

## Legislative Update

by Kara Moore\*

The following is a list of some of the Acts passed in the 2<sup>nd</sup> session of the 41<sup>st</sup> Manitoba Legislature in 2016. While every effort has been made to ensure the accuracy of the information provided, 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/bills/41-2/index.php>.

***The Provincial Court Amendment Act***, S.M. 2017, c. 4 (Bill 4, 2<sup>nd</sup> session, 41<sup>st</sup> Legislature)

**Royal Assent:** June 2, 2017

**Summary:** This Act amends *The Provincial Court Act*. An administrative judicial justice of the peace is to be appointed to assist the Chief Judge in the administration and management of all judicial justices of the peace. As well, a retired judicial justice of the peace may be designated as a senior judicial justice of the peace and can be assigned duties by the Chief Judge when there is a temporary shortage of judicial justices of the peace.

**In Force:** By Proclamation

***The Advocate for Children and Youth Act***, S.M. 2017, c. 8 (Bill 9, 2<sup>nd</sup> session, 41<sup>st</sup> Legislature)

**Royal Assent:** June 2, 2017

**Summary:** In 2014, the Commission of Inquiry into the death of Phoenix Sinclair recommended that Manitoba enact stand-alone legislation for the Children's Advocate and provide the Advocate with a broader mandate. This Act implements those recommendations. This Act also changes the name of Children's Advocate to Advocate for Children and Youth.

### **Expanded Advocacy Mandate**

Under previous legislation, the Advocate could provide advocacy services for children receiving services under *The Child and Family Services Act* or *The Adoption Act*. This Act expands that mandate to include advocacy services for children receiving or eligible to receive any of the following publicly funded services:

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- disability services provided for in the regulations;
- educational programming for children who need an individual education plan;
- mental health and addiction services provided by government and health care facilities;
- victim support services;
- criminal justice services for youth in custody or under supervision.

In addition, the Advocate may advocate for young adults between 18 and 21 who, as children, received services under *The Child and Family Services Act* and are now eligible to receive any of the following publicly funded services:

- services to assist them in their transition to adulthood;
- disability services provided for in the regulations;
- educational programming for those who need an individual education plan.

### **Expanded Mandate to Review and Investigate Deaths and Serious Injuries**

Under previous legislation, when a child in the care of child and family services died, the Advocate had to review publicly funded services provided to that child.

To assist in improving the effectiveness and responsiveness of publicly funded services for children, this Act gives the Advocate broad discretion to review and investigate a serious injury or death of a child who was receiving any of the following services at the time of the injury or death, or in the year preceding it:

- services under *The Child and Family Services Act* or *The Adoption Act*;
- mental health or addiction services provided by government and health care facilities;
- criminal justice services for youth in custody or under supervision.

The Advocate may also review and investigate a serious injury or death of a young adult who was a former permanent ward receiving transitional child and family services.

### **Expanded Public Reporting**

In addition to the annual report required by previous legislation, the Advocate must publish a service plan that describes the Advocate's goals for the year and includes specific objectives and performance measures.

The Advocate may publish special reports to assist in making services for children and young adults more effective and responsive.

### **Amendments to Other Acts**

Consequential amendments are made to other Acts, including *The Child and Family Services Act*, *The Adoption Act* and *The Ombudsman Act*.

### **Expanded Advocacy Mandate**

Under current legislation, the Advocate may provide advocacy services for children who are receiving services under *The Child and Family Services Act* or *The Adoption Act*. This Act expands that mandate to include advocacy services for children receiving or eligible to receive any of the following publicly funded services:

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### **Amendments to Other Acts**

This Act makes consequential amendments to other Acts, including *The Child and Family Services Act*, *The Adoption Act* and *The Ombudsman Act*.

**In Force:** By Proclamation

***The Department of Justice Amendment Act***, S.M. 2017, c. 14 (Bill 15, 2<sup>nd</sup> session, 41<sup>st</sup> Legislature)

**Royal Assent:** June 2, 2017

**Summary:** This Act amends *The Department of Justice Act*. A person who is or was prosecuted cannot sue a Crown attorney or other specified persons for things done or not done in performing or claiming to perform a duty or authority relating to a prosecution. Instead, the person may bring a proceeding against the Attorney General, who stands in the place of the Crown attorney or other persons.

**In Force:** Upon Royal Assent

***The Fatality Inquiries Amendment Act***, S.M. 2017, c. 15 (Bill 16, 2<sup>nd</sup> session, 41<sup>st</sup> Legislature)

**Royal Assent:** June 2, 2017

**Summary:** *The Fatality Inquiries Act* requires the reporting of sudden or unexpected deaths and deaths that occur in specified circumstances. An inquiry must be conducted into all reported deaths. A medical examiner must conduct an investigation into a death if the inquiry raises questions about the manner or cause of death. The chief medical examiner may arrange for a judicial inquest to be held to examine the circumstances of a death and make recommendations to prevent deaths in the future.

### **Inquiries and investigations**

The Act:

- clarifies the roles of investigators and medical examiners;
- specifies who has responsibility for taking control of a body that is the subject of an inquiry; and
- authorizes inquiries into deaths of Manitoba residents that occur outside Manitoba.

### **Inquests**

Amendments in the Act clarify when an inquest into a death is to be held. An inquest must be held if a person died as the result of the use of force by a peace officer. There is a presumption that an inquest is to be held if a person dies while in custody or while residing in specified

provincial facilities. However, an inquest is not required in such cases if the death was due to natural causes and was not preventable or if there was no connection between the death and the supervision or care provided to the deceased. The chief medical examiner is not required to arrange for an inquest in specified situations.

The manner in which an inquest is called is updated. The amendments clarify the roles of the judge presiding at an inquest and counsel for the inquest. The ability of the Minister of Justice to call an inquest or have an active role in relation to matters under the Act is removed.

**Act updated**

Several provisions are rewritten or reorganized to improve readability. Outdated provisions are repealed. The Act makes consequential amendments to *The Vital Statistics Act*.

**In Force:** By Proclamation

***The Court Security Amendment Act***, S.M. 2017, c. 16 (Bill 17, 2<sup>nd</sup> session, 41<sup>st</sup> Legislature)

**Royal Assent:** June 2, 2017

**Summary:** This Act amends *The Court Security Act*. Security officers are authorized to conduct searches for liquor and illegal drugs when people come to court. Security officers may seize weapons, liquor and illegal drugs that are brought into court.

The Act also enables security officers to evict a person who causes a disturbance and to evict or prevent a person from entering court when there are reasonable grounds to believe that the person will cause a disturbance.

**In Force:** By Proclamation

***The Legislative Security Act***, S.M. 2017, c. 17 (Bill 18, 2<sup>nd</sup> session, 41<sup>st</sup> Legislature)

**Royal Assent:** June 2, 2017

**Summary:** This Act deals with security in the legislative precinct, which is the area that covers the Legislative Building and the grounds around the Legislative Building.

The Speaker of the Assembly has ultimate responsibility for security for the Legislative Assembly. The Speaker and the Minister of Justice are to enter into an arrangement respecting the provision of security in the legislative precinct. This arrangement must establish a process for selecting a director of legislative security. The director of legislative security is responsible for providing direction to legislative security officers who will provide security services in the legislative precinct.

Security officers may screen people entering the Legislative Building for weapons. A person who is not authorized to possess a weapon in the Legislative Building may be denied entry and have their weapon seized. Security officers may evict a person from the legislative precinct if the person engages in conduct that threatens safety in the legislative precinct or interferes with the operation of the Assembly.

Amendments are made to *The Drivers and Vehicles Act* to authorize the Registrar of Motor Vehicles to disclose certain vehicle licensing records to a legislative security officer.

A consequential amendment is made to *The Legislative Assembly Management Commission Act*.

**In Force:** By Proclamation

***The Cannabis Harm Prevention Act (Various Acts Amended)***, S.M. 2017, c. 22 (Bill 25, 2<sup>nd</sup> session, 41<sup>st</sup> Legislature)

**Royal Assent:** June 2, 2017

**Summary:** The federal government has announced that it will introduce legislation that would legalize the non-medical use of cannabis (marijuana). This Act amends several Acts to address health or safety concerns that will arise when cannabis consumption is no longer illegal, and it closes any legislative gaps that might be created when cannabis is no longer considered to be an illegal drug.

***The Child Sexual Exploitation and Human Trafficking Act***

Cannabis is expressly stated to be a controlled substance under this Act. This ensures that the Act continues to apply to persons who supply cannabis in exchange for sexual conduct with a child or in order to compel victims of human trafficking to engage in specified activities.

***The Drivers and Vehicles Act***

This Act is amended to require the registrar of motor vehicles to make a determination whether to suspend the licence of a novice driver or a person with a class or subclass of driver's licence prescribed in the regulations if the person receives a 24-hour roadside suspension under the new addition to *The Highway Traffic Act* for being under the influence of a drug.

***The Highway Traffic Act***

This Act is amended to:

- create restrictions on the transportation of cannabis in motorized vehicles;
- prohibit the consumption of cannabis in motorized vehicles on a highway;
- create a 24-hour roadside suspension when an officer believes on reasonable grounds that as a result of being under the influence of a drug, a person is unable to safely operate a motor vehicle, vessel, aircraft or railway equipment; and
- mirror the obligation on the registrar of motor vehicles added to *The Drivers and Vehicles Act* under similar provisions of *The Highway Traffic Act*.

***The Mental Health Act***

Cannabis is expressly listed as an intoxicant under this Act. A prohibition on providing intoxicants to residents in a mental health facility still applies to cannabis when it is legalized.

***The Non-Smokers Health Protection Act***

This Act is amended to prohibit people from smoking cannabis in enclosed public places, including through the use of e-cigarettes.

***The Off-Road Vehicles Act***

This Act is amended to create similar transportation and consumption prohibitions for off-road vehicles as those added for vehicles under *The Highway Traffic Act*.

***The Public Schools Act***

Every school must have a student code of conduct. The code must include a statement that students must not possess alcohol or illicit drugs at school. Since cannabis will not be considered an illicit drug when it is legalized, the Act is amended to specifically add cannabis to the list of prohibited products.

**In Force:** Subsection (2) comes into force upon royal assent; parts 2, 3, 5 and 6 come into force by proclamation.

\* Kara is starting her 3<sup>rd</sup> year of law school and was the MBA summer student for 2017. Thank you to Manitoba Justice- Legislative Counsel for reviewing the article