FEDERAL Government developing new OH&S regulations for management of offshore areas

The Governments of Canada, Nova Scotia and Newfoundland and Labrador, together with the participation of the offshore petroleum boards*, are developing Occupational Health and Safety (OHS) regulations to replace transitional regulations that will expire in December 2019. The new Oil and Gas Occupational Safety and Health Regulations will apply to workers engaged in the exploration or drilling for, or the production, conservation, processing or transportation of, oil or gas in frontier lands, as defined under the Canada Oil and Gas Operations Act. Amendments will also be made to the Oil and Gas Occupational Safety and Health Regulations to: update and align current provisions as needed with the Canada Occupational Health and Safety Regulations, Maritime Occupational Health and Safety Regulations and the Atlantic Offshore Accords.

Mandatory Safety Management Systems

The proposed regulations will require companies to develop, implement and maintain and enforce mandatory Safety Management Systems to reduce and manage risks to safety, security and the environment and which will foster a strong ‘safety culture’.

What is a strong safety culture?

The regulatory proposal defines a strong safety culture as a set of “attitudes, values, norms, and beliefs, which a particular group of people shares with respect to risk and safety.” The government further characterizes a strong safety culture as one in which:

- leaders demonstrate that safety is their overriding value and priority;
- every individual/person feels empowered and recognized for making safe decisions;
- every individual/person feels encouraged to report safety hazards, including threats;
- every individual/person is aware of known hazards while remaining vigilant to new threats;
- every individual/person feels empowered and recognized for making safe decisions;
- every individual/person feels encouraged to report safety hazards, including threats where they have committed an error and introduced a threat themselves;
- every individual/person, including the most junior employee would not hesitate to take action in response to a safety concern without fear of disciplinary action or reprisal;
- every individual works safely regardless of whether or not someone is watching; and
- the organization is continually learning from its own and others’ experiences with the goal of advancing safety.

The role of the ‘accountable person’

Another feature of the proposed legislation is the identification of a person who will be accountable for the establishment, maintenance and continual improvement of the management system. Operators will be required to ensure that the accountable person has the human and financial resources necessary to fulfill that task.

The accountable person will, in turn, be required to sign a statement accepting their responsibilities for the establishment, maintenance and continual improvement of the management system and for the development of a ‘safety plan’.

(Continued on next page)


New OHS regulations for offshore ...

What are the features of a successful ‘safety plan’?

A safety plan will be required to set out the procedures, practices, resources, sequence of key safety-related activities and monitoring measures necessary to ensure the safety of the proposed work or activity. The plan must include:

- a summary of, and references to, the management system, including the Occupational Health and Safety management system, that demonstrate how it will be applied to the proposed, work and how the duties set out in the regulations with regard to safety will be fulfilled;

- a safety plan document that includes:
  - a summary of all the studies undertaken to identify hazards and to evaluate safety risks related to the proposed work or activity, including any hazards by adjacent or simultaneous activities taking place near the work or activity;
  - the processes used for identifying those hazards, assessing consequences and probabilities, and evaluating prevention and mitigation measures;
  - a description of the hazards that were identified and the results of the risk evaluation;
  - a summary of the measures to anticipate, avoid, prevent, reduce or manage safety risks; and measures for communicating the hazards and risk mitigation measures with all directly affected individuals;
  - a description of all structures, facilities, equipment and systems critical to safety and a summary of the system in place for their inspection, testing and maintenance;
  - a description of the organizational structure and the command structure for the proposed work which clearly explains their relationship, and which provides contact information of the person accountable for the safety plan and of the person responsible for implementing it; and - If the possibility of ice hazards exists -:
  - measures to address the safety of the operations and the protection of installations, facilities, vessels, pipelines, equipment or systems, including systems for ice detection, surveillance, data collection, reporting, forecasting and, if appropriate, ice avoidance or deflection;
  - a description of the arrangements for monitoring compliance with the plan and for measuring performance in relation to its objectives, including audits, inspections, data collection and analysis.

For a diving operation, the safety plan document should also include: a detailed description of the diving activities outlined in the scope of the diving operation; and a description of the practices and procedures to be followed in the diving operation. (See draft regulation for additional requirements).

FEDERAL Consultations on new Framework Regulations scheduled for Fall

The new OH&S Regulation is part of an intergovernmental Offshore Regulatory Renewal Initiative (FORRI) launched last year through Natural Resources Canada (NRCan).

The FORRI process involves the modernization and amalgamation of the following five regulations: - Drilling and Production Regulations; Geophysical Regulations; Certificate of Fitness Regulations; Installations Regulations; and Operations Regulations - and their amalgamation into one Framework Regulation.

Consultations on the policy intent stages of the process are being carried out in three phases:

- **Phase 1:** Dealing with Board Powers, Applications, Management Systems and Management System requirements and Operator Duties - including requirements relating to: Emergency Response procedures; Safety and Environmental Protection: [https://www.nrcan.gc.ca/energy/crude-petroleum/18666](https://www.nrcan.gc.ca/energy/crude-petroleum/18666)

A series of one-day, multi-stakeholder consultation sessions on a draft regulatory text of Framework Regulations is reportedly being scheduled by NRCan for this Fall.

For more information, see FORRI website: [http://www.nrcan.gc.ca/energy/crude-petroleum/17729](http://www.nrcan.gc.ca/energy/crude-petroleum/17729)
Red flag reports

Miner thrown, killed by vehicle, company fined $200,000
Glencore Canada Corporation, owner-operator of the Nickel Rim South Mine in Sudbury, ON, pleaded guilty and has been fined $200,000 in the death of a worker who was run over by a vehicle. The incident took place on October 20, 2015 at Glencore’s base metal mine near Sudbury, which produces nickel and copper ore.
A worker was operating a machine known as a load haul dump (LHD) used in the underground operation to move broken rock or ore. While operating the LHD on a ramp, it appeared the bucket of the vehicle made contact with a wall. The LHD continued to move; the worker was ejected from the operator’s compartment and was run over by one of the vehicle’s tires. Investigations by the Ministry of Labour and a joint investigation team comprising Glencore workers, suggested that the door to the operator’s compartment of the vehicle opened while it was moving down the ramp. The worker was not wearing a seatbelt at the time he was ejected from the driver’s cab, although there was a functioning seatbelt in the compartment. Glencore pleaded guilty to failing as an employer to provide information, instruction and supervision to a worker to protect the safety of the worker, contrary to the Occupational Health and Safety Act - specifically to failing to provide sufficient information regarding the use of the seatbelt while operating the LHD. The company was fined $200,000 in Sudbury court by Justice of the Peace, Michael G. Kitlar, on August 28, 2017. The court also imposed a 25-per-cent victim fine surcharge as required by the Provincial Offences Act. The surcharge is credited to a special provincial government fund to assist victims of crime.

Regulatory alert - federal initiatives -

FEDERAL CNSC issues draft document dealing with people who have died with residual nuclear substances as a result of medical procedures
CNSC recently released REGDOC-2.7.3, “Radiation Protection Guidelines for the Safe Handling of Decedents” for consultation. The document provides guidance and recommended practices for minimizing radiation exposure to death-care professionals (e.g. funeral directors, embalmers, pathologists etc.) and other professionals who may encounter a person who has died with residual nuclear substances as a result of therapeutic medical procedures.
Status: Consultation is open until November 19, 2017.
Access draft document:
http://nuclearsafety.gc.ca/eng/pdfs/consultation-regs/regsdoc2-7-3-RGPG-HND-eng.pdf

FEDERAL CNSC updates guidance on performance of industrial radiography devices

Industrial radiography is a widely-used non-destructive testing method that employs high-activity sealed radioactive sources to examine the structure of welds, castings and building components, in order to identify flaws and errors or to ensure that work in an area will not affect hidden existing systems, such as pipes and electrical wires. The advantages of using exposure devices for non-destructive testing are that they are highly portable, require no external power sources, and can be used in various field settings. However, industrial radiography is a high-risk activity, due to its widespread use of sealed radioactive sources and the potential of these sources to immediately deliver high doses of radiation to those operating the devices. Persons applying for certification of such devices must thoroughly demonstrate that the exposure device and related accessories are designed to operate in a safe manner.

Document:

FEDERAL Draft oversight report on use of nuclear substances posted
The CNSC has announced that the draft “Regulatory Oversight Report on the Use of Nuclear Substances in Canada: 2016” is now available for comment. The report focuses on the results of compliance verification and enforcement activities in 2015 for licensees that use nuclear substances in four sectors: medical, industrial, academic and research, and commercial. The report will be presented at a public CNSC meeting, October 12, 2017, and webcast live.


FEDERAL Notice that chlorhexidine is to be added to List of Toxic Substances
August 19, 2017 edition of Canada Gazette Part I; Dept. of the Environment and Dept. of Health; Canadian Environmental Protection Act, 1999
A summary of a draft screening assessment has concluded that chlorhexidine and its salts meet one or more of the criteria set out in the Canadian Environmental Protection Act 1999 (CEPA 1999), section 64 on Toxic Substances. Chlorhexidine and its salts are used in Canada as broad-spectrum antiseptics and antimicrobial preservatives in products such as drugs for human or veterinary uses, hard-surface disinfectants, skin antiseptics, natural health products, and cosmetics.

The ministers have released a risk management scope document to initiate discussions with stakeholders on the development of risk management actions to manage the substances. More information regarding the scientific considerations may be obtained from the Canada.ca (Chemical Substances) website at:
www.canada.ca/en/health-canada/services/chemical-substances.html

Gazette notice: http://www.gazette.gc.ca/rp-pr/p1/2017/2017-08-19/pdf/g1-15133.pdf
Special focus: Federal initiatives - Labour Program Forward Regulatory Plan

Labour Program Forward Regulatory Plan 2017-2019 reveals how federal government intends to regulate workplace health and safety in the next two years

The federal government recently updated its ‘Labour Program Forward Regulatory Plan 2017 - 2019’. The Plan provides information on those regulatory initiatives that Employment and Social Development Canada (ESDC) expects to bring forward over the next two years. It also identifies public consultation opportunities and a departmental contact point for each regulatory initiative. The purpose of publishing the Plan is to give consumers, business, other stakeholders and trading partners greater opportunity to inform the development of regulations and to plan for the future.

The Plan comprises government implementation of the following health and safety initiatives over the next two years:

Amendments to the Canada Labour Standards Regulations

The Canada Labour Standards Regulations are made under Part III of the Canada Labour Code (the Code), which establishes labour standards that federally regulated employers must provide to their employees.

The aim of this regulatory package is to update Schedule I of the regulations, which contains listings of outdated industrial establishments of several large federally regulated employers. These lists are relevant for determining when a group termination of employment under Part III has occurred, which leads to certain obligations that employers must fulfill. There may be business impacts.

Consultations: Consultations with key stakeholders listed in Schedule I of the regulations will be undertaken in the fall of 2017 to discuss potential changes to this Schedule, with a view to proposing regulatory amendments in 2018 for pre-publication in Part I of the Canada Gazette.

Contact: Brenda Baxter, Director General, Workplace Directorate, Labour Program, 819-654-4410 brenda.baxter@labour-travail.gc.ca

Confined spaces: Canada Occupational Health and Safety Regulations

Part XI of the Canada Occupational Health and Safety Regulations, under Part II of the Canada Labour Code, addresses health and safety requirements for employers and employees with respect to work being undertaken in areas that meet the definition of a confined space.

The objective is to update regulations to ensure they reflect current industry best practices.

Consultations: Consultations with federally regulated employers and employees were completed on January 17, 2017. The amendments are expected to be pre-published in Part I of the Canada Gazette in fall 2017.

Contact: Brenda Baxter, Director General, Workplace Directorate, Labour Program, 819-654-4410 brenda.baxter@labour-travail.gc.ca

Hazardous substances of the Canada Occupational Health and Safety Regulations

Part X of the Canada Occupational Health and Safety Regulations, under Part II of the Canada Labour Code, addresses health and safety requirements for hazardous substances in the workplace. The objective is to update Part X of the Canada Occupational Health and Safety Regulations to update terminology, clarify employer requirements, and improve health and safety protection for workers.

Consultations: Federally regulated employers and employees were consulted through the Hazardous Substances Working Group. Consultations were completed on May 15, 2014. Stakeholders will have the opportunity to comment on proposed amendments which are expected to be pre-published in Part I of the Canada Gazette in winter 2018.

Contact: Brenda Baxter, Director General, Workplace Directorate, Labour Program, 819-654-4410 brenda.baxter@labour-travail.gc.ca

Maritime Occupational Health and Safety Regulations

The Maritime Occupational Health and Safety Regulations under Part II of the Canada Labour Code apply to employees employed:

- on vessels registered in Canada; and
- on uncommissioned vessels of Her Majesty in right of Canada; and
- in the loading or unloading of vessels.

Amendments are intended to update the Maritime Occupational Health and Safety Regulations to address certain comments received from the Standing Joint Committee for the Scrutiny of Regulations, and to align the regulations with possible amendments to regulations under the Canada Shipping Act, 2001.

Consultations: Stakeholders will be consulted during the development of amendments to the regulations. Timing for public consultation is to be determined. Stakeholders will also have the opportunity to submit comments following the pre-publication of the proposed amendments in Part I of the Canada Gazette.

Contact: Brenda Baxter, Director General, Workplace Directorate, Labour Program, 819-654-4410 brenda.baxter@labour-travail.gc.ca

Occupational exposure limits – Grain and flour dust

Regulations under Part II of the Canada Labour Code prescribe the exposure limits for hazardous substances including grain and flour dust.

The objective of amending the occupational exposure limits is to lower the occupational exposure limits for grain dust from 10 mg/m³ to 4 mg/m³ and to increase the occupational exposure limits for flour dust from 0.5 mg/m³ to 3 mg/m³ to establish practicable and enforceable levels that protect employee health and safety.

Corresponding amendments would be made to the following regulations:

- Part X of the Canada Occupational Health and Safety Regulations
- Part 20 of the Maritime Occupational Health and Safety Regulations

Consultations: Federally regulated employers and employees were consulted through the Hazardous Substances Working Group. The proposed regulations were pre-published in Part I of the Canada Gazette on June 10, 2017 and the public comment period closed on July 10, 2017. It is anticipated that the regulations will be published in Part II of the Canada Gazette in 2018.

Contact: Brenda Baxter, Director General, Workplace Directorate, Labour Program, 819-654-4410 brenda.baxter@labour-travail.gc.ca
Labour Program Forward Regulatory Plan 2017-2019

<table>
<thead>
<tr>
<th>Description and purpose of regulatory initiative</th>
<th>Consultation calendar and contact</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Occupational Health and Safety Regulations – Miscellaneous Amendments Regulations</strong></td>
<td><strong>Consultations</strong> on the regulatory proposal are not required since amendments are minor and administrative in nature.</td>
</tr>
<tr>
<td>A Miscellaneous Amendments Regulations package will address a significant number of comments made by the Standing Joint Committee for the Scrutiny of Regulations on the Maritime Occupational Health and Safety Regulations, Aviation Occupational Health and Safety Regulations, and On Board Trains Occupational Health and Safety Regulations. Other possible minor administrative amendments to occupational health and safety regulations may be identified. The MARs package is an efficient means by which to correct errors, omissions, and inconsistencies and do not require stakeholder consultation.</td>
<td><strong>Contact:</strong> Brenda Baxter, Director General, Workplace Directorate, Labour Program, 819-654-4410 <a href="mailto:brenda.baxter@labour-travail.gc.ca">brenda.baxter@labour-travail.gc.ca</a></td>
</tr>
<tr>
<td><strong>Oil and Gas Occupational Safety and Health Regulations</strong></td>
<td><strong>Consultations:</strong> It was expected that stakeholder consultations would begin in spring 2017. Stakeholders will also have the opportunity to submit comments following the pre-publication of the proposed amendments in Part I of the Canada Gazette.</td>
</tr>
<tr>
<td>The Oil and Gas Occupational Safety and Health Regulations apply to employees employed on or in connection with the exploration or drilling for, or the production, conservation, processing or transportation of, oil or gas in frontier lands, as defined in the Canada Oil and Gas Operations Act.</td>
<td><strong>Contact:</strong> Brenda Baxter, Director General, Workplace Directorate, Labour Program, 819-654-4410 <a href="mailto:brenda.baxter@labour-travail.gc.ca">brenda.baxter@labour-travail.gc.ca</a></td>
</tr>
<tr>
<td>Amendments will be made to the Oil and Gas Occupational Safety and Health Regulations to: update and align current provisions as needed with the Canada Occupational Health and Safety Regulations, Maritime Occupational Health and Safety Regulations and the Atlantic Offshore Accords; update references to standards; correct inconsistencies between English and French; as well as ambiguities raised by the Standing Joint Committee for the Scrutiny of Regulations; incorporate Violence Prevention and Hazard Prevention Programs; and make amendments to the confined spaces provisions, to align with any proposed for Part XI of the Canada Occupational Health and Safety Regulations.</td>
<td></td>
</tr>
<tr>
<td><strong>Safety materials, equipment, devices and clothing of the Canada Occupational Health and Safety Regulations</strong></td>
<td><strong>Consultations:</strong> Federally regulated employers and employees were consulted through the Part XII Working Group. Consultations with federally regulated employers and employees were completed in September 2011. Since February 2009, fifteen meetings of the Part XII Working Group were held. In November 2012, the Labour Program finalized a report to summarize the consultation process and outcome. Stakeholders will also have the opportunity to submit comments following the pre-publication of the proposed amendments in Part I of the Canada Gazette. It is anticipated that pre-publication will occur in spring 2017.</td>
</tr>
<tr>
<td>Part XII of the Canada Occupational Health and Safety Regulations under Part II of the Canada Labour Code, prescribes the use of safety materials, equipment, devices and clothing for employees and persons granted access to the work place. The use of these items is prescribed in cases where it is not reasonably practicable to eliminate or control a health or safety hazard. The proposed amendments to Part XII of the Canada Occupational Health and Safety Regulations update references to Canadian and international standards, allowing them to reflect current technologies and safety practices required in the work place. In addition, implementing these changes will provide superior protection for employees using safety materials, equipment, devices and clothing. The proposed amendments would bring the technical requirements up to industry standards and make them more consistent with those in other Canadian jurisdictions.</td>
<td><strong>Contact:</strong> Brenda Baxter, Director General, Workplace Directorate, Labour Program, 819-654-4410 <a href="mailto:brenda.baxter@labour-travail.gc.ca">brenda.baxter@labour-travail.gc.ca</a></td>
</tr>
<tr>
<td><strong>Updating references to Health and Safety standards</strong></td>
<td><strong>Consultations:</strong> For several years, employer and employee representatives have expressed their concerns regarding outdated reference to standards in the Canada’s Occupational Health and Safety regulations. Labour Program will ensure that stakeholders have been consulted. Timing for public consultation is to be determined.</td>
</tr>
<tr>
<td>Part II of the Canada Labour Code provides authority to incorporate by reference standards in Canada’s Occupational Health and Safety regulations. The majority of the references to the standards incorporated in Canada’s Occupational Health and Safety regulations are out of date (most of them being over 25 years old). Although most employers voluntarily comply with the latest standards, amending the existing provisions would be the best option to ensure enforcement and protection of the health and safety of employees. The objective of amending Canada’s Occupational Health and Safety regulations is to mitigate the risk of workplace injuries resulting from outdated Occupational Health and Safety standards incorporated in regulations. The proposed changes will update all incorporations by reference in Occupational Health and Safety regulations to ensure that they include the most current standards. Amendments would be made to the following regulations: Canada Occupational Health and Safety Regulations Aviation Occupational Health and Safety Regulations On Board Trains Occupational Health and Safety Regulations Maritime Occupational Health and Safety Regulations The reference to the standards in Oil and Gas Occupational Safety and Health Regulations would be updated when amending these regulations.</td>
<td><strong>Contact:</strong> Brenda Baxter, Director General, Workplace Directorate, Labour Program, 819-654-4410 <a href="mailto:brenda.baxter@labour-travail.gc.ca">brenda.baxter@labour-travail.gc.ca</a></td>
</tr>
</tbody>
</table>

For more information, see: https://www.canada.ca/en/employment-social-development/programs/laws-regulations/labour/forward-regulatory-plan/labour-forward-regulatory-plan.html
ONTARIO Province updates guide to transition to WHMIS 2015

ONTARIO New Occupational Exposure Limit (OELs) take effect Jan. 1, 2018
Effective January 1, 2018, Regulation 833 and O. Reg. 490/09 are amended to reflect new or revised occupational exposure limits (OELs) or listings for 21 chemical substances. The changes - based on data supplied by the American Conference of Governmental Industrial Hygienists (ACGIH) - include:

- the addition of specific listings for 4 substances in regulation: Cyanogen bromide, Ethyl isocyanate, Peracetic acid and Phenyl isocyanate.
- Revisions to exposure limits or listings for 17 substances currently regulated, including: Acetone, Atrazine, Barium sulfate, 1-Bromopropane, Ethylidene norbornene, Lithium hydride, Methomyl, Methyl formate, Methyl isocyanate, Naphthalene, Nickel carbonyl, Oxalic Acid, Pentachlorophenol, Pentane, and Trichloroacetic acid, 1,2,3 – Trichloropropane, and Triethylamine.

In addition:
- Effective January 1, 2018, the Ministry adopts a more protective OEL for beryllium as well as the ACGIH method for addressing exposures to the aliphatic hydrocarbon gases. Also:
  - The minimum oxygen content before mechanical ventilation is required in section 138(1) of Regulation 851 – Industrial Establishments, is increased from 18% to 19.5% as set out in (O. Reg. 289/17).

https://www.labour.gov.on.ca/english/resources/notices.php#august012017

ONTARIO Regulations add certain isocyanates under OHSA
Ontario Gazette, August 12, 2017; regulation filed July 28, 2017
- O. Reg. 288/17 - dealing with Occupational Exposure Limits for Isocyanates, organic compounds - amends Table 1 of Ontario Regulation 490/09 by substituting a new table which adds two substances - Ethyl isocyanate [109-90-0] and Phenyl isocyanate - to the table of OELs. https://www.ontario.ca/laws/regulation/r17288
- O. Reg. 287/17 amends Reg. 833 - Control of Exposure to Biological or Chemical Agents by, among other things: re-defining “ACGIH table” in Section 1; and revoking Listing item 48f of Table 1 of the Regulation and substituting a new table providing OELs for Methyl Isocyanate [624-83-9]; Ethyl isocyanate [109-90-0] and Phenyl isocyanate. https://www.ontario.ca/laws/regulation/r17287

Gazette:

ONTARIO No link observed between adverse neurological conditions and occupational aluminum exposure; more study needed on McIntyre Powder
Ontario’s Workplace Safety & Insurance Board (WSIB) recently posted online: “Occupational Aluminum Exposure and McIntyre Powder Update”. The review of current and past research studies failed to identify any link between aluminum exposure and the development of adverse health conditions - including neurological conditions. The review also found that there was “no consistent scientific evidence supporting a causal link between McIntyre Powder [aluminum dust] exposure and the development of neurological conditions”. Despite this, WSIB plans to commission a further study to ensure that ‘no stone is left unturned.’

Download the review at:
https://www.wsib.on.ca/portal/faces/WSIBdetailPage?cGUID=WSIB071283&redirect=WSIB_ARTICLE&_afw=0&_adf.ctrl-state=t2znvfz6v_29
Legislative summary: Distracted driving - use of cellphones and hand-held devices

Distracted Driving:

Laws regulating cell phone use continue to evolve
by W. M. Glenn

In November 2006, when we ran our first Legislative Summary on distracted driving, only Newfoundland and Labrador had opted to amend its Highway Traffic Act to prohibit a driver from using a hand-held cellular phone while driving a motor vehicle on a highway. While several provinces and territories were considering following Newfoundland’s lead, most continued to insist that existing provisions on careless and/or dangerous driving were sufficient to deter irresponsible cellphone use.

When we compiled our most recent update on the subject (in December 2008), Prince Edward Island, Nova Scotia and Quebec had joined Newfoundland in promulgating similar prohibitions and Ontario and Manitoba were in the process of enacting their own draft legislation. By the end of 2011, it was illegal (with some narrowly-defined exceptions) to use a hand-held cell phone while driving in every Canadian province and territory, from coast to coast.

To date, the federal government has been content to cede leadership on the issue to the provinces/territories and has not taken complementary legislative action to amend the Criminal Code to further deter cell phone use while driving. However, that may change. In a letter earlier this year, federal Transport Minister Marc Garneau asked his provincial counterparts to consider adopting additional measures to control cell phone use “which are both stricter in terms of their impact but also uniform across the country.” The Minister believes that “having robust and nationally consistent enforcement measures and penalties will help mitigate the negative impact of this increasingly pervasive problem on Canada’s roads.”

Laws broadly define ‘highway’ and ‘motor vehicle’

Currently, provincial and territorial cell phone-related distracted driving laws - prohibit the use of specified electronic devices while driving or operating a motor vehicle on a highway. Typically, the terms “motor vehicle” and “highway” are broadly defined in the legislation. For example, Alberta’s Highway Traffic Act defines a “highway” to mean:

“any thoroughfare, street, road, trail, avenue, parkway, driveway, viaduct, lane, alley, square, bridge, causeway, trestleway or other place (or any part of any of them), whether publicly or privately owned, that the public is ordinarily entitled or permitted to use for the passage or parking of vehicles”

and includes the ditch, sidewalk, boulevard, and any other land adjacent to the roadway. The Act defines a “motor vehicle” to mean:

“a vehicle propelled by any power other than muscular power, or a moped”

but does not include a bicycle, a power bicycle, an aircraft, an implement of husbandry or a motor vehicle that runs only on rails.

If the two criteria are met and there is no other explicit exemption, then the prohibition should be widely operative. (Check the definitions in Table 2 and/or contact your local transport ministry for clarification.) Although you will still see a disturbing number of fellow drivers continuing to ignore the prohibitions, just about everyone knows that doing so can bring a hefty fine, cost demerit points (see Table 1) and increase insurance rates. While some exemptions are permitted, they cannot be assumed.

Exceptions

After setting out the basic prohibition against using hand-held devices, most statutes then:

• define what electronic devices are covered and which may be permitted under certain circumstances, (e.g. making emergency calls or using a phone or other device while parked off the highway (but not stopped at a red light);
• define what is meant by the term “use,” and usually make exceptions for hands-free use under certain circumstances;
• may include additional provisions related to display screens, headphones, two-way radios, GPS systems and other devices;
• make exceptions for certain user groups (such as police and other enforcement officers, ambulance drivers, fire fighters, emergency response personnel and certain public operators, and for road building vehicles, etc.); and
• may outline additional restrictions on new or novice drivers.

Since the initial cell phone prohibitions were enacted, several jurisdictions have promulgated additional restrictions, increased fines and penalties, and expanded their lists of permitted and prohibited devices. The following summary updates these changes, describes the exemptions made for specified occupations and activities, and explains what it means exactly to “use” an electronic communications device.

Table 1

Penalties for Distracted Driving

<table>
<thead>
<tr>
<th>Province</th>
<th>Fine</th>
<th>Demerit Points</th>
</tr>
</thead>
<tbody>
<tr>
<td>British Columbia</td>
<td>$543 (1st offence)</td>
<td>4</td>
</tr>
<tr>
<td></td>
<td>$888 (2nd offence)</td>
<td>3</td>
</tr>
<tr>
<td>Alberta</td>
<td>$287</td>
<td>3</td>
</tr>
<tr>
<td>Saskatchewan</td>
<td>$280</td>
<td>4</td>
</tr>
<tr>
<td>Manitoba</td>
<td>$200</td>
<td>5</td>
</tr>
<tr>
<td>Ontario</td>
<td>$490-$1000</td>
<td>3</td>
</tr>
<tr>
<td>Quebec</td>
<td>$80 - $100</td>
<td>4</td>
</tr>
<tr>
<td>New Brunswick</td>
<td>$173</td>
<td>3</td>
</tr>
<tr>
<td>Nova Scotia</td>
<td>$234 (1st offence)</td>
<td>3</td>
</tr>
<tr>
<td></td>
<td>$349 (2nd offence)</td>
<td>4</td>
</tr>
<tr>
<td></td>
<td>$579 (subsequent)</td>
<td>4</td>
</tr>
<tr>
<td>PEI</td>
<td>$575 - $1275</td>
<td>5</td>
</tr>
<tr>
<td>NF &amp; Labrador</td>
<td>$100 - $400</td>
<td>4</td>
</tr>
<tr>
<td>Yukon Territory</td>
<td>$250</td>
<td>3</td>
</tr>
<tr>
<td>NWT</td>
<td>$322-644</td>
<td>3</td>
</tr>
<tr>
<td>Nunavut</td>
<td>No provisions in Act</td>
<td></td>
</tr>
</tbody>
</table>

1. Adapted from Distracted Driving Laws in Canada, CAA; https://www.caas.ca/distraction/distracted-driving-laws-in-canada/
2. In addition to banning hand-held communication devices, BC and Ontario also ban the use of hand-held electronic entertainment devices while driving.
3. BC, Saskatchewan and Yukon prohibit GDL (Graduated Driver Licensing) drivers from using both hand-held and hands-free devices.
4. BC’s base fine is $368 plus $175 for ICBC’s driver penalty point premiums.
5. A second offence within 12 months has a base fine of $368 plus $520 for ICBC’s driver penalty point premiums. Repeat offenders will also have their driving record subject to automatic review, which could result in a 3-12 month driving prohibition.
6. The fine increases to $644 for distracted driving in school and construction zones.

(Continued on next page)
Legislative summary: Distracted driving - use of cellphones and hand-held devices

<table>
<thead>
<tr>
<th>Table 2: Selected statutes related to the use of cellular phones while driving</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Note:</strong> Additional prohibitions may apply to televisions, display screens, electronic gaming equipment and other devices. This summary is only meant as an introduction and does not constitute legal advice; for full compliance requirements, contact your provincial or territorial transport ministry.</td>
</tr>
</tbody>
</table>

**Federal Criminal Code**

Under s.249(1)(a) of the Code, everyone commits an offence who operates a motor vehicle in a manner that is dangerous to the public, having regard to all the circumstances, including the nature, condition and use of the place at which the motor vehicle is being operated and the amount of traffic that at the time is or might reasonably be expected to be at that place. There are no provisions in the Code specifically related to distracted driving or the use of a hand-held electronic device while operating a motor vehicle.

Everyone who commits an offence under s.249(1) is guilty of an indictable offence and liable to imprisonment for a term not exceeding 5 years, or is guilty of an offence punishable on summary conviction. If the dangerous operation of a motor vehicle causes bodily harm to another person, the driver is liable to imprisonment for a term not exceeding 10 years; or if causing death, to a term not exceeding 14 years.

**Prohibition**

Under s.214.2, a person must not use an electronic device while driving or operating a motor vehicle on a highway. Nor may they communicate by means of an electronic device with another person or by electronic mail or other text-based message.

The term "electronic device" means: (1) a hand-held cellular telephone or another hand-held electronic device that includes a telephone function, (2) a hand-held electronic device that is capable of transmitting or receiving electronic mail or other text-based messages, or (3) a prescribed class or type of electronic device (see below).

The term "use" means: (1) holding the device in a position in which it may be used; (2) operating one or more of the device's functions; (3) communicating orally by means of the device with another person or another device; or (4) taking another action that is set out in the regulations by means of, with or in relation to an electronic device (below).

The Use of Electronic Devices While Driving Regulation (BC Reg 308/2009), under the Act, adds "a person who watches the screen of an electronic device" to the definition of the term "use"; and provides a list of additional prescribed electronic devices, including electronic devices that include a hands-free telephone function, global positioning systems, hand-held electronic devices one of the purposes of which is to process or compute data, hand-held audio players, hand microphones, and televisions. The regulation also covers: the installation of certain electronic devices; prohibitions for new drivers; additional exemptions for certain persons; the hands-free use of electronic devices; and the permitted use of GPSs, hand microphones, audio players and televisions.

**Exceptions**

Under s.214.3 of the Act, the prohibition in s.214.2 does not apply to the following persons who use an electronic device while carrying out their powers, duties or functions: (1) a peace officer; (2) a person driving or operating an ambulance as defined in the Emergency Health Services Act; or (3) fire services personnel as defined in the Fire Services Act.

In addition, under s.214.4, the prohibition in s.214.2 does not apply to a person who uses an electronic device: (1) while operating a motor vehicle that is safely parked off the roadway or lawfully parked on the roadway and is not impeding traffic; (2) to call or send a message to a police force, fire department or ambulance service about an emergency; or (3) that is configured and equipped to allow hands-free use in a telephone function, is used in a hands-free manner and is used in accordance with the regulations (see below).

In addition, BC Reg 308/2009 sets forth exemptions for: certain persons appointed under s.11 of the Canada Border Services Agency Act; and a person designated as a park warden under s.18 of the National Parks Act.

Section 7(1) of BC Reg 308/2009, permits use of an electronic device in a hands-free telephone function while driving or operating a motor vehicle on a highway, if the device: (1) is installed in accordance with s.4 and within easy reach of the driver's seat, or worn securely on the person's body; (2) is voice-activated or requires only one touch in order to initiate, accept or end a call; and (3) if a device includes an earpiece, the earpiece is worn only in one ear (this subsection does not apply to a person who is driving or operating a motorcycle on a highway).

Note, under s.6 of BC Reg 308/2009, new drivers in the Graduated Licensing Program Class 7 (new driver) and 7L (learner) are prohibited from using any electronic device while driving, including navigation devices, handsfree units, and other "permitted devices." The following prohibitions do not apply if the GLP driver is safely parked and off the roadway or is making an emergency call to 911.

**Resources:** The Road Safety BC webpage "Distractions While Driving -- Cell Phones and Other Devices" covers rules, penalties, a list of banned devices etc. See: [http://www2.gov.bc.ca/gov/content/transportation/driving-and-cycling/road-safety-rules-and-consequences/distractions](http://www2.gov.bc.ca/gov/content/transportation/driving-and-cycling/road-safety-rules-and-consequences/distractions)

**British Columbia Motor Vehicle Act and the Use of Electronic Devices While Driving Regulation (BC Reg 308/2009), under the Act**

Under s.115(1) of the Act, no individual shall drive or operate a vehicle on a highway while at the same time: (a) holding, viewing or manipulating a cellular telephone, radio communication device or other communication device that is capable of receiving or transmitting telephone communication, electronic data, electronic mail or text messages; or (b) holding, viewing or manipulating a hand-held electronic device or a wireless electronic device.

Additional provisions cover: display screens that may be visible to the driver; the use of global positioning systems; other prohibited activities (such as reading, writing or engaging in personal grooming or hygiene); and the power to make regulations.

In addition, the Distracted Driving Regulation (Alta Reg 113/2011), under the Act, covers the hand-free and "one touch" use of a cellular telephone or a radio communication device.

**Resources:** Alberta Transportation's "Distracted Driving Legislation" webpage: [www.transportation.alberta.ca/distracteddriving.htm](http://www.transportation.alberta.ca/distracteddriving.htm)

Under s.115(2), an individual may drive or operate a vehicle on a highway while using a cellular telephone or radio communication device in hands--free mode. In addition, the prohibition in s.115.1(1)(a) does not apply to: (1) the use of 2-way radio communications devices in certain circumstances; (2) an individual driving or operating an emergency vehicle while acting within the scope of employment; or (3) a vehicle that is not on a highway or is parked in a manner specified in a regulation under this Act. An "emergency vehicle" means: (1) a vehicle operated by a police service as defined in the Police Act; (2) a fire--fighting or other type of vehicle operated by the fire protection service of a municipality; (3) an ambulance; (4) a vehicle operated as a gas disconnection unit of a public utility; or (5) a vehicle designated by regulation as an emergency response unit (see s.2 of the Vehicle Equipment Regulation (Alta. Reg. 122/2009)).

In addition, Alta, Reg. 113/2011 sets forth exemptions for: (1) individuals who hold a radio operator certificate issued under the Radiocommunication Act (Canada) to hold, view or manipulate a 2--way radio communication device; (2) individuals appointed as spectrum management officers under the Radiocommunication Act (Canada); and (3) individuals employed for the purposes of monitoring telecommunication service levels and disruptions.

(Continued on next page)
### Legislative summary: Distracted driving - use of cellphones and hand-held devices

#### Ontario Highway Traffic Act and Display Screens and Hand-held Devices (O. Reg. 366/09), under the Act

<table>
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<td>Under s.78.1(1) of the Act, 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. A similar prohibition under s.78.1(2) applies to the use of 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). Note, under s.14(1) of O. Reg 366/09, a driver may press a button on a hand-held wireless communication device to make, answer or end a cell phone call or to transmit or receive voice communication on a two-way radio if the device is placed securely in or mounted to the motor vehicle so that it does not move while the vehicle is in motion and the driver can see it at a quick glance and easily reach it without adjusting his or her driving position.</td>
<td>Under ss.78(3)-(5) of the Act, the prohibition does not apply to: (1) a person while using the device in hands-free mode; (2) the use of the device to contact ambulance, police or fire department emergency vehicles; (3) the driver of an ambulance, fire department vehicle or police department vehicle; (4) any other prescribed person or class of persons; or (5) if the motor vehicle is off the roadway or is lawfully parked on the roadway, is not in motion, and is not impeding traffic.</td>
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#### Quebec Highway Safety Code

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<tr>
<th>Prohibition</th>
<th>Exceptions</th>
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<tr>
<td>Under s.439.1 of the Act, no person may, while driving a road vehicle, use a hand-held device that includes a telephone function. For the purposes of this section, a driver who is holding a hand-held device that includes a telephone function is presumed to be using the device. In addition, under s.439, no person may drive 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, except in the cases or on the conditions determined by regulation. Under s.440, in no case may the driver of a road vehicle or a bicycle use headphones or earphones (this section does not apply to a device used in conversational exchanges among its users to the extent that the device allows surrounding traffic noises to be heard.)</td>
<td>This prohibition does not apply to drivers of emergency vehicles in the performance of their duties (i.e., a road vehicle used as a police car in accordance with the Police Act, as an ambulance in accordance with the Act respecting pre-hospital emergency services, a fire safety vehicle, or any other road vehicle which meets the criteria established by regulation).</td>
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</tbody>
</table>

#### Saskatchewan The Traffic Safety Act and the Traffic Safety (Hand-held Electronic Communications Equipment) Regulations (RRS c.T-18.1 Reg 7), under the Act

<table>
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<tr>
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<tr>
<td>Under s.241(2) of the Act, no driver shall hold, view, use or manipulate electronic communications equipment (i.e., cellular phone or other prescribed equipment) while driving a motor vehicle on a highway. “Use” means to use the electronic communications equipment to make, answer or end a phone call, to transmit or receive voice communication, to text, talk, email, or surf or access the Internet, or for any other prescribed purpose. Saskatchewan Government Insurance’s (SGI) “Driver Distraction and Inattention” webpage covers common driver distractions, cell phone use, and links to the cell phone laws page and graduated driver’s licensing program page.</td>
<td>Section 241(2) does not apply to (1) a driver who is not a new driver and who, while driving a motor vehicle on a highway activates the electronic communications equipment to make a phone call by pressing a button once or utilizes his or her voice to activate the equipment, and does not hold the equipment; (2) if the driver is using electronic communications equipment to report an emergency to a police service, a fire department or emergency medical services or to request an ambulance; (3) a prescribed person or prescribed class of persons; or (4) a prescribed vehicle or prescribed class of vehicles.</td>
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### Legislative summary: Distracted driving - use of cellphones and hand-held devices

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<td><strong>Manitoba</strong></td>
<td>The Highway Traffic Act and the Cellular Telephones and Other Hand-operated Electronic Devices Regulation (Man. Reg. 83/2010), under the Act</td>
</tr>
</tbody>
</table>

**Prohibition**

Under s.215.1(2) of the Act, no person shall use a hand-operated electronic device while driving a vehicle on a highway unless: (a) before using the device by hand, the person safely drives the vehicle off the roadway and keeps the vehicle stationary while using the device; or (b) the device is a cellular telephone (or another electronic device that includes a telephone function) and is configured and equipped to allow hands-free use as a telephone and is used in a hands-free manner. Note, under s.215, no driver operating a motor vehicle or bicycle on a highway, shall wear, on both ears, headphones which are used for the purpose of listening to a radio or a recording.

A "hand-operated electronic device" means: a cellular telephone; another electronic device that includes a telephone function and normally is held in the user’s hand during use (or requires the user to use his or her hand to operate any of its functions); an electronic device that is not otherwise described but that is capable of transmitting or receiving e-mail or other text-based messages, and normally is held in the user’s hand during use (or requires the user to use his or her hand to operate any of its functions); or any other electronic device that is prescribed by the regulations.

The term “use” in relation to a hand-operated electronic device, means any of the following actions: (1) holding the device in a position in which it may be used; (2) operating any of the device’s functions; (3) communicating by means of the device with another person or another device, by spoken word or otherwise; (4) looking at the device’s display; and (5) taking any other action with or in relation to the device that is prescribed by the regulations.

**Exemptions**

Under s.215.1(3), a person may use a hand-operated electronic device by hand to call or send a message to a police force, fire department or ambulance service about an emergency. Under s.215.1(4), the prohibition does not apply to any of the following persons in carrying out his or her duties: (1) a member of the Royal Canadian Mounted Police Force or another police officer, police constable or constable; (2) a firefighter employed by a fire department; or (3) an ambulance operator as defined in s.1 of The Emergency Medical Response and Stretcher Transportation Act. And under s.215.1(5), the prohibition does not apply to: a radio apparatus (as defined in s.2 of the Radiocommunication Act (Canada)) that is operated under the authority of a radio operator certificate issued under that Act; a citizen’s band radio or family band radio; or a mobile data terminal that is used for dispatch or other business-related communications in the course of his or her duties, and is not held in the driver’s hand when the vehicle is moving.

The Cellular Telephones and Other Hand-operated Electronic Devices Regulation (Man. Reg. 83/2010) under the Act, defines certain terms (such as “used in a hands-free manner,” “cellular telephone network provider” and “mobile data terminal”), and sets forth exemptions related to: the use of a two-way radio or trunked mobile radio system; and the use of a hand-operated electronic device by a government employee who works in (or a person who has been assigned emergency response duties in) a government emergency organization.

**Resources:** Manitoba Public Insurance’s “Distracted Driving” webpage covers dangers of distracted driving, statistics, tips to avoid distractions, fines and penalties. See: [www.mpi.mb.ca/en/Rd-Safety/Distracted-Driving/Pages/DDOverview.aspx](http://www.mpi.mb.ca/en/Rd-Safety/Distracted-Driving/Pages/DDOverview.aspx)

| **New Brunswick** | Motor Vehicle Act |

**Prohibition**

Under s.265.02 of the Act, no person shall operate a motor vehicle on a highway while using a hand-operated electronic device. A “hand-operated electronic device” means: a cellular telephone; a two-way radio; a portable global positioning system navigation device; a portable entertainment device; another electronic device that includes a telephone function and normally is held in the user’s hand during use (or requires the user to use his or her hand to operate any of its functions); an electronic device that is not otherwise described but that is capable of transmitting or receiving e-mail or other text-based messages, and normally is held in the user’s hand during use (or requires the user to use his or her hand to operate any of its functions); or any other hand-operated electronic device prescribed by regulation.

The term “use” in relation to a hand-operated electronic device includes any of the following actions: (1) holding the device in a position in which it may be used, whether it is turned on or off; (2) operating any of the device’s functions; (3) communicating by means of the device with another person or another device, by spoken word or otherwise; (4) looking at the device’s display; and (5) taking any other action with or in relation to the device that is prescribed by regulation.

**Exemptions**

Section 265.02 does not apply to a person: (1) who uses the device to call the local police department, the Royal Canadian Mounted Police, the fire department or an ambulance service about an emergency; (2) operating an authorized emergency vehicle in the course of his or her duties or employment; (3) if the device is configured and equipped to be used as a hands-free telephone, used in a hands-free manner, and used exclusively by voice commands by touching the device only once to initiate or accept a telephone call and only once to end it, while all other actions in relation to the call are performed exclusively by voice command; (4) who uses a two-way radio while operating a motor vehicle for commercial purposes, or a commercial vehicle as defined in s.265.1; (5) who uses a two-way radio if that person is the holder of a radio operator certificate issued under the Radiocommunication Act (Canada); (6) who looks at a portable global positioning system navigation device’s display for navigational purposes while operating a motor vehicle on highway, or (7) who uses a hand-operated electronic device while operating a motor vehicle that is safely parked near the curb or outer edge of the shoulder of the highway.

**Resources:** The "Driver Distraction" webpage at: [www2.gov.ca/content/gov/en/departments/gov_public_safety/content/promo/driver_distraction.html](http://www2.gov.ca/content/gov/en/departments/gov_public_safety/content/promo/driver_distraction.html)

| **Newfoundland and Labrador** | Highway Traffic Act |

**Prohibition**

Under s.176.1(1) of the Act, a person shall not 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, email or text messages. Under s.176.1(2), a person may drive a motor vehicle on a highway while using a device described in that subsection in hands-free mode.

The prohibition in s.176.1(1) does not apply to: (1) the driver of an ambulance, fire department vehicle or police vehicle; (2) a peace officer who is driving a motor vehicle in the discharge of his or her duties; (3) another prescribed person or class of persons; (4) a person holding or using a device prescribed for the purpose of this subsection; (5) a person engaged in a prescribed activity or in prescribed conditions or circumstances; (6) the use of a device to contact ambulance, police or fire department emergency services; or (7) a device that is linked to a non-public shortwave radio communication system. The prohibition does not apply if the motor vehicle is off the roadway and is not in motion, or if the motor vehicle is lawfully parked on the roadway.

**Resources:**

The "Driver Distraction" webpage at: [www2.gov.ca/content/gov/en/departments/gov_public_safety/content/promo/driver_distraction.html](http://www2.gov.ca/content/gov/en/departments/gov_public_safety/content/promo/driver_distraction.html)

| **Nova Scotia** | Motor Vehicle Act |

Under s.100(D)(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 or operating a personal transportation on a roadway or a side-walk.

Section 100D(1) does not apply to a person who uses a hand-held cellular telephone or other communications device to report an immediate emergency situation.

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<td><strong>Prohibition</strong></td>
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<tr>
<td><strong>Highway Traffic Act</strong></td>
<td>Under s.291.1 of the Act, 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, email or text messages. Under ss.291.1(2-4), a person may drive a motor vehicle on a highway while using a device in hands-free mode.</td>
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<tr>
<td><strong>Yukon Territory</strong></td>
<td><strong>Exemptions</strong></td>
</tr>
<tr>
<td><strong>Motor Vehicles Act</strong></td>
<td>Under s.210.1(2) of the Act (except as provided in subsections (3) and (4)), no person shall use an electronic device while operating a motor vehicle on a highway. The term “electronic device” means: (1) a device (other than a communications, electronic data, email or text messages. Under s.291.1(1) does not apply to: (1) the driver of an ambulance, fire department vehicle or police vehicle; (2) a peace officer, other than a police officer, who is driving a motor vehicle in the discharge of his or her duties; (3) any other prescribed persons or classes of persons; (4) a person holding or using a device prescribed for the purpose of this subsection; (5) a person engaged in a prescribed activity or in prescribed circumstances; (6) the use of a device to contact ambulance, police or fire department emergency services; or (7) the use of a device that is linked to a non-public shortwave radio communication system.</td>
</tr>
<tr>
<td><strong>Regulations</strong> (YCO 1978/120), under the Act</td>
<td>The prohibition does not apply if the motor vehicle is off the roadway and is not in motion; or if the motor vehicle is lawfully parked on the roadway.</td>
</tr>
<tr>
<td><strong>Northwest Territories</strong></td>
<td><strong>Resources:</strong> For further information, see Yukon Highways and Public Works “Distracted Driving” webpage: <a href="http://www.roadsafety.gov.yk.ca/phonecall">www.roadsafety.gov.yk.ca/phonecall</a></td>
</tr>
</tbody>
</table>
ALBERTA  Government announces review of OH&S Act: Comment deadline - October 16, 2017

The Government of Alberta announced August 16, 2017, that it is launching a review of the province’s occupational health and safety system to improve workplace safety. The review will examine the OHSAs, as well as compliance, enforcement, education, engagement, and prevention efforts in Alberta’s OHS system. The review will also clarify employer and worker responsibilities, improve worker engagement and maintain Alberta’s strong focus on illness and injury prevention. Send written comments/submissions to: lb.review@gov.ab.ca - deadline: October 16, 2017. N.B. the following consultation website includes a discussion paper that provides background information and guiding questions on the 3 themes of the OHS review: responsibility, worker engagement and prevention: https://www.alberta.ca/ohs-system-review.aspx

ALBERTA  Workers’ Compensation Board (WCB) Review Panel posts report

Alberta’s WCB Review Panel recently concluded its work and submitted its final report to the Minister of Labour for consideration. The recently-posted report recommends a “worker-centered” system that puts the health and well-being of injured workers at the centre of the workers’ compensation system. Among other changes, the report further recommends:
- the establishment of a new Fair Practices Office to serve as an ombudsman-type function for Alberta’s workers’ compensation system;
- increased assistance for workers and employers with reviews and appeals, through an Office of the Appeals Advisor (OAA);
- greater choice for injured workers in selecting health professionals;
- the establishment of an obligation to return workers to work; and
- the adjustments of certain benefits provided by the system, with the specific aim of addressing areas where there is hardship, fatalities, permanent injuries of young workers.

Read the review panel final report at: https://www.alberta.ca/assets/documents/WCB-Review-Final-Report.pdf

MANITOB A Amendments to Non-Smokers Health Protection regulations deal with the sale of Vapour products

A Non-Smokers Health Protection Amendment Regulation (Man. Reg. 112/2017) under Manitoba’s Non-Smokers Health Protection and Vapour Products Act was registered on August 31, 2017. Under the amendment, the title of the Non-Smokers Health Protection Regulation, Manitoba Regulation 174/2004, is replaced with “Non-Smokers Health Protection and Vapour Products Regulation”. The amendments deal primarily with requirements relating to the management and sale of vapour products through vapour product shops.


MANITOB A Regulations under Highway Traffic Act posted

The following unconsolidated regulations under the Highway Traffic Act were recently posted:
- Man Reg 100/2017 - Bicycle Helmets Regulation, amendment: http://web2.gov.mb.ca/laws/regs/annual/2017/100.pdf

SA S KATCHEWAN  Regulations deal with amusement ride safety


RED FLAG REPORTS

Electrical company fined $70,000 after workers injured

Entegrus Powerlines Inc., a Chatham electrical utility contractor, recently pleaded guilty and has been fined $70,000 after two workers received electrical burns. On August 11, 2016, a six-person crew was changing a switch on a utility pole on Head Street North in Strathroy. The final steps for installing the new switch involved forming thick copper leads that would attach the switch to live 16,000-kV power lines. The safety cover on the lines was removed during this time and not reinstalled. Additionally, none of the crew members were assigned to act as a dedicated observer - someone competent in the work being performed who has no other duties but to continuously monitor the situation.

While workers were forming the fifth of the six leads needed to install the switch, the end of the lead made contact with the live power line. An energy surge went through the lead, switch and utility pole. Two of the workers were in contact with the pole at the time and suffered electrical burns. Entegrus Powerlines Inc. pleaded guilty to failing to take the reasonable safety precaution of ensuring that a dedicated observer, who was competent in the task being performed, was in place with no other duties but to monitor the work continuously.

The company was fined $70,000 in London court by Justice of the Peace, Anna Hampson, on August 31, 2017. The court also imposed a 25-per-cent victim fine surcharge as required by the Provincial Offences Act. The surcharge is credited to a special provincial government fund to assist victims of crime.
Red flag reports

Royal Ottawa Health Care Group fined $75,000 after patient stabs nurse with a pen
The Royal Ottawa Health Care Group was fined $75,000 plus a 25-per-cent victim fine surcharge recently after a nurse was stabbed by a patient at the Brockville Mental Health Centre. The Royal Ottawa Health Care Group operates the Brockville Mental Health Centre in addition to other mental health care and research facilities in Ottawa. On October 10, 2014, a nurse working at the Brockville Mental Health Centre was critically injured while observing a patient at the centre's Forensic Treatment Unit. The incident occurred after the nurse had escorted the patient to the washroom. After the patient left the washroom, the patient stabbed the nurse multiple times with a pen. The nurse was taken to hospital for emergency treatment. This incident was one of a series of incidents that took place after this patient was transferred to the unit. Multiple nurses were assaulted by the patient between August and October 2014. Following a trial, the court found the defendant failed to reassess the risk of workplace violence as required by the Occupational Health and Safety Act. The court held the defendant had an obligation to reassess the risk of workplace violence and eliminate the attacks on staff.

Section 32.0.3(4) of the Occupational Health and Safety Act states that an employer must reassess the risks of workplace violence as often as is necessary to ensure that the related policies and programs continue to protect workers from workplace violence.

Regulatory alerts – provincial initiatives

BRITISH COLUMBIA OHS reg. on storage racks takes effect Jan. 1, 2018
As previously reported, on January 1, 2018, a new regulation governing the installation, inspection, use, and maintenance of steel storage racks will take effect in British Columbia. There are a number of resources available, including frequently asked questions, an OHS guideline, and an explanatory primer. For more information, visit: https://www.worksafebc.com/en/health-safety/tools-machinery-equipment/storage-racks

BRITISH COLUMBIA New oil and gas regulation aimed at controlling risks resulting from pressures in flow piping systems now in effect
Amendments to Part 23 of BC’s Occupational Health and Safety Regulation (OHSR) came into effect August 1, 2017. The revisions enhance the performance-based regulations for flow piping systems by introducing requirements for integrity assurance programs into the regulation, and improving the requirements for pipe restraints.

NOVA SCOTIA Amendments to Canada-Nova Scotia Offshore Petroleum Resources Accord regulations update references to standards
Nova Scotia Royal Gazette, Part II, August 18, 2017
• Canada-Nova Scotia Offshore Marine Installations and Structures Occupational Health and Safety Transitional Regulations - amendment (Reg 118/2017) - updates definitions and references to current standards. See page 654-661 of the Gazette.
• Canada-Nova Scotia Offshore Marine Installations and Structures Transitional Regulations - amendment (Reg 119/2017) - updates standards relating to fire-fighting equipment and immersion suits. See page 662 of the Gazette for details.

NOVA SCOTIA Amendments to EA and Asbestos Waste Management Regulations prescribe requirements re: batteries and asbestos waste
Nova Scotia Royal Gazette, Part II, August 18, 2017
N.S. Reg. 120/2017 to 121/2017, made Aug. 8, 2017, is designed to reduce the regulatory burden on facilities that store lead-acid battery waste and asbestos waste by removing the requirement for an environmental assessment as recommended in Schedule “A” and clarifying the regulatory requirements under the Asbestos Waste Management Regulations for storage of asbestos waste in the manner set forth in Schedule “B”. For details see Schedules A and B on page 664 of the Gazette.

NEW BRUNSWICK WorkSafeNB posts proposed compensation policies for consultation
http://www.worksafenb.ca/docs/Backgrounder-Marijuana-Cannabis-for-Medical-Purposes.pdf
Policy 34-200 – Investment Goals and Objectives - due date: September 12, 2017.
Policy 34-205 – Statement of Investment Philosophy and Beliefs - due date: September 12, 2017.

NEWFOUNDLAND AND LABRADOR Symposium: Safety and Integrity Management of Operations in Harsh Environments
Newfoundland’s 3rd Workshop and Symposium: Safety and Integrity Management of Operations in Harsh Environments is scheduled for the Holiday Inn, St. John’s, NL, Canada - October 18-20, 2017. Organizers: C-RISE Memorial University Centre for Risk, Integrity, and Safety Engineering (C-RISE) in collaboration with Canada-Newfoundland and Labrador Offshore Petroleum Board (C-NLOPB). Download the Program:
Standards, codes and guidelines

**FEDERAL CSA Group releases first edition of standard dealing with first aid kits for the workplace**

CSA Group recently released the first edition of Z1220-17: First aid kits for the workplace (31 pages). This standard is part of a series of standards on workplace first aid; provides general requirements for workplace first aid kits; specifies a classification system for the kits; sets minimum requirements for their contents based on their classification; and provides requirements for the selection of kits based on various workplace environments.


**FEDERAL Amendment to CSA Standard Z627-16 deals with Breath alcohol ignition interlock devices**

Amendments to the first edition of CSA Z627, “Breath alcohol ignition interlock devices” were recently posted. The standard describes the performance standards, technical specifications, physical markings, and qualification tests required for the acceptance of breath alcohol ignition interlock devices. Additionally, it identifies the functional, durability, environmental, accuracy, electromagnetic compatibility, and special breath alcohol ignition interlock performance requirements and tests needed to qualify any particular unit or family of units.

Although CSA categorizes the Standard under “occupational health and safety”, CSA Z627 is principally directed at test laboratories and breath alcohol ignition interlock manufacturers - although it may also be relevant to policy and regulatory personnel.

Contact: jill.collins@csagroup.org Close date: Oct 24, 2017.


A draft first edition of CSA Z5000 (Building Commissioning for Energy Using Systems) was recently posted on the CSA review website. The standard has been developed to assist the building commissioning industry in assessing whether or not a building is performing as expected to achieve energy and water efficiency goals. It applies to new construction of Part 3 Buildings defined by the National Building Code of Canada.

Contact: mike.hopkins@csagroup.org Review end date: Oct 7, 2017.

Access draft (registration [free] required) at: http://publicreview.csa.ca/Home/Details/2684

**FEDERAL CSA S852 - Blast Resistant Window Anchor Systems**

**Description:** This new draft standard provides criteria for the design of blast-resistant window anchor systems for use in new or existing buildings.

Contact: mark.braiter@csagroup.org

Review start date: July 26, 2017; Review end date: Sept 26, 2017

Access draft at: http://publicreview.csa.ca/Home/Details/2677

**FEDERAL Updated CGSB-43.146-2016 TDG standard contains significant changes related to Intermediate Bulk Containers**

The Canadian General Standards Board (CGSB) recently updated CAN/CGSB-43.146. The document summarizes the most significant changes to the standard that are applicable to Intermediate Bulk Container (IBC) manufacturers. It is the responsibility of the IBC manufacturer, IBC leak test and inspection facility or IBC user to read and understand the sections of the standard that are applicable to their respective activities to ensure they are aware of all changes.

Access the document at: https://www.tc.gc.ca/eng/tdg/moc-ibc-cgsb43146-1308.html

**FEDERAL Draft CSA NGV 6.1 - Compressed Natural Gas (CNG) fuel storage and delivery systems for road vehicles (New Edition)**

The standard applies to the design, installation, inspection, repair and maintenance of a fuel storage and delivery system installed in an on road vehicle for use with compressed natural gas.

More information at:


**Information resources**

**NIOSH Launches Mobile Lifting Calculator App**

The US-based National Institute for Occupational Safety and Health (NIOSH) recently launched a new mobile app called NLE Calc, which is designed to help workers avoid injuries that are typically caused by job-related manual lifting tasks. The mobile app is one of the first apps to calculate the composite lifting index (CLI) for multiple lifting tasks. It is available for both Apple and Android phones at their respective application stores.

More info at:

https://www.cdc.gov/niosh/topics/ergonomics/nlecalc.html

**Updated Fentanyl resources available for workers**

NIOSH has updated its webpage: Fentanyl, Protecting Workers at Risk. On the new page, NIOSH identifies four job categories where emergency responders might come into contact with fentanyl or its analogues:

- Pre-Hospital Patient Care
- Law Enforcement,
- Investigation and Evidence Handlings, and
- Special Operations and Decontamination. NIOSH delineates the level of risk to responders into three categories - minimal, moderate, and high - and supplies a table that provides recommendations for personal protective equipment based on job category and level of risk.

The webpage notes that, “all PPE should be used in accordance with OSHA’s PPE standard (29 CFR 1910.132). When required, respirator use should be in the context of a comprehensive respiratory protection program in accordance with the OSHA respiratory protection standard (29 CFR 1910.134) and other requirements.”

https://www.cdc.gov/niosh/topics/fentanyl/risk.html
**Information resources**

**HRPA survey says: Most employers are unprepared for pot**

A survey completed by over 650 members of Canada’s Human Resources Professionals Association (HRPA) between June 1, 2017 and June 9, 2017 found that 45% of respondents do not believe that their current workplace policies adequately address potential new issues that may arise with the legalization of marijuana. Moreover, only 11% of responding HR professionals believed that their workplace policies addressed the use of medical marijuana in the workplace at all and nearly 90% had no personal experience with accommodating an employee who used medical marijuana. The top concerns identified by HRPA members related to: employees operating motor vehicles, impact on disciplinary procedures, decreased work performance, employees using heavy machinery, and absenteeism. A HRPA ‘white paper’ which accompanied results of the survey makes ten recommendations designed to help employers and employees ensure that they create a safe and productive workplace. One of the key recommendations is that government must set a clear legal definition of “impairment” and provide guidance on the circumstances under which an employee can be tested in relation to cannabis use. HRPA further recommends that government create two regulatory streams for legalized marijuana - one for recreational use and one for medical use - to distinguish between employees whose marijuana use must be accommodated and those who are using purely for recreational purposes. For more information, see: “Clearing the Haze: The Impacts of Marijuana in the Workplace” at: https://www.hrp.ca/Documents/Publish/HRPA-Clearing-The-Haze.pdf

**OHS due diligence – Legal briefs**

**Appeal Court Upholds $270,000 Fine In OHSA Matter – When MOL And Company Agreed On $180,000**

by Adrian Miedema, Dentons LLP, August 31, 2017

**Abstract:** An auto parts manufacturer, who had been found guilty on three charges under the OHSA after a worker sustained injuries, was fined $270,000, even though the MOL prosecutor at trial had requested a fine in the range of only $175,000 to $225,000. The company appealed the amount of the fine, but did not appeal the convictions. The appeal judge rejected the appeal on the basis that; the company - 'a substantial corporation' - had been found guilty on three charges; had a prior 2004 OHSA conviction; and that the injury to the worker, which rendered him a paraplegic, had been ‘devastating’. The appeal judge ruled that the fine of $270,000 "fell within the appropriate range" and dismissed the appeal.

**Takeaway:** "The author notes that " the case illustrates the point that, particularly in cases of serious injury to a worker that "offends" the court, there is always a risk that the court will impose a fine that is greater than the amount that the MOL prosecutor wanted."


Read full text analysis at: www.occupationalhealthandsafetylaw.com

**Can A Defendant Be Charged Criminally After Pleading Guilty To OHSA Charges?**

by Stringer LLP, September 1, 2017

In a recent fatality case (R. v. Campbell). Mr. Campbell pleaded guilty, as a supervisor under Ontario's OHSA, to an offence relating to the improper use of a mobile crane. He was fined $3,500. Approximately five months after the guilty plea, the provincial Crown Attorney charged him under the Criminal Code with criminal negligence causing death. Mr. Campbell brought a constitutional motion to dismiss the charge, primarily on the basis that the Crown Prosecutor ought to have proceeded with the OHSA charges and Criminal Code charges at the same time rather than waiting to lay criminal charges until after the accused pleaded guilty to the OH&S offence. The Court accepted Mr. Campbell's argument and stayed the charges. The Court ... found that an accused should have a sense of security that when pleading guilty to a charge, that plea resolves the case in its entirety. The Court also accepted that if the OHSA plea were admissible at the criminal trial (which was a jury trial), it would be highly prejudicial to the accused.

**Takeaway:** The authors state that the case is welcome news for defendants who choose to plead guilty to OHSA charges. "Introducing the potential of criminal charges being commenced after an individual pleads guilty to OHSA charges would chill the plea-bargaining process and make it more difficult to resolve matters without a trial."...

"[Although] this decision does not entirely close the door to criminal charges being laid after the OHSA process is complete... we expect that such cases would be the exception rather than the rule".


**Drug Detection Dogs Fail Smell Test**

by Kim Thorne, Roper Greyell LLP, August 29, 2017

In United Steelworkers Local 7552 v. Agrium Vanscoy Potash Operations (Grievance 16-10, Random Drug Searches/Interviews), [2015] S.L.A.A. No. 1, a Saskatchewan employer's practice of periodically deploying drug detection dogs to screen individuals entering its safety-sensitive worksite was held to be in breach of the collective agreement...

In this case, Arbitrator Norman pointed out that the employer did not adduce sufficient evidence to establish a general problem of drug use at its worksite and thus fell short of meeting what he saw as the threshold standard set in the Supreme Court of Canada's analysis in Communications, Energy and Paperworkers Union of Canada, Local 30 v. Irving Pulp & Paper, Ltd., – i.e. "evidence of enhanced safety risks, such as evidence of a general problem with substance abuse in the workplace" ....

**Takeaway:** The author notes that "employers who are considering the use of drug sniffing dogs to detect the movement of drugs onto a worksite should carefully do their homework and compile as much evidence of drug use at work as possible...Adoption of measures such as drug detection dogs will likely be found unreasonable in the absence of proof of an actual drug issue at the workplace".

EHS conference, training and professional development planning calendar

**September 2017**

September 15-20, 2017: **International Society for Respiratory Protection 19th International Conference**; Denver, Colorado; ISRP; Website: [www.denver.isrp.com](http://www.denver.isrp.com)

September 17-20, 2017: **Canadian Society of Safety Engineering Professional Development Conference**; Halifax, Nova Scotia; Canadian Society of Safety Engineering; website: [http://www.csse.org/2017_conference](http://www.csse.org/2017_conference)


September 25–27, 2017: **National Safety Council Expo**; Indianapolis, IN, USA; website: [http://congress.nsc.org/nsc2017/Public/Enter.aspx?gcld=EAAlQobChMfsOn87rFN1QIVaRXACH1BEw-9EAYASAAEgJ2aPD_BwE](http://congress.nsc.org/nsc2017/Public/Enter.aspx?gcld=EAAlQobChMfsOn87rFN1QIVaRXACH1BEw-9EAYASAAEgJ2aPD_BwE)


**October 2017**


October 12, 2017; **WSPS Northeastern Ontario Conference**; Sudbury, ON; website: [http://www.wspsc.ca/northeast.aspx](http://www.wspsc.ca/northeast.aspx)

October 12, 2017; **The Health and Safety Conference**; Toronto, ON; Lancaster House; website: [http://lancasterhouse.com/conferences/show/id/76](http://lancasterhouse.com/conferences/show/id/76)

October 13, 2017; **Workplace Safety and Insurance Conference**; Toronto, ON; Lancaster House; website: [http://lancasterhouse.com/conferences/show/id/77](http://lancasterhouse.com/conferences/show/id/77)


October 26-27, 2017; **Alberta Health & Safety Conference**; Banff, Alberta; website: [http://hsconference.ca](http://hsconference.ca)

**November 2017**

November 20-21, 2017; **IOSH Conference 2017**; Birmingham, United Kingdom; Institute of Occupational Safety and Health. website: [https://www.iosh.co.uk/IOSH/Home/Events/Event%20details.aspx?Name=IOSH%20Conference%202017&ID=%7B0DD1843-582D-DC9-8A33-BE77B8B0197D%7D&ItemType=VolunteerEvent&ReturnURL=%2FEEvents.aspx%3Fpage%3D4%26currentPage%3D9](https://www.iosh.co.uk/IOSH/Home/Events/Event%20details.aspx?Name=IOSH%20Conference%202017&ID=%7B0DD1843-582D-DC9-8A33-BE77B8B0197D%7D&ItemType=VolunteerEvent&ReturnURL=%2FEEvents.aspx%3Fpage%3D4%26currentPage%3D9)


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