



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 paper focuses upon the legal framework for the commencement of legislation established by the *Legislation Act, 2006*.

Contents

INTRODUCTION	1
HOW DOES AN ACT COME INTO FORCE?	1
Overview	1
In Force on Royal Assent	2
Act is Silent	2
Act Specifies Royal Assent	3
Effectiveness of Acts Brought into Force on Royal Assent: Is Actual Notice Required?	3
In Force on a Fixed Date	3
In Force on Proclamation	4
General	4
Amending or Revoking a Proclamation	5
Proclaiming Part of an Act	5
Judicial Consideration of Partial Proclamation of an Act	6
Not Proclaiming an Act	7
Varied In Force Dates	8
REGULATIONS	8
Filing of Regulations	9

Publication of Regulations	9
Statutory Provisions on Bringing a Regulation into Force	10
WAYS OF SETTING THE IN FORCE DATE OF A REGULATION	10
Silence	10
Upon Filing	10
In Force on a Fixed Date - Prospective	11
In Force on a Fixed Date – Retroactive	11
Assorted In Force Dates	13
Can Regulations be Made under Unproclaimed Legislation?	13

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 (also known as subordinate legislation). There is, however, a fundamental distinction between law-making activity and the “coming into force” of a law. Legislation begins to operate and produce legal effects when it comes into force.¹ In Ontario, the principles for bringing Acts and regulations into force are found mainly in the *Legislation Act, 2006*.²

This paper explains the ways that Acts or regulations in Ontario can enter into force and thereby become binding. It also discusses issues relating to coming into force.

HOW DOES AN ACT COME INTO FORCE?

Overview

A Bill becomes an Act once it receives three readings in the Legislative Assembly. A final step, Royal Assent, occurs when the Lieutenant Governor signs the Bill on behalf of the Queen; the Bill then becomes an Act and is law. The date of Royal Assent is included in the enacted version of a Bill.³

However, a law does not operate until it comes into force. Each Act contains information on how it will come into force, known as a commencement provision.⁴

¹ Ruth Sullivan, *Sullivan on the Construction of Statutes*, 6th ed. (Markham: LexisNexis Canada Inc., 2014), p. 723.

² *Legislation Act, 2006*, S.O. 2006, c. 21, Sched. F. The *Legislation Act, 2006* was proclaimed in force on July 25, 2007. It repealed and replaced the *Statutes Act*, the *Regulations Act*, and the *Interpretation Act* to assemble in a single Act provisions about the publication, citation, and interpretation of Ontario legislation.

³ The date of Royal Assent of an Act can be located on the following two publicly available electronic resources:

- On the Bills & Lawmaking page of the website of the Legislative Assembly of Ontario (www.ontla.on.ca/lao/en/bills): locate the Bill version of the Act. The Royal Assent date can be found under the “Status” tab. Alternatively, it can be found on the title page of the pdf version of the Royal Assent version of a Bill.
- On e-Laws (www.ontario.ca/laws): the Royal Assent date appears at the top of the Source law version of an Act.

⁴ The commencement provision is generally the second-last section of an Act. Commencement provisions can be located on the following two publicly available electronic resources:

- On the Bills & Lawmaking page of the website of the Legislative Assembly of Ontario (www.ontla.on.ca/lao/en/bills): in the Royal Assent version of a Bill.
- On e-Laws (www.ontario.ca/laws): commencement provisions are omitted from the consolidated laws but can be found in the Source law version of an Act.

An Act may come into force on one or more of the following dates:

- on the date of Royal Assent;
- on some other date(s) specified in the Act; or
- on a date set out in a proclamation subsequent to Royal Assent.

Bringing an Act into force on a date other than Royal Assent offers flexibility to a government. A Legislature may choose to delay commencement of a law for many reasons, such as to await events or to give notice to the public. A delayed commencement also allows time to prepare for the administration of an Act, such as, for example, holding consultations and preparing regulations and explanatory materials.⁵

In Force on Royal Assent

Act is Silent

Section 8(1) of the *Legislation Act, 2006* states that “unless otherwise provided, an Act comes into force on the day it receives Royal Assent.”⁶

Thus, silence as to the method of commencement of an Act means that the Act enters into force upon assent. Prior to the passage of the *Legislation Act, 2006*, legislation entered into force upon assent only when it expressly stated that it came into force in this way.⁷

However, if the commencement provision is subsequently amended, the amended commencement date will not be reflected in the Royal Assent version or the original Source law version of an Act.

⁵ Sullivan, p. 728 and F.A.R. Bennion, D. Bailey and L. Norbury, *Bennion on Statutory Interpretation*, 7th ed. (London: LexisNexis, 2017), pp. 169-170. See also Bryan Schwarz and Darla Rettie, “Rick Mantey: Exposing the invisible,” (2001) 28:2 *Manitoba Law Journal* 187 at 194-195.

Whatever method is used to set the commencement date, under s. 9(1) of the *Legislation Act, 2006*, unless otherwise provided, an Act comes into force at the first instant of the day on which it comes into force.

⁶ See also ss. 8(2) and 9(2) of the *Legislation Act, 2006* for further provisions respecting Royal Assent.

⁷ 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. Yet a different rule was adopted in 1925 and continued to apply until 2007. In particular, during this period the *Statutes Act* held that, in general, unless otherwise provided, every Act took effect on the 60th day after the end of the session at which it was passed. 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; *The Statutes Act, 1925*, S.O. 1925, c. 6, s. 2; and the *Statutes Act*, R.S.O. 1990, c. S.21, s. 5. Section 134, para. 4 of the *Legislation Act, 2006* repealed the *Statutes Act*.

Act Specifies Royal Assent

Despite s. 8(1) of the *Legislation Act, 2006*, Acts generally are not silent with respect to their coming into force date. It is common for an Act to be brought into force by way of a provision stating: “This Act comes into force on the day it receives Royal Assent.” See, for example, s.11 of the *Ontario Society for the Prevention of Cruelty to Animals Amendment Act, 2015*.⁸

Effectiveness of Acts Brought into Force on Royal Assent: Is Actual Notice Required?

The *Legislation Act, 2006* states that unless otherwise provided, an Act that comes into force on Royal Assent is not effective against a person before the earliest of the following times:

1. When the person has actual notice of it.
2. The last instant of the day on which it comes into force.⁹

If Royal Assent precedes actual notice of an Act, the Act is still effective against that person at the last instant of the day of Royal Assent.

In Force on a Fixed Date

The commencement provision may provide that the Act comes into force on a date or dates other than the date of Royal Assent. The date(s) may be before or after Royal Assent.

Fixed Date after Royal Assent

In some cases, a commencement date subsequent to the date of assent is specified. The expression—“this Act comes into force on (date)” —is generally used.

In other cases, the coming into force date is linked to the date of Royal Assent (and so cannot be specified in the Act since the date of Royal Assent is not known at the time of its drafting). For example, the *Modernizing Regulation of the Legal Profession Act, 2013* provides that certain sections come into force “on the later of April 7, 2014 and the day this Act receives Royal Assent,” while other sections come into force “three months after the day this Act receives Royal Assent.”¹⁰

A commencement date may also be linked to the coming into force of another provision. For example, the commencement provision of the *Smart Growth for*

⁸ *Ontario Society for the Prevention of Cruelty to Animals Amendment Act, 2015*, S.O. 2015, c. 10, s. 11.

⁹ *Legislation Act, 2006*, s. 9(2).

¹⁰ *Modernizing Regulation of the Legal Profession Act, 2013*, S.O. 2013, c. 17, s. 28(2) and (3). This Act also brings sections into effect upon Royal Assent and proclamation and so would fall in the “varied in force” date category discussed below.

Our Communities Act, 2015 provides that s. 18(2) came into force 121 days after s. 18(1) of the Act was proclaimed in force.¹¹

It is possible for legislation to specify that provisions, if unproclaimed, will take effect 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 by March 1, 2000 came into force on that day.¹²

Fixed Date before Royal Assent – Retroactivity

There is a strong presumption that legislation is not intended to be retroactive; however, this presumption can be rebutted by express words or by necessary implication.¹³

There are limits, however, on the power of the Legislature to give retroactive effect to statutory provisions. The *Canadian Charter of Rights and Freedoms*¹⁴ limits the power of the Legislature to create retroactive (or ex post facto) criminal offences and gives offenders the benefit of the lesser punishment where the penalty for an offence is changed after it is committed.¹⁵

Retroactive statutes are deemed to have come into effect in the past—that is, a date prior to the date of Royal Assent. Thus, there is the phrase “This Act shall be deemed to have come into force on (the particular date).” Alternatively, an Act may limit retroactivity to specified sections or deem part of the Act in force on one retroactive date while deeming another part of the Act in force on a different retroactive date.¹⁶

In Force on 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.”¹⁷

¹¹ *Smart Growth for Our Communities Act, 2015*, S.O. 2015, c. 26, s. 39.

¹² *Amendments Because of the Supreme Court of Canada Decision in M. v. H. Act, 1999*, S.O. 1999, c. 6, s. 68(3). Sections 1–24 and 26–68 came into force in this way.

¹³ Sullivan, pp. 771-772. Sullivan notes that “all that is required is some sufficient indication that the legislation is meant to change the law for the past as well as the future.”

¹⁴ *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c. 11.

¹⁵ Peter W Hogg, *Constitutional Law of Canada*, looseleaf edition (5th ed, Thomson Carswell, 2007), pp. 51-33, 51-35 and 51-36.

¹⁶ Sullivan considers deemed commencement to be confusing and unnecessary. She argues that “the same result could be achieved without fiction by declaring that the legislation applies to facts existing on or occurring before or after a designated day.” See Sullivan, pp. 731-732.

¹⁷ Under the *Legislation Act, 2006*, procedurally, such a proclamation “shall be issued under an order of the Lieutenant Governor in Council recommending that the proclamation be issued.” The “Lieutenant Governor in Council” is defined as the Lieutenant Governor, acting by and with the

Amending or Revoking a Proclamation

Under the *Legislation Act, 2006*

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.¹⁸

An example is provided by the proclamation of a provision in a schedule to the *Open for Business Act, 2010*; the amendment of the proclamation and then its revocation.¹⁹

Proclaiming Part of an Act

There is no requirement that all sections of an Act be proclaimed in force at the same time.²⁰ Indeed, the *Legislation Act, 2006* states 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 for different parts, portions or sections of the Act.²¹

advice of the Executive Council. See *Legislation Act, 2006*, ss. 73 and 87. The *Official Notices Publication Act* requires that, in general, where a proclamation is made, it must be published in *The Ontario Gazette*. See *Official Notices Publication Act*, R.S.O. 1990, c. O.3, s. 2(1)(a). Issues of *The Ontario Gazette* dating back to January 2000 can be found at www.ontario.ca/ontario-gazette.

For a list of proclamations applicable to Acts contained in the Revised Statutes of Ontario, 1990 or Acts enacted on or after January 1, 1991, see the *Table of Proclamations* published on the e-Laws website at www.ontario.ca/laws/proclamations. This list also sets out provisions that have not yet been proclaimed into force.

¹⁸ *Legislation Act, 2006*, s. 75(1). See also s. 75(2).

¹⁹ In particular, a proclamation was issued on January 23, 2013, naming March 1, 2013 as the date subsection 5(17) of Schedule 2 to the *Open for Business Act, 2010* (S.O. 2010, c. 16) would come into force (OIC 121/2013, (2013) Ont Gaz 146-05). A second proclamation was issued on February 27, 2013 changing the in force date to September 1, 2013 (OIC 305/2013, (2013) Ont Gaz 146-10, 575). A third proclamation was issued on June 12, 2013 revoking the proclamation (OIC 848/2013, (2013) Ont Gaz 146-25, 1743).

²⁰ For further discussion of this issue, see Craig E. Jones, “The Partial Commencement of Acts: A Constitutional Criticism of the Lieutenant Governor in Council’s ‘Line-Item Veto’ Power,” 5:2 (2000) *Review of Constitutional Studies*: 178 and 193 and Alex Stedman, “Unproclaimed legislation – the delegation of legislative power to the executive,” 28:1 (2013) *Australasian Parliamentary Review*: p. 85.

²¹ *Legislation Act, 2006*, s. 8(3).

Some Acts give specific authority for a proclamation to “apply to one or more . . . provisions, and proclamations may be issued at different times with respect to any of those provisions.”²²

Occasionally, the Legislature may restrict the government’s discretion and require that an Act be brought into force in its entirety. The *Ministry of Energy Act, 2011* contained the following commencement provision:

14. (1) The Act set out in this Schedule comes into force on a day to be named by proclamation of the Lieutenant Governor.

(2) A proclamation under subsection (1) may only be made in respect of the entire Schedule.²³

Judicial Consideration of Partial Proclamation of an Act

In *Reference re Criminal Law Amendment Act*, the Supreme Court considered whether the Governor in Council exceeded its power by proclaiming an Act in force with the exception of certain subsections and sub-subsections.²⁴ The majority concluded that the statute granted the executive discretion to proclaim or not proclaim sections and subsections, and so the Court should not examine the manner in which the executive exercises this power.

Legal scholar Pierre-André Côté notes that “as each statute forms a whole, enactment in stages may alter its meaning” but goes on to say that “it is doubtful, however, except in the case of a flagrant abuse of power by the executive, that the courts would intervene to invalidate a proclamation or order on the grounds that the effect of enactment by stages was to change the meaning of the statute.”²⁵

However, Sullivan notes that “it is not at all clear that the Supreme Court of Canada would (or should) take the same deferential attitude today [as it did in *Reference re Criminal Law Amendment Act*]. The power to proclaim legislation, like any other delegated authority, is subject to the limits fixed by Parliament both express and implied.”²⁶

²² See, for example, the *Strengthening Quality and Accountability for Patients Act, 2017*, S.O. 2017, c. 25, s. 2(1).

²³ *Ministry of Energy Act, 2011*, S.O. 2011, c. 9, Sched. 25.

²⁴ [1970] S.C.R. 777, 1970 CanLII 129.

²⁵ Pierre-André Côté, *The Interpretation of Legislation in Canada*, 4th ed. (Toronto: Carswell, 2011), p. 103.

²⁶ Sullivan, p. 731.

Not Proclaiming an Act

Can the Legislature decide to never proclaim a particular Act or provision in force?

Sullivan states that, while the exercise of the power to proclaim is subject to judicial review, the possibility of review on the non-exercise of that power is “more doubtful.”²⁷

In the United Kingdom, it has been suggested that “whenever Parliament passes an Act it intends, unless the contrary intention appears, that all its provisions shall be brought into force within a reasonable time” and this matter may be subject to judicial review.²⁸

Ontario has codified a process for the repeal of legislation that remains unproclaimed for nine years or more.²⁹ Since 2011, the *Legislation Act, 2006* has required the Attorney General to annually table in the Legislature a report listing all unproclaimed Acts and provisions that were enacted nine years or more before December 31 of the preceding calendar year and which remain unproclaimed on that date.³⁰

An Act or provision listed in this report is automatically repealed on December 31 of the calendar year in which the report is tabled unless

- it comes into force on or before December 31 of that calendar year; or
- during that calendar year, the Assembly adopts a resolution that it not be repealed.³¹

Each year the Attorney General must publish on the e-Laws website a list of the Acts and provisions repealed in this way.³² For example, in 2017 certain sections

²⁷ *Ibid.*, p. 729.

²⁸ Bennion, Bailey and Norbury, p. 172. The authors point to a House of Lords decision which found that the Home Secretary “had a duty to keep under consideration from time to time the question whether or not the situation had arrived when it was appropriate to bring the statutory provisions into force, so could not lawfully decide that they would *never* be implemented [emphasis in original].” See *R v Secretary of State for the Home Department ex p Fire Brigades Union* [1995] 2 AC 513.

²⁹ *Good Government Act, 2009*, S.O. 2009, c. 33, Sched. 2, s. 43(7). This provision is very similar to federal legislation that had been passed the previous year. See the *Statutes Repeal Act*, S.C. 2008, c. 20.

³⁰ *Legislation Act, 2006*, s. 10.1(2). See, for example, *Report under section 10.1 of the Legislation Act, 2006*, Sessional Paper 171, tabled February 27, 2017 and *Report under section 10.1 of the Legislation Act, 2006*, Sessional Paper 439, tabled February 21, 2018.

³¹ *Legislation Act, 2006*, s. 10.1(2).

³² *Ibid.*, s. 10.1(3). These lists can be found in the Legislative Tables on e-Laws at <http://www.ontario.ca/laws/public-statute-provisions-repealed-under-section-101-legislation-act-2006>.

of the *Long-Term Care Homes Act, 2007* were repealed after remaining unproclaimed for over nine years.³³ In 2012, three unproclaimed Acts were repealed: the *Collision Repair Standards Act, 2002*, the *Sustainable Water and Sewage Systems Act, 2002*, and the *Rescuing Children from Sexual Exploitation Act, 2002*.³⁴

Varied In Force Dates

Two or more of the above “in force” methods may be incorporated in the same Act.³⁵

REGULATIONS

The *Legislation Act, 2006* defines a “regulation” as a

regulation, rule, order or by-law of a legislative nature made or approved under an Act of the Legislature by the Lieutenant Governor in Council, a minister of the Crown, an official of the government or a board or commission all the members of which are appointed by the Lieutenant Governor in Council.³⁶

³³ S.O. 2007, c. 8, ss. 32, 45, 207(2)–(8), (11) – (14), (18), 212.

³⁴ S.O. 2002, c. 31, c. 29, and c. 5, respectively.

³⁵ A particularly complex commencement provision can be found in s. 76 of the *All Families Are Equal Act (Parentage and Related Registrations Statute Law Amendment)*, 2016, S.O. 2016, c. 23, which states:

- (1) Subject to subsections (2) to (12), this Act comes into force on the day it receives Royal Assent.
- (2) The following provisions come into force on a day to be named by proclamation of the Lieutenant Governor:
[specified sections and sub-sections are listed]
- (3) Subsections 1(2) and 18(11) come into force on the later of the day subsection 1 (1) comes into force and the day subsection 1 (3) of Schedule 33 to the *Jobs for Today and Tomorrow Act (Budget Measures)*, 2016 comes into force.
[. . .]
- (5) Subsection 21(2) comes into force one year after the day this Act receives Royal Assent.
[. . .]
- (11) Section 60 comes into force on the later of the day subsection 1(1) comes into force and the day subsection 1(1) of the *Not-for-Profit Corporations Act, 2010* comes into force.
[. . .]
- (12) Section 65 comes into force on the later of the day subsection 1(1) comes into force and the day section 2 of the *Pooled Registered Pension Plans Act, 2015* comes into force.

See also the remaining provisions of s. 76.

³⁶ *Legislation Act, 2006*, s. 17.

Regulations must comply with Part III (Regulations) of the *Legislation Act, 2006* unless excluded from its application.³⁷ In order to be effective, regulations that are not excluded must comply with the filing and publishing requirements set out in Part III.

Filing of Regulations

Regulations must be filed with the Registrar of Regulations.³⁸ This must be done within four months after the making of a regulation or after the date of its approval, if approval of the regulation is required. An exception, however, applies if the regulation-making authority and regulation-approving authority (if any) give approval for a later filing.³⁹ A regulation that is not filed has no effect.⁴⁰

Publication of Regulations

Every regulation must be published

- promptly after its filing on the Government of Ontario's e-Laws website,⁴¹ 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.⁴²

These publication requirements have significant legal consequences. Unless a regulation or the authorizing Act provides otherwise, the regulation is not effective against a person before the earliest of the following times:

- when the person has actual notice of it;

³⁷ The definition of "regulation" in s. 17 of the *Legislation Act, 2006* excludes by-laws of a municipality or local board as defined in the *Municipal Affairs Act* and orders of the Ontario Municipal Board (now the Local Planning Appeals Tribunal). Some Acts specify that certain instruments are not regulations within the meaning of Part III of the *Legislation Act, 2006*. See, for example, the *Teaching Professions Act*, R.S.O. 1990, c. T.2, s. 12(4) and the *Financial Services Regulatory Authority of Ontario Act, 2016*, S.O. 2016, c. 37, Sched. 8, s. 9(10).

³⁸ *Legislation Act, 2006*, s. 18(1). Qualifications to the filing requirement are contained in ss. 19-21. See also s. 32(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 18." No such regulations have been made. (The *Regulations Act*, R.S.O. 1990, which was repealed by the *Legislation Act, 2006*, also contained a filing requirement but did not set a time frame for filing.)

³⁹ *Legislation Act, 2006*, s. 19(1)-(2).

⁴⁰ *Ibid.*, s. 22(1).

⁴¹ This is typically done within two business days. See Standing Committee on Regulations and Private Bills, *Hansard*, 1st Sess., 41st Parl. (December 3, 2014), p. T-11.

⁴² *Legislation Act, 2006*, s. 25(1). No regulation prescribing timelines has been made.

- the last instant of the day on which it is published on the e-Laws website; and
- the last instant of the day on which it is published in the print version of *The Ontario Gazette*.⁴³

Thus, actual notice of a regulation is not a requirement before it can be effective against a person.

Statutory Provisions on Bringing a Regulation into Force

Some Acts impose requirements or restrictions on the timing of the coming into force of regulations.⁴⁴

WAYS OF SETTING THE IN FORCE DATE OF A REGULATION

As with an Act, each regulation contains information on how it will come into force (its commencement provision).⁴⁵

Silence

Subsection 22(2) of the *Legislation Act, 2006* provides that a regulation comes into force on the day on which it is filed, unless the regulation or its authorizing statute provides otherwise. Therefore, if a regulation and authorizing Act are silent as to the in force date of the regulation, it takes effect upon the date of filing.

Upon Filing

Despite s. 22(2), Ontario regulations are generally not silent with respect to their in force dates. It is common for a regulation to state that it comes into force on the date of filing. For example, O. Reg. 19/15 made under the *Coroners Act* provides that it “comes into force on the day it is filed.”⁴⁶

⁴³ Ibid., s. 23(2). The publication requirement does not apply in certain situations. See, for example, the *Emergency Management and Civil Protection Act*, R.S.O. 1990, c. E.9, s. 7.2(2).

⁴⁴ For example, the *Insurance Act* sets criteria for when regulations dealing with certain ratios, percentages, amounts, and calculations may come into force. It states that such regulations do “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.” See the *Insurance Act*, R.S.O. 1990, c. I.8, s. 121(2). Another example is s. 7(5) of the *Endangered Species Act, 2007* which provides that: “a regulation under this section comes into force on the day it is filed.” See the *Endangered Species Act, 2007*, S.O. 2007, c. 6.

⁴⁵ The commencement provision is generally the last section of a regulation. Commencement provisions can be located on e-Laws (www.ontario.ca/laws). Commencement provisions are omitted from the consolidated regulations but can be found in the Source law version of a regulation; however, if a commencement provision is subsequently amended, the amended commencement date will not be reflected in the original Source law version of a regulation.

⁴⁶ O. Reg. 19/15 made under the *Coroners Act*, R.S.O. 1990, c. C.37.

In Force on a Fixed Date – Prospective

As with an Act, the regulation may come into force on a specified date(s) in the future.

A regulation may provide in a straightforward manner that it comes into force on a certain date. For example, O. Reg. 236/14 made under the *Insurance Act*, which was filed on November 27, 2014, set out that its commencement date would be January 1, 2015.⁴⁷

The regulation-maker may seek to ensure that a regulation will come into force no earlier than a particular date. For example, a regulation made under the *Child and Family Services Act*, which was filed on June 2, 2017, stated that it came into force “on the later of July 1, 2017 and the day it is filed.”⁴⁸

In some cases, the coming into force date is linked to the filing date of the regulation. For instance, a 2015 regulation made under the *Ontario College of Trades and Apprenticeship Act, 2009*, provided that it came into force “two years after the day it is filed.”⁴⁹

Also, although regulations, unlike some Acts, are not proclaimed into force, they may provide that they come into force when an Act or part of an Act is proclaimed in force.⁵⁰

In Force on a Fixed Date – Retroactive

In her text on the construction of statutes, Ruth Sullivan notes that “it is presumed that the legislature does not intend to delegate a power to legislate retroactively, retrospectively or to interfere with vested rights.”⁵¹ However, this presumption can be rebutted—an Act may expressly authorize the making of regulations that are deemed to have come into force on a day before the regulation is filed.⁵²

⁴⁷ O. Reg. 236/14 made under the *Insurance Act*, R.S.O. 1990, c. I.8.

⁴⁸ O. Reg. 173/17 made under the *Child and Family Services Act*, R.S.O. 1990, c. C.11.

⁴⁹ See s. 2 of O. Reg. 21/15 made under the *Ontario College of Trades and Apprenticeship Act, 2009*, S.O. 2009, c. 22.

⁵⁰ For example, O. Reg. 132/14 made under the *Provincial Offences Act*, R.S.O. 1990, c. P.33, provided in s. 3 that it would come into force “on the later of the day subsection 1(40) of Schedule 4 to the *Good Government Act, 2009* comes into force and the day this Regulation is filed.” O. Reg. 132/14 was filed on May 6, 2014. Since the referenced provision was proclaimed in force on July 1, 2014, that was the date that O. Reg. 132/14 came into force. For further discussion of the issue of making regulations under statutes not yet in force, see the section below entitled “Can Regulations be Made under Unproclaimed Legislation?”

⁵¹ Sullivan, p. 834.

⁵² Under Standing Order 108(i) of the Legislative Assembly, the Standing Committee on Regulations and Private Bills, in examining regulations, shall have regard to the following guideline: “Regulations should not have retrospective effect unless clearly authorized by statute.”

An Act may grant wide or limited discretion for regulations to operate retroactively.

One formulation for a broad discretion for retroactive regulations can be found in the *Land Transfer Tax Act*: “A regulation is, if it so provides, effective with reference to a period before it was filed.”⁵³

Another example of broad authorization for retroactive regulations can be found in the *Animal Health Act, 2009*:

If a regulation provides that a provision of the regulation is deemed to have come into force on a day before the regulation is filed, the provision is deemed to have come into force on that day.⁵⁴

Authority for retroactive regulations limited to regulations made only under a specified provision and for a specified purpose is found in the *Education Act*:

A regulation made under subsection [58.1](2) may provide that it shall be deemed to have come into force and taken effect on the day of filing or at such earlier or later time as is stated in the regulation, for any purpose related to representation on or elections to a district school board or school authority.⁵⁵

The statute may authorize retroactivity only to a specified date. A provision of the *Planning Act* provides, for instance, that

a regulation made under clause [70.5](1)(a) may be retroactive to December 12, 2005.⁵⁶

As with an Act, a regulation may be deemed in force on a particular date; there are different ways of expressing the retroactive date.⁵⁷

⁵³ *Land Transfer Tax Act*, R.S.O. 1990, c. L.6, s. 22(3).

⁵⁴ *Animal Health Act, 2009*, S.O. 2009, c. 31, s. 65(7).

⁵⁵ *Education Act*, R.S.O. 1990, c. E.2, s. 58.1(3).

⁵⁶ *Planning Act*, R.S.O. 1990, c. P.13, s. 70.5(3).

⁵⁷ For example, O. Reg. 46/04, made under the *Health Insurance Act*, R.S.O. 1990, c. H.6, and filed on March 1, 2004, provides in s. 2 that “This Regulation shall be deemed to have come into force on January 1, 2002.” Somewhat similarly, O. Reg. 2/15, made under the *Ontario Disability Support Program Act, 1997*, S.O. 1997, c. 25, Sched. B, and filed on January 7, 2015, provides in s. 2 that it comes into force “on January 1, 2015, or, if this Regulation is filed after that date, it is deemed to have come into force on that date.” O. Reg. 182/17 made under the *Land Transfer Tax Act*, R.S.O. 1990, c. L.6, and filed on June 8, 2017, provides in s. 9 that it “is deemed to have come into force on the day Schedule 1 to the *Budget Measures Act (Housing Price Stability and Ontario Seniors’ Public Transit Tax Credit), 2017* comes into force.” Schedule 1 to the *Budget*

Assorted In Force Dates

A regulation can establish different in force dates for different provisions. For example, O. Reg. 166/14, made under the *Ontario Disability Support Program Act, 1997*, and filed on August 15, 2014, provides:

- (1) Subject to subsections (2) and (3), this Regulation comes into force on the day it is filed.
- (2) Sections 1, 2, 3, 4, 6 and 7,
 - (a) come into force on September 1, 2014, if this Regulation is filed on or before September 1, 2014; and
 - (b) are deemed to have come into force on September 1, 2014, if this Regulation is filed after September 1, 2014.
- (3) Sections 5 and 8 come into force on March 1, 2015.⁵⁸

Can Regulations be Made under Unproclaimed Legislation?

Yes. The *Legislation Act, 2006* addresses the situation where an Act yet to be proclaimed into force confers regulation-making powers. Such powers “may be exercised at any time after Royal Assent even if the Act is not yet in force.”⁵⁹

Thus, regulations may be made under the authority of an unproclaimed Act; however, in general, the exercise of the regulation-making powers will have “no effect” until the Act comes into force.⁶⁰

The ability to make regulations under an Act not yet in force can be useful where the Act provides that some of its elements will be set out in a regulation. Regulations that are made before an Act comes into force allow the Act to be fully operational once it does come into force.⁶¹

Measures Act (Housing Price Stability and Ontario Seniors’ Public Transit Tax Credit), 2017, S.O. 2017, c. 17, came into force on the date of Royal Assent, June 1, 2017.

⁵⁸ Section 9, O. Reg. 166/14 made under the *Ontario Disability Support Program Act, 1997*, S.O. 1997, c. 25, Sched. B.

⁵⁹ *Legislation Act, 2006*, s. 10(1).

⁶⁰ *Ibid.*, s. 10(2). The scope of s. 10 extends beyond regulation-making powers conferred by an unproclaimed Act—permitting, for example, appointments to be made.

⁶¹ For example, the *Psychotherapy Act, 2007*, S.O. 2007, c. 10, Sched. R received Royal Assent on June 4, 2007. Three regulations were made under the Act before April 1, 2015, the date on which most of the Act was proclaimed. Two of the regulations—O. Reg. 34/13 and O. Reg. 67/15—provided that they would come into force “on the later of the day section 6 of the Act comes into force and the day this Regulation is filed”; therefore, these regulations came into effect with section 6 of the Act on April 1, 2015. One of the regulations—O. Reg. 317/12—originally

provided that it would come into force “on the later of the day section 4 of the Act comes into force and the day this Regulation is filed.” A subsequent regulation, O. Reg. 305/15, amended the commencement date of O. Reg. 317/12 to October 2, 2015.