Manitoba Ups Penalties for Human-Caused Wildfires

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published 06/22/2023

As I write this article, the Manitoba Wildfire Service is advising that wildfire danger in central and eastern Manitoba is high to extreme. Nine active wildfires are burning. Seven thousand residents of Cross Lake/Pimicikamak Cree Nation are being relocated with the help of the Canadian Red Cross due to a fire burning two to three kilometres from the community. The Wildfire Service is working with ground crews and aircraft to suppress the blaze. The weather has turned for the better.

At the same time, Alberta is experiencing modest meteorological relief in an earlier than usual wildfire season, which threatens to be the worst on record. Fires burn out of control in Saskatchewan, British Columbia and the Northwest Territories.

In Manitoba, provincial burning permits are currently required from April 1 to Nov. 15 for outdoor fires set within the Burn Permit Area. Those permits may be cancelled or restricted on short notice if fire danger conditions require. Municipalities may implement their own burning restrictions, and in municipalities that do, the province will not issue burning permits.

On March 9, 2023, Manitoba's Natural Resources and Northern Development Minister Greg Nesbitt announced that the Manitoba government introduced Bill 21, which amends *The Wildfires Act* (Manitoba). According to the Department, the amendments are intended to enhance public safety by strengthening measures to mitigate human-caused wildfire risks.

"In Manitoba, it is estimated that nearly half of all wildfires are caused by humans, in some cases causing devastating social and economic disruptions, displacing families, threatening lives along with the loss of property, and destroying valuable natural resources," said Nesbitt. "Our government is committed to keeping Manitobans safe and this legislation enhances enforcement and investigative powers along with increased penalties to help reduce the threat of human-caused wildfires."

The proposed legislation is intended to strengthen the enforceability of fire safety requirements, enhance compliance tools, and to clarify powers of officers appointed under the Act to inspect and investigate wildfire causes. To ensure that officers have the right tools and authorities for wildfire prevention, mitigation, and investigation, the Bill proposes a

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number of amendments including:

- augmented enforcement provisions that grant clearer authority to officers to inspect for compliance and to investigate the causes of any wildfire;
- clearer authority for officers to enter private property for inspections and investigations, including authorizing officers to enter or cross privately-owned land, use privately-owned equipment, conduct tests, and take samples and records; and
- updated prohibitions and ability to issue stop work orders as a means of rectifying issues of non-compliance.

To increase public transparency and implementation of fire mitigation activities, the Bill replaces the wildfire work permit system with a new regulation that prescribes fire safety requirements for all industries and individuals. This will align Manitoba's wildfire safety framework with those of other provinces. Currently, Manitoba is the only province west of Quebec that does not outline and enforce fire safety requirements through regulation.

The Bill, once in force, will raise the maximum penalties for violations. Today's penalties have not been updated since 1998. The legislation provides for an increase in the maximum penalties upon conviction to:

- a fine of up to $100,000 and no more than two years for imprisonment or both for individuals (up from $10,000 and one year); and
- a fine of up to $1,000,000 for corporations (up from $50,000).

"These increases align our penalties with other provincial jurisdictions and better reflect the social, environmental and economic cost of human-caused wildfires," Nesbitt said.

All changes will take effect on April 1, 2024.

Two things that are very important to note is that the amended Act will provide that:

- when a contravention of the Act or the regulations continues for more than one day, the person who is in contravention is guilty of a separate offence for each day the contravention continues (under the current Act this only applies to failure to hold a permit); and
- in circumstances where a corporation commits an offence under the Act or the regulations, a director or officer of the corporation who authorized, permitted or acquiesced in the commission of the offence is also guilty of an offence, whether or not the corporation has been prosecuted or convicted.

To put that into perspective, where a corporation is found to be in violation of the Act, it can be fined up to $1,000,000 per day, and any officer or director of the corporation can be fined up to $100,000 per day and be jailed for up to two years. This significantly ups the ante for anyone found to be operating outside of the Act and every director and officer. It is incumbent upon any business whose operations could result in a wildfire or that involves burning to ensure that everything that can be done to avoid the commission of an offence is done, and that policies and procedures and training are properly documented and enforced. Only by proving that due diligence has been exercised can a corporation or individual

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successfully avoid conviction once the Crown has proved the facts constituting the offence.

The Act already provides that an offender can be found to be responsible for firefighting costs, which can easily eclipse the amount of any fines that may be imposed. Where a person is convicted of an offence, the court may order the convicted person to reimburse the Province or any municipality for costs incurred in wildfire protection operations that were undertaken as a result of the person's acts or omissions that resulted in the conviction.

Add to all of this the possibility of a civil claim by the Province for natural resource damages arising out of a wildfire against anyone proved to be at fault and one can easily see how a failure to exercise the greatest of caution with fire can result grave financial consequences.

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