

Responding to Policy Change from Above: Municipal Accountability and Transparency Regimes in Ontario

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In 2006, the Ontario government amended the Ontario *Municipal Act* by passing Bill 130, the *Municipal Statute Law Amendment Act*. Among other things, this legislation required that municipalities adopt a number of mandatory provisions relating to accountability and transparency. Local governments were also asked to consider a number of voluntary measures. This essay examines how 12 municipal governments in Ontario responded to these mandatory and voluntary legislative requirements. Using primary documents and elite interviews with local government officials, the authors analyzed the municipal processes and outcomes produced in response to Bill 130. The findings suggest that, in general, Ontario municipalities tended to react negatively to the mandatory and optional policy changes instituted from above. None the less, there was some variation in municipal responses, much of which can be explained by focussing on variations in municipal policy learning, organizational legacies, public input, and to a lesser extent, time and cost restraints.

En 2006, le gouvernement de l'Ontario a modifié la *Loi de 2001 sur les municipalités* en adoptant le projet de loi 130 – la *Loi de 2006 modifiant des lois concernant les municipalités*. Entre autres, cette loi exigeait que les municipalités adoptent un certain nombre de dispositions obligatoires reliées à la reddition de comptes et à la transparence. On a également demandé aux gouvernements locaux de songer à adopter certaines mesures volontaires. Le présent article examine comment 12 gouvernements municipaux de l'Ontario ont réagi à ces exigences législatives volontaires et obligatoires. À l'aide de sources primaires et d'entrevues avec des représentants de gouvernements locaux, nous avons analysé les processus municipaux et les résultats du projet de loi 130. Nous avons trouvé qu'en général, les municipalités ontariennes avaient tendance à réagir négativement aux changements politiques volontaires et obligatoires institués par le palier de gouvernement supérieur. Nous avons quand même observé certaines variations dans les réactions des municipalités, ceci pouvant être expliqué en examinant les variations dans l'apprentissage des politiques municipales, les traditions organisationnelles, la participation du public et, d'une façon moins importante, les restrictions de coûts et de temps.

A growing body of scholarship has emerged suggesting that cities and their governments have become important actors within the Canadian federation (Bradford 2004; Sancton 2008; Young and Leuprecht 2006; Broadbent 2008; Andrew, Graham, and Phillips 2002; Gertler and Wolfe 2004; Gertler 2001). At the same time, however, cities have historically lacked the constitutional status and freedom to respond adequately to broad policy changes and challenges. Under Section 92.8 of the Canadian constitution, for instance, the provinces have responsibility for “municipal institutions in the province.” The structure of the Canadian federal system is such that local governments cannot act unless they have “specific authority for that action in some provincial statute ... [which] obviously imposes a significant restraint on the ability of local governments to be innovative” (Siegel 1997, 129). Provincial governments, therefore, play a major role in the lives of Canadian local governments. During the 1990s, for instance, municipal governments in Ontario had no choice but to absorb the massive downloading of costs and programs by the federal and provincial governments (Sancton 2002, 259; Stewart and Smith 2007, 267; Siegel 2009, 29). Many also underwent rounds of amalgamation under provincial pressure and directive, which involved the restructuring and consolidation of municipal borders and policy capacity (Sancton 2000; Siegel 2005).

Although the existing local government literature is rich with descriptions of the provincial-municipal relationship as it pertains to the delivery of programs, fiscal relations, and municipal amalgamation, very little is known about how local governments respond to voluntary and mandatory policy change from above. To partially address these lacunae, we examine the 2006 implementation of Ontario’s Bill 130, which saw the provincial government require municipalities to pass accountability and transparency regimes that had both mandatory and voluntary elements. This Ontario legislation emerged from a number of high-profile scandals in Ontario involving MFP Financial, which were reported in the news in the early 2000s. These scandals highlighted what were perceived to be significant deficiencies in local accountability and transparency regimes in the province (Fernando 2007). In response, the Ontario government amended the *Municipal Act* in 2006 to force municipalities to design better accountability and transparency regimes. First, municipal governments were required to create and/or update formal accountability and transparency policies in a number of areas and to create a process for investigating closed, in-camera sessions and meetings. Second, local governments were asked to consider a number of optional accountability and transparency measures, such as a code of conduct, a lobbyist registry/registrar, an auditor-general, and an integrity commissioner.

The main goal of this essay is to discover the factors that may have influenced how municipal governments in Ontario responded to the mandatory and voluntary policy changes instituted from above. A secondary goal is to describe and analyze the processes and outcomes used by municipal governments in Ontario in constructing their accountability and transparency regimes in response to provincial requirements. To accomplish these goals, we conducted a study of the post-2006 accountability and transparency regimes in 12 Ontario municipalities that were created in response to the implementation of Bill 130. The 12 Ontario local governments selected were Ajax, Halton Hills, the Region of Waterloo, the City of Waterloo, Whitby, Durham Region, Halton Region, Cambridge, Oshawa, Oakville, Kitchener, and Ottawa. Each was selected because of institutional variety in terms of geographic size and location, population, and structure.

Our analysis relied on a variety of primary documents, such as minutes to various meetings, research reports, and other items in each of the municipalities. We also conducted 14 anonymous interviews with city officials who were involved in the creation of their city's accountability and transparency policies. These interviews took place in the spring and summer of 2010 and were conducted over the phone. Each of the interviewees was given the option to remain anonymous, and each exercised that option.

Our findings suggest that most, but not all, municipalities chose to meet the minimum requirements, while the optional measures were adopted unevenly across our sample. Those that pursued more than the minimum requirements tended to be larger municipalities or had existing policies that were similar to the voluntary ones listed in the legislation. At first glance, these findings may reflect the fact that municipal actors generally are resistant to any provincial "interference" in local decision-making; yet our research suggests that other factors, such as organizational legacies, policy learning, public demand, and to a lesser extent, time and cost restraints, may also matter for determining municipal responses to provincially mandated policy change.

The essay begins with a discussion of some theoretical lenses in the public policy literature that can help us explain the outcomes of our cases. Then some background considerations relating to the passage of provincial legislation and municipal responses in Ontario are presented. Next, we describe the processes and outcomes produced in response to the legislation. Finally, we discuss the implications of our findings for understanding how municipal governments respond to mandatory and voluntary policy changes instituted from above.

Agenda Setting, Policy Learning, Organizational Legacies, Path Dependency, and Beyond

Existing literatures on public policy and public administration offer powerful theories of policy adaption and change. According to these literatures, policy is seen to change incrementally, for the most part. This fact is generally attributed to having the same set of actors in place for a very long time, on either the political or the administrative side of government (Howlett and Ramesh 1995). Municipal governments generally fall into this category, with institutional compositions that are set for many years. Alternative explanations for incremental change may include marginal differences between existing policies and their proposed changes (Hayes 1992) and the fact that policy subsystems are more or less fixed (Baumgartner and Jones 1993). Once again, municipalities generally exhibit some of these characteristics. In either case, policy change is generally incremental rather than sudden.¹

When examining the municipal response to provincially imposed accountability and transparency mechanisms, four theoretical frames are potentially useful: agenda-setting, policy learning, organizational legacies, and public participation.

Agenda Setting: Policy Windows and Streams

The literature on agenda setting is well-developed and rich (Cobb and Elder 1972; Simeon 1976; Baumgartner and Jones 1993; Rochfort and Cobb 1993; Howlett and Ramesh 1995; Soroka 2002). Agenda setting is the process through which attention for a particular issue is garnered. Governments confront competing demands for actions from various sectors. As such, identifying and then prioritizing them presents a challenge for policy officials.

For the purposes of our research, a subset of the agenda-setting literature, namely the concept of policy windows and streams, is particularly helpful.² According to John Kingdon (1984), there are three types of streams that are relevant—problems, policies, and politics. In the first stream, people come to identify some condition as a problem and begin to agitate for a change in policy to correct it. This stream consists of the perception of certain problems as public problems that require government action to resolve them. For Kingdon, problems arise typically because of sudden events, such as a crisis, or from displeasure with existing programs. The policy stream consists of experts and analysts examining the problem and proposing initial solutions. All possibilities to resolve the problem are examined and are then narrowed down to a list of

workable solutions. The political stream can consist of several factors, such as changes in public opinion, legislative action, or interest group pressure.

According to Kingdon, each stream—problem, policy, and political—operates independently of each other. It is only at a specific point—a policy window—that all three converge. A policy window, then, is an opportunity when the right forces align to allow policy change to occur. Kingdon explains this process: “the separate streams of problems, policies and politics come together at certain critical times ... solutions become joined to problems, and both of them are joined to favourable political forces” (1984, 21). Kingdon’s work accounts for public input and the ways that issues can move from systemic to institutional agendas. As such, Kingdon provides a unique explanation for both problem identification and policy change. The policy windows and streams literature can help us identify how accountability and transparency policy was shaped in each community. The right conditions could create a policy window that certain actors could capitalize upon to alter the traditional or intended scope of accountability legislation.

Policy Learning

Policy evaluation is a standard practice for governments (Pal 2006) and policy learning is at the heart of this evaluative process (Bovens and t’Hart 1996, 4; Howlett and Ramesh 2003, 208). Policy learning can be seen as an attempt to improve or enhance policy-making based on the assessment of past experiences (Etheredge and Short 1983; Sabathier 1988; Rose 1988). Stritch explains that policy learning is “a process of evaluating new policy ideas, past practices and foreign precedents” (2005, 553). He continues by arguing that “[governments] learn from the shortcomings of pre-existing programmes and practices in their own jurisdiction; they learn from the precedents of other jurisdictions; and they learn from the articulation of interests by societal participants in the course of the policy-making process” (2005, 554).

Bennett and Howlett (1992, 289) create three typologies in the policy learning paradigm: government learning, lesson-drawing, and social learning. In the government learning paradigm, state officials conduct policy learning in order to effect organizational change. In the lesson-drawing typology, policy networks learn to effect program change, while social learning involves policy communities that affect policy paradigms. Generalized policy learning can emerge from any of these sources, with municipalities conducting vigorous rounds of research before embarking upon a certain policy course that they may be locked into for several years to come.

Organizational Legacies and Path Dependency

The concept of organizational legacies draws much of its theoretical background from path dependency. As a concept, path dependency has had a place as an explanatory tool in the social sciences for at least two decades (David 1985, 1989; North 1990; Arthur 1994; Steinmo, Thelen, and Longstreth 1992). Although its adaption for policy studies has come with some criticism (Kay 2005), it is seen as a viable tool for analysis in studies of public policy and public administration.

In the policy realm, path dependency can have a lingering effect within institutions: “choices made when an institution is being formed or when a policy is being initiated, will have a continuing and largely determining influence ... far into the future” (Peters 1999, 63). In essence, path dependency explanations—and by association, organizational legacy explanations—suggest that the past conditions our future. In terms of policy development and implementation, Francesca Gains, Peter John, and Gerry Stoker argue that “path dependency captures the tendency for a policy step in one direction to encourage the next step to be in a similar direction” (2005, 27). In short, history matters.

In terms of real-world experiences with public policy decisions, some of the literature on organizational legacies and path dependency has shown to hold some explanatory power when examining policy change. Some research (Tierney 1984, 89) has found that organizational legacies can be damaging to institutions in some cases, as burdensome past practices, a bloated work force, or a negative institutional ethos are kept in place for extended periods of time. These types of institutional legacies can be hard to change abruptly, but incremental change over time is possible in some cases (Wilsford 1994). Other research, however, has found that policy implementation or regulation from above, such as from senior levels of government, can lead to deviation (whether sudden or slight) in the evolutionary path of some institutions (Gains, John, and Stoker 2005).

In terms of our research, path dependency and organizational legacies may help to explain potential variation between municipalities—examining why one municipality chose one course of action, while another did not. It may also help us explain how some municipalities may take existing policies and alter them to meet provincial directives.

Public Participation

Public participation is usually a core part of policy creation (Howlett 2011, 96; Leroux, Hirtle, and Fortin 1998). Increasingly, the role of the public in policy consultation has expanded, with citizens not only making recommendations to government but also designing the consultation process itself (Dryzek and Tucker 2008). As such, public participation, whether it be a variation of citizen

panels or public meetings, is becoming an increasingly popular tool for public policy-makers.

The impact of this participation varies, however. Several key issues have been identified (Howlett 1990; Salter and Slaco 1981; Weblar and Tuler 2000; Margerum 2008; Dion 1973) in designing consultative processes:

- 1) Who is involved and who is not?
- 2) Who makes this determination?
- 3) What resources do they have?
- 4) Are their recommendations binding?

These are concerns faced by policy-makers when drawing up a consultative process. Whether it is the general public or an elite configuration, how is the composition of these groups and meetings chosen? Whether these groups have resources, such as access to staff, access to politicians, or funding, will also determine their effectiveness. How binding the group's recommendations are is equally important. Is the government just listening or is it bound to follow the input received? Finally, will decision-makers attempt to frame the parameters of the consultation process in a way that would hinder meaningful discussion and idea-generation?

The inclusion of the public in policy design has been seen to alter the composition of the type of policies adopted. Quite simply, adding the public matters. Since the legislation mandated from the province involved accountability and transparency mechanisms intended to increase the public's trust in local institutions, we imagine that most of the municipalities included in the study would have introduced or would have considered some sort of public consultation mechanism in policy design stages.

Background Considerations

The municipal accountability and transparency legislation introduced in 2006 was driven by a number of factors related to a perception that municipal politics in Ontario lacked openness. A key factor behind this perception was a series of headlining scandals that had cost some municipalities tens of millions of dollars. At the centre of these scandals was MFP Financial, which in the past had provided a variety of technical services to a number of municipalities in Ontario. The most notable of MFP's financial dealings was with the City of Toronto, which commentators argue did not receive the kind of scrutiny it deserved. Among other things, incentives were given to municipal officials and councillors in return for favourable treatment of MFP's financial proposals. The result was millions of dollars in cost overruns (Fernando 2007).

These specific scandals reinforced pre-existing negative perceptions of municipal transparency, such as those related to the close relationship between certain special interests and municipal officials in the GTA (Greater Toronto Area). Some recent research on Canadian local election financing (MacDermid 2006, 2007; Young and Austin 2008), for instance, has found a high correlation between private support—most notably from the development industry—and electoral success. As a result, many urban centres tend to have councils with a pro-development bias.

Structurally, with respect to access to information requests, municipalities have also traditionally been much slower at producing requested information. They have been criticized for the exorbitant costs of some access requests. Typically, an access to information request at the federal level of government costs only five dollars, which can be seen as a negligible administrative charge. Municipalities will often charge for any copying and other such expenses, however. If a request produces dozens of pages of information that require photocopying, the cost can be quite prohibitive. This ultimately produces a barrier to trying to access information at the municipal level.

In short, a convergence of structural and temporal factors created the conditions for the Ontario government to pursue accountability and transparency reform at the local level in 2006. The primary legislation that governs provincial-municipal relations in Ontario is the *Municipal Act*. As a general ordinance, the act applies to all municipalities in the province regardless of size (except for Toronto), provides the legal foundation for the creation of municipalities, and outlines what municipalities can and cannot do in terms of the programs and services they can create. The act also provides the guidelines for municipal public administration and therefore is the centerpiece for local accountability and transparency policies.

On 1 January 2007, the Ontario provincial government proclaimed into law the *Municipal Statute Law Amendment Act, 2006*, also known as Bill 130, which substantially altered the powers and responsibilities that municipal governments enjoyed under the *Municipal Act, 2001*. According to then-Ontario Municipal Affairs and Housing Minister John Gerretsen, “through this legislation, the McGuinty government and our municipal partners are beginning a new era in which local governments across Ontario have new powers and more autonomy reflective of their status as mature, responsible governments” (quoted in Municipal Affairs and Housing 2007). The updated law was meant to address the growing importance of municipalities in public policy and public administration.

Bill 130 provided two different sets of accountability and transparency policies to be adopted by municipal councils. The first set included mandatory

policies that reflected a number of specific areas such as procurement practices, hiring practices, the sale and disposition of land, public notices, accountability and transparency policies, and policies with respect to the delegation of council's powers and duties. If policies in any of these areas did not exist, municipalities had to create them, and if they did exist, they would have to update and formalize the practices. In addition to updating or creating these policies, municipalities were required to hire a public meetings investigator and create a process to allow investigation of in-camera meetings. To protect the integrity of any sensitive information arising out of these in-camera meetings, the public meetings investigator was to have a narrow scope to conduct investigations. The scope was essentially reduced to understanding whether the focus of the subject matter during the in-camera session was consistent with what was told to the public. Local governments had until 31 December 2007 to institute these mandatory measures.

In addition to the mandatory requirements, the *Municipal Statute Law Amendment Act, 2006* allowed municipalities to adopt a number of optional accountability and transparency measures. Municipalities were authorized to establish a code of conduct for council and for local boards of the municipality. As we will show below, a number of municipalities in our study decided to adopt such a code. In addition, municipalities were able to appoint accountability and transparency officers such as an integrity commissioner, an auditor general, an ombudsman, and/or a lobbyist registrar. Although not required to do so, surprisingly, a number of municipal governments in Ontario adopted one or more of the optional measures, discussed below.

In short, the Ontario government believed that forcing municipal governments to draft mandatory accountability and transparency policies and to appoint a public meetings investigator were steps that would address the issues raised above. Through Bill 130, municipalities were forced to devise a set of policies that would show their commitment to open government, which is a concept promoted by David Eaves (2011). By placing more information on the corporate website for municipalities, for instance, a city could avoid the expense of responding to some information requests—those looking for information could simply search the website. By making sure citizens had a process for scrutinizing public meetings, the city provided citizens with a better sense of whether there was a close link between lobbying firms and specific decisions made by councils behind closed doors. The voluntary measures that were made possible in Bill 130 gave municipalities the option to reassure citizens further that their municipal councils were working ethically and democratically.

In the next section, we examine the processes that municipalities in Ontario used to address the mandatory and voluntary policy changes instituted by Bill

130. We then look at the outcomes of those processes before discussing the implications of our findings for municipal policy-making in response to change instituted from above.

Municipal Response: Processes

Of the 12 municipalities we studied, eight used a staff-driven process or a process that involved staff and an existing municipal committee to generate their policy responses to Bill 130. Among these eight, five municipalities (Ajax, Halton Hills, Region of Waterloo, City of Waterloo, and Whitby) delegated the task to their clerks and their support staff. For these municipalities, the clerk's office drafted research reports and policies, and submitted them to council for review, modification, and approval (de Rond 2007b; Landry 2007a). For the other three municipalities, a committee of staff and council members acted as an intermediary step between the drafting of the policies by the clerk and the final approval from council. In the Region of Durham, for instance, council directed staff to report on the implications of Bill 130 for the region. Staff then drafted a policy and associated bylaws for the region's finance and administration committee to assess. Council reviewed the materials, made relevant changes, and approved the new policy and bylaws. Similarly, in Halton, staff and council worked together through its administration and finance committee to respond to the legislation. Staff members generated reports on Bill 130 and drafted policies for the committee to review and modify before sending its policies to council for approval (Halton Administration and Finance Committee 2007). In Ottawa, a similar process was undertaken with staff drafting reports and policies for consideration by an existing committee, which then sent the materials to council for approval.

In the remaining four municipalities, officials decided to use staff members and to create a special committee to address the accountability and requirement provisions in Bill 130. In Cambridge, council created the Bill 130 Taskforce, whose membership included the city clerk, the treasurer, two councillors, and the mayor. As a preliminary step, the clerk's office produced reports and recommendations for the task force to consider. The task force then assessed these recommendations, drafted policies, and submitted them to council for approval (Mitchell 2007). In Oshawa, the commissioner of corporate services recommended that council create an Accountability and Transparency Subcommittee to review Bill 130 and make recommendations. This sub-committee had five members: the mayor and four councillors. It then drafted the policies and sent them to council for approval. In Oakville, the city created a staff working group to generate reports and draft policies. It also created a special council

policy committee to oversee the work of the staff working group. These two committees worked together to generate a set of policies and bylaws for council to approve. Finally, in Kitchener, the city decided to create a special committee made up of staff members, council members, citizens, and media representatives to address the requirements of Bill 130. This committee drafted the policies collectively and then sent them to council for approval (Kitchener 2008).

As part of the policy-making process, eight of the municipalities indicated that they engaged in informal consultations with other municipal governments. In almost all cases, consultations occurred between municipalities that were geographic neighbours and were considered comparative in terms of size, location, and issues. Officials from Durham Region, for instance, spoke to staff members from eight constituent lower-tier governments in the region regarding how they planned to deal with the requirement for a closed meetings investigator. Cambridge had informal discussions with officials from the cities of Guelph, Brantford, and Oakville. Most of the informal discussion pursued by the city clerk of the Region of Waterloo took place among a group of city clerks from large single-tier municipalities and regional governments, such as Ottawa, Toronto, Thunder Bay, Halton, and Peel. For the Region of Waterloo, the most important consultations occurred with Ottawa because that city was thought to have engaged in a sustained effort at public consultation. Oshawa consulted with Toronto, Newmarket, Kenora, Aurora, Brock Township, Ajax, Burlington, Guelph, North Glengarry, London, Strathfield, New South Wales in Australia, and Sunny Vale in California. Officials from Halton Hills said they drafted their policy jointly with the other municipal governments within their region, including the Region of Halton and the cities of Milton and Burlington. Ajax also regularly consulted with its neighbouring cities in the Durham region (de Rond 2007a) as did Ottawa and Oakville, who also made special mention of the crucial information provided by the larger informal and formal clerks associations to which they belonged.

In terms of public input, each municipality publicized and held open committee and/or council meetings and posted relevant materials like agendas, draft policies, and research reports online. Only two municipalities seemed to make special efforts to engage the public. As previously mentioned, the City of Kitchener created a special committee to deal with Bill 130, which included members of the public and the media. The City of Oshawa went further when a council subcommittee recommended on 17 January 2008 a two-phase approach to public consultation. Phase one was to put together a Community Leaders Roundtable as a source of stakeholder input on any draft policies and codes created by the city. Members of the roundtable included individuals from the Oshawa Accessibility Advisory Committee, the Downtown Oshawa Board of Management, the

College Park Seventh Day Adventist Church, the Durham Regional Labour Council, Member of Parliament Dr. Colin Carrie, the Durham Family YMCA, Tribute Homes, Durham Regional Police Services, the Oshawa Senior Citizens Centre, and the South Oshawa Youth Advisory Committee. Phase 2 was to place newspaper ads and to use the city's website aggressively to seek public input. As part of this phase, Oshawa also commissioned an accountability and transparency survey of city residents and received 105 responses.

In sum, all 12 municipalities used a range of processes that involved staff members, existing and special committees, and council to develop an accountability and transparency response to Bill 130. Most of the municipal governments engaged in consultations with neighbouring and/or comparable regional and municipal authorities. In some cases, staff members turned to informal and sometimes formal networks of clerks for advice and information. Finally, very few municipalities engaged in public input processes beyond what was normally used at the municipal level. The cities of Kitchener and Oshawa were the exceptions.

The Policy Outputs

So what did the 12 municipalities in our sample produce in terms of the mandatory and optional policies available to them in Bill 130? In terms of the mandatory requirement to pass an accountability and transparency policy, 11 of the local and regional governments did so while one is in the process of doing so. Surprisingly, almost all of the policies produced were quite similar, addressing the same topics and procedures with some variation. The contents of these policies were driven by two main factors. First, city clerks, staff members, and council members began drafting their policies by collecting and formalizing the various programs, policies, and practices that already existed into one document. Second, they expanded, reorganized, and modified this document by studying and consulting with various municipalities, as described above. Below is a list of common elements found in the accountability and transparency documents surveyed:³

1. Policy Objective / Purpose: The purpose of the policy; usually can be simplified to "This policy is to comply with Section 270.1.5 of the *Municipal Act, 2001*, as amended."
2. Definitions: Defining the terms *accountability* and *transparency*, among others.
3. Policy Statement: A general collection of the broad commitments that the municipality is embarking upon in this policy. Corporate acknowledgement and commitment to the purpose.

4. Operating Details / Policy Requirements: An itemization of the internal policies, mechanisms, measures, and bylaws that operationalize the policy. In essence, this pertains to what the municipality is doing (or planning to do) with respect to accountability and transparency in key areas, usually in practical or prescriptive terms. The main areas of interest in this important section are further:
 - a) financial matters;
 - b) administration / internal governance;
 - c) participation and information sharing.
5. Enforcement / Complaint Process: Outlines who investigates possible breaches of the policy, and who enforces or interprets the policy.

In terms of the mandatory requirement for a closed meetings investigator, all of the municipalities met this requirement in one of three ways. The default position for all municipalities in Ontario was the provincial ombudsman. Among the 12 municipalities we examined in this study, four (Oshawa, Halton Hills, Ajax, and Kitchener) chose to use the Ontario ombudsman (Landry 2007b). In the case of Ajax and Kitchener, both originally chose to use the closed meetings investigator provided by the Local Authority Services Ltd. (LAS), which is a wholly owned subsidiary of the Association of Municipalities of Ontario. In 2009 and 2010, respectively, however, both cities ended their relationship with the LAS and decided to employ the Ontario ombudsman as their closed meetings investigator. For these four municipalities, the choice of the ombudsman was driven by three factors: the ombudsman was seen as having the necessary expertise and resources to do a good job, the service provided by the ombudsman was free, and in the case of Kitchener and Ajax, it seemed that there was little demand for these types of investigations in the past and therefore it did not make any sense to hire someone on retainer.

The majority of the other municipalities in this study (Cambridge, the City of Waterloo, Oakville, Region of Halton, Region of Waterloo, Whitby, and initially Ajax and Kitchener) chose to employ the services of the LAS (Clerk's Department 2008; de Rond 2007a; Mitchell 2007; Halton Administration and Finance Committee 2007; Whitby Corporate Services 2008). The popularity of this decision seems to reflect a broader trend among municipalities in Ontario. According to the LAS, over 140 local governments in Ontario currently make use of its closed meetings investigation program. To deliver this service, the LAS has contracted Amberley Gavel Ltd. to provide its customers with a standardized system of closed meetings investigation at the request of a third party. The municipal governments in our sample that chose this service did so because it

was a popular option among other municipalities in the province. It was also seen as being a competent, transparent, and relatively cheap service even if no investigation was ever undertaken; according to the LAS website, municipalities pay the LAS investigator a retainer fee of \$300 per year and an hourly fee of \$156.25 plus reasonable out of pocket expenses should an investigation be required. Lastly, city officials favoured the LAS because it was connected to the Association of Municipalities of Ontario and it was willing to provide background and education training sessions for city staff and councillors, including best practices.

Only one local government in our sample chose to hire its own closed meetings investigator. In January 2008, the City of Ottawa hired Douglas Wallace. City officials pursued this option because they thought that this strategy would be more effective than using the LAS service. As well, they did not want to rely on the Ontario ombudsman.

Beyond the mandatory accountability and transparency components, very few municipalities in our sample chose to adopt the various optional measures in Bill 130. The most popular optional measure was the code of conduct for council, although in most cases the local governments that adopted these codes already had some sort of code in effect prior to Bill 130. The Region of Durham, for instance, already had a procedural bylaw that governed the conduct of council members and city employees, so Bill 130 simply provided the region with the opportunity to consolidate and refine this code. The same situation occurred in Cambridge, Oshawa, the Region of Halton, Halton Hills, Ajax, and Oakville (Ajax 2004; Kitchener 2008; Waterloo 2009; Clerk's Department 2008; Halton 2000). The cities of Waterloo (2009) and Kitchener (2008) each adopted new codes of conduct, whereas the Region of Waterloo considered doing so but eventually rejected it. Ottawa is currently drafting a code of conduct for council's consideration.

Our analysis of the codes of conduct that were publicly available (Ajax 2004; Kitchener 2008; Waterloo 2009; Halton 2000) suggests that these documents tend to address the following nine issues. First, there is usually a section relating to gifts and benefits, which is meant to publicly disclose information to prevent members of the public from using their generosity or wealth to influence the behaviour of council members. Second, all of the codes of conduct, with the exception of two,⁴ contained provisions relating to hiring. These provisions were meant to ensure that the hiring process was open and fair. Third, all of the codes provided rules to prevent or minimize the possibility of conflicts of interest occurring among members of council. Fourth, there is usually a section that deals with confidentiality and when/how confidentiality is to be maintained. Fifth, all of the codes have a section addressing the legitimate use of public assets. Sixth, the codes provide rules that prevent council members from exerting undue political influence

on city staff members. Seventh, the codes discourage council members from using municipal resources and staff for election campaigning. Eighth, except for Ajax (2004), each municipality has established rules governing the relationship between council members and businesses. Finally, most of the codes of conduct, with the exception of Halton, have a procedure for complaints and the enforcement of the codes.

In terms of the other optional measures, four of the municipal governments in our sample hired an integrity commission or are in the process of hiring one. The Region of Durham, for instance, has added the duties of the integrity commissioner to those of its commissioner of human resources, whose job is to give information seminars on ethics and integrity, and to submit a yearly report to council regarding whether the code of conduct has been breached. Both Kitchener (2008) and Oakville (2008) hired integrity commissioners, and in the case of Oakville, this individual helped the clerk's office to draft the city's code of conduct for council. Finally, the City of Waterloo adopted an integrity commissioner in principle but has yet to fill the position despite repeated efforts.

Beyond the codes of conduct and the integrity commissioner, only two municipalities have pursued or are considering the other optional measures. Ottawa, for instance, hired an auditor general in 2004 and has expanded the powers of that office to be in compliance with the auditor general provisions in Bill 130 (Ottawa Corporate Services and Economic Development Committee 2007). The Region of Halton is currently considering a lobbyist registry and has formed a special lobbyist registry review subcommittee of council to investigate the option.

In sum, all of the regional and local governments in our sample have complied with or are in the process of complying with the mandatory accountability and transparency requirements in Bill 130. Very few have pursued the various optional measures available. When local and regional governments did pursue the optional measures, they usually did so because they had something similar in existence prior to the passing of Bill 130.

Municipal Officials' Assessments of Bill 130's Accountability and Transparency Provisions

As part of our research, we asked the interviewees to express their opinions on the effect of Bill 130 on the development and practice of their government's accountability and transparency regimes. Approximately half of the local government officials we surveyed had negative assessments of Bill 130. Many of them felt that the mandatory provisions were redundant because their municipality already had a variety of bylaws and procedures that they felt dealt

adequately with accountability and transparency. Others suggested that the mandatory and optional provisions were not applicable to their governments because the provisions in Bill 130 were based on the experiences of much larger cities, like Toronto. Finally, others felt that it was hypocritical of the province to force municipal governments to institute a formal accountability and transparency regime when the province itself did not have such a regime in place.

Approximately a fourth of the municipal officials we interviewed thought that the accountability and transparency requirements in Bill 130 were a good idea, however. One official suggested that based on the frequency of high-profile local government scandals in the province over the last 10 years, the provincial government could not leave it to municipalities to address accountability and transparency effectively. Although most municipalities in Ontario have good accountability and transparency records, this official believed that province-wide requirements were necessary. Other officials suggested that the legislation was a positive development because it forced their governments to develop more comprehensive and formal accountability and transparency policies than they had previously. These officials believe that the legislation has greatly improved how their governments publicize the actions of their staff and politicians.

The rest of the respondents had mixed feelings about the impact of Bill 130. One respondent suggested that although it was good that his government was forced to consolidate and formalize its policies, his municipality would have preferred to receive more guidance and technical advice from the province on how to do so. Other respondents praised the legislation for pushing their governments to develop more comprehensive policies, but lamented the amount of resources that they had to expend to do so. One respondent, however, was ambivalent and mentioned that the legislation had no positive or negative effect on the municipal government's accountability and transparency regime.

A number of respondents were unhappy with the requirement for a closed meetings investigator. One official complained that this requirement infringed upon the independence of municipalities. Another individual observed that the municipality used to have off-site council and staff retreats, whose purpose was to allow government officials to engage in frank conversations about municipal policies and procedures. These were also opportunities for brainstorming, sharing information, forecasting, and policy speculation, and the like. Since the passage of Bill 130, however, these retreats no longer occur because officials have felt they could no longer speak freely for fear of a request for an investigation. Overall, though, most interviewees were fine with this requirement mainly because none of their governments had yet received a request for a closed meetings investigation.

Analysis and Discussion

The main goal of this essay is to discuss how local governments responded to the mandatory and optional policy changes instituted from above by the provincial government. The cases included in this study have provided a variety of responses to Ontario's Bill 130. These responses are presented in table 1.

In terms of processes, the municipal governments surveyed in this essay used a mix of staff, existing or special committees, and council approval to develop their policies. In terms of policy outputs, each government passed or was close to completing an accountability and transparency policy. All have addressed the issue of a closed meetings investigator by relying on one of the following: the Ontario ombudsman, the LAS, or a dedicated closed meetings investigator. In terms of the optional measures, the most common one adopted was the code of conduct; few of the other options were chosen. Finally, respondents provided mixed assessments of the effect of Bill 130 on their government's accountability and transparency regimes.

In broader terms, these cases are instructive for highlighting a number of other important aspects of municipal policy-making in Canada. Many respondents, for instance, complained that their governments generally lacked the resources and the time to address policy changes sufficiently instituted from the provincial government. As a result, staff and council frequently made decisions using a cost-benefit analysis. The City of Waterloo, for instance, mentioned that its decision-making on the optional requirements was driven by how much each element would cost and whether or not the benefits provided justified that cost. A number of municipalities made a decision about who should provide their closed meeting investigation service based on reputation but also on the annual cost. Some municipalities chose the LAS because they had negative assessments of the provincial ombudsman and positive ones of the LAS. Although the LAS was slightly more expensive than the Ontario ombudsman (which did not include a cost to the municipality), the LAS was substantially cheaper than hiring a dedicated closed meetings investigator.

Another consequence of a lack of resources and time was that staff and council members tended to rely heavily on pre-existing bylaws, procedures, and policies to develop their new policies. Indeed, as discussed earlier, many of the accountability and transparency policies and the codes of conduct described above were firmly rooted in pre-existing bylaws, practices, and procedures. Much of these reactions we saw earlier in the notion of path dependency and organizational legacies. When pressed, most municipalities chose to deviate very little from existing structures and bylaws. Despite some evidence (Gaines, John, and

Table 1. *Comparison of measures adopted by community.*

City	Types of Policies Adopted	Process Used for Adoption	Actors Involved	Policies Rejected
Region of Waterloo	Accountability and transparency policy	Council and committee process	Corporate resources department, public consultation sought	None considered
Kitchener	Accountability and transparency policy, code of conduct, integrity commissioner	Accountability and transparency committee	Mayor, 1 councillor, city staff, some public consultation sought	Auditor general, ombudsman, lobbyist registrar and registry
City of Waterloo	Code of conduct, integrity commissioner, accountability and transparency policy	Ethics in municipal life committee, council and advisory committees	Council, staff, some public involvement on advisory committees	Auditor general, ombudsman, lobbyist registrar and registry
Cambridge	Accountability and transparency policy	Council and committee processes	Council task force, corporate services, and clerk's office	Auditor general, ombudsman, lobbyist registrar and registry
Halton Region	Code of conduct, accountability and transparency policy	Council and committee process	Council, committees, staff	None considered
Halton Hills	Accountability and transparency policy	Council and committee process	Council, committees, staff	Ombudsman
Oakville	Code of conduct, accountability and transparency policy	Council and committee process	Council, administrative services committee	Auditor general, ombudsman, lobbyist registrar and registry

City	Types of Policies Adopted	Process Used for Adoption	Actors Involved	Policies Rejected
Durham Region	Code of conduct, integrity commissioner, accountability and transparency policy	Council and committee process	Council, committees, staff	Integrity commissioner, ombudsman
Ajax	Code of conduct, accountability and transparency policy	Council and committee process	Council, committees, staff	Auditor general, ombudsman, lobbyist registrar and registry, integrity commissioner
Oshawa	Auditor general, city charter and code of conduct, accountability and transparency policy	Council and committee process, accountability and transparency sub-committee	Council, committees, staff, community leaders roundtable, public consultation sought	Ombudsman, lobbyist registrar and registry, integrity commissioner
Whitby	Accountability and transparency policy	Council and committee process	Council, committee, staff	None considered
Ottawa	Auditor general, accountability and transparency policy	Council and committee process	Council, committees, staff	Integrity commissioner

Stoker 2005) showing that policy mandates imposed from above can lead to deviation in the path of some institutions, we do not find evidence to support that conclusion in this particular case. Instead, municipalities chose variations on existing programs rather than the creation of new paradigms.

As well, a number of respondents mentioned that their governments used parts of policies and procedures of other municipalities, not only in southern Ontario, but also elsewhere in Canada, the United States, Australia, and New Zealand. This form of lesson-drawing is quite common in the policy learning literature, where one jurisdiction will examine the perceived successes and failures of policy regimes in other localities. Resource and time constraints created powerful incentives for municipal policy-makers to use policy shortcuts in the development of their policies.

A key component of this emulation of other municipalities' policy-making experience was the existence of informal networks between municipal officials. In the case of the development of accountability and transparency policies in southern Ontario, we found that an important communication existed among city clerks. Respondents and policy documents mentioned how city clerks would study and contact their counterparts in neighbouring or comparable municipalities. Ajax, for instance, regularly consulted with its regional neighbours in Durham not only because they belonged to the same region, but also because they were all fairly similar in population, economic activity, and geographic location. Officials from Kitchener, Waterloo, and the Region of Waterloo also mentioned that they were in regular contact with each other. Officials from the Region of Durham mentioned that in addition to their neighbouring governments, they regularly met with officials from eight comparable lower-tier governments in southern Ontario (see also Durham 2007, 13). Officials from Halton Hills said they worked closely and collaboratively with the Region of Halton and with the cities of Burlington and Milton to create their accountability and transparency policies, while Ottawa, Pickering, Whitby, and Oakville mentioned similar dynamics. In these cases, we can see some intra-network learning, where geographically close jurisdictions drew lessons from the implementation and adaptation of similar policies.

Another consequence of municipalities' lack of resources and time was the general lack of public input and citizen engagement. As mentioned above, almost none of the municipalities used citizen engagement strategies beyond the norm. As a result, almost all of the local and regional governments studied in this essay reported minimal public involvement. City officials held open meetings, posted minutes online, took out advertisements in local newspapers, and engaged in other conventional strategies, but interviewees reported that

they received few, if any, delegations, reports, submissions, or any other form of commentary from the public.

In two cases, however, public input did have a clear effect on outcomes, mainly because public input was sought in a different way. For instance, as mentioned above, two local governments in our sample, Waterloo and Kitchener, adopted codes of conduct where none had existed previously. Our findings suggest that these two codes of conduct emerged not only because of informal communication networks between city staff in the province, but also because both cities chose to have members of the public sit on their accountability and transparency committees. In the case of Waterloo, for instance, its Ethics in Municipal Life Committee membership consisted of two city councillors and four members of the public. Similarly Kitchener's Accountability and Transparency Committee consisted of the mayor, one city councillor, several city staff members, and several members of the public. Although broad public input and interest were absent in almost all of our cases, it seemed that local governments that formally included public citizens in their committees tended to move beyond adopting the minimum requirements or simply updating pre-existing policies.

Much of this is present within the public policy literature on public engagement. Quite simply, adding the public matters. When the general public is formally included in decision-making bodies, we arrive at different policy conclusions. This is especially important in designing accountability and transparency regimes that are supposed to help the general public in accessing their own local governments.

In sum, municipal policy responses were very much circumscribed by the limited resources and time that local and regional actors felt they had to address the requirements handed down by the provincial government. The mandatory and optional policies developed were very much influenced by internal cost-benefit analyses and pre-existing accountability and transparency regimes, as well as by external policy emulation and through informal communication networks. The general lack of excitement about the imposed process could explain the large role assigned to staff in policy creation. Indeed, our empirical findings indicated that there was little enthusiasm among politicians to shape the process and to force changes that did more than simply reach compliancy with the imposed legislation, resisting what Kingdon (1984) would describe as a policy window. Public interest in the issue also tended to be very low, and as a result, few municipalities pursued the range of optional accountability and transparency measures that were available to them. Respondents from six local and regional governments stated that had there been strong public interest or a mobilized interest group in support of one or more of the optional measures, then the local government would have acted beyond what was minimally required.

Conclusion

This research suggests that municipal governments tend to respond to mandatory policy change by adopting the minimum requirements set out in provincial legislation. Optional provisions are pursued only when similar provisions are already in existence at the local level; hence, groups that adopted voluntary codes of conduct tended to do so because they already had these codes or something similar in effect prior to the legislation. Although municipal officials were interested in exploring the other voluntary measures available, most did not pursue them because there was a lack of public interest or because of significant cost and time constraints; municipal officials felt that they did not have the resources or time under the legislation to engage in a proper policy-making exercise. Instead, most local governments relied on existing materials, policy legacies, and informal networks with other municipalities to generate a response within the one-year time frame.

Our research also demonstrates that the relationship between municipalities and central governments has not evolved as much as some have contended. While many authors have noted the growing importance of municipalities both socially and economically, municipalities remain creatures of the province, politically. For municipal governments to become autonomous policy actors within the Canadian federation, provincial governments need to provide municipalities with more leeway and resources to respond to provincial guidelines and expectations in creative and innovative ways. As well, some of our findings suggest that municipal governments might increase their autonomy by engaging with the general public in a way that better activates local public interest in municipal policy-making. Doing so may generate the political capital necessary to allow municipal governments to design and implement policies that push at and beyond the borders established by provincial legislative frameworks like Bill 130.

Notes

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1. Of course, policy change is not always incremental. See Baumgartner and Jones (1993) regarding punctuated equilibrium and policy change.
2. We thank one of the reviewers for pointing out the potential applicability of this literature to our project.
3. There are some minor variations between these documents. One unique policy was Kitchener's while the policies of Ajax, Cambridge, Halton Hills, Halton Region, and Whitby were the most similar.
4. Ajax and the Region of Halton.

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