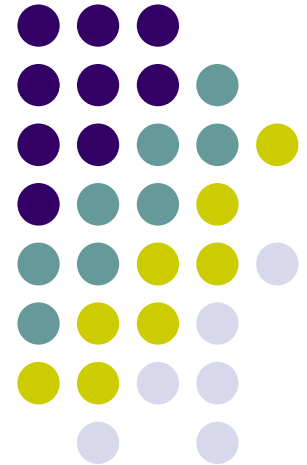


# Ontario's Change Powers

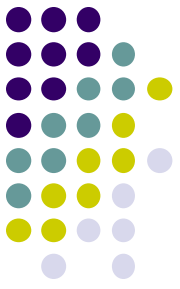
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CIAJ Conference, 2018

Tamara Kuzyk, Legislative Counsel  
Office of Legislation Counsel (Ontario)

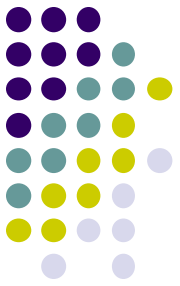


# What are the change powers?



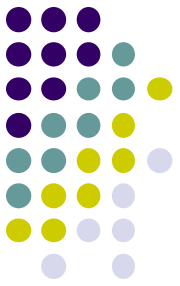
- Statutory, limited on-going revision powers
  - Enumerated list of revision powers in Part V, *Legislation Act, 2006* (s. 42 (2))
  - At discretion of Chief Legislative Counsel
  - Apply to current versions of consolidated law published on the e-Laws website (Ontario's official electronic copies of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

# What are the change powers?

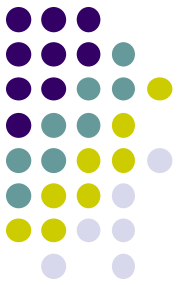


- May apply to Acts or regulations
  - Are not applied to documents incorporated by reference
- General limitations
  - Cannot alter the legal effect of a law (s. 42 (1))
  - No legal significance to be inferred from the timing of a change (s. 44)

# Why change powers?



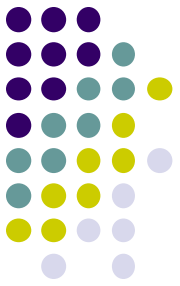
- A need for revision-type changes to laws in lieu of decennial revisions
- 1990: Ontario's last print decennial consolidation/revision of Acts and regs
  - Each decennial revision authorized by statute (one each for Acts and regs), with revision powers listed
- 1998: *Statute and Regulation Revision 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



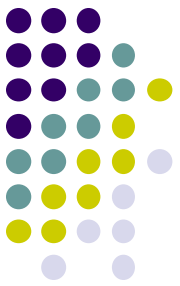
# Why change powers?

- 2000: e-Laws launched (on-going, unofficial consolidations of Ontario Acts/regs)
  - [www.ontario.ca/laws](http://www.ontario.ca/laws) ; [www.ontario.ca/fr/lois](http://www.ontario.ca/fr/lois)
- July 25, 2007: *Legislation Act, 2006* comes into force
  - 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?



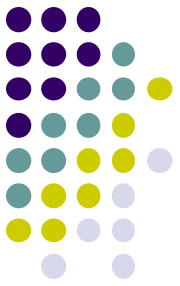
- Powers include (s. 42 (2))...
  - Correct spelling, punctuation or grammatical errors (para. 1)
  - Replace description of date/time with actual date/time once known (para. 4)
  - Update name/title/location/address of body/office/person/place/thing that otherwise continues (para. 9)



# What can change powers do?

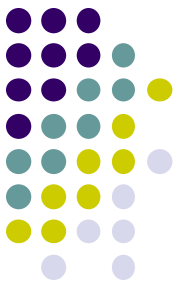
- Powers include...
  - Correct provision numbering errors and fix cross-references accordingly (para. 10)
  - Make correction, if both patent error and patent correction (para. 12)
- Additional two powers added by amendment in 2009
  - Make minor changes required to ensure consistent form of expression (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?



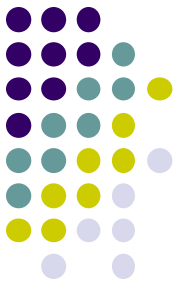
- Can be specific to a given Act/regulation
  - RRO 1990, Reg. 74 (General), s. 9 (2):  
Changed by striking out ‘Accountant of the Ontario Court’ and substituting ‘Accountant of the Superior Court of Justice’.
- Or can be applied more broadly
  - Every regulation containing ‘drinking-water’, every provision containing ‘drinking-water’:  
Changed by removing the hyphen





# What can't they do?

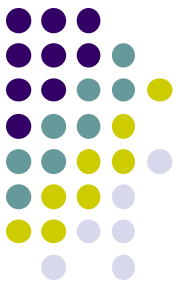
- More limited in scope than previous decennial revision powers, ie, do not include...
  - Omission/removal of obsolete/spent laws/provisions
  - Altering numbering and arrangement of provisions
  - Making changes necessary to more clearly bring out the lawmaker's intentions



# 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



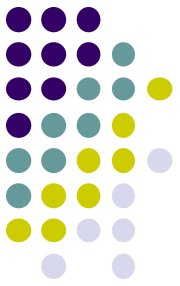
- Most change powers require notice (in manner that Chief Leg Counsel considers appropriate); applies to para. 4-12 change powers (s. 43 (2))
- Otherwise, notice discretionary (s. 43 (1))
  - required to consider nature of change and extent to which notice would help understand legislative history (s.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

Wine Content and Labelling Act, 2000

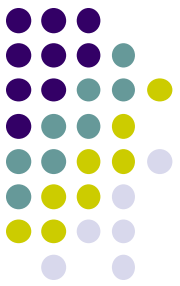
S.O. 2000, CHAPTER 26  
SCHEDULE P

**Consolidation Period:** From December 14, 2017 to the [e-Laws currency date](#).

Last amendment: 2017, c. 34, Sched. 44.

Legislative History: 2011, c. 1, Sched. 1, s. 10; CTS 15 JL 16 - 4; 2017, c. 34, Sched. 44. [-]

# Notices in practice: examples on e-Laws



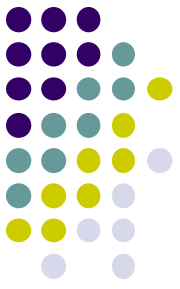
Statute	Provision(s) Changed	Change Made	Authority (para.)	Change Notice Citation (CTS)
Every Act containing 'Public Trustee', other than the Public Guardian and Trustee Act and the Unclaimed Intangible Property Act	Every provision containing 'Public Trustee'	Changed by striking out 'Public Trustee'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

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

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

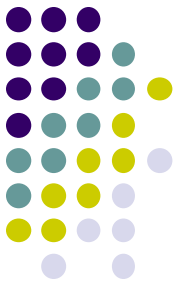
<https://www.ontario.ca/laws/consolidated-regulations-change-notices>

# 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”

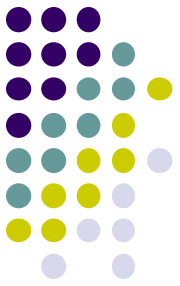
# Changes and corrections team



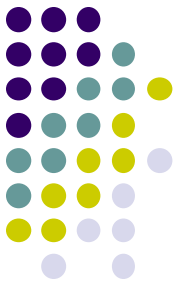
- Functional considerations
  - Consensus-based decision-making
  - Consultation with Chief Leg Counsel as needed
  - At least one bilingual leg counsel team member
- Additional powers and duties
  - Exercise of discretion re giving change power notices (where discretionary)
  - Drafting of change powers notices and ensuring publication on e-Laws



# Using the change powers



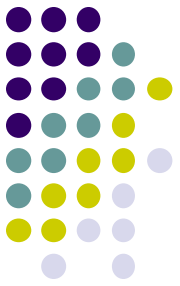
- Most commonly used powers
  - Correct spelling/punctuation/grammar (para. 1)
  - Alter style/presentation of text/graphics (para. 2)
    - Used largely for web accessibility purposes
  - Minor changes to ensure consistent form of expression (para. 2.1)
  - Update name/title/location/address of body/office/person/place/thing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



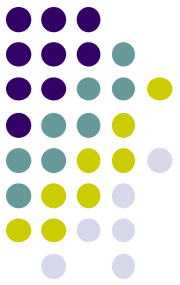
# Using the change powers

- 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

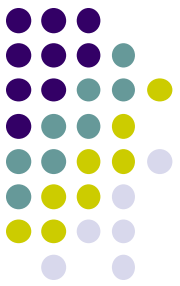


- Not used to date
  - Replace reference to a bill (if/once enacted) with reference to the Act (para. 5)
  - If provision provides it's contingent on future event that occurs, remove text referring to the contingency and make related changes (para. 6)



# 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?