

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



Like many safety directors trying to run a compliant OHS program, you may be confused about how to deal with technical standards published by nongovernment organizations like the Canadian Standards Association (CSA), American National Standards Institute (ANSI) and the National Fire Protection Association (NFPA) (for simplicity's sake, we'll refer to these organizations collectively as 'CSA'). If CSA standards are supposed to be voluntary, why do companies get fined and penalized for not following them? This story will sort out the confusion by explaining the legal impact of voluntary standards and how to factor them into your OHS compliance strategy.

What Are CSA Standards'

CSA standards look just like OHS regulations. They both outline technical measures you need to take to address a specific hazard or safely carry out a certain kind of operation. They even cover the exact same issues. Example: CSA Z460 and Part 15 of the Alberta OHS Code both deal with Control of Hazardous Energy. Why do you need 2 standards? And which one do you follow?

Of course, there are important differences between CSA standards and OHS regulations. The first has to

do with the scope and character of the information. Thus, OHS laws typically set out only a general framework, procedure and/or set of standards to guard against a hazard. The CSA Standard is usually consistent with the law but goes into much greater depth. It provides the technical, nuts-and-bolts details that the OHS laws leave out.

The Interplay between CSA Standards & OHS Laws

The dynamic: OHS statutes, i.e., the OHS 'Act' of the jurisdiction, establishes an employer's general safety duty; the OHS regulations describe the things employers must do to meet that duty; and CSA Standards fill in the technical details to flesh out the regulation. Example:

- **OHS statute**: Section 3(1)(a) of the Alberta *OHS Act* says employers must

take 'reasonably practicable' steps to ensure workers' 'health and safety and welfare';

- **OHS regulations:** Section 212(2) of the Alberta OHS Code flesh out Section 3(1)(a) of the Act by requiring employers to '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 could follow to ensure compliance with Section 212(2).

The 4 Key Things to Understand about CSA Standards

A good way to come to grips with CSA Standards is to remember these 4 principles:

1. A CSA Standard Isn't a Law

OHS laws are always mandatory; CSA Standards are generally voluntary. Organizations like the CSA are typically private groups made up of industry representatives, technical experts and policy makers. They get together in committees and try to reach a consensus on safety matters. They're not governmental organizations and have no power to require employers to follow their standards. All they can do is make recommendations.

2. CSA Standards Can Become Mandatory

CSA standards may become mandatory via a process called 'incorporation by reference' 'Incorporation by reference' which happens when an OHS statute or, more typically, a regulation cites a CSA Standard and says that you have to follow it. In effect, the CSA standard becomes part of the law and OHS inspectors can issue orders or fines against you for not following it.

Example: A supervisor let an inexperienced worker use a crane to lift a steel cover and place it over a propane tank at a Yukon mine site. Because the worker didn't know what he was doing, the cable stretched and parted causing the crane ball to fall and narrowly miss a worker standing nearby.

Section 3(1)(c) of the Yukon *OHS Act* requires employers to provide workers adequate training and supervision to perform tasks based on the worker's abilities. Section 56(1) of the *General Safety Regulation* says CSA Z150, '*Safety Code for Mobile Cranes*,' is incorporated by reference. CSA Z150 says that only trained, experienced and qualified operators can operate cranes. The employer was thus found guilty of letting an inexperienced worker operate a crane in violation of the OHS law [*R. v. Northland Fleet Services (Yukon) Ltd.*, [1993] Y.J. No. 32, 1993].

All jurisdictions incorporate at least some CSA standards by reference into their OHS laws. Some, such as Alberta, incorporate dozens of them. Sometimes the OHS regulatory agency, like the Ontario Ministry of Labour, issues a bulletin to notify employers that it's adopting a CSA standard. A jurisdiction may also incorporate a series of standards and let the employer decide which one to follow. **Example:** Section 8.22 of the B.C. *OHS Reg.* says protective footwear is acceptable as long as it meets one of 4 standards: CSA Z195-M92; ANSI Standard Z41-1991; or either British Safety Institution Standard BS EN 345: 1993, or BS

EN 346:1993.

A jurisdiction might incorporate only a part of a standard. **Example:** Section 88 of the Alberta *OHS Code* says a mobile crane must meet the requirements of CSA-Z150-98 (R2004), *Safety Code on Mobile Cranes* 'with the exception of clauses 1.6 and 1.7.'

3. Voluntary CSA Standards Affect Liability & Due Diligence

Not all CSA standards get incorporated by reference into OHS laws. While these CSA standards remain voluntary, they still have a potentially significant impact on compliance and your liability risks. Explanation: Many OHS laws and regulations require you to take 'reasonable' or 'reasonably practical/practicable' steps to ensure safety without specifying what those steps are. Similarly, due diligence requires you to take 'reasonable steps' to comply with OHS laws and prevent violations.

Reasonable doesn't mean perfect. And the mere fact an injury or incident occurs doesn't prove you didn't meet the standard of reasonable. The question is what should an employer in your position, knowing what you knew at the time, have done to prevent the risk? To answer that question, judges, prosecutors and OHS inspectors will look to CSA standards.

Employer Liable Because It Didn't Follow CSA Standards

There has been at least one case in Canada where an employer was held liable for not meeting voluntary CSA standards. The case took place in Ontario after a 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. This is 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] A.B.P.C. 95 (2000)].

4. You Don't Have to Adopt Voluntary Standards

The fact that voluntary CSA standards represent a credible and accepted standard of safety seems to suggest that you must comply with them. This isn't true. If it were, the provinces would simply incorporate every single CSA standard by reference into their OHS laws and have done with it. Understanding why they don't do this is key to coming to grips with the significance of CSA standards.

Although the people who write the CSA standards consider costs, their overriding objective is to ensure safety even at a high price tag. Their recommendations represent a kind of safety 'gold standard.' Lawmakers, by contrast, tend to be more attuned to corporate finances and seek to strike an appropriate balance between safety and costs and ensure that required measures are affordable for all companies. The CSA standards that get incorporated by reference into OHS laws presumably meet these criteria.

What Should You Do About CSA Standards'

The employer's obligation is to provide not necessarily the highest degree of safety possible but the highest degree of safety it can reasonably afford given its resources, the risks involved and other factors. In other words, you don't have to buy a Rolls-Royce if a Chrysler is almost as safe. But if an incident happens in the Chrysler that wouldn't have happened in a Rolls, you'd better be prepared to defend your decision from second-guessers. To do that you'll need documentation of your reasons for thinking the Chrysler offered adequate protection. Here are some practical steps to take:

- Identify which CSA Standards your province incorporates by reference into its OHS laws;
- It's not necessary to know about, let alone be familiar with all standards not incorporated by reference. Just keep track of important new standards and changes from the major organizations that affect your industry;
- 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;
- Keep records documenting your consideration of the recommendation to adopt the CSA standard and why you decided to do so or not do so.