

Cleaning Up the Statute Book in Ontario

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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*

Revision: change powers (cont'd)



- 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)