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WHEN DO ONTARIO ACTS AND REGULATIONS COME INTO FORCE?

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Each year in Ontario the legislative and executive branches of government pass bills and issue regulations. This lawmaking activity raises a key question: when do these laws take effect and become legally binding?

In answering this question, this revised paper looks not only at the existing legal framework, but also at the changes put forward in the proposed *Legislation Act, 2005* (which appears as Schedule F to Bill 14, the *Access to Justice Act, 2006*). The paper discusses as well a September 2005 ruling of the Supreme Court of Canada on the constitutionality of retroactive legislation.

Contents

INTRODUCTION

In Ontario, as in the other provinces, the making of laws can be divided into the passage of Acts and the issuance of regulations. A fundamental distinction, however, must be drawn between such lawmaking activity and the "coming into force" of a law. Focusing upon the latter, this paper explains how to determine whether a particular Act or regulation in Ontario has entered into force and is thereby binding.

The paper also looks at the impact of Bill 14, the *Access to Justice Act, 2006*, which was introduced by Attorney General Michael Bryant in October 2005. Schedule F to the Bill contains a proposed *Legislation Act, 2005* which would, if passed, make some changes to the principles for bringing Acts and regulations into force.[1] Amongst other things, these changes involve

- the legal significance when an Act is silent as to when it comes into force;
- a time frame for the filing of regulations; and
- the role of actual notice of a regulation in determining when the regulation is effective against a person.

ACTS: DATES OF TAKING EFFECT

A bill is considered to be "passed" by the Legislative Assembly once it has received three readings; upon receiving Royal Assent, the "passed" bill becomes an Act. An Act, however, may or may not come into force at the Royal Assent stage. Rather, what is determinative is the Act itself. The following question must be asked: "Is there some provision in the legislation specifying a date of commencement (also known as a "commencement provision")?" If not, the *Statutes Act*,[2] as discussed below, will apply. Please note, however, that the *Legislation Act* would repeal the *Statutes Act*.[3]

In Ontario an Act may take effect in six different ways, which may be identified as follows: Royal Assent; fixed date (retroactive); fixed date (prospective); proclamation; hybrid (combination); and silence.

Royal Assent

A section in the legislation states that "this Act comes into force on the day it receives Royal Assent."

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[1] Bill 14, *Access to Justice Act, 2006*, 2nd Sess., 38th Leg. Ont. 54 Eliz. II, 2006 (second reading, 11 April 2006; referred to the Standing Committee on Justice Policy). Internet site at http://www.ontla.on.ca/documents/Bills/38_Parliament/Session2/b014.pdf accessed on 18 April 2006.

[2] R.S.O. 1990, c. S.21. Internet site at http://www.e-laws.gov.on.ca/DBLaws/Statutes/English/90s21_e.htm accessed on 18 April 2006.

[3] Bill 14, Sched. F, *Legislation Act, 2005*, s. 130, para. 4.

Under the proposed *Legislation Act*, it would no longer be necessary to state that an Act came into force upon Royal Assent. Rather, an Act would automatically come into force this way, unless it said otherwise. As stated in s. 6 of the *Legislation Act*:

> 6(1) Unless otherwise provided in it, an Act comes into force on the day it receives Royal Assent.[4]

Fixed Date (Retroactive)

General

A date prior to the date of assent is named. Thus, there is the phrase — "This Act shall be deemed to have come into force on (the particular date)." Various sections may be deemed in force at different times.

In *Sullivan and Driedger on the Construction of Statutes* ("Sullivan and Driedger") Ruth Sullivan points out that an Act is sometimes made retroactive to prevent persons with advance notice of the legislation from taking steps to avoid the effect of the Act before it comes into force. As she observes, "this use of retroactivity is common in fiscal legislation."[5]

Retroactive legislation is also occasionally used "to cure invalidity and other mistakes."[6] For example, in October 1998 the Supreme Court of Canada ruled that an Ontario regulation which imposed probate fees was invalid.[7] Within two months of the decision, legislation had been passed which retroactively imposed an estate tax back to 1950.[8]

On a technical level, the terms "retroactivity" and "retrospectivity" are often used interchangeably;[9] some analyses of legislation, however, draw a distinction between the two concepts.[10]

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[4] See also s. 6(2)-(4) of the *Legislation Act* for further provisions respecting Royal Assent.
[5] Ruth Sullivan, *Sullivan and Driedger on the Construction of Statutes*, 4th ed. (Markham: Butterworths, 2002), p. 563.
[6] Ibid.
[7] *Re Eurig Estate*, [1998] 2 S.C.R. 565.
[8] See the *Estate Administration Tax Act, 1998*, S.O. 1998, c. 34, Schedule, s. 8(1). The imposition of the estate tax was made retroactive to the year when probate fees were first set by regulation, which was 1950. Previously, they had been imposed by statute. Technically, for purposes of this paper, the *Estate Administration Tax Act, 1998* would fall under the "hybrid (combination)" method for bringing an act into force, as not every provision came into force retroactively.
[9] See Elizabeth Eddinger, "Retrospectivity in Law," *University of British Columbia Law Review* 29 (1995): 5-25, para. 11.
[10] See Sullivan, pp. 549-550 and Pierre-André Côté, *The Interpretation of Legislation in Canada*, 3d ed. (Toronto: Carswell, 2000), pp. 133-136.

Constitutionality of Retroactive Legislation: Judgment of the Supreme Court of Canada

Background

Does Canadian constitutional law prohibit or restrict the enactment of retroactive laws in any way? In September 2005 in *British Columbia v. Imperial Tobacco Canada Ltd.* the Supreme Court of Canada addressed the argument that the concept of the "rule of law" required that legislation be prospective in nature. This argument was one of several made by tobacco manufacturers in a constitutional challenge of British Columbia's *Tobacco Damages and Health Care Costs Recovery Act.*[11] The legislation in question authorized the B.C. Government to sue tobacco manufacturers to recover the health care costs incurred in treating persons exposed to their tobacco products. The Act expressly stated that it had "retroactive effect", including the allowing of actions to be brought "arising from a tobacco related wrong, whenever the tobacco related wrong occurred."[12]

As explained by one commentator:

> . . . the B.C. legislature felt that recovering health care costs pertaining to smoking-related illnesses and doing so retroactively outweighs any negative effect that such a law may have in causing the public to lose confidence in the law as a framework for guiding behaviour.[13]

Decision of the Court

In this case, the Supreme Court held that with the exception of a criminal law context as provided for by s. 11(g) of the *Canadian Charter of Rights and Freedoms*, "there is no requirement of legislative prospectivity embodied in the rule of law or in any provision of our Constitution."[14] It then cited with approval the following passage from Peter Hogg's *Constitutional Law of Canada*:

> Apart from s. 11(g), Canadian constitutional law contains no prohibition of retroactive (or ex post facto) laws. There is a presumption of statutory interpretation that a statute should not be given retroactive effect, but, if the retroactive effect is clearly expressed, then there is no room for interpretation and the statute is effective

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[11] S.B.C. 2000, c. 30. Internet site at http://www.qp.gov.bc.ca/statreg/stat/T/00030_01.htm accessed on 18 April 2006.
[12] Ibid., s. 10.
[13] Devrin Froese, "Professor Raz, The Rule of Law, and the Tobacco Act," *Canadian Journal of Law and Jurisprudence* 19 (January 2006): 175.
[14] *British Columbia v. Imperial Tobacco Canada Ltd.*, [2005] 2 S.C.R. 473, para. 69. Internet site at http://www.lexum.umontreal.ca/csc-scc/en/pub/2005/vol2/html/2005scr2_0473.html accessed on 18 April 2006.

> according to its terms. Retroactive statutes are in fact common.[15]

The exception contained in s. 11(g) of the *Charter of Rights* reads as follows:

> 11. Any person charged with an offence has the right…
>
> (g) not to be found guilty on account of any act or omission *unless, at the time of the act or omission,* it constituted an offence under Canadian or international law or was criminal according to the general principles of law recognized by the community of nations; [emphasis added]

The Supreme Court's judgment referred to the position that "retrospective and retroactive legislation can overturn settled expectations and is sometimes perceived as unjust."[16] The Court responded that

> those who perceive it as such can perhaps take comfort in the rules of statutory interpretation that require the legislature to indicate clearly any desired retroactive or retrospective effects. Such rules ensure that the legislature has turned its mind to such effects and "determined that the benefits of retroactivity [or retrospectivity] outweigh the potential for disruption or unfairness" . . . .[17]

Fixed Date (Prospective)

A date subsequent to the date of assent is specified. The expression — "this Act comes into force on (date)" — is generally used. Similar to the retroactive approach, the entire Act may not take effect at the same time; different "in force" dates may apply to different sections.

It is possible that the fixed commencement date may depend upon the occurrence of a particular event. For example, the division of Ontario into 107 electoral districts under the *Representation Act, 2005*, "takes effect immediately after the first dissolution of the Legislature" following December 15, 2005.[18]

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[15] Ibid., para. 69, quoting Peter W. Hogg, *Constitutional Law of Canada*, 4th ed. (looseleaf) (Toronto: Carswell, 1997), vol. 2, section 48.8.
[16] *British Columbia v. Imperial Tobacco Canada Ltd.*, para. 71.
[17] Ibid. The Court quoted from the case of *Landgraf v. USI Film Products*, 511 U.S. 244 (1994), at p. 268.
[18] *Election Statute Law Amendment Act, 2005*, S.O. 2005, c. 35, Schedule 1, s. 2(4). Internet site at http://www.e-laws.gov.on.ca/DBLaws/Statutes/English/05r35_e.htm accessed on 18 April 2006. Although the provision uses the words "takes effect" rather than "comes into force", for purposes of this example it is considered to be an "in force" provision. Technically, the example occurs in a statute which falls in the "hybrid (combination)" category discussed below.

Sullivan and Driedger summarizes the various reasons why Legislatures may choose to delay the commencement of legislation (which would also apply to proclamations — discussed next). Those reasons include:

- to await events;
- to allow time to prepare the necessary administrative machinery;
- to give fair warning to the public; and
- to achieve a political goal.[19]

Proclamation

General

An Act may contain a provision which reads "This Act comes into force on a day to be named by proclamation of the Lieutenant Governor." Under the *Interpretation Act*, such a proclamation "is to be understood to be a proclamation issued under an order of the Lieutenant Governor in Council."[20] "Lieutenant Governor in Council" is in turn defined as the Lieutenant Governor, acting by and with the advice of the Executive Council.[21]

The *Legislation Act* would repeal the *Interpretation Act*, but would retain a provision on how proclamations are issued.[22]

In general, where a proclamation is made, it must be published in *The Ontario Gazette*. As stated in the *Official Notices Publication Act*:[23]

> 2 (1) Unless another mode of publication is authorized by law, there shall be published in The Ontario Gazette, all proclamations issued by the Lieutenant Governor;

For a list of proclamations applicable to Acts contained in the Revised Statutes of Ontario, 1990 or Acts passed subsequently, see http://www.e-laws.gov.on.ca/dblaws/Tables/Public%20Statutes/Table_of_Procs.htm. This list also sets out provisions that have not yet been proclaimed into force.

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[19] Sullivan, p. 489. See also Bryan Schwarz and Darla Rettie, "Underneath the Golden Boy: A review of recent Manitoba laws and how they came to be [-] Interview with Rick Mantey: Exposing the invisible," 28:2 (2001) *Manitoba Law Journal*: 194-195.

[20] This understanding applies wherever the Lieutenant Governor is authorized to do any act by proclamation. *Interpretation Act*, R.S.O. 1990, c. I.11, s. 21. Internet site at http://www.e-laws.gov.on.ca/DBLaws/Statutes/English/90i11_e.htm accessed on 18 April 2006.

[21] Ibid., s. 29(1).

[22] Bill 14, Schedule F, *Legislation Act, 2005*, ss. 67 and 130, para. 1. S. 67 says that when an Act authorizes the Lieutenant Governor to do anything by proclamation, the proclamation "shall be issued under an order of the Lieutenant Governor in Council recommending that the proclamation be issued." The proclamation also does not have to refer to the order in council.

[23] R.S.O. 1990, c. O.3. Internet site at http://www.e-laws.gov.on.ca/DBLaws/Statutes/English/90o03_e.htm accessed on 18 April 2006.

Timing of Proclamations

Proclaiming Part of an Act

There is no requirement that all sections of an Act be proclaimed in force at the same time. The *Statutes Act* indeed says expressly that if an Act provides that it is to come into force on a day to be named by proclamation, "proclamations may be issued at different times as to any part or parts or portion or portions or section or sections of the Act."[24] The *Legislation Act* would repeal the *Statutes Act*, but would include a very similar provision on what can be termed the "selective proclamation" of an Act.[25]

The "leading"[26] Canadian case respecting the power to proclaim legislation into force, whether wholly or partially, is *Reference re Criminal Law Amendment Act*.[27] *The Criminal Law Amendment Act, 1968-69*[28] amended a number of federal Acts ranging from the *Criminal Code* to the *Combines Investigation Act*. S. 120 stated that

> this Act or any of the provisions of this Act shall come into force on a day or days to be fixed by proclamation.

Acting under this power, the Privy Council proclaimed most, but not all, of a section dealing with impaired driving. The proclaimed provisions provided, amongst other things, for the compulsory taking of a breath sample; the parts of the section not proclaimed required that an accused person be offered a specimen of his or her breath in an approved container. In general, the issue before the Supreme Court of Canada was whether or not the proclamation, taking into account its partial nature, was valid.

The majority of the Court held that the proclaimed provisions had been validly brought into force. They emphasized that by virtue of s. 120 Parliament had conferred upon the executive the authority to bring the *Criminal Law Amendment Act* into force in a piecemeal fashion. It was beyond the power of the courts to review the manner in which the executive exercised this discretion. As noted by Justice Hall, it was "Parliament [not the courts] which has the power to remedy the situation if the executive has actually acted contrary to its intention."[29]

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[24] *Statutes Act*, s. 5(3).
[25] See Bill 14, Sched. F, *Legislation Act, 2005*, s. 6(5).
[26] Sullivan, p. 525.
[27] [1970] S.C.R. 777.
[28] S.C. 1968-69, c. 38.
[29] Ibid., p. 785. See also pp. 783 (Judson J.) and 800 (Laskin, J.). In an article published in 2000, Vancouver lawyer Craig Jones contrasts "an 'Act-specific' line-item veto power [by which he means the power to partially proclaim an Act that may be found within an Act itself as in s. 120 of the *Criminal Law Amendment Act*] and a general, or carte blanche authority". The latter denotes a general statutory provision which holds that when any Act is to come into force on proclamation, proclamations may be issued at different times for different provisions of the Act. Jones contends that this kind of "carte blanche empowerment of the executive to edit legislation [by means of the partial commencement of Acts]. . . is unforeseen by the Canadian constitutional system . . . ." It allegedly violates constitutional boundaries between the legislative and executive branches of government. See Craig E. Jones, "The Partial Commencement of Acts: A Constitutional Criticism

Unproclaimed Legislation

The issue of the timing of the proclamation of an Act also raises the following question: does the Legislature impliedly intend that the proclamation(s) be made within a reasonable time? In other words, is there an obligation to proclaim which is reviewable by the courts? The answer seems to be "No."[30] Indeed, in November 2002, the Ontario Government indicated that certain pension provisions in a budget bill, if passed by the Legislature, would never be proclaimed. Rather, there would be further consultation on the matter in question; if it were necessary to make legislative amendments, changes would be introduced in the form of a new bill.[31] In the end, however, the issue of proclaiming the provisions did not arise as they were withdrawn from the bill before third reading.[32]

In regards to what might be termed the "non-proclamation of legislation," in 1999 the Manitoba Court of Appeal made reference to an "understandable reluctance by the courts to 'read in' [that is, to incorporate in an Act] unproclaimed legislation, especially where to do so would arguably frustrate the intention of Parliament." The Court said this reluctance was "clearly the case" prior to the

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of the Lieutenant Governor in Council's 'Line-Item Veto' Power," 5:2 (2000) *Review of Constitutional Studies*: 178 and 193.

[30] See, for example, the United Kingdom case of *R. v. United Kingdom (Secretary of State for the Home Department)*, (1995), 180 N.R. 200 (H.L.) where the House of Lords held that the Secretary of State did not have a duty to bring certain sections of an Act into force. (The Act in question -- the *Criminal Justice Act 1998* -- provided that the sections "shall come into force on such day as the Secretary of State ... may appoint.") As stated by Lord Browne-Wilkerson:

> In my judgment it would be most undesirable that . . . the court should intervene in the legislative process by requiring an Act of Parliament to be brought into effect. That would be for the courts to tread dangerously close to the area over which Parliament enjoys exclusive jurisdiction, namely the making of legislation. (para. 24)

In a somewhat similar vein, Lord Nicholls of Birkenhead wrote that

> a court order compelling a minister to bring into effect primary legislation would bring the courts right into the very heart of the legislative process. But the legislative process is for the legislature, not the judiciary. (para. 111)

Both of these judgements, however, recognized a duty on the part of the Secretary of State to consider from time to time the question whether or not to bring the sections into force. (see paras. 25-27 and 112-113) This decision is highlighted in *Sullivan and Driedger's* discussion of the delayed commencement of legislation at pp. 524-525.

[31] Ontario, Ministry of Finance, "Pension amendments in Bill 198 will never be proclaimed," *News Release*, 28 November 2002. Internet site at http://www.fin.gov.on.ca/english/media/2002/nr-b198pension.html accessed on 18 April 2006. See also Ontario, Legislative Assembly, *Hansard, Official Report of Debates*, 37th Parliament, 3rd Session (26 November 2002): 3238 (Premier Eves). Internet site at http://www.ontla.on.ca/hansard/house_debates/37_parl/session3/L062A.htm#PARA132 accessed on 18 April 2006.

[32] Bill 198, the *Keeping the Promise for a Strong Economy Act (Budget Measures), 2002*, 3rd Sess., 37th Leg. Ont. 51 Eliz. II, 2002 (assented to 9 December 2002). The pension amendments had originally appeared in Part XXV of the bill.

Charter of Rights. It continued that a "reservation" concerning the reading in of unproclaimed provisions was "equally relevant post-Charter."[33]

Finally, with respect to the issue of timing, it is possible for legislation to say that unproclaimed provisions take effect, or are repealed, on a particular date. The *Amendments Because of the Supreme Court of Canada Decision in M. v. H. Act, 1999*, for example, stated that provisions which had not been proclaimed in force as of March 1, 2000 came into force on that day.[34] An example of the reverse situation is provided by the *Agriculture and Food Institute of Ontario Act, 1996*. That Act stated that it would be repealed on March 31, 1999, if it were not proclaimed in force by that date.[35]

The latter kind of provision is not expressed elsewhere in general terms — that is, there is no Ontario legislation which states, as a general principle, that after a certain period of time unproclaimed legislation is repealed.[36]

Repeal of Acts by Proclamation

Although an infrequent occurrence, a proclamation may not only bring an Act or part of an Act into force, but also be authorized to do the reverse. The *Fairness is a Two-Way Street Act (Construction Labour Mobility), 1999*, for instance, came into force by proclamation and may be repealed, in whole or in part, the same way.[37]

Proclaiming Legislation and the Making of Regulations

The *Interpretation Act* addresses the situation where an Act which must be proclaimed into force confers regulation-making powers. Under s. 5, such powers "may be exercised at any time after the passing of the Act."[38] Thus, regulations may be made under the authority of an unproclaimed Act; however, they cannot "come into operation until the Act comes into operation."[39] Illustrations are provided by two regulations made under the *Prohibiting Profiting from*

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[33] *R. v. Hoeppner (H.)*, (1999), 134 Man. R. (2d) 163 at 185. In this case, the Court was not prepared to remedy a *Charter* violation by reading into the *Criminal Code* unproclaimed provisions of the *Code*. The British Columbia Supreme Court, on the other hand, in *Grigg v. Berg Estate* (2000), 186 D.L.R. (4th) 160 at 173 and 182, found it appropriate to read in an unproclaimed provision, where the *Charter* had been infringed.

[34] S.O. 1999, c. 6, s. 68(3). Ss. 1-24 and 26-68 came into force in this way.

[35] S.O. 1996, c. 17, Sched. B, s. 22(2). As no proclamation was made, the Act was repealed.

[36] Compare, for example, Nova Scotia's *Justice Administration Amendment (2001) Act* which holds that, subject to certain qualifications, unproclaimed legislation is considered to be repealed five years after Royal Assent. S.N.S. 2001, c. 5, s. 5 (amendment to the *Interpretation Act*). S. 5 itself has to be proclaimed in force.

[37] See S.O. 1999, c. 4, s. 27 which states that the "Lieutenant Governor may, by proclamation, repeal this Act or any section or subsection of it." Internet site at http://www.e-laws.gov.on.ca/DBLaws/Statutes/English/99f04_e.htm accessed on 18 April 2006. It should be noted that an Act may provide for its repeal by proclamation even if it comes into force some other way. See, for example, the *Back to School Act (Hamilton-Wentworth District School Board), 2000*, S.O. 2000, c. 23, s. 23.

[38] *Interpretation Act*, R.S.O. 1990, c. I.11, s. 5.

[39] The scope of s. 5 extends to non-regulation making powers (e.g. the power to make an appointment) conferred by an unproclaimed Act.

Recounting Crimes Act, 2002[40] before that Act was proclaimed in force. These regulations were both expressed to come into force on the later of (1) the day they were filed; and (2) the day the regulation-making powers in the *Prohibiting Profiting from Recounting Crimes Act, 2002* were proclaimed in force.[41]

The proposed *Legislation Act* also contains a provision which permits the making of regulations under an unproclaimed Act. In particular, it says that a regulation-making power in an Act "may be exercised at any time after Royal Assent even if the Act is not yet in force."[42] However, until the Act comes into force, the exercise of the regulation-making power "has no effect except as may be necessary to make the Act effective when it comes into force."[43]

Amending or Revoking a Proclamation

The *Legislation Act* would place restrictions on the amendment or revocation of a proclamation as follows:

> A proclamation that brings an Act into force may be amended or revoked by a further proclamation before the commencement date specified in the original proclamation, but not on or after that date.[44]

Hybrid (Combination)

Two or more of the above "in force" methods may be incorporated in the same Act. For example, the *Greater Toronto Services Board Act, 1998* stated:

> 76(1) Except as provided in subsections (2) and (3), this Act comes into force on January 1, 1999.
>
> (2) Sections 7 and 9 and subsection 15(2) come into force on the day this Act receives Royal Assent.
>
> (3) Parts II and III and sections 73 and 74 come into force on a day to be named by proclamation of the Lieutenant Governor.[45]

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[40] S.O. 2002, c.2. Internet site at http://www.e-laws.gov.on.ca/DBLaws/Statutes/English/02p02_e.htm accessed on 18 April 2006.
[41] See O. Regs. 235/03, s. 7 and 236/03, s. 12. Internet sites at http://www.e-laws.gov.on.ca/DBLaws/Source/Regs/English/2003/R03235_e.htm and http://www.e-laws.gov.on.ca/DBLaws/Source/Regs/English/2003/R03236_e.htm accessed on 18 April 2006. These regulations were filed on June 6, 2003, but the *Prohibiting Profiting from Recounting Crimes Act, 2002* was not proclaimed into force until July 1, 2003.
[42] Bill 14, Sched. F, *Legislation Act, 2005*, s. 7(1). As with s. 5 of the *Interpretation Act*, the scope of this provision extends to the conferral of non-regulation making powers (such as the power to make appointments) under an Act not yet in force.
[43] Ibid., s. 7(2).
[44] Ibid., s. 69.
[45] S.O. 1998, c. 23. With respect to the proclamation component of the hybrid approach, it may be expressed indirectly—that is, part of one Act may be expressed to come into force when part of

Silence

If an Act is silent as to when it comes into force, the *Statutes Act* applies. It holds that, as a general rule, "unless otherwise provided therein," every Act takes effect on the 60th day after the end of the session at which it was passed. The relevant provision reads as follows:

> 5(1) Unless otherwise provided therein, every Act comes into force and takes effect on the sixtieth day after the prorogation of the session of the Legislature at which it was passed or on the sixtieth day after the day of signification, whichever is the later date.
>
> (2) Where a session of the Legislature is ended by the dissolution of the Legislature, the date of the dissolution shall for the purposes of this section be deemed to be the date of the prorogation.[46]

As mentioned earlier, the *Legislation Act* would repeal the *Statutes Act*. It would establish the principle, also adopted at the federal level, that if an Act is silent as to the date of commencement, it enters into force upon the date of assent to the Act.[47]

From a historical perspective, until 1918, silence in an Ontario Act in fact meant that the Act came into force upon assent. In 1919, the rule was changed to provide that unless otherwise provided, an Act came into force on the 60th day after assent. The rule in the *Statutes Act* of 60 days after prorogation was adopted in 1925.[48]

ACTS: "IN FORCE" METHODS AND THE STATUTES OF ONTARIO OF 2003-2005

Some of these commencement methods are adopted more frequently than others. For instance, for public Acts passed during 2003-2005, more came into force by Royal Assent (42.5 percent) than by any other method. Looking only at the year 2005, the Royal Assent method was used 46 percent of the time (18 of 39 Acts).

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another Act is proclaimed in force. An illustration is provided by the *Toughest Environmental Penalties Act, 2000*, S.O. 2000, c. 22, s. 4(2)-(4).

[46] 29 Subsection (1) refers to "signification" which can occur when a bill is "reserved". The right of reserve denotes a power of the Lieutenant Governor which has fallen into disuse–that is, the power to reserve a bill for the assent of the Governor General. Where a reserved bill has been laid before the Governor General in Council and the Governor General has assented to it, the Lieutenant Governor "signifies" that those steps have been taken. Signification is shown either by speech or message to the Legislative Assembly, or by proclamation. See *Constitution Act, 1867*, 30-31 Vict., c. 3 (U.K.), ss. 55-57 and 90; and *Statutes Act*, s. 4.

[47] *Interpretation Act*, R.S.C. 1985, c. I-21, s. 5(2). Internet site at http://laws.justice.gc.ca/en/i-21/text.html accessed on 18 April 2006.

[48] See *The Interpretation Act*, S.O. 1867-68, c. 1, s. 4; *The Statute Law Amendment Act, 1918*, S.O. 1918, c. 20, s. 1; and *The Statutes Act, 1925*, S.O. 1925, c. 6, s. 2.

A statistical breakdown for the period 2003-2005 is provided in the Table below. For the purposes of the Table, an Act that appears as a Schedule to another Act is classified as a separate Act.[49]

TABLE:
STATUTES OF ONTARIO: 2003-2005 (PUBLIC ACTS)

Method for Bringing Entire Act into Force	Number of Acts	Percentage of Total Acts
Royal Assent	37	42.5
Fixed Date (Retroactive)	1	1.1
Fixed Date (Prospective)	4	4.6
Proclamation	14	16.1
Hybrid (Combination)	31	35.6
Silence	0	0.0
Total	87	100.0*

*Due to the rounding of percentages, total is 99.9 percent.

Apart from the Acts included in the table, 21 private Acts were enacted during the above three-year period. With two exceptions, all came into force upon Royal Assent.

REGULATIONS: APPLICATION OF THE REGULATIONS ACT

Regulations are made under the authority of Acts and enter into force in accordance with the *Regulations Act*.[50]

Filing of Regulations

Overview

The *Regulations Act* stipulates that all regulations must be filed with the Registrar of Regulations. Filing has the following consequences:

> 3. *Unless otherwise stated in it*, a regulation comes into force and has effect on and after the day upon which it is filed. [emphasis added]

[49] Also, for purposes of the table, an Act appearing as a Schedule to another Act is considered to come into force on Royal Assent under the following circumstances--when it is expressed to come into force on the day the Act enacting the Schedule receives Royal Assent. As well, if the commencement and short title provisions in an Act, and the long title of the Act, are stated to be in force upon Royal Assent, but the rest of the Act comes into force by some other method(s), then the Act is categorized by the other method(s).

[50] R.S.O. 1990, c. R.21. Internet site at http://www.e-laws.gov.on.ca/DBLaws/Statutes/English/90r21_e.htm accessed on 18 April 2006.

> 4. Except where otherwise provided, a regulation that is not filed has no effect.

The highlighted words in s. 3 require that a regulation be looked at to determine when it comes into force. As with an Act, the regulation may be deemed in force on a particular date(s) or come into force on a specified date(s) in the future.[51] Also, although regulations may not be proclaimed into force, they may provide that they come into force when an Act or part of an Act is proclaimed in force.

If the regulation is silent as to its "in force" date(s), then it takes effect upon the date of filing. A regulation will explicitly refer to the date of filing if one or more provisions come into force upon filing, and the rest of the regulation comes into force some other way(s).[52]

This framework for the commencement of a regulation is subject to the qualification below regarding publication of a regulation.[53]

Filing under the Proposed Legislation Act

The *Legislation Act* would repeal the *Regulations Act*, but still require all regulations to be filed with the Registrar of Regulations.[54] A regulation would have to be filed within four months after its making, unless the regulation-making authority gave permission for a later filing.[55]

The consequences of filing under the *Legislation Act* would basically be the same as under the *Regulations Act*, as reflected in the following provision:

> 18(1) A regulation that is not filed has no effect.
>
> (2) Unless otherwise provided in the regulation or the Act under which the regulation is made, a regulation comes into force on the day on which it is filed.

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[51] Where a regulation operates retroactively, Standing Order 106(h) of the Legislative Assembly requires the Standing Committee on Regulations and Private Bills to determine whether there has been compliance with the following guideline: "Regulations should not have retrospective effect unless clearly authorized by statute." Internet site at http://www.ontla.on.ca/documents/standing_orders/out/index.htm#P1262_90217 accessed on 18 April 2006.

[52] The hybrid or combination method of coming into force is possible, as with Acts.

[53] The framework is also subject to the possibility, albeit slight, that the Act authorizing a regulation may set out criteria for when the regulation takes effect. S. 121(2) of the *Insurance Act*, for instance, says that a "regulation made under paragraph 6 of subsection (1) [which deals with certain ratios, percentages, amounts, and calculations] does not come into force until the day thirty days after it is filed with the Registrar of Regulations or such later day as may be set out in the regulation." Internet site at http://www.e-laws.gov.on.ca/DBLaws/Statutes/English/90i08_e.htm#BK90 accessed on 18 April 2006.

[54] Bill 14, Sched. F, *Legislation Act, 2005*, ss. 14(1) and 130, para. 2. Qualifications to the filing requirement are contained in ss. 15-17. See also s. 26(a) which amongst other things empowers the making of regulations "prescribing methods and rules for filing regulations that supplement or provide alternatives to the rules described in section 14."

[55] Ibid., s. 15.

Publication of Regulations

General

Every regulation must be published in *The Ontario Gazette* within one month of its filing. A later publication date, however, is permissible, where authorized by Ministerial order.[56]

Publication of a regulation has significant legal implications. In particular, s. 5(3) of the *Regulations Act* states that a regulation which is not published "is not effective against a person who has not had actual notice of it."

Comment by Regulations Committee

The protection offered by s. 5(3) was recognized by the Legislative Assembly's Standing Committee on Regulations and Private Bills in its *Second Report 1988*, which dealt with the regulation-making process in Ontario. The Committee pointed out that there was no statutory requirement that the public be given notice of a regulation immediately. Accordingly, it considered a possible amendment to the *Regulations Act* which would declare that a regulation would not come into force until its publication in the *Gazette*.[57]

The Committee concluded that s. 5(3) adequately addressed the concern that an individual might be prosecuted for violating an unpublished regulation.[58]

Publication under the Proposed Legislation Act

The *Legislation Act* would require every regulation to be published

- promptly after its filing on the Government of Ontario's e-Laws website; and
- in the print version of *The Ontario Gazette* within one month after its filing or in accordance with such other timelines prescribed by regulation.[59]

As with the publication scheme under the *Regulations Act*, the publication requirement would have significant legal consequences. Unless a regulation or the authorizing Act provided otherwise, the regulation would not be effective against a person until the earliest of the following times:

- when the person had actual notice of it;
- the last instant of the day on which it was published on the e-Laws website; and
- the last instant of the day on which it was published in the print version of *The Ontario Gazette*.[60]

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[56] *Regulations Act*, s. 5(1)-(3).
[57] Ontario, Legislative Assembly, Standing Committee on Regulations and Private Bills, *Second Report 1988* (Toronto: The Committee, 1988), p. 39.
[58] Ibid.
[59] Bill 14, Sched. F, *Legislation Act, 2005*, s. 19(1).

Thus, as pointed out by the Ministry of the Attorney General:

> Regulations would be enforceable after electronic publication on e-Laws without waiting for the traditional Ontario Gazette, or on actual notice to the person concerned.[61]

COMING INTO FORCE OF REVISED STATUTES AND REGULATIONS

A special statute — the *Statute and Regulation Revision Act, 1998* ("Revision Act")[62] — applies to the coming into force of revised statutes and regulations. Under this Act, the Chief Legislative Counsel for the Province of Ontario is authorized to prepare a revision — that is, a consolidation — of any or all of the statutes or regulations of Ontario. Such a revision may do a number of things, including the correction of grammatical or typographical errors and the repeal of obsolete provisions.[63]

The *Revision Act* provides for the depositing of revised statutes and regulations with the Office of the Clerk of the Assembly and the Registrar of Regulations, respectively. The Queen's Printer must then ensure that the deposited statute or regulation is published in a printed form.[64]

A deposited statute comes into force on a day to be named by proclamation of the Lieutenant Governor. That day must not be earlier than the day the revised statute is published by the Queen's Printer.[65]

A deposited regulation comes into force on the day it is published by the Queen's Printer, unless a later day is specified in the revised regulation.[66] As of April 2006, no statute or regulation had been deposited. The Government of Ontario, however, has created the e-Laws web site at http://www.e-laws.gov.on.ca/home_E.asp?lang=en which provides access to the consolidated laws of the province. The *Legislation Act*, which would repeal the *Statute and*

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[60] Ibid., s. 18(4).
[61] Ontario, Ministry of the Attorney General, "Creation of the Legislation Act", *Backgrounder*, 27 October 2005. Internet site at http://www.attorneygeneral.jus.gov.on.ca/english/news/2005/20051027-accs2justc-bge.asp accessed on 18 April 2006.
[62] The *Statute and Regulation Revision Act, 1998* appears as Schedule C to the *Red Tape Reduction Act, 1998*, S.O. 1998, c. 18. Internet site at http://www.e-laws.gov.on.ca/DBLaws/Statutes/English/98s18_e.htm accessed on 18 April 2006.
[63] Ibid., ss. 1-2.
[64] Ibid., ss. 3(1), 4(1), and 5(1). In addition to any method of publication that complies with the printed form requirement, revised statutes may be published in the annual volume of the Statutes of Ontario and revised regulations may be published in *The Ontario Gazette*. See s. 5(2).
[65] Ibid., s. 3(2).
[66] Ibid., s. 4(3).

Regulation Revision Act, 1998, would require the Attorney General to maintain this electronic database of consolidated law (and "source law").[67]

[67] Bill 14, Sched. F, *Legislation Act, 2005*, ss. 1(1), 2(a), and 130, para. 3. The term "source law" denotes Acts as enacted by the Legislature, and regulations as filed with the Registrar of Regulations.