Legislative Building Blocks – 1
Basic Design – Statutes, Regulations, Rules, Principles and Discretion

**Fundamental Choices for Statutes and Regulations**

Rodney Fehr, Legislative Counsel
Ministry of Justice (British Columbia)

Canadian Institute for the Administration of Justice
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Overview

- Instrument choice – who makes the choice?
- Instrument choice
- Factors influencing the design of the legislative scheme
- Determining the appropriate regulation-making authority
Instrument choice – who makes the choice?

- Constitution
- Parliament or Legislature
- Cabinet
- Attorney General
- Chief Legislative Counsel
Instrument Choice - Statute

- controversial matters that should be addressed by the legislative body, including
  - provisions affecting rights or freedoms
  - retroactive provisions
  - power to expropriate property
  - power to grant exemptions
  - power to amend a statute
  - validating provisions
  - provisions that operate despite other significant legislation
Instrument Choice - Statute

- power to subdelegate regulation-making powers
- regulation-making powers for matters that are usually addressed in the statute
- provisions establishing the structure of public bodies or providing for senior appointments
- provisions that establish a tax
- provisions relating to courts and civil liability
- transitional provisions and consequential amendments
Instrument Choice - Regulations

- procedural matters (e.g. how to apply for a licence or time limits in a process)
- matters that are subject to frequent adjustment (e.g. fees, rates)
- technical matters that involve scientific or other expertise (e.g. prescribing classes of things or respecting the construction and operation of a treatment plant)
- setting qualifications (e.g. entitlement to a benefit or licence)
Instrument Choice – Orders-in-Council

- appointing officials, board members, etc.
- approving agreements, bylaws, etc.
- designating facilities, parks, etc.
- transferring powers between ministers
- making regulations
Factors influencing the design of the legislative scheme

- Matters addressed in the statute:
  - subject-matter
  - legal risk
  - minority government
  - strategic reasons
Factors influencing the design of the legislative scheme

- Matters addressed in the regulations:
  - lack of time
  - delayed decision
  - convenience
  - strategic reasons
Determining the appropriate regulation-making authority

- minister, ministry official or an organization
  - administrative or technical matters
  - matters of concern only to the minister, ministry or organization

- Governor General in Council/
  Lieutenant Governor in Council