

A national occupational health & safety (OHS) and workers' compensation law newsletter



The **North American Occupational Safety and Health ("NAOSH") Week, May 6-12, 2007**, focus for this year is transportation safety. Gowlings' OHS team has prepared this special newsflash that discusses specific OHS issues related to transportation safety. Additionally, our April Podcast, available on our website, also discusses transportation safety issues across Canada.

Work-related transportation injuries and fatalities are largely preventable, and are costing Canadian employers a tremendous amount of money, as well as exposing them to potential prosecution. Transportation accidents tend to be very serious, affecting the lives of the workers, the public, and their families. In general, OHS legislation across Canada requires employers to take reasonable precautions for worker health and safety. Failure to comply, resulting in an injury or death, may be viewed as negligence or wanton and reckless disregard for the lives or safety of others, and may result in charges under the recent Bill C-45 amendments to the *Criminal Code*.

We hope this special newsflash helps you understand transportation safety so you can ensure your safety program meets the expected standard of due diligence.

Norm Keith, B.A., LL.B., CRSP
Partner, Gowlings

Transportation Work and Workers' Compensation

By Elizabeth Rankin, B.A.Sc., CRSP

Did you know that motor vehicle crashes constitute the greatest single cause of traumatic workplace fatalities? In Ontario alone, they accounted for 199 work-related deaths and more than 30% of all work-related traumatic injuries between 2000 and 2005. Also, according to the Ontario Ministry of Transportation ("MTO") they cost over \$9 billion per year in direct and indirect social costs.

Statistics in other provinces, such as Alberta, British Columbia and Québec are similar. Add to this more than 300,000 lost time accidents accepted by Workers'

Compensation Boards in Canada, and it can be seen that work-related transportation accidents are taking a tremendous financial toll on our economy. The Workplace Safety and Insurance Board ("WSIB") in Ontario has estimated that the actual cost of a single lost time accident, including direct and indirect costs, is approximately \$98,000.

If you employ workers either directly or via contract who use transportation to carry out work you need to know how the workers' compensation laws and policies in your jurisdiction apply to them.

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Work-Related Driving: Risk Factors and Employer Prevention Strategies

By Cathy Chandler, B.A.Sc., CRSP

Driving is an occupational health and safety issue - and not only for transportation companies. Emergency service and utility vehicles, taxis, heavy machinery and company cars are driven on the job every day. Maintenance workers, community health care workers, postal workers, police and sales representatives are just some of the workers exposed to risks from driving and road conditions.

In fact, driving is one of the most dangerous work activities that most people do. Motor vehicles are the leading cause of traumatic fatalities at work. Therefore, employers must identify and assess the risks involved in driving for work purposes and take all reasonable precautions to control those risks.

What are the Risks?

Anyone who operates a motor vehicle as part of his or her job is at risk of being involved in a roadway collision resulting in

injury or death. Here are some of the risks:

- 1. Poor weather conditions** - in order to meet clients, provide patient care or meet deadlines, many workers will travel during poor weather conditions. Poor visibility and slippery roads from rain, snow and fog can cause drivers to skid and lose control of their vehicle.
- 2. Rural driving and the road environment** - Workers must travel through rural areas to make deliveries, meet clients and provide patient care. Country roads can have unexpected hazards that city drivers are not used to such as wildlife that block the road (e.g. deer/moose) or dart across the road (e.g. raccoons/foxes), fallen trees, dips and bends in the road that prevent drivers seeing other vehicles and hazards and uneven or unpaved surfaces.
- 3. Speeding** - There are a variety of reasons for speeding when driving for work purposes including being late for

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Transportation Work and Workers' Compensation

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Workers' compensation boards across Canada all have one thing in common: workers are eligible for benefits for accidents that arose in the course of and out of the work.

Generally, if a worker is injured while carrying on the employer's work in or about a vehicle that he or she uses for that purpose, the injured worker will be eligible for benefits. A vehicle may be a car, truck, bus, mobile equipment, plane, helicopter, ship or boat. However, there are various situations where the rules may not be so clear. Here is some clarification of work related travel policy according to the WSIB in Ontario. Other provinces have similar policies. Always check the relevant policies for your jurisdiction.

Travelling On Employer's Business

In most cases, a worker is not eligible for workers' compensation benefits if they are involved in an accident travelling to or from work. Coverage generally begins once the worker is on the employer's premises. However, when travelling on business for the employer, the worker is generally considered to be at work continuously, unless there is some marked departure on a personal errand from the work related activity.

The injured worker may be eligible for benefits if he or she was engaged in an activity that was reasonably incidental to the work at the time, in a location that took them away from their normal route due to a work related activity, or travelling in a company vehicle.

Travelling To or From Work

A worker may be considered to be working if the employer requires the worker to drive a vehicle to or from work, except where there is a distinct departure on a personal errand. A worker is also covered when being conveyed from one location to another under the control and supervision of the employer.

Overnight Accommodation

Workers who require overnight accommodation and are injured at the place of accommodation are eligible for benefits



when the employer is paying the worker's expenses. The activity that the worker was involved in at the time must be shown to be reasonably incidental to the work, such as dining or using facilities. Such activities within a reasonable distance from the place of accommodation are also covered, providing they are not engaged in a personal activity not related to the work (ie. watching a movie at a theatre or gambling at a casino).

Responding To An Emergency Call

Workers travelling to answer an emergency call from the employer, requiring immediate action on the worker's part, are covered from the time the telephone call is received, while travelling by reasonable and direct route to the employer's premises or work site from the time and point of departure, and on the return trip to the worker's own property or the point of departure.

Off-Duty Police Officers

Coverage is extended to off-duty police officers while carrying out police duties for and paid by organizations other than the police commission, such as directing traffic at shopping malls under the following conditions:

- the request is assigned by a senior officer in a local police station, from the extra duty list available and posted in the station, and
- the police officer accepting extra duty, reports to and parades for inspection

before and after extra duty, if required, by the local police department or commission.

Police Officers Travelling To and From Court

Police officers are eligible for benefits for an accident when:

- travelling from their home to a court in another town or city, by the most direct and uninterrupted route;
- required to pick up items from the police station, property bureau or drug repository, for the period travelling to and from the court house in a direct and uninterrupted route;
- on court house property;
- travelling to and from the court house from their home; and
- travelling from home to the police station, property bureau or drug repository and similarly, for the return trip home, after the court appearance and returning the evidence.

If you have workers who travel for work, we recommend that you have clear policies on worker safety during work related travel. In addition, you should have clearly defined procedures for reporting and investigating work-related injuries incurred during travel for work purposes. This will enable timely reporting to the applicable workers' compensation board, ensure your workers receive their benefits to which they are eligible in a timely manner, and avoid potentially costly mistakes, oversights and disputes. ■

A Look at Transportation Accidents Across Canada

By David Marchione, B.A.

The Association of Workers' Compensation Boards of Canada ("AWCBC") has reported that of the 337,930 lost time incidents that were accepted across Canada in 2005, approximately 6,510 of those were due to transportation accidents. This number constitutes approximately two (2) per cent of all lost time accidents accepted across the country, and does not include any accident that was not reported to one of the provincial or territorial compensation boards. This number also does not include any incident that was reported, but not accepted by one of the compensation boards.

Of the 6,510 accidents accepted, the majority (5,896, or 90.6%) resulted from highway accidents. The remaining 614 accepted accidents were broken down between railway accidents, water vehicle accidents, aircraft accidents, and unsp-

specified transportation accidents.

The provinces with the greatest number of highway accidents in 2005 included Ontario (1,621), British Columbia (1,244), Alberta (1,200) and Québec (992). These provinces had significantly higher numbers of highway accidents than the remaining provinces and territories.

When examining the industries with the greatest numbers of highway accidents, the Transportation and Storage sector had the highest numbers in 2005 with 1,516. The Government Services sector was next with 814, followed by the Health and Social Services sector with 584. These industry sectors had the highest number of highway accidents in 2004 and 2005.

The Transportation and Storage industry sector also had the highest numbers of railway (92), water vehicle (105), and aircraft accidents (67) in 2005. The Fishing and Trapping industry had a significant number of water vehicle accidents (96), while the Government Services sector had

high numbers of water vehicle accidents (31) and aircraft accidents (4).

The workers' compensation statistics, as reported by the AWCBC, support that transportation accidents, although comprising a small number of the total number of lost time injuries across Canada, still represent a significant number of accidents and associated injuries across the country. Employers should be aware of the impact these types of accidents have on their business in terms of costs. As well, employers should consider the costs to their employees, both physically and emotionally, following a workplace accident.

Steps must be taken to identify transportation hazards in your industry, and controls, including training and information, must be implemented to prevent these incidents from occurring. See Cathy Chandler's article starting on page 1 for more information on the risks associated with driving for work and recommendations to reduce these risks. ■

Year	Highway Accidents	Railway Accidents	Water Vehicle Accidents	Aircraft Accidents	Transportation Accidents (unsp./n.e.c.)	Total
2005	5,896	112	294	80	128	6,510

The above information does not include any non-highway accidents as reported by the AWCBC.



Emergency Preparedness & Response Planning Public Course

Developed by Kathryn Fisher, B.A.Sc., and Norm Keith, B.A., LL.B., CRSP

This course focuses on:

- Review of workplace emergency events and lessons learned
- A synopsis of legislation, codes and standards that relate to emergency management
- Key elements of an Emergency Preparedness and Response Plan
- Strategies and resources for managing various types of emergency events, such as fire, medical incidents, bomb threat, pandemic, chemical and biological exposure, etc.
- Practical steps on how to put your plan into practice
- Considerations for business continuity planning

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| July 5, 2007 | Toronto |
| September 11, 2007 | Toronto |
| October 4, 2007 | London |
| October 17, 2007 | Ottawa |
| October 23, 2007 | Kitchener |
| November 1, 2007 | Windsor |
| November 20, 2007 | Mississauga |

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Work-Related Driving: Risk Factors and Employer Prevention Strategies

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appointments and deadlines, attempting to meet quotas and maximize earning potential by making a specified number of deliveries or visiting a certain number of patients or clients per day. Speeding may increase the likelihood of an accident. The faster the speed, the less time there is for the driver to stop the car. In a crash, the damage is done by the force of impact. Even driving at 5km/h over the posted speed limit will make the crash more severe.

4. **Fatigue and Night Driving** - Many workers (e.g. transport truck drivers) travel for long periods of time, often through the night to meet delivery deadlines. A crash caused by fatigue is exceptionally severe because the driver makes little or no manoeuvre to prevent the crash.
5. **Vehicle condition** - The risk of vehicle breakdown and collision is increased when employers require their workers to drive poorly maintained company vehicles or have no control over the maintenance of a worker's personal vehicle. Not only does this increase the likelihood of an accident, it also exposes the employer to risk of prosecution under OHS laws and/or the *Criminal Code*.
6. **Inexperienced and inattentive drivers** - The types of vehicles that workers use to conduct company business are varied and include cars, trucks, tractor trailers, vans, fork trucks and buses. Poorly trained or untrained workers that are required to drive these vehicles significantly increase their risk of being involved in a work related motor vehicle collision. Often, workers are required to drive to locations they are unfamiliar with which can lead to inattentiveness if they are consulting maps or calling the office for directions while driving.
7. **Using mobile communication devices** - Drivers who use their vehicle for work purposes are more likely than most to use a mobile communication device ("MCD") such as a mobile phone, pager, Blackberry etc. while driving. Drivers who use a MCD are four

times more likely to crash, injuring or killing themselves or other people. Drivers who use a MCD are much less aware of what is happening on the road around them, fail to maintain proper lane position and steady speed, react more slowly and take longer to brake.

Employer Prevention Strategies

Preventing work-related motor vehicle accidents requires strategies that combine traffic safety principles and sound safety management practices. Employers can promote safe driving behaviour by providing safety information and instruction to workers and by implementing and enforcing driver safety policies. Motor vehicle collisions are not an unavoidable part of doing business. Here are some ways employers can protect their employees and fulfill their duties under the *Occupational Health and Safety Act*:

1. Implement and enforce a comprehensive driver safety program including documented policies and procedures on safe driving, vehicle inspection and maintenance, and worker training and instruction.
2. Empower members of the JHSC to inspect company owned vehicles as part of their regular monthly workplace inspections.
3. Implement a documented circle check procedure for inspecting vehicles (company owned and personally owned) prior to use and a tool to document and follow-up on hazards and defects.
4. Offer hands-on practical courses through a professional driving school, on defensive driving techniques and navigating poor road conditions.
5. Implement and enforce a policy that bans employees from conducting business on a MCD while driving.
6. If possible, implement contingency procedures for workers if it becomes unsafe to drive due to weather/road conditions (e.g. re-scheduling client visits).
7. Develop work schedules that allow employees to obey speed limits and to follow applicable hours-of-service regulations.
8. Adopt a structured, regular vehicle maintenance program.

9. Provide company vehicles that offer the highest possible levels of safety and occupant protection.
10. Teach workers strategies for recognizing and managing driver fatigue and in-vehicle distractions.
11. Provide training to workers operating specialized motor vehicles or equipment.
12. Emphasize to workers the need to follow safe driving practices on and off the job.
13. Ensure that workers assigned to drive on the job have a valid driver's license and one that is appropriate for the type of vehicle to be driven.
14. Subsidize a CAA or other road side assistance provider membership.

Health Hazards Associated with Driving

Employers must not forget about the health hazards associated with driving for work purposes.

Sitting and/or holding a foot pedal down for long periods of time and whole body vibration from the road are risk factors associated with driving, especially for workers that drive for long periods at a time each day. Typical health problems from frequent driving include neck, back and shoulder pain, cramps, pressure points and poor circulation in the legs and buttocks, increased chance of low back injury from lifting and long-term potential for degeneration of spinal discs and disc herniation.

Employers can manage the health risks associated with driving by implementing an ergonomics program that includes ergonomic assessments of vehicles (both company and personal) used for work purposes. Properly adjusting seats and steering wheels, using lumbar supports and extra cushioning, and taking regular (5 minutes every hour) rest and stretch breaks will go a long way in preventing the health hazards associated with driving.

For more information on work related driving risks and prevention strategies, contact Cathy Chandler directly at 416-369-7351 or cathy.chandler@gowlings.com. ■

Recently Released Reports Regarding Transportation Accidents

By Adam Neave, B.A.Sc. and
Goldie Bassi, B.A., LL.B., LL.M.

Two inquiry reports for two separate fatalities that occurred in the transportation industry were released this April. The first, issued by the Transportation Safety Board of Canada ("TSB"), was concerning a plane crash in the Beauce region of Québec, in which the pilot and two wildlife protection officers were killed. The second, released by Judge Peter Ross in Halifax was regarding the death of a Cape Breton ferry worker four years ago.

The TSB, which investigates all transportation occurrences to advance transportation safety, conducted an investigation into the November 5, 2005 plane crash where an aircraft operated by Grondair and chartered by the Québec Department of Natural Resources and Wildlife ("QDNRW") went down while on a night aerial surveillance mission intended to spot poachers hunting illegally. Foggy conditions forced the pilot to fly below the minimum altitude required by the Canadian Aviation Regulations ("CAR") causing the aircraft to become caught in treetops and eventually crash in a clearing. The final report of the TSB concluded that the visual flight rules for the flight were conducted in marginal conditions at an altitude below the minimum obstruction clearance altitude prescribed by the CAR for night flights.

As a result of the accident, the QDNRW adopted a series of protective measures to ensure that aerial surveillance operations are safe. In addition, Grondair amended its company operations manual to set the minimum altitude for poaching surveillance flights at 1,000 feet above the maximum elevation figure published in aeronautical charts for visual flight. The TSB's objective is limited to fact gathering and making recommendations; it cannot determine or assign legal blame.

The second report released by Judge Ross inquired into the death of a Cape Breton ferry worker employed by the provincial government. The worker, who was clearing snow on the ferry pads, was fatally injured when his tractor plunged into the icy waters below. Judge Ross presided over the inquiry and appropriately did not assign blame, but he did put forward 27 recommendations, calling attention to the need for greater equipment training for in-house workers assigned to snow plowing and better means of hazard identification and assessment at all provincial workplaces.

The report also called for a review of emergency response procedures with a particular focus on water rescue operations in Nova Scotia. Judge Ross also noted that since the accident in 2003, the province had already taken steps to ameliorate some of the problems and concerns highlighted in the report. ■

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