Cleaning Up the Statute Book in Ontario

CIAJ Conference, 2012

Tamara Kuzyk, Legislative Counsel
Office of Legislation Counsel (Ontario)
Background: consolidation and revision of Ontario laws

- **Terminology:**
  - Consolidation: a law into which are incorporated any amendments to it
  - Revision: corrections and changes made to a law in order to update it and make it more readable

- **History, generally**
  - Pre-1990: Decennial (more or less) consolidations/revisions in print
  - 1990: Ontario’s last decennial consolidation/revision
  - 1990s: Periodic unofficial consolidations on CD (no revision)
  - 1998: *Statute and Regulation Revision Act, 1998* (never used)
  - 2000: e-Laws launched (on-going, unofficial consolidations)
  - 2007: On-going revision powers under *Legislation Act, 2006*
  - November 30, 2008: Laws published on e-Laws become official copies of the law
Cleaning up the statute book: some tools in Ontario

- *Legislation Act, 2006*
  - On-going revision powers ("change powers")
  - Duty to correct publication and consolidation errors
  - Automatic repeal of unproclaimed statutory provisions
  - Power to consolidate unconsolidated law
- Legislative housekeeping initiatives
- Other tools
Revision: change powers

- List of limited, on-going powers at discretion of Chief Legislative Counsel
  - Cannot alter the legal effect of a law
  - Only applies to consolidated law
    - Change only made to current consolidated version but, if appropriate, may be read into previous consolidated versions and/or back into the original parent law
  - No legal significance to be inferred from the timing of a change

- Authority found in Part V, *Legislation Act, 2006*
Examples of authorized change powers:
- Correction of spelling, grammatical, typographical errors
- Replacement of description of date with actual date
- Correcting errors in the numbering of provisions and updating cross-references

More limited in scope than the previous paper revision powers, which also included:
- Changing numbering or arrangement of provisions
- Repealing laws or provisions that are obsolete/spent
- Making changes that are necessary to bring out more clearly what is considered to be the lawmaker’s intention

Notice is required in most cases
Duty to correct errors

- *Legislation Act, 2006* creates duties to correct publication and consolidation errors and to provide public notice of the corrections where appropriate
  - Applies to both paper and electronic copies of laws
  - Duty lies with officials in the Office of Legislative Counsel
- “Errors” for the purposes of these statutory correction powers are strictly limited to differences between the law as made and the law as published or consolidated
Automatic repeal

• Section 10.1, *Legislation Act, 2006*: based on the federal *Statutes Repeal Act*

• Provides for the automatic repeal on December 31 of a given year of unproclaimed Acts/provisions that were enacted 9+ years before December 31 of the previous year
  - Attorney General must table a report in the Legislative Assembly listing affected Acts/provisions every year
  - listed Acts/provisions aren’t repealed if saved by resolution in that year or brought into force before the end of the year

• Lists of repealed Acts/provisions must be published on e-Laws

• First report tabled in January, 2011
Consolidating unconsolidated law

- Chief Legislative Counsel has discretion under the *Legislation Act, 2006* to consolidate unconsolidated law

- Attendant powers:
  - creation of a French version, if law is unilingual
  - use of change powers and, in addition, power to,
    - omit obsolete provisions
    - alter the numbering and arrangement of provisions
Legislative housekeeping initiatives

- “Housekeeping” bills, e.g., Good Government bills and legislative Red Tape initiatives
- *Legislation Act, 2006* repealed and revoked hundreds of spent and obsolete unconsolidated statutes and regulations as part of a “Red Tape initiative” intended to reduce unnecessary legislative burdens
Other tools

- Duty for Chief Legislative Counsel to occasionally provide Attorney General with lists of obsolete statutory provisions (S. 4, *Legislation Act, 2006*)
- Internal “corrections” list to identify and track errors, obsolete references or provisions and other similar items
- Developing drafting techniques for minimizing the need for constant updating
  - “‘Minister’ means the Minister responsible for the administration of this Act.”
  - Judicious use of cross-references rather than repetition
Looking ahead

- Should Ontario expand its change powers?
  - Should the change powers include, e.g., renumbering?

- Should other auto-repeal mechanisms be created?
  - s. 89 of the Australian Capital Territory’s Legislation Act, 2001: automatic repeal of certain laws and provisions, such as transition provisions, after a specified period (includes savings provisions respecting effect of repeal)
Looking ahead (cont’d)

- Should obsolete provisions be removed?
  - Currently happens on a very limited basis.

- Should obsolete laws be removed?
  - Office project in mid-2000s to identify obviously spent regulations, which were marked as spent and moved to a separate database on e-Laws together with repealed and revoked laws.
  - Nothing similar to date for statutes.

- Drafting with an eye to cleaning up
  - Self-repealing/revoking provisions: should they be encouraged?
    - Can make consolidation resource-intensive
    - Can lead to a profusion of historical versions of a law (if such versions are created and maintained)