

Roper Greyell Bulletin – December 2009

Use of Electronic Devices While Driving

Legislative amendments expected to come into force in B.C. on January 1, 2010 will prohibit the use of hand-held electronic devices while driving on the province's roads. As B.C.'s Minister of Public Safety and Solicitor General, Kash Heed, put it, "[Y]ou [will not be able to] talk, type or dial on any hand-held device while driving." This will bring the province into line with other Canadian jurisdictions like Ontario, Quebec, Manitoba, Nova Scotia, Newfoundland and Prince Edward Island.

Summary of Legislative Amendments

Bill 15, the *Motor Vehicle Amendment Act, 2009*, received Royal Assent on October 29, 2009 and will amend the B.C. *Motor Vehicle Act* as follows:

- (a) It will be prohibited to use hand-held electronic devices, such as cell phones, BlackBerrys, MP3 players and iPods, while driving.
- (b) Only cell phones and electronic devices that are hands-free and involve one-touch activation will be permitted.
- (c) It will be prohibited for a new driver in the "learner" or "novice" stage of B.C.'s Graduated Licensing Program to use any kind of electronic device while driving, regardless of whether the device he or she is using is hands-free or involves one-touch activation.
- (d) Any person caught text messaging or e-mailing while driving will face a \$167 fine as of February 1, 2010, and will also receive three penalty points on his or her driving record.
- (e) If performing their duties, police, fire and ambulance personnel will be permitted to use cell phones while driving.
- (f) A driver will only be permitted to use his or her cell phone while behind the wheel to make an emergency 911 call or if safely pulled over on the side on the road.

Implications of Legislative Amendments for Employers

The amendments to the *Motor Vehicle Act* are laudable. According to the B.C. government, "cell phone use while driving is the number one cause of distracted driving" and "[o]n average, about 117 people die each year in B.C. and 1,400 are sent to hospital because someone was not paying attention behind the wheel".

While the legislative amendments represent a change for the better, they do mean that most B.C. employers have some work to do. They now have little choice but to turn their minds to employee use of hand-held electronic devices while driving.

If you are an employer doing business or operating in this province, you are well advised to consider issues like the following:

- (a) Do you require employees, in the performance of their duties, to use hand-held electronic devices while driving? Are you aware of employees who text message or e-mail while behind the wheel for work purposes? This is problematic not only because of the inconsistency with the Bill 15 amendments to the *Motor Vehicle Act* but also because of the risk to public safety and, from the employer perspective, the potential for significant vicarious liability. American employers, incidentally, are well attuned to the potential for vicarious liability in this context. There has been much litigation in the U.S. in which employers have been sued because their employees crashed while talking on a cell phone for work purposes.
- (b) Have you given thought to implementing a formal policy (either as a free-standing policy or as part of a wider telecommunications policy) concerning the use of hand-held electronic devices by employees who are behind the wheel? Legal counsel can assist in the preparation of such a policy.
- (c) How do you, as an employer, propose dealing with an employee who insists on using a hand-held electronic device while driving a company vehicle? Will you treat the employee as you would treat an employee who speeds in a company vehicle or will you treat the employee in some other way?

If you have questions regarding the issues raised in this bulletin and how they may affect you or your company, please do not hesitate to contact any lawyer at our firm.

Lawyer contact information can be obtained by contacting us at (604) 806-0922 or visiting our website at www.ropergreyell.com.

* Every effort has been made to ensure accuracy in respect of this bulletin. The comments, however, are necessarily of a general nature. Clients and other interested parties are urged to seek specific advice on matters of concern and not to rely solely on the text of this bulletin. *

