

The Space *in* the Rules: Bureaucratic Discretion in the Administration of Ontario Works

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One of the central lessons taken from the work of Michael Lipsky on street level bureaucracies is that street level bureaucrats make policy. Two resulting broad public policy concerns are the impact of street level decision making on public policy and the impact on citizens' access to public services. This article reports on a study of the views of Ontario Works' case managers on the nature of bureaucratic discretion in the setting of a highly rule bound provincial income assistance programme in Canada. The focus of this article is on case managers' interaction with contradictory and complex policy directives. An argument is developed that in such a restrictive policy setting, meeting the goals of unswerving policy implementation and citizen access to public services may work at cross purposes.

Keywords: Bureaucratic discretion, policy implementation, Ontario Works.

Introduction

One of the central lessons taken from the work of Michael Lipsky on street level bureaucracies is that street level bureaucrats make policy (Prottas, 1979; Lipsky, 2010; Durose, 2011). As front line workers engage with complex eligibility and service delivery rules, and as they respond, with limited resources, to the contingent lives of service users, they develop routines and practices which ration services (Prottas, 1979; Lipsky, 2010). Two resulting broad public policy concerns around this use of discretion are the impact of street level decision making on public policy (altering, extending or subverting policy intents), and the impact on citizens' access to public services (arbitrary and differential application of regulations).

Lipsky's study of front line workers is representative of an interest in the study of policy implementation from the street level, often referred to as a bottom-up focus on implementation. Recent scholarship has focused on changes to the nature of discretion under performance and outcome measures, risk management and other features of New Public Management (Evans and Harris, 2004; Taylor and Kelly, 2006; Brodtkin, 2011a; Fletcher, 2011; Sawyer and Green, 2013; Hoyle, 2014). Other studies have examined the nature of the relationship between citizens and the state as reflected in bureaucratic encounters between front line workers and service recipients in settings of financial constraint and increased need (Rowe, 2002; Hermans and Declercq, 2003; Maynard-Moody and Musheno, 2003; Dubois, 2010).

This article reports on a study of front line workers who administer a provincial income assistance programme in Ontario, Canada, called Ontario Works. The study explores case managers' analysis of their own spaces for exercising discretion and the ways in which

they make use of that discretion. In engaging front line workers directly about the nature and use of discretion, a clear picture emerges of the considerable opportunity for *rule discretion* (Taylor and Kelly, 2006) in Ontario Works, even in the midst of a proliferation of rules.

Income assistance programmes in Canada are cost shared with the federal government. The 1995 federal budget was a watershed moment in the neo-liberal restructuring of social services in Canada. This budget cut federal transfer payments to the provinces for health, education and social services, and reconfigured legislated mandates for income assistance into block funding with the removal of standards which restricted provincial activities such as workfare. The provincial response to both cuts in funding and devolution of policy responsibility included restructured social assistance systems (Baker Collins, 1998). In Ontario, under the Progressive Conservative government, social assistance benefits were cut by 21.6 per cent in 1995, followed several years later by a complete restructuring of social assistance, including the introduction of workfare, a complex, automated application process, increased surveillance of recipients, limitations on appeals and a new regulatory regime (Workfare Watch, 1999; Herd and Mitchell, 2003; Mosher *et al.*, 2004). Under the Liberal government (elected in 2003), marginal policy changes to social assistance included small cost of living increases, the removal of the complicated two step application process and changes to earnings reductions and asset levels. These changes have been largely cosmetic. The primary infrastructure of the workfare programme, including the continual proving of eligibility and work required in exchange for benefits, remains largely intact.

Dimensions of discretion and impacts of its use

The examination of bureaucratic discretion, as a dimension of the study of policy implementation, is concerned with determining the congruence between policy as written and policy as implemented. Factors which have been part of the study of bureaucratic discretion include front line work conditions, institutional arrangements and treatment of recipients. As this study focuses more particularly on the nature of bureaucratic discretion in relation to policy rules, the literature review will focus on various understandings of rule discretion (Taylor and Kelly, 2006). Taylor and Kelly (2006) proposed a helpful distinction between value discretion, task discretion and rule discretion, defined as the discretion in organisational rules, legislative rules and policy directives.

Discretion as interpretation, or space in the rules

At one level, discretion in decision making is simply the exercise of judgement in applying a standard (Handler, 1986; Carroll and Siegel, 1999; Evans and Harris, 2004; Stivers, 2007). In the case of income assistance programmes, such as Ontario Works, a set of complex rules around eligibility and programme requirements are applied to individual cases. Those who interpret the rules decide which rules apply in situations where there may be different but equally valid interpretations of those rules (Sandfort, 2000; Evans and Harris, 2004). In addition, although rules may be standardised, client needs and lives are not, and so some exercise of judgment is necessary, even desired (Handler, 1986; Howe, 1991; Brodtkin, 1997; Carroll and Siegel, 1999). In situations where there is a gap between law and social reality, discretion allows for the adaptation of policies to

individual circumstances and to changing conditions (Hermans and Declercq, 2003). This intended discretion provides a necessary flexibility which assists in policy implementation (Matland, 1995; Hermans and Declercq, 2003). Maynard-Moody and Musheno describe the situation of street level workers as 'rule saturated but not rule bound' (2003: 10). This dimension of discretion might be called *the space in the rules*.

Discretion as space outside the rules

There is also a dimension of discretion in the literature which has been called unintended or unauthorised discretion (Hill and Hupe, 2002). One conceptualisation of unintended discretion sees discretion as existing in those spaces which the rules do not cover. Dworkin described discretion as 'the hole in the doughnut . . . an area left open by a surrounding belt of restriction' (1977: 31), and, similarly, Hawkins described it as the 'space between the rules' (Hawkins, cited in Heinen and Scribner, 2007). Sometimes the space outside the rules is created by front line workers as they deviate from, subvert, modify or break the rules (Howe, 1991; Maynard-Moody and Musheno, 2003; Lipsky, 2010; Brodtkin, 2011b). Action of this nature by front line workers, sometimes called a workaround, may use discretion in ways which are responsive to the underlying intent of the policy and on other occasions in ways that prevent intended outcomes (Campbell, 2011). The potential for arbitrary implementation leading to legal inequality (Hermans and Declercq, 2003) is explored more fully below.

Important impacts of the exercise of bureaucratic discretion

It follows from the existence of bureaucratic discretion that there will be variation in how policy is interpreted and implemented by street level bureaucrats (Peck, 2001; Rowe, 2003; Radey, 2008; Hoyle, 2014). A central concern which arises in response to the exercise of differential bureaucratic discretion is democratic accountability for policy. The decisions of street level bureaucrats take place in private, one on one interactions, and front line decision makers are not accountable in the same way as visible policy makers (Sandfort, 2000; Evans and Harris, 2004; Sossin, 2005; Lipsky, 2010; Pires, 2011). This dimension of unaccountable policy making may create a gap between policy intentions as stated in legislation/regulations and policy as implemented (Protas, 1979; Jewell and Glaser, 2006; Heinen and Scribner, 2007; May and Winter, 2009; Lipsky, 2010; Brodtkin, 2011b). Hill and Hupe (2002) argue that the importance of consistent implementation rests in the upholding of public values.

A second concern around the exercise of discretion is that the rationing of services undertaken by street level bureaucrats alters the terms of access to benefits and categorises clients in ways that have the potential to lead to unequal treatment. Legal scholars have particularly taken up the concern around due process and equal treatment of citizens (Dworkin, 1977; Handler, 1983; Pires, 2011). From a rights perspective, bureaucratic neutrality and the uniform application of rules is a shield against political interference, favouritism and exercise of moralising judgements (Handler, 1986; Sandfort, 2000; Sossin, 2005; Pires, 2011). From a citizenship perspective, scholars have been concerned that street level bureaucrats act as gate keepers of access to public benefits (Protas, 1979; Maynard-Moody and Musheno, 2003; Rathgeb Smith, 2003; Lipsky, 2010). Street level workers have been found to exercise moralizing judgements that distinguish between

worthy and unworthy clients (Handler, 1983; Morgen, 2001; Lipsky, 2010), and in ways that discriminate based on level of disadvantage and race (Keiser, *et al.*, 2004; Stivers, 2007; Radey, 2008; Fletcher, 2011; Soss, *et al.*, 2011; Watkins-Hayes, 2011).

Policy conflict and ambiguity

The equivalence of consistent policy implementation with democratic accountability is also questioned by those who study policy implementation. While street level workers are held responsible for policy variation and for differential use of discretion, the argument is also made that the contradictory and conflictual nature of policies are to blame for inconsistencies in the application of rules. Discretion is driven not only by the need to interpret the rules but by the need to negotiate between competing priorities and contradictions within the rules. In contested policy domains (and income assistance would certainly be such a domain), policy makers will embed compromises and conflicts/contradictions they could not resolve in the legislation itself (Protas, 1979; Maynard-Moody and Musheno, 2003; Brodtkin, 2006; Jewell and Glaser, 2006; Piore, 2011). Policies may also be incomplete, ambiguous, contain indeterminate language or fail to cover all contingencies (Ricucci, 2002; Evans and Harris, 2004; Brodtkin, 2006; Lipsky, 2010; Piore, 2011).

Matland (1995) suggests that policy conflict (disagreement about goals and/or means) and policy ambiguity (lack of clarity about goals and/or means) are central features in the study of policy implementation. Policy conflict and ambiguity can also be negatively correlated when conflict is curbed by increased ambiguity (Matland, 1995). These issues are a reminder that the policy context in which discretion is exercised is a key factor in analysing its use. As aptly stated by Meyers and Vorsanger:

Unresolved political conflicts . . . often result in ambiguous policy directives, poorly supported programmes, or policies with deeply flawed theories of action. Incremental reforms arising from political compromise often create dense systems of overlapping organizational responsibility and poorly coordinated or even contradictory policy directives. (2003: 253)

In such a context, the authors question what criteria should be used to judge the exercise of discretion (Meyers and Vorsanger, 2003). In the face of conflicting and ambiguous policy, is adherence to policy design the only measure of democratic accountability? Matland (1995) argues that taking statutory language as a starting point may fail to consider broader public concerns (for example, poverty reduction). Hogwood and Gunn (1984) argue that some policies incorporate a poor understanding of the problem to be solved. So a straightforward equation of congruent policy implementation with democratic accountability is complicated by policy conflict, ambiguity and poor design. This concern is taken up more fully in the discussion.

A study of Ontario Works case manager views of discretion

This article reports on Ontario Works case managers' perceptions of the spaces in which they exercise bureaucratic discretion and the limits on that discretion. Discussions of bureaucratic discretion can differ greatly on the definition of and conditions under which discretion is exercised. Conceptions of bureaucratic discretion are often drawn

indirectly from interviews with case managers about programme administration and resource constraints. This article draws on interviews with case managers in which they are asked directly about their perception of spaces for the exercise of bureaucratic discretion in their implementation of Ontario Works.

Policy implementation in this setting refers to provincial legislation which sets forth the Ontario Works (OW) programme, detailed provincial policy directives which set rules for implementation and local business processes which describe practices in areas that have been left to local area discretion. The Ontario Works programme is heavily rule bound with some estimates suggesting there are 800 plus rules (Commission for the Review of Social Assistance in Ontario, 2011). In the OW programme, case managers occupy a distinctive front line role in the implementation of policy. They determine income eligibility, enforce workfare requirements and deliver additional services to support employability. The OW case manager role remains a generalist role, although in some offices case managers focus primarily on eligibility and others on employability (the term case manager does not denote supervisory responsibilities over other staff).

This study began as a pilot project to seek case manager input on the meaning of bureaucratic discretion in support of a larger project proposal. The important insights of case managers about their own discretion prompted an expansion of the project to include additional case manager interviews. In total, fifteen OW case managers working in southern Ontario were included in the study. Case manager interviews were conducted during 2012 and 2013, with the bulk of interviews taking place in the summer and autumn of 2013.

Methods

Qualitative interviews were conducted with case managers focusing on bureaucratic discretion itself. The interview began with questions about the nature of their responsibilities and the length of their employment with OW and about the rewarding and difficult aspects of their work. The central focus of the interviews was on questions about areas of policy implementation where case managers were able to exercise discretion as well as areas where policy regulations and/or supervision limited the exercise of discretion (in the interview, the term professional judgement was used in place of bureaucratic discretion, which is not a familiar term for case managers). Case managers were also asked to describe contradictions and complexities in their work and differences in the exercise of discretion that they observed among case managers in their workplace.

Case managers were recruited both formally and informally. Local social service agency personnel were asked to share information about the study with OW case managers who may be interested in participating and an email recruitment letter was sent to case managers through a regional director of the programme. Ethical approval for the research was obtained from the McMaster University Research Ethics Board. The case managers interviewed for this study are representative of a range of years of experience in case management, and also a range of types of case management. About one third of the case managers had been working in OW for less than five years, about one third had worked for OW for between five and ten years, and about one third had worked for OW for over ten years, with two case managers working in income assistance very long term at seventeen and twenty-seven years. There were a variety of case manager roles represented among the participants, ranging, for example, from income eligibility and employment

counselling, to community outreach, training and working with particular populations, including the homeless, young people and those with addictions and mental health issues. As expected, case managers who had worked longer had also held a greater variety of case manager positions. The variation in the roles primarily related to the setting in which case management took place (in community settings or the OW office), and the population of recipients (a general population or a specific population) with which the case manager interacts. All of the case manager roles focus either on eligibility, employability or both, and all of the case managers interviewed had experience in both areas. The greater length of experience and the variety of experiences among the case managers reflects more extensive knowledge of OW policy implementation.

The case managers who took part in the study work in regional offices in southern Ontario. Since case managers report on both sanctioned and unsanctioned uses of discretion, the specific offices from which case managers originated is not being shared to protect confidentiality. Local practices alluded to in the interviews could have the effect of identifying local offices, so care has been taken to avoid identifying practices specific to a particular OW office. Campbell's (2011) warning about potential repercussions for case managers from management responses to unsanctioned use of discretion is well taken.

Case manager interviews were audio recorded, transcribed and analysed using the MAXQDA qualitative data analysis programme. Interviews were analysed both inductively and deductively. Inductive analysis examined interview texts for metaphors used in describing discretion and descriptions of policy areas which both allowed and limited discretion and descriptions of how discretion was used. Interviews were also analysed deductively drawing on street level bureaucracy theory, particularly discussion of the spaces in which discretion is found. This article draws on the following themes found in the interviews: metaphors used for the presence and absence of discretion, principles used in exercising discretion, examples of policies where discretionary spaces exist and examples of 'black and white' policies where they do not, the nature of discretionary space and the discretionary tools available, and the complexities and contradictions in the policies.

Findings: 'There's wiggle room in every decision'

The case managers interviewed for this study describe a setting in which there are numerous spaces for the exercise of discretion and these spaces exist within and across the many rules which govern OW implementation. A statement from one case manager illustrates this milieu: 'There's wiggle room in every decision.' Case managers used numerous metaphors to describe the spaces in the legislation: *wiggle room*, *leeway* or *fuzzy lines*. There were also areas where policy directives were seen as *stringent*, *mandatory* or *black and white*, including areas such as income levels, asset restrictions and deductions for employment and child support. In this section, the nature of the discretionary spaces used by case managers will be described in more detail.

Discretion in the legislation

For case managers, discretion begins in the policy legislation (specifically the policy directives and regional business processes described above). For example, case managers generally agreed that there is significant room for discretion in two areas: first, in outlining

the participation agreement, which spells out the required participation in work-related activities, and, second, in issuing discretionary benefits. The following statements from case managers describe the discretion in the legislation.

The directives themselves uh there are some portions that say uh 'we must' do something and then there are a lot of other portions that say 'we shall' so we have some grey area there.

We do follow legislation, there are circumstances that we have discretions and these are case-by-case situations. The legislation still has the backup; there is freedom in the legislation so-to-speak as well.

So that's one benefit that I issue daily that is under my discretion um and it can fit under the legislation in many different ways we just have to be creative in how you issue it.

Right so I mean there is a general framework that's there. We are bound by pretty particular legislation it's just that there tends to be grey areas within that legislation . . .

In describing the nature of their relationship to the directives, the case managers describe an overall framework that also includes very particular direction. The spaces they describe for manoeuvring are not wide open, but small spaces (wiggle room) that exist in wording that suggests some flexibility ('we must' versus 'we shall'), case-by-case situations that require a unique interpretation and specific benefits for which there is case manager discretion in delivery.

One example of a small space for discretion exists in the exercise of verification. Case managers describe discretion in how closely they verify expenditures for discretionary benefits. Less strict verification may create space for the creative use of funds that meets contingent circumstances in client's lives that have not been anticipated by policy directives. There is also discretion in verification of information required from clients, for example, doctor's notes and/or letters from landlords. And when information is missing, a case manager could suspend a client's cheque if there is required information outstanding, or a case manager could give the client extra time to gather the information. Discretion exercised in these small spaces can make a difference to clients in securing and maintaining eligibility.

Control of information is another specific tool that can be expanded or contracted by case managers. Case managers can inform clients of the discretionary benefits available to them or issue them only if the client knows to request them. Case managers can let the client know of their rights to appeal decisions and/or encourage them to read the policy directives which are publically accessible, or they can withhold this information.

Discretion is also a function of learning on the job how to interpret legislation, what the spaces in the rules are and how and when to make use of them.

I constantly am looking at policies, they're bookmarked. I honestly I'm probably reading, I probably read six to eight policies a day to cross reference because there's so many . . . it's something like eight hundred and ninety-four and they're looking at trying to condense it and trying to make it simpler.

One case manager expressed her dismay at recent changes in policy directives regarding a discretionary benefit because they disrupted her carefully constructed

understanding of the discretion available to her: 'I'm so uncomfortable I don't know how far I can bend the rules on this one yet.' Case managers develop over time a sense of the discretionary spaces available as they interpret the policy regulations.

Discretion enlarged or created by case managers

Case managers also describe their own role in building on legislative discretion. Case managers describe themselves as stretching or expanding (*push the boundaries, work the situation, manoeuvre, bend*) the room available in the legislation. This kind of discretion might be called using the spaces in the rules.

I think you'll hear the answer too again that being case managers we are masters of reading legislation so if there's any way of us finding a loophole we'll find it and we'll use it.

So there's just little things like that that we can kinda, you know, not ignore but stretch a little.

It's that human aspect like, you know . . . single mom with four kids and you know whatever people do, things like that around Christmas time to help people out like, they're saying 'oh I need-none of my kids have winter clothing allowance' oh ok well and then you're looking, we can't issue winter clothing allowance but I've seen here that they've never been issued bed funding. Oh well do you need any beds? and the clients can kinda gauge what you're getting at, 'oh maybe ok', . . . I don't feel necessarily comfortable doing that cause down the line what if they really need the bed or something right? So it's not something that I typically do but I do know that that's how caseworkers find a loophole.

'There's wiggle room in every decision' describes a general milieu in which one can veer to the more demanding and often literal interpretation of policy directives or create some wiggle room.

Discretion bounded by supervision

Discretion is also shaped by directions from, and interactions with, supervisors. Case managers describe some aspects of regulation where monitoring by supervisors is more stringent and/or there are audit requirements that must be met. In other areas, supervisors encourage the use of discretion. Supervisors, for example, can grant discretion in response to case managers seeking permission to expand discretionary room in special cases, sometimes called 'a one-off'.

There's always the opportunity to go and speak with the supervisor or manager and talk about what you are seeing and what the local policy is and whether or not there is any flexibility in that.

They [supervisors] always tell us to 'live in the grey', that's actually their big word, and use 'reasonableness', live in the grey and apply reasonableness. So the directives are there more or less as a guideline.

The reference above to applying 'reasonableness' draws from wording in numerous OW policy directives where recipients are expected to make 'reasonable' efforts to comply

with regulations and to participate in work activities and where administrators may make exceptions on 'reasonable' grounds.

In their description of their own use of discretion, case managers describe a complex interplay of directives, case manager decision making and supervisory decision making. Discretion which exists in the legislation can be expanded or contracted by both case managers and supervisors. The majority of case managers interviewed would use more discretion than they do if it were available to them. For a few case managers, discretion is the default stance, and they describe themselves as essentially unrestricted. These case managers tend to work in community settings, for example on an outreach team or a unit which works with the homeless, where they are given more discretion by virtue of their role in working with a population in more complex circumstances.

There were several case managers (a minority of those interviewed) who would restrict their discretion more than their supervisors would; that is they were uncomfortable with the level of discretion they were encouraged to use. This discomfort was expressed regarding two areas of policy implementation. In the first, some case managers were uncomfortable with being directed not to follow up on indications that more than one client of OW was living in a particular housing unit (shared housing is a means of coping with housing benefits that are well below average rents, but if reported could result in a reduction in income support). Another area of discomfort was around a flexible approach to appointment times for clients. Several case managers reasoned that prompt attendance at appointments was good training for employment and should be a requirement.

Differential use of discretion

Case manager discretion exists on a continuum, and case managers in this study primarily compared themselves to other case managers who are less inclined to use discretion. These other case managers were described as *sticklers, restrictive, dictatorial or stringent*. One example referenced by several case managers was the issuing of bus tickets. Some case managers apply a strict requirement of a minimum number of medical appointments per week to qualify for bus tickets, others simply require a note from a doctor, and yet others use a 'broad determinants of health' approach and issue bus tickets based on the benefits of socialising or visiting the library.

Case managers in this study described peers who they have observed being more stringent in their decision making than the legislation requires. It was clear from case manager comparisons that case managers can forego discretion, that is, they can refuse to use the discretion that exists in the legislation. Just as workers described black and white legislation, they also described black and white implementation of legislation.

You can take it very literally that the person has to be out every day, you know, from 8:30 to 4:30 looking for work and applying for jobs but that's insane.

You're kind of setting the client up for failure because if I impose on you ten different things you have to do and for whatever reason you are not able to meet what I've imposed on you then I will cut you off for three to six months.

One could posit the use of discretion on behalf of the client as positive (with the purpose of ensuring access to benefits) or negative (restricting access to benefits). The

negative use of discretion would then mean using discretionary spaces to restrict access. The case managers in this study, however, imply that the rules themselves are restrictive enough that there is no need to look for discretionary space to punish clients. A literal interpretation of the regulations will achieve this.

Case managers recognise and speak of the impact on recipients of differences in interpretation. Unequal treatment results when some case managers interpret the legislation more generously for clients than others, and so persons with generous case managers receive better services.

That's another issue that we have is that we all interpret it differently so . . . um we are given quite a bit of ability to make decisions and often that doesn't always benefit because we're not applying everything evenly to everybody.

That's the thing, it's well known which workers are strict, which workers are a little bit more flexible. We all work within the guidelines.

Differential use of discretion and the potential for unequal citizen access to benefits is one of the two policy concerns identified at the outset. When case managers in this study speak of their differential use of discretion, they refer primarily to the spaces in the legislation and how they are read differently. They speak far less about working conditions, such as high caseloads or performance measures. They are somewhat concerned about resource constraints, but in their description of differential discretion they focus primarily on the policies and the spaces in the rules.

Policy ambiguity and conflict

OW case managers were asked about the contradictions and complexities they face in their daily work. Although case managers make some references to the gap between policy goals and resources, the majority of concerns referred to the complexities and contradictions within the policies themselves. Case managers report ambiguous policy directives that require reading and re-reading to decipher whether a directive is something they *may* do or something they *must* do (one case manager described how she had one week after returning from maternity leave to catch up on fifty-two policy changes during that year, both provincial and local). In complex cases, managers are cross referencing a number of different policies and find these policies are in conflict with each other.

It's at many times contradictory. So you'll read a piece of legislation that tells you to do one thing and another piece of legislation that tell you to do exactly the opposite so again, navigating your way through all the rules in such a way that at the end of the day you can say that you at least if not benefitted some client at least not made their lives any worse than they are.

And then there's local policies too. But when they write the business processes they write them on top of each other instead of sort of . . . so you may read in one business process that this person is eligible because of this, that, and the other thing or but then if you go to a different you know area they're not eligible because of this. So it's like they're written and but never sort of gone back through to sort of clean them up.

A strong theme in case managers' comments on contradictions is differences in interpretation between case managers and supervisors. Case managers will read and interpret policy directives according to their best understanding, but be told that local interpretation is different than their understanding or has changed. One case manager who had her interpretation overruled stated:

'No, no, now it's like this' . . . and six months from now it'll be the opposite so it's almost like sometimes you feel like you're damned if you do, damned if you don't. You can't ever be right. It's always the opposite for certain . . . the rules change a bit um cause it may . . . it depends on who's in charge that day or what's happening and that kind of thing.

Case managers also report policies that are ambiguous and internally contradictory, policy directives that work against policy intents, standardised rules that do not work in non-standardised situations and local policy practices that they view as contradicting provincial policy intents. One case manager described the irony in situations where provincial or federal politicians have become involved on behalf of clients who have come to their constituency office for assistance:

What drives me crazy is when I get a call from an MPP's office complaining about something that's black and white by the provincial directive. I'm like 'I'm a caseworker. You're a politician. You have way more power to change this than I do. This is what your people, your elected officials, have passed through in parliament. I'm just acting it out'.

The policy ambiguity and conflict that case managers face in their implementation of Ontario Works are an important part of the context in which they work and must be taken into account in making judgements about OW case managers' use of discretion.

Conclusion: the tensions between policy implementation and citizen access

The space in the rules

Ontario Works is one of the most rule bound settings a front line worker might encounter in policy implementation. However, as demonstrated in this study, more rules do not mean less discretion. Discretion exists in the proliferation of rules, in the contradictions and complexities in the rules and in the policies that embody political conflict and ambiguity. This study has demonstrated that front line workers have a complicated and contradictory relationship with the policies they are required to implement. Often the policies, not the clients, are found wanting.

We have a woman who's just been evicted out of her house, she has four little kids you know, she's used up all her community support, what are we doing with her? Those are the grey ones you know. You have to figure out a way.

Here the case manager is indicating a contradiction between the overall policy goal (to ensure a woman with four small children has food, clothing and shelter) and the literal interpretation of the rules (she has exhausted her eligibility for a discretionary benefit that could assist her with rent). The case manager will 'figure out a way'.

In these situations, discretion is not the usurping of policy room but the use of room needed to resolve internal policy contradictions. Should the weight of democratic accountability be born exclusively by policy implementers when inconsistent policy implementation may simply be 'a product of the inevitable messiness and incrementalism of real world politics' (Hill, 1997: 37)?

Citizen access and democratic accountability

Although the conflictual and ambiguous nature of some policy has been acknowledged, the general principle that democratic accountability is best achieved by policy implementation that is congruent with policy intent remains operative. The underlying concern is that citizen access to benefits to which they are entitled should not be arbitrarily undermined by street level bureaucrats (Hill, 1997). Congruent policy implementation is assumed to improve citizen access to benefits. The primary concern is that moralising judgements applied by front line workers may both restrict access to benefits and differentially reward some clients while punishing others.

A scenario which this reasoning does not take adequately into account is when the policies themselves make citizen access to benefits difficult. Ontario Works, for example, although intended to provide income support for the very poorest, makes proving eligibility difficult and complicated. The policy directives provide many tools by which to find citizens ineligible. They may be found ineligible, for example, for missed appointments, missing information or insufficient effort to find employment. As noted, all that is needed to prevent access to benefits is the literal application of the rules (for example, see Stivers, 2007). In the example given above, does the case manager bend the rules to ensure the young woman with four children is housed, or follow the policy directives to the letter (which would mean the loss of her housing)?

Those who judge policy on larger goals, like poverty reduction and meeting human need, find that policies can systematically deny access. Lakhani (2003), for example, measures the implementation of the United Kingdom's Social Fund against the goal of poverty reduction and finds the outcomes disappointing and inadequate. Rowe (2003) describes the Social Fund as a system that fails to respond to individual need and systematically restricts access, but meets the goal of fiscal restraint. In a rule saturated policy regime like that of the Social Fund or OW, the goal of citizenship access to benefits and the goal of consistency between policy intent and policy implementation work at cross purposes. In this kind of policy context, consistency in implementation works against citizenship access since the programme is designed to make access difficult. Access to benefits is ensured only by front line workers using the gap between the policy directives and their implementation.

Those who equate democratic accountability with congruent policy implementation under these conditions would need to be satisfied with implementation which denies access, or at least makes it very difficult, since that is the intent of the policy. In these settings, democratic accountability is not in service to enable citizen access to benefits. Democratic accountability is in service to constrain costs and induce labour market participation, thus ensuring a benefit programme is a last resort. Those who equate democratic accountability with some larger goal, such as poverty reduction or providing care for those in desperate circumstances, would define democratic accountability as

accountability to this larger goal. Policy implementation which is incongruent but which improves access would be seen as democratically accountable.

Hill (1997: 383) makes an excellent point about the normative dimensions implicit in the debate about implementation above and suggests the discussion of implementation does not capture the broader concerns around democratic accountability.

If we want to have a debate about accountability by all means let us have one – after all the issues about the need for new approaches to public accountability are of enormous importance – but let us not confuse attempts to analyse how policies are put into practice with such a debate.

In a restrictive policy regime, if the intent is to have democratic accountability to ensure citizen access, a focus on congruent policy implementation will not get us very far. A more fruitful approach to differential discretion might come from greater transparency in the system and fewer rules so that clients and their advocates can understand and challenge differential decisions that are made about access. Non-profit social service agencies, community legal clinics and self-advocacy groups can provide an important support in this challenge. In a restrictive policy regime, improvement in citizen access will not come from changing the nature of bureaucratic discretion.

This article has provided a window on the perceptions of OW case managers in southern Ontario of the spaces in the rules for the exercise of discretion. It is acknowledged that in a voluntary recruitment process there may be a tendency for those case managers who are prepared to discuss their work with a researcher to also be those who are more generous in their use of discretion on clients' behalf. The case managers who participated, however, were able to provide a description of a more stringent application of the directives on the part of their colleagues. The insights of the case managers interviewed provide a reminder of the importance of the policy context and the recognition that policy dilemmas, which are downloaded to the implementation stage, compel the use of discretion. In such a setting, particularly in a rule bound punitive policy regime, consistent policy implementation may work against citizen access to public benefits.

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