Ontario’s Change Powers

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What are the change powers?

- Statutory, limited on-going revision powers
  - Enumerated list of revision powers in Part V, *Legislation Act, 2006* (s. 42 (2))
  - At discretion of Chief Legislative Counsel
  - Apply to current versions of consolidated law published on the e-Laws website (Ontario’s official electronic copies of laws)
    - If appropriate, may be read into previous consolidated versions and/or back into original source law (s. 45)
What are the change powers?

- May apply to Acts or regulations
  - Are not applied to documents incorporated by reference
- General limitations
  - Cannot alter the legal effect of a law (s. 42 (1))
  - No legal significance to be inferred from the timing of a change (s. 44)
Why change powers?

- A need for revision-type changes to laws in lieu of decennial revisions
- 1990: Ontario’s last print decennial consolidation/revision of Acts and regs
  - Each decennial revision authorized by statute (one each for Acts and regs), with revision powers listed
- 1998: *Statute and Regulation Revision Revision Act, 1998*
  - Authorized Chief Leg Counsel to prepare revision of any/all Act/reg, at CLC’s discretion
  - Revision powers enumerated
  - Never used…too entrenched in a print/paper world
    - Required print publication of each revised law; deposit of revised laws with new commencement
Why change powers?

  - www.ontario.ca/laws ; www.ontario.ca/fr/lois
  - Repeal of Statute and Regulation Revision Act, 1998 and replacement by change powers
- November 30, 2008: Laws published on e-Laws become official copies of the law
What can change powers do?

- Powers include (s. 42 (2))…
  - Correct spelling, punctuation or grammatical errors (para. 1)
  - Replace description of date/time with actual date/time once known (para. 4)
  - Update name/title/location/address of body/office/person/place/thing that otherwise continues (para. 9)
What can change powers do?

- Powers include…
  - Correct provision numbering errors and fix cross-references accordingly (para. 10)
  - Make correction, if both patent error and patent correction (para. 12)

- Additional two powers added by amendment in 2009
  - Make minor changes required to ensure consistent form of expression (para. 2.1)
  - Make minor changes required to make form of expression in English and French versions more compatible (para. 2.2)
What can change powers do?

- Can be specific to a given Act/regulation
  - RRO 1990, Reg. 74 (General), s. 9 (2):
    Changed by striking out ‘Accountant of the Ontario Court’ and substituting ‘Accountant of the Superior Court of Justice’.

- Or can be applied more broadly
  - Every regulation containing ‘drinking-water’, every provision containing ‘drinking-water’:
    Changed by removing the hyphen
What can’t they do?

- More limited in scope than previous decennial revision powers, i.e., do not include...
  - Omission/removal of obsolete/spent laws/provisions
  - Altering numbering and arrangement of provisions
  - Making changes necessary to more clearly bring out the lawmaker’s intentions
What can’t they do?

- Express limitation on para. 9 power
  - cannot be used to change name/title of,
    - Ontario minister/ministry
    - Municipality
    - Non-legislative documents incorporated by reference
    - Ontario Acts/regulations
  - no limitation on use of change power to change references to body/office/person/place/thing if legislation expressly deems a replacement reference (para. 8)
Notice

- Most change powers require notice (in manner that Chief Leg Counsel considers appropriate); applies to para. 4-12 change powers (s. 43 (2))
- Otherwise, notice discretionary (s. 43 (1))
  - required to consider nature of change and extent to which notice would help understand legislative history (s. 43 (3))
- Notice must state the change or nature of it (s. 43 (4))
Notices in practice

- Published on e-Laws, under “Legislative Tables”
- Separate, sortable tables for Acts and regs
- Given in English and in French, even if affected law is unilingual, or change is only in one language

Contents
- Name of Act or of regulation and enabling Act
- Provision(s) changed
- Change made
- Authority (para. of s. 42 (2))
- Change notice citation
Notices in practice: change notice citations

- Change notice citations (CTS/CTR)
  - A way to make change powers for which notice is given trackable in legislative history
  - Format: CTS/CTR DD MM YY – [number of notice on day of issuance]
## Notices in practice: examples on e-Laws

<table>
<thead>
<tr>
<th>Statute</th>
<th>Provision(s) Changed</th>
<th>Change Made</th>
<th>Authority (para.)</th>
<th>Change Notice Citation (CTS)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Every Act containing 'Public Trustee', other than the Public Guardian and Trustee Act and the Unclaimed Intangible Property Act</td>
<td>Every provision containing 'Public Trustee'</td>
<td>Changed by striking out 'Public Trustee' and substituting 'Public Guardian and Trustee'.</td>
<td>9</td>
<td>30 AU 10 - 1</td>
</tr>
</tbody>
</table>

https://www.ontario.ca/laws/consolidated-statutes-change-notices

<table>
<thead>
<tr>
<th>Enabling Statute</th>
<th>Regulation</th>
<th>Provision(s) changed</th>
<th>Change made</th>
<th>Authority (para.)</th>
<th>Change notice citation (CTR)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Administration of Justice Act, R.S.O. 1990, c. A.6</td>
<td>Small Claims Court - Fees and Allowances, O. Reg. 432/93</td>
<td>Schedule 1, item 7</td>
<td>Changed by striking out 'Ontario Court (Provincial Division)' and substituting 'Ontario Court of Justice'.</td>
<td>8</td>
<td>21 NO 11 - 1</td>
</tr>
</tbody>
</table>

https://www.ontario.ca/laws/consolidated-regulations-change-notices
Changes and corrections team

- Chief Leg Counsel’s discretion delegated to small group of leg counsel (3-4) who “specialize” in change powers and publication/consolidation errors
- Deal with urgent matters as they arise; non-urgent matters dealt with in periodic “blitzes”
Changes and corrections team

- Functional considerations
  - Consensus-based decision-making
  - Consultation with Chief Leg Counsel as needed
  - At least one bilingual leg counsel team member

- Additional powers and duties
  - Exercise of discretion re giving change power notices (where discretionary)
  - Drafting of change powers notices and ensuring publication on e-Laws
Using the change powers

- Most commonly used powers
  - Correct spelling/punctuation/grammar (para. 1)
  - Alter style/presentation of text/graphics (para. 2)
    - Used largely for web accessibility purposes
  - Minor changes to ensure consistent form of expression (para. 2.1)
  - Update name/title/location/address of body/office/person/place/thing that otherwise continues (para. 9)
  - Make correction, if both patent error and patent correction (para. 12)
Using the change powers

- Rarely used
  - Change Act/regulation title to accord with changes in naming practices and make related changes (para. 7)
  - Incorporate transitional provisions in amending law into the consolidated parent and make related changes (para. 11)
Using the change powers

- Not used to date
  - Replace reference to a bill (if/once enacted) with reference to the Act (para. 5)
  - If provision provides it’s contingent on future event that occurs, remove text referring to the contingency and make related changes (para. 6)
Challenges and limitations

- Drafting office as decision-makers
- How broadly to apply the powers?
  - Balancing presumed Legislative intent of “cleaning up the lawbook” against overreaching and slippery slopes
- E.g., para. 12: patent error and patent correction
  - When is a correction patent?
  - Scope of analysis: Do you look outside the law? Outside laws entirely?
Challenges and limitations

- Omission of more robust revision powers with no alternative is taking toll over time...
- No authority to repeal/revoke legislation, provisions or portions of provisions that are obsolete, spent or have no legal effect
Challenges and limitations

- Limits on renumbering
  - Restricted to correction of numbering errors and related cross-reference updates (para. 10)
  - No discretion to renumber otherwise
  - Over the years, can lead to awkward numbering (gaps, .0.1.1, etc.)…likely only to get worse
    - Possible approach: re-enactment…but clients can be reluctant to open up provisions simply for renumbering purposes, especially if a law is of long-standing
Looking ahead

- Expanding the change powers?
  - Should the change powers include, e.g., renumbering?
- Supplementing or replacing with more robust statutory revision powers?
- Enacting statutory auto-repeal mechanisms to address spent law?