

## **Legislative Update**

*by Derrick Stewart\**

The following is a list of some of the Acts passed by the first and second session of the 39<sup>th</sup> Manitoba Legislature in 2007 and 2008. Information is current at the time of preparing this article. While every effort has been made to ensure the accuracy of the information provided to you in this article, lawyers should refer to the specific legislative or regulatory provision. Current versions of Manitoba statutes and regulations are available online at <http://web2.gov.mb.ca/laws/index.php>.

**The Real Property Amendment Act (Wind Turbines)**, S.M. 2007, c. 8 (Bill 4, 1<sup>st</sup> Session, 39<sup>th</sup> Legislature)

**Royal Assent:** November 8, 2007

**Amends:** *The Real Property Act*, C.C.S.M. c. R30

**Summary:** The Act simplifies the process of registration of rights relating to wind turbines. It is now possible for a title, separate from the landowner's title, to be issued to a wind turbine generating company for its right relating to the wind turbine.

**In Force:** Upon Royal Assent

**The Insurance Amendment Act**, S.M. 2007, C. 10 (Bill 7, 1<sup>st</sup> Session, 39<sup>th</sup> Legislature)

**Royal Assent:** November 8, 2007

**Amends:** *The Insurance Act*, C.C.S.M. c. I40; *The Corporations Act*, C.C.S.M. c. C225

**Summary:** This Act is intended to make *The Insurance Act* more consistent with similar Acts in other provinces. As well, it is intended to allow flexibility in how developing issues in the insurance industry are dealt with, and to increase consumer and policyholder protection. The Act subjects insurance companies in Manitoba to new provisions concerning corporate governance including the issues of independence of directors, disclosure and avoidance of conflicts of interest, unanimous shareholder agreements, actuarial requirements, and auditing requirements. Changes to the *Insurance Act* allow classes of insurance to be prescribed by regulation, to allow consistency with other provinces and to allow for changes in insurance products over time. The amendments also allow for regulations to be made to govern the reserve requirements of reciprocal or inter-insurance exchanges.

The Bill allows expansion of the provisions for beneficiaries to be designated under accident and insurance policies. Provisions relating to special insurance brokers are expanded to allow for better protection of consumers who require their services to obtain insurance that is not otherwise readily available.

Amendments to the provisions concerning the maximum claim amount an insurance agent can adjust without holding an adjuster's licence allow for an amount to be prescribed by regulation. Enforcement of the Act is improved due to the unification of offence provisions, increases in fines and other penalties, and providing for injunctions to prevent unlicensed persons from acting as insurance agents or adjusters.

Outdated provisions, including those related to mutual benefit societies are repealed or amended. Provisions of the *The Corporations Act* are amended due to their inconsistency with the Bill's

new corporate governance provisions with some sections being repealed and others being made inapplicable to insurance companies.

**In Force:** All sections except sections 2, 18, 20, 22, 25 and 30 and subsections 32(2) and 36(2) to (5) upon Royal Assent. Sections 2, 18, 20, 22, 25 and 30 and subsections 32(2) and 36(2) to (5) by proclamation.

**The Securities Amendment Act**, S.M. 2007 c. 12 (Bill 9, 1<sup>st</sup> Session, 39<sup>th</sup> Legislature)

**Royal Assent:** November 8, 2007

**Amends:** *The Securities Act*, C.C.S.M. c S50; *The Corporations Act*, C.C.S.M. c. C225

**Summary:** This Bill is intended to amend *The Securities Act* in order to make it more consistent with the securities laws of other provinces and allow for increased investor protection. Some provisions concerning prospectuses, take-over bids, issuer bids and insider trading are amended or repealed to allow these matters to be regulated under national harmonized rules adopted by the Manitoba Securities Commission. Sections concerning civil liability for misrepresentations in prospectuses, take-over bids, issuer bids and documents related to these issues, and civil liability for not complying with distribution requirements for these documents, are amended to allow for greater consistency with other provinces.

This Bill also improves the Manitoba Securities Commission's power to make orders and rules to protect investors, including orders based on the rulings of courts and other securities regulators, and rules governing auditors of reporting issuers and about public disclosure of forward looking information by reporting issuers. As well, for many offences under *The Securities Act*, the maximum period of imprisonment is increased.

This bill establishes new standards of care for investment fund managers, as well as increases oversight of investment funds.

**In Force:** Upon Proclamation

**The Family Maintenance Amendment Act and Inter-jurisdictional Support Orders**

**Amendment Act**, S.M. 2007, c. 13 (Bill 10, 1<sup>st</sup> Session, 39<sup>th</sup> Legislature)

**Royal Assent:** November 8, 2007

**Amends:** *The Family Maintenance Act*, C.C.S.M. c. F20; *The Inter-jurisdictional Support Orders Act*, C.C.S.M. c. I60

**Summary:** This Bill increases the ability to locate persons in child support recalculation, maintenance enforcement and inter-jurisdictional support cases. It also increases the ability to obtain necessary financial information in order to recalculate or enforce support. This Bill promotes timely disclosure of financial information in child support recalculation cases by allowing recalculated orders to take effect earlier. This Bill also clarifies the jurisdiction of Manitoba courts to vary certain support orders in inter-jurisdictional cases.

**In Force:** Upon Royal Assent

**The Apology Act**, S.M. 2007, c. 25 (Bill 202, 1<sup>st</sup> Session, 39<sup>th</sup> Legislature)

**Royal Assent:** November 8, 2007

**Summary:** This Bill allows an individual to apologize for an act without having to be concerned about their legal liability. The apology is not considered an admission of guilt and does not affect any insurance coverage that they may have, even if the insurance contract contains

wording to the contrary. The apology cannot be taken into account when the courts determine liability.

**In Force:** February , 2008, being 90 days after the date of Royal Assent.

**The Highway Traffic Amendment Act**, S.M. 2008, c. 5 (Bill 3, 2<sup>nd</sup> Session, 39<sup>th</sup> Legislature)

**Royal Assent:** June 12, 2008

**Amends:** *The Highway Traffic Act*, C.C.S.M. c H60

**Summary:** This Bill extends provisions of *The Highway Traffic Act*, concerning forfeiture of a vehicle and automatic suspension of a driver's licence upon conviction of certain offences, to street racing offences recently added to the *Criminal Code*.

**In Force:** Upon Royal Assent

**The Provincial Court Amendment Act (Family Mediators and Evaluators)**, S.M. 2008, c. 6 (Bill 4, 2<sup>nd</sup> Session, 39<sup>th</sup> Legislature)

**Royal Assent:** June 12, 2008

**Amends:** *The Provincial Court Act*, C.C.S.M. c. C275

**Summary:** This Bill gives The Provincial Court power, in a custody, access, or related family matter disputes, to refer the parties to mediation or a family evaluator's report. The rules for confidentiality of information acquired during mediation are consistent with the requirements for similar proceedings in the Court of Queen's Bench.

**In Force:** Upon Royal Assent

**The Witness Security Act**, S.M. 2008, c. 7 (Bill 5, 2<sup>nd</sup> Session, 39<sup>th</sup> Legislature)

**Royal Assent:** June 12, 2008

**Summary:** This Bill is meant to establish a program to protect witnesses and associated people who may be at risk due to their involvement in certain criminal prosecutions. A law enforcement agency must apply to an assessment panel to have a person admitted into the program. This panel will consider the risk to the person, the importance of the witness to the prosecution and the seriousness of the crime involved. When the panel admits a person to the program they must decide what services to provide that individual. The available services under the program include relocation, accommodation, financial support and change of identity. Information concerning the program and those people admitted to it must be treated in a confidential manner. It is an offence for anybody providing services under the program to disclose the location or identity of a person in the program, or to disclose any other information that might endanger the program participant.

**In Force:** By Proclamation

**The Securities Amendment Act**, S.M. 2008, c. 8 (Bill 6, 2<sup>nd</sup> Session, 39<sup>th</sup> Legislature)

**Royal Assent:** June 12, 2008

**Amends:** *The Securities Act*, C.C.S.M. c. S50

**Summary:** This Bill amends *The Securities Act* to make it more consistent with equivalent Acts in other jurisdictions. Provisions concerning certain matters including registration, financial reporting or disclosure, bonding and certain notices are amended to allow the Manitoba Securities Commission to regulate these matters under the national harmonized rules. Standards of care are now established and imposed on companies that are regulated under the Act but upon which standards of care were not previously imposed (eg. Investment portfolio managers).

The Commission Director's powers are expanded to allow them to prevent misuse and abuse of advertising and sales literature in relation to securities activities. The Director is also given new powers to suspend or cancel the registration of a person or company.

The Bill repeals unproclaimed provisions of *The Securities Amendment Act*, S.M. 2006, c. 11, concerning registration requirements for persons and companies in the securities industry. These regulations will now be governed by national harmonized rules. The Bill also repeals one section of *The Securities Amendment Act*, S.M. 2007, c. 12, in order to retain in *The Securities Act* a provision on distributing prospectuses. As well, the Bill makes housekeeping amendments to unproclaimed provisions of the Act enacted by *The Securities Amendment Act*, S.M. 2007, c. 12.

**In Force:** By Proclamation (except for sections 13 to 15); Upon Royal Assent (sections 13 to 15)

**The Child and Family Services Amendment Act (Child Pornography Reporting)**, S.M. 2008, c. 9 (Bill 7, 2<sup>nd</sup> Session, 39<sup>th</sup> Legislature)

**Royal Assent:** June 12, 2008

**Amends:** *The Child and Family Services Act*, C.C.S.M. c. C80

**Summary:** This Act makes reporting of child pornography mandatory, and sets out what actions are required to be taken when child pornography has been reported.

**In Force:** By Proclamation

**The Phosphorus Reduction Act (Water Protection Act Amended)**, S.M. 2008, c. 10 (Bill 8, 2<sup>nd</sup> Session, 39<sup>th</sup> Legislature)

**Royal Assent:** June 9, 2008

**Amends:** *The Water Protection Act*, C.C.S.M. c. W65

**Summary:** This Bill amends *The Water Protection Act* to reduce the amount of phosphorus released from cleaning products, such as dishwashing detergent, personal care products and chemical water conditioner, into Manitoba's water. The Bill includes provisions to prohibit selling, supplying, manufacturing, distributing or importing dishwashing detergent that contains in excess of 0.5% phosphorous (as well as other phosphorous containing products) after July 1, 2010. Regulations may also be made that would prohibit these products from particular uses. The Bill includes an exemption power in order to allow these products to be used where necessary to reduce a risk to human health.

**In Force:** By Proclamation

**The Protection for Persons in Care Amendment Act**, S.M. 2008, c. 11 (Bill 9, 2<sup>nd</sup> Session, 39<sup>th</sup> Legislature)

**Royal Assent:** June 12, 2008

**Amends:** *The Protection for Persons in Care Act*, C.C.S.M. c. P144

**Summary:** This Bill amends *The Protection for Persons in Care Act* to extend protection of the identity of person who reports an abuse or provides information in respect of a reported abuse. The Bill ensures that investigators and those engaged in administration of the Act cannot be made to disclose information relating the identity of a person reporting an abuse. The Bill also clarifies the minister's authority to designate employees as investigators and appoint other investigators.

**In Force:** Upon Royal Assent

**The Securities Transfer Act**, S.M. 2008, c. 14 (Bill 12, 2<sup>nd</sup> Session, 39<sup>th</sup> Legislature)

**Royal Assent:** June 12, 2008

**Amended:** *The Personal Property Security Act*, C.C.S.M. c. P35; *The Corporations Act*, C.C.S.M. c. C225; *The Court of Queen's Bench Act*, C.C.S.M. c. C280; *The Executions Act*, C.C.S.M. c. E160

**Summary:** This Bill is modeled on *The Uniform Securities Transfer Act*, which was prepared by the Canadian Securities Administrators' Uniform Securities Act Task Force and approved by the Uniform Law Conference of Canada. The Bill enacts a comprehensive system, reflecting current international commercial practices, of rules governing the transfer of investment securities. The Bill also provides for the rights and obligations of issuers, purchasers, transferors, transferees and other persons concerning securities held both directly and indirectly.

**In Force:** Upon Royal Assent

**The Highway Traffic Amendment Act (Damage to Infrastructure)**, S.M. 2008, c. 16 (Bill 13, 2<sup>nd</sup> Session, 39<sup>th</sup> Legislature)

**Royal Assent:** June 12, 2008

**Amended:** *The Highway Traffic Act*, C.C.S.M. c. H60

**Summary:** This Bill creates a new offence under *The Highway Traffic Act* for damages to a highway or highway structure. Those who may be charged are the driver and their supervisor, and the person who loaded the vehicle and their supervisor, if the load was higher or wider than permitted under *The Highway Traffic Act* or if it did not comply with a permit issued under the Act. The owner of the vehicle is also guilty of the same offence the other individuals are charged with. A person guilty of an offence under this section is liable on summary conviction to a fine not more than \$5,000.

**In Force:** Upon Royal Assent

**The Criminal Property Forfeiture Amendment Act**, S.M. 2008, c. 16 (Bill 14, 2<sup>nd</sup> Session, 39<sup>th</sup> Legislature)

**Royal Assent:** June 12, 2008

**Amends:** *The Criminal Property Forfeiture Act*, C.C.S.M. c. C306; *The Victims' Bill of Rights*, C.C.S.M. c. V55

**Summary:** This Bill makes two important changes to *The Criminal Property Forfeiture Act*. First, the application for forfeiture of property is no longer required to be made by a police chief. This function has now been transferred to a newly created position of director. The Bill also sets out the powers and responsibilities of the director. Second, a new system for distribution of the proceeds of the forfeited property is established. Under this system the proceeds of the property are deposited into a new fund which can then be used to pay expenses related to forfeiture and sale of property, as well as compensate victims of unlawful activity. The money from this fund can also be used to support crime prevention initiatives, enhance training of law enforcement officials, and to remedy the effects of unlawful activities.

The Bill also changes the way applications for forfeiture are conducted, with expanded powers to make interim orders concerning preservation, management and sale of property being granted to the judge hearing the application. The position of asset manager is created and will be responsible for managing and selling forfeited property.

**In Force:** By Proclamation

**The Testing of Bodily Fluids and Disclosure Act**, S.M. 2008, c. 19 (Bill 18, 2<sup>nd</sup> Session, 39<sup>th</sup> Legislature)

**Royal Assent:** June 12, 2008

**Summary:** This Bill allows a person that has come into contact with the bodily fluid of another person in specified circumstances to obtain a court order requiring the other person to provide a sample of that bodily fluid. The bodily fluid will then be used to test for certain communicable diseases. A person is eligible to apply for a testing order if the came into contact with the bodily fluid of another person due to being the victim of a crime, while providing emergency medical assistance, while acting in their duties as a firefighter, emergency medical responder or peace officer of in other circumstance prescribed by regulation.

There are two type of testing orders available. An expedited order can be made by a justice of the peace with no notice to the person who will be the subject of the order. However the order will not be valid if the subject of the order objects to it by the deadline set out in the order. An application for a standard testing order can be made to a judge which they can then grant if they believe the applicant may have been infected with a communicable disease and the testing order would provide some benefit to them and not pose a significant risk to the health of the subject of the order. A sample provided under the order will be tested in accordance with the order, and results will be provided to the applicant and the subject of the order.

**In Force:** By Proclamation

**The Gunshot and Stab Wounds Mandatory Reporting Act**, S.M. 2008, c. 21 (Bill 20, 2<sup>nd</sup> Session, 39<sup>th</sup> Legislature)

**Royal Assent:** June 12, 2008

**Summary:** This Bill requires hospitals and certain health care facilities to report to a police service when they have treated a person for gunshot and stab wound.

**In Force:** By Proclamation

**The Legal Profession Amendment Act**, S.M. 2008, c. 27 (Bill 26, 2<sup>nd</sup> Session, 39<sup>th</sup> Legislature)

**Royal Assent:** June 12, 2008

**Amends:** *The Legal Profession Act*, C.C.S.M. c. L107

**Summary:** This Bill increases the ability of the Law Society of Manitoba to ensure the public interest is adequately protected in the delivery of legal services.

**In Force:** Upon Royal Assent

**The Child and Family Services Amendment and Child and Family Services Authorities Amendment Act (Safety of Children)**, S.M. 2008, c. 33 (Bill 34, 2<sup>nd</sup> Session, 39<sup>th</sup> Legislature)

**Royal Assent:** June 12, 2008

**Amends:** *The Child and Family Services Act*, C.C.S.M. c. C80; *The Child and Family Services Authorities Act*, C.C.S.M. c. C90

**Summary:** This Bill amends *The Child and Family Services Act* and *The Child and Family Services Authorities Act* to clarify that the safety and security of the children are the most important considerations in providing services.

This Bill also specifies that provincial standards to be followed by child and family services agencies must include an assessment of the risks to a child's life, health and emotional well being, as well as a determination of the nature and frequency of contact between agency workers and the child in order to ensure that the child is safe and receiving all appropriate services.

**In Force:** Upon Royal Assent

**The Court of Appeal Amendment Act**, S.M. 2008, c. 35 (Bill 39, 2<sup>nd</sup> Session, 39<sup>th</sup> Legislature)

**Royal Assent:** June 12, 2008

**Amends:** *The Court of Appeal Act*, C.C.S.M. c. C240

**Summary:** This Bill increases, by one, the number of justices of The Court of Appeal bringing the total number, including the Chief Justice of Manitoba, to eight justices. The Bill also introduces provisions, similar to those in *The Court of Queen's Bench Act*, to deal with vexatious proceedings. The Bill also amends the English version of *The Court of Appeal Act* to be gender neutral.

**In Force:** Upon Royal Assent

\* Derrick Stewart is starting his 2nd year at law school and was the MBA summer student for 2008. Thank you to Manitoba Justice – Legislative Counsel for reviewing the article.