

TRANSPORT CANADA ROADMAP PROVIDES DIRECTION ON CONSENT AGREEMENTS

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Transport Canada recently released guidance on the use and development of consent agreements to resolve contraventions (or perceived contraventions) of the *Motor Vehicle Safety Act* (the “**Act**” or the “**MVSA**”) and related regulations.^[1] This guidance comes after consent agreements were added as an enforcement mechanism under the Act in 2018.^[2]

The Minister of Transport (“**Minister**”) may use consent agreements as an alternative to pursuing prosecution or issuing an administrative monetary penalty (not yet in force) when a person or company contravenes the Act or its regulations. However, such agreements are not a guaranteed remedy. Rather, the Minister has the discretion to decide in each case whether a consent agreement is appropriate. Relevant factors include whether the entity acknowledges that they have contravened the Act, whether a consent agreement will bring the entity into compliance faster than using another enforcement mechanism, and whether the consent agreement will reduce the chance that the entity will reoffend.

By entering into a consent agreement, Transport Canada and the other party agree to specific terms and conditions that remedy a contravention or perceived contravention of the Act. Such terms and conditions may include financial penalties, reporting obligations and a requirement that the entity take certain steps to correct non-compliance (such as changes to a company’s safety culture). Importantly, after the entity and Transport Canada decide on the terms, the consent agreement is registered with the Federal Court of Canada. Breaches of the consent agreement constitute violations of a court order. This means that the Federal Court has authority to impose further penalties where the contravener does not follow the consent agreement.

Transport Canada’s discretion to use consent agreements reflects a broader trend of Canadian authorities being empowered to use flexible compliance and enforcement tools such as remediation agreements. Remediation agreements (also known as deferred prosecution agreements) allow the Crown to use an alternative to prosecution as an enforcement mechanism to combat corporate crime (see our related bulletin series [here](#)). Although flexible enforcement mechanisms are becoming more readily available to regulators, whether they will be regularly exercised by Transport Canada with respect to the MVSA is not yet clear.

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[1] Transport Canada: [Establishing a consent agreement under the Motor Vehicle Safety Act](#).

[2] See our prior bulletin on amendments to the MVSA [here](#).

A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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