

The Theory of (Legislated) Forms

Plato, prescription and paradox

Outline

- Why legislated forms matter
- What forms are
- The Interpretation Acts
- Drafting considerations

Disclaimers

- Canada-centric
- English-language only
- Paper vs e-Docs

Forms matter because...

- They're ubiquitous

CanLII
The Canadian Legal Information Institute

"prescribed form"

Case name, legislation title, citation or docket

Noteup: cited case names, legislation titles, citations or dockets

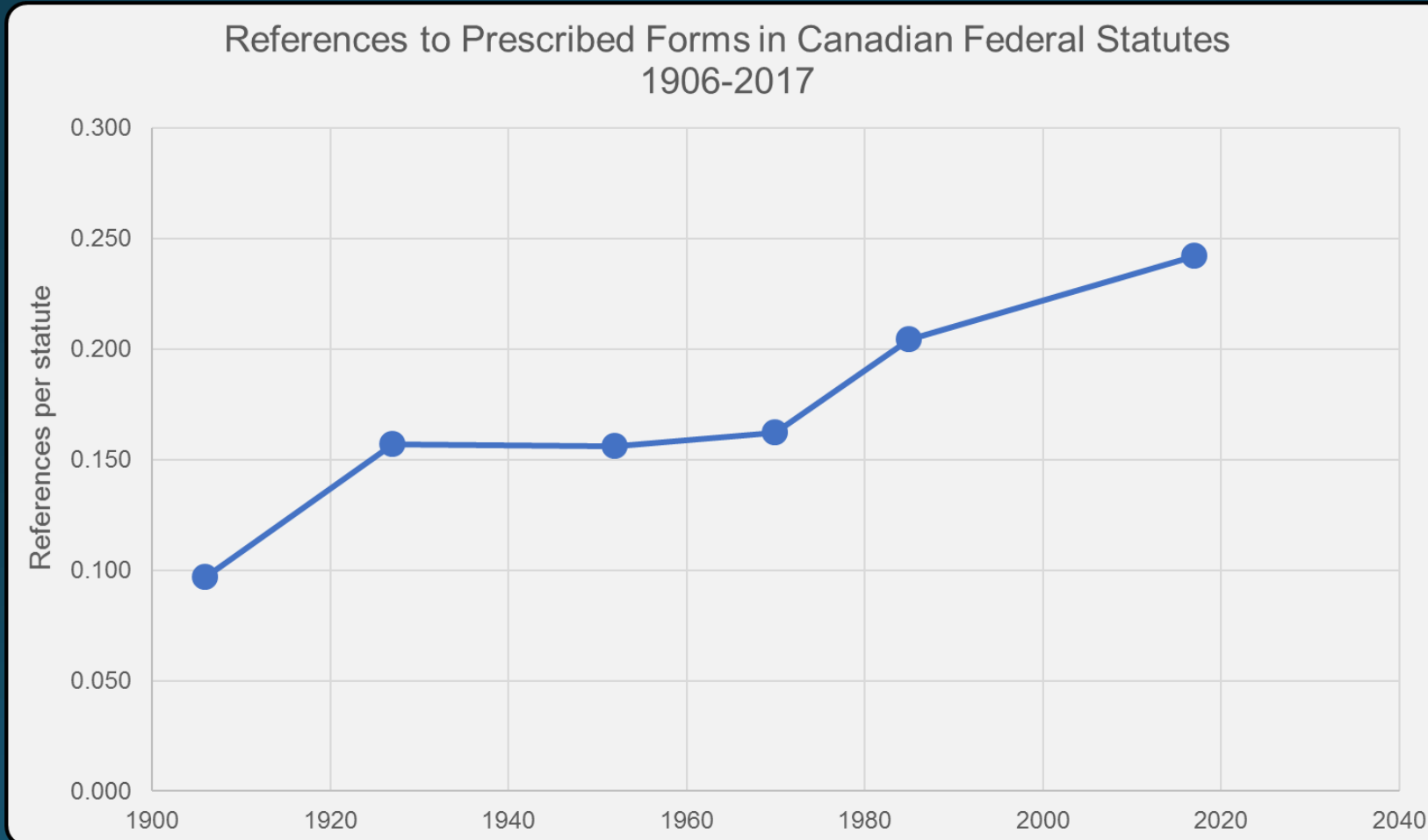
[All CanLII \(7,159\)](#) [Cases \(5,003\)](#) **[Legislation \(1,483\)](#)** [Commentary \(0\)](#)

[All jurisdictions ▾](#) **[Consolidated legislation ▾](#)** [All versions ▾](#)

<input type="checkbox"/> Canada (Federal)	93	
<input type="checkbox"/> British Columbia	121	L, c L-1.1
<input type="checkbox"/> Alberta	127	
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<input type="checkbox"/> Manitoba	100	on that he or she has possession of the affidavit of the ap
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<input type="checkbox"/> Quebec	55	land shall file an application and a debenture in prescrib
<input type="checkbox"/> New Brunswick	97	creditor who wishes to register a memorial of judgment
<input type="checkbox"/> Nova Scotia	122	all file an application in prescribed form with the [...]
<input type="checkbox"/> Prince Edward Island	84	
<input type="checkbox"/> Newfoundland and Labrador	87	cedure Act, SNB 1987, c P-22.1
<input type="checkbox"/> Yukon	89	
<input type="checkbox"/> Northwest Territories	69	nswick — New Brunswick
<input type="checkbox"/> Nunavut	73	section 14(8), a defendant who has paid a fixed penalty r

in **prescribed form** to the address specified in the ticket for payment [...] 38(1)Upon t

- Their use is growing



- They come in myriad varieties
 - uses and purposes;
 - makers;
 - formats;
 - legal effects.

- Sometimes they're strange

O.I.C. 2005/183
MOTOR VEHICLES ACT

DÉCRET 2005/183
LOI SUR LES VÉHICULES AUTOMOBILES

Notice of Impoundment of Motor Vehicle — Avis de mise en fourrière d'un véhicule automobile

Page 1 of 2

Page 1 de 2

TO
À _____
OF
DE _____
Situé(e) _____
The following described motor vehicle is impounded, pursuant to section _____
La véhicule automobile décrit ci-dessus est mise en fourrière en vertu de la section _____

Identifying number of vehicle	Description of vehicle
of the Motor Vehicles Act, in your establishment from this date and must not be removed or permitted to be removed or released from impoundment except upon order of the registrar of motor vehicles.	de la Loi sur les véhicules automobiles, et ce, par suite de la mise en fourrière de ce véhicule, et si celui-ci ne doit pas être restitué que sur l'ordre du registraire des véhicules automobiles.
Year/Make	Plaque no.
Année/Marque	Id. d'immatriculation
Style	Transportation
Type	Truc, camion, etc.
Serial number	
Numéro de série	
Owner of owner	
Nom du propriétaire	
Address of owner	
Adresse du propriétaire	

ACKNOWLEDGMENT OF RECEIPT OF MOTOR VEHICLE	ACCUSÉ DE RÉCEPTION D'UN VÉHICULE AUTOMOBILE
Notion of impoundment of motor vehicle served on me this _____	Un avis de mise en fourrière d'un véhicule automobile m'a été signifié le _____
I will acknowledge receipt of the described motor vehicle _____	et j'en ai réception de la véhicule décrit ci-dessus.
By _____ For _____	

Note: This motor vehicle must not be sold until some time has been released from impoundment.

Note: Le véhicule automobile décrit ci-dessus ne doit pas être vendu à moins d'avoir été libéré de l'autorité de la fourrière dans le délai prescrit.



MOTOR VEHICLES ACT
NOTICE OF IMPOUNDMENT OF MOTOR VEHICLE
LOI SUR LES VÉHICULES AUTOMOBILES
AVIS DE MISE EN FOURRIÈRE D'UN VÉHICULE AUTOMOBILE

TO
À _____
owner, grantor or lessor = propriétaire, ayant droit ou locataire

OF
DE _____
area or place of impoundment = zone ou lieu de la fourrière

Situated at
Située à _____

The following described motor vehicle is impounded,
pursuant to section

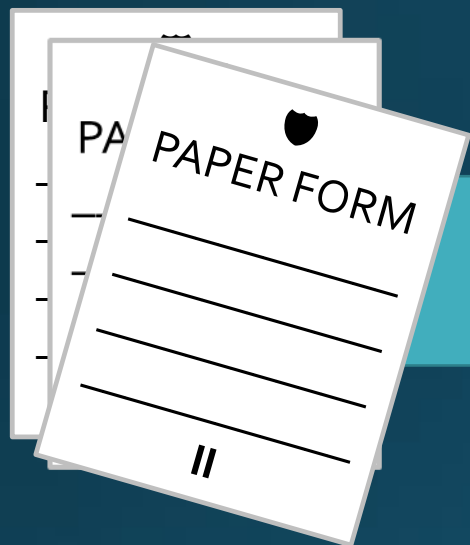
Le véhicule automobile décrit ci-dessous est mis en
fourrière conformément à l'article

section number = numéro de l'article

description = description

of the Motor Vehicles Act in your establishment from

de la Loi sur les véhicules automobiles, et ce peut être



Regulation



Why?

Registry No. _____

Numéro d'enregistrement _____

GOVERNMENT OF YUKON

WRIT OF IMMEDIATE GARNISHMENT

(Issued Before Judgment)

In the _____ Court,
(Supreme or Territorial)

Between _____ of _____, plaintiff,
(Name) (Place)
and
_____ of _____, defendant,
(Name) (Place)
and
_____ of _____, garnishee.
(Name) (Place)

TO THE GARNISHEE:

Take notice that the plaintiff has commenced an action against the defendant in this Court for a liquidated demand in the amount of \$ _____.

The AMOUNT SOUGHT TO BE ATTACHED by this Writ is \$ _____. *(The amount shall not exceed the amount demanded in the action.)*

Whether or not you are indebted to the defendant, you are required to file one copy of the accompanying Notice of Response with the Court and to deliver one copy of it to the plaintiff. *(If three copies of the Notice of Response are not served on you with this Writ, you may disregard this Writ.)*

If you are indebted to the defendant, you are required to pay the amount you owe, to a maximum of the amount sought to be attached, into Court within 14 days after the service of this Writ on you. From this amount you may deduct not more than \$25 as your cost of compliance with this Writ.

WAGE EXEMPTION: This Writ does not attach any wages or salary owed by you to an employee.

In your Notice of Response you may dispute your liability to pay into Court all or part of the amount sought to be attached. *(A Notice of Response must be filed and delivered*

GOUVERNEMENT DU YUKON

BREF DE SAISIE-ARRÊT IMMÉDIATE

(avant jugement)

Cour _____
(suprême ou territoriale)

_____ de _____, demandeur,
(nom) (endroit)
et
_____ de _____, défendeur,
(nom) (endroit)
et
_____ de _____, tiers-saisi
(nom) (endroit)

AU TIERS-SAISI :

Le demandeur a introduit une action contre le défendeur devant la présente Cour pour une somme déterminée de \$ _____.

Le MONTANT À SAISIR au titre du présent bref est de \$ _____. *(Le montant ne peut être supérieur à la demande réclamée dans l'action.)*

Que vous soyez ou non endetté envers le défendeur, vous devez déposer au tribunal une copie de l'avis de réponse ci-joint et en remettre une au demandeur. *(Vous pouvez ne pas tenir compte du présent bref si trois copies de l'avis de réponse ne vous ont pas été signifiées avec le présent bref.)*

Si vous êtes endetté envers le défendeur, vous devez consigner au tribunal le montant dû jusqu'à concurrence du montant à saisir, dans les 14 jours suivant celui de la signification du bref. Vous pouvez déduire de ce montant une somme ne dépassant pas 25 \$ au titre des frais engagés pour répondre au présent bref.

EXEMPTION À L'ÉGARD DES SALAIRES : Le montant des salaires que vous devez à un employé n'est pas saisissable en vertu du présent bref.

Dans l'avis de réponse, vous pouvez contester votre obligation de verser au tribunal la totalité ou une partie du montant à saisir. *(L'avis de réponse doit être déposé au tribunal*



BIRTH · NAISSANCE

Yukon
Health and Social Services
Services de Santé et de Bien-être

BIRTH CERTIFICATE
CERTIFICAT DE NAISSANCE



Shirley Clements
Shirley Clements
Registrar Yukon Vital Statistics
Registraire des statistiques de l'état civil du Yukon



Certified extract from
Registration of Births,
Deaths and Marriages,
Yukon, Canada
Extrait certifié d'enregistrement
de naissances, décès et
mariages (Yukon)
Canada

YK (2706/00)

Name
Nom **SMITH, Jane Janey**

Date of Birth Date de naissance	Oct 20, 2000
Place of Birth Lieu de naissance	Whitehorse
Name of Parent Nom du parent	sample specimen
Place of Birth Lieu de naissance	xxxxxxxxxxxxxxxxxxxx
Name of Parent Nom du parent	sample specimen
Place of Birth Lieu de naissance	xxxxxxxxxxxxxxxxxxxx
Name of Parent Nom du parent	sample specimen
Place of Birth Lieu de naissance	xxxxxxxxxxxxxxxxxxxx
Name of Parent Nom du parent	sample specimen
Place of Birth Lieu de naissance	xxxxxxxxxxxxxxxxxxxx
Registration No. N° d'enregistrement	2000-601000
Registration Date Date d'enregistrement	Oct 21, 2000

Sex
Sexe **F**

Date Issued
Déposé le **Jun 27, 2014**

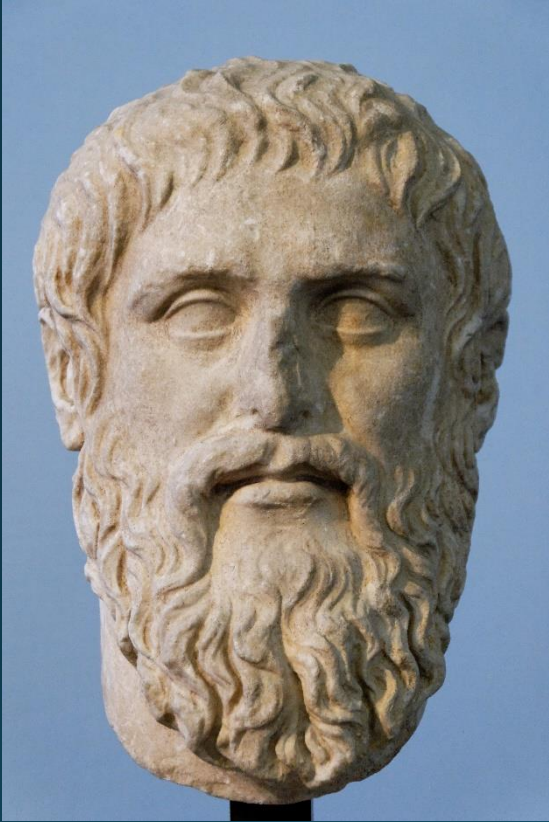


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- They pose issues for drafters
 - When should the law require a form (or enable one)?
 - Who should make forms?
 - What should a form look like?

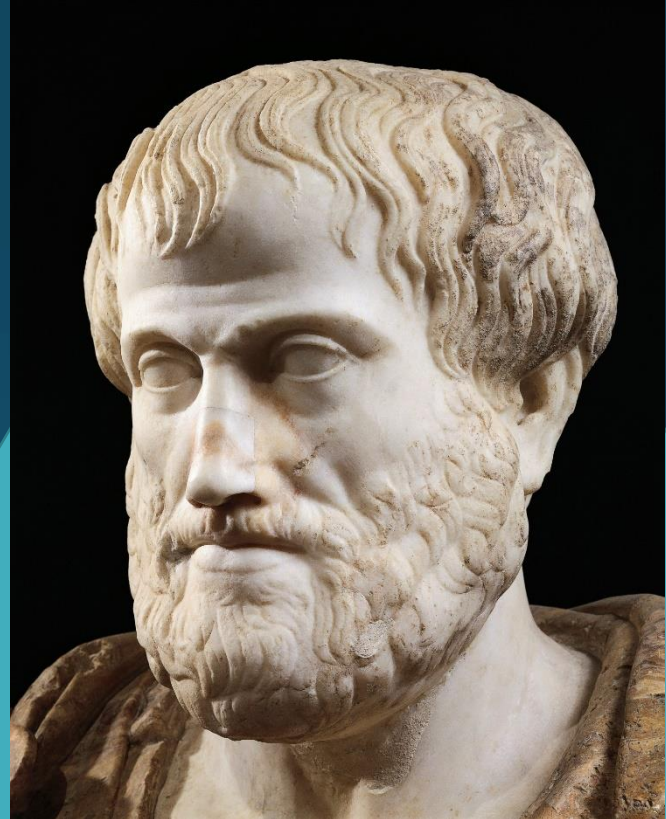
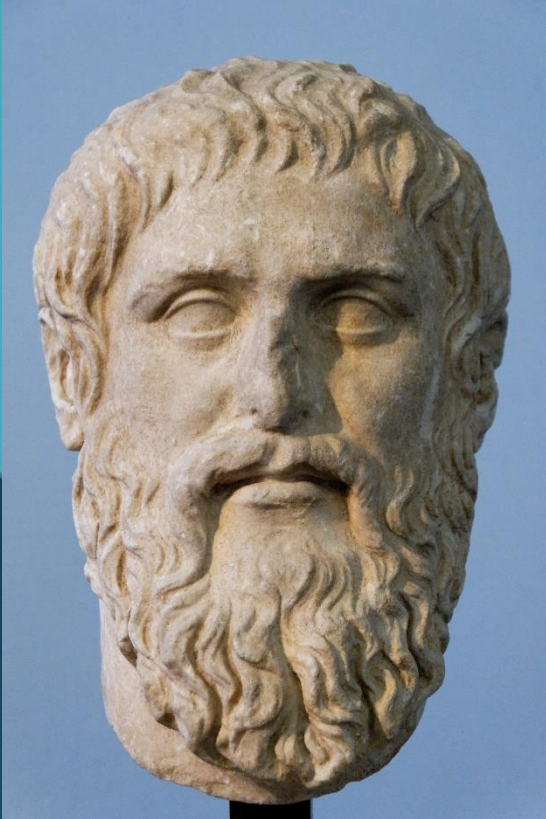
What is a form?

Anything that gives structure or shape to something.



“The immortality of the soul is proved by our ability to apprehend the everlasting concept-objects that Plato often calls the Forms....”

Encyclopedia of Philosophy



What do forms do?

What do forms constrain?

Where do they convey their
information/meaning?

Examples

An application for a licence shall be in the prescribed form and shall specify the claim or claims applied for as designated on the official maps of the Department.

Mineral Resources Act (Nova Scotia), s.24(2)

Form 6 - Application for Exploration Licence or Renewal of Exploration Licence
(pursuant to the *Mineral Resources Act*, S.N.S. 1990, c. 18, s. 24(2) & 44(1)(a))

Application is hereby made for an Exploration Licence under the *Mineral Resources Act* for all minerals saving and excepting _____ over an area of ground situated at or near _____ in the County of _____ and described as follows:

Claim	Tract(s)	Claim Reference Map

Signed at _____ Date _____

Signature of applicant (Please print name) **Occupation**

Address

Postal code

Tel. no.

Licence to be issued to

Address

Postal code

Note: If the intended licensee is not a resident of Nova Scotia, the name and post office address of a person resident in Nova Scotia who has agreed to accept service on behalf of the applicant must be given as follows:

Service may be made upon _____, who resides at
_____, telephone no. () _____.

A licence issued pursuant to this application is subject to the *Mineral Resources Act* and regulations, in particular the following Sections of the *Act*: s. 16, s. 39, s. 40, s. 55A, s. 84, s. 85, s. 86, s. 87, s. 88.

For further information, contact the Registrar of Mineral and Petroleum Titles at 1-902-424-4068.

An export permit shall be issued in the form established by the Minister.

Cultural Property Export Regulations (Canada), s. 9.

The director and every person employed for the purposes of this Act ... shall, before entering upon his or her duties, take and subscribe an oath or affirmation in the following form:

I, _____, do solemnly swear/affirm...

The Statistics Act (Manitoba), s. 6(1)

An application under this section must ... be made
in the form and manner acceptable to the
Registrar...

Body Armour Control Act (Alberta) s. 6(2)(a)

Dictionary meanings

- 1 “A set or fixed order of **words** (e.g. as used in religious ritual).”
- 2 “The customary or legal **method** of drawing up a writing or document.”
- 3 “A formulary **document** with blanks for the insertion of particulars.”

Oxford English Dictionary

In other words...

- 1 Ritual text (**words**)
- 2 Instructions for drafting an instrument (**method**)
- 3 A thing with in-itself value or effect (**document**)

1 Ritual text

- Forms of oath, etc.
- Boilerplate
- Bilingual forms for unilingual audiences?

1 Ritual text

Key value: getting the words right

- The words have *per se* legal effect, or
- Their presence indirectly affirms something important

2 Instructions for drafting

- Common-law writs
- Transactional documents
 - Applications
 - Contracts

Declaration of Conformity

DEMONSTRATION OF CONFORMITY WITH RECOGNIZED STANDARDS TO SATISFY THE SAFETY AND EFFECTIVENESS REQUIREMENTS OF THE CANADIAN MEDICAL DEVICES REGULATIONS

Name of the medical device as it appears on the label: _____

Name of the Manufacturer of the medical device: _____

1. List of recognized standard(s) applicable in part or in whole to this Medical Device:

Full name of Standard(s) as stated on the TPD Recognized Standards List

In the case where only specific parts or Sections of a recognized standard apply to the device, *Sections 2 through 7 must be completed.*

In the case where all parts and Sections of a recognized standard apply to the device, *Section 5 through 7 must be completed.*

2. In the case where only specific parts or Sections of a recognized standard apply to the device, note the requirements that are not applicable to the medical device:

Recognized Standard(s)	Inapplicable Requirements of the Recognized Standard

6. An independent testing laboratory or certification body was used to determine the conformance of the medical device with the recognized standard(s):

Yes ☐ G

No ☐ G

If the answer to the above is Yes, the name and address of the testing laboratory or certification body and their accreditations are as follows:

Name and Address of Testing Laboratory or Certification Body	International, National or Provincial Accreditations of the Testing Laboratory or Certification Body

7. As a senior official of the manufacturer, having responsibility for the regulatory compliance of the medical device with the requirements of the Canadian *Medical Devices Regulations* and this Declaration of Conformity, I hereby declare that the information I have provided in support of the safety and effectiveness of the medical device to be true and accurate.

I also acknowledge that any false statement made with respect to the conformity of the medical device with an applicable recognized standard(s), or a determination by Health Canada that the medical device does not conform to the requirements of the recognized standard(s), could result in the suspension of any medical device licence which has been issued for the medical device subject of this Declaration of Conformity.

Name of Senior Official _____

Title of Senior Official _____

Signature of Senior Official _____

Date: _____

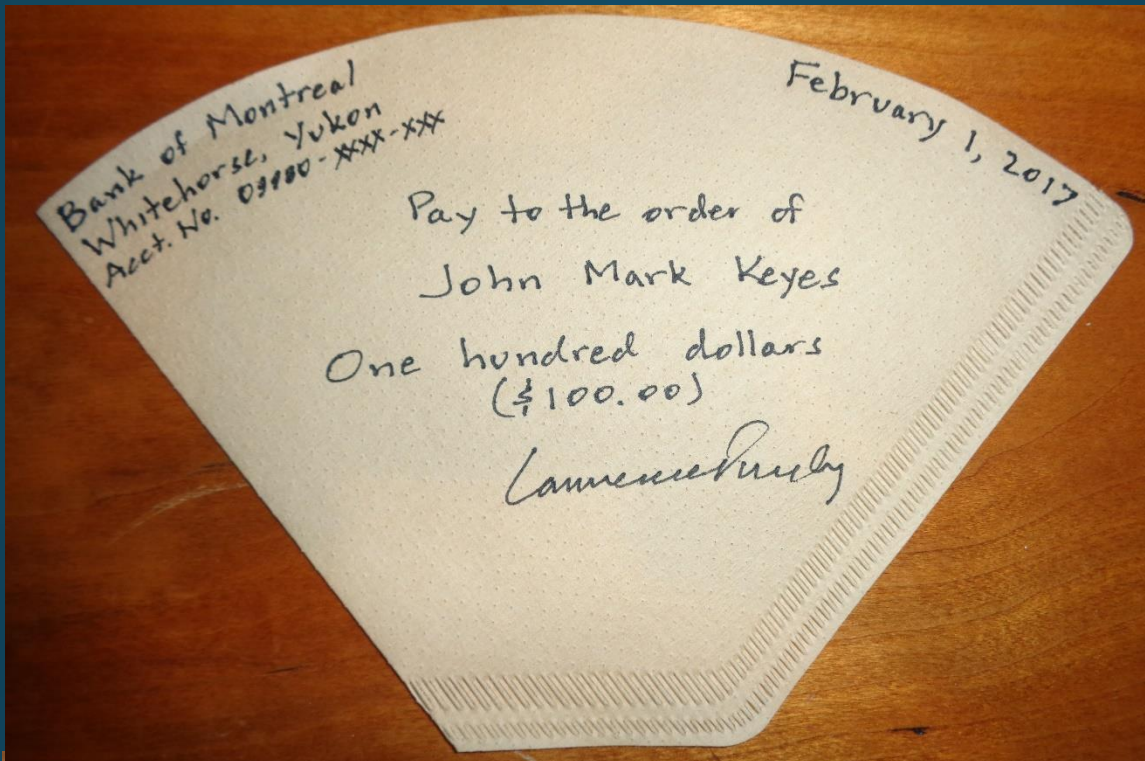
2 Instructions for drafting

Key value: getting the information right

- Complete data, in the preferred order, to enable processing

3 A thing itself

- official originals

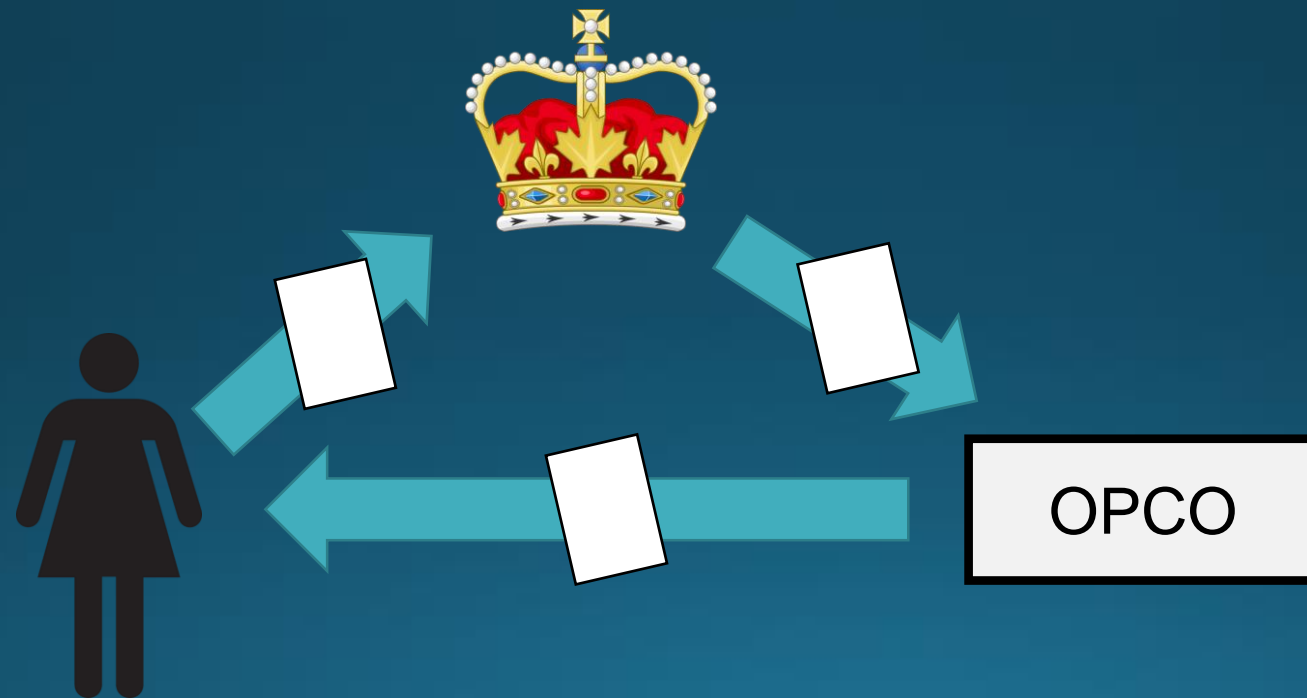


3 A thing itself

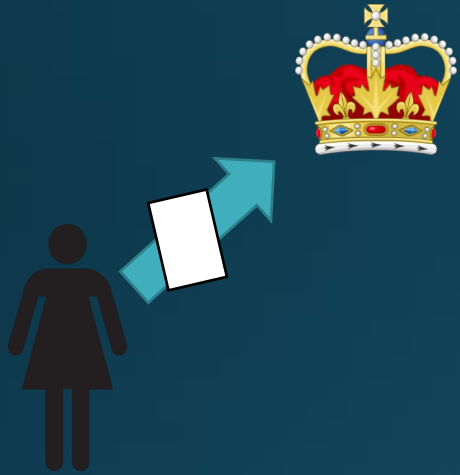
Key value: authenticity – using the right item

- The thing itself has special properties (inherent value or trustworthiness)

Forms as means of communication

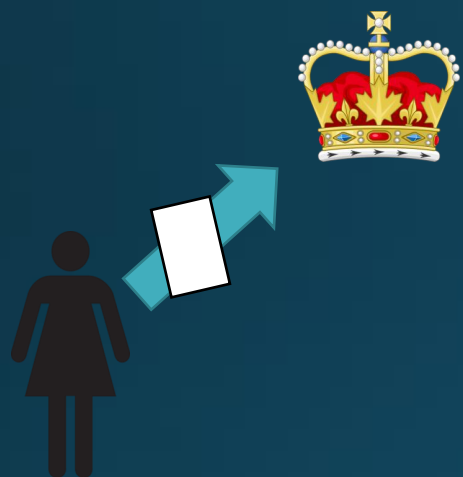


Person to Government



Requiring a form can add to...

- Completeness and consistency of information
- Processing efficiency (e.g. machine readability)
- Easier data mining and record-keeping



Can also erect obstacles

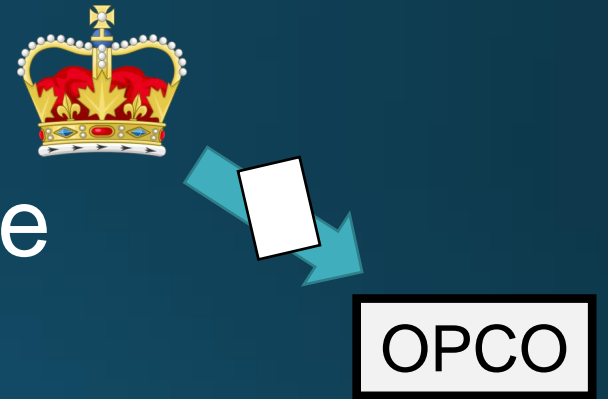
“The Circomlocution Department is accessible to the Public if the Public approaches it according to the official forms; if the Public does not approach it according to the official forms, the Public has itself to blame.”

Charles Dickens, *Little Dorrit* (1857) (adapted)

Government to Person

A legislated form can...

- Control (and simplify) administrative action
- Enhance public confidence
- Aid interjurisdictional comity



Person to Person (neither = Government)

A required form can...

- Regularize legal relationships
- Help offset power imbalances
- Streamline dispute resolution



Typology of Forms

1. A legislated form controls

- a ritual text;
- the presentation of information; or
- the use of special documents.

2. A legislated form transmits information

- from non-government persons to government;
- from government to non-government persons; or
- between non-government persons.

	<i>Information flow</i>		
<i>Value served</i>	Person to Govt	Govt to Person	Person to Person
Right words	◎	◎	◎
Right information	◎	◎	◎
Right item	◎	◎	◎

Interpretation Acts and deviations from forms

Where a form is prescribed, deviations therefrom not affecting the substance nor calculated to mislead, shall not invalidate the form used.

RSNB 1973, c I-13, s 22(f);
(same with minor variations in
Canada, AB, BC, NL, NS, NT, NU,
PE, SK, YT)

Where a form is prescribed, deviations therefrom not affecting the substance **nor calculated to mislead**, shall not invalidate the form used.

- What about a deviant form that's *calculated* to mislead, but couldn't possibly succeed?

A form that differs from the one prescribed or approved under an Act or regulation may be validly used if the differences do not affect the substance and **are not likely to mislead.**

CCSM c I80, s 37

The strict use of the forms enacted by statutes to ensure the execution of their provisions shall not be required on pain of nullity, if the deviations therefrom do not affect the meaning.

CQLR c I-16, s 48

Deviations from a form whose use is required under an Act do not invalidate the form if,

(a) they do not affect the substance and are unlikely to mislead; and

(b) the form is organized in the same or substantially the same way as the form whose use is required.

SO 2006, c 21, Sch F, s 84

So what?

A decision tree for legislative drafters

Decision tree

1. Should the legislation require use of a form?

- Is a form necessary?
 - Ritual text (e.g. oath)
 - Technical requirements
 - Authenticity
- Will a form be helpful...
 - to the client-user?
 - to the program administrator?

7.(1) A person who wishes to conduct an archaeological investigation in the province shall apply to the Minister for an archaeological permit by submitting to the Minister

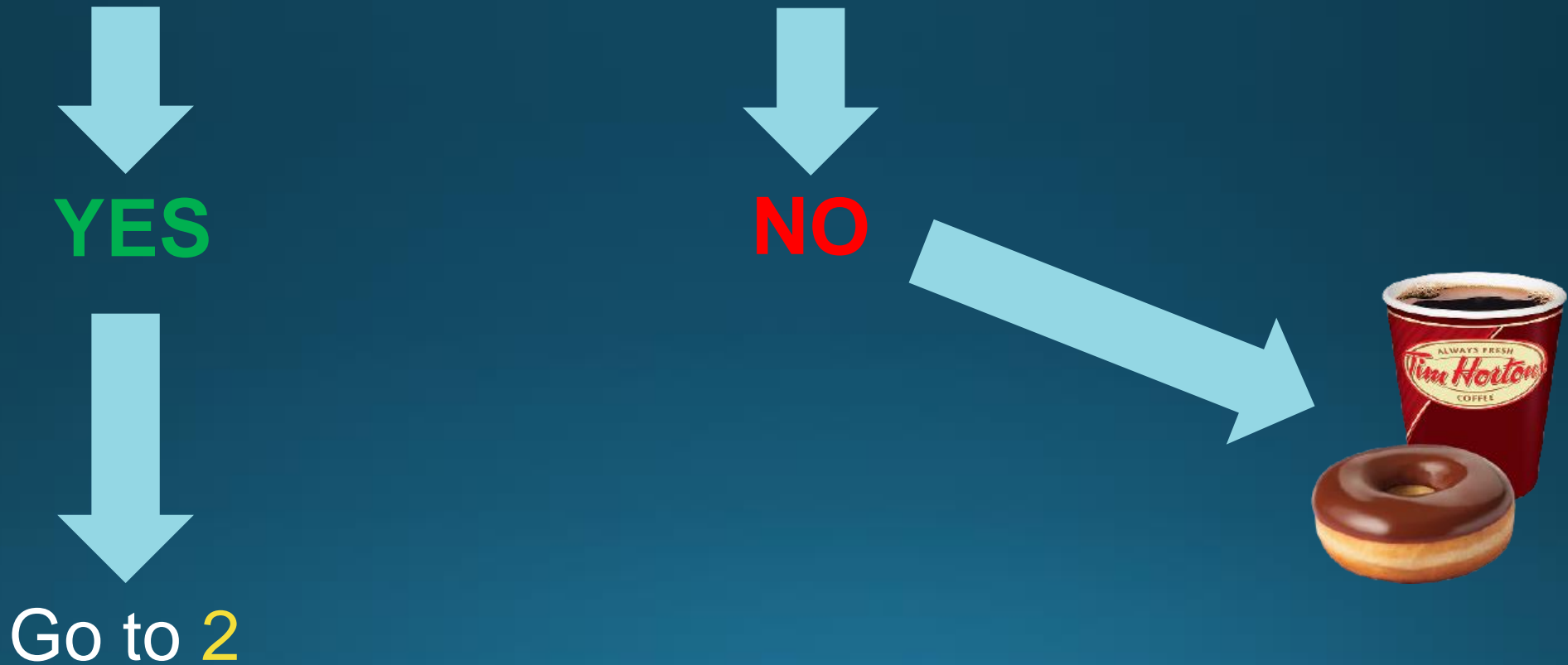
~~(a) a completed application in the prescribed form;~~

(b) such information respecting the application and the proposed archaeological investigation at the site as the regulations or the Minister may require; and

(c) the prescribed fees.

Decision tree

1. Should the legislation require use of a form?



Decision tree

2. Should the form itself be legislated?

Consistency – *and legislative burden*

VS

Flexibility – *and potential uncertainty*

To apply for a grant, a school division must submit **the prescribed form** within a prescribed period to the Minister.

The Education Property Tax Credit Act (SK), s 4(2)

Before being permitted by the Board to take an examination, a candidate shall

- (a) complete **an examination application form provided by the Minister,**
- (b) have attained the age of 19 years, and
- (c) satisfy the Board that he or she...

Scalers Act (NB), s 7(2)

Pop quiz!

What legislated form do Canadian commuters see most frequently?



(g) Private

The plate's size shall be 152 x 304 mm (6" x 12") and have one of the following sets of distinguishing marks, colors, symbol, and size of lettering and digits:

- (i) Gold background, black letters and digits no larger than 67 mm (2 3/4") in height for the plate's identification marks, a goldpanner symbol on the left hand side of the plate, the words "The Klondike" no larger than 16 mm (5/8") in height on the top portion of the plate and the word "Yukon" no larger than 16 mm (5/8") in height on the bottom portion of the plate; or
- (ii) White and blue background, black lettering digits no larger than 67 mm (2 3/4") in height for the plate's identification marks, a goldpanner symbol on the left hand side of the plate, the words "The Klondike" no larger than 16 mm (5/8") on the top portion of the plate and the word "Yukon" no larger than 16 mm (5/8") on the bottom portion of the plate with the colors of the goldpanner symbol being red or orange combined with black and yellow and the words "The Klondike" and "Yukon" being red or orange.

*Regulations Prescribing Licence Plates and Validation Tabs (Yukon), OIC
1990/111*

The Registrar shall issue licence plates in the number and of the type and colour approved by the Minister.

*Operator Licensing and Vehicle Control Regulation,
Alta Reg 320/2002, s 63(2)*

Decision tree

2. Should the form itself be legislated?



YES



Go to **3**



NO



Identify who's to make
(issue, provide...) the form

Decision tree

3. Who should legislate the form?



Decision tree

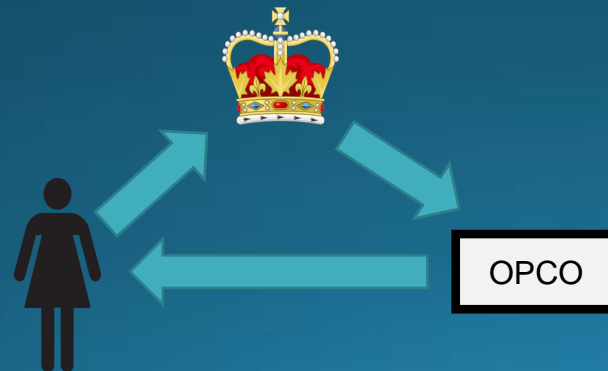
4. Which delegate?

- Does *Cabinet* need to make a form?
 - structure of enactment
 - contentious matter
- If not, consider delegating to Minister, program official (e.g. Registrar)

Decision tree

5. What kind of form best fits the need?

- Which value(s) is (are) served?
 - Right words, right information, right thing?
- Where is information flowing?



Summary (1)

Q. What are legislated forms for?

A. Control by the legislator of the **words**, the **method** or the **document (thing)**.

Q. Where do legislated forms travel?

A. From **persons to governments**, from **governments to persons** and **between persons**.

Summary (2)

Tips for drafters

- Recommend forms cautiously
- Delegate form-making appropriately
- Fit the form to the purpose