

Will distracted driving crackdown suffice?

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For Law Times

After Ontario Court Chief Justice Annemarie Bonkalo increased fines for distracted driving in February, the Ontario government decided to get in on the action by tabling the keeping Ontario's roads safe act.

The legislation targets cellphone users and introduces rules related to pedestrians, cyclists, and tow trucks in the hopes of reducing accidents.

Until recently, education and awareness had been the tools of choice when tackling the burgeoning phenomenon of distracted driving. The Canadian Automobile Association, among other groups, has publicized its conclusions that those measures aren't sufficient to change the culture surrounding the use of electronic devices. The government is answering the call with a more aggressive approach that many hope will change public perceptions.

The proposed legislation and supporting amendments to the Highway Traffic Act would impose three demerit points and increase the maximum fine for distracted driving to \$1,000, a significant increase from Bonkalo's range of \$155 to \$280. Current legislation allows for fines ranging from \$60 to \$500.

"It's not every day I agree with the measures taken by Queen's Park in the conversation between motor vehicle drivers and injured parties," says Windsor, Ont., personal injury lawyer Greg Monforton.

"But I'm 100 per cent behind this initiative. It will save lives."

Monforton says there's no question there has been an increase in motor vehicle collisions caused by distracted driving. "Not a week goes by when we are not consulted by a seriously injured person or a loved one of someone who has lost their life because of it. It is particularly tragic because all these collisions are needless and preventable."

His observations support statistics that suggest that in 2013, fatalities in Ontario from distracted driving exceeded those from drinking and driving. Andrew Iacobelli of Iacobelli Law Firm PC says that in his practice, some of the most serious injury cases are from distracted driving.

"Head-on crashes, rear-enders where there has been no effort at all to slow down, people who drive into a stopped car at full speed, there's no doubt that the higher-speed collisions are frequently caused by distracted driving."

Monforton echoes that sentiment. "They are very serious collisions with very serious injuries, not just fender benders," he says.

"We see orthopedic injuries, spinal cord injuries, brain injuries, all needless. It would be one thing if the only person at risk was the driver, but it also affects passengers and anyone in the

vicinity. It is profoundly ill advised."

As Patrick Brown of McLeish Orlando LLP points out, the stakes are high. "If you hit somebody, it's not just the fines to worry about," he says. "Similar to drunk driving, the deterrent shouldn't be that you might get caught by the law and face a criminal conviction or lose your licence; the most significant deterrent should be that you could kill somebody by using a device inside a vehicle."

Iacobelli thinks there's a perception that the fine increase is a money grab but suggests people should talk to emergency workers like police, paramedics, and doctors.

"They will say it's much more than that. In the most horrific accidents, if it's not outright distracted driving, then it's at least suspected."

However, there's some doubt the fines alone will cause enough of a cultural shift to alter people's conduct. "It's a step in the right direction but probably not enough to make a cultural shift," says Iacobelli.

"You can bring the issue more into focus by increasing the severity of the offence but you also need more education, similar to drinking and driving, such as educating students in school and building a cultural stigma. Until you get to that level with distracted driving, there won't be a cultural change."

Law enforcement and road safety organizations have been working hard to make people realize that distracted driving is as dangerous as drinking and driving. The Insurance Bureau of Canada estimates distracted drivers experience the same level of impairment as someone with a blood-alcohol concentration of .08 per cent.

Brown believes there are still other options available to stem the tide of negligent driving. "I don't think fines and education go far enough to make people realize that their actions inside the vehicle can have dire consequences. There are other things we can do to affect the way people perceive who is entitled to use the road and how they use the road." He refers to the recommendations from the Ontario chief coroner's reviews into pedestrian cycling deaths in 2012. Specifically, he points to the need for a provincial policy statement that all municipal and road planners adopt a "complete streets" approach to guide the redevelopment of existing communities and the design of new areas to ensure the safety of all road users.

"Increased fines and loss of points are all forms of drivers being punished for doing something wrong. It is reactive," says Brown.

"To make a cultural shift, the government must require municipalities not just to enforce

fines but to make structural changes in street design, such as the use of bike lanes and increased pedestrian crossings, so more space is afforded to the various users. It's part and parcel of a more proactive approach to road safety in Ontario, especially in the inner city of Toronto."

In the meantime, lawyers face the challenge of proving the offence in court. "Unless there's an eyewitness or a person admits to distracted driving at the scene, it's very challenging to prove," says Iacobelli.

Brown notes that with drinking and driving, a large number of collisions will have police on the scene with blood taken and breath analysis performed. "With distracted driving, if people aren't forthcoming with that information, it's hard to catch. Although we request full and complete cellphone records, it's still not foolproof."

Plaintiff lawyers, then, must be diligent. "It behooves every plaintiff's lawyer to carefully look into whether a cellphone or electronic device was in play at the time of the accident," says Monforton.

"Procurement of cellphone records is now a standard matter of inquiry even if there is no suggestion of distracted driving. It's a matter of course that the records of any and all electronic devices should be exchanged for discovery." **LT**