

Strong(er) Mayors in Ontario – What Difference Will They Make?

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Note: IMFG plans to publish this commentary on Ontario's strong mayors legislation as an IMFG Forum paper. In order to contribute to public debate about bills 3 and 39 and the use of the new powers, we have decided to make a preliminary version of the text available.

About IMFG

The Institute on Municipal Finance and Governance (IMFG) is an academic research hub and non-partisan think tank based at the School of Cities at the University of Toronto.

IMFG focuses on the fiscal health and governance challenges facing large cities and city-regions. Its objective is to spark and inform public debate, and to engage the academic and policy communities around important issues of municipal finance and governance. The Institute conducts original research on issues facing cities in Canada and around the world; promotes high-level discussion among Canada's government, academic, corporate, and community leaders through conferences and roundtables; and supports graduate and post-graduate students to build Canada's cadre of municipal finance and governance experts. It is the only institute in Canada that focuses solely on municipal finance issues in large cities and city-regions.

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Speaker Biographies

Karen Chapple is the Director of the School of Cities at the University of Toronto, where she also serves as Professor in the Department of Geography and Planning. She is Professor Emerita of City & Regional Planning at the University of California, Berkeley, where she served as department chair and held the Carmel P. Friesen Chair in Urban Studies. Chapple studies inequalities in the planning, development, and governance of regions in the U.S. and Latin America, with a focus on economic development and housing. Her most recent book is *Transit-Oriented Displacement or Community Dividends? Understanding the Effects of Smarter Growth on Communities* (with Anastasia Loukaitou-Sideris, MIT Press, 2019).

Matt Elliott has covered Toronto City Hall for 12 years, offering readers insight, analysis and lots of charts. Starting as a blogger, he now contributes a weekly column to the Toronto Star and publishes City Hall Watcher, an award-winning independent newsletter providing in-depth news and analysis focused on the city's municipal government. He also teaches journalism at Humber College and makes regular appearances on CBC Radio, Newstalk 1010 and other Toronto media outlets.

Gabriel Eidelman is Assistant Professor, Teaching Stream, at the University of Toronto's Munk School of Global Affairs and Public Policy, where he serves as director of the Urban Policy Lab, with a joint appointment at the Institute for Management and Innovation. His research focuses on cities, urban governance, and intergovernmental relations in Canada and North America, and has

been published in numerous journals, including *Cities*, *Urban Affairs Review*, and the *Journal of Urban Affairs*. He is also co-editor of IMFG's 'Who Does What' research series. In 2016, Gabriel co-led the City Hall Taskforce, which proposed changes to the mayor's powers.

Alison Smith is an Assistant Professor of Political Science at the University of Toronto. Her teaching and research interests relate to Canadian politics and public policy, including complex policy making, homelessness governance, and the history of housing policy. Her book, *Multiple Barriers: The Multilevel Governance of Homelessness in Canada* was published in July, 2022. It asks why homelessness governance is so different across the country, and argues that the fact that homelessness can be defined so differently explains many of these differences.

Zack Taylor is Associate Professor of Political Science at Western University, as well as a Fellow at the Institute on Municipal Finance and Governance. His book *Shaping the Metropolis* (McGill-Queen's University Press, 2019), compares the different pathways taken in the historical development of Canadian and American urban governance and their implications for local autonomy and democracy, equity, and urban growth. His paper with Alec Dobson, "Power and Purpose: Canadian Municipal Law in Transition," was published by IMFG in 2020.

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Executive Summary

On October 19, 2022, IMFG convened a [public panel discussion](#) entitled “Strong(er) Mayors – What Difference Will They Make?” The speakers were Karen Chapple, Director of the School of Cities at the University of Toronto; City Hall journalist Matt Elliott; Alison Smith, Assistant Professor of Political Science at the University of Toronto; and Gabriel Eidelman, Assistant Professor, Teaching Stream, at the Munk School of Global Affairs and Public Policy at the University of Toronto. The panel was moderated by Zack Taylor, Associate Professor of Political Science at Western University. The discussion and follow-up questions by the audience brought to the surface a variety of perspectives, both for and against, on the “strong mayor” provisions of the *Strong Mayors, Building Homes Act* passed by the Ontario legislature on September 8, 2022. This commentary contextualizes and summarizes the speakers’ remarks. It also takes stock of the additional provisions in the *Better Municipal Governance Act* introduced on November 16, 2022.

Strong(er) Mayors in Ontario – What Difference Will They Make?

Introduction

Zack Taylor, IMFG Fellow

Doug Ford wrote the following words after his defeat in the 2014 Toronto mayoral election:

“If I ever get to the provincial level of politics, municipal affairs is the first thing I would want to change. I think mayors across this province deserve stronger powers. One person in charge, with veto power, similar to the strong mayoral systems in New York and Chicago and LA. I would want our mayors to have strong powers but to be held accountable; if the voters don’t like the job he or she is doing, they can fire that mayor in four years. That’s how it should work.” In Rob and Doug Ford, *Ford Nation: Two Brothers, One Vision* (Toronto: HarperCollins 2016), pp. 85–86.

Now, of course, Doug Ford is premier of Ontario and his government has passed a law and accompanying regulations that, for the Cities of Toronto and Ottawa, change the mayor’s prerogatives in potentially important ways. A second bill, now being debated, would further expand mayoral powers in ways that are without precedent in western democracies. If deemed a success, the government plans to roll out the changes to cities across the province.

But what is a “strong” mayor? There is no simple answer to this question. The term itself comes from the United States, where the historical norm at all levels of government is the separation of powers; just as the president or a state governor leads the executive branch, sitting apart from the legislature, an American “strong mayor” is not a member of council. As the country industrialized and cities grew in the second half of the nineteenth century, big-city mayors accumulated a wide range of formal powers which they often used to partisan ends. By the early twentieth century, such “boss rule” was restrained as reformers passed state laws and rewrote city charters to produce something that bears similarity to what we have in Ontario and other Canadian provinces: nonpartisan local governments in which most decisions are made by council as a whole, and implementation is left to professional administrators. American experts refer to the unreformed structure as the “mayor-council” system, and reformed governments as the “council-manager” system.

Some strong-mayor or mayor-council systems remain, of course. In Chicago, “American Pharaoh” Richard J. Daley ruled Chicago from 1955 to 1976, his corrupt Democratic Party

“machine” dispensing patronage across the city, often to the detriment of minorities.¹ His cultural legacy, as seen in *Boss*, *City Hall*, and other television shows and movies, is the image of an unrestrained chief executive who heads up a separate executive branch of government, can make a wide range of unilateral decisions without consulting council, hire and fire employees and spend money at will, and reward friends and punish enemies – in short, someone who, elbows out, has the political and institutional resources to get things done. Others will point to more congenial examples. In *If Mayors Ruled the World*, political scientist Benjamin Barber portrayed former New York mayor and finance billionaire Michael Bloomberg as a benign autocrat who used wisely his discretionary powers to govern a large and extraordinarily diverse city facing complex problems.²

Both images are distant from how things have worked in Ontario and most other Canadian provinces since before Confederation, and indeed how they work in most American cities today. Ontario’s new legislation will not create Canadian Daleys or Bloomborgs. To be sure, the mayors of Toronto and Ottawa, and perhaps in the future other Ontario cities, will gain new prerogatives, however their use is circumscribed in several ways, not least by their subordination to “provincial priorities.” Ontario will have stronger mayors, not American-style strong mayors.

On October 19, 2022, IMFG held a public panel discussion entitled “Strong(er) Mayors – What Difference Will They Make?” to gain an academic perspective on these legislative changes. Each of the invited speakers provided insights on specific aspects of the law and their implications. Karen Chapple, Director of the University of Toronto’s School of Cities, discussed the inspiration for the reform, American “strong mayor” cities. Well-known City Hall journalist Matt Elliot probed how the relationship between the mayor and councillors might change. Alison Smith, Assistant Professor of Political Science at the University of Toronto, talked about the provincial-municipal intergovernmental relationship and the politics of housing policy. Finally, Gabriel Eidelman, Assistant Professor, Teaching Stream, in the University of Toronto’s Munk School of Global Affairs and Public Policy, examined the implications of the change for the relationship between elected officials and the professional administration.

This commentary follows on the event. It includes edited versions of the speakers’ remarks, along with commentary from Zack Taylor, IMFG Fellow and Associate Professor of Political Science at Western University. It also contains commentary on the subsequently introduced Bill 39, the *Better Municipal Governance Act*, which augments the strong mayor powers in significant ways.

¹ Cohen, Adam and Elizabeth Taylor. 2000. *American Pharaoh: Mayor Richard J. Daley: His Battle for Chicago and the Nation*. Boston: Little, Brown.

² Barber, Benjamin R. 2013. *If Mayors Ruled the World: Dysfunctional Nations, Rising Cities*. New Haven, CT: Yale University Press.

What is in Bill 3, the *Strong Mayors, Building Homes Act*?

The Ontario government introduced Bill 3, *An Act to amend various statutes with respect to special powers and duties of heads of council*, on August 10, 2022. The bill received Royal Assent less than a month later, on September 8. The bill amends corresponding sections of the *City of Toronto Act* and the *Municipal Act*, and also the *Municipal Conflict of Interest Act*. The legislation's short title, the *Strong Mayors, Building Homes Act*, indicates the government's association of the bill with a high-profile policy issue: the housing affordability crisis.

The legislation provides for some aspects to be fleshed out by regulation. Text of two draft regulations was released on October 3. They came into effect on November 15, the start of the new council term.

The new provisions initially apply only to the Cities of Toronto and Ottawa. However, the government may, by regulation, add other municipalities to the list. The premier has signalled that it will add "other large cities" next year.³

Importantly, the Act is not permissive. Municipalities listed in the regulation cannot opt out of the Act's application. However, the mayor is not compelled to use the new powers. Mayors may voluntarily choose not to use them, and the regulation permits them to delegate certain powers back to the council. Mayors in several Ontario cities, including Ottawa, have pledged not to use the new powers.

The provisions in the Act and regulations fall into three main categories: provincial priorities, changes to the mayor and council's relationship with the municipal administration, and changes to the mayor's relationship with council.

1. "Provincial Priorities"

A key element of the Act is the creation of a new provincial prerogative: the ability to define, by regulation, "provincial priorities." As described below, some of the new mayoral powers can only be exercised if they are deemed to "advance" a provincial priority. There are no guidelines for how general or specific the priorities may be, or on the topics to which they may pertain. In keeping with the provincial government's linking of the new powers to its housing agenda, the regulations specify two provincial priorities related to housing:

1. Building 1.5 million new residential units by 2031

³ Benzie, Robert. 2022. "Doug Ford says he'll extend strong-mayor powers beyond Toronto and Ottawa next year." *Toronto Star*. 17 Oct. <https://www.thestar.com/politics/provincial/2022/10/17/doug-ford-says-hell-extend-strong-mayor-powers-beyond-toronto-and-ottawa-next-year.html>

2. The construction and maintenance of infrastructure to support accelerated supply and availability of housing including, but not limited to, transit, roads, utilities, and servicing

The provincial government may change or add priorities at its own discretion and without consultation.

2. Changes to Council's Relationship with the Administration

A second element is the transfer to the mayor of several powers regarding the municipal administration previously exercised by council as a whole. These include the power to appoint the Chief Administrative Officer (CAO), which in Toronto is called the City Manager; to hire and dismiss senior municipal managers and the chairs and vice-chairs of agencies, boards, and commissions; and to reorganize the city's administrative structure, which is organized into functional divisions. The mayor may also direct municipal employees to "undertake research and provide advice to the head of council and city council on policies and programs of the City or of the head of council" and to undertake actions to implement them.

There are several limitations on these powers. First, the ability to hire and fire senior managers does not extend to positions which have special legal authority under provincial law. These include the Clerk, Treasurer, and their deputies, as well as the Chief Building Official; accountability officers, namely the Integrity Commissioner, Ombudsman, and Auditor General; the heads of the police and fire services; and the Medical Officer of Health. These restrictions are intended to maintain professional conduct, without political interference, of municipal elections, record-keeping, finance, public health, policing, fire protection, the application of the building code, and other functions prescribed by provincial law. They are also intended to preserve independent oversight of the conduct of the mayor and councillors.

Second, the regulation limits the power to hire and dismiss senior managers to "the highest level of senior management" in an administrative division. The mayor cannot hire and fire staff at lower levels of the organization. This limits the potential for the power to be used for patronage purposes. Third, in the interest of transparency, these actions must be communicated in writing and made public. Direction to staff must be reported to the Clerk and to the CAO. Finally, as noted, mayors may, at their own discretion, delegate the powers to appoint the CAO and hire and dismiss senior managers and board heads back to council.

3. Changes to the Mayor's Relationship with Council

The third element is the granting of new prerogatives to the mayor vis-à-vis council. As before, the mayor sits as a member of council and votes on bylaws, but now gains several new powers.

The first is the unilateral ability to create and dissolve council committees and appoint their chairs. Under the current system, Ontario cities have wide latitude to decide how to organize their council committee structure. Councils adopt these systems by bylaw. Under the new provisions, mayors may do this at their discretion. The effect may be to make other municipalities more like the City of Toronto (see **Box 1**).

Box 1: Organizing Council in the City of Toronto

In the City of Toronto, council has delegated to the mayor the power to appoint the chairs of standing committees and an executive committee composed primarily of the standing committee chairs. The effect of the Act in Toronto is therefore to reverse the onus; instead of council delegating the committee-making power to the mayor, the mayor has the power by default and may delegate it to council. Mayors in other cities will no doubt decide how to organize council in ways that make sense given the size of the municipality, the complexity of council business, and the size of the council. Toronto created its executive committee in 2006 on the premise that allowing the mayor to strengthen the mayor's influence over the council's agenda would improve accountability and streamline decision-making. As Matt Elliott's analysis below shows, this has been borne out.

The aspect that has attracted the most attention is the mayor's new power to veto bylaws adopted by council, provided that the bylaw has to do with the budget or, in the mayor's opinion, "could potentially interfere with" a provincial priority. The budget veto may amount to a "line-item veto" as is common in many American jurisdictions, which in principle reduces pork-barrel politics, although the literature is equivocal on this point.⁴ The provincial priority veto gives the mayor broad discretion to decide what constitutes "interference." As is common in the United States, council may override either type of veto by a two-thirds vote. A mayor cannot use the veto to invalidate bylaws that were adopted in the more distant past – it can only be used within a certain number of days after the bylaw's adoption.

Finally, the mayor is now charged with initiating the budget process, which previously was presented to council by the CAO. The regulation sets a February 1 deadline to propose the budget, after which council has 30 days to amend and ultimately approve it. The mayor may also circumvent normal procedure to put items related to provincial priorities on the council agenda.

What is in Bill 39, the *Better Municipal Governance Act*?

A little more than two months after the passage of Bill 3, the provincial government introduced a new bill, the *Better Municipal Governance Act*. It contains two elements relevant to the strong-mayor power.

⁴ Indridason, Indridi H. 2011. "Executive veto power and credit claiming." *Public Choice* 146, pp. 375–394. <https://doi.org/10.1007/s11127-010-9595-8>

1. Further Changes to the Mayor’s Relationship with Council

As introduced on November 16, 2022, the bill gives the mayor a far-reaching new power: the ability to put into effect a bylaw that may be opposed by as many as two-thirds of council members. The veto created in Bill 3 gave the mayor the power to annul a bylaw passed by a majority of council members if it is deemed related to a provincial priority. This new provision goes further by lowering the approval threshold for passing bylaws proposed by the mayor. Provided that they “advance” a provincial priority, such bylaws can be passed with as few as one-third of councillors, including the mayor. In Toronto’s 26-member council (including the mayor), the mayor can now use this tool to pass bylaws with only eight additional votes – the same number of people who currently serve on the mayor’s hand-picked executive committee.

2. Possible Future Provincial Interventions in Selected Regional Municipalities

The provincial government appears to be laying the groundwork for reforming regional municipalities in the broader Toronto region. Readers should recall that in 2018, the provincial government appointed a Regional Government Review commission to study reforms to regional municipalities.⁵ The final report was never made public and nothing concrete emerged from it.⁶ Some speculated that the commissioners recommended amalgamating some or all two-tier municipalities, but this may have been too radical at the time. Prior to the 2018 municipal elections, the government also cancelled the first direct election of the regional chairs of Peel and York Regions, reverting to the earlier practice of the regional council appointing the chair.⁷

In tandem with Bill 39, the province has announced its intention to appoint “facilitators” to “assess” governance arrangements in the Regional Municipalities of Durham, Halton, Niagara, Peel, Waterloo, and York.⁸ This may potentially open the door to consolidation of two-tier systems into single-tier municipalities similar to the Cities of Toronto and Ottawa, the abolition of the upper tier, other forms of restructuring, or the reallocation of responsibilities between tiers. Importantly, the government has linked these assessments to the extension of strong-mayor powers to the regional chairs.

Bill 39 also takes the extraordinary step of transferring the power to select the regional chairs in York, Peel, and Niagara from the respective regional councils to the Minister of Municipal

⁵ Government of Ontario. 2019. “Regional Government Review.” 15 Jan. <https://www.ontario.ca/page/regional-government-review>.

⁶ Benzie, Robert and Rob Ferguson. 2019. “Premier Doug Ford’s government abandoning push for regional reform.” *Toronto Star*. 25 Oct. <https://www.thestar.com/politics/provincial/2019/10/25/premier-doug-fords-government-abandoning-push-for-regional-reform.html>.

⁷ Javed, Noor and Robert Benzie. 2018. “Patrick Brown to Run for Brampton Mayor.” 27 July. <https://www.thestar.com/news/gta/2018/07/27/patrick-brown-to-run-for-brampton-mayor.html>.

⁸ Government of Ontario. 2022. “Backgrounder: Better Municipal Governance Act.” 16 Nov. <https://news.ontario.ca/en/backgrounder/1002482/better-municipal-governance-act-2022>.

Affairs and Housing, who will reappoint the incumbents to their positions. The directly elected regional chairs in Durham, Halton, and Waterloo remain unaffected.

These legislative changes are a clear departure from Ontario tradition, but what effect will they have on the governance of Toronto, Ottawa, and other cities across the province? We asked the panellists at the October 19 event to reflect on this question.

The American Strong Mayor: Similarities and Differences

Karen Chapple

There is a rich body of mostly American scholarly research comparing council-manager and mayor-council government. Moreover, most of the studies are from 20 or 30 years ago. That said, there are a few interesting insights that can inform our discussion. I will touch on three: overall trends, effectiveness of the different systems, and partisanship.

The Overall Trend: The United States is Shifting Away from the Strong-Mayor Model

The type of government is tied to city size in the United States. The council-manager form of government predominates in small cities with populations of less than 250,000.⁹ However, two-thirds of cities with population above 500,000, many of them in the Midwest and Northeast, where big cities first emerged, use the mayor-council structure. Nevertheless, cities seem to be moving away from the mayor-council form; 56% of American municipalities had a strong mayor in 1984, compared with just 44% in 2008.

Effectiveness

Why this is happening is not clear. It may have something to do with the effectiveness of the council-manager system. Evidence suggests that the council-manager model has several benefits:¹⁰

- **It reduces corporate influence.** In strong mayor cities, developers and wealthy property owners have been shown to have more influence on land-use policy.

⁹ Svava, J. and D. Watson, eds. 2010. *More Than Mayor or Manager: Campaigns to Change Form of Government in America's Large Cities* (Washington D.C.: Georgetown University Press).

¹⁰ Carr, J.B. 2015. "What Have We Learned about the Performance of Council-Manager Government? A Review and Synthesis of the Research," *Public Administration Review* 75(5): 673–689, <https://www.jstor.org/stable/24757440>.

- **The quality of public service is higher.** In a council-manager system, department heads use their autonomy from political interference to focus on implementation rather than symbolic actions and have the freedom to innovate.
- **Citizens are more engaged.** When ward councillors have more autonomy from the mayor, they spend more time on representing and servicing constituents.
- **It reduces conflict among elected officials.** As councillors are accountable to each other rather than to the mayor, they have a strong incentive to collaborate and constructively negotiate.

We can always point to very successful strong mayors in the U.S. – my favorites are Michael Bloomberg in New York and Gavin Newsom in San Francisco, who were able to set and execute agendas from sustainability to same-sex marriage. But these are the exceptions rather than the rule.

Partisanship

American cities with strong-mayor governments generally have partisan elections. Is this a good thing or a bad thing? Evidence shows that partisan election increases voter turnout.

But partisanship also has an impact on the types of policies pursued by the city’s elected officials. There is some interesting recent work on this out of Harvard’s Kennedy School, showing that cities with Democrat mayors have higher rates of multifamily housing production, regardless of the type of government. There is a suggestion that these effects are occurring in cities where councils have less power over land use changes.¹¹

This is more or less consistent with accounts of pro-growth regimes in the U.S., where developers seem to get a lot built in certain cities.¹²

Partisanship is complicated in the Ontario municipal context, of course, as elections are officially nonpartisan and no party labels appear on the ballot. But even if the parties are not out front, one can foresee an outcome here where a pro-development ideology can take hold more easily, as the “strong mayor” becomes a vehicle for the provincial government to advance its own goals – in the current case, the “provincial priorities” around housing supply and infrastructure.

¹¹ de Benedictis-Kessner, Justin, and Christopher Warshaw. 2016. "Mayoral Partisanship and Municipal Fiscal Policy." *The Journal of Politics* 78(4): 1124–38. See also K.L. Einstein and D.M. Glick (2018), “Mayors, Partisanship, and Redistribution: Evidence Directly from U.S. Mayors,” *Urban Affairs Review* 54(1): 74–106, <https://doi.org/10.1177/1078087416674829>.

¹² Stone, Clarence N. 2008. *Urban Regimes and the Capacity to Govern: A Political Economy Approach*. In *Power in the City: Clarence Stone and the Politics of Inequality*, edited by M. Orr and V. C. Johnson, 76–107. Lawrence, KS: University of Kansas Press.

Intergovernmental Relations

The “provincial priorities” sharply distinguish what is happening in Ontario from the American experience. The foundational principle of American local government is “home rule.” Most American states have adopted constitutional amendments or laws that inhibit state intervention in local affairs and enable cities adopt charters that define (within limits) how their system of government operates. For example, the state cannot override local zoning laws, but it can set some minimum standards for development controls. Ontario and other Canadian provinces may override local official plans and zoning bylaws, or impose its own regulations, at will.

What we are about to see in Toronto and Ontario is completely antithetical to the American strong-mayor tradition. Ontario’s reforms are imposed from the top down, not demanded from the bottom up, and many of the mayor’s new powers can only be exercised to further provincial policy objectives. No American mayor would want to answer to the state governor. There is no U.S. precedent for what is going on in Ontario.

Some American strong mayors have leveraged their powers and influence to secure benefits for their cities from state government. I think again of Richard J. Daley, who had considerable influence in the Illinois State Legislature, and more recently San Francisco, where the affordable housing crisis and positive relationships between Democratic mayors and governors have led to a series of pro-housing legislation with a strong affordability component.¹³ There are also counterexamples. New York City Mayor Bill De Blasio’s strong-mayor powers had little effect on his acrimonious relationship with former Governor Andrew Cuomo over public transit governance and transportation policy more generally.

One cause for optimism is its effect on regionalism. The American experience shows that intermunicipal collaboration within metropolitan areas is strengthened by strong leadership by the central-city mayor. A strengthened executive may allow the mayor to make credible commitments on behalf of the city in intergovernmental negotiations. Whether the new powers will increase the capacity of the mayor to lead regional discussions is something to watch for.

Democracy, Accountability, and Majority Rule

Another important change with the new strong mayor powers is the *Better Municipal Government Act*’s giving the mayor the power to pass bylaws with only one-third support of council. The American theory of the separation of powers is designed to create checks and balances. A strong mayor in Chicago or New York can veto bylaws passed by a majority of council. This power is checked, however, by council’s ability to override a veto with a two-thirds

¹³ Rast, Joel. 2016. “Regime Building, Institution Building: Urban Renewal Policy in Chicago, 1946–1962.” *Journal of Urban Affairs*, 31(2): 173–194.

vote. In no American city, with or without a strong mayor, can bylaws be passed by less than a majority of councillors; this would be seen as fundamentally undemocratic.

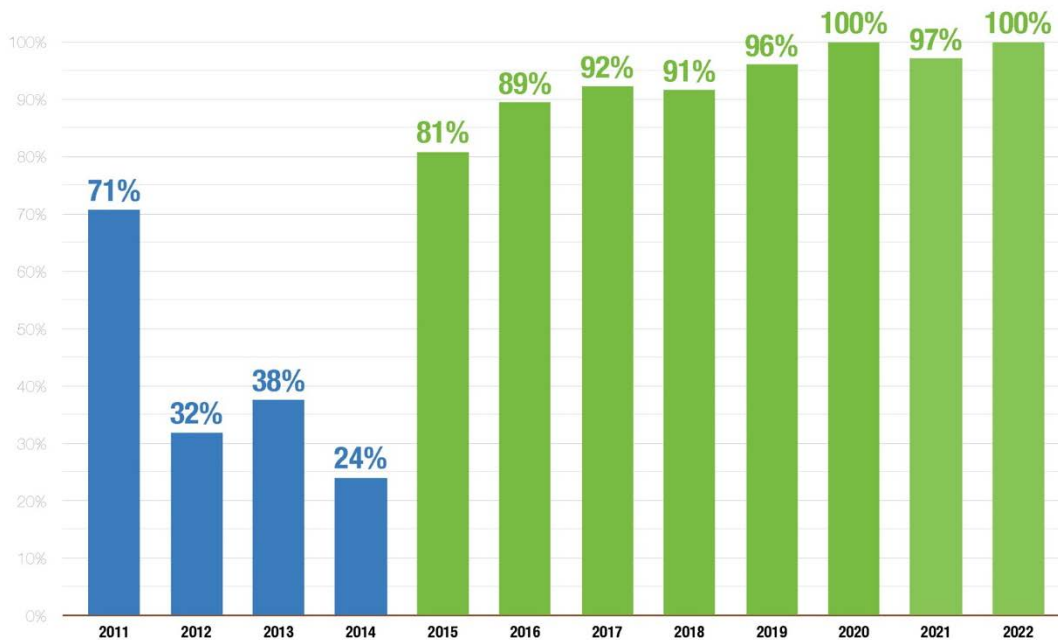
In Toronto, the Mayor Already Controls the Agenda

Matt Elliott

While the veto power has received the most attention of all the changes in the bill, I doubt it is going to have major ramifications for the way City Hall operates – at least in Toronto. That’s because of one number: 98%.

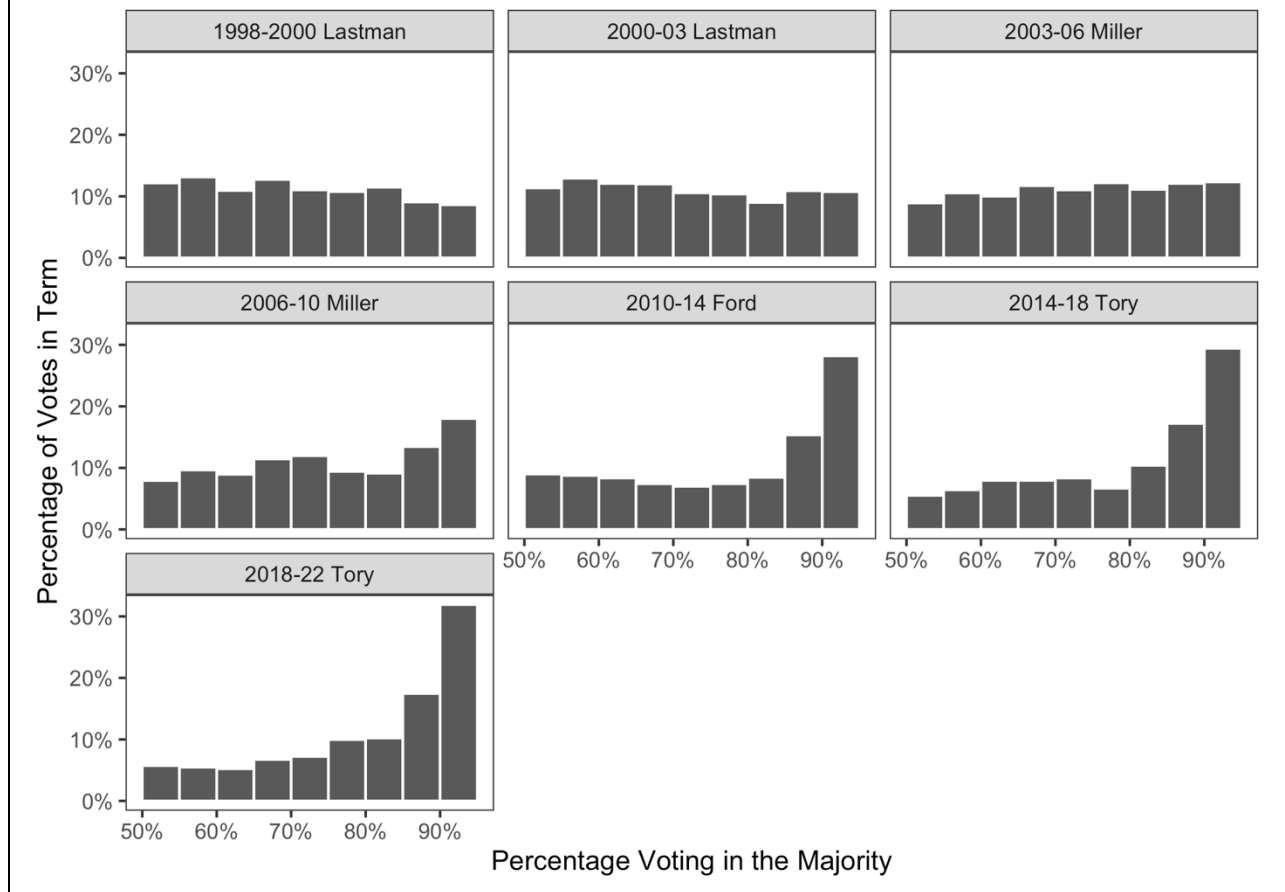
Some people may have the idea that Council is full of rogues who routinely vote against the mayor, but the data suggest otherwise. I have been tracking significant votes on Toronto City Council for more than a decade in a project I call the Council Scorecard. It shows how often each councillor votes with the mayor and the mayor’s win/loss record. The Scorecard reveals a clear and striking pattern: the mayor almost never loses a vote. John Tory has won 98% of relevant council votes this term. In some recent years his record is essentially perfect – that is, he is on the winning side of 100% of council votes (see **Box 2**).

Box 2: Percentage of key council votes in which the majority of councillors voted with the mayor



Councillor voting is also increasingly lopsided. Going back to amalgamation in 1998, we see that the proportion of recorded votes decided by 80/20 margins has doubled from about 30% in the Mel Lastman and David Miller eras to about 60% during Tory’s tenure (see **Box 3**).

Box 3: Lopsided council votes are more common now than ever before



The bottom line is that there would not have been many opportunities to use the much-hyped mayoral veto over the past eight years, and this is unlikely to change.

There are, of course, exceptions. Tory lost on one big issue during the last term: legalizing multi-tenant housing, also known as rooming houses, across the city. He argued that the current ban in most of the neighbourhoods outside of the city core had created an underground economy of poor-quality apartment housing. He brought the issue forward twice, but ultimately set it aside as his most consistent allies, councillors representing the suburban areas where multi-tenant housing is banned, turned against him. Tory knew the amended bylaw would not pass, so he delayed it. It will come up again in 2023. If Bill 39 comes into effect, the mayor would be able to

pass such a bylaw even if two-thirds of council opposes it. Some councillors expect this will occur.¹⁴

The rooming house story demonstrates two things. First, mayors can avoid defeat by choosing not to bring votes to the floor that they have a good chance of losing. More importantly for the strong mayor discussion, it also shows that, on its own, the veto would not have helped him. A mayor cannot veto a bylaw that has not been passed.

A mayor can use the new powers to put items on the council agenda, and they allow the mayor to veto certain bylaws passed by council. What they cannot do is enable the mayor to somehow pass bylaws without council's approval. By lowering the approval threshold from 50% to 33%, however, Bill 39 stacks the deck in favour of the mayor.

What effect might the veto and the lower approval threshold have behind the scenes, when the mayor and councillors are informally horse-trading and negotiating? We can imagine how the mayor could threaten to veto an item about infrastructure funding in a councillor's ward if that councillor does not support the mayor on another issue. We could start seeing that kind of hardball. I think this would be surprising under Mayor Tory, however, who has shown himself to be very adept at using his existing prerogatives – committee assignments, for example – to shape council's agenda.

But what about mayors who are not named John Tory? Could mayors actively use the veto and their discretion over how to attach it to provincial priorities to achieve political and policy goals that are potentially far removed from those priorities? It is possible, but unlikely, at least in Toronto. As stated above, the mayor already has considerable powers to shape the council's agenda. And by convention, council tends to defer to the mayor's large electoral mandate, especially early in the term. Even Rob Ford saw early wins on issues such as the vehicle registration tax and declaring the TTC an essential service. No veto would have been necessary.

The veto would be more likely to come into play in situations like we saw in the later years of Rob Ford's mayoralty, but, ironically, I think it is likely that the veto would result in gridlock and inaction, rather than the mayor running roughshod over council, although again, the lower approval threshold would enable the mayor to push through items that a majority of council opposes, provided that they are deemed to "advance provincial priorities."

Recall the 2012 votes on the Transit City transit plan. Mayor Rob Ford wanted "subways, subways, subways." Council wanted light rail lines. Council voted for the LRTs and Ford could

¹⁴ Rider, David. 2022. "John Tory's unprecedented new powers could allow him to ignore any opposition, city councillors warn." *Toronto Star*, 17 Nov. <https://www.thestar.com/news/gta/2022/11/17/tory-tells-toronto-to-trust-me-not-to-abuse-strong-mayor-powers.html>.

not do much about it. If he had a veto, he could have vetoed LRT-related budget votes, but he still would have lacked the support to get his subway plan through. This might have led to compromise, or it could have just led to... nothing. I think the result could have been a year where there was basically no city-endorsed transit plan. A stalemate.

This eventuality is interesting to think about in the context of this legislation, which the government has justified as a way to speed things up. It could just as easily slow things down.

Intergovernmental Relations and the Housing Connection: Downloading Political Responsibility

Alison Smith

I have been asked to discuss the provincial-municipal relationship, especially as it concerns housing policy. In the 1970s, University of Toronto political scientist Richard Simeon wrote an important book called *Federal-Provincial Diplomacy*.¹⁵ He argued that in many fields, from pensions, to education, to constitutional reform, policymaking in Canada unfolds as a process of bargaining between federal and provincial executives, which he called “diplomacy” or “executive federalism.”

This model has been criticized for being undemocratic, unaccountable, and exclusive. Back in the late 1980s, the Meech Lake Accord collapsed in part because it was seen as a closed-door, elite-driven process. The subsequent Charlottetown Accord was more inclusive and was put to a national referendum (but was rejected).¹⁶

It strikes me that strong-mayor powers for some or perhaps many cities would re-create this diplomatic relationship, but on a very uneven playing field between provincial and municipal governments. With a type of provincial-municipal diplomacy, we could see a situation where a small number of people decide policy behind closed doors for a very large number of people.

This is concerning for two reasons.

First, the city is at a structural disadvantage in provincial-municipal relations. I have done a small amount of work on local autonomy in Canada with Zac Spicer.¹⁷ We conceptualized local

¹⁵ Simeon, Richard. 1972. *Federal-Provincial Diplomacy: The Making of Recent Policy in Canada*. Toronto: University of Toronto Press.

¹⁶ Russell, Peter H. 1993. *Constitutional Odyssey: Can Canadians Become a Sovereign People?* 2nd ed. Toronto: University of Toronto Press.

¹⁷ Smith, Alison, and Zachary Spicer. 2016. "The Local Autonomy of Canada's Largest Cities." *Urban Affairs Review* 54(5): 931–61.

autonomy as the ability of local governments to do what they want free from provincial constraints. To the extent that the mayor gains additional powers, it is entirely on the province's terms. This does not strike me as enhanced autonomy if it must be in alignment with the province's priorities; rather, the mayor becomes another tool of provincial governments to implement their preferred policies. Mayors could request that something be made a provincial priority, but the province has all the power here and could simply say no.

I am also concerned about the legitimacy and equity of policymaking at the local level as well. Several years ago, John Tory expressed interest in strong mayor powers after a request from the Toronto chief of police, who wanted more funding for increased surveillance. Tory stated if he had strong mayor powers, he could give the chief of police what he wanted. (Though in this specific example, the council approved the request within a few hours).¹⁸ It is problematic if major policy changes on policing or other matters, including transit, housing, and homelessness, could be made by only two or three people. Public debate on these and other issues should occur not only within council, but with broader participation of groups from around Toronto, including Black Lives Matter, Indigenous-led advocacy groups, and others would be affected.

Downloading Responsibility for Addressing the Housing Crisis

My second point relates to the housing crisis and who should bear the responsibility for addressing it. It is always important for me to note that while we are currently facing a housing crisis across Ontario, there has been a crisis of housing for people with low incomes for decades. For all but a brief period in the 1960s and 1970s, meeting the housing needs of people with low incomes has been low on the priority list of governments at all levels and of every political stripe. Municipalities certainly share in some of the blame for this, but housing is a complex issue and requires the participation of everyone.

While empowering mayors to accelerate housing production may allow for more nimble action, this is also the downloading of responsibility for addressing the housing crisis to the local level. When it comes to providing deeply affordable housing (housing that is affordable for people who are on social assistance), rent-geared-to-income housing (usually capped at 30% of someone's income), and supportive housing for people who are or are at risk of being unhoused, municipalities cannot do this on their own.

This is particularly the case in Ontario and Toronto in particular, where there is acute housing need but also a mismatch of authority and resources that is not seen in any other Canadian province. Ontario was the only province to download responsibility for housing policy to municipalities in the 1990s, and did so without also transferring additional funding. The result

¹⁸ Keenan, Ed. 2018. "John Tory hasn't made the case for moving Toronto to a 'strong mayor' system," *Toronto Star*, 25 July, <https://www.thestar.com/opinion/star-columnists/2018/07/25/john-tory-hasnt-made-the-case-for-moving-toronto-to-a-strong-mayor-system.html>.

was a generational failure to maintain and expand the affordable housing stock, which is very expensive to do. This means that intergovernmental alignment in Ontario is extremely important, because the level of government that has the authority for housing policy – the municipal – does not have the resources to create an inclusive housing system that provides supportive, affordable and deeply affordable housing to those who need it.

Municipalities certainly have a role, but senior governments do as well. I find it so frustrating that the provincial government states that housing is such a major priority, and yet it has done so little with the powers and resources it has. The province’s own Housing Affordability Task Force suggested that the government eliminate exclusionary zoning.¹⁹ The provincial government appears willing to do just that. But eliminating exclusionary zoning is not going to solve the entire housing crisis, including the crisis of deeply affordable and supportive housing. It could help with the missing middle, but municipalities do not have the resources to develop and maintain housing for people who are unable to access adequate and affordable housing through the private market.

Making the Mayor More Accountable

Gabriel Eidelman

I have been asked to focus my remarks on the *executive* dimension of stronger mayor powers – that is, how mayors in Ottawa and Toronto will oversee the administrative functions of government – rather than the mayor’s *legislative* powers at council, including the veto. In this respect, I must say I am rather positive about some of the proposed changes.

The way the provincial government dropped these changes on Toronto and Ottawa – a surprise from on high, without consultation, in the middle of an election – is inexcusable. Setting this aside, I will focus on the *substance* of two specific reforms contained in the *Strong Mayors, Building Homes Act* that I believe have some merit: the mayor’s new statutory responsibility to lead the municipal budget process, and the mayor’s new power to hire and fire, with several notable exceptions, the most senior members of the civil service as well as reorganize the machinery of municipal government.

Responsibility for the Budget

Giving the mayor responsibility to prepare the city budget seems like a small change, but it flips the current budget process on its head. Most people assume that *politicians*, not public servants, initiate and present the city budget. After all, this what we see at the federal and provincial

¹⁹ Lawrence, Jake. 2022. *Report of the Housing Affordability Task Force*. Toronto: Government of Ontario. <https://www.ontario.ca/page/housing-affordability-task-force-report>.

levels, where after weeks and months of consultation and preparation, the minister of finance stands up in the legislature, presents the government's priorities, parliament votes, and the public service gets on with the business of implementation.

If you ask me, that is how it *should* work at the city level, too. But in municipal government, it is almost the reverse. The formal budget process begins with a presentation by the city manager, who tables the *staff*-recommended "preliminary" or "draft" operating and capital budgets. And in most cases, despite months of debate in committees, council usually passes the staff-proposed budget with almost no meaningful changes.

Consider that Toronto's 2022 operating budget was passed almost exactly as proposed, even though it came with a \$1.4 billion shortfall, on a hope and a prayer that other levels of government will fill the gap! (As of writing, the City is still short roughly \$800 million.)

Who is accountable for the budget this process? Everyone and no one, all at the same time. It's a system defined by ambiguity and plausible deniability. Staff get to say they are following council's direction – and remember that only council can formally direct staff, not the mayor. Councillors get to say that they are following staff's expert advice. And the mayor gets to take their pick, deferring to staff or respecting the will of council. In short, right now, no one owns the budget – not councillors, not staff, and certainly not the mayor.

That's not right. The buck should stop somewhere. And I think it is perfectly reasonable to expect that the mayor should wear this responsibility, and formally lead the budget process. The mayors of Toronto and Ottawa – past, present, and future – are the only people elected to office not by 5,000 or 10,000 voters in a single ward, but by hundreds of thousands of people across the city. No matter what your personal opinion of Mayor Tory, the fact is, in 2018, he directly received, *at a minimum*, nearly 20 times more votes than each of his council colleagues and in some cases more than 85 times more votes. Voters elect mayors to lead their city government. I say, make them lead!

Of course, I'm not advocating that the mayor, and *only* the mayor, should have complete control over every aspect of the budget. Council has a key role to play: to debate and approve that budget in public. The new legislation does not change this responsibility. The only formal power that the mayor actually gains in the process is the power to *propose* the budget. Why is this important? Because it would give *clarity to staff* about how to plan and deliver services consistent with the mayor's city-wide priorities and commitments. It would *send a signal to councillors* that the priorities of the city writ large take precedence over strictly local matters. And it would *match the public's expectations* that the job of the mayor is to lead, and that they should be held accountable for their decisions.

The Power to Hire and Dismiss Senior Managers

That leads to the second key piece of the story: control over the machinery of government. Here, once again, the reality of municipal government in Canada conflicts with people's general understanding of how things work. Up till now, Ontario designates mayors as the "chief executive officers" of their cities. This sounds nice, but it comes with no actual power to act like a CEO as most people understand it. Bill 3 gives the mayor the authority to hire or fire top civil servants, and otherwise reorganize the structure of local government.

Now, if you are *cringing* at the thought of the mayor having such unilateral power to hire and fire the most senior civil servants, I will remind you that this is precisely how things work at the federal and provincial levels. Who appoints and dismisses the Clerk of the Privy Council, the Secretary to Cabinet, and all federal and provincial deputy ministers? The prime minister and premier. In principle, this would be no different.

As it stands today, the lines of accountability between the city manager, their executive team, and the mayor are not as clear as they should be. The public service currently serves all of council *equally*. In practice, that means public servants are pulled in multiple contradictory directions. Making senior staff more responsive to the mayor's priorities, as chief executive, would, in my opinion, rebalance the policy process to prioritize city-wide concerns over the often-parochial concerns of local councillors.

Does this mean the mayor should have the power to dive deep into the bureaucracy and hire and fire anyone they please? Of course not. The regulations clarify that the power to hire and fire is limited to the "the highest level of senior management" and key officials are excluded.

This being said, I think it would be prudent to beef up protections for these senior staff, and the public service in general, to avoid potential abuses of this power and find the right balance. This may mean drafting new codes of conduct, amending the public service bylaw, and even legislative changes at the provincial level to protect the independence of the public service.

Overall, though, I would say that the changes to the mayor's relationship to the administration have merit, and could help bring about more effective, responsive, and accountable local government.

Conclusion

Zack Taylor

The panel discussion revealed a mixture of positive and negative assessments. To begin, Karen Chapple cautioned us to avoid too closely identifying Ontario's strong(er) mayors with American strong mayors. The powers, organizational structures, and relationship to party politics in the two models differ considerably, with quite different implications. Some aspects of the law provoked more negative reactions than others. Karen Chapple and Alison Smith were critical of its potential effect on intergovernmental relations, finding that instead of empowering mayors vis-à-vis the province, it subordinates them to provincial priorities. Smith saw the real and symbolic strengthening of the mayor as blame-avoidance by the provincial government – should mayors fail to improve housing affordability, it is they who will bear the political cost, not Queen's Park.

Matt Elliott was skeptical that the balance of power between the mayor and council would change much in practical terms, at least in the City of Toronto. Gabriel Eidelman was the most positive of the group, arguing that strengthening the executive, subject to the safeguards laid out in the legislation and regulations, would improve accountability for decisions and reinforce the city-wide perspective in policymaking. Smith, however, remains concerned that even with these safeguards, concentrating authority in the mayor will reduce democratic oversight and inclusion. The minority-rule provision added in Bill 39 reinforces these concerns. For bylaws to be passed with the support of only one-third of council violates longstanding democratic norms and has no counterpart in any western democracy.

The panel presentations were followed by discussion and audience questions that probed nuances and raised new issues. Given the panel's focus on Toronto, a key question is how the new powers will play out in other, smaller municipalities. We summarize some of these additional points here.

Is There a Risk to "Politicizing" the Public Service?

How worried should we be about politicizing the municipal public service? Will the changes make it easier to recruit high-quality administrative leadership, or will potential applicants be repelled by the political relationship with the mayor? Karen Chapple argued that in the United States at least, talented administrators have been attracted to a system where they are encouraged to innovate and their ideas can be implemented – think of Janette Sadik-Khan's work on land-use and transportation in New York City. There is also the example of Boston's mayor, who created a special-projects office that developed innovative apps for use by residents, and so on. Overall, however, the American research finds that the council-manager system fosters more consistent implementation. This suggests that, on the one hand, a well-resourced and relatively autonomous chief executive may be able to empower innovators in the local public service. On the other hand, when a mayor and high-profile staff "own" particular innovations, they are less likely to survive when elected officials and senior managers change. Moreover, residents may appreciate consistent service delivery by a professional, meritocratic public administration.

Gabriel Eidelman made a different point: that senior federal and provincial administrators are appointed by the political executive. What makes this practice relatively uncontroversial are the guardrails that protect the system from abuse and corruption. The City of Toronto already has a robust public service bylaw and procedural bylaws that regulate the interface between elected officials and senior administrators. To encourage ethical behaviour, transparency, and accountability, Eidelman suggested three directions that all cities should pursue. First, council should clarify, in its code or procedural bylaw, the political role and responsibilities of the mayor as CEO versus the administrative role and responsibilities of the chief administrative officer, as well as their respective reporting relationships to council. Under no circumstance should the mayor be able to tell the CAO or any other senior administrator that “you work for me, and *only* me.” Senior managers should remain accountable to council as a whole, not just the mayor, including being required to answer questions in public about the administrative operations of government. The senior leadership hiring process should also be codified in a bylaw to ensure that all appointees are highly qualified.

Second, as recommended by Justice Bellamy in the Computer Leasing Inquiry report and Justice Marrocco in the more recent Collingwood inquiry, councils should codify in their public service or procedural bylaw, that staff must conduct themselves at all times in a neutral, objective, and impartial manner, and obligate them to provide professional, independent, and truthful expert advice when called upon. Third, mandatory training should be required for mayors, councillors, and staff to help them adapt to these new reporting relationships and institutionalize the dividing line between politics and administration as best practices and norms of local public administration.

Do Mayors Have the Capacity to Manage These New Powers?

The new powers require that the mayor have the administrative capacity to make good decisions about how to use them. Matt Elliott and Gabriel Eidelman noted that even the mayors of Ontario’s largest cities have relatively small political offices and mostly rely on the city manager’s office to provide advice and manage complex administrative and fiscal processes. Indeed, mayors’ offices are predominantly staffed by communications people and a handful of advisors. With greater power over the budget and the ability to hire and dismiss senior managers, and also the veto, mayors will likely need to expand their in-house expertise and advisory capacity. An important question is whether mayors ask councils for the funds required to staff a larger office. It also remains to be seen whether council will vote to authorize the funds to pay for this and pass bylaws containing rules for how the office will be structured.

How Will This Work in Smaller Municipalities?

Almost all the focus has been on Toronto and Ottawa. The implementation of strong-mayor powers is likely to be very different – and the risks arguably greater – in smaller Ontario cities

that have fewer senior managers, flatter management structures, and less elaborate rules and procedures.

Gabriel Eidelman argued that much will hinge on the existing organizational culture and the rules they have in place. Smaller municipalities are often portrayed as old-boys' clubs in which the lines that separate the political from the administrative are blurry and conflicts of interest are rife. The province could help by amending the *City of Toronto Act* and the *Municipal Act* to require councils to adopt municipal codes or procedural bylaws to define and regulate these processes. The provincial government could also enact separate legislation akin to the *Public Service of Ontario Act* or federal *Public Service Employment Act*.

Speaking as a journalist, Matt Elliot brought up another dimension: scrutiny by the media and the public. Toronto has an exceptionally rich media environment, with multiple newspapers and broadcast media outlets with city hall reporters, and many activists and bloggers. Smaller places have fewer of these, or none, with a corresponding loss of public awareness of what is going on.

How the ability of mayors under Bill 39 to pass bylaws despite the opposition of two-thirds of council will play out in municipalities with small councils is another open question. In Ontario, municipal councils must have a minimum of four members in addition to the mayor. While Toronto and Ottawa each have 25 ward councillors plus the mayor, many medium-size cities have small councils. For example, Markham, Richmond Hill, and Vaughan have nine-member councils, including the mayor. Some city councils are even smaller: Waterloo has eight members, Burlington seven, and Brampton six. In Brampton, the mayor would need only *one* other councillor to agree with him to pass a bylaw that advances provincial priorities. This raises fundamental questions about legitimacy, democracy, and accountability.

What about the Regional Municipalities?

The two-tier regional municipalities such as Halton, Peel, York, Durham, Niagara, and Waterloo present a dilemma that the province has recognized with its introduction of Bill 39. In these places, upper-tier municipalities make decisions and perform functions that are especially germane to the nominal purpose of the *Stronger Mayors, Building Homes Act*: building more housing quickly. Regional councils make policies regarding settlement area expansions, urban structure planning, and the extension of hard infrastructure, including road, water, and sewer systems. Some run public transit systems. Given the regional municipalities' policy influence over housing production and infrastructure provision, would it make sense to extend strong mayor powers to the regional chairs? The *Better Municipal Governance Act* signals that the province is considering how best to extend strong-mayor powers in these contexts.

Turning regional chairs into strong mayors would alter the relationship between lower-tier municipalities and the region – the question is, how? A key dilemma is democratic legitimacy:

while some regional chairs are directly elected, most are appointed. Can we imagine a scenario where an appointed regional chair vetoes a regional bylaw passed by a regional council composed of elected local mayors and councillors? One possible outcome of the facilitators' work is the direct election of all regional chairs – effect, making them regional mayors.

What are the Limits of “Provincial Priorities”?

In most cases under the new legal framework, the new mayoral powers can only be exercised when a bylaw is deemed to advance or impede a provincial priority. Housing is the provincial government's current preoccupation, but what about two, five, or ten years from now, when future provincial governments may face different challenges? We can imagine several scenarios. As policy concerns change, the minister may amend the regulation to remove one provincial priority while adding another. In her remarks, Alison Smith pointed to policing as a potential future provincial priority. There is no requirement that the province have only one priority at a time. The regulation may evolve over time to contain a laundry list of priorities. If the province uses its power to name priorities strategically, it may gain considerable over local policy agendas and choices, potentially undermining local autonomy.

Provincial priorities do not have to be focused on a substantive policy dilemma, such as housing affordability. They could also be framed in much more general terms. For example, the province could name low taxes, crime, climate change mitigation, disaster preparedness, or transportation congestion as priorities. Depending on how many priorities are listed, and how broadly or specifically they are worded, one can imagine a situation where mayors could deem just about any bylaw to be eligible for special council consideration, the veto, or Bill 39's lower approval threshold.

Summing up: An Uncertain Future

The provincial government introduced these legislative changes to address an immediate problem: housing unaffordability. Whether strong-mayor powers will have any effect on housing production remains to be seen. Of greater concern is how the mayor's new powers, and especially the province's ability to define provincial priorities, may be used in the future. Will local policymaking and implementation become more innovative, responsive, and effective? Will this come at the expense of local autonomy, democracy, and accountability, especially if use of Bill 39's one-third approval threshold – an unprecedented violation of democratic norms and traditions – becomes routine? Will changes that appear to be designed with Ontario's largest cities, Toronto and Ottawa, in mind, readily transfer to other contexts, such as small and mid-size cities and two-tier systems? How big are the risks that the use of the mayors' new powers will intensify local conflict and generate gridlock? And without any guidelines for how provincial priorities should be defined, will future provincial governments use them for political ends rather than to further legitimate policy objectives? Only time will tell.