When do Ontario Acts and Regulations Come into Force?

Research Paper B31 (revised November 2011)

Prepared by
Philip Kaye
Manager
Legislative Research Service

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 at the legal framework for the commencement of legislation established by the *Legislation Act, 2006*, including amendments made in 2009 dealing with unproclaimed legislation. The paper also contains updated statistics on the various ways Ontario statutes have come into force.

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" (or commencement) 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 incorporates changes to the principles for bringing Acts and regulations into force which are contained in the *Legislation Act, 2006*.[1] These changes were proclaimed in force on July 25, 2007. Amongst other things, the changes involved

- 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.

The paper also explains the amendments made in 2009 to the *Legislation Act, 2006* by the *Good Government Act, 2009* dealing with unproclaimed Acts and provisions.[2]

WAYS FOR BRINGING ACTS INTO FORCE

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.[3] Indeed, in Ontario an Act may take effect in five different ways, which may be identified as follows:

- Royal Assent;
- fixed date (retroactive);
- fixed date (prospective);

---

[1] S.O. 2006, c. 21, Sched. F, accessed November 20, 2011.

[2] *Good Government Act, 2009*, S.O. 2009, c. 33, Sched. 2, s. 43(7) [adding s. 10.1], accessed November 20, 2011. Eve Leung, Research Librarian, Ontario Legislative Library, provided extensive assistance in researching developments since August 2007. Additional assistance was provided by Rick Sage, Research Librarian, also with the Legislative Library.

[3] Royal Assent occurs when the Lieutenant Governor signs a bill on behalf of the Queen, following the passage of the bill by the Legislative Assembly.

- proclamation; and
- hybrid (combination).

Royal Assent

Silence as to the Commencement of an Act

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.[4]

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.

Historical Significance of Silence

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. 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 sixtieth day after the end of the session at which it was passed.[5]

Fixed Date (Retroactive)

General

Retroactive statutes are deemed to operate in the past—that is, 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 on the Construction of Statutes* ("Sullivan") 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

---

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

[5] 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*.

into force. As she observes, "this use of retroactivity is common in fiscal legislation and is found in other contexts as well."[6]

Retroactive legislation is also occasionally used to "cure invalidity" and to "correct past injustice or to avoid gaps in ongoing relationships."[7] For example, in October 1998 the Supreme Court of Canada ruled that an Ontario regulation which imposed probate fees was invalid.[8] Within two months of the decision, legislation had been passed which retroactively imposed an estate tax back to 1950.[9]

On a technical level, the terms "retroactivity" and "retrospectivity" are often used interchangeably;[10] some analyses of legislation, however, draw a distinction between the two concepts.[11]

Is Retroactive Legislation Constitutional? — Judgment of the Supreme Court of Canada

Background

Does Canadian constitutional law prohibit or restrict the enactment of retroactive laws in any way? In 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*.[12] 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",

---

[6] Ruth Sullivan, *Sullivan on the Construction of Statutes*, 5th ed. (Markham: LexisNexis Canada Inc., 2008), p. 681.

[7] Ibid, p. 682.

[8] *Re Eurig Estate*, [1998] 2 S.C.R. 565.

[9] 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.

[10] See Elizabeth Eddinger, "Retrospectivity in Law," *University of British Columbia Law Review* 29 (1995): 5-25, para. 11.

[11] See Sullivan, pp. 670-677; Sullivan, *Statutory Interpretation* (Toronto: Irwin Law, 2007), pp. 251-254, 257-259, and 262; and Pierre-André Côté in collaboration with Stéphane Beaulac and Mathieu Devinat, *The Interpretation of Legislation in Canada*, 4th ed. (Toronto: Carswell, 2011), pp. 140-144.

[12] S.B.C. 2000, c. 30, accessed November 20, 2011.

including the allowing of actions to be brought "arising from a tobacco related wrong, whenever the tobacco related wrong occurred."[13]

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.[14]

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."[15] 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 according to its terms. Retroactive statutes are in fact common.[16]

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]

---

[13] Ibid., s. 10.

[14] Devrin Froese, "Professor Raz, The Rule of Law, and the Tobacco Act," *Canadian Journal of Law and Jurisprudence* 19 (January 2006): 175.

[15] *British Columbia v. Imperial Tobacco Canada Ltd.*, [2005] 2 S.C.R. 473, para. 69, accessed November 20, 2011.

[16] Ibid., para. 69, quoting Peter W. Hogg, *Constitutional Law of Canada*, 4th ed. (looseleaf) (Toronto: Carswell, 1997), vol. 2, section 48.8.

The Supreme Court's judgment referred to the position that "retrospective and retroactive legislation can overturn settled expectations and is sometimes perceived as unjust."[17] 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" . . . .[18]

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 (which under the *Election Act* occurred on September 10, 2007).[19]

Sullivan 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.[20]

---

[17] *British Columbia v. Imperial Tobacco Canada Ltd.*, para. 71.

[18] Ibid. The Court quoted from the case of *Landgraf v. USI Film Products*, 511 U.S. 244 (1994), at p. 268.

[19] *Representation Act, 2005*, S.O. 2005, c. 35, Schedule 1, s. 2(4), accessed November 20, 2011. 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.

[20] *Sullivan on the Construction of Statutes*, p. 644. 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.

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." Procedurally, under the *Legislation Act, 2006*, such a proclamation "shall be issued under an order of the Lieutenant Governor in Council recommending that the proclamation be issued."[21] "Lieutenant Governor in Council" is in turn defined as the Lieutenant Governor, acting by and with the advice of the Executive Council.[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 enacted on or after January 1, 1991, see the *Table of Proclamations* published on the e-Laws website.[24] This list also sets out provisions that have not yet been proclaimed into force.

Timing of Proclamations

Proclaiming Only Part of an Act

There is no requirement that all sections of an Act be proclaimed in force at the same time. The *Legislation Act, 2006* indeed says 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.[25]

The "leading"[26] Canadian case respecting the power to proclaim legislation into force, whether wholly or partially, is *Reference re Criminal Law Amendment*

---

[21] *Legislation Act, 2006*, s. 73. Section 73 states that this procedure applies whenever an Act authorizes the Lieutenant Governor to do anything by proclamation. It further provides that the proclamation does not have to refer to the order in council.

[22] Ibid., s. 87.

[23] R.S.O. 1990, c. O.3, accessed November 20, 2011.

[24] Queen's Printer for Ontario, "Table of Proclamations," accessed November 20, 2011.

[25] *Legislation Act, 2006*, s. 8(3).

[26] *Sullivan on the Construction of Statutes*, pp. 645-646.

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*. Section 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]

Is there an Obligation to make a Proclamation?

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

---

[27] *Criminal Law Amendment Act, Reference*, [1970] S.C.R. 777, accessed November 20, 2011.

[28] S.C. 1968-69, c. 38.

[29] [1970] S.C.R. 777 at 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 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

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

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's* discussion of the delayed commencement of legislation at pp. 644-645. See also Daniel Greenberg, ed., *Craies on Legislation: A Practitioners' Guide to the Nature, Process, Effect and Interpretation of Legislation*, 9th ed. (London: Sweet and Maxwell, 2008), sections 10.1.14-10.1.18.

[31] Ontario, Ministry of Finance, "Pension amendments in Bill 198 will never be proclaimed," *News Release*, 28 November 2002, accessed August 22, 2007. See also Ontario, Legislative Assembly, *Hansard, Official Report of Debates*, 37th Parliament, 3rd Session (November 26, 2002): 3238 (Premier Eves), accessed November 20, 2011.

[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 December 9, 2002). The pension amendments had originally appeared in Part XXV of the bill.

[33] *R. v. Hoeppner (H.)*, (1999), 134 Man. R. (2d) 163 at 185, accessed November 21, 2011. 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, accessed November 21, 2011, found it appropriate to read in an unproclaimed provision, where the *Charter* had been infringed.

Statutory Provisions on the Consequences of Not Proclaiming Legislation

Also, 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]

Speaking more broadly, until two years ago there was no Ontario legislation which stated as a general principle that after a certain period of time unproclaimed legislation was repealed. The addition of s. 10.1 to the *Legislation Act, 2006*, in December 2009, however, codified this principle.[36] The section mirrored very closely federal legislation which had been passed the previous year.[37]

Starting in 2011, under s. 10.1(2) the Attorney General must 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.[38]

What happens to an Act or provision listed in this report? It 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.[39]

Each year the Attorney General must publish on the e-Laws website a list of the Acts and provisions repealed in this way.[40]

---

[34] S.O. 1999, c. 6, s. 68(3). Sections 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] *Good Government Act, 2009*, S.O. 2009, c. 33, Sched. 2, s. 43(7), accessed November 21, 2011.

[37] See the *Statutes Repeal Act*, S.C. 2008, c. 20, accessed November 20, 2011.

[38] See accordingly Ministry of the Attorney General, *Statutes or Statutory Provisions that were Enacted on or before December 31, 2001 and are Uunproclaimed as at December 31, 2010*, Sessional paper 392, tabled March 1, 2011.

[39] *Legislation Act, 2006*, s. 10.1(2).

[40] Ibid., s. 10.1(3).

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 was repealed the same way.[41]

Can Regulations be made under Unproclaimed Legislation?

The *Legislation Act, 2006* addresses the situation where an Act which must be proclaimed into force confers regulation-making powers. Under s. 10(1), such powers "may be exercised at any time after Royal Assent even if the Act is not yet in force." 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.[42]

The *Interpretation Act*, which was repealed by the *Legislation Act, 2006*, contained a similar provision respecting the making of regulations under an unproclaimed Act.[43] Thus, for example, two regulations were made under the *Prohibiting Profiting from Recounting Crimes Act, 2002*[44] 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.[45]

Amending or Revoking a Proclamation

The *Legislation Act, 2006* places 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.[46]

---

[41] 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, accessed November 21, 2011.

[42] *Legislation Act, 2006*, s. 10(2).The scope of s. 10 extends to non-regulation making powers (e.g., the power to make an appointment) conferred by an unproclaimed Act.

[43] R.S.O. 1990, c. I.11, s. 5, accessed November 21, 2011.

[44] S.O. 2002, c. 2, accessed November 21, 2011.

[45] See O. Regs. 235/03, s. 7 and 236/03, s. 12, accessed November 21, 2011. 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.

[46] *Legislation Act, 2006*, s. 75(1). See also s. 75(2).

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.[47]

FREQUENCY OF THE DIFFERENT "IN FORCE" METHODS: 2006-2010

Some of these commencement methods are adopted more frequently than others. For instance, approximately one-half of the public Acts passed during the five-year period 2006-2010 were to come into force entirely upon Royal Assent or by proclamation. The latter method offers much flexibility to a government. For instance, before the new Act takes effect, any necessary regulations can be drafted and explanatory material for the guidance of public officials and the public can be prepared.[48]

A full statistical breakdown for 2006-2010 is provided in the table and chart below.[49] For the purposes of the Table, an Act that appears as a Schedule to another Act is classified as a separate Act.[50]

---

[47] 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 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).

[48] See F.A.R. Bennion, *Bennion on Statutory Interpretation: A Code*, 5th ed. (London: LexisNexis, 2010), pp. 283-284. In this United Kingdom publication, Bennion lists the above-mentioned reasons and others (such as the opportunity for consultations with the interests concerned) for the commencement of legislation on a "date or dates specified by government order."

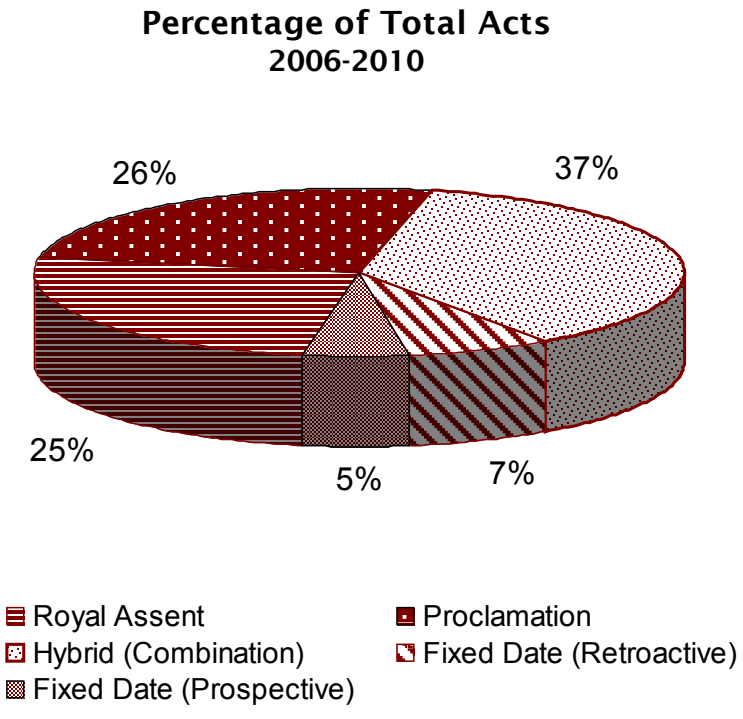
[49] Eve Leung, Research Librarian, Ontario Legislative Library, reviewed the statutes passed between 2007 and 2010 (the period since the last revision of this paper) and prepared the table and chart.

[50] 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, come into 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). Finally, one Act—the *More Time to Appeal Act, 2006*—was deemed to come into force on a particular day which happened to be the day of Assent. Accordingly, it was not retroactive and for purposes of the table, is viewed as being in force upon Assent.

STATUTES OF ONTARIO: 2006-2010 (PUBLIC ACTS)

Method for Bringing Entire Act into Force	Number of Acts	Percentage of Total Acts
Royal Assent	48	25.1
Fixed Date (Retroactive)	14	7.3
Fixed Date (Prospective)	10	5.2
Proclamation	49	25.7
Hybrid (Combination)	70	36.6
Silence (as a method of commencement under the *Statutes Act* pre-July 25, 2007)	0	0.0
Total	**191**	**100.0***

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



Apart from the Acts included in the table and chart, 44 private Acts were enacted during the above five-year period. All came into force upon Royal Assent.

REGULATIONS

Regulations are made under the authority of Acts and enter into force in accordance with Part III of the *Legislation Act, 2006*.

Filing of Regulations

Part III stipulates that all regulations must be filed with the Registrar of Regulations.[51] The *Regulations Act*, which was repealed by the *Legislation Act, 2006*, also contained a filing requirement.[52] However, it did not set a time frame for filing. In contrast, under the *Legislation Act, 2006* a regulation must be filed within four months after its making 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) gives approval for a later filing.[53] Filed regulations must be made available for public inspection.[54]

Filing has the following consequences:

> 22(1) A regulation that is not filed has no effect.
>
> (2) *Unless otherwise provided in a regulation or in the Act under which the regulation is made*, a regulation comes into force on the day on which it is filed. [emphasis added]

The highlighted words in s. 22 require that a regulation or the authorizing Act be looked at to determine when the regulation comes into force.[55] As with an Act, the regulation may be deemed in force on a particular date(s) or come into force

---

[51] *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.

[52] R.S.O. 1990, c. R.21, s. 2(1), accessed November 27, 2011.

[53] *Legislation Act, 2006*, s. 19(1)-(2).

[54] Ibid., s. 18(8).

[55] Section 121(2) of the *Insurance Act* is an example of a provision in an authorizing Act which sets criteria for when a regulation comes into force. It states 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," accessed November 27, 2011.

on a specified date(s) in the future.[56] 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 a regulation and authorizing Act are silent as to the "in force" date(s) of the regulation, 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).[57]

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

Publication of Regulations

The *Legislation Act, 2006* requires 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.[58]

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;
- 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*.[59]

---

[56] Where a regulation operates retroactively, Standing Order 108(i) 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," accessed November 27, 2011.

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

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

[59] Ibid., s. 23(2).

Thus, as pointed out by the Ministry of the Attorney General in October 2005 upon the introduction of the *Access to Justice Act, 2005* (containing the proposed *Legislation Act*):

> 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.[60]

[60] Ontario, Ministry of the Attorney General, "Creation of the Legislation Act," *Backgrounder*, 27 October 2005, accessed November 28, 2011.