OHS Law, 101: What's the Difference between a CSA Standard and an OHS Law?

To be compliant, a workplace OHS program must meet not only the OHS statutes and regulations, but in some cases the technical requirements set out in "voluntary" safety standards published by nongovernment organizations like the Canadian Standards Association (CSA), American National Standards Institute (ANI) and the American Society for Testing and Materials (ASTM) (for simplicity's sake, we'll refer to all these organizations collectively as "CSA").

Confused? You're not alone. After all, aren't CSA standards voluntary? If so, how can it be mandatory to follow them? This piece will sort out the confusion and explain the legal significance of CSA standards and their impact on your organization's liability.

What Are CSA Standards?

CSA standards look a lot like laws. They also address the exact same issues covered in the OHS laws. But there are some key differences. OHS laws typically set out only a general framework, procedure and/or set of standards to guard against a hazard. CSA standards typically go into much greater depth. They provide the technical, nuts-and-bolts details that the statutes and regulations leave out. Many CSA standards also go much further than the laws in protecting workers. Theoretical example:

- **The provincial OHS statute** says employers must maintain the physical premises in safe condition;
- **The OHS regulation** fleshes out this requirement by mandating adequate lighting; and
- **The CSA standard** sets out precise illumination standards, specifies which bulbs to use and says how often they must be changed.

The 4 Principles of CSA Standards

A good way to come to grips with CSA standards is to remember these four principles:

1. **A CSA Standard Isn't a Law**

OHS laws are always mandatory; CSA standards are generally voluntary. Organizations like the CSA are not governmental organizations and they have no power to force employers follow their standards. All they can do is make recommendations.

2. **CSA Standards Can Become Mandatory**

Voluntary CSA standards may become mandatory through a process called incorporation by reference. This 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.

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 *Occupational Health and Safety 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 Code Z150, "Safety Code for Mobile Cranes," is incorporated by reference. CSA Code Z150 says, among other things, 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.*].

All jurisdictions incorporate at least some CSA standards by reference into their OHS laws. Some incorporate dozens of them.

The most common way to incorporate a CSA Standard by reference is to adopt the entire standard. But 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 Regulation* says protective footwear is okay as long as it meets one of four listed voluntary standards.

An OHS law might also incorporate only a part of a standard.

Example: The Yukon *General Safety Regulation* says installed oil heating equipment must meet the CSA Standard for Oil Burning Equipment, except for a particular clause of the Standard.

The jurisdiction might also adopt the standard but change a specific part of it.

3. **Voluntary CSA Standards Affect Due Diligence**

Not all CSA standards get incorporated by reference into OHS laws. Technically, these CSA Standards remain voluntary because they're not part of the law. But if an accident occurs at your workplace, your liability might turn on whether you followed the standard. It might seem unfair and illogical that employers should be punished for not following CSA standards that aren't mandatory. The reason has to do with due diligence.

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Explanation: The law doesn't say employers must be perfect and recognizes that certain incidents aren't the employer's fault. So when get charged, you can defend yourself by proving that the violation wasn't your fault. How do you do this? By showing that you exercised "due diligence", that is, took reasonable steps in the circumstances to guard against foreseeable risks.

To decide on a due diligence, a court must compare what an employer in your position, knowing what you knew at the time should have done to prevent the violation against

what you actually did do. Stated differently, the court must judge your actions against a standard of reasonableness. But how on earth does a judge sitting in a courtroom know what specific steps a reasonable employer should have taken to prevent a violation?

One possibility is to look at the safety standards adopted by prestigious and credible organizations like the CSA. Although they may not be the law, these standards represent a consensus among industry and policy makers about the kinds of safety precautions that are reasonable and appropriate, a sort of "best practices." As such, they're bound to influence on judges trying to decide if an employer showed due diligence.

Employer Who Didn't Follow Voluntary Standard Is Liable

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 three 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 specify which device to use. But the CSA Standard for Machine Guarding says that height should be considered in determining if a physical barrier provides enough protection. According to the Standard, a barrier of less than 39-inches (1,000 millimetres) is too short since it's so easy to climb over. The Ontario regulation doesn't incorporate the CSA standard by reference. Even so, 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.*]. _

Employer Who Follows Voluntary Standard Is Not Liable

Conversely, an Alberta court relied on compliance with voluntary standards to hold that an employer was not liable. A 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 had apparently crawled under the conveyor and became ensnared on the other side on something called a return belt idler. 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**

As we noted at the beginning of this story, there are some key differences between CSA standards and OHS laws. One of these differences has to do with the people who write them and their purposes. The people who write the laws and regulations are trying to strike a balance between workers' safety and employer costs. They need to know that the measures they require employers to adopt protect and are affordable by all companies. The CSA standards that get incorporated by reference into OHS laws presumably meet these criteria.

Although the authors of CSA standards also consider costs, their principal motivation

is safety. So, in many cases, the committees that adopt the standards are willing to impose more rigorous and expensive standards. In a sense, then, the CSA standard is more apt to represent a “gold standard” for safety.

The implication is that employers don’t have to adopt voluntary CSA standards if they can’t afford them. 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 accident 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.

What Should You Do About CSA Standards?

Here are 4 practical steps to take:

1. Identify which CSA standards your jurisdiction incorporates by reference into its OHS laws;
2. Keep track of important new standards and changes from the major organizations that affect your industry;
3. If your joint health and safety committee, an OHS official or a consultant recommends implementing a voluntary CSA standard, especially in writing, take the recommendation seriously and either accept it or give a good reason for rejecting it;
4. Keep records documenting your consideration of the recommendation to adopt the CSA standard and why you decided not to do so.