

## Legislative Update

by Jana Vandale\*

The following is a list of some of the Acts passed in the 4<sup>th</sup> session of the 41<sup>st</sup> Manitoba Legislature in 2019. 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/laws/index.php>.

***The Highway Traffic Amendment Act (Immediate Roadside Prohibitions)***, S.M. 2019, c. 6 (Bill 7, 4<sup>th</sup> Session, 41<sup>st</sup> Legislature)

**Royal Assent:** June 3, 2019

**Summary:** This Act amends *The Highway Traffic Act* to allow peace officers to impose immediate roadside prohibitions on drivers based on blood alcohol content.

Depending on a driver's blood alcohol content and previous suspension history, consequences may be:

- a licence suspension for a period ranging from 72 hours to three months; and
- impoundment of the vehicle for a period ranging from three days to 30 days.

Drivers must also pay an administrative penalty and may be required to use an ignition-interlock system. The Registrar of Motor Vehicles may refuse to renew the driver's licence or insurance of a person with an unpaid administrative penalty.

Amendments are also made to *The Drivers and Vehicles Act*. A person who received an immediate roadside prohibition may be required to undergo an impaired driver's assessment and complete an education or treatment program before having their driver's licence reinstated.

***The Referendum Act***, S.M. 2019, c. 7 (Bill 8, 4<sup>th</sup> Session, 41<sup>st</sup> Legislature)

**Royal Assent:** June 3, 2019

**Summary:** This Act establishes *The Referendum Act*, a framework for conducting referendums in Manitoba.

Under *The Referendum Act*, a referendum is required if significant changes are to be made to Manitoba's voting system or to the Constitution of Canada.

*The Referendum Act* also applies when other provincial legislation mandates a referendum be held or when the government decides to hold one to obtain the opinion of Manitobans.

The outcome of a referendum is advisory only unless another Act specifically provides otherwise.

The rules for calling and conducting a referendum are set out, including rules for participants, such as official committees who campaign for a particular outcome and political parties.

An official committee is eligible to receive public financing of up to \$250,000 for expenses related to the referendum.

Restrictions similar to those found in *The Election Financing Act* apply to government advertising during a referendum.

Consequential amendments are made to *The Fiscal Responsibility and Taxpayer Protection Act*, *The Manitoba Hydro Act* and *The Manitoba Public Insurance Corporation Act*.

***The Family Law Modernization Act***, S.M. 2019, c. 8 (Bill 9, 4<sup>th</sup> Session, 41<sup>st</sup> Legislature)

**Royal Assent:** June 3, 2019

**Summary:** This *Act* is comprised of two new *Acts* and four amending *Acts* that modernize family law in Manitoba.

### ***Schedule A - The Family Dispute Resolution (Pilot Project) Act***

#### Pilot Project for resolving family disputes

This Schedule creates a new dispute resolution process for resolving family disputes, outside the traditional court system. The goal of the new process, established as a three-year pilot project, is to help families resolve disputes in a fair, economical, expeditious and informal manner.

#### Two phases — facilitated resolution and adjudication

Under the pilot project, dispute resolution proceedings have two phases. The first is the facilitated resolution phase, in which a resolution officer works with the parties to a dispute to help them reach a mutually satisfactory agreement. Disputes that cannot be resolved in the first phase proceed to the second phase, in which an adjudicator holds a hearing and makes a recommended order.

#### Disputes covered by the pilot project

The pilot project is mandatory for most types of family disputes under provincial legislation, including disputes about:

- custody of and access to children,
- support for children, spouses and common-law partners, and
- property.

Some exceptions apply. These include (but are not limited to) situations where relief is needed on an expedited basis; where court proceedings are commenced before the pilot project starts; where a party resides outside Manitoba; and where an existing order prevents the parties from communicating with one another because of domestic violence.

#### Role of the Court of Queen's Bench

A party to a family dispute who disagrees with an adjudicator's recommended order settling the family dispute has 35 days to file an objection in the court. If an objection is filed, the court will resolve the dispute by confirming the adjudicator's recommended order or making another order. If no objection is filed, the adjudicator's recommended order is deemed to be confirmed and becomes an enforceable court order.

## Amendments to other Acts

Consequential amendments are made to three other Acts.

### ***Schedule B - The Child Support Service Act***

First established under *The Family Maintenance Act*, the Child Support Service is continued under its own Act and given additional responsibilities. These include the following:

- In addition to its current role of recalculating existing child support orders based on updated income information, the Service is given authority to make initial child support decisions in specified circumstances. This will enable many families to have child support determined without having to make a court application.
- The Service may recalculate all Manitoba child support orders unless a court order prohibits recalculation. Current law permits re-calculation only when a court order authorizes it.
- The Service may determine when support for an adult child is no longer eligible for recalculation. This eliminates the need for many parties to make a court application.
- Child support agreements become eligible for recalculation by the Service.

Consequential amendments are made to *The Family Maintenance Act*.

### ***Schedule C- The Arbitration Amendment Act (Family Law)***

New provisions respecting the arbitration of family law disputes are included in *The Arbitration Act*. Consequential amendments are made to three other Acts.

### ***Schedule D - The Provincial Court Amendment and Court of Queen's Bench Amendment Act***

New provisions respecting the appointment of a family evaluator, social worker or other person to evaluate a custody, access or related matter are included in *The Provincial Court Act* and *The Court of Queen's Bench Act*. The court is to consider certain factors when making an appointment and may apportion the costs of the evaluation between the parties.

### ***Schedule E - The Family Maintenance Amendment Act***

This Schedule expands the administrative authority of the Maintenance Enforcement Program ("MEP"), which is the government program that enforces the payment of maintenance under court orders and agreements. By allowing MEP to make administrative decisions in appropriate circumstances and to gather information more effectively, a number of court applications are made unnecessary.

The amendments include the following:

- MEP may suspend enforcement of support in appropriate circumstances. Currently a court order is required to suspend enforcement.
- Parties are permitted to enter into an agreement to change the amount of court-ordered support. Currently a court order is required to make such a change.

- MEP may undertake reviews to determine the status of adult children and may cease enforcing support for them in appropriate circumstances. Currently a court order is required to terminate support.
- MEP may enforce reduced child support if certain criteria are met, for example, when the eldest child is no longer dependent but support continues for younger dependent siblings.
- MEP may adjust instalment payments in a court order if a math error has occurred and may offset child support payments. Currently a court order is required.
- A recipient of support is permitted to decide whether penalties are assessed on arrears. Currently MEP assesses penalties on all arrears.
- MEP may cancel or reduce penalties or costs in certain circumstances. Currently a court order is required.
- To enable more effective enforcement, MEP may require a debtor to appear and provide information.

A consequential amendment is made to *The Garnishment Act*.

### ***Schedule F - The Inter-jurisdictional Support Orders Amendment Act***

This Schedule eliminates the need for copies of support orders from other jurisdictions to be certified before they can be filed in a Manitoba court and enforced.

***The Budget Implementation and Tax Statutes Amendment Act, 2019***, S.M. 2019, c. 13 (Bill 16, 4<sup>th</sup> Session, 41<sup>st</sup> Legislature)

**Royal Assent:** June 3, 2019

**Summary:** This Act amends various tax Acts to implement some of the tax measures announced in the 2019 Manitoba Budget. The measures implemented in this Act include the following:

#### Fuel Tax (Part 1)

- effective June 1, 2019, extending the forestry exemption to fuel used by mill site equipment for log handling and processing [s. 1]

#### Income Tax (Part 2)

- consistent with changes to the federal *Income Tax Act*, ensuring that split income does not reduce net income for the purpose of the following non-refundable income tax credits:
  - spouse or common-law partner amount
  - eligible dependant amount
  - infirm dependant amount
  - caregiver amount [s. 3(1) to (5)]
- consistent with changes to the federal *Income Tax Act*, including certain veteran benefits as income eligible for the pension income tax credit [s. 3(6)]
- commensurate with the reduction in the sales tax rate, reducing the refundable portion of the manufacturing investment tax credit from 8% to 7% effective for property acquired on or after July 1, 2019, but leaving the non-refundable portion at 1% [s. 4]
- making the film and video production tax credit permanent [s. 5 and 6]

- updating the paid work experience tax credit provisions for consistency and to ensure that the specified tax credit limit for a period of employment applies as intended where the employer is a partnership [s. 7]
- extending the book publishing tax credit by five years to 2025 [s. 8]
- extending the cultural industries printing tax credit by one year to 2021 and limiting the credit to \$1.1 million per taxpayer [s. 9]
- extending the small business venture capital tax credit by three years to 2023 [s. 10]

#### Retail Sales Tax (Part 3)

- reducing the sales tax rate from 8% to 7% effective July 1, 2019 [s. 11(a)]
- ensuring that the retail sales tax does not apply to the federal carbon tax [s. 11(b)]

In addition, Part 4 of the Act amends provisions of *The Election Financing Act* that govern the reimbursement of election expenses for candidates and political parties. A candidate or political party will be eligible for reimbursement of election expenses if they get 5% of the vote, instead of the previous 10%. The maximum amount of reimbursement payable is reduced from 50% to 25% of election expenses. [s. 12 to 16]

#### ***The Liquor, Gaming and Cannabis Control Amendment Act (Cannabis Possession Restrictions)***, S.M. 2019, c. 12 (Bill 15, 4<sup>th</sup> Session, 41<sup>st</sup> Legislature)

**Royal Assent:** June 3, 2019

**Summary:** This Act makes amendments to *The Liquor, Gaming and Cannabis Control Act* concerning the possession of cannabis.

The possession of more than 30 grams of cannabis in a public place is prohibited. A person must not possess cannabis that is not packaged, labelled and stamped in the manner required by the federal government. A person does not contravene this prohibition if they possess 30 grams or less of cannabis.

A specified class of cannabis or a specified product containing cannabis may, by regulation, be exempted from the application of one or more provisions of the Act.

#### ***The Residential Tenancies Amendment Act***, S.M. 2019, c. 15 (Bill 19, 4<sup>th</sup> Session, 41<sup>st</sup> Legislature)

**Royal Assent:** June 3, 2019

**Summary:** This Act amends *The Residential Tenancies Act*.

Currently, a tenant can end a tenancy agreement early if they experience domestic violence or stalking. The Act is expanded to include sexual violence. The procedure for establishing that violence or stalking has occurred is also simplified. Certain persons acting in their professional or employment capacity may provide a statement confirming violence or stalking has occurred.

Under the Act, most decisions and orders of the Residential Tenancies Commission can be further appealed to the Court of Appeal. The Act is amended so that the decisions and orders are final and cannot be appealed. A consequential amendment is made to *The Cooperatives Act*.

***The Courts Modernization Act (Various Acts Amendments)***, S.M. 2019, c. 16 (Bill 20, 4<sup>th</sup> Session, 41<sup>st</sup> Legislature)

**Royal Assent:** June 3, 2019

**Summary:** This Act amends four Acts that govern court proceedings in Manitoba.

*The Court of Appeal Act*

New procedures are established to make orders respecting persons who are vexatious litigants. The ability of the court to make rules regarding practice and procedure is clarified. The court must make an annual report respecting its activities.

*The Provincial Court Act*

Committees that are currently convened to provide a list of candidates when there is a need to appoint a judge or a judicial justice of the peace are made standing committees. Each committee will maintain an ongoing list of qualified candidates. When an appointment is required, the committee will prepare a list of candidates who are recommended for the appointment in question.

Provincial court judges must retire at age 75.

*The Court of Queen's Bench Act*

New procedures are established to make orders respecting persons who are vexatious litigants.

A committee that was convened to provide a list of candidates when there is a need to appoint a master is made a standing committee. This committee will maintain an ongoing list of qualified candidates and will prepare a list of recommended candidates when a master is to be appointed.

Masters must retire at age 75. The court must make an annual report respecting its activities. The ability of all judges to deal with aspects of certain family proceedings is clarified.

*The Court of Queen's Bench Small Claims Practices Act*

The monetary limit for a small claim action is raised from \$10,000 to \$15,000. That limit may be increased by regulation.

A defendant in a small claim action is required to file a defence. Default judgment may be obtained against a defendant who does not file a defence by the deadline set under the rules. A process is established to set aside default judgments.

The amount of costs that can be awarded against a party is increased from \$100 to \$500. Wrongful dismissal from employment claims cannot be brought in a small claim action.

***The Presumption of Death and Declaration of Absence Act and Amendments to The Insurance Act***, S.M. 2019, c. 20 (Bill 226, 4<sup>th</sup> Session, 41<sup>st</sup> Legislature)

**Royal Assent:** June 3, 2019

**Summary:** This Act replaces *The Presumption of Death Act* with *The Presumption of Death and Declaration of Absence Act*. The key changes are as follows:

- If certain conditions are met, the court may order that a person is presumed to be dead or declare that a person is absent.
- An affected person, an insurance company or the Public Guardian and Trustee may apply for an order. Interested persons must be notified about the application and may participate in the hearing.
- The court may appoint a personal representative or committee to deal with the property of a person who is presumed dead or declared absent.
- If the personal representative or committee becomes aware that the person is not dead or absent, then no further steps to administer the person's property or estate may be taken.
- The distribution of a person's property to others is final even if the person is later found to be alive or no longer absent. The court may, if just to do so, order the property be returned or the person be compensated.
- A presumption of death order from another jurisdiction may be recognized in Manitoba.

The Act also amends *The Insurance Act*. A presumption of death order is sufficient proof for the purpose of a life insurance contract.

Consequential amendments are made to *The Marriage Act* and *The Trustee Act*.

\*Jana is starting her 2<sup>nd</sup> year of law school at the University of Ottawa and was the MBA summer student for 2019. Jana is planning to return to Winnipeg to article and to later start her law career. Thank you to Manitoba Justice – Legislative Counsel for reviewing the article.