Policy Design as Instrument Choice?
The regulation revisited

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Paper presented to the Canadian Association for Programs in Public Administration Annual Research Conference on May 25-26, 2015 at Glendon College, York University, Toronto ON

“In the case of the regulatory instrument, attempts are made in most Western countries to improve the process of how and when to use this instrument. The underlying assumption is that by improving the process of how we choose policy instruments, the "politics of policy instrument choice" will be better managed and lead to rational choices”
(Lemaire, 2007, p. 72).

Policy studies as an academic field wrestles with the interrelated pursuits of developing theoretical rigor and applying that theory to the practice of public administration. These two motivations can be complementary or divergent, but in the end it is the theory that must serve, propel and reflect the practice, and not vice versa. Theories of public policy development have attempted to systematize the process by which governments define, design, implement and evaluate state activity (or inactivity). A crucial step within that development cycle is policy design, meaning the development of policy options and their alternatives (Howlett, 2014, p. 192). Although policy design can be said to encompass a variety of elements, “including policy goals, objectives and aims, as well as policy means, tools and their calibrations” (Howlett, 2014, p. 194), the primary emphasis within the literature tends to focus on the question of instrument choice. This emphasis is demonstrated in many ways: by defining policy instruments, through attempts to create instrument typologies or classifications, and the theorizing that marries instruments to policy goals.

The prominence of instrument choice within the policy design literature is perhaps unsurprising. It is a laudable pursuit to provide greater potential for the success of policy interventions by arming practitioners with a toolbox of instruments whose characteristics and applications are defined. And it is not the purpose of this paper to discount the applied benefits that have come from such pursuits. It is, however, the intention of this study to question the emphasis on instrument choice within the policy design literature and to argue that there are limitations that come with such a singular focus. The assumption that policy design is ultimately a process of instrument selection is problematic in the practice of public administration in two ways: firstly, it ignores the contextual
factors that may remove instrument choice from the policy design process altogether; and secondly, it assumes a constancy of instruments themselves, neglecting intra- and inter-instrument variability.

In a re-examination of the instrument of regulation, this paper employs the concept of implementation style as suggested by Michael Howlett. Focusing on Manitoba’s child care system, the study examines the institutional factors that may predetermine the selection of regulation as the default policy instrument. Through an analysis of three recent examples of child care regulation in Manitoba, the study concludes that despite an absence of instrument choice, there exists significant policy design as demonstrated by the variability of the regulations themselves. In challenging the limitations of policy design as instrument choice, practitioners may be afforded greater flexibility and creative ‘space’ within the policy design process.

Building the toolbox of policy design

In the policy design literature, it is difficult to avoid the metaphors of ‘tools’ and the ‘toolbox’, because the focus of study centres on questions of policy means. If we can understand the characteristics of a policy tool and the context of when we might wish to employ that tool, we can (in theory) improve our chances of success. Matching the appropriate policy instrument to the situation at hand, therefore, becomes a central aim of policy design. In order to accomplish this aim, research tends to cluster around two questions: what are the means of policy, and how and under what circumstances ought they to be selected?

The attempt to systematize the exercise of government activity has as a goal the efficient use of limited public resources to achieve a positive or improved outcome. Within that context, the ability to approach policy design with some degree of predictability reduces the risk of failure and the resultant social, political, economic or cultural costs. Indeed, a significant body of instrument theory stems from the discipline of economics, focused on questions of efficiency and encouraging government intervention into the market only where appropriate (Howlett, 2004).

Linder and Peters define policy design as the blueprint for the “fashioning and deployment of means” (1990, p. 303). In their work, however, they are explicit in the view that instrument choice is the linchpin of that design process. They go so far as to state that “starting with the wrong instrument in a design is more dangerous than using the right instrument poorly” (Linder & Peters, 1990, pp. 303-304). They advocate for greater attention and rigor to the study of instrument choice, both in current use and as well as in opportunities for new or improved policy means. The call to action on this front has and continues to be answered, and has provided much-needed theoretical and applied focus on questions of policy design.
Linder and Peters were certainly not the first to recognize the value of understanding the characteristics and application of policy instruments. In his work “From ‘old’ to ‘new’ policy design”, Howlett (2014) provides a comprehensive account of the evolution of policy design studies. Tracing this intellectual evolution from Harold Lasswell’s work on policy instrument definition, Howlett describes how policy design began to flourish in the 1970s and 1980s through a more explicit focus on the instruments or “techniques” of government activity. This growing maturity of design studies was the result of an analytical separation of policy formulation from policy implementation. And what is evident throughout Howlett’s survey is that policy design continues to be equated with, and indeed defined by, instrument choice. “Policy design elevates the analysis and practice of policy instrument choice—specifically tools for policy implementation—to a central focus of study, making their understanding and analysis a key design concern” (Howlett, 2014, p. 193).

In her chapter on Policy Instrument Choice and Evaluation, Marie-Louise Bemelmans-Videc is explicit in her positioning of policy instruments as the central focus of study. The development and use of a typology of policy instruments, “enlightens the choice between values of good governance” (Bemelmans-Videc, Rist, & Vedung, 2007, p. 16). Policy design is also treated in Leslie Pal’s Beyond Policy Analysis, where it is understood to be the art of “detailing what tools to use, and in what combination, to achieve a given end” (Pal, 2014, p. 129). And while Pal recognizes the evolution in the array of policy instruments, he still conforms to the instrument definition-choice structure. “The conventional discussion of policy instruments usually proceeds by laying out the basic categories and outlining some of the objective characteristics of each of the instruments” (Pal, 2014, p. 129).

This emphasis in the literature presents two correspondent challenges in the practice of policy design, the first of which is its lack of theoretical or applied insights to situations where the ‘choice’ of instrument may be removed. Before tackling the question of how policy instruments might be pre-selected, this study will delve into the second challenge presented by the literature: the limits involved in instrument definition.

**Regulation as the ‘stick’**

Regulations are employed by government to compel or prohibit activities in a variety of sectors, including economic, social, environmental, and health fields. Within the policy design literature, regulation is generally defined in terms of a mutually exclusive categorization alongside other policy instruments. Within this frame, regulation has been variously described as coercive (Doern & Phidd, 1983), punitive (Balch, 1980), economically inefficient (Lemaire, 2007) and characterized as government’s “stick” (Bemelmans-Videc, Rist, & Vedung, 2007). In the toolbox of policy instruments, regulation frequently appears as among the
most interventionist; an expression of the full extent of government’s legitimate use of power.

Regulation, as an instrument, can be defined both broadly and quite narrowly. In the broad sense, regulation is understood to be a mechanism for compelling action, in contrast to other strategies such as information, facilitation or incentives (Balch, 1980). Regulation consists of “rules of behaviour backed by the direct sanctions and penalties of the state” (Doern & Phidd, 1983, p. 306), and can be used both to limit or promote activities (Lemaire, 2007). Broad definitions of regulation as a policy instrument can also encompass other rule-like levers that involve government sanctions, including ‘guidelines’ or ‘standards’ (Doern & Phidd, 1983, p. 307). In this way, regulation is defined as a distinct category of policy instrument; the stick and not the carrot of policy design.

In the narrow sense, regulation is a specific form of subordinate or delegated legislation that is derived from statute. Legislative authority to create this form of law is generally delegated to Cabinet, an individual or to a body (Pal, 2014). Unlike statutes, which must be debated and passed by the legislative branch of government, regulations carry the weight of law, but are more nimble. Not subject to the legislative session, regulations are developed and assented to by the delegated body granted the authority to create them.

Though definitions of regulation as a policy instrument do vary, the intent of the exercise tends to be the same. The definition is a precursor to devising theories of instrument choice, as either how instruments are or ought to be selected. In applying utility theory to instrument choice, Balch (1980) suggests that regulation would be the appropriate instrument in situations where there are limited alternatives and where the goal is specific and measurable. In Doern and Wilson’s classification of instruments according to levels of coercion, they hypothesized that governments would tend to select initially the least coercive instrument (Doern & Phidd, 1983). Bressers and O’Toole (1998) contend that regulation becomes a preferred instrument in situations where there is weak interconnectedness and cohesiveness of a policy network (the actors and targets of policy development).

There are limitations to this type of approach to policy design, in that it can tend to prioritize theoretical coherence above applied utility. Rarely does the practitioner have access to information so complete and robust as to make a perfect instrument choice. “In real world situations, as information difficulties arise in determining instrument effects and as the clarity and precision of goals diminishes, it becomes more and more likely that policy means and ends will be mismatched” (Howlett, 2004, p. 5). Moreover, classification requires an underlying assumption of the actual or perceived consistency of the instrument itself; the expectation that regulation can be defined and is therefore replicable. However, even this assumption is challenged by the recognition that instruments can be somewhat substitutable (Howlett, 2004; Trebilcock & Hartle, 1982).
Howlett (2004) suggests an alternative to this “good and evil” approach to instrument choice, that moves beyond the somewhat false dichotomies involved in instrument definition and selection. He proposes an approach to policy design that accounts for implementation style, meaning “the set of previously existing arrangements and any long-standing preferences for particular instruments that may exist in a specific sector” (Howlett, 2004, p. 8). In examining the internal constraints and external contexts of instrument selection, Howlett contends that policy design can be further refined, leading to more innovative policy solutions. In advancing Howlett’s argument, what follows is an analysis of the institutions of child care governance in Manitoba and the ways in which these structures may propagate a regulatory implementation style.

The institutions of child care in Manitoba
Modern child care services originated from a need to provide supports to women, thereby enabling them to participate in the labour market (Atkin, 2001). These early services in the Canadian context were created and delivered through charities, but as child care gained salience as a public issue in the late post-war period, governments began to engage in the sector. Yet, unlike the universal education system, child care remains arms-length to government and is generally delivered by not-for-profit and for-profit providers (Prentice, 2006). Despite attempts at creating a national or harmonized system, child care continues to be the purview of provincial governments.

In Manitoba, government’s role in child care formally came about in 1974 with the creation of the Child Day Care Program through the Department of Health and Social Development (Child Care Coalition of Manitoba, 2014). This early engagement involved offering start-up funding to providers, as well as subsidies for parents. In 1983, the provincial government introduced The Community Child Care Standards Act1 and regulations that required centre and home providers to become licensed according to provincial standards (Manitoba Early Learning and Child Care, 2003). Over 30 years have passed since the Act and regulations came into force, and since that time Manitoba’s system has expanded both in size and in the depth of its regulatory structure.

The Child Day Care Program is now known as the office of Manitoba Early Learning and Child Care (MELCC), within the Department of Family Services. MELCC has responsibility for the licensing and monitoring of 1,092 providers (666 centres and 426 homes), certifying individuals to work in the licensed sector, and providing almost $140 million in annual funding through grants and subsidies (Manitoba Family Services, 2014, pp. 61-68). The office also supports capital projects for new and renovated centres, administers an online child care registry to connect parents to providers, and delivers supports to improve curricular

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1 Originally named The Community Child Day Care Standards Act, the title was amended in 2004.
quality. MELCC is responsible for policy development in the furtherance of its mandate, almost all of which is in some way regulated.

Two consolidated regulations fall under *The Community Child Care Standards Act*: M.R. 62/86 (Child Care Regulation) and M.R. 20/2011 (Child Care Worker Retirement Benefits Regulation). At one-hundred pages in length, M.R. 62/86 constitutes the bulk of the regulations, including licensing standards, certification standards, safety requirements, board governance, subsidy eligibility and maximum daily fees (Province of Manitoba, 2014). Passed in 2011, M.R. 20/2011 is a much narrower regulation focused on pensions and retirement supports for the child care workforce (Province of Manitoba, 2011b). During the 16-year period of New Democratic Party rule between 1999-2015, there have been 23 amendments to the Child Care Regulation, as well as the creation of the Child Care Worker Retirement Benefits Regulation. The volume and breadth of regulatory activity suggests a particular implementation style. There are several institutional factors that encourage the continued use of regulations, both in terms the external context and internal constraints.

*External context*

MELCC as a government organization interacts with the child care sector through several mechanisms. There are front-line provincial staff that undertake the licensing and monitoring of the over 1,000 providers across Manitoba, as well as financial staff that deal directly with parents applying and receiving subsidies for child care fees. MELCC also has relationships with other Manitoba government departments, with child care offices in other jurisdictions and with advocacy groups like the Manitoba Child Care Association (MCCA).

Regulation as a framework for child care is not only apparent at the provincial level in Manitoba. The context of child care oversight across Canada is regulatory in nature. The 10 provinces and three territories all have regulatory structures in place to license centre and home-based child care settings (Friendly, Halfon, Beach, & Forer, 2013). Policy development in one jurisdiction does not occur in a vacuum. It is embedded in the broader national context, where provincial governments can monitor and share their best practices and new initiatives. The institutional mechanisms for this cross-jurisdictional engagement include the Childcare Resource and Research Unit (CRRU), an organization that provides resources and information related to child care policy across Canada. All provinces and territories contribute data and information to CRRU’s studies, which includes comprehensive reports about the state of child care in Canada. Policy development that moves away from the regulatory structure for child care may result in concerns raised from provincial counterparts who are part of this national network.

Within the province, Manitoba also has institutionalized processes that promote the continued use of regulation. One such body is the Child Care Regulatory Review Committee (also known as Reg Review). Reg Review is an advisory
body to the Minister of Family Services and is comprised of various representatives from within the child care community, including MCCA, child care providers, departmental staff, parents, and representatives from francophone and Aboriginal communities, as well as from educational institutions (Manitoba Early Learning and Child Care, 2005). Notably focused on regulations, the committee is an attractive forum for consultation, given the breadth of its membership and the regularity of its meetings. The purpose of the committee as set out in its Terms of Reference is to “review and advise on child care regulations to ensure they are relevant to the current needs of families and providers of service” (Manitoba Early Learning and Child Care, 2005, p. 6). Although Reg Review has at times been provided with broader tasks, such as the 2001 Vision for Child Care, it is primarily a means by which government is able to consult on proposed regulatory changes. Not only does the committee reflect on regulatory changes brought forward by provincial staff, they can also generate proposals for regulatory amendments for consideration by government. This existing consultative mechanism may therefore encourage policy development that is simply assumed to be regulatory in nature.

Another contextual factor related to policy instrument choice is the mechanism for implementation. Given the existing regulatory framework for child care in Manitoba, there are already staff resources allocated and processes in place to ensure compliance with those regulations. There are 33 provincial staff positions solely dedicated to the licensing and monitoring of child care providers (Manitoba Early Learning and Child Care, 2014, pp. 13-15). These Child Care Coordinators are located in regions across the province, and have regular and ongoing relationships with all licensed centres and homes. In addition to the staffing resources, there are also existing procedures for handling non-compliance with regulations. Centres and homes, that are found to be non-compliant with any of the requirements under the Act or regulations, are subject to a Licensing Order made by the Director of MELCC (Manitoba Early Learning and Child Care, 2015). These Orders are publicly communicated on the provincial government website, clearly indicating the areas of non-compliance. In extreme cases, providers may also have their licenses suspended or terminated, in accordance with the Act and regulations. The creation of additional regulatory requirements therefore becomes an attractive option in terms of policy implementation and licensee accountability, given that it is possible to take advantage of existing organizational structures and processes.

Internal constraints
Beyond the external contextual factors, there are also internal constraints that may lead to an assumed choice of regulation as a policy instrument for child care. By internal constraints, Howlett is referring to the “internal configuration of instrument mixes [that] alters the calculus of instrument choice in significant ways” (Howlett, 2004, p. 7). In essence, these are constraints in terms of the types of instruments that exist or that can be combined to achieve a policy outcome.
In the case of MELCC, a major internal constraint is the existing and extensive regulatory structure already in place. Every aspect of MELCC’s role touches on the regulations, and not only in respect of licensing, certification or health and safety requirements. The Act and regulations also outline how various grants are allocated, the requirements for individuals to receive financial support for training, eligibility for subsidies, the maximum fees that can be charged, and curriculum requirements.

This existing framework could, in some respects, be the result of the statutory structure laid out in the Act. For example, the Act provides the Minister of Family Services the power to authorize the payment of grants, subject to the regulations. The regulations then specify the types of grants and financial assistance, their requirements and any conditions. However, since the Act was first passed in 1983, the various forms of financial support for child care have vastly expanded beyond general operating grants tied to licensing standards. MELCC now administers capital funding, training grants to individuals working in child care, recruitment incentive grants, emergency funding, grants to support the inclusion of children with additional support needs, and the recent introduction of funding for pensions and retirement supports (Province of Manitoba, 2014). Not all of these other forms of financial assistance are strictly ‘regulatory’ in nature, in the sense of Doern and Phidd’s “rules of behaviour backed by…direct sanctions” (1983, p. 306). So how is it that they are all regulated? This is partly due to the constraints of the statute that restrict some policy levers to regulation even where their intent is not necessarily regulatory, as is the case for some of these forms of financial assistance.

The other aspect of this internal constraint is the instrument environment created by the existing regulatory framework itself. Another limitation of the policy design literature is a lack of attention to the instrument environment that is already in place and into which any new policy instrument must fit. In many sectors, policy development is generally occurring as an extension, expansion, reduction or amendment to government’s existing role in that sector. Rarely do practitioners have the luxury of ‘blue sky’ policy development where there is no existing policy framework. In the case of MELCC, where government has had over 30 years of regulatory development and expansion, any new policy instruments must be complementary to the regulations, even if they are not regulatory themselves. This is the cautionary note that Howlett (2004) emphasizes, recognizing that instruments do not exist in isolation and ought to form complementary ‘mixes’ within the overall policy design. For MELCC, that policy development occurs within a complex framework dominated by existing regulations.

An implementation style for child care
In this section, institutional factors both external and internal were explored with a view to questioning whether MELCC has an implementation style weighted towards regulation. Given the cross-jurisdictional context, the institutional structures and processes, as well as the constraints of the existing statutory and
regulatory framework, I would argue that Manitoba’s child care policy development does indeed tend toward a regulatory implementation style. However, I am not suggesting that the predominance of a single instrument is an impediment to effective policy development. In fact, I would contend that there is evidence of innovative policy design both within and among the regulations.

A (con)textual analysis of three regulations

MELCC provides an interesting case study for the variability of regulatory design, due in part to the high volume of its regulatory activity. This analysis will focus on three recent regulations, all enacted between April 2010 and December 2011. This period falls in the middle of a broad vision strategy for child care that spanned from 2008 – 2013, called Family Choices: Manitoba’s Five-Year Agenda for Early Learning and Child Care. The agenda formed a period of heightened policy development with its 12 public commitments, designed to further the growth and accessibility of the system, to enhance quality and to support the child care workforce (Manitoba Early Learning and Child Care, 2008).

The regulations are analyzed according to three design elements: the production of the regulatory content, the flexibility of the regulatory language, and the instrument context within which the regulation is situated. The first two elements are primarily intra-regulatory in focus, meaning an examination of the way in which regulatory content is produced and the flexibility of that content. The third element is inter-instrumentary, with a view to understanding if and how the regulation interacts within a policy mix design involving other instruments. The analysis will explore the extent of the variability that exists among these elements within the three regulations.

Child Care Safety Charter – Child Care Regulation amendment (53/2010)

As part of its Family Choices agenda, the Manitoba government committed to establishing a Child Care Safety Charter (Manitoba Early Learning and Child Care, 2008). The Charter requires that each child care facility has an approved safety plan and code of conduct, forming part of the licensing standards. The Charter was announced in 2008 and came into force in 2010, through legislative and regulatory amendments. The purpose of the Child Care Safety Charter is to ensure that the health and safety of children in child care settings is protected. In general, health and safety is an area of government intervention where regulation is a common instrument choice (Lemaire, 2007, p. 62).

The production of the regulatory content itself reflected extensive consultations on the part of government. Between the initial announcement in 2008 and the proclamation of the legislative and regulatory amendments in 2010, MELCC conducted “more than 40 workshops with child-care facilities plus follow-up advice and support” (Province of Manitoba, 2010b). This pre-drafting work informed the legislative and regulatory content through a consultative approach, with civil servants engaging with those who would be the targets of the policy development.
The resulting legislative content provides the fundamental contours of the Charter requirements, which includes (among others) prohibitions for bullying and harassment, procedures for controlling visitor access, emergency procedures for threats, and policies related to emergency medical crises (Province of Manitoba. Legislative Assembly, 2008). The regulatory content ensures that approved safety plans and codes of conduct are in place and that staff are instructed as to their provisions, as part of the existing licensing process for child care centres and homes (Province of Manitoba, 2010a).

The legislative and regulatory language is moderately flexible. This is due in part to the wide variations among the over 1,000 child care centres and homes, whose physical spaces and programming may entail unique health and safety needs. This flexibility of the language is likely a reflection of the pre-drafting consultations, and envisions the participation of child care licensees in producing the content of what ultimately will become their own, individual safety plan and code of conduct. The language of the Act and regulation provides for the structure of the plan and the code, what elements they must contain in order to satisfy the standards, while remaining flexible enough for licensees to reflect the unique situation of their individual child care centre or home.

In terms of a specific policy design related to improved safety in child care settings, the instrument mix for this regulation is limited. MELCC did develop comprehensive informational and educational resources for use by licensees, to guide them in developing their safety plans and codes of conduct. Department staff were specifically allocated to assist child care providers in becoming compliant and limited financial resources were made available to assist with equipment costs related to controlling visitor access (Province of Manitoba, 2010b). But overall, these other instruments were only used in service of supporting the primary vehicle, which was legislative and regulatory in nature. The Child Care Safety Charter presents an example of a primary instrument with supporting policy mechanisms, which did not form part of a more complex multi-instrument policy design.

*Child Care Worker Retirement Benefits Regulation (20/2011)*  
In 2010, Manitoba became the only jurisdiction in Canada outside of Quebec to offer retirement and pension supports to the child care workforce (Province of Manitoba, 2010c). Another commitment of the Family Choices agenda, the introduction of the Retirement Benefits Regulation marked a major financial initiative of the Manitoba government at a cost of $6.6 million in annual funding (Province of Manitoba, 2010c). The regulation provides provincial matching of employee contributions to pension plans in child care centres, provincial reimbursement of Registered Retirement Savings Plan (RRSP) contributions for home-based providers, and a lump-sum benefit paid upon retirement for workers in either home or centre-based facilities. Despite the fact that the initiative was designed to provide direct funding supports, the primary instrument was regulation.
There is no evidence that the production of the regulatory content was done collaboratively with licensees, although it certainly appears to reflect the financial challenges of those who work in the field. The details of the plan announced prior to enactment reflected the content of the regulation that was later developed. The public communications also noted that “information packages and orientation sessions with details of the plan will be available to facilities soon” (Province of Manitoba, 2010c). This suggests that the content of the Retirement Benefits Regulation was more government directed than, for example, the Child Care Safety Charter where consultations and workshops formed part of the regulation-development process. The top-down content approach is not necessarily a detriment to the regulation and in fact might reflect the complexity of the financial provisions required.

In examining the language, the Retirement Benefits Regulation is notable for the specificity of its provisions. The regulations require that every child care centre create a registered pension plan, that both the employer and employee contributions be at least 4% of the employee wage, that the minister reimburse RRSP contributions for home-based providers according to a set formula, and clarifies the conditions and the formula for government’s payment of the retirement benefit (Province of Manitoba, 2011b). There is no flexibility as to the conditions, formulas and requirements as set out in the regulation.

The Retirement Benefits Regulation is firmly set within a policy mix design, forming a cornerstone of the Manitoba government’s Workforce Stability Strategy for child care. This strategy falls under the larger Family Choices agenda, and specifically aims at improving the recruitment and retention of the child care workforce. Other major components of the Workforce Stability Strategy include increasing wages, launching or expanding various training initiatives, providing funding and scholarships to encourage the study of early childhood education, and a public awareness campaign highlighting careers in child care (Province of Manitoba, 2010c). The instruments vary widely from direct funding provision, to training programs and an informational campaign. It is clear that all of these instruments form part of a larger policy mix design, of which the Retirement Benefits Regulation is but one component.

Child Care Curriculum – Child Care Regulation amendment (223/2011)
Addressing another commitment under the Family Choices agenda, in 2011 the Manitoba government enacted a regulatory change requiring that child care centres have an approved curriculum statement for both their preschool and infant programs. The introduction of play-based curricula was designed to enhance the quality of programming within licensed child care centres. Although effectively a quality assurance and pedagogical initiative, it was still captured under the licensing standards in the regulations.

The regulation amendment is particularly noteworthy in its extremely limited content, leaving the actual development of the curriculum requirements to occur
post-enactment. The regulation consists of the addition of two clauses under the licensing requirements for child care centres, one requiring the preschool curriculum statement to be in place by December 31, 2011 and one requiring the infant curriculum statement to be in place by July 1, 2013 (Province of Manitoba, 2011a). This timeline was specifically built in with the understanding that government would work in conjunction with licensees to develop the curriculum statements for each centre.

Although the language in the regulation is quite specific (centres must have an approved curriculum statement), it does not speak to the standards, requirements or content of the curriculum statement. I would argue that the real content and language around this policy initiative was in fact not found within the regulations, but in the curriculum framework documents and in the curriculum statements themselves.

The curriculum statements were cooperatively developed between licensees and civil servants, using the frameworks designed by government following enactment of the regulation. The two frameworks, one for preschool programs and one for infant programs are both titled *Early Returns*. Based on child development research, *Early Returns* was created by MELCC in conjunction with other provincial government departments, MCCA, and post-secondary institutions offering programs in early childhood education (Manitoba Early Learning and Child Care, 2011). What differentiates MELCC’s approach in this policy initiative is the cooperative content development underlying the whole process. The *Early Returns* frameworks are not directive, rather the flexible language serves to guide licensees through a process of curricular development that allows them to reflect on their existing programming. *Early Returns* states at the outset that the curriculum framework is designed to “help you develop your curriculum and write a statement that describes it” (Manitoba Early Learning and Child Care, 2011, p. 1). The frameworks provide current research in various areas of child development and then pose questions to the child care provider about ways in which their programming might relate to that research. In this way, the language of the initiative is flexible, allowing for a post-regulatory cooperative approach to content development.

Similar to the Child Care Safety Charter, *Early Returns* was a single initiative approach to policy design, aimed at a specific objective of improving the quality of child care programming. It was guided by informational resources and supported by provincial staff, but was not designed as part of a larger policy mix.

**Discussion**

In this study, three Manitoba child care regulations were examined to determine the variability that might exist among them. The elements considered included the process of content production, the flexibility of the language and the
instrument environment within which the regulation resides. The findings are summarized in the table below.

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<thead>
<tr>
<th>Regulation</th>
<th>Content production</th>
<th>Language</th>
<th>Instrument environment</th>
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</thead>
<tbody>
<tr>
<td>Child Care Safety Charter (53/2010)</td>
<td>Consultative approach prior to enactment</td>
<td>Moderately flexible</td>
<td>Supporting instruments only</td>
</tr>
<tr>
<td>Child Care Worker Retirement Benefits Regulation (20/2011)</td>
<td>Government-directed</td>
<td>Specific</td>
<td>Policy mix design</td>
</tr>
<tr>
<td>Child Care Curriculum (223/2011)</td>
<td>Cooperative approach following enactment</td>
<td>Specific in the regulation, but flexible in supporting instruments</td>
<td>Supporting instruments only</td>
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</table>

Despite the common use of regulation, the three initiatives were quite different in their intent: health and safety, funding, and quality assurance. The content production of the policy initiatives also varied from a pre-regulatory consultative approach, a government-produced approach and a post-regulatory cooperative approach. The variation in this regard may be reflection the differences in the subject matter, the need to respond to the particular situation of each licensee or perhaps simply the time and resources required.

In terms of the language of the policy initiatives, the degree of flexibility also showed some variability. The Child Care Safety Charter language appeared in both the statute and the regulation, and in combination set out the basic structures for the new regulatory requirements. The language afforded some degree of flexibility to ensure that all licensees would be able to comply. The Retirement Benefits Regulation contained very specific language with almost no room for flexibility. It provided formulas for the calculation of supports and set out the eligibility conditions for retirement benefits. The Child Care Curriculum language was specific in the regulation, but contained no details as to the actual content. The content and language was therefore to be found primarily in the framework documents designed to guide licensees in meeting the new regulatory requirement for curriculum statements. The language therein was highly flexible, affording licensees the opportunity to reflect their programming in the development of their own curriculum statement.

In terms of policy mix, only the Retirement Benefits Regulation was specifically designed to work as part of a larger strategy involving complementary initiatives and instruments. The other two regulations each functioned more as a primary instrument supported by other instruments, all within a single initiative.

Overall, the findings demonstrate the variability that can exist in a single instrument, in one sector, enacted in a similar time period. This suggests that despite a regulatory implementation style, Manitoba’s child care policy still affords
some degree of design ‘space’ that is not centred on the question of instrument choice. This variability may also support the proposition that instruments can be somewhat substitutable (Howlett, 2004) or that they can designed in such a way as to produce cross-elasticity (Treblilcock & Hartle, 1982). The degree to which regulations can be molded in terms of their internal design would suggest that strict instrument classifications provide only part of the picture in terms of policy instrument definition. Further exploration of intra-instrument and inter-instrument design space, both from theoretical and applied perspectives would provide practitioners greater creative agency in policy design.

Another important and related area suggested by Howlett (2004) is the need for the analysis of changes in implementation style. How these preferences for particular policy instruments shift over time may provide both scholars and practitioners with improved understanding of some of the larger questions of instrument selection. An interesting avenue for further study might include a sectoral lens perspective on child care governance in Manitoba, examining the ways in which a regulatory implementation style is received and perceived by child care providers. It is possible that this style is so embedded that it has become the ‘language’ of child care governance and communication in Manitoba. Alternatively, with the increased attention to consultative approaches to policy development and the third sector, perhaps there is an opportunity to expand that implementation style to feature other policy instruments.

Conclusion
This study explicitly questions the limitations of the existing policy design literature, suggesting that it fails to capture design that occurs in the absence of instrument choice. Through an institutional examination of child care governance in Manitoba, this paper suggests that policy design in this sector reflects a preferred regulatory implementation style. In analyzing three recent examples of Manitoba child care regulations, the findings demonstrate intra- and inter-instrument variability in terms of the content production, flexibility of language and the instrument environment. This variability among the regulations suggests that policy design occurs, even in instances where instrument choice may be lacking. While instrument definition provides the contours of policy means, greater attention to intra- and inter-instrument design would afford more creative space in the practice of public administration.
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