



Using Cell Phones and Other Devices in Your Car

by Stephen R. Moore
October 15, 2009



Stephen's practice is largely restricted to the insurance field. His main areas of interest are bodily injury claims and coverage issues. He has handled motor vehicle accident, governmental liability, product liability professional errors and omissions and directors and officers liability claims.

He provides advice and assistance to automobile insurers and brokers with respect to automobile insurance regulatory issues including rate filing matters. He also assists brokers and agents in their dealings with the Financial Services Commission of Ontario and the Registered Insurance Brokers of Ontario. In dealing with these issues, Stephen works closely with the members of the firm's corporate and regulatory insurance group.

Stephen may be reached directly at 416.593.3950 or smoore@blaney.com.

A week next Monday (October 26, 2009) the Province's new legislation regarding the use of cell phones and other devices in your car comes into force. The Province has announced that the police will not be laying charges for violations of these new provisions until February 1, 2010 but we should all know what the new rules are and begin to obey them now. Fines for violations of these new provisions will range from \$60 to \$500. In the following few paragraphs I will outline both the new and old rules for the use of cell phones and display devices as they apply to most vehicles. I will not be outlining the special rules applicable to emergency personnel and commercial vehicle operators or the special limited exemption for licensed HAM radio operators.

Any handheld device that can send or receive telephone communications, electronic data, mail or text messages cannot be used except in limited circumstances. Generally this includes cell phones, smart phones, PDAs etc. First, they can be used at any time to contact ambulance, police or fire department emergency services. Generally, this would be a call to 9-1-1. Additionally, such devices can be used if the vehicle is parked off the roadway (or on the roadway if legally parked), the vehicle is not in motion and it is not impeding traffic. If you pull over to the side of the road to make a call or text a friend and you are not in an area where you can legally park, then you are violating the new provisions.

The most important exemption concerns hands free devices but you need to be aware of the specifics of this exemption to ensure that you comply with it. The hands free connection can be to a headset, ear piece, or device attached to your clothing or to the vehicle itself. It is also permissible to operate a button to answer a call, initiate the dialling of a call or to end a call provided the button is attached to the person or his or her clothing and is linked to a cell phone etc., or is securely attached in or mounted to the vehicle so that it does not move while the vehicle is in motion and the driver can see it at a quick glance and easily reach it without adjusting his or her driving position. Most Bluetooth devices would satisfy these conditions. However, it is important that after-market Bluetooth devices be mounted close to the driver in a position where they can reach it without shifting their seating positions. If there is a large height difference amongst the people that are using a vehicle, it would be useful to have them all attend at the time the device is installed to ensure they can reach the device when it is mounted. It appears that you can only press one button to answer a call, make a call or hang up. This means you cannot use the keys on your cell phone to dial a call. Since the button must be securely mounted, unless you have a phone holder, you cannot use the phone to answer, end or dial the call. Keep in mind that if you get into your car and you need to turn on your phone, you would be violating these new provisions.

That takes us to display devices. The general rule is that you cannot have the display screen of a television, computer or other device visible to the driver. Additionally, the driver is prohibited from using a hand-held electronic entertainment device (iPods or Gameboys for example) or other prescribed device (no others are prescribe) the primary use of which is unrelated to the safe operation of the motor vehicle. The amendments to the Highway Traffic Act clearly distinguish between display devices and hand-held electronic entertainment devices but the regulations are somewhat ambiguous regarding this distinction. The problem is in determining whether non-entertainment hand-held electronic devices with display screens are prohibited or not. The best example would be a Dictaphone. I believe that there is a risk that a Dictaphone with a display screen is caught by the provisions but one without would not be caught. In any event, anyone using a Dictaphone does run the risk that he or she will be charged with careless driving. I believe that after the enactment of these provisions a conviction for such conduct is much more likely.

In any event, there are exemptions to these provisions as well. You can have a display visible if the device displays information on the conditions, use and immediate environment of the vehicle, information on road conditions, an ignition interlock system, a car audio control that displays only text or static images or a hand-held device that displays only text or static images and is connected directly into and operates using the audio controls of the motor vehicle. However, the latter exemption only applies if the device is placed securely in or mounted to the motor vehicle so that it does not move while the vehicle is in motion. This would, of course, cover most of the displays on a standard vehicle dashboard, a permanent GPS and a vehicle's audio controls.

Some portable devices are problematic. For example, portable GPS systems. A portable GPS that is mounted using a permanent mount or suction mount that the device can be removed from is probably OK but I suspect that bean bag mounted GPS systems would be problematic. Additionally, placing a Smartphone with a GPS program on the centre console would violate the new provisions. An iPod that is connected to the audio controls and is operated by those audio controls is OK. However, if you intend to view the screen it needs to be securely mounted to the vehicle. On the other hand, even if an iPod is securely mounted it would appear that it cannot be used unless it uses the audio system controls to change songs etc. To legally use an iPod you probably must use a device that is controlled by the audio system of the car and either hide the screen from the driver or mount the iPod securely to the vehicle. It looks like we all may have found another use for duct tape. ■

For an analysis of the implications of these new provisions on employers please see [Jack Siegel's](#) article **“Don’t Touch That Dial! Ontario’s New Law on Electronic Driving Distractions”**.