



**Lancaster, Brooks & Welch LLP**  
BARRISTERS AND SOLICITORS

**Is your workplace ready for Ontario's Display Screen and Cell Phone Ban?**

By Leanne E. Standryk

*Corporate Bulletin for December 2009*

In an economy that promotes efficiency and productivity, employers and employees alike are looking for ways to effectively capture their time and increase business. An increasing number of employees are provided with Blackberries and cell phones that allow them to conduct work 24/7 and conduct "work on the road" - creating offices on wheels.

Most of you will know that effective October 26, 2009 the Government of Ontario introduced a ban on the use of mobile devices while driving. A violation of the new law carries with it fines of up to \$500.00 together with the potential of licence suspensions, loss of demerit points and potential imprisonment. While the law became effective October 26, 2009, the Government has announced a 3 month grace period to focus on educating drivers about the ban. Enforcement will begin February 1, 2010.

While the legislation does not include a provision to create Employer liability for offences committed by their employees while engaged in work-related activity, an Employer could be exposed to civil liability and be held vicariously liable for damages resulting from an accident incurred by an employee while performing a work related activity.

The issue of civil liability has not as yet been reviewed by the Canadian Courts. This said, the issue has been decided in several decisions from the United States. While the decisions are not binding on our Canadian Courts, they offer some insight into potential treatment of these issues here in Canada. For example, an Arkansas-based company lost a \$21-million lawsuit for personal injuries sustained by the plaintiff in a car accident caused by an employee who was using a cell phone for a sales call at the exact moment of the accident. These cases should prompt employers to consider the following:

1. *The Occupational Health and Safety Act* requires employers to take every reasonable precaution to protect the health and safety of their workers. This potentially extends a duty on employers to ensure that there are appropriate workplace policies in place regarding use of mobile devices, texting, talking or viewing a computer screen in their rolling offices while driving.
2. **Develop and Implement a Cell Phone/PDA Use Policy.** Employers should take immediate steps to develop and implement a policy that sets out the parameters for acceptable use of devices that is consistent with Ontario's new legal standards. At a minimum, the policy should prohibit the use of hand-held devices while driving at all times unless the device is

**Lancaster, Brooks & Welch LLP**

PO Box 790, 80 King Street, St. Catharines, Ontario L2R 6Z1  
PO Box 67, 247 East Main Street, Welland, Ontario L3B 5N9  
55 Main Street West, Grimsby, Ontario L3M 1R3

Tel. 905.641.1551,  
Tel. 905.735.5684,  
Tel. 905.594.1263,

Fax 905.641.1830  
Fax 905.735.3340  
Fax 905.594.1268

[www.lbwlawyers.com](http://www.lbwlawyers.com)

used in "hands-free" mode or the vehicle is off the road and not in motion at the time of the call.

3. **Education.** Employers should develop a communications and mandatory training strategy to ensure employees are fully aware of company policy governing cell phone use and their new obligations under the *Highway Traffic Act*. Require employees to sign a form acknowledging that they have received a copy of the policy, understand the policy and consequences of any breach and maintain the form in each employee's file.
4. **Review Job Duties and Responsibilities.** Consider whether any employees are operationally required or expected to be responsive to calls and e-mails while in transit. Clear guidance should be provided to these individuals that a failure to respond to e-mails while in transit shall not be subject to discipline or reprisal.
5. **Consistently Enforce Disciplinary Measures.** Employers should consistently enforce policies governing cell phone use by following disciplinary measures commensurate with the severity of the infraction.
6. **Provide Hands-Free Devices.** Where appropriate and feasible, employers may consider issuing hands-free devices to employees, particularly those employees who are required to use cell phones and other devices frequently throughout the workday.

By taking pro-active steps prior to February 1, 2010, employers may reduce their potential liability, help promote a culture of worker safety and ensure compliance with the law.

**Commercial Law Group**

Rodger A. Gordon	rgordon@lbwlawyers.com	Robert W. P. Welch	rwelch@lbwlawyers.com
Harry E. Thorsteinson	hthorsteinson@lbwlawyers.com	R. Bruce Smith	bsmith@lbwlawyers.com
Gary L. Black	gblack@lbwlawyers.com	Michael A. Mann	mmann@lbwlawyers.com
David L. Edwards	dedwards@lbwlawyers.com	Wade R. Mills	wmills@lbwlawyers.com

**Employment Law Group**

Robert B. Reid	rreid@lbwlawyers.com	Leanne E. Standryk	lstandryk@lbwlawyers.com
----------------	----------------------	--------------------	--------------------------

**Lancaster, Brooks & Welch LLP**

PO Box 790, 80 King Street, St. Catharines, Ontario L2R 6Z1	Tel. 905.641.1551,	Fax 905.641.1830
PO Box 67, 247 East Main Street, Welland, Ontario L3B 5N9	Tel. 905.735.5684,	Fax 905.735.3340
55 Main Street West, Grimsby, Ontario L3M 1R3	Tel. 905.594.1263,	Fax 905.594.1268
<a href="http://www.lbwlawyers.com">www.lbwlawyers.com</a>		