

Legislative Update

by Natalie Paul*

The following is a list of some of the Acts passed by the third session of the 39th Manitoba Legislature in 2009. 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 Forest Amendment Act, S.M. 2009, c.5 (Bill 3, 3rd session, 39th Legislature)

Royal Assent: June 11, 2009

Amends: *The Forest Act*, C.C.S.M. c. F150

Summary: This Bill bans logging in provincial parks, except in Duck Mountain Provincial Park. Consequential amendments are made to *The Provincial Parks Act* to reflect this ban. This Bill gives officers the right to inspect vehicles transporting timber and land that is the subject of a timber cutting right. Officers may receive written authorization exempting them from provisions of the *The Forest Act* during investigations. The authorization will be subject to specified restrictions.

This Bill creates new offences dealing with the possession of illegally harvested timber and the unauthorized harvesting of timber by the holder of a timber cutting right. Penalties for offences under this *Act* are increased. The Bill authorizes dues for Crown timber to be based on the market value of goods produced from the timber.

This Bill allows holders of timber cutting rights who cut Crown timber to hire an authorized person to perform the forest renewal work on their behalf. It also allows a charge to be established for forest management services performed by the Crown or by the holder of a forest management license.

In Force: By proclamation, except for two sections.

The Highway Traffic Amendment Act, S.M. 2009, c. 6 (Bill 5, 3rd session, 39th Legislature)

Royal Assent: June 11, 2009

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

Summary: This Bill prohibits smoking in a vehicle by a person younger than 16 and by anyone else if a person younger than 16 is present. A driver is also prohibited from using a cell phone or similar electronic communication device with the exception to make a hands-free telephone call, while pulled over and stopped or to communicate with a police, fire or ambulance service in an emergency. This Bill allows for regulations to be made to add further exemptions for certain classes of devices, vehicles or persons, or to prohibit the use of other kinds of devices while driving.

In Force: By Proclamation

The East Side Traditional Lands Planning and Special Protected Areas Act, S.M. 2009, c. 7 (Bill 6, 3rd session, 39th Legislature)

Royal Assent: June 11, 2009

Summary: This Bill enables First Nations and aboriginal communities on the east side of Lake Winnipeg to engage in land use and resource management planning on Crown land that they have traditionally used. This area can be established at the request of a First Nation or an

aboriginal community. Decisions about land use and resource management in the planning area will be developed by a planning council. As a management plan is approved, regulations will be passed that will apply the management plan. These will deal with matters in the planning area such as the allocation or disposition of land and resources, restrictions on development and the process for making decisions on land use, resource management and development issues in the planning area.

This Bill also allows for areas of Crown land on the east side of Lake Winnipeg to be designated as a special protected area. Regulations may be made to protect the land and resource in the special protected area as well as it may restrict or prohibit development and other specified activities in the area.

In Force: Upon Royal Assent

The Highway Traffic Amendment and Manitoba Public Insurance Corporation Amendment Act, S.M. 2009 c. 9 (Bill 11, 3rd session, 39th Legislature)

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

Royal Assent: June 11, 2009

Summary: Under provisions of *The Highway Traffic Act*, a person who is convicted of certain offences can have their vehicle forfeited or driver's licence automatically suspended. This Bill allows those provisions to apply in the case of alcohol-related driving offences recently added to the *Criminal Code*.

Under provisions of *The Manitoba Public Insurance Corporation Act*, certain no-fault accident benefits may be reduced if they benefit a person who is responsible for the accident and is convicted of one of several offences under the *Criminal Code* in relation to the accident. This Bill allows for those provisions to apply in the case of alcohol-related driving offences recently added to the *Criminal Code* and in cases of street racing offences previously added to it.

In Force: Upon Royal Assent

The Residential Tenancies Amendment Act, S.M. 2009 c. 10 (Bill 12, 3rd session, 39th Legislature)

Amends: *The Residential Tenancies Act*, C.C.S.M. c. R119

Royal Assent: June 11, 2009

Summary: This Bill amends *The Residential Tenancies Act* with key changes being provisions about tenancy agreements, tenant services, pet damage deposits, guarantors, administrative penalties, a correction power and single commissioner hearings.

The Director of Residential Tenancies is given authority to deal with tenancy agreements where services such as meals, laundry or housekeeping services are provided by the landlord for a separate charge in addition to rent. This Bill includes new provisions that require a standard tenancy agreement to be used, which must set out the tenant services provided and the charge for the service package. Written notice is required of any increase in the charge for providing tenant services, or terminating these tenancies or for withdrawing or reducing any of the tenant services. A process for dealing with claims against tenant services security deposits is also set out.

This Bill allows landlords to collect a pet damage deposit when permitting a tenant to keep a pet in a rental unit and sets out the process for making claims against these deposits.

Authority is given to the Director to determine claims relating to a guarantor's liability under a guarantee agreement that relates to a residential tenancy agreement. Requirements for the contents of a guarantee agreement are set out as well as provisions about terminating the guarantee agreement.

The director is authorized to impose administrative penalties on landlords and tenants for failing to comply with orders made under specified sections of the Act or for contravening those sections.

This Bill authorizes the Director and the Residential Tenancies Commission to correct or amend typographical, numerical or other errors in their orders. This Bill also allows certain matters to be heard by the chief commissioner or a deputy chief commissioner instead of a panel of three commissioners.

This Bill includes other amendments such as clarifying responsibility for maintaining mobile home sites, setting out the manner in which landlords can discount rent if they are offering a rent discount to a new tenant after regaining possession of rental units in complexes with three or fewer units and giving the director authority to make an order requiring a life lease landlord to reimburse a tenant for a rent overpayment. A consequential amendment is also made to *The Life Leases Act*.

In Force: Most provisions are in force on proclamation.

The Consumer Protection Amendment Act (Payday Loans), S.M. 2009, c. 12 (Bill 14, 3rd session, 39th Legislature)

Amends: *The Consumer Protection Act*, C.C.S.M. c. C200

Royal Assent: June 11, 2009

Summary: This Bill amends provisions of *The Consumer Protection Act* relating to payday loans which include some provisions enacted in 2006 and are not yet in force. This Bill allows for the Public Utilities Board order to be rescinded, and power is given to the Lieutenant Governor in Council to make regulations within three years after they come into force, to conduct public consultations in the course of that review, and make recommendations to the minister.

The Bill prohibits a payday lender from making a loan for more than a specified percentage of a borrow's net pay as well as prohibiting the lender from discounting loans and restricts "tied selling". This Bill will strengthen the government's ability to regulate the activities of payday lenders and to enforce payday loan provision. It will also regulate internet payday loans.

This Bill establishes the Manitoba Payday Borrowers' Financial Literacy Fund to be able to fund programs for improving financial literacy of borrowers. As such, payday lenders will be required to contribute to the fund in accordance with the regulations.

In Force: Upon Royal Assent (Subsections 19(2) and 19(3); By Proclamation (Section 6 and part of section 8)

The Victim's Bill of Rights Amendment Act, S.M. 2009, c. 13 (Bill 15, 3rd session, 39th Legislature)

Amends: *The Victims' Bill of Rights*, C.C.S.M. c. V55

Royal Assent: June 11, 2009

Summary: This Bill allows the parents and children of a deceased victim to obtain information about the investigation and prosecution of an offence. This bill gives clarity for the ability of victims to express their views on matters relating to the prosecution of charges and requires prosecutors to give those particular views serious consideration.

In Force: Upon Royal Assent

The Regulated Health Professions Act, S.M. 2009, c. 15 (Bill 18, 3rd session, 39th Legislature)

Royal Assent: June 11, 2009

Summary: This Act changes the way health professions are regulated in Manitoba. This Act replaces 21 statutes dealing with different health professions with one umbrella Act, *The Regulated Health Professions Act*. Health care provided by health professionals will now be regulated through reserved acts rather than through exclusive scopes of practice. In some cases, the Act permits the delegation of a reserved act to a person who is not a member of a regulated health profession but who is competent to perform the act. Each health profession is regulated by a college and has a duty to serve the public interest. This governing body of a college is its council with at least 1/3 of council members being public representatives. Each college has a registrar who is responsible for maintaining the college's registers and issuing certificates of registration and practice.

Every member of a regulated health profession must be registered with its profession's college. In order to practice, a registered member must also hold a valid certificate of practice. Members of the same or different regulated health professions and any other health care provider may practice in association with one another. These regulated members may also carry on their practice through a corporation. A title restriction is imposed and only certain regulated health professions may use the terms "doctor", "surgeon", "physician", "registered" and "licensed". The practice of the health profession is regulated by its council with the use of standards of practice, a code of ethics, practice directions and continuing competency programs.

The Act sets out a process for dealing with complaints about members of a regulated health profession. Included are a separate complaints investigation committee and a separate inquiry committee for each profession. As well, a college may choose to audit a member's practice. Information is provided to the public about members through practitioner profiles. The college has a duty to prepare an annual report on its activities and maintain a publicly accessible website. An advisory council is created in order to provide advice to the minister about matters related to the Act, such as changes to the list of reserved acts and health human resource planning and management. The advisory council must consult with any colleges that may be affected by its advice.

The Act implements a process whereby an unregulated health profession may become a regulated health profession. Included may be an investigation into the practice of that profession.

The minister has power to launch an inquiry, issue a directive or appoint an administrator, but only when it is in the public interest to do so. Individuals who employ members of a regulated health profession are responsible for ensuring that the person is registered and permitted to practise the profession. Employers, hospitals and regional health authorities are required to notify the applicable college when a member is suspended or their employment is terminated.

The College of Physicians and Surgeons of Manitoba and the College of Pharmacists of Manitoba have their own separate Parts to deal with matters unique to those professions, such as the accreditation of non-hospital diagnostic and treatment facilities, and the licensing and operation of pharmacies.

A comprehensive set of regulation-making powers are given to the Lieutenant Governor in Council, the minister and the councils of the colleges. Certain circumstances require them to consult with members of the profession or the public. The powers of council to make by-laws are also set out.

The Act also provides for the transition from regulating health professions under their individual statutes to regulating them under this Act. Consequential amendments are made to several statutes, such as *The Anatomy Act*, *The Health Services Insurance Act* and *The Interpretation Act*, so that their terms are consistent with *The Regulated Health Professions Act*.

In Force: By Proclamation

The Mortgage Dealers Amendment and Securities Amendment Act, S.M. 2009, c. 16 (Bill 19, 3rd session, 39th Legislature)

Amends: *The Mortgage Dealers Act*, C.C.S.M. c. M210

Royal Assent: June 11, 2009

Summary: An amendment to *The Mortgage Dealers Act* is a title change to *The Mortgage Brokers Act*. The Act now applies to every person who, for remuneration, solicits another person to lend or borrow on a mortgage, provides information to a lender about someone who wants to obtain a mortgage, assesses a potential borrower on behalf of a lender, or engages in another mortgage-related activity prescribed in the regulations. The Act is amended to allow sub-categories of mortgage brokers to be established by regulation.

The Manitoba Securities Commission is given the power to fine a person who is registered under the Act, after holding a hearing about the person's conduct. When dealing with minor or trivial matters, the commission can accept an undertaking from the person without holding a hearing. The penalty amounts have changed as well as a number of other administrative amendments. The title change results in consequential amendments to three other Acts.

Amendments to *The Securities Act* includes the authorization to appoint staff members as investigators for the purposes of the four Acts administered by the commission (*The Commodity Futures Act*, *The Mortgage Brokers Act*, *The Real Estate Brokers Act* and *The Securities Act*) by the director of The Manitoba Securities Commission . As well, the maximum the director may order a person to pay to a claimant as compensation for financial loss is increased from \$100,000 to \$250,000.

In Force: The amendments to *The Mortgage Dealers Act* come into force on proclamation, while amendments to *The Securities Act* came into force on Royal Assent.

The Labour Mobility Act, S.M. c. 18 (Bill 21, 3rd session, 39th Legislature)

Royal Assent: June 11, 2009

Summary: This Bill allows certified workers from other Canadian jurisdictions to practice their occupations in Manitoba in accordance with Chapter 7 (Labour Mobility) of the Agreement on

Internal Trade. This requires Manitoba regulators to comply with Chapter 7 when workers certified for an occupation in another jurisdiction apply to obtain certification for that occupation.

In Force: Upon Royal Assent

The Cooperatives Amendment Act, S.M. 2009, c. 19 (Bill 22, 3rd session, 39th Legislature)

Amends: *The Cooperatives Act*, C.C.S.M. c. C223

Royal Assent: June 11, 2009

Summary: This Bill will enable cooperatives to establish different classes of membership shares. This provides greater flexibility to cooperatives and allows agricultural cooperatives to take advantage of recent changes in the federal *Income Tax Act*.

Terms and conditions may be imposed on a cooperative issuing shares or other securities that are not the subject of an offering statement. Also, a cease trading order can be issued when concerns exist regarding issues of shares or securities by a cooperative. The establishment of a cooling-off period protects the purchasers of shares and securities of a cooperative. Penalties for offences under this *Act* have increased.

In Force: By Proclamation

The Gaming Control Amendment Act, S.M. c. 23 (Bill 27, 3rd session, 39th Legislature)

Amends: *The Gaming Control Act*, C.C.S.M. c. G5

Royal Assent: June 11, 2009

Summary: This Bill requires retailers to be registered with the Gaming Control Commission if they sell lottery tickets on behalf of the Western Canada Lottery Corporation or the Manitoba Lotteries Corporation. The Western Canada Lottery Corporation is also required to adopt and implement a responsible gaming policy.

The Executive Director of the Gaming Control Commission is authorized to take into account the appropriateness of premises to be used when considering whether to licence gaming activity as well as to mediate complaints by patrons about lottery schemes conducted and managed by the Western Canada Lottery Corporation. The Executive Director's order-making power is expanded to allow orders to be made in respect of a lottery ticket retailer who contravenes the Act, the regulations or a term or condition of the retailer's registration.

A consequential amendment is made to *The Manitoba Lotteries Corporation Act*.

In Force: By Proclamation

The Private Investigators and Security Guards Amendment Act, S.M. c. 24 (Bill 28, 3rd session, 39th Legislature)

Amends: *The Private Investigators and Security Guards Act*, C.C.S.M. c. P132

Royal Assent: June 11, 2009

Summary: This Bill removes the licensing category of in-house security guards therefore all security guards will now be treated in the same matter, regardless if the work directly for one employer or employed by a business that provides security guards to others.

This Bill ensures that employers are no longer required to apply for a license for individuals they employ as a private investigator or security guard. Instead, an individual will make the application and obtain the license directly. Once licensed, an individual can move between

employers without having to renew the license. A licensee is required to report to the registrar if charged or convicted of a crime. The registrar may immediately suspend a licence if it is believed to be in the public's best interest. Inspection powers are strengthened under this Act and other administrative amendments are also made.

In Force: By Proclamation

The Environment Amendment Act, S.M. c. 25 (Bill 29, 3rd session, 39th Legislature)

Amends: *The Environment Act*, C.C.S.M. c. E125

Royal Assent: June 11, 2009

Summary: This Bill prohibits the unauthorized release of pollutants that have a significant negative impact on the environment and it also supplements existing sections of the Act. An environmental protection order may be issued when the release of a harmful pollutant has occurred or might occur in the near future. The order may require that the person responsible take appropriate steps to protect the environment such as restoring an area affected by the pollutant. The director or an environment officer can take emergency action in order to protect the environment if the release of the pollutant has caused or could potentially cause significant harm to the environment.

This Bill creates changes to the environmental licensing process. Public consultations conducted by a proponent on a proposed development may be taken into account when a decision is made on the proposal. As well, the energy efficiency of a proposed development and the amount of greenhouse gases that will be released by a development must be taken into account when decisions regarding the issuing of a license for the proposed development. The minister may make decisions dealing with certain classes of development. The language in a number of provisions is updated and clarified.

In Force: By Proclamation

* Natalie is starting her 3rd year at law school and was the MBA summer student for 2009.
Thank you to Manitoba Justice – Legislative Counsel for reviewing the article.