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### Personal Injury

# Proposed distracted walking fines tough to police

By AdvocateDaily.com Staff



Fines for distracted walking could improve road safety if properly policed, Windsor personal injury lawyer [Gino Paciocco](#) tells [AdvocateDaily.com](#).

A private member's [bill](#), introduced at the provincial legislature last month by MPP Yvan Baker proposes to fine distracted pedestrians up to \$50 if they cross the road while using their phones.

If passed, the cellphone ban suggests \$50 fines for a first offence, escalating to \$75 for the second, and all the way up to \$125 for the third.

"I think that fines would help deter people from using their phones while crossing roadways, especially with increased penalties for repeat offenders, says Paciocco, a founding partner of [Paciocco & Mellow](#).

However, he adds that exceptions written into the proposed law, for emergency calls and for the continuance of conversations begun before stepping into the crosswalk, will make it "difficult to police."

Baker, who represents Toronto riding Etobicoke Centre in the provincial legislature, said at a news conference that Bill 171, the Phones Down, Heads Up Act, was inspired by local constituents who urged him to act following an increase in pedestrian deaths in the city. According to the [CBC](#), 42 pedestrians were killed on the city's streets in 2016, the highest total since 2002.

"These fines are modest and are meant to act as a deterrent," Baker explained at the news conference.

Paciocco says his city has not been spared in recent years when it comes to road safety, with a 2015 [report](#) by the Windsor-Essex County Health Unit showing that pedestrians injured in collisions accounted for 145 emergency department visits the previous year, the third most common cause of injuries. The report also shows that on average, around two pedestrians die annually in crashes.

The CBC story points to a [2015 report by Toronto Public Health](#) examining pedestrian and cyclist deaths in the city from 2008-2012, in which the authors concluded that inattentive pedestrians were around 40 per cent more likely to be injured or killed in a collision. However, the same report also found that most



incidents involved people crossing at a green light where they had the right of way ahead of the vehicle that struck them.

In his remarks, Baker rejected criticism that the law minimized driver responsibility for crashes, noting that the bill would also force the Ministry of Transportation to lead an annual distracted driving awareness campaign.

"The focus of this bill is not to point a finger at either pedestrians or drivers," he said.

Paciocco says there is an onus on both drivers and pedestrians to keep a proper lookout for their safety, and that the bill does not change that situation.

"I think it is appropriate to have everyone responsible for their own safety and that of others," he says.

Meanwhile, in Hawaii, Honolulu recently became the first U.S. city to [pass](#) legislation banning people from crossing the road "while viewing a mobile electronic device," exposing repeat offenders to fines of up to US\$99.

Paciocco says a number of his cases involve pedestrians and cars, and that if the law passes, it could end up having an effect on those cases.

"Distracted walking could be used as a reason to apportion contributory negligence to a plaintiff in a personal injury lawsuit, which reduces the exposure of the at-fault driver," he says. "Any fine or behaviour that causes a pedestrian to fail to keep a proper lookout would be used to aid in a defence of a claim."

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