

Criminal Code Driving Prohibitions

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Mandatory Prohibition Order

- ▶ Section 320.24(1) of the *Code*
- ▶ Sentencing provision -- only after finding of guilt
- ▶ Applies to:
 - Impaired and blood/drug concentration offences simpliciter (no bodily harm or death)
 - Refusal simpliciter



Mandatory Prohibition Order - min/max

- ▶ Duration = the appropriate prohibition + the entire period of imprisonment
- ▶ 1st offence: min 1 year, max 3 years
- ▶ 2nd offence: min 2 years, max 10 years
- ▶ 3rd+ offence: min 3 years, no max (life)



Discretionary Prohibition Order

- ▶ Section 320.24(3)-(4) of the *Code*
- ▶ Applies to:
 - The low blood drug concentration offence, 320.14(4)
 - Dangerous operation
 - Impaired or refusal involving bodily harm or death
 - Fail to stop
 - Flight from police
 - Operation while prohibited (used to be mandatory)



Discretionary Prohibition Order - max

- ▶ No minimum duration
- ▶ Low blood drug offence: max 1 year
- ▶ Other offences based on maximum prison sentence:
 - Max prison life (causing death): no max
 - Max prison > 5 years but < life (indictable): 10 years max
 - All others: 3 years max



Pre-sentence prohibition credit

- ▶ Period of prohibition on bail must be deducted from prohibition on sentence: *R v Lacasse*, 2015 SCC 64
- ▶ Applying credit can reduce the prohibition below a mandatory minimum: *R v Bland*, 2016 YKTC 27
- ▶ Pre-sentence MVA driving restrictions should not be deducted from the CC prohibition: *Bland* at para. 18



When does it start?

- ▶ Takes effect on the day it is made: 320.24(5.1)
 - Previously started at end of jail sentence (*Lacasse*) but clarified by Parliament in 2018 amendments
 - Period of imprisonment added, but *Code* silent on intermittent and conditional sentences
- ▶ Exception to immediate start: if offender prohibited at the time of the *commission* of the offence, court may make new prohibition consecutive: 320.24(9)
 - *Code* silent on whether multiple new prohibitions can be consecutive
- ▶ Can be stayed pending appeal: 320.25
 - conditions during stay do not reduce length



What is prohibited?

- ▶ Vessel, aircraft, railway equipment: all operation
- ▶ Motor vehicle: “**operation** on a street, road or highway or in any other public place” - 320.24(8)

[Note: **operation** of motor vehicle means driving or having care or control]



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“Any other public place” includes:

- ▶ Snowmobile on bush trail 35km from Fort Mac; public land = other public place: *R v Hagerman*, [1992] A.J. No. 548 (ABPC)
- ▶ Snowmobile on tundra on the outskirts of Cambridge Bay; any place to which the public has “ready access”: *R v Haniliak*, [2000] Nu.J. No. 13 (NUCJ)
- ▶ Strictly controlled but heavily trafficked area on tarmac side of Toronto airport: *R v Singh*, [1994] O.J. No. 2452 (ONCJ)
- ▶ Road entirely on First Nations reserve and not connected to provincial public road system: *R v Dunsford*, 2013 ONCJ 416 [c.f. *R v Wycotte*, 2006 BCPC 657]



“Any other public place” does not include:

- ▶ Bulldozer on closed (but not barricaded) portion of highway under construction: *R v Ballard*, [1997] N.B.J. No. 62 (NBPC)
- ▶ Truck driving in campground inside municipality of Fort Smith; evidence failed to establish precise location: *R v Maxwell*, 2011 NWTTC 4
 - At para. 56: "public place" means a place to which a significant segment of the public has a right of access, and where it can be reasonably anticipated that a motor vehicle that is being operated will come into close proximity to pedestrians or other motor vehicles



Offence of operation while prohibited

- ▶ 320.18 (1) It is an offence to operate a motor vehicle while prohibited by:
 - (a) “an order made under this Act”
 - Arguably includes bail condition (pre-2018 could only be charged as breach)
 - Sentence order (320.24 prohibition, conditional sentence, probation)
 - (b) any other form of statutory restriction (federal/territorial) imposed in respect of a *Criminal Code* conviction



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