

Legislative Update

by Tamara Edkins*

The following is a list of some of the Acts passed in the 3rd session of the 41st Manitoba Legislature in 2017. 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/41-3/index.php>.

The Public Interest Disclosure (Whistleblower Protection) Amendment Act, S.M. 2018, c.4 (Bill 5, 3rd session, 41st Legislature)

Royal Assent: Upon Royal Assent

Summary: This Bill makes a number of changes to *The Public Interest Disclosure (Whistleblower Protection) Act*. The key changes are as follows.

School Divisions and School Districts, Municipalities and Local Government Districts

The protections under the Act are extended to school divisions and school districts and their employees. The government may, by regulation, identify municipalities, including The City of Winnipeg, and local government districts to be covered by the Act.

Disclosures and Investigations

Disclosures are handled by a senior official within the public body (referred to as a "designated officer") or by the Ombudsman. Their roles are clarified and the investigatory powers of a designated officer are strengthened. The amendments:

- authorize the Ombudsman to request, review, and provide recommendations concerning the disclosure procedures of a public body;
- require information about the Act to be communicated annually to employees;
- require a supervisor who receives a disclosure to promptly refer it to the designated officer;
- clarify which disclosures are to be investigated by a designated officer and which by the Ombudsman;
- clarify that a designated officer may consult with the Ombudsman, the chief executive of the public body or other persons as necessary for the conduct of an investigation;
- specify that an investigator must take steps to protect the identity and procedural rights of all people involved in the investigation, including the whistleblower, a witness and a person alleged to have committed the wrongdoing;
- specify the circumstances in which a designated officer or the Ombudsman may decide not to investigate a disclosure;
- empower a designated officer to require an employee to produce documents and be interviewed for the purpose of an investigation; and
- allow the designated officer or Ombudsman to determine the manner in which the whistleblower is to be informed of the results of an investigation.

Reprisal Complaints

The powers of the Ombudsman are enhanced to receive and investigate reprisal complaints and to make recommendations to address acts or threats of reprisal. Reprisal complaints must be made to the

Ombudsman. The employee may file a further complaint about the alleged reprisal with the Manitoba Labour Board if he or she is not satisfied with the outcome of the Ombudsman's process.

Protection of Whistleblower's Identity

In addition to requiring everyone involved in the investigation to protect the identity of a whistleblower, protection for a whistleblower is further strengthened by prohibiting the disclosure of the whistleblower's identity in a civil court proceeding or a proceeding of an administrative tribunal.

Review of Act

The minister responsible for the *Act* is required to review it every five years. Consequential amendments are made to *The Personal Property Security Act* and *The Real Property Act*.

In Force: Upon Royal Assent

The Sustainable Watersheds Act (Various Acts Amended), S.M. 2018, c. 6 (Bill 7, 3rd session, 41st Legislature)

Royal Assent: June 4, 2018

Summary: This Bill amends four Acts. The amendments primarily deal with improving water management in Manitoba.

Conservation Districts Act (Part 1)

Conservation districts are renamed watershed districts. A board of a district may now do work outside its boundaries if the work benefits the district. For that purpose, a board may enter into agreements with others, including First Nations. When assessing the benefits, a board must consider the relevant watershed management plan prepared under *The Water Protection Act*.

Other amendments deal with district board operations, including ministerial budget approval, subcommittee composition and municipal withdrawal from a district.

Manitoba Habitat Heritage Act (Part 2)

The Manitoba Habitat Heritage Corporation's role in conserving and enhancing wetlands is recognized. The corporation is authorized to carry out wetland restoration and enhancement projects required under *The Water Rights Act*. The corporation may establish different funds to support its activities.

Water Protection Act (Part 3)

Nutrient targets at specified locations may be set by regulation. The government must monitor nutrient levels at the specified locations and publicly report the results to measure progress in meeting the nutrient targets. The government is required to work with governments in other jurisdictions to develop coordinated water management for river basins that extend outside Manitoba.

Water Rights Act (Part 4)

A streamlined registration process is created for the establishment or operation of low impact drainage and water retention projects.

For projects greater in scope, a licence must not be issued if significant or sensitive wetlands will be lost or altered unless specified steps to restore or enhance wetlands are taken to ensure no net loss of wetland benefits. Enforcement measures are enhanced and fines are increased.

In Force: Upon Royal Assent

The Safe and Responsible Retailing of Cannabis Act (Liquor and Gaming Control Act and Manitoba Liquor and Lotteries Corporation Act Amended), S.M. 2018, c.9 (Bill 11, 3rd session, 41st Legislature)

Royal Assent: June 4, 2018

Summary: This Bill amends *The Liquor and Gaming Control Act* and *The Manitoba Liquor and Lotteries Corporation Act* to authorize and regulate the retail sale of cannabis in Manitoba when such sales are permitted by the federal government.

Cannabis sales

Cannabis may be sold only by a person who holds a retail cannabis licence. This licence authorizes the sale of cannabis at a location specified in the licence as well as through online sales. Cannabis stores may sell only cannabis that has been grown by federally authorized producers. Cannabis sold in a cannabis store must be packaged and labelled in accordance with federal requirements.

The Manitoba Liquor and Lotteries Corporation (MLLC) is responsible for acquiring cannabis for resale. All cannabis at cannabis stores must have been purchased from MLLC. MLLC may enter into agreements with private parties who will act as cannabis distributors.

Liquor, Gaming and Cannabis Authority

The Liquor and Gaming Authority of Manitoba is renamed the Liquor, Gaming and Cannabis Authority of Manitoba. It is responsible for licensing cannabis stores and cannabis distributors. Its inspectors will inspect cannabis stores and enforce restrictions and prohibitions regarding cannabis.

Prohibitions

A number of prohibitions related to cannabis are created to protect the public and prevent young persons from using cannabis. Residential cultivation of cannabis is prohibited. A person under 19 years of age cannot buy cannabis at a cannabis store and they are prohibited from possessing or using cannabis. The provision of cannabis to persons who are impaired by alcohol, cannabis or other substances is prohibited.

The penalties for offences under *The Liquor, Gaming and Cannabis Control Act* are increased.

Plebiscite on cannabis stores

A municipality may hold a plebiscite to prohibit the operation of cannabis stores in the municipality.

Related and consequential amendments are made to a number of Acts.

In Force: By Proclamation

The Traffic and Transportation Modernization Act, S.M. 2018, c. 10 (Bill 14, 3rd session, 41st Legislature)
Royal Assent: June 4, 2018

Summary: This Bill makes significant changes to the regulation of traffic and transportation in Manitoba. The Highway Traffic Board and Motor Transport Board are eliminated. The Bill amends *The Drivers and Vehicles Act*, *The Highway Traffic Act*, *The Manitoba Public Insurance Act* and *The Provincial Railways Act*. The Act repeals *The Highways and Transportation Act* and *The Highways Protection Act*. A number of unproclaimed statutory provisions and outdated regulations are also repealed.

Schedule A — Transportation Infrastructure Act

This Schedule enacts a new Act that eliminates the Highway Traffic Board and transfers jurisdiction over provincial highways to the government. It also sets out the authority and obligations of the department in relation to airports, docks and ferries. The Act replaces both *The Highways and Transportation Act* and *The Highways Protection Act*

Schedule B — Highway Traffic Amendment Act

This Schedule makes the following key amendments to *The Highway Traffic Act*:

- municipalities are given the power to fix speed limits on municipal roads by overriding the default speed limit by by-laws. The government retains the responsibility for fixing speed limits on provincial highways;
- with the elimination of the Motor Transport Board, operating certificates are no longer required. Heavy trucks and buses continue to need safety fitness certificates issued by the government;
- allows the government to broaden, by regulation, the manner in which a municipality may indicate temporary parking bans;
- moves detailed vehicle equipment requirements from *The Highway Traffic Act* into regulations; and
- requires agricultural and infrastructure equipment to have private liability insurance when driven on a highway.

Schedules C and D — Drivers and Vehicles Amendment Act and Manitoba Public Insurance Corporation Amendment Act

These Schedules amend *The Drivers and Vehicles Act* and *The Manitoba Public Insurance Corporation Act* to reflect the simplified vehicle categories and the elimination of the Motor Transport Board.

Schedule E — Provincial Railways Amendment Act

This Schedule amends *The Provincial Railways Act* to reflect the elimination of the Motor Transport Board. It simplifies the regulatory framework for short-line railways and creates a Superintendent of Railways.

In Force: By Proclamation

The Drivers and Vehicles Amendment and Highway Traffic Amendment Act, S.M. 2018, c.12 (Bill 17, 3rd session, 41st Legislature)

Royal Assent: June 4, 2018

Summary: This Bill amends *The Drivers and Vehicles Act* to make the offence of careless driving under *The Highway Traffic Act* an offence that must be reported to the Registrar of Motor Vehicles. The report enables the Registrar to proceed with driver improvement measures if warranted.

The Bill also amends *The Highway Traffic Act* to require a three-day roadside licence suspension when a driver is charged with prohibited use of a cell phone or similar hand-held communication device while driving. For a second or subsequent offence in a 10-year period, the suspension period is increased to 7 days.

A driver whose licence is suspended receives a temporary driving permit valid until the end of the next day. The suspension for that person takes effect once the temporary permit expires.

The suspension may not be appealed to the Registrar of Motor Vehicles or to the Licence Suspension Appeal Board.

In Force: Upon Royal Assent

The Child and Family Services Amendment Act (Taking Care of Our Children), S.M. 2018, c.13 (Bill 18, 3rd Session, 41st Legislature)

Royal Assent: June 4, 2018

Summary: Customary care is care provided to children in a way that recognizes and reflects the unique customs of the children's community. It preserves a child's cultural identity, respects the child's heritage, facilitates cross-generational connections and recognizes the role of the community in raising its children.

The Child and Family Services Act is amended to establish a legislative basis for supporting the provision of customary care to Indigenous children through agreements and living arrangements.

Before providing customary care supports and services, agencies must make arrangements with Indigenous communities to work together to provide customary care.

Other amendments that support customary care include:

- expanding the Declaration of Principles and the factors for determining the best interests of the child to better reflect the importance of customary care for Indigenous children and families; and
- requiring that notice of a court proceeding relating to a Metis child be given to the Metis agency responsible for serving the child, in the same way that notice respecting a First Nations child is given to the agency serving the child's First Nation.

A consequential amendment is made to *The Child and Family Services Authorities Act*.

In Force: By Proclamation

The Planning Amendment Act (Improving Efficiency in Planning), S.M. 2018, c.14 (Bill 19, S.M. 2018, c.14)

Royal Assent: June 4, 2018

Summary: This Bill amends *The Planning Act*.

Zoning by-laws

Currently, the process for adopting or amending a zoning by-law provides for additional proceedings if anyone objects. Under this Bill, those proceedings are required only if objections are received from 25 voters. If a zoning amendment concerns a specific property, the additional proceedings also apply only if at least 50% of the owners of the neighbouring properties object.

Livestock operations

The review and approval process for large-scale livestock operations is amended. Such an operation is no longer required to be designated as a conditional use in a zoning by-law, and any by-law that provides that designation must be reviewed within one year. An existing farm building that conforms to the applicable zoning by-law can be replaced, altered or expanded without the need for renewed approval. The provision deeming related nearby livestock operations to be a single operation is removed.

Appeals

Currently, decisions about conditional use applications for large-scale livestock operations or aggregate quarry operations are not subject to appeal. Under this Bill, an applicant may now appeal a rejection, or the imposition of conditions on an approval, to the Municipal Board.

Other key amendments

Under this Bill,

- a 30-day time period is established for the Municipal Board to report on its hearing concerning a development plan by-law;
- a municipality no longer reports to the minister on its consultation with school boards about development plan by-laws;
- the variance of a zoning by-law that can be approved by a designated employee is increased to 15% from not more than 10%;
- the process for closing public reserves is streamlined;
- the Interdepartmental Planning Board is dissolved and references to it are removed from *The Environment Act* and *The Mines and Minerals Act*.

In Force: Upon Royal Assent

The Employment Standards Code Amendment Act (2), S.M. 2018, c.15 (Bill 20, 3rd Session, 41st Legislature)

Royal Assent: June 4, 2018

Summary: This Bill makes several changes to *The Employment Standards Code*.

Leaves of absence

Parental leave is extended from 37 weeks to 63 weeks, and a new 17-week leave is established to permit employees to care for an adult family member who is critically ill. These amendments allow Manitobans to take advantage of recent changes to employment insurance benefits available under federal legislation.

Employment of young people

The minimum age for employment is raised from 12 to 13 years of age.

The requirement that an employer obtain a permit from the director before employing someone under the age of 16 is eliminated. Instead, an employer must ensure that a young person under the age of 16 has a work readiness certificate certifying that they have completed a work readiness course approved by the director.

Agreement re averaging standard hours of work

New provisions allow an employer and an employee (or group of employees) to enter into an agreement specifying different standard hours of work than the default standard hours specified in the Code, if certain conditions are met.

Complaints to the director

Employees covered by a collective agreement may not make a complaint to the director. The director is authorized to refuse to accept frivolous or vexatious complaints.

In Force: Upon Proclamation, except the leave provisions, which came into force on royal assent

The Queen's Counsel Act, S.M. 2018, c. 16 (Bill 22, 3rd Session, 41st Legislature)

Royal Assent: June 4, 2018

Summary: Queen's Counsel (Q.C.) is an honorary title bestowed on a lawyer to recognize exceptional merit in their profession.

A Queen's Counsel is appointed by Cabinet on the advice of the Minister of Justice and Attorney General. Before giving that advice, the minister must consult with an advisory council.

A new Act is established and consequential amendments are made to *The Legal Profession Act*.

In Force: Upon Proclamation

The Commodity Futures Amendment and Securities Amendment Act, S.M. 2018, c.17 (Bill 23, 3rd Session, 41st Legislature)

Royal Assent: June 4, 2018

Summary: This Bill amends *The Commodity Futures Act* and *The Securities Act*.

After holding a hearing, the Manitoba Securities Commission may file an order in the Court of Queen's Bench. The order may then be enforced as if it were a judgment of the court.

The Bill further amends the two *Acts* to make the following changes with respect to self-regulatory organizations recognized by the Manitoba Securities Commission:

- allowing a party affected by a decision of a self-regulatory organization to apply to the Commission for a review of the decision;
- allowing a decision of a self-regulatory organization to be filed in the Court of Queen's Bench and enforced as if it were a judgment of the court;
- providing immunity to a self-regulatory organization for actions taken in good faith under a power or duty assigned to the organization under Manitoba securities law.

In Force: Upon Royal Proclamation

The Non-Smokers Health Protection and Vapour Products Amendment Act (Prohibiting Cannabis Consumption in Outdoor Public Places), S.M. 2018, c.18 (Bill 25, 3rd Session, 41st Legislature)

Royal Assent: June 4, 2018

Summary: This Bill amends *The Non-Smokers Health Protection and Vapour Products Act* to prohibit the smoking or vaping of cannabis in outdoor public places and other places specified by regulation. Prohibitions relating to cannabis apply to areas under federal jurisdiction.

The title of the Act is changed to reflect the broader regulation of smoking and vaping. Consequential amendments are made to three Acts because of the title change.

In Force: By Proclamation

The Impaired Driving Offences Act (Various Acts Amended), S.M. 2018, C.19 (Bill 26, 3rd Session, 41st Legislature)

Royal Assent: June 4, 2018

Summary: On April 13, 2017, the federal government introduced Bill C-46, which adds several new offences to the *Criminal Code* related to driving while impaired by drugs, including cannabis. Bill C-46 also modernizes the provisions that deal with drug- and alcohol-impaired driving.

This Bill follows the structure and timing of Bill C-46.

The Drivers and Vehicles Act and *The Highway Traffic Act* are amended to include the new criminal offences in relation to administrative driver's licence suspensions and disqualifications for impaired driving.

The list of offences that must be reported to the Registrar of Motor Vehicles is updated, along with the list of suspensions and disqualifications that may be appealed to the Licence Suspension Appeal Board.

Novice drivers are prohibited from driving if they fail a roadside drug screening test.

The Manitoba Public Insurance Corporation Act is amended to update the list of offences for which a conviction reduces or cancels the entitlement to receive compensation under that Act.

Consequential amendments are made to *The Blood Test Act* and *The Provincial Offences Act*.

In Force: Upon Royal Assent

The Workplace Safety and Health Amendment Act (Inappropriate or Unsafe Footwear), S.M. 2018, c.22 (Bill 219, 3rd Session, 41st Legislature)

Royal Assent: June 4, 2018

Summary: This Bill amends *The Workplace Safety and Health Act* to prohibit an employer from requiring a worker to wear footwear that is not appropriate to the protection required for the worker's work or that does not allow the worker to safely perform their work.

In Force: Upon Royal Assent

* Tamara is starting her 3rd year of law school and was the MBA summer student for 2018. Thank you to Manitoba Justice- Legislative Counsel for reviewing the article.