

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

***Fundamental Choices for Statutes
and Regulations***

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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