

Legislative summary : Cell phones and other driving distractions

Cell phones and other distractions:

More provinces opt to restrict use of cell phones by drivers

By William M. Glenn

TWO YEARS IS A LONG TIME IN POLITICAL life. When we last covered the topic of cell phones and distracted driving (see Legislative Summary, *EH&S Reporter*, November 2006) only Newfoundland had passed legislative amendments restricting the use of this ubiquitous and seemingly indispensable electronic device by drivers who were simultaneously attempting to operate a motor vehicle. At that time we noted that few, if any, other provinces or territories were ready to follow Newfoundland's lead. While private member's bills would appear on the legislative agenda from time to time, governments across the country insisted that the current prohibitions against distracted or careless driving were sufficient to curtail irresponsible cell phone use.

Well, the situation has changed, apparently. A series of reputable scientific studies definitely linking cell phone use to (at least a modest and perhaps a four-fold) increase in accident rates spurred the medical community and insurance sector to increase their lobbying efforts on tougher cell phone prohibitions. In response, three more provinces – Prince Edward Island, Nova Scotia and Quebec – have joined Newfoundland in restricting the use of cell phones by drivers. And both Manitoba and Ontario have similar government-sponsored amending legislation working its way through the approvals pipeline.

(It should be noted that all Canadian regulatory efforts to date address only hand-held phones and similar devices, although the available research shows that hands-free communication systems present a similar level of distraction for drivers. It's not the fumbling, per se, with the device that's the problem; it's the cognitive demands of holding the conversation. There is little statistical difference in the increased risk of accident posed by the use of either system.)

As you might remember, Newfoundland and Labrador kicked things off with a ban on the use of hand-held cell phones by drivers, which took effect January 1, 2003. Nova Scotia was next with amendments to its *Motor Vehicle Act*, which received Royal Assent December 7th, 2007 and took effect April 1st of 2008. Quebec followed suit with a similar package of amendments to its *Highway Safety Code* which received Royal Assent December 23, 2007.

In both cases, the prohibition only applies to hand-held cell phones (or other devices that function as a telephone) while the driver is operating a vehicle. Nova Scotia added "text messaging" to its ban, while Quebec allowed an exception for operators of emergency vehicles in the performance of their duties.

To aid enforcement, Quebec added a clause that said simply holding a cell phone would constitute a presumption of its "use" and would be an offence. Officials also warn against drivers attempting to read information on the screen of a hands-free cell phone anchored in its holder; such behavior likely violates the existing prohibitions against viewing televisions and other types of screens.

Prince Edward Island took a slightly less-inclusive approach. Only a Stage 1 driver or a newly licensed driver is

prohibited from using a hand-held cellular telephone (or using headphones, an MP3 player or any other hand-held electronic device) while operating or having care or control of a motor vehicle.

Ontario tabled its proposed ban on the use of hand-held devices to talk, text or e-mail while driving, in a bill to amend the province's *Highway Traffic Act* on October 28, 2008. Unless a vehicle is pulled off the roadway or lawfully parked, its operator would be prohibited from using or viewing hand-held cell phones or smartphones, electronic entertainment devices (such as iPods, MP3 players or portable games), laptop computers or DVD players.

And most recently, on November 27, 2008, Manitoba introduced its Bill No. 5, proposed amendments to the *Highway Traffic Act*, again to prohibit drivers from using a hand-held cell phone or similar device, with exceptions for emergency calls and use by police, fire or ambulance personnel. To ease enforcement and ensure drivers aren't tempted to play games, take pictures, watch videos and/or text message friends while merging on to the highway at high speed, the drafters of the amendment package saw fit to include a precise, extensive (and rather convoluted) definition of the term "use". An extensive public education campaign will be rolled out to inform the public and give motorists access to the information they need prior to the proposed amendments becoming law.

These six provinces join five U.S. states – California, Connecticut, New Jersey, New York, and Washington – as well as the District of Columbia and the Virgin Islands which already have laws prohibiting driving while talking on hand-held cell phones. In addition, 17 states have laws prohibiting novice drivers and school bus drivers from all cell phone use (both hand-held and hands-free) while driving. And seven states (Alaska, California, Connecticut, Louisiana, Minnesota, New Jersey and Washington) and the District of Columbia have implemented a ban on text messaging for all drivers. A complete summary, updated as of October 2008, is available on the Governors' Highway Safety Association website at:

http://www.ghsa.org/html/stateinfo/laws/cellphone_laws.html

So who is next? Alberta recently quashed a private member's bill to ban cell phone use while driving, while the ruling Tory party rejected a similar motion from a riding association during its annual policy convention this fall. Instead, the government is talking about strengthening the current provisions meant to address distracted driving. While many individual members and even the Premier agree that text messaging and telephone use are potentially dangerous, they say enforcing a ban on cell phones would be challenging. In the interim, the Transport Minister has called for more "driver education".

Both Saskatchewan and New Brunswick are playing the same tune. A Department of Public Safety spokesperson says New Brunswick considers the use of cell phones the same way it views other driver distractions, while Saskatchewan's Crown Corporations Minister insists, "We do not have any conclusive evidence that shows that legislation towards banning cell phone use will in fact enhance driver safety. We are not contemplating any legislation at this time." Of course, officials in Ontario, Quebec, PEI, Manitoba and Nova Scotia were saying much the same sort of things just two years ago.

Legislative summary : Cell phones and other driving distractions

Table 1

Selected Statutory Provisions Related to the Use of Cell Phones and Other Electronic Equipment in Motor Vehicles

Note, many of these provisions permit exemptions for the use of radios, on-board computers and other equipment by certain specified vehicles, including those operated by police, fire department, ambulance services and other emergency response groups.

Jurisdiction	Limits on use of cellular telephones	Limits on use of televisions/screens
<p>British Columbia Motor Vehicle Act Regulations (B.C. Reg. 26/58), under the <i>Motor Vehicle Act</i></p>	<p>None specified.</p>	<p>Under s.7.18 of the Motor Vehicle Act Regulations (B.C. Reg. 26/58), no person shall drive a vehicle in which the image displayed from a television set in the vehicle is visible to that person. Additional provisions provide certain exceptions and cover the secure mounting of the device.</p>
<p>Alberta Vehicle Equipment Regulation (Alta. Reg. 322/2002) under the <i>Traffic Safety Act</i></p>	<p>None specified.</p>	<p>Under s.75 of Reg. 322/2002, a person shall not drive or operate a motor vehicle that is equipped with a video entertainment system if the driver can see the screen when the vehicle is moving</p>
<p>Saskatchewan <i>Traffic Safety Act</i> (S.S. 2004, c. T-18.1)</p>	<p>None; however, the Government of Saskatchewan <i>Cellular / Wireless Devices Policy and Guidelines</i> directs employees to “refrain from using cellular / wireless devices in a hand-held position to the extent possible while operating vehicles and other equipment”</p>	<p>Section 241(1) of the Act covers the placement, mounting and use of televisions, computers and other electronic devices that include a screen. Such equipment must be securely and safely mounted, located so that it does not obstruct the view of the driver, and any image that is displayed is not visible to the driver. Certain exemptions are permitted for navigation devices, time pieces, peace officers, or equipment designed for the safe operation of the vehicle, its load or passengers.</p>
<p>Manitoba <i>Highway Traffic Act</i> (C.C.S.M. c. H60)</p> <p>Bill No. 5 (<i>The Highway Traffic Amendment Act Promoting Safer and Healthier Conditions in Motor Vehicles</i>) passed First Reading November 27, 2008</p>	<p>Section 215 of the Act currently states that no driver of a motor vehicle on a highway may wear headphones (on both ears) used to listen to a radio or a recording. According to the Offence Notices Regulation (Man. Reg. 210/2003), the total fine, including costs and surcharges, for an offence under this section is \$92.</p> <p>Proposed amendments to the <i>Highway Traffic Act</i>, (see page 2674) would add a series of new provisions following s.215 to prohibit drivers from using a cell phone or similar electronic communication device. However, exceptions would allow for the use of such a device: 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. “Use” is defined to include: holding the device in a position in which it may be used, operating any of its functions, communicating with another person by spoken word or otherwise, looking at the device’s display, and taking any other action that may be prescribed by regulation.</p>	<p>Sections 214(3)-(4) of the <i>Highway Traffic Act</i> prohibit the operations of a motor vehicle equipped with a television set unless the set is mounted or positioned behind the seat occupied by the driver, and the screen is not visible directly or indirectly from the driver’s seat. According to the Offence Notices Regulation (Man. Reg. 210/2003), the total fine, including costs and surcharges, for an offence under this section is \$92.</p> <p>Later regulations may 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.</p>
<p>Ontario <i>Highway Traffic Act</i> (R.S.O. 1990, c. H.8)</p> <p>Bill 118 (<i>Countering Distracted Driving and Promoting Green Transportation Act, 2008</i>) passed First Reading on October 28, 2008, passed Second Reading on November 27, 2008, and was referred to the Standing Committee on General Government at that time.</p>	<p>The Act currently has no provisions related specifically to the use of cell phones.</p> <p>Under the proposed new ss.78.1(1) and (2), no person shall drive a motor vehicle on a highway while holding or using a hand-held wireless communication device or other prescribed device (that is capable of receiving or transmitting telephone communications, electronic data, mail or text messages), or a hand-held electronic entertainment device or other prescribed device (the primary use of which is unrelated to the safe operation of the motor vehicle.) Exceptions are permitted for cell phones operated in a “hands-free” mode. The prohibition does not apply to the driver of an ambulance, fire department vehicle or police department vehicle, nor to any person using the device to contact ambulance, police or fire department emergency services. In addition, the use of a cell phone or entertainment device would be permitted if the motor vehicle is off the roadway or is lawfully parked on the roadway, is not in motion, and is not impeding traffic.</p>	<p>Section 78 of the Act currently prohibits the operation of a motor vehicle equipped with a television on a highway if any part of the set is located forward of the back of the driver’s seat, or is visible to the driver while he/she is operating the vehicle; regulations may exempt certain classes of drivers or equipment.</p> <p>Under the proposed changes to the Act, s.78 would be repealed, and under new s.78.1, “No person shall drive on a highway a motor vehicle that is equipped with, carries, contains or has attached to it a television, computer or other device with a display screen if the display screen is visible to the driver.” Exceptions would be permitted for a GPS navigation device, a logistical tracking system for commercial vehicles, a collision avoidance system, and/or various system status display screens. The new subsection would not apply to ambulances, fire department vehicles, police department vehicles, or other classes of vehicles or persons that may be set forth in regulation.</p>

Legislative summary : Cell phones and other driving distractions

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<p>Quebec Highway Safety Code (R.S.Q., chapter C-24.2)</p> <p>Bill 42 (An Act to amend the Highway Safety Code and the Regulation respecting demerit points) was introduced November 14, 2007, and received Royal Assent on December 21, 2007.</p>	<p>Under s.439.1 of the Code, no person may, while driving a road vehicle, use a hand-held device that includes a telephone function. Further, there is a presumption that a driver who is holding a hand-held device that includes a telephone function is presumed to be using the device. This prohibition on cell phone use does not apply to drivers of emergency vehicles in the performance of their duties. Under s.508, the penalty for contravening this section is a fine of \$80 to \$100. Under the Regulation Respecting Demerit Points, contravention could cost a driver 3 points.</p> <p>In addition, under s.440 of the Code, no driver of a road vehicle may use headphones or earphones, unless they apply to a device used in conversational exchanges and allow surrounding traffic noises to be heard. Under s.506, the penalty for contravening this section is a fine of \$30 to \$60.</p>	<p>s.439 of the Code prohibits (with certain exemptions) the driving of a road vehicle in which a television set or a display screen is so placed that the image broadcast on the screen is directly or indirectly visible to the driver. Under s.508, the penalty for contravening this section is a fine of \$80 to \$100.</p>
<p>New Brunswick</p>	<p>None specified.</p>	<p>None specified.</p>
<p>Nova Scotia <i>Motor Vehicle Act</i> (R.S.N.S. 1989, c. 293)</p> <p>Bill 7 (An Act to Amend Chapter 293 of the Revised Statutes, 1989, the Motor Vehicle Act) passed Third Reading and received Royal Assent on December 7, 2007, and took effect April 1, 2008</p>	<p>Under the new s.100D (1) of the Act, it is an offence for a person to use a hand-held cellular telephone or engage in text messaging on any communications device while operating a vehicle on a highway. This prohibition does not apply to a person who uses a hand-held cell phone or other communications device to report an immediate emergency situation.</p> <p>Under the Summary Offences Tickets Regulations (N.S. Reg. 4/2001), the fine for an offence under this section is \$135.75 for the first offence, \$164.50 for the second and \$222.00 for the third and subsequent offences.</p>	<p>Under s.184(7) of the <i>Motor Vehicle Act</i>, no person shall drive on a highway a motor vehicle equipped with a television viewer, screen or other means of visually receiving a television broadcast that is located in the vehicle at a point forward of the back of the driver's seat or that is visible to the driver while he is operating the vehicle.</p> <p>Under the <i>Summary Proceedings Act, 2002</i>, the fine for an offence under this section is not less than \$50 for the 1st offence, not less than \$100 for the 2nd offence and not less than \$200 for the 3rd or a subsequent offence.</p>
<p>P.E.I. Graduated Driver Licensing Regulations (P.E.I. Reg. EC225/07) under the <i>Highway Traffic Act</i> (R.S.P.E.I. 1988, c. H-5)</p>	<p>Under s.6 of P.E.I. Reg. EC225/07, no person who is a Stage 1 driver or a newly licensed driver shall use a hand-held cellular telephone, headphones, mp3 player or any other hand-held electronic device while operating or having care or control of a motor vehicle.</p> <p>Under the Ticket Regulations (P.E.I. Reg. EC321/01), the out of court penalty for an offence under this section is \$100.</p>	<p>Under s.133 of the <i>Highway Traffic Act</i>, no person shall drive upon a highway a motor vehicle equipped with or carrying a television set while the set is in operation.</p> <p>Under the Ticket Regulations (P.E.I. Reg. EC321/01), the out of court penalty for an offence under this section is \$50.</p>
<p>Newfoundland and Labrador <i>Highway Traffic Act</i> (R.S.N.L. 1990, c. H-3), and the Licensing and Equipment Regulations (C.N.L.R. 1007/96) under the Act</p>	<p>Under s.176.1 of the Act, a person shall not use a hand-held cellular phone while driving a motor vehicle on a highway. This prohibition does not include a cellular phone that is equipped with (and used with) an external speaker or ear phone and microphone that may stand alone, be mounted in the vehicle, or worn on the body. It also excludes a 2-way radio device. Upon conviction, a driver is liable to a loss of 4 demerit points, a fine of \$100 to \$400 or, in default of payment, a jail term of 2 to 14 days.</p>	<p>Under s.34(1) of C.N.L.R. 1007/96, a person shall not drive on a highway a motor vehicle that is equipped with a television set a part of which is located in the motor vehicle forward of the back of the driver's seat, or that is visible to the driver while he or she is operating the motor vehicle. This prohibition does not apply to a closed circuit television system used to assist the driver in the operation of the vehicle.</p>
<p>Yukon <i>Motor Vehicles Act</i> (Y.M.O. 2000/03)</p>	<p>None specified.</p>	<p>Under s.132(1) of the Act, no person shall drive on a highway any motor vehicle that is equipped with a television set, unless the set is located and operated in such a manner that the driver cannot by any means see the screen of the television set while the vehicle is in motion. A person guilty of an offence under this section is liable on summary conviction to a fine of not more than \$500 and in default of payment to imprisonment for a term not exceeding six months.</p>
<p>Northwest Territories & Nunavut <i>Motor Vehicles Act</i> (R.S.N.W.T. 1988, c. M-16)</p>	<p>None specified.</p>	<p>Under s.145(1) of the Act, no person shall operate, on a highway, a vehicle that is equipped with a cathode ray tube display screen (or similar viewing screen), if the screen is located in front of the driver's seat, or is visible to the driver while the driver is operating the vehicle. Exemptions can be made for prescribed purposes.</p>

Legislative summary : Cell phones and other driving distractions

Table 2
Resources on Careless Driving and Cell Phone Use

The reader is also directed to an excellent website maintained by the Canadian Automobile Association (CAA) that covers the problems posed by distracted driving at <http://www.caa.ca/driventodistract/what/distracted.html>
 The Insurance Bureau of Canada also hosts a website that highlights the problems of distracted driving at <http://www.besmartbesafe.ca/>

Jurisdiction	Information resources
Federal	Transport Canada maintains a cell phone safety website which provides Q&As and safety tips on cell phone use in vehicles, a couple of strategy documents for reducing driver distraction, a 2002 Transport Canada report <i>The Impact of Cognitive Distraction on Driver Visual Behaviour and Vehicle Control</i> and the <i>Observational Survey of Cell Phone use by Drivers of Light Duty Vehicles 2006-2007</i> . For copies, visit the site at http://www.tc.gc.ca/roadsafety/
British Columbia	The Insurance Corporation of British Columbia has prepared a 2-page factsheet, <i>Safe Cell Phone Use – It's Your Call</i> , and a research paper <i>The Impact of Cell Phone Use on Driving Performance</i> which are available through their website at http://www.icbc.com
Alberta	The Coalition for Cellphone-free Driving, based at the University of Alberta, has produced a toolkit for creating a corporate cellphone policy, driving tip sheets, videos, a powerpoint presentation on distracted driving, research and survey summaries, all of which are available through its website at http://www.cellphonefreedriving.ca/ In addition a 2007 <i>Distracted Driving Report</i> , which lists cell phone use as just one cause of distracted driving, is available on The Ministry of Transportation website at http://www.transportation.alberta.ca/601.htm
Saskatchewan	Saskatchewan Government Insurance (SGI) maintains a webpage on driver distraction, including a series of safe driving tips and a reminder on safe cell phone use by drivers, on its website at http://www.sgi.sk.ca/sgi_pub/road_safety/driver_distraction.htm
Manitoba	Manitoba Public Insurance has produced a video and a series of factsheets on driver distractions, including cell phone use, which are available on their website at http://www.mpi.mb.ca/english/dr_tips/DriverDistractions.html
Ontario	The Ministry of Transport has prepared a video that shows how distractions can affect driving, as well as links to research studies and a tip sheet on distraction-free driving, available at http://www.mto.gov.on.ca/english/news/statements/stat081028-video.htm . The Ministry has also produced a series of factsheets, including <i>Drivers, your attention Please!</i> that addresses the problem of careless driving, and <i>Motorists and Cellular Phones</i> , that provides a list of cell phone safety tips, available on-line at http://www.mto.gov.on.ca/english/safety/topics.htm
Quebec	La société de l'assurance automobile hosts a webpage that covers the dangers of cell phone use (and urges that people avoid hands-free as well), the penalties under Quebec law, available at http://www.saaq.gouv.qc.ca/en/accident_prevention/cell_phone/index.php
Nova Scotia	Information on cell phone use and driver distraction can be found on the Department of Transportation and Infrastructure Renewal website at http://www.gov.ns.ca/tran/cellphone.asp
Prince Edward Island	Transportation and Public Works has produced a 3-page brochure <i>Driver Distractions</i> , which includes tips on safe cell phone use, and can be downloaded from the TPW's list of on-line resources at http://www.gov.pe.ca/tpwpei
Newfoundland and Labrador	There are a number of press releases and backgrounders related to the province's ban on cell phones available through the government's website at http://www.gov.nl.ca/
Yukon	The Department of Highways and Public Works maintains a Road Safety webpage at http://www.hpw.gov.yk.ca/trans/transportservices/roadsafety/index.html
Northwest Territories & Nunavut	The Department of Transportation maintains a website, <i>Distracted Driving is Impaired Driving</i> , with information on cell phone use and safe driving tips at http://www.dot.gov.nt.ca/_live/pages/wpPages/DistractedDriverImpairment.aspx