



Put it Down or Pull Over: The ban on using cell phones/PDAs while driving

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On January 1, 2010, British Columbia banned drivers from using cell phones, BlackBerries or other PDAs while driving. Local governments and First Nations should ensure its employees know the boundaries of the law.

What is banned?

Drivers are now prohibited from:

- holding their PDA/cell phone in a position to be used
- texting or sending emails
- talking on their device
- using the GPS function
- searching the internet.

Drivers face a fine of \$167 and three penalty points on their license.

What are the exemptions?

For local governments and First Nations, there are important exemptions:

- use by peace officers, ambulance drivers and firefighters if the device is being used while carrying out their duties, powers or functions
- using the device to make an emergency communication to the police, ambulance or fire services
- hands-free use.

How does the ban affect local governments and First Nations?

Unless the use falls within an exemption, local governments and First Nations may face liability for accidents caused by employees using their cell phone/PDA while driving. Liability to the employee may arise if the employee is required to stay in touch while out of the office. Further, in several U.S. cases, employers have been found liable to third parties for collisions caused by employees who were driving while using a cell phone, where the cell phone was provided or required by the employer. Finally, local governments may not be

saved by their statutory immunity if an employee contravenes the law and causes an accident.

Some examples of where a local government or First Nation could potentially become liable for accidents caused by employees:

- a building inspector in a corporation vehicle calling into the office to check an address on her way to a site
- a planning engineer in his own car taking a call from the office on his way to a meeting
- a CAO in her own car sending an email to her assistant while driving home at night.

What can a local government and First Nation do to reduce the risk?

The local government and First Nation must ensure its employees comply with the law. Adopting a policy may be an effective way of ensuring employees know the law, and the consequences of contravening the law. While there is no guaranteed defence to liability, adopting an appropriate policy has several benefits. A policy may:

1. reduce the risk of the employee using his device while driving, and thereby reduce the risk of a collision;
2. set out who is responsible for any fine;
3. set out disciplinary steps for those who refuse to comply the ban;
4. contribute to overall employee wellness: by overcoming the attitude that the employee must be connected to the work place at all times;
5. be relied upon if challenged by WorkSafe BC as having an unsafe workplace;
6. be promoted as an example of good community citizenry.

What should the policy say?

A policy need not be complicated or lengthy. At a minimum, however, the policy should include the following:

- a statement of the law and what it prohibits
- a statement of the safety risks
- a direction to employees on what not to do, and what to do
- a direction to managers to ensure compliance
- a statement of the consequences for breach of the policy.

As with all policies, a policy on PDA/cell phone use while driving will only be effective if it is applied and enforced rigorously. If the local government or First Nation does not enforce the policy, a civil court will not allow them to rely on it. Consequently, ongoing monitoring and enforcement is crucial.