

Legislative Update

by Stephanie Chan*

The following is a list of some of the Acts passed by the 3rd session of the 40th Manitoba Legislature in 2014. 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 Personal Health Information Amendment Act, S.M. 2013, c. 22 (Bill 4, 3rd Session, 40th Legislature)

Royal Assent: December 5, 2013

Summary: In a July 2012 report, the Manitoba Ombudsman commented that *The Personal Health Information Act* does not make it an offence for a person to gain unauthorized access to another person's personal health information. This Act creates such an offence. The Act also makes it an offence to falsify another person's personal health information.

In Force: Upon Royal Assent

The New Home Warranty Act, S.M. 2013, c. 23 (Bill 5, 3rd Session, 40th Legislature)

Royal Assent: December 5, 2013

Summary: This Act ensures that all new homes built for sale are covered by a warranty against defects in materials, labour and design and structural defects. Home builders and warranty providers must be registered under the Act and only registered builders are allowed to build homes for others or for sale.

Homes built by registered builders must be covered by a home warranty provided by a warranty provider. The minimum required coverage is

- (a) 12 months for materials, labour and design;
- (b) 15 months for common areas of condominiums and common areas of other buildings with two or more dwelling units under one ownership;
- (c) two years for
 - violations of the *Manitoba Building Code* that constitute a threat to health or safety or are likely to cause material damage to the home,
 - defects that make the home unliveable,
 - defects in the electrical, plumbing, heating, ventilation and air conditioning systems,
 - defects in the building envelope (including water penetration),
 - defects in the exterior cladding, caulking, windows and doors that may lead to detachment; and
- (d) (d) seven years for structural components.

The minimum coverage may be increased by regulation following a review with public consultation, which must occur at least once every five years.

An owner who wishes to build his or her own home does not need to obtain a home warranty. However, to prevent the Act from being circumvented, owner-builders are subject to certain restrictions. An owner-builder must obtain an authorization before beginning to build and there are restrictions on the resale of an owner-built home within the warranty period.

A builder who fails to supply a home warranty provided by a warranty provider is deemed to

provide a warranty to the owner. The builder's warranty provides the same coverage as the minimum required under a home warranty.

In Force: By Proclamation

The Provincial Court Amendment Act, S.M. 2013, c. 26 (Bill 8, 3rd Session, 40th Legislature)

Royal Assent: December 5, 2013

Summary: This Act amends *The Provincial Court Act* to facilitate the use of electronic documents in the court.

In Force: By Proclamation

The Department of Justice Amendment Act, S.M. 2013, c. 33 (Bill 16, 3rd Session, 40th Legislature)

Royal Assent: December 5, 2013

Summary: This Act amends *The Department of Justice Act*. A court may find that a person who is not able to obtain legal aid is entitled to government-funded legal representation. The lawyer for that person is to be retained in accordance with the regulations and paid at a prescribed rate. In addition, a lawyer who is appointed to perform certain functions in a trial is to be paid at a prescribed rate when the government is directed to pay the lawyer's fees.

In Force: By Proclamation

The Consumer Protection Amendment and Business Practices Amendment Act (Motor Vehicle Advertising and Information Disclosure and Other Amendments), S.M. 2013, c. 34 (Bill 17, 3rd Session, 40th Legislature)

Royal Assent: December 5, 2013

Summary: This Act amends *The Consumer Protection Act* by adding a Part about motor vehicle advertising and information disclosure. A motor vehicle dealer

- is prohibited from engaging in false advertising or providing false information about a vehicle;
- must ensure that advertisements indicate the total price of a vehicle, including all additional charges and taxes (except for the retail sales tax and the federal goods and services tax);
- must ensure that an advertisement about a used late-model vehicle indicates that it is a used vehicle;
- must ensure that advertisements comply with any additional requirements prescribed by regulation;
- must disclose information about a vehicle to a consumer in accordance with the regulations; and
- must ensure its employees comply with the restrictions and obligations under this Part.

By regulation, these restrictions and obligations may be applied to other persons and the director may publicise compliance orders made under the new Part. Enforcement measures will include

- issuing a compliance order under the new Part; and
- imposing an administrative penalty under the existing provisions of the Act.

This Act also amends *The Business Practices Act*. Because of the enhanced consumer protection measures relating to motor vehicles in *The Consumer Protection Act*, the information disclosure provisions currently found in *The Business Practices Act* are repealed.

In addition, *The Business Practices Act* is amended

- to permit the director to communicate information to the public when it is in the public interest to do so;
- to prohibit a person from asking or making a consumer waive his or her rights;
- to increase the fine amounts for offences; and
- to enable a compensation order to be enforced as an order of the Court of Queen's Bench.

In Force: Upon Royal Assent/By Proclamation

The Business Practices Amendment Act (Improved Consumer Protection and Enforcement), S.M. 2014, c. 6 (Bill 18, 3rd Session, 40th Legislature)

Royal Assent: June 12, 2014

Summary: This Act amends *The Business Practices Act*. It clarifies when a supplier takes advantage of a consumer and provides that it is an unfair business practice to subject the consumer to undue pressure. It is also an unfair business practice to pressure a consumer to renegotiate the terms of a transaction because the goods are under the supplier's possession or control. The list of examples of false representations or the use of exaggeration that are deemed to be unfair business practices is expanded.

A supplier may be ordered by the Director of Business Practices, or may enter into a voluntary agreement with the director, to correct or retract a false or misleading advertisement. A supplier may also be ordered to post a director's order in its business premises.

Other amendments include

- permitting the director to act when only one unfair business practice has been, is being or may be committed;
- permitting inspections of a supplier's business premises where the director believes it is necessary to determine whether a supplier is in compliance;
- shortening the time period for appealing a director's order to 14 days;
- removing the requirement to obtain the minister's written approval before the director can take enforcement measures, such as issuing a cease order or entering into a voluntary agreement with a supplier; and
- modernizing the enforcement, investigation, search warrant, injunction and penalty provisions and making them consistent with legal developments.

In Force: Upon Royal Assent

The Accessibility for Manitobans Act, S.M. 2013, c. 40 (Bill 26, 3rd Session, 40th Legislature)

Royal Assent: December 5, 2013

Summary: This Act enables the establishment of accessibility standards to achieve accessibility for Manitobans disabled by barriers. A barrier is defined to be anything that, in interaction with a person's impairment, may hinder the person's full and effective participation in society on an equal basis. A person or organization that is subject to an accessibility standard will be required to take actions to identify and remove barriers and to prevent new barriers from being created.

The provincial accessibility advisory council is continued. Working within the minister's terms of reference for an accessibility standard and after public consultation, the council is to make recommendations about accessibility objectives and the actions that should be taken to improve accessibility. The council's membership includes representatives of persons with disabilities and representatives of those who will be made subject to the accessibility standards.

Before an accessibility standard is established, the recommendations and the draft standard must be made available to the public for comment. To make the accessibility standards

enforceable, inspection and enforcement powers are provided, including the power to impose administrative penalties. This Act also requires the government, municipalities and prescribed public sector organizations to prepare annual accessibility plans and make them publicly available.

In Force: Upon Royal Assent

The Consumer Protection Amendment Act (High-Cost Credit Products), S.M. 2014, c. 12 (Bill 34, 3rd Session, 40th Legislature)

Royal Assent: June 12, 2014

Summary: This Act amends *The Consumer Protection Act* to add a new Part about high-cost credit products. A high-cost credit product is a loan, a line of credit or a similar form of credit that meets the criteria set out in the regulations. Cabinet may also make regulations specifying other types of high-cost credit products. The new Part does not apply to regulated payday loans, mortgages or credit extended by banks or credit unions. Only licensed high-cost credit grantors may offer, arrange or provide high-cost credit products. A licensed high-cost credit grantor must

- post signs at each business location stating that the products are high-cost credit products and setting out information about the cost of credit;
- disclose before the borrower enters into the agreement key information about the high-cost credit product and the agreement, the cost of credit, and the borrower's rights;
- give the borrower reasonable time to review the disclosed information and the agreement and provide a copy of the completed agreement to the borrower at no cost;
- not charge a fee or penalty for early repayment; and
- keep records of its high-cost credit products and agreements.

A borrower may cancel a high-cost credit agreement within 48 hours after entering into it or at any time if the borrower was not notified of the 48-hour cancellation right. The new Part also provides for a comprehensive set of Cabinet regulation-making powers to deal with high-cost credit products, agreements and credit grantors. In addition, the Manitoba Payday Borrowers' Financial Literacy Fund is renamed the Manitoba Borrowers' Financial Literacy Fund. High-cost credit grantors are required to pay into the fund.

This Act also includes amendments to clarify certain provisions of Part XVIII (Payday Loans) of *The Consumer Protection Act* and to ensure the consistency of that Part with the new Part.

In Force: By Proclamation

The Consumer Protection Amendment Act (Compliance and Enforcement Measures), S.M. 2013, c. 45 (Bill 35, 3rd Session, 40th Legislature)

Royal Assent: December 5, 2013

Summary: This Act amends *The Consumer Protection Act*. Various compliance measures are enhanced and consolidated within a single part titled "Compliance and Enforcement". They will apply generally to all businesses regulated under the Act. The key enhancements are as follows:

- The director may, with or without a specific complaint,
 - request records and information from a business,
 - authorize a person to inspect the business premises or other place where records or information may be kept, and
 - apply to court for an entry and inspection warrant.
- The director may
 - issue a compliance order,
 - apply to the court for an injunction, and

- for certain types of businesses, issue an order for the payment of costs relating to an inspection or records or practices review.
- If a person does not comply with a compliance order, the court (on application by the director) may order the person to comply.
- A person must not knowingly provide false or misleading information to the director or a consumer services officer.
- The maximum administrative penalty that may be imposed on a corporation is increased from \$5,000 to \$20,000.

In addition, regulation-making powers relating to service, recordkeeping and cost orders are added to the Act as well as the ability to make regulations that apply differently to different classes.

In Force: Upon Royal Assent

The Public Guardian and Trustee Act, S.M. 2013, c. 46 (Bill 36, 3rd Session, 40th Legislature)

Royal Assent: December 5, 2013

Summary: This Act replaces the existing *Public Trustee Act*. Key changes include the following:

- The name "Public Trustee" is changed to "Public Guardian and Trustee".
- The Public Guardian and Trustee's functions are clarified and listed. They include acting as a trustee, estate administrator, litigation guardian, substitute decision maker and committee.
- The Public Guardian and Trustee's responsibilities as a trustee for minors' trusts are updated to reflect current practice and to reduce delay and expense to the trusts. The Public Guardian and Trustee may encroach on capital in certain circumstances, pay out small trusts to a parent or guardian, and, if the minor resides outside Manitoba, transfer the trust to an entity that is similar to Manitoba's Public Guardian and Trustee but is located where the minor resides.

The Public Guardian and Trustee's responsibilities as an administrator of a deceased person's estate are also updated in order to reduce delay and expense to the estate.

- Provisions in *The Mental Health Act* relating to the administration of estates of deceased persons for whom the Public Guardian and Trustee acted as committee are moved into the new Act.
- Under the current Act, costs may not be awarded against the Public Trustee when it represents a defendant without success, but has acted reasonably and in good faith. In the new Act, this protection is extended to cases where the Public Guardian and Trustee represents an applicant or plaintiff.
- The Act also provides for liability protection and permits the Public Guardian and Trustee to obtain information to properly assess and carry out his or her functions.
- The rules for investing property held in trust by the Public Guardian and Trustee are revised to reflect current practice.

In addition, amendments are made to *The Mental Health Act* to improve protection for a mentally incapable person where the person granted an enduring power of attorney before the Public Guardian and Trustee was appointed committee. In certain circumstances, the Public Guardian and Trustee must apply to the court for direction as to the best interests of that person. As well, amendments are made to allow a second named attorney to carry on under a power of attorney when the authority of the first attorney is terminated. Another amendment allows the Public Guardian and Trustee to apply to court to be removed or replaced as committee when it is in the best interests of the person in question to do so.

Provisions in *The Court of Queen's Bench Surrogate Practice Act* that relate to the

administration of estates by the Public Trustee and are no longer used, or are provided for elsewhere, are repealed. The Act also includes consequential amendments to several other Manitoba Acts because of the name change to "Public Guardian and Trustee".

In Force: By Proclamation

The Provincial Offences Act and Municipal By-law Enforcement Act, S.M. 2013, c. 47 (Bill 38, 3rd Session, 40th Legislature)

Royal Assent: December 5, 2013

Summary: Schedule A — *The Provincial Offences Act*

This Schedule replaces *The Summary Convictions Act*. It establishes the procedures for prosecuting offences under Manitoba statutes, regulations and municipal by-laws. The Act makes the following significant changes:

- The new Act deals with all topics related to provincial prosecutions rather than relying on provisions of the Criminal Code. Matters such as search and seizure, arrest and release, procedures for hearings, and appeals are all addressed.
- A ticket issued under the new Act must have a preset fine indicated on it. This will allow every person who receives a ticket to pay the fine without having to attend court.
- A person who receives a ticket may respond by paying the fine, asking a justice to reduce it in exceptional circumstances, or asking for a hearing to dispute the charge. A person who fails to take action is convicted by default. The default process has been streamlined.
- If a person is charged with an offence by an information being laid (which is the process used for more serious offences), a new provision allows the prosecutor to ask a justice to impose conditions on the person charged pending a hearing. The purpose of such conditions is to prevent an offence from being committed. Under the current scheme, conditions may be imposed only if a person is first arrested.
- Certificate evidence may be used in a hearing on a ticket offence (where there is no possibility of jail). This provision allows the prosecutor to put evidence before the court without requiring a police officer or other enforcement officer to attend. The court retains the power to require the officer to attend if that is necessary to decide the matter fairly.
- Appeal rights are specifically provided. An appeal on a ticket may be made only if it raises a legal issue, and only if it relates to the conviction itself and not the amount of the fine.
- Municipal parking by-laws will no longer be prosecuted in court. Instead, municipalities must use an administrative penalty regime, which is set out in Schedule B to this Act, to enforce their parking by-laws.
- The ability of government and municipalities to collect fines has been improved. A lien can be registered in the Personal Property Registry against the property of a person who has not paid their fines. The current Act limits the lien right to vehicles, and applies only to unpaid parking tickets.
- In all municipalities, by-law enforcement officers will be able to issue tickets for by-law contraventions without having to be peace officers.

Consequential and related amendments are made to other Manitoba Acts, including *The Highway Traffic Act*.

Schedule B — *The Municipal By-law Enforcement Act*

This Schedule gives municipalities the ability to process and resolve parking violations and other contraventions of their by-laws using an administrative penalty scheme that does not involve court proceedings. Municipalities are required to use the new scheme to enforce their parking by-laws, and are permitted to use it to enforce other by-laws that have a maximum penalty at or below an amount prescribed by regulation. Under the new scheme, formal by-law

enforcement action begins with a by-law enforcement officer issuing a penalty notice to a person. If the person wishes to dispute the penalty notice, they can ask for it to be reviewed by a screening officer appointed by the municipality. A person who is not satisfied with the screening officer's decision has a further opportunity to dispute the notice by requesting a hearing by an independent adjudicator appointed by the government. In addition, the new Act permits municipalities to join together to cost share and jointly administer an administrative penalty scheme.

In Force: By Proclamation

The Protection for Temporary Help Workers Act (Worker Recruitment and Protection Act and Employment Standards Code Amended), S.M. 2014, c. 16 (Bill 50, 3rd Session, 40th Legislature)

Royal Assent: June 12, 2014

Summary: Part 1 of the Act amends *The Worker Recruitment and Protection Act* to require temporary help agencies to be licensed. A temporary help agency is prohibited from charging its temporary employees fees for services that the agency provides and from taking actions that will restrict its employees from becoming employed by others. The director is also given the ability to authorize an unlicensed individual to recruit a foreign worker on an employer's behalf, if the position to be filled pays at least double the Manitoba industrial average wage. Part 2 of the Act amends *The Employment Standards Code* to entitle a temporary help employee to notice of termination or wages in lieu of notice.

In Force: On a Specified Date

The Labour Relations Amendment Act (Time Lines for Labour Board Decisions and Hearings), S.M. 2014, c. 20 (Bill 54, 3rd Session, 40th Legislature)

Royal Assent: June 12, 2014

Summary: This Act requires the Manitoba Labour Board to make regulations setting out the time periods within which it will make decisions following the hearing of a complaint, application or referral to the Board. In the case of applications for union certification or decertification, the Board must also make regulations setting out the time period within which it will hold a hearing.

In Force: Upon Royal Assent

The Highway Traffic Amendment Act (Countermeasures Against Drug-Impaired Driving), S.M. 2014, c. 23 (Bill 57, 3rd Session, 40th Legislature)

Royal Assent: June 12, 2014

Summary: Under the *Criminal Code* (Canada), a police officer can require a driver to undergo an evaluation to identify drug impairment if the officer believes that the driver's ability to drive is impaired by the consumption of a drug. Currently, *The Highway Traffic Act* provides for roadside licence suspensions, vehicle seizures and vehicle forfeitures for drivers who drink alcohol before driving or who refuse or fail to provide breath or blood samples or to perform physical coordination tests. This Act incorporates *Criminal Code* evaluations into the suspension, seizure and forfeiture program so that drug-impaired driving is treated consistently with alcohol-impaired driving. The Act also contains consequential amendments to *The Drivers and Vehicles Act*.

In Force: By Proclamation

The Adoption Amendment and Vital Statistics Amendment Act (Opening Birth and Adoption Records), S.M. 2014, c. 25 (Bill 59, 3rd Session, 40th Legislature)

Royal Assent: June 12, 2014

Summary: This Act amends *The Adoption Act* and *The Vital Statistics Act* to create a scheme that allows for more openness with respect to adoption records and pre-adoption birth records, subject to certain privacy rights. Currently under *The Adoption Act* identifying information

regarding adoptions granted before March 15, 1999, cannot be released without the written consent of the parties. For an adoption granted on or after that date eligible family members may obtain identifying information about the parties once all of them are adults, unless a veto prohibiting disclosure of identifying information ("disclosure veto") is filed on the post-adoption registry. Currently under *The Vital Statistics Act* pre-adoption birth registrations and related adoption orders are confidential and can be disclosed only by court order.

Adoption Act Amendments

Part 1 of this Act amends *The Adoption Act*. The key changes are as follows:

- A person who was born in Manitoba, was adopted, and is now an adult may now apply to the director under *The Adoption Act* for a copy of his or her pre-adoption birth registration and the new registration of birth document that was substituted for it after the adoption. The parent named on the person's pre-adoption birth registration ("registered birth parent") may also apply for those documents, but the copies they get will not show information about the adoptive parents.
- A person who was born outside Manitoba but adopted here and is now an adult may apply for his or her pre-adoption birth registration information that is available in the director's records.
- Disclosure vetoes can be filed only by adopted persons who are 16 or older or their registered birth parents, and only if the adoption was granted in Manitoba before these amendments take effect, or outside the province.
- Adult parties to an adoption granted in Manitoba will continue to be able to file contact vetoes until these amendments take effect. However, after these amendments take effect, adopted persons who are 16 or older and their registered birth parents will be able to file a contact preference to specify the contact with the other that they are prepared to have, if any.
- An aboriginal person who was born in Manitoba and adopted will be able to request that his or her pre-adoption birth registration and identifying information about his or her birth parents be given to another person, or to a government or organization, for the purpose of applying for benefits or services provided to aboriginal persons. These requests are not subject to vetoes or contact preferences.
- The director under *The Adoption Act* will operate as the "central desk" for the Vital Statistics Agency and the court in dealing with requests for adoption and pre-adoption birth registration records, information and Manitoba adoption orders. As well, search services offered by the director are expanded.
- Provisions relating to adoption proceedings in the court will reflect the court's practice of adoption proceedings being closed to the public.
- To help protect parties' privacy rights, the director will be able to disclose identifying information to an appropriate authority in another jurisdiction to determine if a veto or contact preference has been filed there. The director will also be able to enter into information-sharing agreements with other jurisdictions.
- Fines for offences under the Act are increased from \$20,000 to \$50,000, in line with the fines for offences under *The Child and Family Services Act*.

Vital Statistics Act Amendments

Part 2 of this Act amends *The Vital Statistics Act*. The key changes are as follows:

- Section 10 of the Act, concerning adoption orders and pre-adoption birth registrations is replaced to reflect the increased transparency of these records.
- The director under *The Vital Statistics Act* will be allowed to give previously sealed pre-adoption birth registrations and related adoption orders to the director under *The Adoption Act* so he or she can carry out responsibilities under that Act.

- As well, the director is given the power to examine registrations or proposed registrations under the Act and to sever information from them if the truthfulness or legitimacy of the information is in doubt.

Consequential Amendments

Part 3 makes consequential amendments to two Acts.

In Force: By Proclamation

The Restorative Justice Act, S.M. 2014, c. 26 (Bill 60, 3rd Session, 40th Legislature)

Royal Assent: June 12, 2014

Summary: Restorative justice is an alternative approach to addressing unlawful conduct outside the traditional criminal prosecution process. It enables offenders and victims of unlawful conduct or other community representatives to find a resolution that promotes healing, reparation and re-integration into the community. An offender in a restorative justice program must take responsibility for his or her actions and must attempt to repair the harm caused by those actions in a variety of ways, such as by apologizing, paying restitution, performing community service work or completing a counselling or treatment program.

This Act promotes the development and use of restorative justice programs in Manitoba. It requires the Department of Justice to develop policies respecting the use of restorative justice programs. It establishes an advisory council that includes people with expertise in the study of restorative justice as well as those with experience in delivering restorative justice programs, counselling or treatment programs or other social services. The advisory council will provide advice to the government on the design and implementation of restorative justice programs. In addition, the Act makes related amendments to *The Victims' Bill of Rights*.

In Force: By Proclamation

The Court of Queen's Bench Small Claims Practices Amendment Act, S.M. 2014, c. 30 (Bill 64, 3rd Session, 40th Legislature)

Royal Assent: June 12, 2014

Summary: This Act amends *The Court of Queen's Bench Small Claims Practices Act*. The key changes are as follows:

- The Act specifies the matters that may be decided by a court officer and the matters that must be decided by a Queen's Bench judge. Matters involving the provincial government or a government agency must be decided by a judge.
- Evidence given at a hearing must be recorded.
- If a defendant does not appear at the hearing after being properly served, the judge or court officer can hear and decide the claim in the absence of the defendant. The defendant may bring an application before a judge or court officer to have that decision set aside if there are valid reasons for doing so. If the decision is set aside there will be a new hearing of the claim.
- An appeal from a decision made by a court officer may be brought to the Court of Queen's Bench on a legal point with leave of a judge. If leave to appeal is granted, the judge will direct how the appeal hearing will be conducted. There is no further appeal.
- An appeal from a decision made by a Queen's Bench judge may be brought to The Court of Appeal on a legal point with leave of a judge of The Court of Appeal. The rules of The Court of Appeal govern the proceedings.

In Force: By Proclamation

* Stephanie is starting her 3rd year at law school and was the MBA summer student for 2014. Thank you to Manitoba Justice – Legislative Counsel for reviewing the article.

