

Watchdogs wading in: Ontario's Legislative Officers in Public Policy Development

by

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Paper presented at the 2012 Annual meeting of the Canadian Political Science Association, Edmonton, Alberta, Friday, June 15th, 2012.

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In Ontario, there are seven Legislative Officers reporting to the Assembly and contributing to the workings of government by providing information, flagging emerging issues, proposing solutions, and identifying points of vulnerability. Officers of the Legislative Assembly, or of Parliament at the federal level, are responsible for generating some of the hot topics of the day and they work tirelessly behind the scenes to effect change more discreetly on a regular basis. These actors and their offices play a significant role on major policy proposals and reforms ranging from privacy protection in the energy grid, public safety legislation at the G20, and newborn health screening. Within the Parliamentary system, the Legislative Officers influence both public policy and public perception. They provide a valuable resource for opposition parties, hold the government to account, and provide a voice for the public interest. They are part ally and part advocate, and given the impressive breadth and material impacts of their work, it is surprising that Ontario's Legislative Officers are not better known among the public and government alike.

The Legislative Officers are typically considered independent watchdogs holding the government to account and they do not have a clear mandate to propose policy changes. However, Ontario's Legislative Officers have used the tools at their disposal, and created some new ones, to influence changes in government policy. I will argue that Legislative Officers are becoming part of the structure that develops public policy. In so doing, they influence policy in their fields of expertise and help the government manage the complexity and sophistication of the public's policy needs. Therefore, an examination of government and politics that leaves out the contribution of these actors does not offer a complete picture of the policy process.

Overview

The genesis for this paper was a broad question about the ability of government to “keep up” with the complexity of the world today.¹ My first encounter with Ontario's Legislative Officers, beyond their inclusion in occasional news headlines, occurred during a series of introductory group meetings where their innovative work was striking. Noticing their absence in the literature and discussion of public policy development in the months that followed, I arranged individual meetings with five of the province's Officers to explore their roles further. What followed was in depth discussions on the ways in which Legislative Officers influence public policy and how they contribute to the government's ability to manage the policy requirements of a complex world.

This paper inserts the study of Legislative Officers into a discussion of public policy development. I first provide a background on Legislative Officers and a summary of key arguments in favour of and against their role in the Parliamentary system. I then provide a brief overview of the formal public policy process as it has been developed in contemporary academic literature. To expose the influence of the Legislative Officers in the policy process, I present interviews with five of the Legislative Officers: the

¹ The temporality in question, “today,” is interchangeable with the “twenty-first century” or “our age,” referring generally to the constellation of forces collectively known as globalization and neoliberalism.

Environmental Commissioner of Ontario, the Auditor General of Ontario, the Information and Privacy Commissioner, the Provincial Advocate for Children and Youth, and the Ontario Ombudsman. In addition to highlighting their role in the policy process, these excerpts reveal the personality and perspective of Ontario's Legislative Officers. Sharing their stories is a preliminary attempt to generate discussion on their place in Ontario's Parliamentary government and their evolving role in the policy process.

Ontario's Legislative Officers

Legislative Officers, and their federal equivalents, the "Parliamentary Officers," have recently been noted in popular media and academic literature. Their new public profile has emerged along with a number of new, or redefined, officers reporting to Parliament at the provincial, territorial and national level.² According to Paul Thomas, "Officers are a relatively obscure feature on the Canadian constitutional landscape, and the label 'officer of Parliament' has been used loosely and inconsistently."³ In general terms, Thomas notes the "title 'officer' is ambiguous," but Officers tend to share certain defining features:

Officers of Parliament are independent, accountability agencies created first to assist Parliament in holding ministers and the bureaucracy accountable and, second, to protect various kinds of rights of individual Canadians. But officers of Parliament are also bureaucracies in their own right, and they possess significant authority and influence within the policy and administrative processes of government.⁴

Thomas explains that in addition to the obvious "officers of parliament"—speakers, clerks, librarians and administrators of parliament—there exists a second class of officers independent of the Executive to varying degrees, serving Parliament as an accountability function as well as protecting and serving the Public.⁵ Officers of Parliament are first and foremost non-partisan and their mandates set out varying statutory powers, such as the ability to investigate, compel evidence, or enforce recommendations.

The Officers of Parliament and the Legislature have been studied in a variety of ways. They are notable for their policy work that strikes at the minutia of public life. Whether it is implementation of a single policy or broad systemic trends, the Officers deal with tangible subject matters and their work has real, often material, consequences for the Public. The Legislative Officers also do timely work. They have a degree of flexibility to interpret their mandates, and they can work publicly or privately depending

² David Pond, "The Impact of Parliamentary Officers on Canadian Parliamentary Democracy: A Study of The Commissioner of the Environment and Sustainable Development & The Environmental Commissioner of Ontario," (2006-2008): 2; See also David E. Smith, "The People's House of Commons: Theories of Democracy in Contention," Toronto: University of Toronto Press, 2007: 1.; See also Thomas, Paul G. "The past, present and future of officers of Parliament," *Canadian Public Administration* 46 (2003): 1.

³ Thomas, "The past, present and future," 1.

⁴ Thomas, "The past, present and future," 1.

⁵ Thomas, "The past, present and future," 6.

on their office design and priorities.

John Reid, former federal Information Commissioner of Canada, highlights independence as the critical feature that a Parliamentary Officer must “strive and fight” to achieve.⁶ He contrasts “...the image of a power-mad Commissioner and his minions, hell-bent on beating government institutions and bureaucrats into submission” by focusing on the nature of their independence, and the responsibility they have to convince the government of their non-partisanship.⁷ Oonagh Gay and Barry Winetrobe examined Parliamentary Officers to identify their core features, highlighting the special relationship between the Officer and Parliament that exists independent of the Executive.⁸ Michael Smith argues that the appointment process is the most important feature of the Legislative Officers as it ensures the “requisite independence from the government of the day so that it [the office] can retain its legitimacy as an agent of Parliament.”⁹

Concerns have been raised in studies of Legislative Officers about their impact on democratic accountability and their role and capacity with respect to the centralization of power in the Executive. Donald Savoie, Canada Research Chair in Public Administration and Governance, warned that a growing field of Parliamentary Officers at the federal level would not be sufficient to repair the problems in the political system.¹⁰ David Pond summarizes the academic critique of Parliamentary Officers, stating that their influence “is a symptom of Parliament’s decline” and their high public profile demonstrates a democratic malaise in Canada’s political culture.¹¹ The independence of the Officers has become synonymous with their objectivity, and this has also made it difficult to challenge their work. With the backing of the public, the Executive is often forced to adopt recommendations from the Officers. According to Pond, the same evolution of independent officers is taking place provincially.¹² He cites the negative publicity from a report by Ontario’s Environmental Commissioner because it “... should shame the executive into action.”¹³ Pond notes how the current Environmental Commissioner has re-interpreted his mandate to expand his Office’s authority by claiming to speak on the “state of public concern.”¹⁴ As with all Legislative Officers, the Environmental Commissioner has interpreted his Legislative framework in order to do the kind of work he finds appropriate. Pond concludes that a Parliamentary Officer may not support the principles of responsible government.¹⁵ Savoie agrees, arguing that officers “have neither the mandate nor the legitimacy to play more than a supporting role.”¹⁶ They have simply made the Parliamentary system worse by creating a patchwork of roles and responsibilities without “clarifying how they fit into the constitutional framework.”¹⁷

⁶ John Reid, “Independence as a State of Mind,” *Canadian Parliamentary Review* (2003): 17-20.

⁷ Ibid.

⁸ Oonagh Gay and Barry K Winetrobe, “Officers of Parliament— Transforming the role,” (2003): 7.

⁹ Michael Smith, “Keeping Independent Officers of the Legislature: The Institutional Design of the Appointment Process under the Condition of Majority Government,” (2010): 3.

¹⁰ Donald Savoie, “Donald Savoie on the crisis of Canadian government,” *The Globe and Mail*, 20 May 2008.

¹¹ Pond, “The Impact of,” 3.

¹² Ibid.

¹³ Pond, “The Impact of,” 27.

¹⁴ Pond, “The Impact of,” 43.

¹⁵ Pond, “The Impact of,” 56.

¹⁶ Donald Savoie, “The broken chain of answerability; Proliferating officers of Parliament and layers upon layers of rules threaten our democracy,” *Globe and Mail*. 17 May 2008.

¹⁷ Ibid.

Legislative Officers also effect relationship dynamics and roles in elected politics and the bureaucracy. Public servants find themselves in a difficult position because they will “never be as credible as officers of Parliament” and legislators are equally challenged because they must balance the expert advice of multiple officers that contains potentially conflicting implications.¹⁸ Thomas concludes, “It is not clear how such entities fit within the existing constitutional framework of ministerial responsibility and administrative accountability... The fundamental issue is how best to hold these independent, accountability agencies themselves accountable for their performance.”¹⁹ It is clear that opinions conflict on the benefits of officers for the parliamentary system, but this does not reflect on whether and to what extent they are involved in policy development.

An Overview of Public Policy Development

One aspect of the Legislative Officers that has been surprisingly unexamined is their role in the policy development process. In fact, the relationship between Legislative Officers and public policy makers is relatively absent from public policy literature. In formal models of public policy development, the policy process is generally conceived as a series of stages.²⁰ The specifics may vary, but there is general consensus around a sequential process that takes place in the creation of public policy. The process generally has a direction and destination, as well as opportunity for feedback to earlier stages. Michael Howlett categorizes the policy development stages according to agenda setting, policy formulation, decision-making, policy implementation and policy evaluation.²¹ Howlett finds that policy development can be studied by individual stages or in terms of relations.²² In either instance, the literature claims to make sense out of the policy development process and to be able to draw patterns within it.²³ For instance, Howlett indicates that you can specify certain kinds of conditions and make predictions.²⁴ Given their extensive network of both ad-hoc and formal interactions that tend to shape the conditions in which policy is made, it is surprising that the Legislative Officers do not figure more prominently in discussions of public policy development.

Legislative Officers and Policy Development

¹⁸ Savoie, “The broken chain of answerability,” *Globe and Mail*, 17 May 2008.

¹⁹ Thomas, “The past, present and future,” 1-2.

²⁰ Michael Howlett, “The Policy Process,” 383-400, *The Handbook of Canadian Public Administration*, Second ed, Ed. Christopher Dunn. (Toronto: Oxford University Press: 2010).; See also Michael Howlett and M. Ramesh, *Studying Public Policy: Policy Cycles and Policy Subsystems*, Second ed. (Toronto: Oxford University Press, 2003).

²¹ Michael Howlett, “The Policy Process,” *The Handbook of Canadian Public Administration*. Second ed. Ed. Christopher Dunn (Toronto: Oxford University Press, 2010), 381.

²² Howlett, “The Policy Process,” 396.

²³ Ibid.

²⁴ Howlett, “The Policy Process,” 397.

After providing a brief theoretical background on the Parliamentary and Legislative Officers, I have chosen to insert the complexity of their opinions, personalities and stories into the idea of public policy development. I approach the topic from a different direction in order to question the model used in literature on public policy while also contributing to the dialogue on Legislative Officers and their place at Ontario's Legislative Assembly. The work that follows reveals the province's Legislative Officers as complex agents of change, working at different levels and with varying resources and strategies. Though they may not be the primary or first driver of policy change, their role and presence is significant in Ontario's Parliamentary landscape.

Karim Bardeesy is a good place to start examining the role and influence of Legislative Officers in the policy process. Bardeesy has been the Director of Policy and Research for the Premier since 2011, in addition to his previous work for the Minister of Finance and as a Reporter and Editorial Writer for the *Globe and Mail*. He is also an instructor at the University of Toronto's School of Public Policy and Governance. Bardeesy acknowledges that the Legislative Officers are on the government's radar to varying degrees based on their personality, mandate and the nature of the issue. Legislative Officers can influence policy, especially when they have a high public profile, but they tend to have a tenuous relationship with the government and their opinions may differ from the government's on what constitutes good policy innovation. Bardeesy states that a "good" Legislative Officer performs a dual role, both "[using] existing tools and communicating the way the future should be."²⁵ They try to set the agenda as Ontario's current Ombudsman has, and they also try to look back retrospectively to learn from the past.

Bardeesy finds that the Ontario Ombudsman and the Auditor General of Ontario can prompt a major policy change from the government. The Ombudsman and Auditor General are Officers of the Legislature that derive their authority and power from legislation in the *Ombudsman Act* and the *Auditor General Act*, respectively. The Ombudsman oversees the administration of government services and investigates complaints to ensure government accountability.²⁶ The Auditor oversees the government's financial accounts and transactions to report on irregularities and evaluate whether public resources are well-managed with regards to the economy.²⁷ According to Bardeesy, the Legislative Officers can prompt significant change: "if [they] came out and lambasted the government, there has to be a government-wide response."²⁸ Therefore, the Legislative Officers are on the government's radar and even if they are not directly interacting on policy work, they are "invoked regularly."²⁹ The Legislative Officers are a "shadowy presence in their [the government's] lives," occasionally called upon for consultation on specific policies or issues.³⁰ This regular influence appears to be most obvious for those Legislative Officers with a defined relationship to Parliament, a large, focused mandate, and a regular reporting mechanism.

²⁵ Karim Bardeesy, Personal Interview, 11 January 2012.

²⁶ Government of Ontario, *Ombudsman Act*, last amended 2006.

²⁷ Office of the Auditor General of Ontario, "What we do," 21 March 2012.

²⁸ Bardeesy, Personal Interview, 11 January 2012.

²⁹ Bardeesy, Personal Interview, 11 January 2012.

³⁰ Bardeesy, Personal Interview, 11 January 2012.

Bardeesy describes the influence of the Auditor General, Ombudsman and Chief Electoral Officer as “quasi-judicial.” This description can be explained by the institutional structure defining the Auditor’s relationship with the government, which has enabled him to “impact accounting treatment” and trigger reforms by releasing value for money audits.³¹ Legislative Officers that have fewer institutionalized interactions with the government are employed more infrequently, but they are still consulted “as needed” to comment on “hot files.”³²

In order for the Auditor and Ombudsman to effectively influence the government, a key element of their work involves “policy framing.” For instance, by positioning their work as a “policy review,” the Legislative Officers can stay within their mandate to evaluate policies, rather than being prescriptive. While the Auditor and Ombudsman are more recognizable and directly influence the overall policy environment, an Officer’s influence can also be less direct and circumstantial. For example, if Legislative Officers produce a special report that attracts attention, this can effect the overall political environment in which policies are made.³³

An Officer’s personality is also influential. For instance, a cooperative or confrontational style will change the relationship between the government and their Office. Under Marin, the Premier’s Director of Policy and Research finds that the Office of the Ombudsman has changed significantly. He attributes the change to the “force of personality,” and Marin might agree based on his extensive experience in “watchdog” roles. Bardeesy argues that the Officers generally do things that “frustrate” government, at times bordering on “unreasonableness.”³⁴ It is up to the individual Officers to strike a balance between the combative and passive styles favoured by the opposition and government. Bardeesy references Dr. Ann Cavoukian, the Information and Privacy Commissioner as a leader in her field and an influential Officer. The Information and Privacy Commissioner IPC is established by three pieces of privacy legislation, the Freedom of Information and Privacy Protection Act and along with Acts regulating health and municipal information. The Information and Privacy Commissioner upholds standards of open government and the protection of personal privacy in government agencies and decisions.³⁵ Bardeesy says that Dr. Cavoukian has become “a thought leader in privacy regulation.” whose creativity has helped to inspire policy development.³⁶

At times when the public profile of an issue is sufficiently high and a Legislative Officer is held in high regard by the government, consultation with Legislative Officers is not unprecedented. For instance, the Ombudsman conducted an investigation into the origin and communication of Regulation 233/10 passed by the province prior to the G20 summit in Toronto in June 2010.³⁷ The Ombudsman’s one hundred and twenty-five page report *G20 Summit: Caught in the Act* released in December 2010 heavily criticized the

³¹ Ibid.

³² Ibid.

³³ Ibid.

³⁴ Ibid.

³⁵ Government of Ontario, *Environmental Bill of Rights*, 1993.; See also Government of Ontario, *Freedom of Information and Protection of Privacy Act*, last amended 2011.; See also Government of Ontario, *Municipal Freedom of Information and Protection of Privacy Act*, 2007.

³⁶ Bardeesy, Personal Interview, 11 January 2012.

³⁷ Ombudsman Ontario, “Ontario Ombudsman to Release Report on G20 Security Regulation: December 7,” 1 December 2010.

province's use of the Public Works Protection Act and the province's decision to sponsor and not publicize the regulation, calling it "unreasonable and grossly unfair... unnecessary and probably illegal."³⁸ The Ombudsman called the regulation "of dubious legality," and said it had led to mass violations of civil rights.³⁹ The G20 investigation and recommendations from the Ombudsman exemplify a Legislative Officer whose work was factored largely into a government's policy reform. Following the report, the province agreed to review the Act and the specific regulation. In fact, the Ministry of Community Safety and Correctional Services adopted all of the Ombudsman's recommendations.⁴⁰

Although he admits the Ombudsman's Report influenced the government's policy reforms post-G20, Bardeesy cautions that the Legislative Officers "are not the first place for good policy advice" because it is "not their job to be helpful."⁴¹ Generally, the government's proactive agenda doesn't include policies that the Legislative Officers push for but it may feel under pressure to adopt them.⁴² Bardeesy notes that the practical nature of the relationship between the legislative officers and the government creates a certain dynamic for their interaction: "they always want more" based on the nature of their job.⁴³ Bardeesy suggests that the nature of the Officers has also changed, at least with respect to the Ombudsman, compared to Ontario's first Ombudsman under the government of Bill Davis in 1975. The role was originally "seen to be more on the cooperative side" because the first Ombudsman Arthur Maloney was a former MPP, which meant he brought a different perspective to the job.⁴⁴ The current Ombudsman, in contrast, is "seen as the [other] extreme."⁴⁵ Another explanation for this perception is that the media refuses to pick up on good news when it comes from a Legislative Officer. Jim McCarter, the Auditor General of Ontario, says that when he gives praise to the government at his press conferences, he normally receives eye-rolling and "nobody listens," even though he insists on keeping up the practice.⁴⁶ Therefore, Legislative Officers may try to influence public policy on multiple levels and with varying tactics, but only certain approaches are likely to catch the attention of the media.

The Environmental Commissioner of Ontario Gord Miller explains why this is the case, arguing that a Legislative Officer cannot be prescriptive for government policy because they are required by law to criticize it.⁴⁷ The Environmental Commissioner of Ontario is established by the *Environmental Bill of Rights* in order to review the Bill and its implementation by Ministries, as well as to promote and assist the public in using the Bill of Rights. The Environmental Commissioner also presents reports on Energy Conservation and Greenhouse Gases, as well as annual and special reports.⁴⁸ Miller

³⁸ André Marin, "Caught in the Act – Ombudsman's Remarks," 7 December 2010.

³⁹ Ombudsman Ontario, "G20 Summit: Caught in the Act," 7 December 2010.

⁴⁰ Karim Bardeesy, Personal Interview, 11 January 2012.; See also Linda Williamson, "Ombudsman finds G20 regulation of 'dubious legality'," *Ombudsman Ontario*, 7 December 2010.

⁴¹ Bardeesy, Personal Interview, 11 January 2012.

⁴² Ibid.

⁴³ Ibid.

⁴⁴ Ibid.

⁴⁵ Ibid.

⁴⁶ Jim McCarter, Personal Interview, 18 May 2012.

⁴⁷ Gord Miller, Personal Interview, 30 April 2012.

⁴⁸ Government of Ontario, *Environmental Bill of Rights*, 1993.

argues that the goal of a Legislative Officer is to influence legislation.⁴⁹ To accomplish this task, the Environmental Commissioner can make requests for investigation, use the *Environmental Bill of Rights*, and release media reports. Miller says the government does not regularly consult him but he has occasionally suggested to whom and where they can look for ideas. He reflects on his attempt to strike a balance between positive and negative feedback in his reports, saying that he tries to provide favorable reviews for good pieces of legislation.⁵⁰

While neoliberal values of restraint have constrained the public service, Miller argues that there is merit in having Legislative Officers who can provide “independent, thoughtful advice” and a second data point for bureaucrats and decision-makers.⁵¹ In fulfilling this public policy role, Legislative Officers help the government to make decisions in an increasingly complex world. Although they may have little authority to enforce their recommendations, Miller describes the action of Legislative Officers as “infusing expertise” into the system.⁵² The nature of this expertise will vary by Office and over time. For instance, the Auditor General has a long-standing relationship with Parliament that changes as issues and budgetary constraints ebb and flow. For Irwin Elman, the Provincial Advocate for Children and Youth, there is an entirely new policy field to be shaped from an independent perspective, and this will become infused with Elman’s professional experience in the children and youth sector as a counselor, educator, youth worker, and policy developer.⁵³ Ultimately, the credentials required to secure their jobs and the required support of an all-party committee in the Legislature, tend towards the appointment of Officers who know a great deal about their field and who can lend great informational resources to the elected officials at the Legislature.⁵⁴

Based on his experience as Environmental Commissioner, Miller states that his office can influence policy in two ways. At times, the Environmental Commissioner is able to work with strong assistance from the public to analyze what is already on the public policy agenda. At other times, issues are raised that are not otherwise talked about, which involves “building a lexicon” of concepts and issues when they are not fundamentally understood by the public and MPPs.⁵⁵ For instance, Miller has had to “build a concept of biodiversity into the public policy literature and dialogue.”⁵⁶ By constantly focusing on the biodiversity agenda, Miller says the “absurdity of the status quo”—Ontario’s biodiversity management—“became increasingly apparent.”⁵⁷ Likewise, Ontario’s Information and Privacy Commission has also had to build new privacy concepts in public discourse.⁵⁸ By establishing a basic level of knowledge and vocabulary on specific policy issues, Legislative Officers enable actors—public, media, and politicians—to understand and engage with the topics they seek to influence.

⁴⁹ Miller, Personal Interview, 30 April 2012.

⁵⁰ Ibid.

⁵¹ Ibid.

⁵² Ibid.

⁵³ Office of the Provincial Advocate for Children and Youth, “Meet the Provincial Advocate,” 2009.

⁵⁴ Miller, Personal Interview, 30 April 2012.

⁵⁵ Ibid.

⁵⁶ Ibid.

⁵⁷ Ibid.

⁵⁸ Ann Cavoukian, Personal Interview, 17 April 2012.

The Environmental Commissioner's work demonstrates how important it is for Legislative Officers to capture the public's attention. For example, Miller's efforts to publicize the plight of Ontario's polar bears show how he needed to frame the issue to provide new information. Facing environmental degradation due to climate change, the polar bears needed human help to survive. Miller addressed and studied this issue, attempting to challenge established assumptions about the way ecosystems are structured, what animals eat and where they are located.⁵⁹ Since the general population was not well informed on the topic, Miller's work was informative and, in turn, beneficial to the issue and contributed to the public's and the government's shifting opinion. In this instance, a Legislative Officer's work attracted public attention to a specific topic and led to change in government policy.

Miller finds that some issues catch on easily with the public, such as snapping turtle protection that resonated and resulted in a petition with 11,000 signatures.⁶⁰ Yet, there is much work to be done by continuing to "build ideas," for instance on the biodiversity and ecosystem crisis because although climate change is restructuring species and ecosystems by introducing invasive species with damaging effects, the issue is not figuring prominently on the public radar.⁶¹ These examples demonstrate that each case is unique. The timing of an investigation and the release of an Officer's report are just two of a number of factors and they are complicated by an issue's public profile, for instance whether an issue is featured in discussions of current affairs or news headlines, the government's openness to change on relevant policies, and to what extent the public and policy-makers are informed about the issue.⁶² The Commissioner also uses what the Office has termed "the expressed involvement of the public" to get its point across.⁶³ Miller argues that Legislative Officers must understand the "metric of importance" used by politicians to weigh public attention and to a lesser extent media attention in order to gauge the importance of a given issue: "The more public attention and media attention, the more MPPs will believe it is important."⁶⁴ Likewise, the Auditor General puts it bluntly, "if no one knows you, nothing happens." As the Environmental Commissioner's experience suggests, when an issue is on the public radar, the likelihood of a government policy response increases considerably.

Like Bardeesy, Miller finds that the Legislative Officers have changed with time. The role and importance of the Legislative Officers has evolved along with the complexity of our society because structures of government were built hundreds of years ago in simpler times when people, goods and information moved at a far slower pace. In an "accelerated" world, "important decisions are made in short periods of time" and policy-makers are trying and adopting new ways of coping.⁶⁵ Miller suggests that governments have tried to rely on increasing bureaucratic sophistication despite facing deep resource constraints.⁶⁶ Another way that governments have tried to "keep up" with their decision-making demands has been to create independent specialists who will offer

⁵⁹ Miller, Personal Interview, 30 April 2012.

⁶⁰ Ibid.

⁶¹ Ibid.

⁶² Ibid.

⁶³ Ibid.

⁶⁴ Ibid.

⁶⁵ Ibid.

⁶⁶ Ibid.

non-partisan advice to the Legislature. Miller sees himself in this role acting as “back up for MPPs.”⁶⁷ With the help of his Office, he produces reports that serve as a resource for elected officials, bureaucrats and the public, and makes himself available by providing one-on-one meetings, caucus briefings, and informational lunch sessions for MPPs and staff of each party.⁶⁸

Despite the hard work of the Legislative Officers on major policy files, their work rarely receives credit. In the case of the Environmental Commissioner, Miller states that he also does not seek recognition.⁶⁹ For instance, working behind the scenes with one of the party leaders led to an overhaul of the liquor bottle deposit system. Miller recalls having honest discussions with the MPP in which he admitted that tetra-packs were not recyclable, as was generally understood to be the case. Later, when the MPP was Chair of the Standing Committee on Government Agencies, the LCBO was chosen for review and the Environmental Commissioner was called in. Miller admits that he sharply criticized the deposit return program.⁷⁰ Soon after, the Premier announced that the Environmental Commissioner was right and committed to changes. Miller explains that the government had already negotiated a new policy and this gave them the opportunity to blame the Environmental Commissioner’s testimony for provoking the change.⁷¹ As this example demonstrates, policy changes are often seen only in their final stages where they can easily be perceived as a coherent output from the government. However, there are often complex chains of interaction, timelines and political motives that link up to generate the visible public outcomes.

In introducing this paper, I argued that the classic model of the policy cycle in standard public policy textbooks does not allow for this kind of complexity. One issue in this model is that the product—a policy outcome—appears as a simplified output from a standardized process, which the previous example helps to illustrate. Miller finds that another limitation of the formal policy cycle is that the program evaluation stage is usually neglected.⁷² The Environmental Commissioner, like some of his independent counterparts, helps to perform this evaluative role. Miller admits that his role as a Legislative Officer is a bit normative, but he balances this with the practical, remarking that “politics is the art of the possible... depending on compromises, deals made, etc.” Ideally, Miller argues, the policy process will not be politically tainted” and evaluative functions “will happen throughout Ministries.”⁷³

In terms of Legislative oversight, Ontario’s Auditor General is hugely influential due to his responsibility for financial accounting. The current Auditor General Jim McCarter states that simply knowing the Auditor exists can often be sufficient motivation for governments to do good work and take precautionary steps.⁷⁴ As Auditor General, McCarter cannot comment on the political motives behind government policy but his Office can “poke holes, discuss impacts, and sometimes indirectly criticize,” by commenting on the impact of new policies after the government makes policy

⁶⁷ Ibid.

⁶⁸ Ibid.

⁶⁹ Ibid.

⁷⁰ Ibid.

⁷¹ Ibid.

⁷² Ibid.

⁷³ Ibid.

⁷⁴ Jim McCarter, Personal Interview, 18 May 2012.

decisions.⁷⁵ The Auditor is also not permitted to propose outright alternatives, however the Auditor's reports still accomplish this task in part by highlighting policies in other jurisdictions that the government "might want to consider."⁷⁶

In November 2004, *The Auditor General Act* expanded the Auditor's mandate by adding value-for-money auditing of broader public-sector organizations that receive government grants, including oversight of colleges and universities, hospitals and school boards. The Auditor now has an impressive oversight capacity to review areas accounting for over 50% of provincial expenditures.⁷⁷ In 2004, the Auditor was given further oversight powers with the "added responsibility of reviewing proposed government advertisements funded by the taxpayer... to verify that they meet certain standards and are not tainted by partisan political interest." The Auditor's decision on advertisements applies "to all ministries, Cabinet Office, the Office of the Premier, and other such entities as may be designated by regulation" and it covers newspaper and magazine advertisements, advertisements in public spaces, radio and television commercials, and print material distributed to households.⁷⁸ With oversight on advertising, the "MUSH" sector (municipalities, universities, schools boards and hospitals) and extensive resources dedicated to value-for-money auditing, Ontario's Auditor General is groundbreaking relative to other provinces where 80-90% of work is typically dedicated to regular financial auditing.⁷⁹

In addition to the breadth of the oversight function, the Auditor also has a unique relationship with the Legislature in terms of regularly reporting to the Public Accounts Committee. Throughout the hearings on the Ornge air ambulance service, the Auditor's opinion has been highly sought by each Party. Noting the Auditor's strong influence, the government and opposition tried to win over McCarter's support for their argument to strike a Select Committee or have the investigations remain within the Standing Committee.⁸⁰ McCarter recognizes the potential dangers of this influence, which is raised by critics who caution that the independence of Legislative Officers is often misconstrued as objectivity. McCarter warns that Legislative Officers need to be careful not to sensationalize. He describes, "If there was a cup on a table with no one around, and the government says the cup was black and I say the cup was white, who do you think the public will believe?"⁸¹ This analogy highlights an important point; namely, the challenge of holding Legislative Officers accountable and ensuring their professional conduct. McCarter thinks Legislative Officers have the potential to become too powerful so they must operate with a heightened sense of responsibility. For instance, he tries to tailor his level of publicity to the profile and severity of the issue in question. He also turns down photo-ops even if they could boost his public profile, and he opts for scrums over news conferences on lower profile issues.⁸²

One way to examine the Auditor General's influence is to identify government responses relative to the Office's work such as setting up a committee on an issue while

⁷⁵ McCarter, Personal Interview, 18 May 2012.

⁷⁶ Ibid.

⁷⁷ Office of the Auditor General of Ontario, "What we do," 21 March 2012: 5.

⁷⁸ Office of the Auditor, "What we do," 21 March 2012: 9.

⁷⁹ McCarter, Personal Interview, 18 May 2012.

⁸⁰ Ibid.

⁸¹ Ibid.

⁸² Ibid.

the Auditor General is reporting on it. McCarter recalls that when his office was investigating unfunded liabilities, the government had already drafted legislation for a Minister to table on the day his report was released. By tabling a Bill in the House, a Minister indicates that the government is taking the Auditor's recommendations seriously and they will avoid some criticism by committing to solutions.⁸³

According to McCarter, Legislative Officers help the government to manage the complexity of contemporary society by acting as a resource: "We have the independence and the information they want, when they want it."⁸⁴ Their knowledge and accessibility is enhanced by their "sense for high risk areas" that comes with years of expertise and credentials noted previously by Miller.⁸⁵ Comparing the importance of the Auditing function today to twenty years ago, McCarter argues that it is not only that fiscal challenges are greater today, but also that the public is better informed and educated, thus creating greater pressure for accountability and efficient service-delivery.⁸⁶ Likewise, Sahir Khan, a senior colleague in the office of federal Parliamentary Budget Officer Kevin Page, agrees that the desire for information among the public is great. The public wants to have another data point to choose from as if they were comparing prices before making a purchase. The Legislative Officers fulfill a public desire for more information and the efficient, cost-sensitive delivery of public services.⁸⁷

In my interview with Ontario's Information and Privacy Commissioner, the Commissioner Dr. Ann Cavoukian argued that Legislative Officers are unquestionably more important today than they were in the past. "I don't think the government can keep up," states Cavoukian.⁸⁸ With social media, increased connectivity, wireless access and networked infrastructure, the widespread risks exceed the government's monitoring and regulatory capacity. Cavoukian saw these transformations taking place and was unsatisfied with the judicial system's response, which was "too little too late."⁸⁹ Her solution was *Privacy by Design (PbyD)*, a proactive privacy-protection model based on embedding privacy protections at the design stage to avoid the need for investigation and remedy. *PbyD* uses privacy as "a default setting" to ensure accountable business practices and to minimize data leakages and identity theft.⁹⁰ Its influence is indisputable. The model is rooted in a system of translatable principles that are now being taught and implemented internationally in both public and private sectors. Cavoukian states that Internet technology was a natural place for *PbyD* to start because it "permeates everything," but the model also extends far beyond, and has become the international standard behind the international Framework for Privacy Regulation in 2010 in Jerusalem and the European Union's new privacy regulations.⁹¹

Ontario's Information and Privacy Commissioner highlights an interesting challenge that governments are facing as they attempt to manage complexity and how this has required considerable response from her office. As governments find themselves

⁸³ McCarter, Personal Interview, 18 May 2012.

⁸⁴ Ibid.

⁸⁵ Ibid.; See also Miller, Personal Interview, 30 April 2012.

⁸⁶ McCarter, Personal Interview, 18 May 2012.

⁸⁷ Sahir Khan, Personal Interview, 11 January 2012.

⁸⁸ Ann Cavoukian, Personal Interview, 17 April 2012.

⁸⁹ Ibid.

⁹⁰ Ibid.

⁹¹ Ibid.

incapable of keeping up, they try to “find backdoors into people’s lives by increasing surveillance.”⁹² This tactic combined with growing public complacency is occurring across jurisdictions, argues Cavoukian.⁹³ Speaking out on public privacy, Ontario’s Information and Privacy Commissioner has also waded beyond her provincial responsibilities into federal affairs to oppose Bill C-30, the ‘Protecting Children from Internet Predators Act.’ Although the bill for warrantless access is technically beyond her mandate, Cavoukian spoke out along with her federal counterpart Jennifer Stoddart to voice concerns about “surveillance by design.”⁹⁴ She engaged the public, encouraged concerned citizens to write to their MPs and took on the Minister of Public Safety Vic Toews in national media.⁹⁵ Cavoukian’s work on privacy protections and outspoken advocacy has helped raise the profile of the Information and Privacy Commissioner’s role in public policy.

Provincially, Cavoukian has had substantial influence over the design of the government’s mandated smart meter program. Smart meters establish two-way wireless communication between homes and utilities, creating “personal energy usage profiles” that are vulnerable to third-party access and abuse.⁹⁶ Flagging the risk at the outset of smart-grid planning, Cavoukian voiced her concerns to then Minister of Energy Brad Duguid and the major utility companies. Cavoukian is confident that her work prompted a directive from the Minister ensuring embedded privacy protections and cooperation from Toronto Hydro and Hydro One.⁹⁷ In this example, the Information and Privacy Commissioner proactively identified the risks of the proposed smart meter policy and used her influence and expertise to ensure a safe program was introduced.

The Provincial Advocate for Children and Youth Irwin Elman also reveals that the public will sometimes call upon the Legislative Officers to raise the profile of issues so that the government must respond. The Provincial Advocate reports to the Legislature as an independent voice for children and youth, identifies systemic problems and responds to complaints related to the ‘Child and Family Services Act’ and the ‘Education Act.’⁹⁸ In November 2011, the Provincial Advocate worked with youth to hold hearings at the Legislative Assembly on the experience of current and former crown wards. The Advocate was open to ideas from the province’s eighty-three hundred crown wards and those previously in care who wanted to highlight their experiences and reform the welfare system.⁹⁹ In May 2012, a report entitled *My REAL Life Book* was released with recommendations and a timeline for fundamental changes.¹⁰⁰ Immediately responding to the Report, the Minister of Children and Youth announced a provincial working group that would include children from care, and government MPP Theresa Piruzza recommended an annual day for “Children and Youth in Care.”¹⁰¹

⁹² Cavoukian, Personal Interview, 17 April 2012.

⁹³ Ibid.

⁹⁴ Ibid.

⁹⁵ Ibid.; See also CBC News, “Toews surprised by content of online surveillance bill,” 18 February 2012.

⁹⁶ Ibid.

⁹⁷ Ibid.

⁹⁸ Office of the Provincial Advocate for Children and Youth, “Mandate and Scope,” 2008.

⁹⁹ Fiona Taylor, “Young People in Care Call for Fundamental Changes to Child Welfare System,” 14 May 2012.

¹⁰⁰ Laurie Monsebraaten, “Ontario’s Youth Leaving Care hearings call for fundamental change to child welfare system,” *The Toronto Star*, 14 May 2012.

¹⁰¹ Ontario Newsroom, “Statement from Minister of Children and Youth Services On Youth Leaving Care Report,” 14 May 2012.

Elman reflects on the role of government in the policy development process by opening it up to a question about the appropriate role of government. Rather than focusing on the nature of the public policy process, Elman suggests that an important question remains on what ought to be the role of government. Like Miller, he finds that increasing budget deficits have changed the role of government by imposing an economic logic and reducing bureaucratic resources. Elman argues that government is re-determined by how these changes are made and society's most vulnerable are disproportionately affected by the outcomes.¹⁰² Elman makes a valuable contribution to the public policy literature by considering not only the ends of the process but also the purpose of government itself. Rather than explaining the role or influence of a Legislative Officer in the policy process, Elman explains that policy decisions and change happen "when someone is uncomfortable."¹⁰³ Thus, policy change is about working from one crisis to the next, managing what's on the public radar in order to get re-elected.¹⁰⁴ Because it is largely motivated by politics, the government lacks the desire to do generative policy work.¹⁰⁵ In order for a Legislative Officer to trigger change, Elman demonstrates that they must find creative ways to overcome challenges including a persistent unwillingness to ask for help, and unwillingness to put the lives of those concerned at the centre of policy-making.

The Province's first Advocate for Children and Youth has gone about his work in a different manner than the other Legislative Officers, stating that he doesn't have the opportunity to choose winnable policies or find instant media attention like the higher-profile Ombudsman or Auditor.¹⁰⁶ Elman uses the media with caution and he works patiently and creatively to develop relationships and push the government to deal with major issues. Recently, he has focused on the plight of Crown wards in the *Youth In and Leaving Care Hearings*. The hearings and report put "young people at the centre of policy development."¹⁰⁷ The government was pressured to acknowledge Crown wards as its children, with each party being a parent and the Legislature being their House. With over seven hundred participants, two hundred written submissions and oral presentations, and a deputation from the Minister of Children and Youth Services, the Hearings and report attracted media attention.¹⁰⁸ The Committee, with Elman's assistance, reversed traditional roles to actively insert into the policy process. It remains to be seen whether the Ministry's working group will do the kind of "generative" policy that Elman and the youth have demanded.

The Advocate's job is not to resolve the problems facing children and youth in Ontario, rather it is to raise the profile of issues to the point where there is willingness among government members to respond with solutions and to get key players working together.¹⁰⁹ Elman says this requires stopping the government from behaving institutionally, and encouraging it to behave "humanly."¹¹⁰ His unique methods

¹⁰² Irwin Elman, Personal Interview, 18 April 2012.

¹⁰³ Ibid.

¹⁰⁴ Ibid.

¹⁰⁵ Ibid.

¹⁰⁶ Ibid.

¹⁰⁷ Ibid.

¹⁰⁸ Ibid.

¹⁰⁹ Ibid.

¹¹⁰ Ibid.

sometimes run up against the bureaucracy because his Office thinks and acts differently, which he finds can be destabilizing.¹¹¹ Equally, he is somewhat limited by his mandate, which permits only the tabling of an annual report to the Legislature rather than whenever his Office sees fit.¹¹²

Ontario's Ombudsman André Marin has taken a different approach since taking on the role in April 2005. His Office's major impact now happens through systemic investigations that have delivered recommendations for the government on topics including revamping the lottery and gaming system, expansion of newborn screenings and repealing the Public Works Protection Act. Marin argues that the key to his office is delivering "cogent, reasonable recommendations that the government can adopt... this is where we have our greatest impact."¹¹³ One indication of the Ombudsman's influence is that, as with the Auditor General's work, organizations will shadow the office's work when they are known to be under investigation. The Ombudsman also relies on moral suasion to convince people its policy recommendations need to be implemented. Marin admits that there would be "little impetus" for change without the "unassailable fact-finding" and public pitch of his reports.¹¹⁴ That's why the ability to table reports and attract significant media attention has helped raise the current Ombudsman's public profile and policy influence.

On the Ombudsman's role in managing the complexity of governing, Marin finds that his Office acts as "a radar for emerging problems" that are highlighted in the Ombudsman's annual report.¹¹⁵ The Ombudsman helps to keep politicians informed about trends and ultimately, helps to drive change within government.¹¹⁶ Institutionally, the Ombudsman's Office is strengthened by a solid mandate and operating structure. For Marin, this structural base is combined with a high degree of visibility—his personality and tactics have been honed since starting in oversight in 1996.¹¹⁷ Marin says government administrators won't change their ways if you maintain a low profile, however he insists his work is not "a game of gotcha."¹¹⁸ Understanding that publicity enables public scrutiny, Marin changed the Ombudsman's reporting system in 2005 to have public announcements of investigations and more frequent reporting.¹¹⁹ Shortly after, Marin launched the Office's first investigation through the new Special Ombudsman Response Team (SORT) on the question of whether parents of children with severe disabilities were being forced to rely on children's aid societies to obtain residential care for their children. Eventually sixty-five children were returned to their parents' custody.¹²⁰ The SORT report in May 2005, "Between a Rock and a Hard Place," was straightforward and Marin describes the process as "an exercise in public advocacy" that was able to leverage the power of persuasion.¹²¹ Marin says the results were life-

¹¹¹ Elman, Personal Interview, 18 April 2012.

¹¹² Ibid.

¹¹³ André Marin, Personal Interview, 18 May 2012.

¹¹⁴ Ibid.

¹¹⁵ Ibid.

¹¹⁶ André Marin, "Letting the Watchdog off the Leash," *The Journal of Public Sector Management*, 39 (2009), 1.

¹¹⁷ Marin, Personal Interview, 18 May 2012.

¹¹⁸ Ibid.

¹¹⁹ Marin, "Letting the Watchdog," 2-3.

¹²⁰ Marin, "Letting the Watchdog," 3-4.

¹²¹ Marin, "Letting the Watchdog," 4.

saving, “a very sobering realization and one that reinforces the power of the Ombudsman’s Office to influence governance for the benefit of its citizens.”¹²²

Final Remarks

“You can outsource services but you can’t outsource accountability.”¹²³

In this paper, I have argued that Legislative Officers are influential in the public policy process, despite typically being perceived as watchdogs rather than contributors to policy development and change. Legislative Officers contribute to policy development through varying techniques, bringing their own personalities and resources to bear on government policy. After briefly introducing some common ways of thinking about Legislative and Parliamentary Officers, I provided a short categorization of the policy process as presented by Michael Howlett and Ramesh in *Studying Public Policy: Policy Cycles and Policy Subsystems* and by Michael Howlett in “The Policy Process.” Although I chose to begin with a simple overview of the policy process, the ensuing discussion of the Legislative Officers exposes the complexity of policy development. In order to do so, I center the activity, personality and policy influence of Ontario’s Legislative Officers, drawing primarily from interviews with five Officers and the Premier’s Director of Policy and Research.

Critics highlight the lack of accountability and tremendous power in Legislative and Parliamentary Officers. At times, the controversy and media frenzy set off by their activity and reports overshadows the quality and intent of their investigations. From another perspective, Legislative Officers are facing other challenges experienced by the bureaucracy as they contend with limited budgets, centralized power in the Executive, and a public that is not necessarily tuned into provincial politics. However, the Legislative Officers in Ontario have demonstrated their relevance by staying connected to the public and developing shifting alliances with bureaucrats and politicians, media, and interest groups. As governments struggle to keep up with a complex world, the expertise and non-partisanship of a Legislative Officer makes an important contribution to policy development. As the interviews reveal, the Legislative Officers also work in the public’s interest by intervening when the government risks infringing on public interests, including privacy, the environment, or efficiently delivered public services. Donald Savoie may be correct in calling for the roles and responsibilities of Officers to be clarified.¹²⁴ The kind of sustained attention this project would require has the potential to shine more light on the policy functions these actors play and the benefits they reap for the Parliamentary institutions of which they are part.

¹²² Marin, “Letting the Watchdog,” 5.

¹²³ Ann Cavoukian, Personal Interview, 17 April 2012.

¹²⁴ Donald Savoie, “The broken chain of answerability” *Globe and Mail*, 17 May 2008.

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