

Legislative Update

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The following is a list of some of the Acts passed by the fourth session of the 39th Manitoba Legislature in 2010. 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 City of Winnipeg Charter Amendment and Municipal Amendment Act (Derelict Property),

S.M.2010, c. 2 (Bill 3, 4th Session, 39th Legislature)

Royal Assent: June 17, 2010

Amends: *The City of Winnipeg Charter*, S.M. 2002, c. 39

The Municipal Act, C.C.S.M. c. M225

Summary:

The City of Winnipeg Charter

This Act amends the process which allows them to gain title to derelict property where the owner fails to rehabilitate or redevelop it. When a property is determined to be derelict, the city must issue a preliminary derelict building order and serve it both on the registered owner as well as anyone who, according to the land titles records, holds an interest in the property. The registered owner then has 90 days to appeal the decision to a committee of council or make the necessary alterations to the property in order to comply with the order. If the property is still in contravention of the bylaw after 30 days the city is now required to issue a second notice to be registered and served to the owner and those with an interest in the property. If the property continues to be in contravention of the by-law and the preliminary order still stands after 60 days have lapsed from the second order being issued then the city can apply to have a derelict building certificate awarded by a designated committee of council. Once the certificate is issued, the city must register the certificate with land titles before they can be given title of the derelict property. The city is not required to give a separate notice of the application for title to the registered owner or interested persons. 30 days from the date of application, unless a court application is brought forth to set aside the certificate, the district registrar may issue title of the property to the city. The city must apply for title within 120 days of the certificate being issued or the property is no longer affected by the derelict order.

The Municipal Act

When a registered owner of property, found in contravention of the municipal derelict building by-law fails to rehabilitate or redevelop the property the municipality need only follow the process, similar to The City of Winnipeg Charter, as outlined within this Act to gain title to the derelict property. Through this Act municipalities are given the authority to regulate the condition and maintenance of vacant dwellings and non-residential buildings. The municipality must issue a first and second notice to the registered owner and others with interest in the property as well as registering the notice with land titles. The registered owner has 90 days to appeal the derelict building order or comply with the order before the municipality can apply for a derelict building certificate. Once that certificate is issued the municipality has 120 days to apply for title to the land and unless the property has been altered to comply with the order and an application to set aside the building certificate is made within 30 days, the title will transfer to the municipality.

In Force: Upon Royal Assent (June 17, 2010)

The Workplace Safety and Health Amendment Act, S.M.2010, c. 3 (Bill 4, 4th Session, 39th Legislature)

Royal Assent: June 17, 2010

Amends: *The Workplace Safety and Health Act*, C.C.S.M. c. W120

Summary:

This Act increases the maximum fines that can be imposed upon a person found guilty of contravening *The Workplace Safety and Health Act*. The penalty for a first offence can be not more than \$250,000 and for a second subsequent offence not more than 500,000.

In Force: Upon Royal Assent (June 17, 2010)

The Highway Traffic Amendment Act (Suspending Drivers' Licences of Drug Traffickers), S.M.2010, c. 6 (Bill 7, 4th Session, 39th Legislature)

Royal Assent: June 17, 2010

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

Summary: This Act adds drug trafficking (violation of section 5 of the *Controlled Drugs and Substances Act* – Canada) to the list of Category A offences if the offender operates a motor vehicle during the commission of the offence. A person convicted of a Category A offence under section 264 of *The Highway Traffic Act* receives a driver's licence suspension of one year for a first offence and a longer suspension for any subsequent offence that occurs within ten years of the original offence.

In Force: By Proclamation

The Highway Traffic Amendment Act (Safety Precautions to be Taken When Approaching Tow Trucks and Other Designated Vehicles), S.M.2010, c.7 (Bill 8, 4th Session, 39th Legislature)

Royal Assent: June 17, 2010

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

Summary: This Act requires drivers to take specific precautions when approaching particular vehicles including roadside assistance vehicles, tow trucks, vehicles capable of minor roadside repairs and vehicles driven by government enforcement officers when those vehicles are using their emergency lighting and/or warning and safety signs.

In Force: By Proclamation

Proceedings Against the Crown Amendment Act, S.M. 2010, c. 9 (Bill 10, 4th Session, 39th Legislature)

Royal Assent: June 17, 2010

Amends: The Proceedings Against the Crown Act, C.C.S.M. c. P140

Summary: The Agreement on Internal Trade is an agreement intended to prevent new trade barriers from being created while reducing past trade barriers in order to liberalize trade within Canada. This Act amends *The Proceedings Against the Crown Act* to enable various orders made against the Government of Manitoba by the presiding body under the Agreement of Internal Trade to be enforced as a court order by filing with the Queen's Bench.

In Force: Upon Royal Assent (June 17, 2010)

The Body Armour and Fortified Vehicle Control Act, S.M. 2010, c. 12 (Bill 14, 4th Session, 39th Legislature)

Royal Assent: June 17, 2010

Summary: This Act regulates the use of body armour and fortified vehicles within Manitoba. Body armour is any garment or item designed for the purpose of protecting a person from projectiles discharged from a firearm. A fortified vehicle is any vehicle that has at least one fortification attached to it, such as material that is designed to resist explosives, bullets, or other projectiles anywhere on the interior or exterior of the vehicle, holes or slots that allow a firearm to be discharged from the vehicle without exposing the shooter, and protective materials like metal or fiberglass that was added to the interior or exterior after the vehicle was manufactured. All individuals must obtain a valid permit in order to possess body armour, unless the individual is exempted from that requirement. All those selling body armour must possess a valid body armour seller's licence. All fortified vehicles must be owned and operated by persons with valid fortified vehicle permits unless exempted from that requirement. If a fortified vehicle is owned or driven by an individual without a permit, the owner must pay to have the fortifications removed by a specified date or the government can destroy the vehicle.

In Force: By Proclamation

The Franchises Act, S.M. 2010, c. 13 (Bill 15, 4th Session, 39th Legislature)

Royal Assent: June 17, 2010

Amends: *New Act*

Summary:

This Act has been modeled after *The Uniform Franchises Act* that was prepared by the Uniform Law Conference of Canada. It grants rights and imposes duties and obligations on all parties within a franchise agreement. The franchisee cannot waive their rights under *The Franchises Act*. Each party within the franchise agreement has a duty of fair dealing. A franchisee has the right to associate with other franchisees and the franchisor cannot interfere with that right or penalize or threaten to penalize the franchisee for exercising that right. A franchisor must also provide certain information, in the disclosure document to the franchisee 14 days before payments are required or signing has taken place. This document must include all the material facts about the franchise, the financial statements, and all proposed agreements to enable the franchisee to make an informed decision. If these facts are not disclosed, the franchisee may cancel the agreement within the time period laid out in the Act. The franchisee may also sue the franchisor and others involved for losses suffered due to a lack of disclosure or misrepresentation within the disclosed information. The individuals disclosing information have certain defences open to them which are outlined in the Act.

In Force: By Proclamation

The Protection from Domestic Violence and Best Interests of Children Act (Family Law Statutes Amended), S.M. 2010, c. 17 (Bill 19, 4th Session, 39th Legislature)

Royal Assent: June 17, 2010

Amends: *The Child Custody Enforcement Act, C.C.S.M. c. C360*

The Domestic Violence and Stalking Act, C.C.S.M. c. D93

The Family Maintenance Act, C.C.S.M. c. F20

Summary: This Act amends a number of family law Acts.

The Child Custody Enforcement Act and *The Family Maintenance Act* have been amended to require courts to assess the risk of domestic violence of stalking before disclosing a person's address when enforcing a custody order or applying for or enforcing an order for maintenance or custody. Also applications must be served personally or through the regular mail service however, they are not considered served until after the 5th day.

The Domestic Violence and Stalking Act is amended to allow parties with a protection order in place to violate that order when attending court or court-ordered proceedings like mediation. However, there are specific restrictions enforced upon the person against whom the order has been made. These restrictions include a physical distance of 2 meters from the subject, that all communication be made through the judge, master or officer of the court and that no direct communication take place between the parties, and finally that the respondent remove themselves from any location where they may be left alone with the subject.

The Family Maintenance Act has adopted the same service requirements being either personally served or through regular mail allowing five days for delivery. Also new criteria has been outlined which the court must consider when determining the best interests of the child in a custody or access application or variation proceeding.

In Force: October 17, 2010

The Drivers and Vehicles Amendment Act, S.M. 2010, c. 26 (Bill 28, 4th Session, 39th Legislature)

Royal Assent: June 17, 2010

Amends: *The Drivers and Vehicles Act*, C.C.S.M. c. D104

Summary: This Act permits the Registrar of Motor Vehicles to publish specific outlined information about permit suspensions, cancellations and renewal refusals if the permit belongs to automobile dealers and salespeople, driver training schools and instructors, and automobile recyclers, and mechanics.

In Force: Upon Royal Assent (June 17, 2010)

The Highway Traffic Amendment Act (Immobilizers and Air Bags), S.M. 2010, c. 19 (Bill 21, 4th Session, 39th Legislature)

Royal Assent: June 17, 2010

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

Summary: This Act makes it an offence for a person who is in the business of servicing or altering a motor vehicle to tamper with, disable or remove a vehicle's immobilizer, except while it is necessary to perform repairs or modifications so long as the immobilizer is restored to its proper functioning upon completion of repairs. This Act also makes it an offence for any person to tamper with, disable or remove a vehicle's air bag, except in specified circumstances outlined within the exceptions.

In Force: Upon Royal Assent (June 17, 2010)

The Manitoba Evidence Amendment Act (Scheduling of Criminal Organizations), S.M. 2010, c. 23 (Bill 25, 4th Session, 39th Legislature)

Royal Assent: June 17, 2010

Amends: *The Manitoba Evidence Act*, C.C.S.M. c. E150

Summary: This Act enables the Lieutenant Governor in Council to place a group on a schedule of criminal organizations if there are reasonable grounds to believe the group is a criminal organization. An application to add a group to the Schedule must set out the basis on which it is determined that a group is a criminal organization. The Act lays out the process to add an organization to the schedule as well as how a group can seek to be removed from the schedule.

In Force: Upon Royal Assent (June 17, 2010)

The Protection for Persons in Care Amendment Act, S.M. 2010, c. 30 (Bill 32, 4th Session, 39th Legislature)

Royal Assent: June 17, 2010

Amends: *The Protection for Persons in Care Act*, C.C.S.M. c. P144

Summary: This Act extends the reporting of abuse requirement of in-patients and residents of hospitals, personal care homes and designated health facilities to cover patients of geriatric day hospitals and emergency rooms. It also creates the ability for the reporting requirement to be further extended through regulation where necessary.

In Force: September 30, 2010

The Statutes Correction and Minor Amendments Act, 2010, S.M. 2010, c. 33 (Bill 36, 4th Session, 39th Legislature)

Royal Assent: June 17, 2010

Amends: Numerous Acts

Summary: This Act corrects a number of typographical, numbering and other drafting errors as well as repealing a couple of obsolete acts and making minor amendments to a number of Acts.

In Force: Royal Assent (Majority of alterations)

The Strengthened Enforcement of Family Support Payments and Miscellaneous Amendments Act (Various Acts Amended), S.M. 2010, c. 28 (Bill 30, 4th Session, 39th Legislature)

Royal Assent: June 17, 2010

Amends: *The Improved Enforcement of Support Payments (Various Acts Amended) Act*, C.C.S.M. c. F20

Summary:

The Family Maintenance Act is amended to include genetic testing as well as blood testing throughout the provisions which authorize the court to order such testing when looking to determine the parentage of the child. Further it is amended to clarify that child support orders may be made to take effect from before or after the date of the court order. In an effort to clarify the wording of section 46, it has been amended to provide that an application to vary a maintenance or custody order, or any other order which this section applies to, is to be determined having regard to any material change in circumstances that has occurred since the order was first made, or since varied. Other amendments allow the child support service to recalculate the amount of a child support order on the basis of the deemed income where a party has failed to provide them with the appropriate updated information.

Part VI of *The Family Maintenance Act* is amended to enhance the enforcement tools and options available to the designated officer of the maintenance enforcement program and a number of changes are outlined within the bill including but not limited to, increasing fines, charging costs of some enforcement orders to debtors, changing the way payments are processed, and restricting the duration of court orders that suspend enforcement of maintenance orders. The Act also makes small amendments to *The Executions Act* and *The Garnishment Act*.

The Court of Queen's Bench Act is amended to allow the court to draw any inference it feels reasonable when a party refuses to cooperate with a family evaluator who is appointed by the court in relation to a custody or access matter. The evaluator must report any such refusal to the court.

In Force: Upon Royal Assent & By Proclamation

The Consumer Protection Amendment Act (Negative Option Marketing and Enhanced Remedies), S.M. 2010, c. 31 (Bill 34, 4th Session, 39th Legislature)

Royal Assent: June 17, 2010

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

Summary: This Act increases the maximum fine to \$300,000 or three times the amount an individual convicted of an offence obtained as a result of that offence, whichever is greater. When someone is convicted of an offence, the court must consider whether to make a restitution order if the Attorney General and Minister of Justice, or a person affected by the offence or their representative makes an application to the court. The order can then be enforced in the same manner as a judgment of the court.

This Act prohibits negative option marketing and ensures a consumer is not required to pay for goods or services received under a negative option marketing scheme. Negative option marketing occurs when a supplier provides a consumer with goods or services that the consumer did not request and then requires that the consumer pay for the goods or services unless the consumer informs the supplier that they do not want them.

In Force: 90 days after Royal Assent

* Jocelyn is starting her 2nd year at law school and was the MBA summer student for 2010. Thank you to Manitoba Justice – Legislative Counsel for reviewing the article.