

Legislation and Regulation in Canada with respect to driver distraction

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In Canada, there are three levels of government that can legislate or regulate. All have a potential role when it comes to driver distraction. These are:

- Federal government
- Provincial/territorial governments
- Municipal governments

The Federal Government has responsibility for original equipment in new or imported vehicles. The provinces are responsible for the conduct of drivers on roadways and the installation of equipment in vehicles after purchase. Municipalities may impose by-laws with respect to vehicle and pedestrian traffic on municipal roads, as specified under provincial highway or motor vehicle acts

There are currently no federal standards or regulations that restrict or prescribe the provision of telematic devices as original equipment in vehicles. Transport Canada is in the process of developing a memorandum of understanding with the vehicle manufacturers to address this issue, and that's all I'm going to say about the federal government role, as you will likely hear more on that from other speakers.

Provincial/Territorial Legislation and Regulations

The information presented on provincial and territorial regulation and legislation was gathered through a brief survey sent to the members of the Standing Committee on Road Safety Research and Policies of the Canadian Council of Motor Transport Administrators. The results are based on responses from 12 of the 13 provinces and territories (Nunavut is not represented).

Most provinces and territories have regulations restricting the use of certain types of visual display devices in vehicles, most commonly, television screens.

Television screens

- 9 jurisdictions prohibit or restrict the use of television screens in vehicles
- 8 of these stipulate that the television screen may not be visible to the driver
- 5 of these also stipulate that the television screen must be behind the driver
- 3 stipulate that the screen must be securely mounted in the vehicle
- 1 states that the set cannot be in operation while in the vehicle (no restriction on placement, but set must be turned off)

Exemptions to regulations prohibiting the use of television screens include:

When used:

- in the safe operation of the vehicle, load or passengers,
- to navigate
- to reach a destination in due timeliness,
- to display time

- by peace officers
- by ambulance drivers
- to assess fees
- closed circuit system used to operate vehicle (QC, NL)

This is a list of all exemptions, by all jurisdictions, but no jurisdiction has all exemptions, and a number of jurisdictions list none.

There are also differences in the definition of the type of visual display specified;

- television set
- television screen
- display screen
- television set, video screen or computer screen
- cathode ray tube display screen or similar viewing screen

Regulations on use of television screens in vehicles have been around for some years; some jurisdictions have updated them to reflect modern types of display screens; others have not.

Cellular telephones

The province of Newfoundland and Labrador is the only jurisdiction in Canada to ban the use of hand-held cellular telephones while driving. No other jurisdiction bans the use of any type of two-way communication device.

At the present time, only a few other jurisdictions are considering, discussing or actively monitoring the situation with regard to possible legislation on the use of cellular telephones phones by at least some driver classes. The possibility of restricting the use of cellular telephones as part of a graduated licensing program has been, or is being considered or discussed by a few jurisdictions.

Headphones

Only one jurisdiction (Manitoba) prohibits the use of headphones for listening to a radio or a recording while operating a motor vehicle or bicycle. Some municipalities have enacted bylaws to prohibit the use of headphones while riding a bicycle.

Driver Behaviour

A number of jurisdictions have legislation that prohibits certain types or general categories of behaviour that involve crowding or interfering with the driver or performing stunts. Note that these offences address visual or physical interference, rather than cognitive interference. Where distraction is specifically mentioned, it is aimed at behaviour that could startle or distract other road users, rather than self-distracting behaviours. In some cases, the legislation is aimed at road users *other than* the driver. Here are some examples:

Alberta Traffic Safety Act Section 115(2).

No person shall

(e) perform or engage in any stunt or other activity that is likely to distract, startle or interfere with users of the highway;

(f) drive a vehicle so as to perform or engage in any stunt or other activity on a highway that is likely to distract, startle or interfere with other users of the highway;

(i) where that person is the driver of a vehicle, permit any person, animal or thing to occupy the front seat of the vehicle in such a manner so as to impede the driver in the free and uninterrupted access to and use of the steering wheel, brakes and other equipment required to be used for the safe operation of the vehicle;

(j) where that person is the driver of a vehicle, permit any person, animal or thing in the vehicle to cause any obstruction to the driver's clear vision in any direction;

(k) ride in a position in a vehicle that interferes with the driver's control over the driving mechanism of the vehicle or that obstructs the driver's clear vision in any direction;

(l) where the person is the driver of a vehicle, exchange places with any other person when the vehicle is in motion;

(m) exchange places with the driver when the vehicle is in motion;

Saskatchewan Highway Traffic Act,

Section 74 (1) While a vehicle is moving on a highway, no person shall sit on the front seat:

(a) to the left of the driver if the vehicle is a left-hand drive vehicle; or

(b) to the right of the driver, if the vehicle is a right-hand drive vehicle;

and the driver shall not allow any person to do so.

Section 74(2) No driver of a motor vehicle shall allow the compartment containing the steering wheel to be over-crowded while the vehicle is in operation on a highway.

Careless Driving

All jurisdictions have a section to address a general category of, "driving without due care and attention" and "driving without consideration". The wording of these sections is remarkably similar from one jurisdiction to the next. It has been proposed that these sections are adequate to deal with instances of distracted driving posing a danger to safety; however that is a largely a question of enforcement.

It needs to be pointed out that the penalties for contravening these sections can be quite hefty in comparison to most other traffic offences. The lowest minimum fine among jurisdictions is \$100; however most jurisdictions mandate a court appearance and the court-imposed fine can be up to \$2,000. In addition, the court can impose a jail sentence of up to 6 months. Those jurisdictions that do not mandate a court appearance have automatic fines of \$270-\$400. Demerit points range from 4-6, with 6 demerit points being the most usual. This compares with 2-3 points for the majority of motor vehicle/highway traffic act offences.

Another fact to keep in mind is that the offence of driving without due care and attention is commonly used as a plea bargain for a Criminal Code impaired driving offence. This may not be the case in all jurisdictions, but it is definitely the case in some.

One must therefore consider how likely will be the widespread use of this offence to control the incidence of distracted driving. The burden of proof is likely to be quite demanding to successfully prosecute a case of driving without due care and attention.

In looking to legislative and regulatory approaches to manage the problem of distracted driving, one should not forget the need for balance. We live in an era where there is pressure on governments to deregulate. Adding sections to our acts to cover all the sources of distractions we can think of and specifically prohibiting them is not a realistic or acceptable approach. However, in an ever-changing world where technology is posing increasing demands on a driver's attention, we should try to ensure that legislation and regulation are keeping pace with, and are in tune with the modern world.