

# What's the Difference between a CSA Voluntary Standard & an OHS Law



The first thing you need to do to get your [workplace health and safety program](#) into compliance with OHS requirements is figure out what those requirements are. That's not as simple as it sounds. Just reading all of your province's OHS statutes and regulations isn't enough. To determine your legal obligations you must also account for voluntary safety standards published by the Canadian Standards Association (CSA), American National Standards Institute (ANSI) and other nongovernment organizations (for simplicity's sake, we'll refer to all these organizations collectively as "CSA").

Like many OHS coordinators, you may be confused about how CSA standards affect your compliance efforts. After all, aren't these standards supposed to be voluntary? Is a CSA standard really just the same thing as a law? Are you required to follow it? What happens if you don't? This briefing will help you sort out the confusion by explaining the impact of CSA standards and their impact on your company's liability risks and how to factor them into your compliance strategy.

## CSA Standards vs. OHS Regulations

CSA standards are detailed, technical documents that lay out guidance and instructions for addressing workplace hazards.

They not only resemble but also cover the same issues as OHS regulations. **Example:** The OHS regulations of all jurisdictions include a section outlining the measures employers must take to control potentially hazardous energy associated with machines or equipment while they're undergoing installation, maintenance, repair or other servicing. CSA Z460 *Control of Hazardous Energy – Lockout and other Methods* does the same thing.

But there are also important differences. OHS laws typically set out a general framework, procedure and/or set of standards to guard against a hazard. While consistent with the law, the corresponding CSA standard goes into much greater depth than the regulations. In many cases, CSA standards are more stringent than OHS regulatory requirements as far as worker safety is concerned.

## The Interplay between CSA Standards & OHS Regulations

The starting point of workplace safety law is legislation, namely, the OHS “Act” that sets out the general requirements that employers, supervisors, workers and other stakeholders must meet to ensure work is carried out safely.

The OHS regulations flesh out the Act by establishing rules for identifying and controlling specific kinds of safety hazards or hazardous operations and thus meet the Act’s general requirements. CSA standards pick up where the OHS regulations leave off by filling in more detailed nuts-and-bolts requirements. Example:

- **OHS Act:** Section 3(1)(a) of the Alberta *OHS Act* says employers must take “reasonably practicable” steps to ensure workers’ “health and safety and welfare” but doesn’t go into much detail on how;
- **OHS regulations:** The Alberta *OHS Code* lists the things

employers must do to meet their obligations under Section 3(1)(a), including Part 15 dealing with hazardous machinery. One of those required measures (contained in Section 212(2)) of the Code is that employers “develop and implement procedures and controls” to [manage hazardous energy while](#) machinery and equipment is serviced; and

- **CSA Standard:** CSA Z460 outlines technical standards for lockout programs, locks, tags and energy isolation equipment that an employer can follow to ensure compliance with Section 212(2).

## How CSA Standards Can Become Legally Binding

On their face, CSA standards don’t carry the force of law. The CSA and other organizations that create these standards are typically made up of industry representatives, technical experts and policy makers who get together in committees and try to reach a consensus on safety matters. They’re not governmental organizations and they have no power to force employers to follow their standards. All they can do is make recommendations.

**General Rule:** While OHS laws are always mandatory, you don’t have to follow CSA standards if you don’t want to. **Exception:** CSA standards can become mandatory via a process called “incorporation by reference.” This happens when an OHS regulation cites a CSA standard and says that you must follow it. In effect, the CSA Standard becomes part of the law and if you don’t follow it, you face risk of prosecution and penalties.

**Example:** Section 323 of the Alberta *OHS Code* requires employers to ensure that scaffolds erected to provide working platforms during building construction work meet CSA S269.2-M87 (R2003), *Access Scaffolding for Construction Purposes*. A

worker was killed after falling from scaffolding that didn't meet the CSA standard. As a result, the employer was fined \$345,000 for violating Section 323 [*Westcan Stucco Wire Ltd.*, Alberta Govt. News Release, Sept. 11, 2011].

## Methods of Incorporation by Reference

CSA standards undergo regular updating and modification. While most jurisdictions specify which version of the standard they're incorporating, in a couple of provinces such as Nova Scotia, the latest version of the listed standard is automatically deemed to apply unless spelled out otherwise. The most common approach is to adopt an entire standard; however, methods of incorporation can vary. In some cases, a province will give employers a list of acceptable standards and let employers select which one to follow. **Example:** In B.C., employers must ensure protective footwear meets either: (a) CSA-Z195-M92; (b) ANSI Z41-1991; (c) BS EN 345:1993; or (d) BS EN 346:1993.

A jurisdiction might also incorporate just a part of a CSA standard. **Example:** In Alberta, a mobile crane must meet CSA-Z150-98 (R2004) "with the exception of clauses 1.6 and 1.7." A province might also adopt a standard but change a specific part of it.

All jurisdictions incorporate at least some CSA standards by reference into their OHS laws. Most provinces incorporate dozens of them. While Ontario incorporates the fewest CSA standards into the actual text of its regulations, the MOL will occasionally issue a bulletin to notify employers of its decision to adopt a particular CSA standard.

# Even Voluntary CSA Standards Affect Liability Risks & Due Diligence

Of course, not all CSA standards get incorporated by reference into OHS laws. If a standard isn't incorporated, you're not legally obliged to follow it. However, to the extent that they represent an established standard of how to identify and manage a workplace hazard, even these technically voluntary standards have a potential impact on your liability risks, especially if an injury, incident or OHS violation occurs at your workplace.

**Explanation:** The fundamental obligation of employers under OHS laws is to take "reasonable" or "reasonably practicable" steps to ensure workers' safety. Similarly, [due diligence](#) requires you to take "reasonable steps" to comply with OHS laws and prevent violations. Reasonable doesn't mean perfect. The mere fact that an injury, incident or violation occurs doesn't prove you weren't reasonable. But it does open the door to prosecution and penalty. The question becomes what should an employer in your position, knowing what you knew at the time, have done to prevent the risk? The judges, prosecutors and OHS inspectors on whom your fate depends may then look to CSA standards to determine whether your safety measures or lack thereof were reasonable.

## Employer Liable Because It Didn't Follow CSA Standards

Failure to follow voluntary CSA standards increases your risks of liability. **Example:** An Ontario worker lost 3 fingers after getting his hand caught in the moving part of a 'trim line #1' machine used to manufacture wafer boards. The company used a device called a dump table to block worker access to the in-running nip hazard of the machine where the injury occurred. But the dump table was only 34-inches-tall and workers

testified that they had little trouble climbing over it to get at the machine. That's what the victim did when he got hurt.

Section 25 of the Ontario OHS *Regulations for Industrial Establishments* says that an in-running nip hazard on any part of a machine must be guarded by a device "that prevents access to the pinch point." The regulation doesn't say anything specific about which device to use. But the CSA machine guarding standard CSA Z432 says that height should be considered in determining if a physical barrier provides enough guarding protection and that a barrier of less than 39-inches (1,000 millimetres) is too short since it's so easy to climb over. Even though the Ontario regulation doesn't incorporate CSA Z432 by reference, the court cited the standard in ruling that the company didn't show due diligence to guard the machine [*R. v. Grant Forest Products Inc.*, [2002] O.J. No. 3374 (2001)].

## **Employer Not Liable Because It Did Follow CSA Standard**

By contrast, consider the case in which an Alberta metals worker was killed after his clothes became ensnared in the metal roller of a conveyor. The roller was guarded on one side only, the side facing the worker when he was sitting at his work station. But the worker apparently crawled under the conveyor and became ensnared on the other side on something called a return belt idler. Section 52(1)(a) of the Alberta OHS Act requires employers to install 'effective safeguards' on machines but doesn't define the term. Nor does the OHS Code. So, the court looked at Section 6.6.2(a) of the American Society of Mechanical Engineers (ASME) standard which requires guarding against 'inadvertent contact.' The court noted that the contact in this case probably wasn't inadvertent since the victim had crawled under the conveyor. Moreover, Section 6.7.1 of the Standard specifies that 'a return belt idler does not

require guarding.' Since the employer's decision to guard only the one side of the roller conformed to ASME Standards, the court ruled that it wasn't guilty of violating the Alberta machine guarding law [*R. v. Maple Leaf Metal Industries Ltd.*, 2000 ABPC 95 (CanLII)].

## CSA Standards Compliance Game Plan

Hopefully, this analysis has helped you grasp what CSA Standards are all about and how to address them in your safety plan. Here are 5 practical steps to take:

1. Identify which CSA standards your province incorporates by reference into its OHS laws;
2. Understand what incorporated CSA standards require;
3. While it's not necessary to know about, let alone be familiar with all standards not incorporated by reference, keep track of important new standards and changes from the major organizations that affect your industry;
4. If your JHSC, an OHS official or a consultant recommends that you implement a voluntary CSA standard, especially if the recommendation is in writing, take the recommendation seriously and either accept it or give a good reason for rejecting it; and
5. Keep records documenting your consideration of the recommendation to adopt the CSA standard and why you decided to do so or not do so.

## Name of OHS Statute by Jurisdiction

The name of the OHS statute varies by jurisdiction. Here's what the law is called in each part of the country:

- ***Occupational Health & Safety Act:*** Alberta, New Brunswick, Newfoundland, Nova Scotia, Ontario, Prince Edward Island, Quebec

- ***Safety Act:*** Northwest Territories, Nunavut
- ***Workers Compensation Act:*** British Columbia
- ***Workplace Safety & Health Act:*** Manitoba
- ***Workers Safety & Compensation Act:*** Yukon
- ***Canada Labour Code:*** Federal
- ***Saskatchewan Employment Act:*** Saskatchewan