

Beyond Instrument Choice: Micro-Level Policy Design in Manitoba's Child Care System

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I. INTRODUCTION

Theories of public policy development have attempted to systematize the process by which governments define, design, implement and evaluate state activity (or inactivity). A crucial step within that development cycle is policy design, meaning the development of policy options and their alternatives (Howlett 2014). Although policy design can be said to encompass a variety of elements, “including policy goals, objectives and aims, as well as policy means, tools and their calibrations” (Howlett 2014:194), emphasis within the literature tends to centre around the question of instrument choice. This focus of activity is demonstrated in many ways: by defining policy instruments, through attempts to create instrument typologies or classifications, and the theorizing that marries instruments to policy goals.

The prominence of instrument choice within the policy design literature is perhaps unsurprising. It is a laudable pursuit to provide greater potential for the success of policy interventions by arming practitioners with a toolbox of instruments whose characteristics and applications are defined. And it is not the purpose of this paper to discount the applied benefits that have come from such pursuits. It is,

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however, the intention of this study to question the emphasis on instrument choice within the policy design literature and to argue that there are limitations that come with such a focus. The assumption that policy design is ultimately a process of instrument selection is problematic in the practice of public administration in two ways: firstly, it ignores the contextual factors that may remove instrument choice from the policy design process altogether; and secondly, it assumes a constancy of the instruments themselves, neglecting intra- and inter-instrument design.

In a re-examination of the instrument of regulation, this paper employs a nested model of policy design, as suggested by Michael Howlett. The paper explores the opportunity for micro-level policy design, circumscribed by a nested framework involving overarching (macro-level) governance arrangements and (meso-level) implementation styles. By advancing Howlett's model through the use of the case study of Manitoba's child care regulations, this paper seeks to add to the growing body of policy design literature, as well as to contribute to current policy deliberations within the provincial child care system. The paper first provides an overview of theories of policy design and presents the possibility of Howlett's model as an avenue forward. The paper then proceeds to a multi-leveled examination of the institutions and the implementation style within Manitoba's child care system. Through an analysis of three recent examples of child care regulation in Manitoba, the study concludes that despite an absence of instrument choice, there exists evidence of micro-level policy design as demonstrated by the variability of the regulations themselves.

II. THE CASE FOR CONTEXTUAL ANALYSIS

Despite its central importance to the practice of public administration, policy design has been somewhat neglected within the field of policy studies (Howlett 2009). Reasons for this lack of attention may be due to the challenges inherent in the practice or perhaps the lack of public access to the process of policy deliberations (Howlett 2009). Yet, policy design ought to be a key focus within policy studies precisely because it is "ubiquitous, necessary and difficult" (Bobrow 2006:75).

In devising theories of policy design, academics and practitioners have tended to focus on instrument choice, with the aim of matching appropriate tools to policy goals. In order to accomplish this aim, research

tends to cluster around two questions: what are the means of policy, and how and under what circumstances ought they to be selected? The attempt to systematize the exercise of government activity has as a goal the efficient use of limited public resources to achieve a positive or improved outcome. Within that context, the ability to approach policy design with some degree of predictability reduces the risk of failure and the resultant social, political, economic or cultural costs. Indeed, a significant body of instrument theory stems from the discipline of economics, with attention to issues of efficiency and encouraging government intervention into the market only where appropriate (Howlett 2004).

Linder and Peters define policy design as the blueprint for the “fashioning and deployment of means” (1990:303). In their work, they are explicit in the view that instrument choice is the linchpin of that design process. They go so far as to state that “starting with the wrong instrument in a design is more dangerous than using the right instrument poorly” (Linder and Peters 1990:303-304). They advocate for greater attention and rigor to the study of instrument choice, both in current use as well as in opportunities for new or improved policy means. The call to action on this front has and continues to be answered, and has provided much-needed theoretical and applied focus on questions of policy design.

Linder and Peters (1990) were certainly not the first to recognize the value of understanding the characteristics and application of policy instruments. In his work *From the ‘old’ to the ‘new’ policy design*, Howlett (2014) provides a comprehensive account of the evolution of policy design studies. Tracing this intellectual evolution from Harold Lasswell’s work on policy instrument definition, Howlett (2014) describes how policy design began to flourish in the 1970s and 1980s through a more explicit focus on the instruments or “techniques” of government activity. This growing maturity of design studies was the result of an analytical separation of policy formulation from policy implementation. What is evident throughout Howlett’s survey is that policy design continues to be equated with, and indeed defined by, instrument choice: “Policy design elevates the analysis and practice of policy instrument choice—specifically tools for policy implementation—to a central focus of study, making their understanding and analysis a key design concern” (Howlett 2014:193).

Policy design is also treated in Leslie Pal’s *Beyond Policy Analysis*, where it is understood as the art of “detailing what tools to use, and in what combination, to achieve a given end” (Pal 2014:129). While Pal recognizes

the evolution in the array of policy instruments, he still conforms to the instrument definition-choice structure. "The conventional discussion of policy instruments usually proceeds by laying out the basic categories and outlining some of the objective characteristics of each of the instruments" (Pal 2014:129).

Much of this attention on instrument choice has led to the creation of typologies (Bemelmans-Videc, Rist, and Vedung 2007; Bressers and O'Toole 1998; Doern and Phidd 1983; Salamon and Elliott, 2002): ideal-type classifications that provide a menu of policy instrument choices to be paired with policy goals and situations. This 'inventory' approach was even re-emphasized by Linder and Peters (1989), while at the same time the researchers expressed reservations about its applicability. Linder and Peters (1989) then proposed another typology that relied on the perspective and agency of individual policymakers themselves. While they still advocated for an instrument typology, this shift was important in recognizing the role of context and institutions within which individual policymakers are embedded. The policymaker's perception of instruments exists "within a complex ecology of contexts, beginning with the decisionmaker's immediate organizational circumstances and extending to features of their political system" (Linder and Peters 1989:35-36).

In his research on policy instruments, Kenneth Woodside (1986) expresses reservations about instrument classifications and the degree to which instruments can be understood in isolation of the social context in which they are being used. Recognition of contextual embeddedness is also the core of Howlett's model that suggests a multi-leveled analysis of policy design. "There is a need to expand the menu of policy design and policy instrument theory to appreciate the nuances and complexities of governance arrangements, policy regimes logics and operational planning" (Howlett 2009:89). This nested model of policy design provides for three interrelated levels of analysis:

Table 1: Policy component of a nested policy design model

Governance arrangements (macro-level)	Implementation style (meso-level)	Instrument calibrations (micro-level)
The broad organizational delivery preferences	The available instrument choices	The technical instrument design and adaptations

Source: Adapted from Howlett (2009).

Howlett’s nested model recognizes the effects of higher-level structures on lower-level policy formulation. The organizational delivery preferences within a policy sector will determine the available instrument ‘choices’ for any given policy design. The selected instrument(s) will then dictate the arena for instrument calibrations at the micro-level. Understanding policy design within a nested model clarifies the choices being made and the level at which there may be opportunity for innovative design.

The value of a nested model approach to policy design will be explored through a case study of regulations in Manitoba’s child care system. Before proceeding through that multi-leveled analysis, this paper will first provide an overview of the instrument of regulation, as traditionally understood within the policy design literature.

III. REGULATION AS A POLICY INSTRUMENT

Regulations are employed by government to compel or prohibit activities in a variety of sectors, including economic, social, environmental, and health fields. Within the policy design literature, regulation is generally defined in terms of a mutually exclusive categorization alongside other policy instruments. Within this frame, regulation has been variously described as coercive (Doern and Phidd 1983), punitive (Balch 1980), economically inefficient (Lemaire 2007) and characterized as government’s “stick” (Bemelmans-Videc et al. 2007). In the toolbox of policy instruments, regulation frequently appears as among the most interventionist, an expression of the full extent of government’s legitimate use of power.

Regulation, as an instrument, can be defined both broadly and quite narrowly. In the broad sense, regulation is understood to be a mechanism for compelling action, in contrast to other strategies such as information,

facilitation or incentives (Balch 1980). Regulation consists of “rules of behaviour backed by the direct sanctions and penalties of the state” (Doern and Phidd 1983:306), and can be used both to limit or promote activities (Lemaire 2007). Broad definitions of regulation as a policy instrument can also encompass other rule-like levers that involve government sanctions, including ‘guidelines’ or ‘standards’ (Doern and Phidd 1983:307). In this way, regulation is defined as a distinct category of policy instrument: the stick and not the carrot of policy design.

In the narrow sense, regulation is a specific form of subordinate or delegated legislation that is derived from statute. Legislative authority to create this form of law is generally delegated to Cabinet, an individual or to a body (Pal 2014). Unlike statutes, which must be debated and passed by the legislative branch of government, regulations carry the weight of law, but are more nimble. Not subject to the legislative session, regulations are developed and assented to by the delegated body granted the authority to create them.

Though definitions of regulation as a policy instrument do vary, the intent of the exercise tends to be the same. The definition is a precursor to devising theories of instrument choice, as either how instruments are or ought to be selected:

In the case of the regulatory instrument, attempts are made in most Western countries to improve the process of how and when to use this instrument. The underlying assumption is that by improving the process of how we choose policy instruments, the ‘politics of policy instrument choice’ will be better managed and lead to rational choices” (Lemaire 2007:72).

In applying utility theory to instrument choice, Balch (1980) suggests that regulation would be the appropriate instrument in situations where there are limited alternatives and where the goal is specific and measurable. In Doern and Wilson’s (1974) classification of instruments according to levels of coercion, they hypothesized that governments might initially avoid the use of regulation by selecting the least coercive instrument. Bressers and O’Toole (1998) contend that regulation becomes a preferred instrument in situations where there is weak interconnectedness and cohesiveness of a policy network (the actors and targets of policy development).

There are limitations to this type of approach to policy design, in that it can tend to prioritize theoretical coherence above applied utility. Rarely

does the practitioner have access to information so complete and robust as to make a perfect instrument choice. “In real world situations, as information difficulties arise in determining instrument effects and as the clarity and precision of goals diminishes, it becomes more and more likely that policy means and ends will be mismatched” (Howlett 2004:5). Moreover, classification requires an underlying assumption of the actual or perceived consistency of the instrument itself; the expectation that regulation can be defined and is therefore replicable. However, even this assumption is challenged by the recognition that instruments can be somewhat substitutable (Howlett 2004; Trebilcock and Hartle 1982; Woodside 1986).

Howlett (2004) suggests an alternative to this “good and evil” approach to instrument choice that moves beyond the somewhat false dichotomies involved in instrument definition and selection. In advancing Howlett’s argument, what follows is an analysis of the institutions of child care governance in Manitoba, the ways in which these structures may propagate a regulatory implementation style, and the potential for policy design at the micro level.

IV. GOVERNANCE ARRANGEMENTS IN MANITOBA’S CHILD CARE SYSTEM

The highest level within the nested model of policy design is the broad governance arrangement within which the meso and micro levels of design must occur. Howlett (2009) states that these arrangements are not ad-hoc, but rather reflect a favoured mode of governance and broad implementation preferences. Understanding these modes and structures is important as policymakers must work within these pre-established preferences, which themselves “affect ... policy objectives and tools, as well as policy targets and tool calibrations” (Howlett 2009:76).

Modern child care services originated from a need to provide supports to women, thereby enabling them to participate in the labour market (Atkin 2001). These early services in the Canadian context were created and delivered through charities, but as child care gained salience as a public issue in the late post-war period, governments began to engage in the sector. Constitutionally accorded to the provinces, the federal government has had some limited engagement with child care services, though attempts at creating a national and universal system have

floundered (Brennan and Mahon 2011). At the provincial level, and in contrast to the universal education system, child care remains arms-length to government and is generally delivered by not-for-profit and for-profit providers (Prentice 2006).

In Manitoba, government's role in child care formally came about in 1974 with the creation of the Child Day Care Program through the Department of Health and Social Development (Child Care Coalition of Manitoba 2014). This early engagement involved offering start-up funding to providers, as well as subsidies for parents. In 1983, the provincial government introduced *The Community Child Care Standards Act*² ("the Act") and regulations that required centre and home providers to become licensed according to provincial standards (Manitoba Early Learning and Child Care 2003). Over 30 years have passed since the Act and regulations came into force, and since that time Manitoba's system has expanded both in size and in the depth of its regulatory structure.

The Child Day Care Program is now known as the office of Manitoba Early Learning and Child Care (MELCC), within the Department of Family Services. MELCC has responsibility for the licensing and monitoring of 1,092 providers (666 centres and 426 homes), certifying individuals to work in the licensed sector, and providing almost \$140 million in annual funding through grants and subsidies (Manitoba Family Services 2014:61-68). The office supports capital projects for new and renovated centres, administers an online child care registry to connect parents to providers, provides some funding for early childhood education training programs, and delivers supports to improve curricular quality. MELCC also investigates complaints of unregulated child care services, including family homes where care is being provided for more children than is legally permitted.

MELCC as a government organization interacts with the child care sector through several mechanisms. There are front-line provincial staff that undertake the licensing and monitoring of the over 1,000 providers across Manitoba, as well as financial staff that deal directly with parents applying and receiving subsidies for child care fees. The office also has relationships with other Manitoba government departments, with child care offices in other jurisdictions and with advocacy groups like the

² Originally named *The Community Child Day Care Standards Act*, the title was amended in 2004.

Manitoba Child Care Association (MCCA). MELCC is responsible for policy development in the furtherance of its mandate, almost all of which is in some way regulated.

Overseeing such a large and disaggregated system delivered through private operators requires a governance mode that ensures compliance. Howlett (2009) sets out four broad modes of governance within his nested model: legal, corporatist, market and network. Canada has not proceeded along a path of state-run, universal child care, meaning a corporatist mode of governance would not apply. Nor is Canada in a position of pure collaborative and voluntary associational delivery through a networked system for this sector. Although some forms of market-based governance modes do apply to child care in Canada, in Manitoba for-profit child care has remained a minor segment of the licensed sector due to government incentives for not-for-profit child care (Prentice 2004). The last of Howlett's (2009) four governance modes, legal governance, would seem to reflect the broad institutional and organizational approach of the Manitoba government with respect to child care services. The aim of a legal governance mode is primarily to ensure compliance and accord legitimacy through the use of law.

V. MANITOBA'S IMPLEMENTATION STYLE FOR CHILD CARE

The governance arrangement sets out the broad structure for policy design, framing the parameters of appropriate instruments at the meso-level. This level of design can be understood as the policy implementation style. Within a legal governance mode, one would expect to find an implementation style weighted in favour of tools of the legal system: legislation, regulations and rules (Howlett 2009). Use of these legal instruments, and in particular regulation, has been a feature of Manitoba's child care system, and is likely the result of both the constraints of the overall governance mode, as well as the institutional structures that may serve to propagate a regulatory system.

Two consolidated regulations fall under *The Community Child Care Standards Act*: M.R. 62/86 (Child Care Regulation) and M.R. 20/2011 (Child Care Worker Retirement Benefits Regulation). At 100 pages in length, M.R. 62/86 constitutes the bulk of the regulations, including licensing standards, certification standards, safety requirements, board governance, subsidy eligibility and maximum daily fees (Province of

Manitoba 2014). Passed in 2011, M.R. 20/2011 is a much narrower regulation focused on pensions and retirement supports for the child care workforce (Province of Manitoba 2011b). During the 16-year period of New Democratic Party rule between 1999 and 2015, there have been twenty-three amendments to the Child Care Regulation, as well as the creation of the Child Care Worker Retirement Benefits Regulation. The volume and breadth of this activity provides further evidence of a regulatory implementation style.

Regulation as a framework for child care is not only apparent at the provincial level in Manitoba. The context of child care oversight across Canada is generally regulatory in nature. The ten provinces and three territories all have regulatory structures in place to license centre and home-based child care settings (Friendly, Halfon, Beach, and Forer 2013). Policy development in one jurisdiction does not occur in a vacuum; it is embedded in the broader national context, where provincial governments can monitor and share their best practices and new initiatives. The mechanisms for this cross-jurisdictional engagement include regular meetings among the provincial and territorial directors of child care, as well as contributions to research bodies such as the Childcare Resource and Research Unit (CRRU), an organization that provides resources and information related to child care policy across Canada.

Within the province, Manitoba has also had institutionalized processes that promote the continued use of regulation. One such body was the Child Care Regulatory Review Committee, originally established around 1996. Until 2014, the Committee functioned as an advisory body to the Minister of Family Services and was comprised of various representatives from within the child care community, including MCCA, child care providers, departmental staff, parents, and representatives from francophone and Aboriginal communities, as well as from educational institutions (Manitoba Early Learning and Child Care 2005). Notably focused on regulations, the committee was an attractive forum for consultation, given the breadth of its membership and the regularity of its meetings. The purpose of this body, as set out in its terms of reference, was to “review and advise on child care regulations to ensure they are relevant to the current needs of families and providers of service” (Manitoba Early Learning and Child Care 2005:6). The committee also led the landmark 2001 report, *A Vision for Child Care*, which was the result of a broad public consultation that generated 24,000 submissions

(Prentice 2004:200). The Regulatory Review Committee was an example of a para-public institution, whereby government and social actors had a structured means by which to engage in policy development. Not only did this body reflect on regulatory changes brought forward by provincial staff, they also generated proposals for regulatory amendments for consideration by government. This consultative mechanism may therefore have encouraged policy development that was simply assumed to be regulatory in nature.

Another consideration in respect of policy instrument ‘choice’ is the mechanism for implementation. Given the existing regulatory framework for child care in Manitoba, there are already staff resources allocated and processes in place to ensure compliance with those regulations. There are 33 provincial staff positions solely dedicated to the licensing and monitoring of child care providers (Manitoba Early Learning and Child Care 2014). These child care coordinators are located in regions across the province, and have regular and ongoing relationships with all licensed centres and homes. In addition to the staffing resources, there are also existing procedures for handling non-compliance with regulations. The creation of additional regulatory requirements therefore becomes an attractive option in terms of policy implementation and licensee accountability, given that it is possible to take advantage of existing organizational structures and processes.

Finally, a significant institutional constraint on policy design at the meso-level is the very existence of the statutory and extensive regulatory structure already in place. Every aspect of MELCC’s role touches on the regulations, and not only in respect of licensing, certification or health and safety requirements. The statute functions as a broad framework for policy design that in many instances circumscribes instrument choice. For example, the Act provides the Minister of Family Services the power to authorize the payment of grants, subject to the regulations. The regulations then specify the types of grants and financial assistance, their requirements, and any conditions. However, since the Act was first passed in 1983, the various forms of financial support for child care have vastly expanded beyond general operating grants tied to licensing standards. MELCC now administers capital funding, training grants to individuals working in child care, recruitment incentive grants, emergency funding, grants to support the inclusion of children with additional support needs, and the recent introduction of funding for pensions and retirement

supports (Province of Manitoba 2014a). Not all of these forms of financial assistance are strictly 'regulatory' in nature, in the sense of "rules of behaviour backed by...direct sanctions" (Doern and Phidd 1983:306). They are the result of a statute that restricts some policy levers to regulation even where their intent is not necessarily regulatory.

Moreover, in instances where the statute may not require the selection of a regulatory instrument, the very existence of the regulatory framework may still encourage its ongoing use. This is due to the fact that policy design must take into consideration the instrument environment that is already in place and into which any new policy instrument must fit. In many sectors, policy development is generally occurring as an extension, expansion, reduction or amendment to government's existing role in that sector. Rarely do practitioners have the luxury of 'blue sky' policy development where there is no existing policy framework. In the case of MELCC, where government has had over 30 years of regulatory development and expansion, any new policy instruments must be complementary to the regulations, even if they are not regulatory themselves. This is the cautionary note that Howlett (2004) emphasizes, recognizing that instruments do not exist in isolation and ought to form complementary 'mixes' within the overall policy design.

In this section, institutional factors were examined with a view to exploring whether MELCC has an implementation style weighted towards regulation. Given the legal governance arrangement, the cross-jurisdictional context, the institutional structures and processes, as well as the constraints of the existing statutory and regulatory framework, I would argue that Manitoba's child care policy development does indeed tend toward a regulatory implementation style. However, this is not to suggest that the predominance of a single instrument is an impediment to effective policy development. In fact, I would contend that despite the lack of instrument choice at the meso-level, there is evidence of innovative, micro-level policy design.

VI. MICRO-LEVEL DESIGN IN THREE REGULATIONS

At the micro-level, Howlett (2009) outlines aspects of technical instrument design that move beyond simple instrument choice. Embedded within a governance arrangement and an implementation style, micro-level policy design accounts for the calibration of the policy

instrument(s). This calibration reflects design choices at the level of the instrument itself: the fine-tuning of the intra-instrument or inter-instrument characteristics.

MELCC provides an interesting case study for the variability of policy instrument design, due in part to the high volume of its regulatory activity. This analysis will focus on three recent regulations, all enacted between April 2010 and December 2011. This period falls in the middle of a broad vision strategy for child care that spanned from 2008 to 2013, called *Family Choices: Manitoba's Five-Year Agenda for Early Learning and Child Care*. The agenda formed a period of heightened policy development with its twelve public commitments, designed to further the growth and accessibility of the system, to enhance quality and to support the child care workforce (Manitoba Early Learning and Child Care 2008).

The regulations are analyzed according to three design calibrations: the production of the regulatory content, the flexibility of the regulatory language, and the instrument context within which the regulation is situated. The first two elements are primarily intra-instrumentary in focus, meaning an examination of the way in which regulatory content is produced and the flexibility of that content. The third element is inter-instrumentary, with a view to understanding if and how the regulation interacts within a policy mix design involving other instruments. The analysis will explore the extent of the variability that exists among the three regulations in light of these calibrations.

A. Child Care Safety Charter: Child Care Regulation Amendment (53/2010)

As part of its *Family Choices* agenda, the Manitoba government committed to establishing a Child Care Safety Charter (Manitoba Early Learning and Child Care 2008). The charter requires that each child care facility has an approved safety plan and code of conduct, forming part of the licensing standards. The Charter was announced in 2008 and came into force in 2010, through legislative and regulatory amendments. The purpose of the Child Care Safety Charter is to ensure that the health and safety of children in child care settings is protected. In general, health and safety is an area of government intervention where regulation is a common instrument choice (Lemaire 2007).

The production of the regulatory content itself reflected extensive consultations on the part of government. Between the initial

announcement in 2008 and the proclamation of the legislative and regulatory amendments in 2010, MELCC conducted “more than 40 workshops with child-care facilities plus follow-up advice and support” (Province of Manitoba 2010b). This pre-drafting work informed the legislative and regulatory content through a consultative approach, with civil servants engaging with those who would be the targets of the policy development.

The resulting legislative content provides the fundamental contours of the charter requirements, which includes (among others) prohibitions for bullying and harassment, procedures for controlling visitor access, emergency procedures for threats, and policies related to emergency medical crises (Province of Manitoba Legislative Assembly 2008). The regulatory content ensures that approved safety plans and codes of conduct are in place and that staff are instructed as to their provisions, as part of the existing licensing process for child care centres and homes (Province of Manitoba 2010a).

The legislative and regulatory language is moderately flexible. This is due in part to the wide variations among the over 1,000 child care centres and homes, whose physical spaces and programming may entail unique health and safety needs. This flexibility of the language is likely a reflection of the pre-drafting consultations, and envisions the participation of child care licensees in producing the content of what ultimately will become their own, individual safety plan and code of conduct. The language of the Act and regulation provides for the structure of the plan and the code, what elements they must contain in order to satisfy the standards, while remaining flexible enough for licensees to reflect the unique situation of their individual child care centre or home.

In terms of a specific policy design related to improved safety in child care settings, the instrument mix for this regulation is limited. MELCC did develop comprehensive informational and educational resources for use by licensees, to guide them in developing their safety plans and codes of conduct. Department staff were specifically allocated to assist child care providers in becoming compliant and limited financial resources were made available to assist with equipment costs related to controlling visitor access (Province of Manitoba 2010b). But overall, these other instruments were only used in service of supporting the primary vehicle, which was legislative and regulatory in nature. The Child Care Safety Charter presents an example of a primary instrument with supporting policy

mechanisms, which did not form part of a more complex multi-instrument policy design.

B. Child Care Worker Retirement Benefits Regulation (20/2011)

In 2010, Manitoba became the only jurisdiction in Canada outside of Quebec to offer retirement and pension supports to the child care workforce (Province of Manitoba 2010c). Another commitment of the *Family Choices* agenda, the introduction of the Retirement Benefits Regulation, marked a major financial initiative of the Manitoba government at a cost of \$6.6 million in annual funding (Province of Manitoba 2010c). The regulation provides provincial matching of employee contributions to pension plans in child care centres, provincial reimbursement of Registered Retirement Savings Plan (RRSP) contributions for home-based providers, and a lump-sum benefit paid upon retirement for workers in either home or centre-based facilities. Despite the fact that the initiative was designed to provide direct funding supports, the primary instrument is regulation.

There is no evidence that the production of the regulatory content was done collaboratively with licensees, although it certainly appears to reflect the financial challenges of those who work in the field. The details of the plan announced prior to enactment reflected the content of the regulation that was later developed. The public communications also noted that “information packages and orientation sessions with details of the plan will be available to facilities soon” (Province of Manitoba 2010c). This suggests that the content of the Retirement Benefits Regulation was more government directed than, for example, the Child Care Safety Charter where consultations and workshops formed part of the regulation-development process. The top-down content approach is not necessarily a detriment to the regulation and in fact might reflect the complexity of the financial provisions required.

In examining the language, the Retirement Benefits Regulation is notable for the specificity of its provisions. The regulations require that every child care centre create a registered pension plan, that both the employer and employee contributions be at least four percent of the employee wage, that the minister reimburse RRSP contributions for home-based providers according to a set formula, and clarifies the conditions and the formula for government’s payment of the retirement benefit

(Province of Manitoba 2011b). There is no flexibility as to the conditions, formulas and requirements as set out in the regulation.

The Retirement Benefits Regulation is firmly set within a policy mix design, forming a cornerstone of the Manitoba government's Workforce Stability Strategy for child care. This strategy falls under the larger *Family Choices* agenda, and specifically aims at improving the recruitment and retention of the child care workforce. Other major components of the Workforce Stability Strategy include providing increases to grant funding for higher wages, launching or expanding various training initiatives, providing funding and scholarships to encourage the study of early childhood education, and a public awareness campaign highlighting careers in child care (Province of Manitoba 2010c). The instruments vary widely from direct funding provision, to training programs and an informational campaign. It is clear that all of these instruments form part of a larger policy mix design, of which the Retirement Benefits Regulation is but one component.

C. Child Care Curriculum: Child Care Regulation Amendment (223/2011)

Addressing another commitment under the *Family Choices* agenda, in 2011 the Manitoba government enacted a regulatory change requiring that child care centres have an approved curriculum statement for both their preschool and infant programs. The introduction of play-based curricula was designed to enhance the quality of programming within licensed child care centres. Although effectively a quality assurance and pedagogical initiative, it was still captured under the licensing standards in the regulations.

The regulation amendment is particularly noteworthy in its extremely limited content, leaving the actual development of the curriculum requirements to occur post-enactment. The regulation consists of the addition of two clauses under the licensing requirements for child care centres, one requiring the preschool curriculum statement to be in place by December 31, 2011 and one requiring the infant curriculum statement to be in place by July 1, 2013 (Province of Manitoba 2011a). This timeline was specifically built in with the understanding that government would work in conjunction with licensees to develop the curriculum statements for each centre.

Although the language in the regulation is quite specific (centres must have an approved curriculum statement), it does not speak to the standards, requirements or content of the curriculum statement. I would argue that the real content and language around this policy initiative was in fact not found within the regulations, but in the curriculum framework documents and in the curriculum statements themselves. The curriculum statements were cooperatively developed between licensees and civil servants, using the frameworks designed by government following enactment of the regulation. The two frameworks, one for preschool programs and one for infant programs, are both titled *Early Returns*. Based on child development research, *Early Returns* was created by MELCC in conjunction with other provincial government departments, MCCA, and post-secondary institutions offering programs in early childhood education (Manitoba Early Learning and Child Care 2011). What differentiates MELCC's approach in this policy initiative is the cooperative content development underlying the whole process. The *Early Returns* frameworks are not directive, rather the flexible language serves to guide licensees through a process of curricular development that allows them to reflect on their existing programming. *Early Returns* states at the outset that the curriculum framework is designed to "help you develop your curriculum and write a statement that describes it" (Manitoba Early Learning and Child Care 2011:1). The frameworks provide current research in various areas of child development and then pose questions to the child care provider about ways in which their programming might relate to that research. In this way, the language of the initiative is flexible, allowing for a post-regulatory cooperative approach to content development.

Similar to the Child Care Safety Charter, *Early Returns* was a single initiative approach to policy design, aimed at a specific objective of improving the quality of child care programming. It was guided by informational resources and supported by provincial staff, but was not designed as part of a larger policy mix.

VII. DISCUSSION

In this study, three Manitoba child care regulations were examined to determine the micro-level policy design within and among them. The calibrations considered included the process of content production, the

flexibility of the language and the instrument environment within which the regulation sits. The findings are summarized in the table below.

Table 2: Micro-level policy design in three child care regulations

Regulation	Content production	Language	Instrument environment
Child Care Safety Charter (53/2010)	Consultative approach prior to enactment	Moderately flexible	Supporting instruments only
Child Care Worker Retirement Benefits Regulation (20/2011)	Government-directed	Specific	Policy mix design
Child Care Curriculum (223/2011)	Cooperative approach following enactment	Specific in the regulation, but flexible in supporting instruments	Supporting instruments only

Despite the common use of regulation, the three initiatives were quite different in their intent: health and safety, funding, and quality assurance. The content production of the policy initiatives also varied from a pre-regulatory consultative approach, a government-produced approach and a post-regulatory cooperative approach. The variation in this regard may be a reflection of the differences in the subject matter, the need to respond to the particular situation of each licensee or perhaps simply the time and resources required.

In terms of the language of the policy initiatives, the degree of flexibility also showed some variability. The Child Care Safety Charter language appeared in both the statute and the regulation, and in combination set out the basic structures for the new regulatory requirements. The language afforded some degree of flexibility to ensure that all licensees would be able to comply. The Retirement Benefits Regulation contained very specific language with almost no room for flexibility. It provided formulas for the calculation of supports and set out the eligibility conditions for retirement benefits. The child care curriculum language was specific in the regulation, but contained no details as to the

actual content. The content and language was therefore to be found primarily in the framework documents designed to guide licensees in meeting the new regulatory requirement for curriculum statements. The language therein was highly flexible, affording licensees the opportunity to reflect their programming in the development of their own curriculum statement.

In terms of policy mix, only the Retirement Benefits Regulation was specifically designed to work as part of a larger strategy involving complementary initiatives and instruments. The other two regulations each functioned more as a primary instrument supported by other instruments, all within a single initiative.

Overall, the findings demonstrate the variability that can exist in a single instrument, in one sector, enacted in a similar time period. This suggests that despite a regulatory implementation style, Manitoba's child care policy still affords a degree of design 'space' at the micro-level that is not centered on the question of instrument choice. This variability challenges the rigid classification of regulation within some traditional theories of policy design, and may support the proposition that instruments can be somewhat substitutable (Howlett 2004) or that they can be designed in such a way as to produce cross-elasticity (Trebilcock and Hartle 1982). The degree to which regulations can be calibrated in terms of their internal design would suggest that strict instrument classifications provide only part of the picture in policy instrument definition.

Another important and related area suggested by Howlett (2004) is the need for the analysis of changes in implementation style. How these preferences for particular policy instruments shift over time may provide both scholars and practitioners with improved understanding of policy design. It would seem that one such mechanism for change would be an alteration to the macro-level governance arrangement within a sector. And contemplation of such a shift for Manitoba's child care system may be occurring. In 2015, Manitoba launched a commission to review and redesign the province's child care system, including the development of options for "universally accessible, licensed early learning and child care" (Province of Manitoba 2014b). It is too soon to speculate as to the recommendations that may come from such a commission, but should it result in a change to the macro-level governance arrangement for child care, this may necessarily bring about opportunities for a new policy

implementation style. In the absence of a shift in governance arrangement, policymakers should look to micro-level calibrations as an opportunity for innovative policy design.

VIII. CONCLUSION

This study explicitly questions the limitations of existing policy design theory, suggesting that it fails to capture design that occurs in the absence of instrument choice.

Employing a nested model of policy design in an examination of child care governance in Manitoba, this paper suggests that policy design in this sector reflects a preferred regulatory implementation style embedded within a legal governance arrangement. In analyzing three recent examples of Manitoba child care regulations, the findings demonstrate intra- and inter-instrument variability in three aspects of micro-level instrument calibration: content production, flexibility of language and the instrument environment. This variability among the regulations suggests that policy design occurs at the micro-level, even in instances where instrument choice may be lacking. While instrument definition provides the contours of policy means, greater attention to micro-level policy design within a nested model may afford practitioners more creative space in the practice of public administration.

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