their municipal Councils, which effectuate building regulation by way of council by-laws (Lovegrove 1991a, 1991b), whereas territorial governments set up their own building

enforcement departments. A similar situation exists in Canada (Hansen 1985, Legget 1965). Traditionally building regulation in both countries can therefore be characterized as public regulatory enforcement regimes: all tasks and responsibilities for drawing up building regulations and implementing, or enforcing, these rest with governments only.

In Australia private sector involvement through certified building control made its entry in the early 1990s (ABCB 1999, chapter 7, PC 2004). Different reasons underlay this introduction. The Commonwealth Government played a strong part in introducing private sector involvement through the implementation of the National Competition Policy (NCP). Through the NCP special advantages previously enjoyed by government business activities were to be removed and anti-competitive conduct had to be limited. One of the spearheads of this policy was the building industry. Yet, this ‘top-down’ introduction appears to have been preceded by a ‘bottom-up’ movement. When asked why the new regime was introduced in South Australia and Victoria, interviewees generally mentioned that prior to the introduction of private sector involvement local Councils were cumbersome, non-proactive, monopolistic, and sometimes having a bad name due to slow application processing times and dictatorial employees. The public sector was furthermore said to be insufficiently qualified to carry out specialized assessment and as a result the development sector demanded a better and faster service (cf. KPMG 2002, PC 2004, VCEC 2005).

Contrary to Australia, in Canada there is no national ‘move’ towards private sector involvement in building regulatory enforcement. Some provincial and local governments have taken initiatives to introduce private sector involvement within their jurisdiction. When asked why new regimes were introduced in Vancouver and Alberta, interviewees made slightly different comments than those heard in Australia: the City of Vancouver faced difficulties meeting time-frames and found the overall knowledge of building regulations of building officials, but also of actors in the building industry, lacking. A strike of building officials made the City decide to introduce an alternate private assessment process (cf. Barrett Commission 1998, BCMH 2007). In the Province of Alberta (municipal) building control authorities appeared to be unable to meet legal inspection criteria and time-frames, or were not carrying out regulatory enforcement at all to avoid issues with liability. The provincial government was looking for a regime under which a certain level of regulatory enforcement could be established throughout the province. As the municipalities are allowed not to enforce building regulations in Alberta, the private sector was regarded as needed to fill in those areas in which municipalities do not take responsibility for regulatory enforcement (SCCA 2003).

With the introduction of the new regimes it was expected that the building regulatory enforcement process would become more effective and efficient; and that this would result in a more speedy building process and a better overall quality of the built environment (ABCB 1999, 2003, Barrett Commission 1998, BCMH 2007, SCCA 2003). The new regimes were introduced in 1981 in the City of Vancouver, and in 1993 in South Australia, Victoria, and Alberta.

## **Two types of regulatory regimes**

Victoria was the first Australian state that actually introduced private sector involvement in the enforcement of building regulations (Nassau and Hendry 1997). Other jurisdictions followed and currently all jurisdictions have introduced private sector involvement or are considering introducing it<sup>2</sup>. Those jurisdictions that have implemented private sector involvement have however chosen different organizational arrangements to do so. Jurisdictional differences can be found in the statutory tasks private certifiers are allowed to carry out, and the parties involved in oversight of the work of private sector actors. Private sector involvement in Canadian building regulatory enforcement regimes shows similar differences amongst jurisdictions<sup>3</sup>. In both Australia and Canada a range of regimes exists in which the private sector has more or less involvement – a sliding scale of private sector involvement.

In this paper I look upon two essentially different types of regimes, which appear to be to ends of that sliding scale<sup>4</sup>. The first regime type, currently implemented in South Australia and the City of Vancouver, is characterized by *limited* private sector involvement: private sector actors are only allowed to carry out assessment tasks. It is however the regulatory arrangement that differentiates this regime from ‘consultancy’:

regulated private sector agents are authorized to carry out statutory enforcement tasks and make binding decisions (cf. Saint-Martin 2000 p. 48).

The second regime type, currently implemented in the Victoria and Alberta, is characterized by *general* private sector involvement: private sector actors are allowed to carry out all statutory assessment tasks and are allowed to issue permits – legally binding rights. Private sector agents are furthermore involved in oversight of the regulatory enforcement regime.

An overview of the key-features is presented in table 1; for an in-depth description of the regimes, see appendix 3.

Table 1 – overview of key-features in the different regimes analyzed

Tasks	Responsibilities							
	Regime type 1				Regime type 2			
	SA		VAN		VIC		ALB	
	pu	pr	pu	pr	pu	pr	pu	pr
<i>Regulatory enforcement process:</i>								
- building plan assessment	X	X	X	X	X	X	X	X
- building permit issuance	X		X		X	X	X	X
- on-site assessment of construction work	X		X	X	X	X	X	X
- follow up enforcement tasks	X		X		X		X	X
- occupancy permit issuance	X		X		X	X	X	X
<i>Oversight process:</i>								
- monitoring municipalities	X					X*		X*
- disciplining municipalities	X							X*
- monitoring private actors	X		X			X*		X*
- disciplining private actors	X					X*		X*

\* Note: A non-governmental agency, consisting private sector stakeholders, authorized by the Minister responsible for building regulation to carry out certain tasks

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

## Two types of relationships within the regimes

The new regulatory regimes in Australian and Canadian building regulation have not been implemented to completely replace the former public regulatory enforcement regimes. The private sector has been introduced as an alternative to public sector involvement. Yet, as these two sectors co-exist and have similar tasks and responsibilities within the new regimes, the sectors stand in a certain relationship. I expect that the public and private sector can support, complement, replace or compete with each other (cf. Barnard 1938, pp. 101-103, Jordan et al. 2005, p. 481).

In Australia the new regimes were introduced to generate *competition* (PC 2004): clients – applicants of building permits and permit owners – are given a certain extent of freedom to choose which sector to involve in statutory building assessment when planning or constructing a building: the municipal building control authority that has authority in a certain area, or any authorized private sector agent. Under the new regimes municipalities have to compete with the private sector for clientele.

In the two Canadian cases private sector involvement appears to have been introduced to *complement* the former public regime. In Vancouver the CP Program is experienced as complementary to the City’s building control authority (BCMh 2007). Interviewees generally mentioned that the City does advise CP involvement to applicant of building permits for complex buildings. In the Alberta regime private sector involvement has been introduced to fill in those areas in which municipalities do not take responsibility for the enforcement of building regulations (SCCA 2003).

An overview of the key characteristics of the different cases are presented in table 2.

Table 2 – Characteristics of the cases

Regime type	Relationship between public and private sector	
	<i>Competitive</i>	<i>Complementary</i>
1. <i>Limited private sector involvement</i>	South Australia, Australia	Vancouver, Canada
2. <i>General private sector involvement</i>	Victoria, Australia	Alberta, Canada

### Over-time regime variation

In order to identify trade-offs that might have occurred due to the introduction of a new regime, I first explore the data collected for each individual case. Following, I will explore to what extent a certain trade-off might be related to the regimes’ design.

#### Type 1: Limited private sector involvement

##### *South Australia (SA)*

In terms of assessment about 70% of all applications are being processed by private certifiers under the new SA regime. In general, interviewees stated that the preference for private certifiers comes from the level of service they provide – greater speed, more availability, more specialization – and relationships they have built with clients. Little consistency was found in a perceived change in the level of compliance with building regulations after the introduction of the new regime. Following the previously mentioned notion of Gunningham and Grabosky (1998, 52) on a gain in technical efficiency, or X-efficiency, due to private sector involvement in regulatory enforcement, it might be assumed that specialized private certifiers will reach a greater inspectorial depth. Some reference was made to perceived downsides of the SA regime. The private certifiers’ assessment process was mentioned as ‘a cog in a large governmental machine’ and permit issuance by the municipal building authority might undo the time-gain of private sector involvement. Then, legally private certifiers are only allowed to assess building plans on code compliance, not to act as advisor. As such the SA regime might suffer from general issues that are related to traditional command and control regimes (cf. Hawkins 1984, Kagan 1984). Especially those notions on the regime bringing about problems with enforcement as it aims too much at end of pipe solutions (cf. Fairman and Yapp 2005, 493).

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

033: 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 private certifiers 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 private certifier made clear:

039: 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 Council therefore has to do it for a hundred dollars; we just can’t do it for a hundred dollars.

This “creaming” might result in another trade-off: the individual versus the societal burden of building regulatory enforcement; or, X-efficiency versus allocative efficiency. Municipalities in SA are responsible for enforcement of building regulations. If municipal building control authorities lose profitable jobs to private certifiers and have to assess



loss-making minor jobs – due to legalized fees – they face a loss of revenue. This loss is made up by general revenues from general taxes: the individual who involves private certifiers faces a more speedy and cheaper assessment process than under the old regime, but the general tax-payer might face an increase in burden. Furthermore, municipalities lose well trained staff to private sector agencies as these appear to provide better terms of employment: ‘municipalities have become the breeding grounds of cadets’ a municipal official mentioned (002).

Another trade-off in the SA regime appears to be X-efficiency versus accountability. Generally private certifiers were said to be subject to commercial pressure due to the client-contractor relationship they enter into. Representatives of the private sector generally mentioned that private certifiers are strong enough to deal with these pressures; a majority of representatives of the public sector however fears that private sector agents ‘bend to their client’s will’. In general, agreement existed amongst interviewees that a strong system oversight, preferably structural auditing, is needed to maintain the accountability of the regime. Currently such a system is not in place in SA. A state official mentioned:

033: A number of the certifiers said to me they would be very happy when the auditing comes in. To them it’s an issue of competition; being on a level playing field. (...) From the way they see it, there are some certifiers that are cutting too many corners. Doing things they don’t think are correct. And auditing would expose those. They have actually lost clients, they have lost people to another certifier who... is a bit more generous or a bit more lax in the way they [carry out assessments].

#### *Vancouver (VAN)*

In terms of assessment about 90% of all complex building works are being processed by Certified Professionals (CP) under the new VAN regime – CPs are only allowed to assess complex works. In general it was expected that clients do choose CP involvement as the CPs are able to provide a higher level of service, and especially a more speedy regulatory enforcement process than their municipal counterparts. Again I note that general reference was made to City officials advising applicants to choose CP involvement when applying a building permit for a complex job.

The City of Vancouver will issue a building permit within a week after the CPs provided sufficient proof of a building plan complying with regulations. Without CP involvement the permit process might take up to twelve weeks. This is a main difference with the SA regime under which municipalities are not bound to a time-frame of permit issuance after the receipt of a private certifier’s assessment report. Generally the involvement of a CP was mentioned to be more expensive than involving the City in the assessment process, but the time gain appears to make up for the additional costs.

A majority of the interviewees especially valued the training program provided by the City to train architects and engineers in order to become CPs. This training can be taken by other actors in the industry as well and this is being done. As a result the general knowledge of building regulations was said to have improved – both in the private as in the public sector. A moderate number of interviewees however mentioned a difference that appears to exist in the way CPs and municipal building officials carry out their tasks. The CP is trained in designing a building that complies with regulations, the building official in looking at what is not complying with the building regulations. An engineer made clear:

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

Another aspect of the new regime generally valued is the introduction of Letters of Assurance. These Letters were not specifically introduced because of the CP Program, but more commonly to clarify the tasks and responsibilities of the different actors involved in the building and enforcement process. Different actors in the process have become more aware of their responsibilities and liabilities, which according to a moderate number of

interviewees has resulted in more compliance with building regulations and less issues with accountability.

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

The CP Program was generally experienced as an positive addition to the City’s building control department. The City does not have to maintain a large and specialized staff; peaks in permit applications can be levelled out; assessment of minor construction work can still be carried out as under the old regime; and, due to CP involvement, the City reduces its liability exposure as the more complex – the more risky – buildings are being assessed by other actors. A former Chief Building Official of Vancouver said:

031: It’s not competition, it’s working side by side. (...) Vancouver has had the [CP] Program for so long now that it has been found that the initial fears did not materialize.

These initial fears came from municipal building officials who feared losing their jobs to private sector actors. These fears still appear to live amongst building officials in other British Columbian municipalities. However, some municipalities have already introduced a comparable CP Program (BCMh 2007). Another initial fear came from the possibility the CP Program provides to have architects or engineers in the role of designer and enforcer. Few interviewees mentioned that under the new regime this results in commercial pressures. A moderate number of interviewees however made clear that the different levels of oversight in the regime guarantee the regime’s accountability. This as every project assessed by a CP is by the City; and CPs are registered architects or engineers overseen by their own associations. Furthermore, ‘in the case of difficult and powerful developers, the City can be an ally to the professionals’ a CP (047) made clear. The City’s official can be used as the stick sometimes needed to gain compliance – the benign big gun (cf. Ayres and Braithwaite 1992 chapter 2). The stringent monitoring of CPs by City officials appears a trade-off within this regime: X-efficiency versus allocative efficiency.

## **Type 2: General private sector involvement**

### *Victoria (VIC)*

In terms of assessment about 75% of all building permits are issued by private certifiers under the new VIC regime. In general the preference for private certifiers is considered to come from the relationship private certifiers can build up with their clients; the high level of service private certifiers provide – speed, specialisation; broader knowledge; and accessibility. Councils might still be suffering from the stigma of being cumbersome and their employees being non-proactive. As with the SA regime, I found little consistency in a perceived change in the level of compliance due to private sector involvement under the new regime. Again here it could be assumed that the private certifiers’ ability to specialize in certain complex building types might result in more inspectorial depth in those projects.

Like in the SA regime, the trade-off in the VIC regime appears to be X-efficiency versus equity. Private certifiers in the VIC regime appear to prefer major construction work to minor or type specific construction work – creaming. Few interviewees mentioned that non-professionals perceive that the Council is the place to go to when it comes to applying for a building permit.

Like in the SA regime, another trade-off in the VIC regime appears to be X-efficiency versus accountability. Commercial pressure was generally mentioned as a possible obstacle on different levels. Firstly, as it is believed that private certifiers might

be less fanatical about acting in the public interest than municipal building control surveyors – private certifiers are considered to keep a business point of view in mind. Secondly, client binding might be a risk when a private certifier becomes too dependent on a client or a small number of clients – to keep her/his client, a private certifier might choose to cut corners. Thirdly and finally, it was noted that competition might erode standards as margins are small. A director of a consultancy agency mentioned:

038: We’re a very competitive industry. (...) So people are always looking for ways to get an edge. (...) I think boundaries are being stretched and sometimes being breached. (...) People think they can get away with it.

In general it was mentioned that a system of oversight is needed to deal with these accountability issues. Oversight is part of the new VIC regime: the Building Practitioners Board (BPB) has authority to monitor and discipline private certifiers. However, a majority of the interviewees looked upon this system of oversight as insufficient. Most critics of oversight focus on the auditing system: not only is the number of audits criticised as being too few – private certifiers interviewed recall being audited once every seven to ten years – but the audits are criticised for having too much focus on procedures. It was found that audits were not focusing on the content of building permits issued and controls performed on-site, but on ticking boxes and following procedures. A private certifier explained:

049: The lack of reliability of the auditing system makes people in the field [building control surveyors and builders] feel pretty safe.

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

Finally, a major advantage of this regime that a majority of interviews mentioned is the authority the BPB has to discipline contractors. Certified professionals hand over enforcement tasks to their own statutory body when non-compliance is found. As the contractor is often the certified professional’s client, the private certifiers experience to be backed up by the BPB when it comes to follow-up enforcement.

### *Alberta (ALB)*

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

053: Before you could go from hammering nails to inspecting buildings. Now there is compulsory training.

Especially in the smaller municipalities and the rural areas this was expected to have resulted in more compliance with building regulations – regulations *are* enforced now,

whereas under the old regime in some parts of Alberta regulatory enforcement was inexistent. Private sector involvement was generally valued as it provided service in those areas, without raising costs for municipalities.

The private sector was however experienced by a majority of interviewees to have a different incentive for regulatory enforcement than their municipal counterparts. A majority of interviewees made negative comments on the choice municipalities have to be accredited. These interviewees would welcome a regime under which municipalities are required to take responsibility for regulatory enforcement, but given the possibility enter into contracts with accredited agencies to have these carry out the actual enforcement tasks. The trade-off – hypothetical as under the old regime regulatory enforcement was not carried out at all in most areas where private agencies now provide service – appears to be allocative efficiency versus effectiveness. A moderate number of interviewees mentioned that private agencies appear to cut costs by carrying out fewer inspections than the major municipalities – Edmonton, Calgary, Lethbridge – do. Furthermore it was mentioned that private agencies are less stringent in carrying out follow-up enforcement tasks as this is not included in their contracts. This issue was clarified by a provincial official:

(043): The big difference, in my view, between the two and why the private industry is weaker in what it delivers than municipalities is because the private industry does not have the long term accountability for the outcome. The municipal services produces stronger compliance monitoring, better initial plan reviews, all the things in the process... And not because the staff or the practitioners have higher qualities – it’s the same folks. We are certifying the same people, so their skills are all the same. It’s that within the municipal order of government the town Council cannot avoid their long term responsibility for the outcome. So, their staff and their service delivery recognizes that. Just inherently. Private industry inspects today and they’re gone tomorrow. And they don’t care [about] any accountability risk – they just deliver the service. That’s the real fundamental difference between the two.

Another trade-off of the ALB regime appears to be allocative efficiency versus accountability. A moderate number of interviewees made clear that the provincial government has become too dependent on a small number of accredited private agencies to carry out regulatory enforcement in those areas where municipalities do not take responsibility. The disciplinary powers to take action against private agencies lie with the Safety Codes Council, but if they withdraw a private agency’s licence, a large area of the province would face an absence of enforcement. A provincial official (041) wondered: ‘What would we do if [the accredited private agencies] close their doors?’.

A notable insight on the private agencies was provided by some interviewees as well. After the introduction of the new regime, the provincial government stimulated their own building officials to start private agencies. In the early years of the new regime therefore most private agencies were run by former public officials. After a number of years ownership changed and “real” private actors took over. With this change also a change in attitude appears to have come in existence, which is likely to result in accountability issues. ‘Safety made way for money’ an accredited private agency’s representative mentioned (036).

Under the new ALB regime the Safety Codes Council has authority to monitor municipalities and private agencies and has power to discipline. A moderate number of interviewees looked upon this system as insufficient. Especially as auditing is carried out on a low frequency and audits appear to be process audits only. It was furthermore noted that the regime would be strengthened when contractors would be regulated as well. Now issues with contractors have to go through court which can turn out time-consuming cases for the participants involved.

### **Between-regime variation**

Trade-offs were found in all cases presented. The trade-offs found, however, varied amongst the new regimes analyzed. I will discuss the trade-offs related to types,

relationships and case-specific circumstances. Table 3 presents an overview of these trade-offs related to the regimes analyzed.

Table 3 – Trade-offs in regimes analyzed

<b>Regime type</b>	<b>Relationship within regime</b>	
	<i>Competitive</i>	<i>Complementary</i>
1. <i>Limited private sector involvement</i>	<b>SA</b> - X-efficiency vs. equity - X-efficiency vs. allocative efficiency - X-efficiency vs. accountability	<b>VAN</b> - X-efficiency vs. allocative efficiency
2. <i>General private sector involvement</i>	<b>VIC</b> - X-efficiency vs. equity - X-efficiency vs. accountability	<b>ALB</b> - allocative efficiency vs. effectiveness - allocative efficiency vs. accountability

In three out of the four cases presented, privatization appears to have resulted in trade-offs of efficiency versus accountability. With the exception of the Vancouver case, interviewees in the other cases regarded oversight of the regime as insufficient to keep the system accountable. Criteria set to private sector actors were generally experienced as sufficient – comments were however made as well in the Australian cases about a lack of criteria for public building officials. The actual monitoring of the private sector actors’ enforcement tasks appears to be the issue in these three cases: too little monitoring, or audits, in general; if monitoring was carried out it was experienced to focus too much on process instead of content; and if monitoring resulted in disciplining, this was experienced as too slow a process and the actual disciplining measures being too soft to bring enough awareness to those involved in the regime – again comments were made in the Australian cases that the municipalities faced over all even less stringent oversight than the private sector actors.

In Vancouver this trade-off appears to have been prevented by stringent oversight: every project a Certified Professional is involved in is being overseen by the City. Another trade-off however appears to be the result of the City’s involvement in private sector actors’ work – found in the SA regime as well. In the type 1 regimes, limited private sector involvement, a trade-off appears to have occurred between X-efficiency versus allocative efficiency. Private sector involvement has sped up the assessment process for those who involve private sector actors in their projects, which in building development means saving money on interest. However, a municipal building authority still has to administer the documentation these private sector actors provide to show that building plans and construction work complies with regulations. This appears partly to be a doubling of tasks. It furthermore obliges municipalities to maintain building control departments, which might have to be funded partly through general revenues.

Competition between the public sector and the private sector appears to have resulted in a trade-off of X-efficiency versus equity in both Australian cases – this trade-off seemed not have come about in the Canadian cases in which the private sector stands in a complementary relationship with the public sector. Competition in the Australian cases has resulted in a situation in which different groups of applicants are treated differently. Municipalities furthermore lose revenue and skilled staff to private sector agencies, but have to process non-cost-effective minor development. A loss of revenue and resources might, in the long term, erode the quality of the public regulatory enforcement authorities, which might endanger their ability to secure the public interest and serve the public.

Alberta showed a case-specific trade-off, which appears to come from the choice municipalities can make to not enforce building regulations in their jurisdiction – allocative efficiency versus effective enforcement. Private sector actors were experienced to carry out regulatory enforcement tasks less stringent than their municipal counterparts, which might result in less intense, less effective enforcement. Municipalities were told sometimes not to take responsibility for regulatory enforcement as this might result in liability issues – due to the system of joint and several liability in Alberta, municipalities were experienced as having deep pockets (cf. Lee 1987). Choosing not to enforce

building regulations keeps municipalities out of court-cases that might result in penalties – paid through general means. In these municipalities therefore the general tax-payer does not have to foot the bill of the municipal building control department.

### **Conclusion**

The introduction of the private sector in different building regulatory enforcement regimes in Australia and Canada appears to have resulted in trade-offs between competing democratic values such as effectiveness, efficiency, accountability and equity. In this paper it was found that some of these trade-offs might come from the amount of private sector involvement in a regime, or from the relationship between the public and the private sector in a regime. Not all trade-offs could however be related to these characteristics as the Alberta case showed.

It was found that private sector involvement overall resulted in regimes that appear to show more effectiveness and more X-efficiency compared to the former public regimes that were in place in all cases analyzed. Yet, private sector involvement over-all appears to result in accountability issues. A solution to accountability issues might be more oversight, with a strong focus on the content of the private sector agents’ – but also on the public sector agencies’ – enforcement tasks. Yet, oversight comes with a price and the question at hand is who should pay that price. In the type 2 regimes the oversight bodies consist mainly of private sector stakeholders and these bodies are self-funding through, mainly, permit levies. In this regime type the client who actually gets a service pays for the accountability of the regime. In the type 1 regimes oversight bodies are public agencies funded partly through general means. In these cases the general tax-payer pays a part of the price for keeping the regulatory enforcement regime accountable – whether if he or she uses the service provided or not. The differences in relationships in the regimes analyzed appear to indicate that a competitive relationship is more likely to result in equity issues than a complementary relationship.

That different combinations of actors, their roles and their responsibilities in a ‘policy mix’ has substantial impact on the results of regulatory governance has been debated (e.g. Gunningham and Grabosky 1998). The empirical research presented in this paper gives valuable insight into how the concept of regulatory enforcement regimes can be used to itemize a ‘policy mix’ in ‘ingredients’ and ‘proportions’ as tool for comparative analysis.

That trade-offs come about when the private sector is introduced in regulatory governance has been debated as well (e.g. Scholz and Wood 1999). What this paper has added to this notion is the understanding that *different* regulatory enforcement regimes might result in *different* trade-offs. It appears however that the direction these trade-offs take relates, at least in part to<sup>5</sup>, the amount of private sector involvement in a regime and the relationship between different sectors within a regime.

### **Acknowledgements**

I would like to thank Peter May for discussing the Australian and Canadian research presented in this paper. I wish to stress that the research findings regarding the Canadian presented in this paper are preliminary. When writing this paper I am still analyzing Canadian data obtained. The over-all findings presented in this paper are therefore preliminary as well.

### **Footnotes**

1. When writing this paper I am still analysing Canadian data obtained. Currently I have sent back a comparative interview report to the Canadian interviewees. I will do so once done and follow the methodology as described. Note that therefore the research findings regarding the Canadian cases presented in this paper have to be regarded as preliminary.

2. Currently four states have introduced private sector involvement – South Australia, Victoria, New South Wales, and Queensland; both territories – the Australian Capital Territory and Northern Territory; and the remaining two states consider to introduce private sector involvement – Tasmania and West Australia.
3. Currently the provinces of Alberta and Ontario, and some cities in British Columbia have introduced private sector involvement in statutory building assessment.
4. Note that the two regimes I discuss in this paper are the ‘practical’ ends of the sliding scale of private sector involvement. Theoretically more and less private sector involvement would be possible and as such the limits of that sliding scale can be stretched. However, the regimes discussed in this paper are the least and the most far reaching building regulatory regimes actually implemented that I analyzed in Australia and Canada.
5. I expect that, for instance, also the difference in liability between Australia and Canada has a notable impact on the differences in trade-offs between the regimes as well. Proportionate liability in the Australian cases; joint and several liability in the Canadian cases.

### Appendix A - brief overview of interviewees

No	Organization	Current position in organization	Regime*		
			exp	sec	case
			p		
01	Adelaide City Council	Building surveying official	b	pu	SA
02	Adelaide City Council	Building surveying official	b	pu	SA
03	Adelaide City Council	Team Leader Building Assessment	b	pu	SA
04	Association of Professional Engineers and Geoscientists of BC	Director Professional Practice and Ethics	b	pr	VAN
05	Australian Institute of Building Surveyors	Past National President, and Building Surveyor	b	pr	SA
06	Australian Institute of Building Surveyors	National President	b	pr	SA
07	BKDI architects	Senior Associate	b	pr	ALB
08	BKDI architects	Code Consultant	b	pr	ALB
09	British Columbia and Yukon Territory Building and Construction Trades Council	Researcher	n	pu	VAN
10	British Columbia Safety Authority	President & C.E.O	b	pu	VAN

\* Abbreviations: exp = experience with either the old (o), new (n), or both regimes; sec = public sector (pu) or private sector (pr)

**Appendix A - brief overview of interviewees (continued)**

No	Organization	Current position in organization	Regime*		
11	Building and Safety Policy Branch	Senior Policy Analyst	n	pu	VAN
12	Building and Safety Policy Branch	Senior Codes Administrator	b	pu	VAN
13	Building and Safety Policy Branch	Senior Policy Analyst	n	pu	VAN
14	Building Commission	Manager Practitioner Compliance	b	pu	VIC
15	Building Commission	Manager Sustainability	b	pu	VIC
16	Building Commission	Senior Technical Advisor, Technical & Research Services Regulatory Development	b	pu	VIC
17	Building Commission	Manager Practitioner Compliance	b	pu	VIC
18	Building Commission	Consultant Regulatory Development	b	pu	VIC
19	Building Commission	Coordinator Practitioner Compliance	b	pu	VIC
20	Building Practitioners Board	Building surveyors representative	b	pr	VIC
21	Building Practitioners Board	Consumers representative, and Past President of the Australian Property Institute	b	pr	VIC
22	Canadian Home Builders Association	Executive Officer of Calgary Region	b	pr	ALB
23	Canadian Home Builders Association	President Alberta Chapter	b	pr	ALB
24	City of Calgary	Head of Legislative and Technical Services, Development and Building Approvals	b	pu	ALB
25	City of Calgary	Former Manager Building Regulations	b	pu	ALB
26	City of Edmonton	Senior technical advisor, Development Compliance Branche, and former private inspector	b	pu	ALB
27	City of Lethbridge	Manager of Building Safety and Inpection Services, City of Lethbridge; President Alberta Building Officials Association	b	pu	ALB
28	City of Melbourne	Municipal Building Surveyor	b	pu	VIC
29	City of Surrey	Manager, Commercial Section, Planning & Development	b	pu	VAN
30	City of Vancouver	Building Code Specialist & Manager of Professional Programs	n	pu	VAN
31	City of Vancouver	Former Building Chief Official	b	pu	VAN
32	GHL Consultants LTD	Certified Professional	b	pr	VAN
33	Government of South Australia, Planning SA	Manager Building Policy Branch	b	pu	SA
34	Homeowner Protection Office	CEO	b	pu	VAN
35	Homeowner Protection Office	Coordinator Practitioner Compliance	b	pu	VAN
36	Inspectiongroup inc.	President, and former municipal building official	b	pr	ALB
37	International Brotherhood of Electrical Workers	Assistant Business Manager	b	pr	VAN
38	Irwinconsult Pty Ltd	Manager Director	b	pr	VIC
39	Katnich Dodd building surveying consultancy	Director, building surveying consultant	b	pr	SA
40	Municipal Affairs	Safety Service Senior Field Inspector	b	pu	ALB
41	Municipal Affairs	Executive Director Safety Services	b	pu	ALB
42	Municipal Affairs	Chief Building Administrator, Safety Services	b	pu	ALB
43	Municipal Affairs	Assisatant Deputy Minister	b	pu	ALB
44	Municipality of Dandenong	Manager Building Services	b	pu	VIC
45	Phillip Chun & Associates Pty Ltd	Associate, and Past National President of the Australian Institute of Building Surveyors	b	pr	VIC
46	Phillip Chun & Associates Pty Ltd	Director	b	pu	VIC
47	Private architect firm	Architect/Certified Professional	b	pr	VAN
48	Private engineer firm, Vancouver	Certified Professional	b	pr	VAN
49	Reddo Building Surveyors	Director	b	pr	VIC
50	Resiance Corporation, real estate, development and construction	Development Manager	b	pr	ALB
51	Resiance Corporation, real estate, development and construction	Project Coordinator	n	pr	ALB
52	Safety Codes Council	Executive Director	b	pr	ALB
53	Safety Codes Council	Manager of Training	b	pr	ALB
54	Stricker Cato Murphy Architects, PS	Certified Professional	b	pr	VAN
55	Umow Lai & Associates Pty Ltd	Director	b	pr	VIC
56	University of South Australia	Head of Building & Project Management; Director Centre for Building and Planning Studies	b		VIC

\* Abbreviations: exp = experience with either the old (o), new (n), or both regimes; sec = public sector (pu) or private sector (pr)



## **Appendix B - Basic outline interview questionnaire**

### *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 have send 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 do [local government]?  
 6 To what extent has compliance (with building regulations) changed after the introduction of [the new regime]?  
 7a Into what extent can acceptable evidence be found of the achievement of regulatory objectives?  
 7b Could you state websites, research reports, articles that might be of help to my further research?  
 9a To what extent is building control performed equally amongst different groups?  
 9b To what extent is building control performed equitably by different the 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 are the criteria to be allowed to enforce building regulations? (for both public and private sector actors)  
 4b. Are these criteria realistic? (qualitative and quantitative)  
 10a What are the statutory responsibility and liability 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 objectives of the 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?

### *Close interview*

- 13 Are there any things you think I have missed in this interview, or is there anything you wish to add?

## **Appendix C - the cases**

### *South Australia (SA)*

South Australia has introduced, relatively, the most conservative system of public and private sector involvement in building assessment (OCBA 2006; PlanningSA 2001). All tasks relating to building regulatory enforcement can be carried out by municipalities and but a few tasks can be carried out by private sector agents. Private sector agents can be

licensed and registered as private certifier by Planning SA, a state governmental agency, which has set entry and participation criteria to private certifiers: accredited by the Australian Institute of Building Surveyors (AIBS) – a non-governmental organization; experience and insurance. Private certifiers are overseen by Planning SA through complaints investigation; future plans are to introduce auditing. Planning SA has authority to discipline private certifiers. Planning SA has no authority to discipline municipalities. Contractors need to be licensed in order to carry out work; this license is provided by another governmental agency than Planning SA.

The private certifier is proportionately liable for work that is carried out based upon its involvement in a project with a limitation period of ten years. The private certifier is only allowed to:

- assess building plans;
- issue a building consent when from assessing building plans compliance with regulations is shown. This consent is not a building permit that gives approval to commence building. Building permits are issued by local Councils after administration of the building consent.

### *Vancouver (VAN)*

The City of Vancouver has introduced a system which allows registered architects and engineers to become a Certified Professional (CP) and in that position carry out statutory assessment tasks on behalf of the City. This is restricted to complex development work only. All tasks relating to building regulatory enforcement can be carried out by the City as well. The City runs the CP registration scheme, provides CP training and exams. Passing the exam, taking continuous professional development, and holding a personal indemnity insurance policy is required to obtain the CP registration. The architects’ and engineers’ association have set requirements to their registered members: education and experience. These Associations oversee their members and have authority to discipline their members. The City of Vancouver has authority to monitor CPs and can issue a complaint at the CP’s Association. An important aspect of the Vancouver regime are so called Letters of Assurance. Professionals involved in building design have to sign a Letter of Assurance which clearly states that they take responsibility for those parts of work they are involved in. The CP has to sign a Letter of Assurance to become CP of a project. No criteria are laid down to contractors.

As registered architect or engineer the CP has joint and several liability for work he or she is involved in. The CP is allowed to:

- assess building plans and is required to coordinate communication with the City;
- assess on-site construction work and is required to update the City monthly on the project’s process;
- issue documentation which stated that the building plans, or the finished building comply with the building regulations. This documentation is not a building permit that gives approval to commence building, or occupy a completed building. Building and occupancy permits are issued by the City of Vancouver after administration of the CP’s documentation. The City however ‘guarantees’ to issue a building permit within a week after receipt of the CP’s documentation.

### *Victoria (VIC)*

Victoria is considered most progressive of all Australian jurisdictions regarding the introduction of private sector involvement (BCV 2003a, 2003b, 2005). All tasks relating to building regulatory enforcement can be carried out by both private sector actors and municipalities. Private sector agents can be registered as private certifier by the Building Practitioners Board (BPB) – an independent statutory authority, which consists of non-governmental stakeholders. The BPB advises on the private certifier’s registration criteria; the Minister for Planning sets the criteria. These criteria are: have the required level of education and experience and hold a policy for professional indemnity insurance as prescribed by the regulations. The BPB is also authorized to oversee the private certifiers’ conduct and ability to practice and the BPB has authority to discipline private certifiers, which includes cancellation or suspension of registration and issuing fines. The BPB is administratively supported by the Building Commission (BC), which is a statutory

governmental organization funded through a building permit levy. In present the BPB investigates complaints and audits private certifiers. Contractors in Victoria have to be registered by the BPB. The BPB also has authority to oversee the work of building practitioners, such as contractors, and discipline these when non-compliance is found. The BPB has no authority to discipline municipalities, neither has the BC.

The private certifier is proportionately liable and has the following enforcement tasks:

- carry out both statutory building plan assessment and on-site construction work assessment;
- issue a building permit when from assessing building plans compliance with regulations is shown;
- issue an occupancy permit when from assessing the construction work and the finished building compliance with regulations is shown;
- carry out enforcement tasks through issuing of a series of ‘enforcement orders’ – written notices that, according to the responsive regulation ‘enforcement pyramid of sanctions’ (Ayres & Braithwaite 1992, pp. 35-38), with each follow up order imply a more harsh means of sanctioning. Non-compliance with an enforcement order may result in prosecution. The private certifier however cannot carry out prosecution itself, but refers the case to the BC, which from that point takes over enforcement tasks.

### *Alberta (ALB)*

In order to be allowed to carry out building regulatory enforcement tasks agencies, including municipalities, have to be accredited. The Safety Codes Council (SCC) is responsible for the accreditation scheme. The SCC is an independent statutory authority, which mainly consists of non-governmental stakeholders funded through a permit levy. The Ministry of Municipal Affairs Safety Service provides administrative support to the SCC. Under the accreditation scheme municipalities can choose to become accredited and take responsibility for enforcement of building regulations. If municipalities choose not to be accredited, the Safety Service provides for building control authorities in those areas by entering into contracts with accredited private sector agencies. Municipalities in Alberta can also choose to enter into contracts with accredited private sector agencies directly. This is a possibility if a municipality wants to have authority for enforcing building regulations, but does not want to hire staff for the execution of tasks. In order to become accredited a municipality or private agency has to provide a Quality Management Plan to the SCC, which states how the municipality or private agency will carry out regulatory enforcement. Once accredited private sector agencies and municipalities are allowed to carry out all assessment tasks and issue permits. SCC has authority to audit both private sector agents and municipalities, and has power to discipline. Contractors are not regulated.

Private sector agencies are joint and several liable for their involvement in a work and have the following enforcement tasks:

- All: building plan assessment; permit issuance; on-site construction assessment; follow-up enforcement tasks; and issuance of occupancy approval.

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