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Manitoba Update - Technical Safety Legislation

By Peter Sim



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The Manitoba Legislature is considering a bill to consolidate the regulation of various types of equipment. *The Technical Safety Act* will replace a series of equipment-specific statutes with a single regulatory framework. The *Act* creates the office of a director of technical safety with broad powers of administration and enforcement. Penalties for violations will be significantly increased. The Bill has received second reading and is proceeding through the committee stage.

The Technical Safety Act will replace *The Electricians' Licence Act*, *The Elevator Act*, *The Gas and Oil Burner Act*, *The Power Engineers Act*, *The Steam and Pressure Plants Act* and Part II of *The Amusements Act*.

The new *Act* will apply to amusement rides; boilers and boiler systems; pressure vessels and pressure piping systems; electrical products and electrical devices; elevators and escalators; fuel burning equipment and fuel systems; refrigeration equipment and refrigeration systems; and any other work or equipment prescribed by regulation as regulated equipment or regulated work.

The *Act* provides that regulated equipment must not be installed or operated without a permit. Anyone performing regulated work on regulated equipment will have to have a licence.

If required by regulation or by written order of the director of technical safety, every owner, manufacturer, vendor or designer of regulated equipment and every person who does regulated work on regulated equipment will have to establish a quality assurance program and obtain a certificate of approval for the program from the director.

The director will have the power to issue, revoke and suspend the various licences, permits and certificates required under the *Act*.

The director will also have the power to issue an order to require that regulated equipment or regulated work comply with a higher standard than that prescribed under the *Act* if the director believes that the higher standard is necessary to minimize a technical safety risk. The *Act* defines a technical safety risk as “a risk that serious personal injury, death or property damage could be caused by the use of regulated equipment or the performance of regulated work”.

Decisions of the director may be appealed to a Technical Safety Appeal Board appointed by the minister responsible for the *Act*. The appeal board is to consist of three to five members who are knowledgeable on safety matters relating to regulated equipment or regulated work.

The *Act* provides for the appointment of inspectors with the power to inspect regulated equipment and records relating to regulated equipment. Inspectors have the power to issue stop work orders where there are reasonable grounds to believe that equipment or work on equipment violates the *Act* or regulations, or regulated equipment or work poses a technical safety risk.

The director may impose administrative penalties of up to \$5,000 for violations of the *Act* or orders under the *Act*. An administrative penalty may be appealed to the Court of Queen’s Bench. Once an administrative penalty is paid for a contravention, the person who paid the penalty may not be prosecuted for the same contravention unless the contravention continues after the penalty is paid.

On a prosecution for a contravention of the *Act*, the penalty for an individual found guilty of an offence is a fine of not more than \$125,000 or imprisonment for a term of not more than six months, or both, for a first offence. For a second or subsequent offence by an individual, the maximum fine is increased to \$250,000. The maximum fine for a corporation is \$250,000 for a first offence, and \$500,000 for a second or subsequent offence.

Once the new *Act* is in place, a regulation will provide for the continuance or transition of licences and permits issued under the various equipment-specific statutes that are being repealed.

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Peter has extensive experience in civil litigation and has acted in a wide range of matters including commercial law, construction disputes, personal injury, insolvency and wrongful dismissal.

He has appeared at all levels of courts and a variety of administrative tribunals. He has also been involved in a variety of commercial transactions including purchase and sale of businesses, commercial financing, incorporations and shareholder agreements.