ALCOHOL AND DRUG POLICY MODEL
FOR THE CANADIAN UPSTREAM PETROLEUM INDUSTRY

Edition 1.0
Release Date September 2007
ENDORSEMENTS

The Alcohol and Drug Policy Model for the Canadian Upstream Petroleum Industry is endorsed by:

- CAGC  Canadian Association of Geophysical Contractors
- CAODC  Canadian Association of Oilwell Drilling Contractors
- CAPP  Canadian Association of Petroleum Producers
- CEPA  Canadian Energy Pipeline Association
- PSAC  Petroleum Services Association of Canada
- SEPAC  Small Explorers and Producers Association of Canada

ACKNOWLEDGMENTS

Enform gratefully acknowledges the support of the endorsing organizations in the development of the Alcohol and Drug Policy Model as well as the Construction Owner’s Association of Alberta (COAA) for its permission and encouragement to borrow liberally from and adapt the Canadian Model for Providing a Safe Workplace, Alcohol and Drug Guidelines and Work Rule.

Enform also notes with appreciation:

- Murray Sunstrum, Vice-President Safety, Enform
- Construction Labour Relations – An Alberta Association
- L. Fenton Consulting Services
- Oricom Original Communications Inc.

CAUTION TO READERS

Every effort has been made to develop a sound general Alcohol and Drug Policy Model given a continually changing and somewhat uncertain legal and social context. The Alcohol and Drug Policy Model should be read in its entirety since important information and qualifications are contained in all the materials comprising the Alcohol and Drug Policy Model. It is the responsibility of each employer to develop its own policy that is specific to its own factual and legal circumstances.
INTRODUCTION

The Alcohol and Drug Policy Model for the Canadian Upstream Petroleum Industry provides employers a tool for managing and reducing risks associated with alcohol and drug use in the workplace. With a focus on safety, the Alcohol and Drug Policy Model describes recommended guidelines for establishing and implementing alcohol and drug policies. It also strongly supports treatment programs and opportunities for re-employment, and applies to all positions within a company.

BACKGROUND

Work began on this document in August of 2005 with the formation of an Alcohol & Drug Task Force under Enform, the safety and training arm of the upstream petroleum industry. The task force consisted of representatives from the six industry associations listed as endorsing organizations on the inside front cover.

This model has been adapted from the pioneering work done by the Construction Owners Association of Alberta (COAA) in developing its Canadian Model for Providing a Safe Workplace, Alcohol and Drug Guidelines and Work Rule.

In 1998, under the direction of the Construction Owners Association of Alberta (COAA), a group of key stakeholders from the construction industry came together to deal with this problem. Through extensive collaborative efforts, the working group developed consistent alcohol and drug guidelines and a policy that would standardize the approach, testing, application and rehabilitation of workers with respect to the use of alcohol and drugs. In February 1999, the first version of the Canadian Model was completed and distributed among the construction industry stakeholders. (Excerpted from the 2005 version of the COAA Canadian Model for Providing a Safe Workplace.)

The foresight required and diligence used in developing the COAA model is inspiring. The upstream petroleum industry would like to formally thank the COAA and acknowledge the passion, dedication, and determination of its membership in progressing toward a safe workplace for all workers.

There were few substantive changes required to adapt the COAA model to the upstream petroleum industry, although the content has been re-organized and supplemented where appropriate.

WHO SHOULD USE IT

The Alcohol and Drug Policy Model is to be used by employers in the upstream petroleum industry as the minimum guideline for policy content and implementation. Employers can go beyond the minimum guideline where appropriate, but should ensure any modifications they introduce are consistent with the minimum guideline.

Employers responsible for construction activities should refer to the COAA Canadian Model for Providing a Safe Workplace (current version).
WHAT YOU’LL FIND INSIDE

The Alcohol and Drug Policy Model contains:

- Guiding Principles, a review of the drivers behind the development of the Alcohol and Drug Policy Model
- Responsibilities, a summary of key accountabilities across all levels of industry and within individual companies
- Guideline for Developing an Alcohol and Drug Policy, the accepted minimum criteria for developing alcohol and drug policies, and a glossary of key terms
- APPENDIX A – Alcohol and Drug Testing Procedures, an overview of accepted testing protocols
- APPENDIX B – Substance Abuse Expert, a description of this role and its accountabilities
- APPENDIX C – Guide for Identifying Safety-sensitive Positions, a tool for identifying and defining these positions
- Independent Legal Opinion, by Andrew R. Robertson
- Independent Medical Opinion, by Brendan Adams, M.D.
- Frequently Asked Questions, covering a variety of issues that may arise in the development and implementation of an alcohol and drug policy
- Guides for employers, supervisors, and employees, for creating awareness and enhancing understanding throughout the workplace

ADDITIONAL RESOURCES

In addition to the resources within the Alcohol and Drug Policy Model, employers can find related information, links, and training opportunities on Enform’s website (www.enform.ca).
GUIDING PRINCIPLES

In developing the Alcohol and Drug Policy Model, the Task Force committed to the following guiding principles.

- The inappropriate use of alcohol and drugs can have serious adverse effects on health, safety, and job performance. An industry-wide approach to addressing this challenge will help to enhance the level of health and safety at the workplace.

- The approach must be employer-based, meaning that each employer is responsible for developing its own policy specific to its organization and employees.

- The application of an alcohol and drug model across the upstream petroleum industry will help to standardize the approach, testing, application, and treatment of workers. It will also assist companies in implementing and managing consistent standards, and ensuring that all employees are treated fairly and with respect.

- Employers responsible for construction activities should refer to the COAA Canadian Model for Providing a Safe Workplace (current version).

- Alcohol and drug policies do not reduce the need for effective performance management systems.

- Awareness, education, effective interventions, and treatment are all key to successful alcohol and drug policies.

- A standardized approach to developing alcohol and drug policies will encourage a shared understanding of the health and safety risks associated with inappropriate use of alcohol and drugs, and the resources available to workers for treatment.

- Every person has the right to a safe and reliable workplace, and industry is committed to ensuring no workers create a risk to themselves, others or company assets through the use of alcohol and drugs.

- Employees and employers share a legal and moral responsibility to ensure their own safety and the safety of those affected by their activities.

- The Alcohol and Drug Policy Model must ensure and maintain confidentiality and credibility of the testing process and must fit within the Canadian legal framework (e.g., human rights, privacy, occupational health and safety).

- Testing for alcohol and drugs must be used in relation to bona fide occupational requirements in such cases as safety-sensitive positions, and for reasonable cause, post incident and any other testing described in the Alcohol and Drug Policy Model.

- Employers are responsible for identifying safety-sensitive positions within their organizations.

- There is a correlation between workplace approaches and practices and family and community benefits. The industry recognizes this correlation and supports a standard alcohol and drug policy model that will benefit all stakeholders.

- There is a shared responsibility between owners and operators of industry facilities and worksites, contractors and workers for the success of the Alcohol and Drug Policy Model.
Responsibilities

Responsibility for the successful implementation of alcohol and drug policies across the upstream petroleum industry is shared by all of the following:

**Employees must:**
- take responsibility to ensure their own safety and the safety of others
- ensure they understand and comply with their company alcohol and drug policy as part of their obligation to perform work activities in a safe manner
- use prescription and non-prescription drugs responsibly, be aware of potential side effects and notify their supervisor of any potential unsafe side effects where applicable
- encourage their peers and co-workers to seek help when there is a breach or potential breach of policy

**Supervisors and leaders must:**
- be knowledgeable about their company alcohol and drug policy and applicable procedures
- ensure they understand and comply with their company alcohol and drug policy as part of their responsibility to perform their work-related activities in an effective and safe manner
- be knowledgeable about the use of alcohol and drugs and be able to recognize behaviors and other indicators of the use of alcohol and drugs
- understand their company’s performance management policy and how the *Alcohol and Drug Policy Model* is integral to that policy
- take action on performance deviations
- take action on reported or suspected alcohol or drug use by employees

**Owners, employers and contractors must:**
- provide a safe workplace
- provide programs that emphasize awareness, education, and training with respect to the use of alcohol and drugs
- ensure their company alcohol and drug policy supports other performance management systems
- ensure effective employee assistance services are available to workers
- assist workers in obtaining confidential assessment, counselling, referral, and treatment
- actively support and encourage treatment programs and re-employment opportunities where applicable
- provide supervisory training and awareness in dealing with the use of alcohol and drugs in the workplace
- ensure that all employees understand the existence and content of the company’s policy as part of employee orientations to that company
• ensure alcohol and drug testing is performed according to the standards set out in the *Alcohol and Drug Policy Model*

• identify safety-sensitive positions within their organizations

**Industry associations (i.e., CAGC, CAODC, CAPP, CEPA, PSAC, and SEPAC) must:**

• communicate the *Alcohol and Drug Policy Model* to their members

• support effective implementation of the *Alcohol and Drug Policy Model*

• participate in ongoing review and appropriate amendments of the *Alcohol and Drug Policy Model*

**Enform, in partnership with the endorsing organizations, must:**

• assume ownership of the *Alcohol and Drug Policy Model*

• ensure that reviews and amendments are made in an appropriate and timely manner with input from interested and appropriate stakeholders

• provide access to the *Alcohol and Drug Policy Model* and associated resources from the Enform website (www.enform.ca)
GUIDELINE FOR DEVELOPING AN ALCOHOL AND DRUG POLICY

This guideline describes the accepted minimum criteria for developing alcohol and drug policies. Employers should use this guideline to develop alcohol and drug policies specific to their own organizations. Contractors and other third parties are also responsible for developing their own policies consistent with this guideline.

1.0 Key Elements of an Alcohol and Drug Policy

1.1 An alcohol and drug policy is established

(a) to provide a safe workplace for all employees and those whose safety may be affected by the conduct of employees, and

(b) to ensure that all employees are treated fairly and with respect.

1.2 By developing an alcohol and drug policy, the employer promotes

(a) the safety and dignity of its employees,

(b) the welfare of its employees and their families,

(c) protection of the environment, and

(d) the best interests of the employer, the owner, the upstream petroleum industry, and the public.

1.3 The use of alcohol and drugs adversely affects the ability of a person to work in a safe manner. An employer’s policy must address the increased risks associated with the use of alcohol and drugs and provide understandable and predictable responses when an employee’s conduct jeopardizes the safety of the workplace.

1.4 An employer’s policy must establish an alcohol and drug work rule that sets specific limits against which employees can be tested to verify compliance with the policy. The limits must be consistent with those described under 2.0, which are compliant with the U.S. Department of Transportation for alcohol testing\(^1\) and the U.S. Department of Health and Human Services (HHS) for drug testing\(^2\).

1.5 The employer must establish an implementation program that informs employees of the alcohol and drug policy through education and offers self-help opportunities to employees who request it.

\(^1\) The U.S. Department of Transportation standards set stringent requirements for alcohol testing that define both the mechanisms for testing and the requirements of the individuals conducting the tests.

\(^2\) In 1998, the Standards Council of Canada voted to abolish the Laboratory Accreditation Program for Substance Abuse and to accept the standards of the U.S. Substance Abuse and Mental Health Services Administration, an agency under the U.S. Department of Health and Human Services.
1.6 The development of an alcohol and drug policy as recommended in this guideline will help employers meet their legal obligations for providing a safe workplace.

1.7 Although not specifically covered in this Alcohol and Drug Policy Model, an employer’s alcohol and drug policy should also address company-sponsored social functions.

2.0 Alcohol and Drug Work Rule

2.1 An employee shall not:

2.1.1 while on company property or at a company worksite, use:

(a) alcohol, or

(b) drugs other than those permitted under 2.2, or

(c) any product or device that could tamper with any sample for an alcohol or drug test

2.1.2 report to work or work

(a) with an alcohol level equal to or in excess of 0.04 grams per 210 litres of breath,

(b) with a drug level equal to or in excess of the concentrations for the drugs set out below:

<table>
<thead>
<tr>
<th>Drugs or classes of drugs</th>
<th>Screening concentration equal to or in excess of ng/mL</th>
<th>Confirmation concentration equal to or in excess of ng/mL</th>
</tr>
</thead>
<tbody>
<tr>
<td>Marijuana metabolites</td>
<td>50</td>
<td>15</td>
</tr>
<tr>
<td>Cocaine metabolites</td>
<td>300</td>
<td>150</td>
</tr>
<tr>
<td>Opiate metabolites</td>
<td>2000</td>
<td>2000</td>
</tr>
<tr>
<td>Phencyclidine</td>
<td>25</td>
<td>25</td>
</tr>
<tr>
<td>Amphetamines</td>
<td>1000</td>
<td>500</td>
</tr>
</tbody>
</table>

or

(c) while the employee’s ability to safely perform his or her duties is adversely affected because of the use of a prescription or non-prescription drug,

---

3 At the time of publication, saliva testing for drugs is not explicitly dealt with in the Alcohol and Drug Policy Model because saliva screening and confirmation test concentration levels have not yet been standardized, nor have they been recognized by SAMHSA or DOT. However, employers choosing to use saliva testing for drug screening tests are encouraged to seek specific guidance on screening concentration levels from a certified testing laboratory. To be consistent with the Alcohol and Drug Policy Model, confirmation testing must be done using a urine sample to the confirmation concentration limits stated in the 2.1.2(b) Urine Samples table.
2.1.3 refuse to
(a) comply with a request made by a representative of the company under 4.0, or
(b) comply with a request to submit to an alcohol or drug test made under 5.0

2.1.4 tamper with a sample for an alcohol or drug test

2.1.5 while on company property or at a company worksite possess or offer for sale:
(a) alcohol, or
(b) drugs other than those permitted under 2.2, or
(c) drug paraphernalia, or
(d) any product or device that could be used to tamper with any sample for an alcohol or drug test

2.2 This work rule permits the possession or use of prescription and non-prescription drugs under the following conditions:
(a) any prescription drug in the employee’s possession or used by the employee is prescribed to the employee, and
(b) the employee is using the prescription or non-prescription drug for its intended purpose and in the manner directed by the employee’s physician or pharmacist or the manufacturer of the drug, and
(c) the use of the prescription or non-prescription drug does not adversely affect the employee’s ability to safely perform his or her duties, and
(d) the employee has notified his or her supervisor or manager before starting work of any potentially unsafe side effects associated with the use of the prescription or non-prescription drug.

2.3 The supervisor or manager who has received a notification under 2.2 may not disclose any information provided under 2.2 to any person, unless either consent to do so has been given by the employee or the supervisor or manager is legally required to do so.

3.0 Implementation of the Alcohol and Drug Work Rule

3.1 Education

3.1.1 An employer must inform its employees of the existence of its alcohol and drug policy and take reasonable steps to inform its employees of:
3.1.2 The likelihood that an employee will comply with the alcohol and drug work rule is increased if he or she knows the safety risks associated with the use of alcohol and drugs and the assistance available under an EAP or EFAP.

3.2 Self-help

3.2.1 Employees who believe that they may have a substance use or substance abuse problem are encouraged to seek advice provided by substance abuse experts (SAEs), EAPs or EFAPs and follow appropriate treatment promptly before job performance or safety is compromised or a violation of the alcohol and drug policy occurs.

3.2.2 An employee who believes that he or she may be unable to comply with the alcohol and drug work rule should seek help by:

(a) contacting a family physician, company doctor, qualified SAE or a person responsible for the administration of an EAP or EFAP,

(b) informing a family member or friend and asking for assistance in contacting a person responsible for the administration of an EAP or EFAP, or

(c) informing a co-worker, a supervisor or a representative of the company to which the employee may belong, of their wish to contact a person responsible for the administration of an EAP or EFAP.

3.2.3 In responding to an employee’s request for help, a foreman, supervisor or manager must

(a) inform the employee of the assistance available under an EAP or EFAP, and

(b) encourage the employee to utilize an EAP or EFAP which may assist the employee.

3.2.4 An employee who is at work and has sought assistance or enrolled in an EAP or EFAP must comply with 2.0.

3.2.5 An employee with an alcohol or drug problem, who is not known to have violated 2.0, will not be disciplined for requesting help in overcoming the problem, or because of involvement in a treatment program. All employees who complete primary treatment for substance abuse or dependence should be strongly encouraged to participate in a structured aftercare program to maintain recovery.
4.0 Confirming Compliance with 2.1.1 or 2.1.5

4.1 A supervisor or manager of an employee who has reasonable grounds to believe the employee may not be in compliance with 2.1.1 or 2.1.5, must request

(a) that the employee confirm whether he or she is in compliance with 2.1.1 or 2.1.5, or

(b) the assistance of appropriate authorities to confirm the employee’s compliance with 2.1.1 or 2.1.5.

4.2 A supervisor or manager of the employee must provide to the employee the reason for the request under 4.1.

5.0 Testing for Compliance with 2.1.2

5.1 Alcohol testing must comply with the standards of the U.S. Department of Transportation.

5.2 Drug testing must comply with standards of the U.S. Department of Health and Human Services (HHS) and be conducted by laboratories certified by the U.S. Substance Abuse and Mental Health Services Administration (SAMHSA). HHS standards have been adopted by the Standards Council of Canada. Since 1998, SAMHSA has been responsible for certifying laboratories in both Canada and the US.

5.3 The following types of testing are to be used to test for compliance with 2.1.2:

<table>
<thead>
<tr>
<th>Type of Testing</th>
<th>Mandatory</th>
<th>Optional</th>
</tr>
</thead>
<tbody>
<tr>
<td>Reasonable grounds (5.5)</td>
<td></td>
<td>✓</td>
</tr>
<tr>
<td>Incident and near miss (5.6)</td>
<td></td>
<td>✓</td>
</tr>
<tr>
<td>Safety-sensitive position (5.7)</td>
<td></td>
<td>✓</td>
</tr>
<tr>
<td>Return-to-duty and follow-up (5.8)</td>
<td></td>
<td>✓</td>
</tr>
<tr>
<td>Random (5.9)</td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>Site-access (5.10)</td>
<td></td>
<td>✓</td>
</tr>
</tbody>
</table>

5.4 An employee who admits to alcohol or drug use upon being requested to submit to testing under this section, must still be tested to avoid violation of 2.1.3.

5.5 Reasonable grounds testing

5.5.1 A supervisor or a manager of an employee must request that an employee submit to alcohol and drug testing under 6.0 if the supervisor or manager and the next level of management, if any present at the company workplace, have reasonable grounds to believe that the employee is or may be unable to work in a safe manner because of the use of alcohol or drugs.
5.5.2 A supervisor or manager of an employee must provide to the employee the reason for the request under 5.5.1.

5.6 Incident and near miss testing

5.6.1 A supervisor or manager of an employee must request that an employee submit to alcohol and drug testing under 6.0 if the supervisor or manager and the next level of management, if any present at the company workplace have reasonable grounds to believe that an employee was involved in an incident or near miss.

5.6.2 A supervisor or manager of an employee must provide to the employee the reason for the request under 5.6.1.

5.6.3 A supervisor or a manager of an employee need not request that the employee submit to alcohol and drug testing if the supervisor or manager and the next level of management, if any present at the company workplace conclude that there is objective evidence to believe that the use of alcohol or drugs did not contribute to the cause of the incident or near miss.

5.7 Safety-sensitive position testing

5.7.1 Employers must identify positions within their organizations that are safety sensitive. APPENDIX C – Guide for Identifying Safety-Sensitive Positions is provided to assist employers in this process.

5.7.2 Conditional-offer testing

(a) Employers should require that applicants for safety-sensitive positions submit to alcohol and drug testing under 6.0 as part of the job application process.

(b) If an employer conducts conditional-offer testing and declines to offer employment to an applicant who has tested positive for levels of alcohol or drugs defined in 2.1.2, the employer must:

(i) advise the applicant that the positive test result does not preclude the applicant from re-applying in the future, and

(ii) advise the applicant that in the event of a new application for employment, the positive test result will not affect that future application and consideration for employment, and

(iii) provide the applicant with a list of available treatment facilities for alcohol and drug dependency if the applicant wishes to take advantage of treatment services at the applicant's expense.

5.7.3 Qualification testing

(a) Existing employees in safety-sensitive positions
(i) When an employer implements its alcohol and drug policy, the employer must test all employees in safety-sensitive positions to verify that they are in compliance with the policy.

- Testing should occur as soon as reasonably practicable, and it is suggested that this testing occur within 18 months from the date the policy is implemented.

- An employee does not have to be tested as part of the employer’s alcohol and drug policy implementation if that employee has previously been tested to the standards of 6.0 or was grandfathered under an existing company alcohol and drug program into a safety-sensitive position. It is suggested that this exclusion only apply to testing or grandfathering that occurred within the 36 months prior to the implementation of the employer’s alcohol and drug policy.

(b) Existing employees transferring into safety-sensitive positions

(i) Employers must require alcohol and drug testing under 6.0 of employees transferring from non-safety-sensitive positions into safety-sensitive positions, before those employees commence work in safety-sensitive positions.

5.7.4 Re-qualification testing

(a) Employers should periodically re-test employees in safety-sensitive positions to verify continued compliance with 2.1.2. It is suggested that re-testing occur within 36 months from the date of the employee’s last negative test or the date of the employer’s alcohol and drug policy implementation, or according to a different timeframe based on the employer’s experiences over a reasonable period of time (e.g., percent negative/positive in various qualification tests).

5.8 Return-to-duty and follow-up testing

5.8.1 An employee who has tested positive and is returning to work after an assessment by an SAE, must successfully pass a drug and/or alcohol test before returning to duty. The SAE may also determine the need for and frequency of follow-up testing.

5.9 Random testing of employees in safety-sensitive positions (optional)

5.9.1 Before implementing a random testing program:

(a) employers are strongly encouraged to seek legal counsel, and

(b) employers must determine that random drug and alcohol testing is reasonably necessary. Reasonable necessity must be
determined on the basis of factors with significant implications for safety and liability, such as, but not limited to:

- evidence that alcohol or drugs are creating a problem among the workforce with significant implications for worker or public safety
- a workforce that is transient or largely unsupervised
- regulatory requirements for random testing in a jurisdiction in which the employer operates (e.g., U.S. DOT requirements for random drug testing of drivers)

5.9.2 Where an employer chooses to implement random alcohol and drug testing of employees in safety-sensitive positions, the employer must:

(a) confirm that each affected employee is covered by an EAP or EFAP,

(b) implement a lawful computer-generated random alcohol and drug testing program in accordance with the procedures set out in the U.S. Department of Transportation alcohol testing program and the U.S. Department of Health and Human Services drug testing program in force as of the date of this publication, and

(c) deliver to each affected employee written notice of the implementation of random alcohol and drug testing at least 30 days prior to implementation of that program at the worksite.

5.9.3 Where an owner directly or by contract requires random alcohol and drug testing, such a random testing program must be applicable to all companies and employees who are in safety-sensitive positions at the worksite.

5.10 Site-access testing (optional)

5.10.1 When an owner directly or by contract requires site-access testing, an employer may require alcohol and drug testing under 6.0 of any employee that is in a safety-sensitive position as a condition of access to the owner’s property.

6.0 Requirements for Alcohol and Drug Testing Programs

6.1.1 Employers must ensure alcohol testing is conducted by personnel in accordance with the U.S. Department of Transportation standards and procedures for alcohol testing. A summary of alcohol tests is provided in APPENDIX A – Alcohol and Drug Testing Procedures.

6.1.2 Drug testing should include screening and confirmation tests. A summary of these and other features of drug tests is provided in APPENDIX A – Alcohol and Drug Testing Procedures.

6.1.3 For confirmation testing, employers must retain a laboratory certified by SAMHSA to conduct drug testing in accordance with the U.S. Department of HHS Federal Workplace Drug Testing Programs in force
as of the date of this publication. At the date of publication of the Alcohol and Drug Policy Model, only three Canadian laboratories were certified by SAMHSA.

6.1.4 Drug testing must be conducted to determine the presence of any of the drugs and levels set out in the five-panel test under 2.1.2, as a minimum.

7.0 Alcohol and Drug Testing Results

7.1.1 Alcohol and drug test results can be negative, positive, tampered, invalid or inconclusive. A negative test result means the employee is in compliance, a positive test result means non-compliance, a tampered test result means non-compliance, and an invalid or inconclusive test result cannot be relied upon to determine compliance or non-compliance. All test results will be provided in a confidential written report from the medical review officer to the designated company representative.

7.1.2 In order to preserve the confidentiality of test results, the designated company representative and any person to whom disclosure is permitted under the employer’s alcohol and drug policy must not disclose the test results to any person other than a person who needs to know the test results to discharge an obligation under the employer’s alcohol and drug policy.

7.1.3 When an employee consents in writing to undergo alcohol or drug testing, he or she also:

(a) authorizes the laboratory to provide the test results to the company or any person with legal authority to require the disclosure of the test results, subject to 7.1.2,

(b) authorizes the medical review officer to provide the test results to an SAE to whom the employee has been referred under the provisions of the employer’s alcohol and drug policy.

7.1.4 A report from the medical review officer to the designated company representative that the employee’s sample produced a negative test result means that the employee complied with 2.1.2. The designated company representative must notify the employee of the negative test result and that no other steps under the employer’s alcohol and drug policy will be taken.

7.1.5 A confidential written report from the medical review officer to the designated company representative that the employee’s sample produced a positive test result means that the employee failed to comply with 2.1.2, unless the medical review officer has determined that there is a legitimate medical explanation for the positive test result.

7.1.6 A confidential written report from the medical review officer to the designated company representative that the employee’s sample has been tampered with means that the employee failed to comply with 2.1.4.
8.0 **Consequences for Failure to Comply with the Alcohol and Drug Work Rule**

8.1 **Employer responses to violations**

8.1.1 An employer may discipline an employee who fails to comply with 2.0. Discipline may include a variety of reasonable measures, up to and including termination for cause. Determination of the appropriate disciplinary measure will depend on the facts of each case, including the nature of the violation, the existence of prior violations, the response to prior corrective programs, and the seriousness of the violation.

8.2 **Violation of 2.1.1 or 2.1.2**

8.2.1 Before undertaking disciplinary measures with an employee who has failed to comply with 2.1.1 or 2.1.2, the employer must take appropriate steps to determine if the employee has a disability for which the employer has a duty to accommodate according to current human rights legislation, labour relations and arbitration rulings, and case law. The employer’s duty to accommodate extends to the point of undue hardship.

8.2.2 Before an employer makes a final decision regarding discipline of an employee who has failed to comply with 2.1.1 or 2.1.2, the employer must direct the employee to and the employee must meet with an SAE. The SAE will complete an initial assessment of the employee and determine the level of assistance required by the employee following the process set out in APPENDIX B – Substance Abuse Expert. The SAE will provide the employee and the employer a confidential written report of their recommendations.

8.2.3 The SAE’s initial assessment must be completed as soon as possible, and the SAE’s report must be delivered to the company within two days of the assessment.

8.2.4 In consideration of the SAE’s report, the employer will determine the appropriate disciplinary measures under 8.1.

8.2.5 Failure by the employee to attend the assessment or follow the recommended treatment program may be cause for termination of the employee.

8.2.6 Where an employee who fails to comply with 2.1.1 or 2.1.2 is disciplined or terminated for cause, the employer may, in addition to any other requirement, give written notice to the employee that they will not be returned to work or considered for re-employment by the employer unless the employee provides the employer:
(a) a certificate issued
   (i) by the treatment program service provider certifying that the employee has successfully completed a treatment program and continues to comply with all the requirements of the treatment program, or
   (ii) by a licensed physician with knowledge of substance abuse disorders certifying that the employee is able to safely perform the duties he or she will be required to perform if re-employed by the employer, and

(b) a statement signed by the employee acknowledging that the person agrees to any conditions imposed as part of a corrective treatment program and such other reasonable conditions set by the employer. The employer may terminate the employment of the employee who fails to comply with the conditions set out in such statement.

8.3 Violation of 2.1.3, 2.1.4 or 2.1.5

8.3.1 If an employer decides to discipline or terminate for cause the employment of an employee who fails to comply with 2.1.3, 2.1.4 or 2.1.5, the employer should also provide the employee with a list of available SAEs that the employee can access at the employee’s expense.

9.0 Definitions

Alcohol: Any substance that may be consumed and that has an alcoholic content in excess of 0.5 percent by volume.

Alcohol and drugs: Alcohol or drugs or both.

Alcohol and drug test: A test administered in accordance with 6.0 of this guideline.

Alcohol and drug work rule: The alcohol and drug work rule set out in 2.0 of this guideline.

Bona fide occupational requirement: Requirements that meet the following three tests established by the Supreme Court of Canada (the Meiorin Test):

1. The employer must show that it adopted the standard for a purpose rationally connected to the performance of the job.

2. The employer must establish that it adopted the particular standard in an honest and good-faith belief that it was necessary to the fulfillment of that legitimate work-related purpose.

3. The employer must establish that the standard is reasonably necessary to the accomplishment of that legitimate work-related purpose. To show that the standard is reasonably necessary, it must be demonstrated that it is impossible to accommodate individual employees sharing the characteristics of the claimant without imposing undue hardship upon the employer.
**Company:** A corporation, partnership, sole proprietorship, association, joint venture, trust or organizational group of persons whether incorporated or not.

**Company workplace:** Includes all real or personal property, facilities, land, buildings, equipment, containers, vehicles, vessels, boats, and aircraft whether owned, leased or used by the company and wherever it may be located.

**Confirmation test:** A test used to verify the positive results from a drug screening test. Confirmation tests use different methods than screening tests, such as gas chromatography and gas chromatography/mass spectrometry, to identify the specific drug or drugs in the sample, as well as the concentration of each drug in the sample.

**Drug paraphernalia:** Includes any personal property which is associated with the use of any drug, substance, chemical or agent the possession of which is unlawful in Canada.

**Drugs:** Includes any drug, substance, chemical or agent the use or possession of which is unlawful in Canada or requires a personal prescription from a licensed treating physician, any non-prescription medication lawfully sold in Canada and drug paraphernalia.

**Employee:** Any person on the employer’s payroll.

**Employee assistance program (EAP):** Services that are designed to help employees who are experiencing personal problems such as alcohol and drug abuse.

**Employee and family assistance services program (EFAP):** Similar to an EAP, but services are designed to support families as well.

**Employer:** A person who controls and directs the activities of an employee under an express or implied contract of employment.

**Incident or near miss:** A significant occurrence, circumstance or condition that caused or had the potential to cause damage to person, property, reputation, security or the environment.

**Laboratory:** A laboratory certified by the United States Department of Health and Human Services under the National Laboratory Certification Program.

**Manager:** Includes team leaders and other persons in authority.

**Medical review officer (MRO):** A licensed physician with knowledge of substance abuse disorders and the ability to evaluate an employee’s positive test results who is responsible for receiving and reviewing laboratory results generated by an employer’s drug testing program and evaluating medical explanations for certain drug test results.

**Negative test result:** A report from the medical review officer that the employee who provided a specimen for alcohol and drug testing did not have an alcohol and drug concentration level equal to or in excess of that set out in 2.1.2.

**Non-prescription drugs:** Drugs that can be lawfully purchased without a prescription.
**Owner:** The person in legal possession of a site. In the context of the upstream petroleum industry, includes operator, licensee, lease-holder, and other parties acting as a prime contractor.

**Positive test result:** A report from the medical review officer that the employee who provided a specimen for alcohol and drug testing did have an alcohol or drug concentration level equal to or in excess of that set out in 2.1.2.

**Prescription drugs:** Drugs that can only be obtained with a prescription from a physician licensed to prescribe drugs. Prescriptions must be made out to a specific individual and filled by a licensed pharmacist.

**Reasonable grounds:** Includes information established by the direct observation of the employee’s conduct or other indicators, such as the physical appearance of the employee, the smell associated with the use of alcohol or drugs on his or her person or in the vicinity of his or her person, his or her attendance record or unexplained absences during regular work hours, circumstances surrounding an incident or near miss and the presence of alcohol, drugs or drug paraphernalia in the vicinity of the employee or the area where the employee worked.

**Safety-sensitive position:** A position in which the individual has a key and direct role in an operation where performance limitations due to substance use could result in a significant incident or near miss. The potential consequences of such an incident or near miss may include fatalities, serious injury to workers or the public, significant property damage, significant environmental damage or detrimental impact to reputation. No mitigating measures warrant reclassification of these positions.

**Screening test:** An initial test performed on a urine or saliva sample to determine the presence or absence of drugs. Screening tests usually focus on identifying particular classes of drugs (e.g., opiates) rather than specific drugs (e.g. morphine). All positive screening tests must be verified by a confirmation test.

**Substance abuse expert (SAE):** A licensed physician; a licensed or certified social worker; a licensed or certified psychologist; a licensed or certified employee assistance expert; or an alcohol and drug abuse counsellor. He or she has received training specific to the SAE roles and responsibilities, has knowledge of and clinical experience in the diagnosis and treatment of substance abuse-related disorders, and has an understanding of the safety implications of substance use and abuse.

**Supervisor:** The person who directs the work of others and may, depending on the nature of the company’s structure, include the foreman, general foreman, supervisor, superintendent or team leader.

**Tamper:** To alter, meddle, interfere or change.

**Treatment program:** A program tailored to the needs of an individual which may include education, counseling and residential care offered to assist a person to comply with the alcohol and drug work rule.

**Work:** Includes training and any other breaks from work while at a company workplace.

**Worksite:** A place at which a person performs work for an owner or employer.
APPENDIX A – ALCOHOL AND DRUG TESTING PROCEDURES

The following procedures are a general overview only. For more detailed information, contact your testing provider.

GENERAL CAUTION

Employers must be aware that the timing of tests can substantially affect results. For example, testing too long after an incident may fail to find substances that were present at the time of the incident, and may in fact find substances consumed after the incident.

ALCOHOL TESTING

GENERAL

(1) The donor is the person from whom a breath or saliva sample is collected.

(2) The donor is directed (and transported if necessary) to a collection site for testing, or a breath alcohol technician (BAT) attends the worksite to administer the test.

(3) The BAT or the screening test technician (STT) as appropriate, establishes the identity of the donor. Photo identification is preferable. Positive identification by a company representative who holds a supervisory position is acceptable.

(4) The BAT or STT as appropriate explains the testing procedure to the donor.

(5) The company must securely store information about alcohol test results to ensure that disclosure to unauthorized persons does not occur.

(6) Breath testing and saliva testing devices are used to conduct alcohol screening tests and must be listed on the National Highway Traffic Safety Administrations (NHTSA) conforming products list.

BREATHE TESTING

(1) The BAT and the donor complete those parts of the alcohol testing form that are to be completed before the donor provides a breath sample.

(2) The BAT opens an individually wrapped or a sealed mouthpiece in the presence of the donor and attaches it to the breath testing device in the prescribed manner.

(3) The BAT explains to the donor how to provide a breath sample and asks the donor to provide a breath sample.

(4) The BAT reads the test result and ensures that the test result is recorded on the alcohol testing form after showing the results to the donor.

(5) The BAT completes the part of the alcohol testing form that is to be completed after the donor provides a breath sample.
(6) If the test result shows an alcohol level that is less than 0.020 grams/210 litres of breath (in accordance with U.S. DOT requirements\(^4\)), the BAT informs the donor that there is no need to conduct any further testing and reports the result in a confidential manner to the company’s designated representative. While the initial communication need not be in writing, the BAT must subsequently provide a written report of the test result to the company’s designated representative.

(7) If the test result shows an alcohol level that is equal to or greater than 0.020 grams/210 litres of breath (in accordance with US DOT requirements), the BAT informs the donor of the need to conduct a confirmation test.

**Saliva testing**

(1) The STT and the donor complete those parts of the alcohol testing form that are to be completed before the donor provides a sample.

(2) The STT checks the expiration date of the saliva testing device, shows the date to the employee, and uses a saliva testing device only if the expiration date has not passed.

(3) The STT opens an individually wrapped or a sealed package containing the saliva testing device in the presence of the donor.

(4) The STT invites the donor to insert the saliva testing device into the donor’s mouth for the time it takes to secure a proper specimen. If the donor does not wish to do this, the collection site person offers to do so.

(5) The STT reads the result the saliva testing device produces and records the test result on the alcohol testing form after showing the results to the donor.

(6) The STT completes the part of the alcohol testing form that is to be completed after the donor provides a saliva sample.

(7) If the test result shows an alcohol level that is less than 0.020 grams of alcohol in 100 millilitres of saliva or an equivalent concentration in other units, the STT informs the donor that there is no need to conduct any further testing and reports the result in a confidential manner to the company’s designated representative. While the initial communication need not be in writing, the STT must subsequently provide a written report of the test results to the company’s designated representative.

(8) If the test result shows an alcohol level that is equal to or greater than 0.020 grams of alcohol in 100 millilitres of saliva or an equivalent concentration in other units, the STT informs the donor of the need to conduct a confirmation test.

(9) The BAT or STT advises the donor not to eat, drink, put anything into his or her mouth or belch before the confirmation test is complete.

**Confirmation test**

(1) All screening tests with results at or above 0.020 must be confirmed using an evidential breath alcohol testing device.

(2) The confirmation test must start not less than fifteen minutes after the completion of the screening test and not more than thirty minutes after the completion of the screening test. If more than 30 minutes has expired since

---

\(^4\) For more information on alcohol testing levels, see question 9 in the Frequently Asked Questions.
the screening test, the confirmation test is still conducted with an explanation noted in the remarks section. This may occur when the person being tested must be transported to a different site for confirmation testing.

(3) The BAT and the donor complete those parts of the alcohol testing form that are to be completed before the donor provides a breath sample.

(4) The BAT opens a new individually wrapped or sealed mouthpiece in the presence of the donor and inserts it into the breath testing device in the prescribed manner.

(5) The BAT explains to the donor how to provide a breath sample and asks the donor to provide a breath sample.

(6) The BAT reads the test result on the device and shows the donor the result displayed. If the confirmation test result is equal to or in excess of 0.020 grams per 210 litres of breath\(^5\), the BAT will do an external calibration check (accuracy check) to ensure the device is in working order. The BAT ensures that the test result is recorded on the alcohol testing form. The BAT verifies the printed results with the donor.

(7) The BAT completes the part of the alcohol testing form that is to be completed after the donor provides a breath sample and asks the donor to do so as well.

(8) The BAT immediately reports in a confidential manner the test results to the company’s designated representative. While the initial communication need not be in writing, the BAT must subsequently provide a written report of the test result to the company’s designated representative.

**Drug Testing – Laboratory Based Testing**

(1) The donor is the person from whom a urine specimen is collected.

(2) The donor is directed (and transported if necessary) to a collection site, or a collection site person attends the worksite.

(3) The collection site person must establish the identity of the donor. Photo identification is preferable. Positive identification by a company representative who holds a supervisory position is acceptable.

(4) The donor must remove coveralls, jacket, coat, hat or any other outer clothing and leave these garments and any briefcase or purse with the collection site person.

(5) The donor must remove any items from his or her pockets and allow the collection site person to inspect them to determine that no items are present which could be used to adulterate a specimen.

(6) The donor must give up possession of any item which could be used to adulterate a specimen to the collection site person until the donor has completed the testing process.

(7) The collection site person may set a reasonable time limit for providing a urine specimen.

(8) The collection site person selects or allows the donor to select an individually wrapped or sealed specimen container. Either the collection site person or the

---

\(^5\) For more information on alcohol testing levels, see question 9 in the Frequently Asked Questions.
donor, in the presence of the other, must unwrap or break the seal of the specimen container.

(9) The donor may provide his or her urine specimen in private, in most circumstances. The specimen must contain at least forty-five milliliters.

(10) The collection site person notes on the chain of custody form any unusual donor behaviour.

(11) The collection site person determines the volume and temperature of the urine in the specimen container.

(12) The collection site person inspects the specimen and notes on the chain of custody form any unusual findings.

(13) If the temperature of the specimen is outside the acceptable range or there is evidence that the specimen has been tampered with, the donor must provide another specimen under direct observation by the collection site person or another person if the collection site person is not the same gender as the donor.

(14) The collection site person splits the urine specimen into two specimen bottles. One bottle is the primary specimen and the other is the split specimen.

(15) The collection site person places a tamper-evident bottle seal on each of the specimen bottles and writes the date on the tamper-evident seals.

(16) The donor must initial the tamper-evident bottle seals to certify that the bottles contain the urine specimen the donor provided.

(17) The collection site person completes the chain of custody form, directing the donor to complete relevant sections as needed, and seals the specimen bottles and the laboratory copy of the chain of custody form in a plastic bag.

(18) The collection site personnel arrange to ship the two specimen bottles to the laboratory as quickly as possible.

(19) The laboratory must be the holder of a certificate issued by the Substance Abuse and Mental Health Services Administration of the United States Department of Health and Human Services under the National Laboratory Certification Program.

(20) The laboratory must use chain of custody procedures to maintain control and accountability of urine specimens at all times.

(21) Laboratory personnel inspect each package for evidence of possible tampering and note evidence of tampering on the specimen forms.

(22) Laboratory personnel conduct validity testing to determine whether certain adulterants or foreign substances were added to the urine specimen.

(23) Laboratory personnel conduct an initial screening test on the primary specimen for the drugs set out in 2.1.2 using established immunoassay procedures. No further testing is conducted if the initial screening test produces a negative test result.

(24) Laboratory personnel conduct a confirmatory test on specimens identified as positive by the initial screening test. The confirmatory test uses gas chromatography/mass spectrometry.

(25) A certifying scientist reviews the test results before certifying the results as an accurate report.
(26) The laboratory reports the test results on the primary specimen to the company’s medical review officer (MRO) in confidence.

(27) The MRO will report to the employer test results that are negative or positive, as well as tests that have been tampered with or otherwise invalidated.

(28) Prior to making a final decision on whether a test result is positive, the MRO must give the employee an opportunity to discuss the results. If there is an acceptable medical explanation for the presence of a drug in a sample, the MRO will change the test result from a positive to a negative. The MRO will only disclose the negative result to the company’s designated representative.

(29) The MRO, if satisfied that there is no legitimate medical explanation for a positive test result, will inform the company’s designated representative in a confidential written report that an employee tested positive.

(30) An employee who has received notice from the MRO that they have tested positive may ask the MRO within 72 hours of receiving notice that they have tested positive to direct another laboratory to test the split specimen.

(31) The laboratory reports the test results on the split specimen to the company’s MRO in confidence.

(32) The MRO will make the final decision on all test results following guidelines that are established for MROs.

**DRUG TESTING – POINT OF COLLECTION TESTING (POCT)**

Some employers may choose, as an option, to conduct screening drug tests using point of collection testing (POCT) methods.

A POCT is a drug screening test performed outside of a certified laboratory. POCTs are conducted using a variety of devices designed for this purpose. Some POCT devices test for a single drug while others can be used to test for combinations of drugs.

POCTs can be particularly useful during conditional and field-hiring conditions because they provide fast results. However, if a POCT provides a positive result, it must be confirmed with a confirmation test at a certified laboratory.

**PRIMARY ADVANTAGE OF POCT**

- Quick turn-around on negative results.

**SOME DISADVANTAGES OF POCT**

- POCT does not currently meet standards set by the U.S. Department of Health and Human Services, the recognized authority on drug testing in North America.

- POCT may not test for the same drugs at the same concentrations as the laboratory-based tests.

- Most POCT devices currently in use require a subjective assessment of the result (e.g., the tester must decide if the test is negative or positive based on visual clues), while laboratory-based drug testing is objective.

- Lack of documentation of testing and quality control results. In a certified laboratory, the raw analytical data is available long after the sample is resulted. This is not the case in POCT since the majority of POCT results are visual and the
result hand written. This also becomes an issue of accountability, since the tester decides what the result is going to be and may be influenced in their decision making by a variety of factors.

- Lack of chain of custody and lack of knowledge in the interpretation of drug test results.
- Positive samples may not be confirmed and inappropriate action may be taken based on a screening test only.

**CONCLUSION**

The two most important elements of drug testing are the outcome for the employee who is tested and the legal defensibility of that outcome. Any actions an employer takes as a result of a positive drug test must be based on accurate and defensible results that can stand up against stringent legal requirements and evolving case law.

For a POCT program to stand the test of defensibility, it must conform to the same stringent standards that are in place for certified laboratories. With the right resources and controls, it is possible that a POCT program can meet those stringent standards and overcome most of the disadvantages listed above. For example, a split-sample method could be used whereby a portion of the sample is used for POCT and a separate portion is sent to a certified laboratory for repeat analysis. A sound chain of custody protocol would ensure both portions of the sample are handled and documented properly. Employers should also ensure that any POCT devices they choose are capable of detecting any drugs they are particularly concerned about (e.g., crystal meth).

However, to make the best choice for testing programs, employers should carefully consider their ability to ensure the legal defensibility of test results and any subsequent decisions and actions taken with tested employees.
APPENDIX B – SUBSTANCE ABUSE EXPERT

THE SUBSTANCE ABUSE EXPERT

The substance abuse expert (SAE) is a person who evaluates individuals (clients) who have sought or been referred for assessment. The SAE makes recommendations concerning education, treatment, follow-up testing, and aftercare.

The SAE is not an advocate for the employer, the client or the bargaining agent or labour provider if the employee has one. The function of the SAE is to protect the safety and health of the client, his or her co-workers and the worksite by professionally evaluating the client and recommending appropriate education and treatment, follow-up tests, and aftercare.

The SAE is a licensed physician; a licensed or certified social worker; a licensed or certified psychologist; a licensed or certified employee assistance professional; or an alcohol and drug abuse counselor. He or she has received training specific to the SAE roles and responsibilities, has knowledge of and clinical experience in the diagnosis and treatment of substance abuse-related disorders, and has an understanding of the safety implications of substance use and abuse.

THE EVALUATION AND ASSESSMENT

Consistent with sound clinical and established SAE standards of care in clinical practice, and utilizing reliable alcohol and drug abuse assessment tools, the SAE must conduct a face-to-face evaluation of the client. The evaluation should comprise a standard psychosocial history; an in-depth drug and alcohol use history (with information regarding onset, duration, frequency and amount of use; substance(s) of use and choice; emotional and physical characteristics of use; associated health, work, family, personal and interpersonal problems); and, a current mental status. The evaluation should provide a diagnosis, treatment recommendations and a treatment plan to be successfully complied with prior to the employee becoming eligible for follow-up evaluation and subsequent return to work.

When a client has failed to comply with 2.1.2 or 2.1.4 of the Alcohol and Drug Policy Model, the SAE may consult with the medical review officer (MRO) who verified the client’s alcohol and drug test in gathering information for this evaluation. The MRO and SAE are free to discuss the test result, substance concentration levels (if available), and any other pertinent medical information disclosed during the MRO’s verification interview with the client.

The SAE shall provide a confidential written report to the employer, the client and the bargaining agent or labour provider if the employee has one, advising of the SAE’s determination of the level of assistance the client requires.

THE REFERRAL

As a result of the evaluation and assessment, the SAE will refer the client to the appropriate program or programs. The SAE will facilitate the referral by making contact with the recommended program or programs, and will transmit the treatment plan with diagnostic determinations to the treatment provider(s).
FOLLOW-UP EVALUATION

Following prescribed treatment, the SAE will evaluate the client prior to return to work. The SAE will gauge the client’s success in meeting the objectives of the prescribed treatment plan. The client’s ability to successfully demonstrate compliance with the initial treatment recommendations will be determined in a clinically based follow-up evaluation. The SAE will also base the determination on written reports from and personal communication with the respective education and/or treatment program professionals. The SAE will prepare a report for the client, the employer or prospective employer, setting out the clinical determination as to the client’s success in meeting the objectives of the treatment plan, and may include in the report the client’s continuing care needs in respect to specific treatment, aftercare, support group services recommendations, and a follow-up testing plan.
APPENDIX C – GUIDE FOR IDENTIFYING SAFETY-SENSITIVE POSITIONS

OVERVIEW

All employees in the upstream petroleum industry, regardless of their work activity or work environment, can be subjected to alcohol and drug testing for reasonable cause or following an incident or significant near miss.

Employees in positions designated as safety sensitive can be subjected to additional testing as described in 5.7. To ensure employers properly apply the alcohol and drug testing requirements of 5.7, they must first identify positions within their organizations that are safety sensitive. This guide offers a process and matrix employers can use as an assessment tool for this purpose.

Employers responsible for construction activities should refer to the COAA Canadian Model for Providing a Safe Workplace (current version).

WORKING WITH THE PROCESS AND SAFETY-SENSITIVE MATRIX

Subjecting employees to additional testing beyond reasonable cause and post incident requires careful consideration to ensure additional testing is legally defensible under prevailing human rights and privacy legislation. The process and matrix offered here are based on a thoughtful, reasonable assessment of work activities, work environments, and areas of impact for individual positions within a company to verify whether they are safety sensitive and therefore subject to additional testing.

Employers can alter the matrix to ensure the work activities and environments are consistent with their operations; however, any changes must not reduce the severity of the activities and environments currently represented in the matrix.

Employers can also choose to use assessment tools other than the process and matrix offered in this guide, provided the identification of safety-sensitive positions meets the same level of scrutiny.

Employers must also understand that the process and matrix in this guide are offered as a tool for employers, not employees, to use in identifying positions that are truly safety sensitive. The employer should assign the work of identifying safety-sensitive positions to appropriate management personnel.
**PROCESS FOR IDENTIFYING AN ORGANIZATION’S SAFETY-SENSITIVE POSITIONS**

1. **Become familiar with:**
   - The Safety-sensitive Matrix
   - Definitions in the matrix
   - Descriptions of work activities and work environments

2. **List all positions within your organization grouping by similar job functions.**

3. **Do example work activities and work environments on SS Matrix include those of your company?**
   - **Yes**
     - **Adjust** (if necessary) areas of impact under P-E-A-R* for consistency with your company’s risk assessment matrix.
     - **Plot** on the SS Matrix each listed position by first considering the work activity and then the work environment.
     - **Designate** each listed as:
       - Non-safety sensitive
       - Safety-sensitive
       - Potentially safety-sensitive
     - **Re-examine** potentially safety-sensitive positions and determine mitigating measures to be applied to move them to non-safety sensitive. Otherwise they are safety-sensitive!
     - **Document** your assessment in each case (i.e., why some are safety-sensitive and others are not) and retain for future reference with A&D policy implementation documents.

   - **No**
     - **Assign** activities (by job function) across 5 levels of severity for work activity.

4. **List all typical locations and environments work is performed.**

5. **Assign** environments across 5 levels of severity for work environment.

6. **Create** your own company specific SS Matrix with meaningful descriptions of work activities and work environments, both allocated to various severity levels based on potential impacts to P-E-A-R*

   *SS= Safety-sensitive

   P-E-A-R= People, Environment, Assets, Reputation

7. **Classification of all organizational positions.**
SAFETY-SENSITIVE MATRIX

This matrix is an assessment tool that can be used to identify positions that may be safety-sensitive, potentially safety-sensitive or non-safety-sensitive, based on work activities and work environment. By industry agreement, the activity of driving is considered potentially safety-sensitive.

<table>
<thead>
<tr>
<th>Severity of Work Activity</th>
<th>Work Activity</th>
<th>Areas of Impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 2 3 4 5</td>
<td></td>
<td>People</td>
</tr>
<tr>
<td><strong>Severity of Work Environment Categories</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1 Non-operating locations</td>
<td>• Admin duties • Office-based computer support • Cleaning / janitorial services</td>
<td>Abandonment / remediation</td>
</tr>
<tr>
<td>2 Low-risk locations</td>
<td>• Non-operating locations</td>
<td>Abandonment / remediation</td>
</tr>
<tr>
<td>3 Production facilities • Pipelines • Proximity to sensitive environment • Green field site • Shop/yard manufacturing • Camps</td>
<td>• Non-operating locations</td>
<td>Abandonment / remediation</td>
</tr>
<tr>
<td>4 Exposure to hazards • Rig site • Time of day • Working alone • Brown field site</td>
<td>• Non-operating locations</td>
<td>Abandonment / remediation</td>
</tr>
<tr>
<td>5 Remote (re: access to health care) • Offshore</td>
<td>• Non-operating locations</td>
<td>Abandonment / remediation</td>
</tr>
</tbody>
</table>

Employers responsible for construction activities should refer to the COAA Canadian Model for Providing a Safe Workplace (current version).

Edition 1.0, September 2007
DEFINITIONS:

- **Safety-sensitive**: A position in which the individual has a key and direct role in an operation where performance limitations due to substance use could result in a significant incident or near miss. The potential consequences of such an incident or near miss may include fatalities, serious injury to workers or the public, significant property damage, significant environmental damage or detrimental impact to reputation. No mitigating measures warrant reclassification of these positions.

- **Potentially safety-sensitive**: A potentially safety-sensitive position is safety-sensitive unless mitigating measures are used to control the hazards and risk to an acceptable level. Examples of mitigating measures include direct supervision, driver training, journey management, fatigue management and working alone programs.

- **Non-safety-sensitive**: Positions that are not considered safety-sensitive or potentially safety-sensitive will be considered non-safety-sensitive. This could include employees who infrequently visit higher-risk locations, provided proper mitigating controls are in place (e.g., continuous supervision, site and safety orientations).

- **Work Environment**: Relates to the highest risk/hazard exposure related to the work environment in which the work activities will be performed. You must consider the highest consequence work environment/location, where an employee may perform work even on an infrequent basis.

- **Work Activities**: Relates to the highest consequence activity, which is likely to be undertaken by an employee. You must consider the highest consequence work, which an employee may only do on an infrequent basis.

WORK ACTIVITIES

<table>
<thead>
<tr>
<th>Level</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Level 1</td>
<td>Slight risk, activities with low consequences of an incident. Risk exposure to hazards is also low.</td>
</tr>
<tr>
<td>Level 2</td>
<td>Minor risk, activities with minor consequences of an incident. Risk exposure to hazards is also minor.</td>
</tr>
<tr>
<td>Level 3</td>
<td>Considerable risk, activities with considerable consequences of incident. Risk exposure to hazards also considerable.</td>
</tr>
<tr>
<td>Level 4</td>
<td>Major risk, activities with major consequences of an incident. Risk exposure to hazards is also major.</td>
</tr>
<tr>
<td>Level 5</td>
<td>Extensive risk, activities with extensive consequences of an incident. Risk exposure to hazards is also extensive.</td>
</tr>
</tbody>
</table>

WORK ENVIRONMENTS

<table>
<thead>
<tr>
<th>Level</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Level 1</td>
<td>Slight risk and hazard exposure in the work environment when performing work activities.</td>
</tr>
<tr>
<td>Level 2</td>
<td>Minor risk and hazard exposure in the work environment when performing work activities.</td>
</tr>
<tr>
<td>Level 3</td>
<td>Considerable risk and hazard exposure in the work environment when performing work activities.</td>
</tr>
<tr>
<td>Level 4</td>
<td>Major risk and hazard exposure in the work environment when performing work activities.</td>
</tr>
<tr>
<td>Level 5</td>
<td>Extensive risk and hazard exposure in the work environment when performing work activities.</td>
</tr>
</tbody>
</table>

CONSIDERATIONS:

- If your assessment falls within the potentially safety-sensitive area, you must determine if the work activity and worker will be supervised or not. If adequate supervision is available, the assessment would be non-safety-sensitive. If adequate supervision is not available, the assessment would be safety-sensitive.

- To aid in the classification of safety-sensitive you should consider the potential detrimental impact on People (Workers and Public), Environment, Assets, and Reputation (P-E-A-R) when assessing the work activities and work environment.

- You should also consider the increasing probability (likelihood) and escalating severity of an actual or potential consequence.

- Special consideration should be given to green workers for all activities they perform.
### Descriptions of Example Work Activities and Work Environments

<table>
<thead>
<tr>
<th>Work Activity Examples (what task)</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Severity Level 1</strong></td>
<td></td>
</tr>
<tr>
<td>Administrative duties</td>
<td>Office-based work performed in head or regional offices and typically would include administrative duties, meetings, using telephone, accounting, purchasing, drafting, etc.</td>
</tr>
<tr>
<td>Office-based computer support</td>
<td>Office-based work performed in head or regional offices consisting of computer work and computer support work.</td>
</tr>
<tr>
<td>Cleaning/janitorial services</td>
<td>Janitorial type services usually provided by individuals or contract companies; does not include industrial equipment cleaning.</td>
</tr>
<tr>
<td><strong>Severity Level 2</strong></td>
<td></td>
</tr>
<tr>
<td>Abandonment/remediation</td>
<td>Dismantling and clean-up of facilities no longer operating or wells no longer capable of producing. Sites are restored to pre-industrial-use condition as much as possible and remediated for alternative land use.</td>
</tr>
<tr>
<td><strong>Severity Level 3</strong></td>
<td></td>
</tr>
<tr>
<td>Operations/maintenance</td>
<td>Routine operating or maintaining/repairing oil and/or gas facilities including pipelines, compressor stations, oil batteries, gas plants and well-servicing equipment. Includes control room operators, unit operators, field operators as well as work done by electrical, instrumentation, and rotating equipment crafts, mechanics, tool technicians, etc. Non-routine activities must be assessed to the task level.</td>
</tr>
<tr>
<td>Supervisory management</td>
<td>Any manager supervising personnel and/or operations classified at severity level three or higher.</td>
</tr>
<tr>
<td>Technical work</td>
<td>Work activities technical in nature. Examples include interpreting geological or geophysical data, preparing a drilling prognosis or well-servicing programs, developing engineering designs, designing pipelines or surface facilities, inspecting equipment and facilities.</td>
</tr>
<tr>
<td>Camp licensed food services</td>
<td>Food preparation and serving activities usually performed by camp catering staff in a licensed or public-health-approved kitchen facility.</td>
</tr>
<tr>
<td><strong>Severity Level 4</strong></td>
<td></td>
</tr>
<tr>
<td>Drilling</td>
<td>Work activities associated with drilling a well including rig move-in, set-up, drilling, running casing, and well testing.</td>
</tr>
<tr>
<td>Seismic</td>
<td>Work involves manual labour duties and/or operating specialized equipment associated with seismic activities. Includes line clearing/slashing, placing/retrieving geophones, drilling/loading shot holes, and data recording.</td>
</tr>
<tr>
<td>Heavy equipment transport</td>
<td>Includes rig moves, transport of mobile equipment, well tubulars, pipe, materials and equipment for oil and gas production facilities.</td>
</tr>
<tr>
<td>Completions/well servicing</td>
<td>Work activities supporting completing and servicing wells such as mobilization/de-mobilization of service rigs, fracting, acidizing, fluid supply/disposal, running/pulling tubing, rig operations, etc.</td>
</tr>
<tr>
<td>Safety watch</td>
<td>Performing safety-watch duties (may include gas testing, confined space entries, maintaining rescue equipment at the ready, controlling access, etc.) in support of other workers performing activities involving exposure to hazards.</td>
</tr>
<tr>
<td>Hot work</td>
<td>Work performed on energized systems including electrical, work on live/pressurized piping or equipment, and maintenance work involving combustible/explosive fluids or materials.</td>
</tr>
<tr>
<td><strong>Severity Level 5</strong></td>
<td></td>
</tr>
<tr>
<td>Product or hazardous goods transport</td>
<td>Transport of any product/material by tank truck or marine transport under control of employer in compliance with TDG requirements. Examples would include hauling produced water or waste products, liquid hydrocarbons (oil, condensate, propane, butane, lube oils), chemicals (methanol, glycol, gas-treating solutions), liquid sulphur, hot water, contaminated materials, radio-active materials, explosives, etc.</td>
</tr>
<tr>
<td>Multiple-person transport</td>
<td>Driving a multi-passenger vehicle (bus, van, crew-cab) to transport workers to their worksite(s).</td>
</tr>
<tr>
<td>Emergency response</td>
<td>Activities related to responding to an emergency – examples include incident-command positions, organizing evacuations, providing assistance such as first aid, notifying resources agencies, spill or gas release mitigation, etc.</td>
</tr>
<tr>
<td>Work Environment Examples (where task done)</td>
<td>Description</td>
</tr>
<tr>
<td>-------------------------------------------</td>
<td>-------------</td>
</tr>
<tr>
<td><strong>Severity Level 1</strong>&lt;br&gt;Non-operating locations</td>
<td>Upstream petroleum industry locations, such as offices, where emergency support services are readily available.</td>
</tr>
<tr>
<td><strong>Severity Level 2</strong>&lt;br&gt;Low-risk locations</td>
<td>Includes storage areas, warehouses, and other support infrastructure.</td>
</tr>
<tr>
<td><strong>Severity Level 3</strong>&lt;br&gt;Production facilities</td>
<td>Attended or unattended oil and gas operating facilities including producing/injecting well sites, processing plants, compressor stations, storage tanks, gathering system, and pipeline junctions.</td>
</tr>
<tr>
<td>Pipelines</td>
<td>Pipeline rights-of-way and associated facilities such as pumping/compressor stations, junctions, valve, and depressuring stations.</td>
</tr>
<tr>
<td>Proximity to sensitive environment</td>
<td>Could be sensitive due to wildlife, lakes or streams, unique vegetation, proximity to public.</td>
</tr>
<tr>
<td>Green field site</td>
<td>A site outside of an established operating area where there is no exposure to hazards from an existing oil or gas operation.</td>
</tr>
<tr>
<td>Shop/yard manufacturing</td>
<td>Equipment fabrication and assembly work in a shop or yard environment with controlled access.</td>
</tr>
<tr>
<td>Camps</td>
<td>Temporary or permanent accommodations for work crews including those associated with drilling and/or well servicing operations and the operation of oil and gas production, and processing facilities, etc.</td>
</tr>
<tr>
<td><strong>Severity Level 4</strong>&lt;br&gt;Exposure to hazards</td>
<td>Work environments where workers would be exposed to significant hazards such as in underwater pipeline repairs, elevated work locations, confined spaces (limited access/egress), proximity to explosives, exposure to benzene, asbestos, H₂S, etc.</td>
</tr>
<tr>
<td>Rig site</td>
<td>Drilling or service rig location, during set-up, operations, ancillary operations, and de-mobilization.</td>
</tr>
<tr>
<td>Time of day</td>
<td>Work locations requiring shift work with workers often having limited or no other personnel to assist them, especially on night shift.</td>
</tr>
<tr>
<td>Working alone</td>
<td>Work locations requiring workers to work alone, or where it is usual for workers to be on their own.</td>
</tr>
<tr>
<td>Brown field site</td>
<td>A site inside an established operating area where there may be exposure to hazards from an existing oil or gas operation.</td>
</tr>
<tr>
<td><strong>Severity Level 5</strong>&lt;br&gt;Remote (re: access to health care)</td>
<td>Isolated worksites remote from established health care facilities. Consistent with OH&amp;S, it would be considered remote if it would take more than 40 minutes to transport a casualty to a health care facility.</td>
</tr>
<tr>
<td>Off shore</td>
<td>Offshore locations could include the arctic, east coast or west coast. All such locations are remote and subject to the extremes of maritime climates.</td>
</tr>
</tbody>
</table>
INDEPENDENT LEGAL OPINION

PROVIDED BY ANDREW R. ROBERTSON, MACLEOD DIXON LLP

You have requested our opinion as to the compliance of the Alcohol and Drug Policy Model for the Canadian Upstream Petroleum Industry (the Alcohol and Drug Policy Model) with the law prevailing in Alberta, and specifically the following parts of it:

(a) Guiding Principles,
(b) Responsibilities, and
(c) Guideline for Developing an Alcohol and Drug Policy.

We express no opinion on the appendices to the 2007 Alcohol and Drug Policy Model.

This opinion is provided as of April 16, 2007.

SUMMARY

Subject to some concerns set out below, on balance we are of the opinion that the Alcohol and Drug Policy Model is in compliance with human rights law in Alberta as it has been pronounced by the courts and human rights tribunals to date.

CAUTIONS

In reviewing and relying on this opinion, the reader must take into account the following:

1. The law relating to human rights, alcohol and drug dependencies, and alcohol and drug testing is in an ongoing period of development. It would be incorrect to view the law in this area as "mature" in the sense that most of the basic principles have been clearly established. Rather, the interaction among issues associated with safety, human rights, privacy, labour law, and the law of employment generally continue to be developed. For example, at the time of writing the Court of Queen's Bench of Alberta has released a decision in the Alberta (Human Rights and Citizenship Commission) v. Kellogg Brown & Root (Canada) Company case (which I will refer to as the Chiasson case, being the name of the complainant), which expressly disagrees with part of the reasoning in Milazzo v. Autocar Connaisseur Inc. decision from the Canadian Human Rights Tribunal, and also disagrees with decisions made by some prominent labour arbitrators who have addressed human rights concerns in the context of alcohol and drug testing. The Chiasson case is being appealed to the Court of Appeal of Alberta. Once the Court of Appeal has heard and decided the case, and subject to a possible further appeal to the Supreme Court of Canada, the Alcohol and Drug Policy Model may have to be substantially re-considered in light of the courts' decisions.

2. To the extent there have been relatively clear statements of law from some courts, there is not yet unanimity amongst the various courts. For example, although Entrop v. Imperial Oil is thought to be one of the leading cases on drug and alcohol testing, the applicability of that Ontario Court of Appeal decision in Alberta was obliquely called into question at the Court of Queen's Bench level in the Elizabeth Metis Settlement case and, in any event their decision in Entrop was acknowledged by the Ontario Court of Appeal to
discuss principles of law that exceeded the jurisdiction of the Human Rights Board of Inquiry which initially heard the case – meaning that the Ontario Court of Appeal may (at least in theory) in a later case, decline to follow its own decision. The Court in the Chiasson case seemed to generally agree with the Entrop decision in the Ontario Court of Appeal, but specifically noted, after reviewing leading cases, the following:

This brief review illustrates a difference of opinion over perceived disability, non-addicted recreational drug users, employer policies and employer actions among arbitration decisions and between these decisions and those of the courts and human rights panels.

This comment seems to suggest that the arbitrators have differing opinions amongst themselves but the courts' decisions are all harmonious. With respect, we do not think there is complete harmony amongst the courts' decisions.

In the recent Bantrel decision by an Alberta Arbitration Board, the arbitration panel noted that arbitration jurisprudence in this area is also not consistent. The board there noted two different approaches that have developed in Ontario and in Western Canada.

Until the Supreme Court of Canada has an opportunity to rule on alcohol and drug testing in the human rights context, the law will likely continue to have some uncertainty.

3. A decision of the British Columbia Labour Relations Board (Fraser Lake Sawmills Ltd. v. Industrial Wood and Allied Works of Canada) discussed frankly the fact that the law in this area continues to develop, and the Board further commented that the correct resolution of a particular problem requires an approach that is "just, practical, and responsive to all of the different considerations that may be relevant to the particular case" – a flexible approach that makes providing an opinion on a policy model (which is, by nature, somewhat inflexible) difficult. Accordingly, throughout this opinion there will be emphasis on assessing each case individually, particularly if some form of discipline is contemplated to be imposed upon an employee who has tested positive for alcohol or for drug metabolites.

Therefore, the reader should seek legal counsel to consider the specific facts of a particular case to take into account later developments in the law, a consensus that may yet be reached by the courts, the unique issues present in the case, and possible remedies available in the circumstances.

**RELATED AREAS OF LAW**

It must be borne in mind that the legal and factual issues associated with alcohol and drug testing and human rights find their way to different kinds of tribunals in different circumstances:

(a) a human rights tribunal (in Alberta, the Alberta Human Rights and Citizenship Commission),

(b) a labour arbitrator or arbitration panel where there is a collective agreement in place,
both a human rights tribunal and an arbitrator or arbitration panel might concurrently be dealing with the same facts,

d) the provincial employment standards agency (in Alberta, the Employment Standards Division of Alberta Employment, Immigration and Industry),

e) a small claims court (in Alberta, the Alberta Provincial Court, Civil Division), and

f) the superior courts of general jurisdiction (in Alberta, the Court of Queen's Bench), either in a civil lawsuit, or on appeal from the human rights tribunal, or on a review of a labour arbitration decision.

Furthermore, in the recent arbitration decision in Imperial Oil Ltd. v. CE&PUC, Local 900 (Picher, December 11, 2006), the arbitration board declined to follow some of the decision in the Ontario Court of Appeal in Entrop, because (para. 110):

The Court of Appeal in Entrop was focused solely on the interpretation of The Human Rights Code. It did not address the interpretation of a collective agreement and thereby did not address the impact of the widely accepted principles of drug testing under the "Canadian Model" in a workplace governed by a collective agreement. In approaching this issue it is important to remember that that which is permissible under human rights legislation may not be permissible under a collective agreement.

Later in the decision, the board discussed the importance of contractual consent, another important factor that is present when there is a collective agreement, and also when the particular alcohol and drug testing policy clearly forms part of the employment contract. This will be discussed further, below. A case involving a clear contract may properly be analyzed differently than a case involving a policy imposed unilaterally by an employer.

In Bantrel, the board noted that the Entrop decision reflected the "narrower approach" taken in Ontario, where the focus is on human rights issues, as compared to the Western Canadian cases that "for the most part have permitted broader drug and alcohol testing programs in workplaces which are demonstrably safety sensitive." Accordingly, the differing practices, focuses and opinions of these various tribunals will likely lead to many more years of development of the law surrounding alcohol and drug testing and human rights.

**OPINION**

The interaction between alcohol and drug testing policies and human rights arises from the fact that a dependency on alcohol or drugs is a disability, and the human rights legislation in Alberta and elsewhere in Canada prohibit discrimination on the basis of either a mental disability or a physical disability. An alcohol and drug testing policy may effectively lead to discrimination against an employee who has a dependency on drugs or alcohol, i.e. a disability. Nonetheless, discrimination of this nature may be permitted by the law, if the alcohol and drug testing policy is a "bona fide occupational requirement", or if the employer accommodates the disabled (dependent) employee "to the point of undue hardship".

It must be noted that "accommodation" of a dependent employee does not mean that an employer must tolerate an impaired employee in the workplace, especially
where the employee is in a safety-sensitive position. For example, the impaired employee may be sent home. The issues here relate to discipline, the employer's right to establish testing policies, and accommodating the disabled employee by allowing for (or providing for) treatment and rehabilitation.

One of the difficulties with drug testing that has confused the discussion on testing policies is that tests for drug use do not test for current impairment, because they can't. A drug test will disclose the presence or absence of metabolites of the drug in urine (or in saliva) and the presence of drug metabolites does not mean that the individual is currently acutely impaired. The individual may well be currently impaired, but a urine test will not reveal that - it will only indicate recent use. In the case of marijuana, a chronic user will still test positive for metabolites up to 30 days after the last use on a urinalysis test, and an occasional user will test positive for 3 to 5 days after last use, because THC (the active ingredient) lodges itself in the fatty tissues of the body (the brain) and is slowly released from the body over time. Since THC is fat soluble, not water soluble as alcohol is, its interaction with the body and the brain is significantly different than the interaction of alcohol with the body.

Even a breathalyser does not actually test for impairment. It tests the quantity of alcohol in the breath, which allows for an extrapolation of how much alcohol is in the blood, which in turn allows us to set standards that are based on an extrapolation of how much alcohol in the blood makes the individual impaired - even though the effects vary from person to person, and what constitutes "impairment" when the alcohol/blood level is above zero involves setting arbitrary standards. It also does not measure how much alcohol was consumed, how long it will take to be processed by the individual's body, it does not test for addiction, and it does not test for sub-acute impairment, such as the effects of fatigue and dehydration following significant alcohol use when the individual may still be noticeably impaired - with an alcohol/blood level of zero.

However, we as a society have accepted the alcohol breathalyser as a testing device for so long that we overlook its shortcomings and there is an expectation that there should be a similar device to test for drug use. Testing for drug metabolites does not test for current acute impairment, sub-acute impairment, nor does it test for addiction. It tests for the only thing that science currently allows us to test for - recent use.

It should be noted that in the recent Imperial Oil Ltd. v. CE&PUC, Local 900 decision, the arbitration panel accepted expert evidence, not substantially disputed, to the effect that a "cheek swab test" (a saliva test) "does not accurately test actual impairment in the subject tested at the time the test is taken" although the results are only available days later, not immediately (as in the case of a breathalyser). However, the expert evidence in Chiasson was to the effect that a saliva test does not measure actual impairment, although it does indicate very recent use of marijuana.

Since tests do not measure current acute impairment (unless the evidence in Imperial Oil is correct), the courts have looked at testing for drug use differently than testing for alcohol use. That must be borne in mind as the cases in this area of law are discussed.

The question of whether an alcohol and drug testing policy is in compliance with human rights legislation involves an inquiry into areas such as the following:

(a) Has the employer created the policy in good faith?
(b) Is there a rational connection between the drug testing policy and the job?

(c) Does the policy provide for steps to be taken by the employer to try to accommodate the dependent worker, to the point of "undue hardship"?

(d) Are the tests sought to be performed reasonable in all the circumstances?

(e) Does the policy properly weigh issues relating to the privacy of the employee and the confidentiality of the test results against the need to address positive test results?

We have reviewed the Alcohol and Drug Policy Model and we are of the opinion that the parts entitled "Guiding Principles", "Responsibilities" and "Guideline for Developing an Alcohol and Drug Policy" are in compliance with the Human Rights, Citizenship and Multiculturalism Act of Alberta. We have some reservations about the provisions regarding conditional-offer testing, random testing, and site access testing, discussed below, but on balance we are of the opinion that the Alcohol and Drug Policy Model is in compliance with human rights law in Alberta as it has been pronounced by the courts and human rights tribunals to date.

Although the writer is not qualified to express an opinion on the laws of other provinces or territories, the Supreme Court of Canada has, on two occasions (U.B.C. v. Berg in 1993 and Montreal (City) v. Quebec (Commission des droits de la personne et des droits de la jeunesse) in 2000) made it clear that human rights legislation will be interpreted similarly in different Canadian jurisdictions, despite differences in terminology. Also, the decisions reported to date did not generally hinge on the precise wording of the legislation in the determination of rights (although the Chiasson reasons noted a distinction between the Alberta legislation and the federal legislation that applied in the Milazzo case, discussed below). Accordingly, we expect that our opinion also reflects the law in Canadian jurisdictions other than Alberta, although we note the views of the arbitration board in Bantrel, who said that case law in Ontario reflects a "narrower approach", focusing on human rights issues than the approach taken in Western Canada, which has permitted broader testing programs in workplaces which are demonstrably safety sensitive.

The Bantrel decision is, from the responsible employer's perspective, refreshing because the board stated:

The panel also is of the view that the issue of drug and alcohol testing cannot be considered in isolation from the increasing emphasis on safety in workplaces which has occurred in the last five to ten years reflected in the strengthening of safety related provisions of the Occupational and Health Safety Act [sic] and the criminalization of certain conduct in the workplace through amendments to the Criminal Code. No longer can employers afford to turn a blind eye to identifiable safety hazards in the workplace, nor would the unions and employees want them to do so.

Aside from reflecting the ever-changing nature of the law in this area, it may reflect the beginning of a conscious shift away from the focus on human rights and a focus centered on risk management and safety.

**CONTRACTUAL ISSUES**

The Alcohol and Drug Policy Model is modeled substantially upon the *Canadian Model for Providing a Safe Workplace* developed and published by The Construction Owners Association of Alberta (the "*Canadian Model*"), although there is an important
distinction between how the Canadian Model is generally introduced into the workplace and how the Alcohol and Drug Policy Model is likely to be introduced.

It is our understanding that the Canadian Model is introduced in the collective bargaining environment by agreement with the applicable trade unions. By doing so, the Canadian Model is made part of the employment contract with each of the workers who are members of the unions. There is therefore a contractual "buy-in" between the employer and the workers. The upstream petroleum industry, in contrast, has no or virtually no organized labour, and accordingly the Alcohol and Drug Policy Model makes no reference to collective bargaining. It does not contemplate an "across the board" agreement with an employer's workers by agreement with a union.

In Imperial Oil Ltd. v. CE&PUC, Local 900, the arbitration board ruled that in the circumstances of that case random drug testing was not permitted, even "cheek swab" tests, which they accepted did test actual impairment by marijuana. The union had not agreed to the random testing, and the employer was relying on its "management rights" clause in the collective agreement. The board clearly restricted their decision to whether the collective agreement allowed Imperial Oil to perform random tests. At para. 125, they stated this:

In this area [the surrender of bodily substances for testing], absent contractual or statutory consent or reasonable cause, an individual's expectation of privacy should be respected.

(Emphasis added.)

Later in the same paragraph, they stated:

In our view, given the wide acceptance of the established arbitral jurisprudence, at this point in time it would require clear and unequivocal contractual language to cause a board of arbitration to conclude that employees, through their union, have consented to random and speculative drug testing of their bodily fluids at the will of their employer.

Therefore, to be confident that a policy that provides for random testing may withstand legal challenge, it is fair to conclude that there must be "clear and unequivocal contractual language" to incorporate the policy as part of the employment agreement.

Therefore, the reader must be aware that the Alcohol and Drug Policy Model will have little or no relevance to an employer's workplace unless it has been introduced to the employment agreement with each employee, one by one, and without taking this step the "random testing" provisions in particular will likely not withstand legal challenge.

Obviously, a good hiring policy going forward would be to attach a copy of the employer's alcohol and drug policy to each and every offer of employment to field workers, to make express reference to it in the offer as being a part of the work agreement, noting that the employer’s policy is based on the Alcohol and Drug Policy Model and may be amended from time to time and that it is the employer’s current alcohol and drug policy in place at any given time that will apply, and to require that the person being hired sign and return a copy of the offer letter. Regardless of the process followed, we recommend that each new worker, when hired, be required to
acknowledge in writing that he or she agrees that the employer’s alcohol and drug policy will form part of the terms of his or her employment. (Note that an acknowledgement by the employee only that the employee has "read and understood" the employer’s alcohol and drug policy does not indicate an agreement by the worker that it applies to him or her.)

The employer’s alcohol and drug policy with a reference to the Alcohol and Drug Policy Model should also appear in the employer’s Human Resource Policy Manual, and it would be a good practice to make reference to both on the employer’s own website, attaching a link to the Enform site and to the Alcohol and Drug Policy Model, particularly if the employer solicits applications for employment from the website, so that every employee who submits an application for employment is aware that the employer’s alcohol and drug policy will form part of the terms of employment, and so that every employee has access to the employer’s alcohol and drug policy and the Alcohol and Drug Policy Model in its current form if it is subsequently amended.

In our view employers may have a different problem when making the Alcohol and Drug Policy Model applicable to existing employees, as noted by the Court of Queen's Bench in a case discussed below, Elizabeth Metis Settlement, at para. 79 of the decision. Generally speaking, the introduction of an important new policy affecting workers may be effected either by written agreement with the employee and with fresh legal consideration of some kind, and sometimes by sufficient advance notice to the employee. If the employer chooses to rely on sufficient advance notice only, legal advice should be sought as to what is sufficient in the circumstances and the employer must be able to prove that each employee actually received the notice - workers on vacation, on disability leave, or temporarily working outside the country are easily missed.

Each employer must consult its own legal counsel to discuss the appropriate steps to be taken to ensure that the employer’s alcohol and drug policy based on the Alcohol and Drug Policy Model properly forms part of the employment contract with each employee.

**General Guidance**

There is really no issue regarding the parts entitled "Guiding Principles" and "Responsibilities" in the Alcohol and Drug Policy Model. Furthermore, there seems to be no particular legal issue in respect of Articles 1.0 of the "Guideline for Developing an Alcohol and Drug Policy" (the "Guideline") which describe the elements of a policy and prohibit the use or distribution of alcohol, drugs or the misuse of prescription drugs in the workplace. The issues discussed in this opinion primarily surround testing and the consequences of a positive test.

**Alcohol and Drug Testing**

The Guideline takes into account the factors that must be considered in policies of this nature, as required by the Supreme Court of Canada, and as stated by the Ontario Court of Appeal in Entrop v. Imperial Oil. They are the following:

(a) the employer must have adopted the policy for a purpose rationally connected to the performance of the job,

(b) the employer must have adopted the policy in an honest and good faith belief that it was necessary to the fulfillment of that legitimate work-related purpose, and
(c) the policy must be reasonably necessary to the accomplishment of the legitimate work-related purpose. It must be demonstrated that it is impossible to accommodate individual employees sharing the characteristics of the claimant without imposing undue hardship upon the employer.

It may be argued that every field position on an upstream petroleum facility has a safety-sensitive aspect to it. However, the Alcohol and Drug Policy Model attempts to establish guidelines that will allow each employer to identify positions within their organizations that are "safety sensitive".

With safety concerns in mind, it is clear that the Guideline satisfies the first two requirements set out above. In our view, it also satisfies the first part of the third requirement.

In respect of the latter part of the third requirement, the Guideline expressly addresses accommodation of a worker suffering from alcoholism or a drug addiction.

**CONDITIONAL-OFFER TESTING**

This provision 5.7.2 is probably the most controversial aspect of the Guideline. Most importantly, the policy allows for the applicant who tests positive to re-apply at a later date and the positive test will not affect the future application and consideration for employment, and it requires the prospective employer to provide the applicant with information to allow him or her to seek treatment, should he or she choose to do so.

Based on the *Chiasson* decision, the refusal to hire an applicant solely on the basis of a positive test result, without any form of accommodation, would be seen by the human rights commissions as discriminatory and in violation of the human rights legislation.

A later decision, by the Ontario Divisional Court in *Weyerhauser Co. Ltd. v. Ontario (Human Rights Commission)* came to a different conclusion. The Court there concluded that without the harsh consequences of automatic dismissal or withdrawal of the job offer (as in *Chiasson*), and with no subjective perception that the job applicant was drug dependent (as the Court interpreted *Chiasson*) the challenge to the pre-employment test, brought by a recreational drug user was not successful. Accordingly, if some form of accommodation is provided to the drug or alcohol dependent job applicant, the pre-employment policy may withstand legal challenge.

As to what duty a prospective employer has to "accommodate" an applicant who has tested positive for alcohol or drug metabolites, the Court in the *Chiasson* case made various suggestions in a similar circumstance. The suggestions include sending the worker for an assessment to determine whether he or she is at a high risk for being a drug abuser, and if at a low risk the employer may be obliged to proceed with a "conditional" hiring with enhanced supervision by drug-awareness trained supervisors and including random impairment (saliva) tests for a period of time.

This burden seems unworkable in practical terms for a variety of reasons and conflicts almost directly with the observations of the Ontario Court of Appeal in *Entrop* (para. 109) in the context of alcohol impairment where the Court said:

> Relying exclusively on supervisors to detect impairment raises additional concerns, also addressed in the expert evidence before the Board. Supervisors have other duties; at Imperial Oil
their primary focus is to direct the manufacture of petroleum products. Supervisors are often unwilling to confront employees with an alcohol problem, or at least to do so constructively. And increased supervision may lead to harassment of or even discrimination against some employees. Random testing is seen by many experts to be fairer to employees because of its objectivity.

It is difficult to reconcile the conflicting comments of both Courts other than to note that in *Entrop* the comments related to alcohol impairment and in *Chiasson* the comments related to drug testing regarding "conditional" hiring, with specially trained supervisors. But the comments in *Entrop* about the complications associated with supervision seem at least equally applicable to drug impairment (where detection by observation is considerably more difficult than detecting impairment by alcohol - and impossible for sub-acute impairment) just as equally to alcohol impairment, and it seems that the Court in *Entrop* did not comment on the "observation" difficulties associated with drug impairment because they did not find random drug testing to be allowed at all. The Court of Appeal seemed to be dismissing supervision as a means of checking for alcohol impairment because alcohol testing is available, reliable, and fair, whereas they pointed out that drug testing does not measure current impairment.

The Court of Queen's Bench's comments in *Chiasson* about saliva testing seem to be based on an understanding that saliva testing checks for current impairment - which was not supported by the evidence in that case.

The conflicting comments can perhaps be resolved best by noting that the comments by both courts were made as *obiter dicta* - sayings made by the way that did not actually form part of the reasoning in the cases.

In any event, in *Chiasson*, the Court went on to say:

> To allow the retaking of the test after a positive result is also a form of accommodation which could be considered in appropriate circumstances. However, care must be taken so that the time gap between tests is not arbitrary and information about this possibility needs to be communicated to applicants.

Therefore, no blanket refusal to hire for any lengthy period of time should result from a positive test by an applicant who has been required to test under the terms of a conditional offer. If he or she suffers from an addiction or dependency, the applicant must be allowed, even encouraged, to seek treatment if there is a dependency or addiction, and a penalty of simply not being considered by a particular employer would be discrimination on the basis of a disability. Since the courts have not ruled on the point, what might be an acceptable "time gap between tests" remains an open question.

The duty to accommodate may extend beyond doing these things. It is hoped that the Court of Appeal of Alberta will provide insight in the *Chiasson* case.

**Testing Existing Employees**

 Paragraphs 5.7.3(a) and (b) address the testing of existing employees who are either already in a safety-sensitive position or are being transferred into a safety-
sensitive position. As noted above, care must be given to ensuring that the Alcohol and Drug Policy Model (or the employer's own alcohol and drug policy) actually forms part of the employment agreement. Specific legal advice must be sought by the employer to consider its own circumstances.

**Re-Qualification Testing**

Paragraph 5.7.4 suggests that testing of employees in safety-sensitive positions be re-done within 36 months. No reported cases to date have specifically addressed this kind of requirement, but it should be approached in a manner similar to random testing: without clear and unequivocal contractual language it may not survive a legal challenge.

**Return-to-Duty and Follow-up Testing**

Paragraph 5.8.1 addresses these items, and several cases have confirmed that after treatment for dependency when an employee returns to work, a test at that time and some follow-up testing are appropriate. Accordingly, this provision seems enforceable. Essentially, it is a variation on "for reasonable cause" testing.

**Random Testing**

Random testing is only permitted under the Alcohol and Drug Policy Model:

(a) of workers at worksites, and  
(b) where all employees are covered by an employee assistance service program.

The Ontario Court of Appeal found random drug testing in its decision in *Entrop v. Imperial Oil* to be *prima facie* discriminatory. The Alberta Court of Queen's Bench also found random drug testing to be *prima facie* discriminatory in the circumstances present in *Alberta v. Elizabeth Metis Settlement*, but found the testing there to be a *bona fide* occupational requirement. If the testing requirement is a *bona fide* occupational requirement, then there is no duty to accommodate, but the Court went on to note that even if the employer cannot show that the testing requirement itself is a *bona fide* occupation requirement, then the employer may show that the testing policy accommodated the worker's disability (dependency/addiction) (see para. 71 of the decision).

The Canadian Human Rights Tribunal authorized random drug testing procedures in *Milazzo v. Autocar Connaissieur*, provided that the duty to accommodate had been met. (It should be noted that the Court of Queen's Bench of Alberta in the *Chiasson* case expressly did not agree with one part of the reasoning in the *Milazzo* case, but that disagreement did not touch on this point.)

The question of whether random drug testing will be allowed is one of the areas where the law has not yet been finally resolved. As mentioned, the reasons in *Entrop* (where it was stated that random drug testing was not in compliance with human rights law - the Court said random drug testing "cannot be justified as reasonably necessary") were expressly acknowledged by the Court to be given in a circumstance where there was no factual basis for the debate and no legal jurisdiction to resolve this issue. The Court of Appeal pointed out that even Mr. Entrop had not complained about the random testing requirements of Imperial Oil's policy.
The *Elizabeth Metis Settlement* case then obliquely questioned the applicability of *Entrop* in Alberta, and allowed random alcohol and drug testing in the circumstances of that case as being a *bona fide* occupational requirement.

In *Milazzo*, the Canadian Human Rights Tribunal also allowed a policy to stand which provided for random drug testing, provided the duty to accommodate was appropriately recognized.

It is acknowledged that in *Suncor Energy Inc. v. Communications, Energy and Paperworkers Union, Local 707 (Pearson Grievance)*, (Jones, 2004), the arbitrator when summarizing the union’s position, the arbitrator stated:

> Further, the mere fact that drug use is a common problem among employees is not sufficient by itself to justify requiring any particular employee to undergo drug testing .... Requiring a drug test in such circumstances amounts to an unwarranted invasion of the employee's privacy. Arbitrators, human rights commissions and the courts have almost universally rejected an employer's ability to require random drug testing: *Entrop v. Imperial Oil*.

Arbitrator Jones' paraphrase of the union's position was similar to a statement made by Arbitrator Burkett in his reasons in *Trimac Transportation Services - Bulk Systems and T.C.U.* in 1999.

However, of importance is that arbitrator Jones did not refer to either the *Elizabeth Metis Settlement* or the *Milazzo* decisions – both of which preceded the release of his decision, and both of which approved of random alcohol and drug testing in the circumstances of those cases.

In the recent *Imperial Oil Ltd. v. CE&PUC, Local 900* decision, the arbitration board rejected random testing in the facts of that case but acknowledged that if there were "clear and unequivocal contractual language" allowing random testing, the outcome may be different.

We think that the law as enunciated by Madam Justice Bielby in *Elizabeth Metis Settlement* and by the Canadian Human Rights Tribunal in Milazzo is correct: that if the employer cannot show that random testing is a *bona fide* occupational requirement, then it may satisfy the requirements of the human rights legislation if it is shown that there is proper accommodation to the point of undue hardship. We think that if there is "clear and unequivocal contractual language" wherein the employee has agreed to random testing, it will withstand legal challenge.

**SITE ACCESS TESTING**

The site access provisions in section 5.10 of the Guideline might also be thought to be controversial. These parts reflect requirements of the owners of some major facilities in the energy industry. For example, in the Fort McMurray area, all of the heavy oil upgrader facilities have "pre-access" testing requirements. With certain limited exceptions (e.g., guests who are accompanied throughout their visit), all persons who attend at those facilities must pass a "pre-access" alcohol and drug screen as part of the owners’ efforts to maintain an alcohol and drug-free work culture and environment in a work location that is particularly risk-sensitive.
These provisions in the Guideline merely reflect the circumstances that were described in a labour arbitration decision rendered by Andrew Sims in *Finning (Canada) v. International Assn. of Machinists and Aerospace Workers Local Lodge 99*, [2005] A.G.A.A. No. 11 (January 7, 2005). Arbitrator Sims was asked to rule on whether he had jurisdiction to hear a grievance against Finning as employer where the testing policy in question was Albion Sands’ pre-access test policy. He ruled that although he had jurisdiction to hear the grievance, his decision did not affect Albion Sands. Finning, as employer, may have had a duty to accommodate one of their workers who did not satisfy Albion Sands’ requirements, by employing the worker at another site.

The recent *Bantrel* case dealt with a pre-access testing policy imposed by Petro-Canada. Bantrel was a contractor to Petro-Canada and it was required to have all of its employees who were to work on the Petro-Canada site (the case dealt with unionized tradesmen) tested before they were allowed access to Petro-Canada’s site. Their unions launched a challenge to the pre-access policy. The board held that the policy was reasonable and the challenge failed. The board went on to muse that it may be unreasonable not to test all employees!

In the Guideline, there is no automatic termination, or any other stated consequence of not passing a site-access test. Since the Guideline will be used primarily (if not exclusively) in workplaces where there is no collective bargaining, the provisions on this point require that its workers agree to the testing as a condition of access to that owner’s site. The Guideline does not eliminate that need for an employer to provide accommodation to an employee who tests positive.

**THE DUTY TO ACCOMMODATE AND THE RIGHT TO DISCIPLINE**

The duty to accommodate has been expressly addressed in sections 8.2, and 8.3 of the Guideline. Section 8.1.1 requires the employer to take into account several relevant facts, including "the response to prior corrective programs"; it is clear that termination is not an automatic response to a violation. Under section 8.2.5, the only circumstances where termination may be said to be "automatic" is failure to attend the assessment by a substance abuse expert, or to follow the course of corrective or rehabilitation action. Even in this circumstance, termination is not required, and the specific factors set out in section 8.1 should still be considered before an employee is dismissed. The need for flexibility, mentioned at the outset of this opinion, was discussed by the arbitration panel in its majority decision in *C.L.R. Operating Engineers v. International Union of Operating Engineers, Local 955* (Beattie, May 25, 2004).

The requirement of proper accommodation was underscored in a case dealing with random testing: *Halter v. Ceda-Reactor Limited*, (Alberta Human Rights Panel, May 16, 2005). In that case, the panel member found that a random test had been done on all workers in an attempt to catch those individuals whose performance on the job may have endangered the safety of the operation, and accordingly she found that the random test was administered on the premise that all workers were perceived to be potential substance abusers. She found that the test was discriminatory, following the Ontario Court of Appeal's decision in *Entrop*.

However, citing the statements in Entrop that,

(a) "random drug testing for employees in safety-sensitive positions cannot be justified as reasonably necessary to accomplish the employer's legitimate goal of a safe workplace free of impairment", and
(b) "stringent sanctions such as automatic termination for all employees after a single positive test is too severe", and

(c) "drug testing post incident or for cause was permissible only if the employer could establish that it was necessary as one facet of a larger assessment of drug abuse",

the Panel Member then concluded that there was no evidence that Ceda-Reactor's policy provided for a proper referral to a medical professional for assessment and rehabilitation, if necessary, and stated that:

it is initiatives such as these that the Panel would perceive as meeting the requirement that testing be one facet of a larger assessment of drug use.

This conclusion seemed to be that random testing of workers in safety-sensitive positions may be acceptable to this Panel Member if there is a proper assessment and rehabilitation program incorporated in the policy. Based on the comments by the Court in *Elizabeth Metis Settlement*, it may also be said that if the employee who tests positive is properly accommodated, the policy requiring the test does not violate the human rights law.

This seems to be two ways of saying the same thing: if the positive test result leads to an opportunity to help the worker seek treatment with an opportunity for return to work once the treatment is complete, the standard imposed by the law has been met. Our opinion is that the Alcohol and Drug Policy Model meets this standard.

In the Alcohol and Drug Policy Model, a positive test result means non-compliance with the Guideline (section 7.1.1) and this may lead to discipline or termination (section 8.1.1). However, prior to making a final decision on disciplining or terminating an employee, the employee must be directed to an assessment by a substance abuse expert (section 8.2.2) who shall make recommendations. The initial assessment is to be completed as soon as possible and the report delivered within two days of the assessment (section 8.2.3). Therefore, although the employee is suspended for this period without pay provided this timeline is followed, the impact on the employee is minimal if the assessment is that there is no dependence on alcohol or a drug.

If there is no dependence, then it was previously thought that there is no human rights violation because there is no disability: *Chiasson v. Kellogg, Brown & Root (Canada) Company*, (Alberta Human Rights Panel, June 7, 2005) and *Milazzo v. Autocar Connaissure Inc*. The Court of Queen’s Bench decision in *Chiasson* reversed the panel member’s decision, but it was in the context of a policy that allowed for no alternative but dismissal if the result were positive, without enquiry into the question of whether the individual were a casual user or addict, and that did not contemplate an assessment or any other accommodation, except for re-application after a six month time gap - which was not explained to Mr. Chiasson. Since all were treated the same, the Court concluded that the policy was in violation of the human rights legislation and the individual who did not have a disability was treated the same as if he did. Although there was no actual perception that Mr. Chiasson had a disability, since he was swept up in the policy he was, according to the Court, deemed to be perceived to have a disability.

The decision contemplated possible compliance with the human rights legislation by referring the worker for an assessment as is contemplated here (other than for
positive conditional-offer test results) and if the worker is found to be at "low risk" (i.e., not suffering from dependency or addiction) then he was to be hired - the case involved a pre-employment test - and supervised by specially trained supervisors, as mentioned above. In the Chiasson case there was no express agreement as to the process for assessment and consequences of a positive test as is contemplated here by the Guideline. In a later decision, by the Ontario Divisional Court (Weyerhauser), the Court held that where there was no automatic withdrawal of the offer where there was a positive test result, and where the employer did not subjectively perceive the applicant to be drug or alcohol dependent, the pre-employment test was upheld as being valid.

The Guideline allows for the determination of whether an employee has a disability or not. Therefore, the reasoning in the Court of Queen's Bench in Chiasson does not apply.

If there is a dependence, then the employee will be referred to treatment and only if he refuses to follow the corrective or rehabilitative program recommended is termination automatic (section 8.2.5). The appropriate discipline depends on the facts of the case (section 8.1).

In Health Employers Assn. of B.C. (Kootenay Boundary Regional Hospital) v. B.C. Nurses' Union, 2006 BCCA 57, the British Columbia Court of Appeal ruled that an employee had been properly dismissed after two proper attempts at accommodation for a drug addiction, where he had not facilitated the accommodation process by staying with his recovery program.

The Guideline mandates providing accommodation to the dependent employee, and accordingly in our view the third requirement has been satisfied.

**DISCRETION**

It should be noted that the Guideline provides for discretion in its application, and the exercise of that discretion cannot be done without due regard to the law. For example, in section 8.1.1 the form of discipline to be enforced will depend upon several factors set out therein. As well, the choice of appropriate discipline in every case must be made in accordance with the statements of law pronounced by the courts, human rights tribunals and labour arbitrators from time to time.

The fact that the Guideline contemplates a possible specific form of discipline (e.g., dismissal) for a specific breach of the policy (e.g., refusal to submit to an alcohol and drug test) does not necessarily mean that that form of discipline should be expected to follow automatically. The principles dealing with "just cause" at common law must still be complied with in the circumstances of the case: J.D. Irving Ltd. v. Communications, Energy and Paperworkers' Union, Local 104 and 1309 (Drug and Alcohol Policy Grievance), 111 L.A.C. (4th) 328 (Picher, 2002). (However, it should be noted that discipline of an employee for refusing to submit to a drug test, and the employer's decision to dismiss, were found not to violate human rights laws in the Elizabeth Metis Settlement case at the Court of Queen's Bench level (reversed by the Court of Appeal of Alberta on other grounds), and a dismissal with cause was upheld in Fluor Constructors Canada Ltd. and I.B.E.W., Local 424, and Construction Labour Relations and C.J.A., Locals 1325 and 2103 (Beattie, 2001) where the employee refused the test.)
Of course, in order to exercise discretion properly, a thorough investigation of the facts must be done. Failure to perform a thorough investigation may lead to a flawed decision as to whether it is reasonable to require testing or as to the appropriate discipline. If that decision is flawed, subsequent discipline for failure to comply with the requirement of a test will not withstand challenge. See C.L.R. Operating Engineers, supra, and C.L.R. Operating Engineers v. International Association of Heat and Frost Insulators and Asbestos Workers, Local Union #110 (Beattie, Oct. 26, 2004).

**STATUTE AND CASE LAW**

Attached to this letter is a Schedule listing and summarizing the relevant sections of the Human Rights, Citizenship and Multiculturalism Act (Alberta) and the Charter of Rights and Freedoms, and leading Canadian cases dealing with alcohol and drug testing. Reference should be made to it to assist the reader in understanding this opinion, particularly where I have referred to a particular court, human rights tribunal, arbitration panel, or labour relations board decision.
SCHEDULE

THE HUMAN RIGHTS, CITIZENSHIP AND MULTICULTURALISM ACT

In Alberta, the applicable sections of the human rights legislation are the following:

7 (1) No employer shall

(a) refuse to employ or refuse to continue to employ any person, or

(b) discriminate against any person with regard to employment or any term or condition of employment,

because of the race, religious beliefs, colour, gender, physical disability, mental disability, age, ancestry, place of origin, marital status, source of income or family status of that person or of any other person.

(2) ...

(3) Subsection (1) does not apply with respect to a refusal, limitation, specification or preference based on a bona fide occupational requirement.

8 (1) No person shall use or circulate any form of application for employment or publish any advertisement in connection with employment or prospective employment or make any written or oral inquiry of an applicant

(a) that expresses either directly or indirectly any limitation, specification or preference indicating discrimination on the basis of ... physical disability, mental disability ... of that person or of any other person, or

(b) that requires an applicant to furnish any information concerning... physical disability, mental disability ....

(2) Subsection (1) does not apply with respect to a refusal, limitation, specification or preference based on a bona fide occupational requirement.

11 A contravention of this Act shall be deemed not to have occurred if the person who is alleged to have contravened the Act shows that the alleged contravention was reasonable and justifiable in the circumstances.

44 (1) In this Act,

... 

(h) “mental disability” means any mental disorder, developmental disorder or learning disorder, regardless of the cause or duration of the disorder;

... 

(l) “physical disability” means any degree of physical disability, infirmity, malformation or disfigurement that is caused by bodily injury, birth defect or illness and, without limiting the generality of the foregoing, includes epilepsy, paralysis, amputation, lack of physical co-ordination, blindness or visual impediment, deafness or hearing impediment, muteness or speech
impediment, and physical reliance on a guide dog, wheelchair or other remedial appliance or device

Comment:

It is universally accepted that an addiction to alcohol or a drug is a disease, and therefore a disability.

**CANADIAN CHARTER OF RIGHTS AND FREEDOMS**

The Supreme Court has stated that, "While there is no requirement that the provisions of [provincial human rights legislation] mirror those of the Canadian Charter [of Rights and Freedoms], they must nevertheless be interpreted in light of the Canadian Charter": Montreal (City), infra, para. 42.

Section 15(1) of the Canadian Charter of Rights and Freedoms provides as follows:

Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on ... mental or physical disability.

As well, in University of British Columbia v. Berg, [1993] 2 S.C.R. 353, former Chief Justice Lamer stated, when speaking for the majority of the Supreme Court:

If human rights legislation is to be interpreted in a purposive manner, differences in wording between provinces should not obscure the essentially similar purposes of such provisions, unless the wording clearly evinces a different purpose on behalf of a particular provincial legislature.

This passage was quoted with approval by the same Court in Montreal (City) v. Quebec (Commission des droits de la personne et des droits de la jeunesse), 185 D.L.R. (4th) 385.

Accordingly, the courts and human rights tribunals are likely to adopt and follow decisions from other Canadian jurisdictions, even though the precise wording of the legislation may be different.

**CASE LAW**

A summary of the leading cases is set out below, in the chronological sequence of their release, to assist the reader in understanding the development of the law up to this time.


In this very early "drug testing" case, the Bank's policy required mandatory drug testing of all new and returning employees. Employees who refused to submit to the test were dismissed. Employees who tested positive and were drug dependent were offered rehabilitation services (at the Bank's expense), but could lose their employment if they refused to take advantage of the services or if rehabilitation
efforts proved unsuccessful. Casual users who tested positive on at least three occasions could also lose their jobs.

The Federal Court of Appeal found the Bank’s mandatory drug-testing policy was a prohibited discriminatory practice. Although the tests mentioned below for determining whether a particular policy is in compliance with human rights law had not yet been clearly enunciated, it is probably correct to say that the consistent reasoning between the two members of the court who agreed in the result (but not as to all of their reasons) was that the policy was not "reasonably necessary" to achieve the intended purpose of obtaining a drug-free workplace.

This decision is not a strong precedent for our current purposes because of the following factors:

(a) the case was decided using a "direct discrimination / adverse discrimination" analysis later abandoned by the Supreme Court of Canada;

(b) there were no "safety-sensitive" employees involved, so the risk of accident causing injury or physical damage was not a consideration;

(c) there does not appear to have been an incident, accident, positive test result or refusal to take the test that led to the court challenge: it was brought by the Canadian Civil Liberties Association, meaning that the case was heard and decided without a clear factual basis and apparently without expert evidence as to the drugs involved, their effect on workers, or appropriate treatment.


In this arbitration case, a safety-sensitive employee had been convicted of possession and cultivation of marijuana, and as a result the employer – who did not have a formal drug testing policy – had required mandatory random drug tests over a period of two years. The employee filed a grievance.

The arbitration panel concluded that in light of the conviction for cultivation of marijuana and possession of significant quantities of the drug, as well as the safety-sensitive position held by the employee, random testing was appropriate, although the panel reduced the period over which random testing would be allowed.

The arbitration panel stated the following:

Except in the most safety-sensitive of positions, or where the law requires it (and these may be one and the same), this does not give an employer the right to test employees at will. Reasonable and probable grounds must exist of an impairment risk .... The value placed on our personal privacy generally outweighs the right to test simply because some employees, sometimes might be abusing alcohol or drugs and coming to work impaired. The balance is however when an employer has good reason to suspect that the risk factor of impairment has been increased for an employee who occupies a safety-sensitive position.

The panel had considered, as an alternative, referral to the employee assistance plan. They rejected this alternative because the employee was adamant that he did
not have a drug problem and this denial did not make him a good candidate for such referral, which would require voluntary participation.


This labour arbitration decision was decided approximately seven months before the Ontario Court of Appeal decision in Entrop v. Imperial Oil, but relied in part on the Ontario Divisional Court decision in Entrop which was partly reversed at the Court of Appeal level.

The sole arbitrator noted that in an earlier interim award he found that he lacked jurisdiction to deal with pre-employment drug and alcohol testing, so the decision focused only on mandatory random drug and alcohol testing, and whether it violated the collective agreement.

The employer was a trucking company, and the policy required mandatory random testing of its drivers. The arbitrator found that it violated the collective agreement. The arbitrator noted that there was not a single incident from 1990 to 1996 where a driver had been found under the influence while operating a company vehicle. He recognized that the introduction of testing had led to the reduction in positive results for both pre-employment and random testing and the rate of "positives" was lower than at least some other Canadian trucking firms, but that a positive drug test result does not establish present impairment.

The arbitrator focused on balancing the employer's right to investigate suspected wrongdoing with the employee's right to personal privacy. He reviewed arbitrator awards to date and stated:

There is not a single award, therefore, that has given effect to an employer right to implement mandatory random drug testing. In every case, the employer interest in implementing such a regime has been found insufficient to justify the intrusion into employee privacy such that its policy has been rendered unenforceable.

He refused to consider evidence of drug use as it relates to the general population at large, to the trucking industry generally, or to other operations of the employer, as establishing a justification for the implementation of mandatory random drug testing.

Of great significance in this case is that the union had not agreed to the random drug testing policy; management attempted to justify the policy under the "management rights" clause in the collective agreement. Without the union's agreement, the arbitrator found the random testing policy unenforceable.

Considering human rights legislation, the arbitrator also concluded that the policy was not "reasonable", and therefore not enforceable.


This case began as a series of decisions by a Board of Inquiry dealing with a complaint by an employee who was employed in a safety-sensitive position and who was required, by Imperial Oil's policy, to disclose that he was a recovering alcoholic. He had not had a drink in over seven years, but when his prior history of alcohol abuse was disclosed, he was reassigned to another job.
The policy was found to violate Ontario's human rights legislation, and that decision was appealed to the Ontario Divisional Court and then to the Court of Appeal.

Of importance is that there were none of the following factors present in the case:

(a) an incident such as a near miss,
(b) an accident,
(c) any drug use at all,
(d) any complaint about the random or other testing requirements set out in Imperial Oil's policy, or
(e) any objective basis to think there had been any impairment by alcohol or a drug at work.

Nonetheless, the Board of Inquiry launched into a complete analysis of Imperial Oil's alcohol and drug testing policy.

The Court of Appeal found that the Board of Inquiry did not have the jurisdiction to address most of the issues that she did, but in light of the fact that the issues had already been argued before the Board, the Divisional Court, and now the Court of Appeal, that Court also addressed all of the issues, although there was no factual application on which to base most of the analysis.

The Court found that the alcohol and drug testing policy was, on its face, discriminatory -- in violation of the human rights legislation.

The Court adopted a three-step test that the Supreme Court of Canada had set out in Meiorin, [1999] 3 S.C.R. 3 to determine whether a standard (in this case, the alcohol and drug policy) that was, on its face, discriminatory, a "bona fide occupational requirement". If the alcohol and drug policy is found to be a bona fide occupational requirements then it was justified.

The test for this is:

(1) the employer must have adopted the policy for a purpose rationally connected to the performance of the job,
(2) the employer must have adopted the policy in an honest and good faith belief that it was necessary to the fulfillment of that legitimate work-related purpose, and
(3) the policy must be reasonably necessary to the accomplishment of the legitimate work-related purpose. It must be demonstrated that it is impossible to accommodate individual employees sharing the characteristics of the claimant without imposing undue hardship upon the employer.

In simpler terms, and in the context of a policy designed to reach an alcohol and drug-free workplace, the test may be summarized this way:

(1) there must be a rational connection between the policy and the job,
(2) the policy must have been created in good faith,
(3) the policy must be reasonably necessary to achieve an alcohol and drug-free workplace, and
(4) there must be no other practical alternative to accommodating the disabled (in this case, addicted) person without "undue hardship".

The Court had little difficulty accepting that the first two steps of the test had been met. The discussion focused on the third test.

The Court had little difficulty with alcohol testing. It has long been accepted that breathalyzer and other tests provide results that show a very strong correlation with impairment.

The same was found not to be true of drug testing. A positive test for drugs does not demonstrate impairment, it only demonstrates relatively recent (within a few weeks) use of the drug.

The Court found pre-employment drug testing and random drug testing is in violation of the human rights legislation because it cannot measure present impairment and also because the sanction for failing pre-employment and random drug testing was too severe for those in safety-sensitive positions: refusal to hire or termination of employment. The "no presence" of drug metabolics was found to be "too arbitrary".

Alcohol testing, in contrast, was found to be a reasonable requirement but only if Imperial Oil met its duty to accommodate in the form of supporting a treatment or rehabilitation program.

Post-accident, incident or near miss alcohol testing was found to be reasonable, and post-accident, incident or near miss drug testing was also found to be reasonable "if Imperial Oil could establish that it was necessary as one facet of a larger assessment of drug abuse" – a factor that was left unexplained.

Both alcohol and drug testing for certification for safety-sensitive positions and post-reinstatement were found permissible if Imperial Oil "can establish that testing is necessary as one facet of a larger process of assessment" of alcohol or drug abuse.


In this arbitration decision, the former version of the Construction Owners' Association of Alberta's Canadian Model was the policy being addressed. A worker employed by Kellogg Brown & Root had a minor accident with a knife, required five stitches to his hand, and could not explain the accident except that it was "silly" and "stupid". He was asked to take the alcohol and drug test, in accordance with the policy, because use of alcohol or drugs could not be ruled out. He refused, because (as he asserted) he was a recreational user of marijuana.

He was dismissed and he filed a grievance.

The dismissal was upheld and those applicable provisions of the policy were found to be enforceable.

Of great importance to the arbitration panel was that the union had endorsed the policy, which was viewed by both parties, and the industry, as very important in ensuring safety on the worksite. The panel noted that:
It is not difficult to imagine circumstances in which, particularly given a Union endorsed Policy, the Employer could be faulted for not having insisted on a test of a person who subsequently acknowledged being a user of marijuana.

(My emphasis.)

The grievance was dismissed.


This arbitration award also dealt with a demand for a drug test and the employee's refusal under the Canadian Model for Providing a Safe Workplace.

An employee was reported to have said to another person that he used marijuana every night. He was required to take an alcohol and drug test but he refused. He was dismissed and he grieved. His grievance was dismissed.

The arbitrator reviewed the history of the Canadian Model as it was drafted at that time, and noted that the issue was whether there was just cause for dismissal, not whether he was considering issues of discrimination or of a bona fide occupational requirement defence. He noted that the Canadian Model had been adopted, by reference, as part of the Collective Agreement. Accordingly, he was of the view that the right to intrude on an employee's privacy by requesting a drug test in certain circumstances had been agreed to.

The arbitrator reviewed the decision of Arbitrator Burkett in **Trimac Transportation Services** and distinguished it, because in the Trimac case Arbitrator Burkett's rule applied only "absent express language in the collective agreement", and in the case before him Arbitrator Elliott found that there was "express language", in the form of the Canadian Model.

He also commented about "shifting values" in society:

> I view the Canadian Model as seeking to create a new environment in the construction industry. The new training, educational, rehabilitative regime, and the rules for testing, signal a change in the industry as significant in its way as drinking/driving laws were for driving Canadians.

It should be noted that the Canadian Model, as it was drafted at that time, did not provide for random drug testing.


This case involved a union grievance relating to an employer-imposed alcohol and drug policy. The policy was generally found to be valid.

The arbitration panel considered the definition of "safety-sensitive" and rejected the union's submission that a position should not be considered to be "safety-sensitive" where the worker is under the ongoing supervision of foremen or supervisors. The panel stated as follows:
In our view for the purposes of drug and alcohol testing the identification of safety-sensitive positions is more usefully achieved by asking what consequences are risked if the person performing a particular kind of work does so impaired by drugs or alcohol. In the case of a person with entirely clerical functions there may be no meaningful risk of adverse consequences, from the standpoint of the safety of other employees, the public or of the property and equipment of the employer, or of anyone else. Conversely, if the answer to the question is that the performance of the job by a person impaired by drugs or alcohol risks the safety of the employee, other employees or persons generally, or the safety of property and equipment, the work must be recognized as safety sensitive, regardless of the degree of supervision which may attach.

In any industrial enterprise, a policy as important as the drug and alcohol policy under consideration in this case must have clear parameters of application. Whether a particular task is qualified as safety sensitive cannot, in our view, be made to depend on the number of supervisors on duty, much less on such unpredictable factors as whether a supervisor is called away to a meeting, or to deal with a problem elsewhere in the plant at any given point in time. It is the work of the employee, the nature of the equipment that he or she operates and the nature of the material he or she handles which must be at the core of the determination of whether his or her position is safety sensitive.

It should be stressed that the foregoing approach to this issue does not, obviously, give the Company carte blanche in defining safety-sensitive positions. Whether a position is safety sensitive for the purposes of the policy must be determined on a case-by-case basis, having regard for the factors touched upon above.


This was a decision in December of 2002 by the B.C. Labour Relations Board. The Board reflected on the fact that the "common law of arbitration" in connection with addiction in the workplace is in a state of development, and noted that where workplace misconduct is related to an addiction, it is often a "hybrid" mix of causes, being a mix of addiction-driven conduct (which is non-culpable) and voluntary conduct (which is culpable conduct).

The Board also noted that addiction is a treatable illness and the individual has a responsibility in respect of his treatment in the context of the employer's duty to accommodate.

Referring to a decision of the B.C. Court of Appeal in *Canadian Airlines International Ltd. v. C.A.L.P.A.*, [1998] 1 W.W.R. 609, where an arbitrator had reinstated a pilot dismissed for using marijuana both on and off duty and transporting it via the company aircraft, the Board noted that the Court of Appeal had reminded the labour
relations community that there are limits to what can be tolerated and found to be reasonable, particularly in respect to safety-sensitive matters.

The Board quoted with apparent approval a passage from an early arbitration decision (Raven Lumber Ltd., 23 L.A.C. (3d) 357 (Munroe, 1986)):

However, if an employee's alcoholism cannot *per se* be regarded as a proper basis for his dismissal, nor can it be allowed to actually enhance the employee's tenure.

As the Board put it:

The presence of an addiction or dependency does not necessarily immunize an employee from disciplinary or corrective action. The extent to which an individual should be held responsible for workplace misconduct needs to be reached having regard to all the circumstances of the case.

The circumstances that the Board said should be taken into account by arbitrators in reviewing disciplinary steps taken against employees whose misbehaviour is related to a dependency are the following:

(a) the special nature of the disease of addiction in relation to the specific circumstances of the cases,
(b) the compulsion associated with an addiction,
(c) the nature and seriousness of the misconduct,
(d) the impact beyond the individual grievor, including the risk posed to the employer and the impact on others in the workplace such as employees or the public,
(e) the need for deterrence,
(f) the employer's efforts to help the employee deal with the addiction,
(g) steps taken by the employee to deal with the disease,
(h) the grievor's employment record, and
(i) other relevant considerations.

The Board stated that arbitrators must be allowed flexibility "to approach uses of addiction-related misconduct in a manner that is just, practical, and responsive to all of the different considerations that may be relevant to the particular case".


The Court of Queen's Bench dismissed an appeal from a decision of a Human Rights and Citizenship Commission panel member who had dismissed two complaints arising from refusal to take workplace alcohol and drug tests. The two employees were not in safety-sensitive positions except for some occasional driving. The case does not seem to have been decided with particular emphasis on the basis of the employees occupying safety-sensitive decisions.

A remote Metis settlement had serious problems with alcohol and drug abuse in the community. The Metis Settlement Council had introduced alcohol and drug testing as
a means of addressing the community-wide problems, because there was a perception that Council staff were users, were under the influence, or were missing work due to drug or alcohol use. The Council wanted its employees to be on their best behaviour.

One of the employees who refused had a known history of addiction problems. The other did not.

The Court concluded that their dismissal for refusing "random" alcohol and drug tests was justified.

Although the Alberta Court indirectly questioned whether the Entrop decision represents the law in Alberta (she said, "To the extent that Entrop applies at all in Alberta ...") the court generally followed the Ontario Court of Appeal's approach in its analysis, but noted that public information and policies created by the Director of the Human Rights and Citizenship Commission based on the decision in Entrop do not have the force of law. As well, the judge said that those public information sheets and policies of the Alberta Human Rights and Citizen Commission "considerably overstate the conclusions" reached in Entrop.

The alcohol and drug policy offered treatment to those who failed the tests. The Settlement had a history of funding substance abuse rehabilitation. The Court found it difficult to fault an employer for failing to offer appropriate drug or alcohol treatment to someone who had refused the test, based only on a presumption that the employee must have some type of substance abuse problem – merely because she refused the test.

Of importance is that the tests were close to being random tests, but were not "random" tests as is usually contemplated. The employees were given about three weeks' notice. They refused. There were given approximately two weeks' notice of a further test requirement. They refused, and then they were dismissed.

The Metis Settlement's policy stated as follows:

As part of the Drug and Alcohol Policy, [the Settlement] may conduct the following types of drug and alcohol testing: ...

c) Reasonable Cause:

Where a supervisor has reasonable cause to believe an employee has acted in contravention of this Policy ....

g) Periodic or Site Specific Testing:

Where due to the nature of sensitive work assignments, employees whose job duties could affect personal safety, co-workers safety, the safety of the public or the safety of the environment ....

An employee who: ..... b) refuses to submit to an alcohol / drug test ....

is in violation of this Policy and is subject to disciplinary action including termination of employment for cause ....
The Court referred to other provisions in the policy that provided for the potential for "further random drug / alcohol testing" after reinstatement.

This reference is significant because although there is very little analysis of why these "random drug / alcohol" tests were found to be a *bona fide* occupational requirement, when the Ontario Court of Appeal had stated in *Entrop* that random drug tests were not, the conclusion seems clear: where there is some compelling reason arising from circumstances, a policy allowing random alcohol and drug tests will be found to be a *bona fide* occupational requirement. In this case, the unique circumstances of (a) a remote community, (b) with a serious addiction problem in the community, (c) where the only jobs, to a great extent, were working for the Settlement, and (d) those who held even clerical positions were role models for the community, the policy was justified, and so was the dismissal of those who refused the test.

On May 20, 2005, the Court of Appeal of Alberta reversed the decision, on the grounds that the Court of Queen's Bench had not considered the threshold issue of whether the policy applied to the Complainants (that is whether there was a basis for demanding the tests at all), and remitted the case back to a human rights Panel Member for re-hearing to give the Settlement an opportunity to justify the demands on other grounds.


This decision of the Canadian Human Rights Tribunal in late 2003 arose out of a complaint by a coach driver, Mr. Milazzo, who was dismissed after the results of a drug test came back positive for marijuana metabolites. When he was told the results of the drug test, Mr. Milazzo said he was "ready to go to rehab for what happened," but although he testified at the human rights hearing, he gave no evidence that he suffered from a drug-related disability. No attempt was made by the employer to ascertain whether Mr. Milazzo suffered from a substance abuse disorder or was merely a casual user of marijuana.

Oddly, the decision says that Autocar viewed Mr. Milazzo's test as a "pre-employment" test, although at the time of the drug test he had worked for the company about five years. Apparently his pre-employment test, required by the policy, had been missed. The test appeared to Mr. Milazzo to have been part of a move to test all drivers. Until then, only drivers who drove to the U.S. had been tested because of the U.S. requirements to test coach drivers. In any event, the policy required random alcohol and drug tests.

Significant expert testimony on drug use, addiction and treatment was presented by both Autocar and the Human Rights Commission. This factor is important, because the expert evidence presented conflicts with the statements about drug testing in the *Entrop* case. In particular, the expert for the employer stated that it is improbable that an individual who was a casual user would still test positive for the presence of cannabis metabolites even five days after his last use. Mr. Milazzo claimed his last use was "several weeks" before the test. If this were true, the continuing presence of cannabis metabolite in his urine suggested long-term use.

The Tribunal found that the evidence did not establish that Autocar perceived Mr. Milazzo to suffer from a drug-related disability. This is also important, because in both *Entrop* and *Elizabeth Metis Settlement* the Courts presumed that the employer perceived that any employee who tested positive suffered from a dependence.
The evidence demonstrated that there had been a history of drivers abusing alcohol or drugs; that the workplace was somewhat transient; that since the drivers were often out of town their activities were difficult to monitor; that drivers occasionally had to take routes to the U.S. (where testing is mandatory); and the evidence suggested that the use of drugs by drivers in the transportation industry is a real problem, with significant implications for public safety.

The Tribunal concluded that a positive drug test result is a "red flag", assisting in identifying drivers who are at an elevated risk of accident. As well, the presence of a drug testing policy will serve to deter employees from using alcohol or drugs in the workplace.

Accordingly, the Tribunal held that Autocar's drug testing policy was reasonably necessary.

Nonetheless, the Tribunal found the policy to be lacking because it did not allow for the accommodation of dependent employees. The pre-employment testing was allowed, but the employer was not entitled to automatically withdraw offers of employment without first addressing the issue of accommodation. They recognized that no accommodation may be possible in some cases, such as in the case of a short-term hiring.

The random testing was allowed, provided the policy was amended to allow for accommodation by rehabilitation of those employees who can establish that they suffer from a substance-related disability.

As Mr. Milazzo had not proven that he had a disability, his personal complaint was dismissed.


In this application for judicial review of an arbitrator's decision, the arbitrator had framed the issue before him to be whether the employer had reasonable grounds to require a drug test, after police had found illegal drugs at the residence of the employee.

The judge, confirming the arbitrator's decision on this point, stated the following:

> While recognizing the fallibilities of drug testing and the general unreliability of results as measuring actual impairment at the time of the test, there is no other objective method by which an Employer can obtain information concerning drug use by an employee. Although a positive test result will not necessarily determine impairment at a particular time, it may lead to further investigation. At the very least, it is one indication, albeit not necessarily a reliable one, that the employee has taken a substance that may impair his ability to carry out his duties. From the Employer's perspective, this information becomes crucial in assessing whether further investigation must be undertaken to ensure that an employee in a safety sensitive position is capable of properly carrying out his duties.

Accordingly, and while the Entrop decision and the policy of the Canadian Human Rights Commission both properly reject as
discriminatory any attempts by an employer to conduct pre-employment and random drug testing, neither prohibits an employer from requiring an employee in a safety sensitive area to take a drug test where there is some evidence that the employee may have been a party to a drug offence.

It should be noted that the comments about pre-employment and random drug testing were *obiter dicta*, and in fact the issues were dealt with in other, later, Queen's Bench cases that had to address them: *Elizabeth Metis Settlement* (random) and *Chiasson* (pre-employment).


In this grievance arbitration, an employee in a safety-sensitive position was dismissed after refusing to submit to an alcohol and drug test after a minor accident, following a mediated return to work arising from a charge of possession of marijuana and psilocybin ("magic mushrooms"). He asserted that the requirement offended human rights legislation, although he insisted that he did not have a substance-abuse problem.

In light of his insistence that he did not have a substance-abuse problem, the arbitrator held that the employer did not have a duty to accommodate. The employer also did not believe that he had a substance-abuse problem.

In the circumstances of this case, his prior mediated return to work specifically contemplated that the employer would have the right to test the grievor on demand in the event of any incident that raised a reasonable suspicion that he might have been impaired at work.

The grievance was dismissed.


In this application for judicial review of a labour arbitration decision, the employee had refused to submit to an assessment of his dependency, after having tested positive for drug metabolites in a random drug test. However, in addition to the test results, the employee had admitted drug use.

The arbitrator rejected the employee's grievance of his dismissal. The Superior Court upheld the arbitrator's decision; the dismissal was found to be proper. The Court found that the grievor had been terminated for refusing the test, not for his drug use. This decision appears to conflict directly with *Elizabeth Metis Settlement*, para. 42.


This grievance arose from a dismissal of an employee with no record of discipline or safety infractions after a "near miss", where a crane he was operating knocked off a live elevated light fixture in a potentially dangerous area. He refused an alcohol and drug test required by the employer under the previous draft of the *Canadian Model*. 
The arbitration panel noted that termination is not the only disciplinary response to a refusal to test.

The employer's investigation into the incident was found to be "perfunctory". There was no consideration of whether there were "reasonable grounds" for not requiring a test, and, if there had been, the employee should not have been required to test. Given the superficial investigation and the recognized need for a subsequent more detailed "root cause" investigation, the grievor should have been suspended for his refusal to test pending the "root cause" investigation.

The employee was re-instated.


This grievance award arose from a dismissal of workers who refused a urine test (alcohol and drug) after been accused of smoking marijuana during their lunch break.

A security guard was found to have been coerced into writing a false report stating that she had smelled marijuana.

In light of the obviously flawed investigation, the grievors were re-instated.


The employer conducted a drug test on all members of a work crew on the basis that drug use amongst some of the workers was suspected. The Complainant had been using marijuana regularly for several months, and (along with 6 others of a total of 14 workers) tested positive for cannabis metabolites. He filed a human rights Complaint when he was terminated from his position.

There was no direct evidence of dependence on marijuana, and the case was assessed from the perspective of perceived dependence. The Panel Member concluded that the "random test was administered on the premise that all members of [the crew] were perceived to be potential substance abusers." The Panel Member referenced *Entrop*, but the decision ultimately rested on the failure of the employer to accommodate the Complainant when he tested positive, because the policy in question did not have "a comprehensive, inclusive policy which has a range of components necessary to meet the requirements established in *Entrop*", and because the Employer took no other steps to accommodate him: no offer of assistance was made, and no re-allocation to a non-safety-sensitive position until he could demonstrate a drug-free sample.


The Complainant had been required to undergo a pre-employment alcohol and drug test as a condition of his employment, but was allowed to commence work awaiting the results of the test. The results were positive for cannabis metabolites and he was terminated. He filed a human rights Complaint.
The panel member heard evidence from him that he was only a recreational cannabis user, and no evidence to the contrary was presented. As well, there was nothing to show that the employer suspected him of serious drug use or of work impairment. As there was no evidence of a disability, real or perceived, the Complaint was dismissed. The Panel commented that if he had shown a disability, then the Meiorin test would not have been met, because (quoting from Milazzo), "employers are not entitled to automatically withdraw offers of employment, without first addressing the issue of accommodation.

This case was heard by the Alberta Court of Queen's Bench on appeal, and the decision was reversed on May 11, 2006, the decision having been filed May 29, 2006. It is cited as Alberta (Human Rights and Citizenship Commission) v. Kellogg Brown & Root (Canada) Company, 2006 ABQB 302. It is currently under appeal to the Court of Appeal.

In her reasons, Madam Justice Sheila Martin concluded that KBR did not demonstrate the reasonable necessity of having all employees meet the single standard of a pre-employment drug test. She noted that pre-employment urine tests do not test for non-impairment at work, and she felt that there are other much more direct, effective, efficient and individual methods for employers to monitor impairment at work. She concluded that as the policy provided for automatic termination without any accommodation, KBR had violated the human rights legislation and was required to pay damages to Mr. Chiasson.


In this application for judicial review of a labour arbitrator's decision upholding the dismissal of an employee, the Court considered the employee's past drug and alcohol abuse and his denial of having a problem until faced with dismissal.

The parties agreed that in the circumstances of the case the employer had just cause to terminate; the issue was whether, in the facts of the case, the employer had discharged its duty to accommodate to the point of undue hardship. In the facts of this case, the arbitrator had concluded that the employer had done so. The judge agreed.

The Court quoted, with approval, a passage from a 1991 arbitration award (Westar Timber Ltd. v. I.W.A. - Canada, Local I-424) where it was noted that unions who feel obliged to prosecute a grievance, and arbitrators who direct reinstatement, may be engaged in "enabling" behaviour - that is, allowing the employee with the addiction to avoid being held accountable for their actions.

As well, the judge cited a 1998 decision from the Alberta Court of Queen's Bench (United Nurses of Alberta, Local 2 v. Red Deer Regional Hospital) where the judge in that case noted that:

> collective agreement provisions and policies that encourage employees to use employee assistance programs would be less effective if employers were required to reinstate employees who refused to access the programs until they were discharged.

This case did not deal with drug testing, but the discharge by the employer of the duty to accommodate by an employer. The case was originally dealt with by a labour arbitrator. Her decision was appealed to the B.C. Court of Appeal.

The employee suffered from drug addiction and had a consequent disability and it was alleged that the employer had failed to accommodate the employee's disability. The employee had previously signed a last chance agreement but not with the Kootenay Boundary Regional Hospital as employer, so the arbitrator (and ultimately the Court of Appeal) held that the Hospital could not rely on it. However, the Hospital could rely on the fact that he had been given two previous opportunities to rehabilitate his addiction, had relapsed, and had failed to take the necessary steps to address the relapse. The Court held that the dismissal was proper.

The Court discussed, with apparent approval, the *Fraser Lake Sawmills* decision of the Labour Relations Board regarding the "hybrid" nature of misbehaviour relating to addictions.

As well, the Court stated that:

> to establish a *prima facie* case of discrimination, an employee must establish that he or she had (or was perceived to have) a disability, that he or she received adverse treatment, and that his or her disability was a factor in the adverse treatment ....

In closing, the Court stated:

> Addiction, as a treatable illness, requires an employee to take some responsibility for his rehabilitation program .... Mr. Bergen failed to discharge that duty, and the duty to accommodate was exhausted.

20. **Imperial Oil Ltd. v. Communications, Energy & Paperworkers Union of Canada (CE&PUC), Local 900.**

This case was a policy grievance challenging Imperial Oil's introduction of random "cheek swab" testing for marijuana impairment. The union had not agreed to this change in the policy. The arbitration panel held that the cheek swab test tested for actual impairment by marijuana.

After a detailed review of arbitration board decisions, the board concluded (with one dissent) that the random marijuana testing was not allowed by the collective agreement in question. The arbitration board noted (para. 122) that in some circumstances random testing might be allowed, such as where an employer could show that there was "an out-of-control drug culture taking hold in a safety sensitive workplace", but those circumstances did not exist in the case before them.


This case was an application for judicial review of a Human Rights Commission decision that arose out of a complaint by a recreational drug user who had been required to submit to an alcohol and drug test after being conditionally offered
employment by Weyerhauser, which he failed. The offer was withdrawn and he filed a complaint with the Commission. The Tribunal ruled, in an interim decision, that it had jurisdiction over the complaint and that it had jurisdiction to review Weyerhauser's policy of pre-employment drug testing for safety-sensitive positions. Weyerhauser asked the Court to prohibit the Tribunal from dealing with the matter further.

The Court allowed the application and prohibited the Tribunal from proceeding. They held that "the mere existence of a drug testing policy" is not evidence of discrimination on the ground of perceived disability. As the Weyerhauser policy did not contain provisions for automatic withdrawal of the offer in the event of a positive test, and the employer was not shown to have perceived the applicant to have a dependency, the Commission did not have jurisdiction to proceed. Both the Entrop and the Chaisson decisions were distinguished.


This case dealt with a challenge by three unions of the pre-access testing policy imposed by Petro-Canada on its sub-contractors before unionized tradesmen (and other employees of the sub-contractors) would be allowed access to the Petro-Canada site.

The Arbitration Board took into account the evidence before them to the effect that drug use on construction sites is a problem, and the introduction of pre-access testing on the Syncrude site in Fort McMurray has led to fewer incidents and greater use of Employee and Family Assistance Plan substance abuse counseling. Most importantly, the Board took into account the changing emphasis in the law on risk management and the strengthening of safety related provisions in the Occupational Health and Safety Act and the criminalization of certain conduct in the Criminal Code, and dismissed the grievances.

The Board went on to say that although they were not asked to determine the reasonableness of a pre-employment testing policy (the case before them dealt only with testing of existing employees), "it is not possible to separate the issue of pre-employment testing from the issue of applying such testing to current employees." They concluded that at least a prima facie case was made out for the reasonableness of pre-employment testing. (The board also mused that it may be viewed as unreasonable not to test all employees.)

They also held that the pre-access testing approach did not represent an unreasonable intrusion into employees' privacy.

They recognized that pre-access testing did not measure current impairment, but that, "it measures some degree of drug and alcohol use which is more than incidental given the cut-offs contained in the policy."
INDEPENDENT MEDICAL OPINION

Provided by: Brendan Adams, M.D.

One of the core difficulties with drug and alcohol policies for the workplace is the fact that legal, legislative and human rights concerns all intersect with research and clinical medicine. These fields of endeavor are not always compatible and, in the past, have suffered from a lack of mutual understanding. In an effort to deal with some of the misunderstandings, Enform has commissioned a medical opinion to add to its Alcohol and Drug Policy Model for the Canadian Upstream Petroleum Industry, (hereinafter referred to as the Alcohol and Drug Policy Model). Enform sought to help delineate the current state-of-the-art thinking in addiction medicine. The explicit goals in the Alcohol and Drug Policy Model are twofold: firstly, to ensure a safe workplace for all individuals, and secondly, to identify individuals who may be suffering from the disease of addiction and offer them the help they need to recover. The Alcohol and Drug Policy Model is not an attempt to dictate any moral position regarding psychoactive drugs, nor is it an effort to identify for purposes of discrimination, psychoactive drug users.

As a starting point for a discussion involving psychoactive drug use in the workplace, the question must be asked, does it really matter? This may further be broken down into two core questions. The first is, is psychoactive drug use really all that prevalent, and if it is, is it increasing or decreasing? The second question is, once we have established the prevalence of psychoactive drug use, does the use of these drugs cause impairment in the workplace, and thereby negatively impact worker safety, or not?

Is psychoactive drug use increasing in Canadian society, or is it not?

An important corollary to this question concerns harms, because even if psychoactive drug use is increasing in Canada, but no increasing harms are being noted from such phenomena, is it really relevant to be concerned about it in the workplace? Extremely useful data to address this complex issue are produced every 10 years by the federal government. This is the Canadian Addiction Survey produced by Health Canada. It is now widely available on the internet, and the interested reader is strongly urged to peruse the entire document as it contains a great deal of useful information:

www.ccsa.ca/CCSA/EN/Research/Research_Activities/CanadianAddictionSurvey.htm

Several trends become immediately apparent upon reviewing this comprehensive study. Firstly, in terms of alcohol, the number of Canadians who consumed alcohol during the past year increased from 72.3 percent in 1994 to 79.3 percent in 2004. Of these 10 percent are deemed heavy, frequent drinkers. Nearly a quarter of the sample of former and current drinkers report that their drinking has caused harm to themselves or to others at some time in their lives, and 8.8 percent of current drinkers stated that harm occurred during the past year. When specific harms were compared between the two surveys 10 years apart, the following table is produced:
TABLE 8.3: PERCENTAGES OF DRINKERS (a) REPORTING VARIOUS TYPES OF HARM FROM ONE’S OWN ALCOHOL USE IN THEIR LIFETIME, CANADA, AGED 15+, 1989, 1994 AND 2004

<table>
<thead>
<tr>
<th>Was there ever a time in your life when you felt your alcohol use had a harmful effect on the following?</th>
<th>NADS 1989 % [CI]</th>
<th>CADS 1994 % [CI]</th>
<th>CAS 2004 % [CI]</th>
</tr>
</thead>
<tbody>
<tr>
<td>Friendships or social life</td>
<td>10.5* [9.6-11.4]</td>
<td>10.1* [9.3-10.9]</td>
<td>14.2 [13.2-15.3]</td>
</tr>
<tr>
<td>Home life or marriage (b)</td>
<td>5.5* [4.8-6.2]</td>
<td>(b)</td>
<td>8.1 [7.3-8.9]</td>
</tr>
<tr>
<td>Work, studies or employment opportunities</td>
<td>3.5* [2.9-4.0]</td>
<td>4.9* [4.3-5.5]</td>
<td>6.8 [6.1-7.7]</td>
</tr>
<tr>
<td>Financial position</td>
<td>5.4* [4.7-6.1]</td>
<td>6.9 [6.2-7.6]</td>
<td>6.9 [6.2-7.7]</td>
</tr>
</tbody>
</table>

Notes:
NADS = National Alcohol and Other Drugs Survey
CADS = Canada’s Alcohol and Other Drugs Survey
CAS = Canadian Addiction Survey
CI = Confidence Intervals
* Significantly different from CAS
a In NADS: Past-year drinkers; in CADS & CAS: Past-year and former drinkers
b Questions asked separately in the CADS: Home life: 5.7 percent; Spouse/partner: 4.7 percent

It is obvious, considering first alcohol, that in every type of problem, the incidence has statistically significantly risen between either 1989 or 1994 and 2004. In no cases have the problems decreased.

Turning to marijuana the same study indicates that, on a global population basis, marijuana usage has increased since 1994 from 7 percent to 14 percent of the general population. This statistic can be broken down in many ways, but two interesting excerpts from the data are that 70 percent of those between ages 18 and 24 had used marijuana in their lifetime and 47 percent of 18 to 19 year olds used marijuana in the last year. What concerns us, however, are regular or heavy users of marijuana, which is defined as weekly or more. Among current users 20.3 percent use marijuana weekly and 18.1 percent use it daily. Thus, in workplace safety, we are obviously concerned about approximately 40 percent of the current users in terms of likelihood of substance use affecting workplace performance. That is not to say that a more casual user could not also appear at work impaired.

Likewise, we are also concerned with the number of individuals who are experiencing harm or difficulty from their marijuana use. This number can be elicited in several different fashions. The first is to look at their ASSIST score. This is an acronym standing for Alcohol, Smoking and Substance Involvement Screening Test, which was an assessment tool developed by the World Health Organization and has been normalized over substantial populations. It gives a measure of abusive use of substances and helps identify those in moderate or urgent need of intervention. When these data are analyzed from the Canadian investigations, Table 10 below is produced (source: Toward a Policy Relevant Typology of Cannabis Use for Canada, March 2006, CCSA-CCLAT, Canadian Center on Substance Abuse/Health Canada, authors Thomas, Flight, Richard and Racine).
It can be seen that 8.1 percent of users experience sufficient problems from their marijuana usage to score as a moderate or high risk on the ASSIST. Looked at another way, among those marijuana users who have smoked in the last three months, and therefore are most likely to be picked up on urinary drug screening, 74 percent of them are moderate or high risk users as determined by this assessment tool.

Table 10: Proposed Typology of Cannabis Use with Percent and Population Estimates Using ASSIST Scores of 4-6 for At-Risk Cutoff (2004)\(^5\)

<table>
<thead>
<tr>
<th>Category of User</th>
<th>Characteristics of Users</th>
<th>% of Past-3-Month Users (n=1,466)</th>
<th>% of Canadian Population 15 and older</th>
<th>Estimated Number of Users (2004)(^6)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Abstainer</td>
<td>No Use in Lifetime</td>
<td>0</td>
<td>55.7</td>
<td>13,487,663</td>
</tr>
<tr>
<td>Past User</td>
<td>Used at Least Once in Lifetime but Not in Last 12 Months</td>
<td>0</td>
<td>30.4</td>
<td>7,361,310</td>
</tr>
<tr>
<td>Past-Recent User</td>
<td>Used in Past Year but Not in Last 3 Months</td>
<td>0</td>
<td>2.9</td>
<td>702,230</td>
</tr>
<tr>
<td>Low-Risk User</td>
<td>Less Than Monthly or Monthly Use in 3 Months AND ASSIST Score (\leq 3)</td>
<td>26.0</td>
<td>2.8</td>
<td>678,015</td>
</tr>
<tr>
<td>Moderate-Risk User</td>
<td>Daily or Near Use in Last 3 Months AND/OR ASSIST Score between 4 and 26</td>
<td>72.3</td>
<td>7.9</td>
<td>1,912,972</td>
</tr>
<tr>
<td>Dependant/High-Risk User</td>
<td>ASSIST Score (\geq 27)</td>
<td>1.7</td>
<td>0.2</td>
<td>48,430</td>
</tr>
</tbody>
</table>

\(^5\) The categorization of cannabis users set out in Table 10 should be interpreted as preliminary since, for the most part, epidemiological data for accurately estimating the health and social risks of different levels of cannabis use are not available. Data of this type are being collected from specific studies in different parts of the world, but we are not aware of any authoritative meta-analyses that draw the literature together in a way that would be improving the specification of a typology of this sort.

\(^6\) Based on a population estimate of 24,214,835 Canadians aged 15+ in 2004.
Another way of examining the same issue is to look at the harms being reported on the ASSIST scale by past year marijuana users, and comparing them to other psychoactive drug users (excluding alcohol). This produces Figure 4 below from the Canadian Addiction Survey. It can be seen from these data that a full 34 percent of past year marijuana users experienced loss of control and 32 percent experienced drug craving. It is this one-third population that would be a potential safety issue in the workplace, as someone who is asserting that they will not lose control over their recreational marijuana use, and subsequently uses marijuana in an inappropriate setting, or timing, is the worker that concerns us.

**Figure 4:** Percentage reporting drug use risk indicators (ASSIST) among past-year cannabis and other drug users, age 15+, Canada 2004

And lastly, in terms of other drugs, the following data are presented in the Canadian Addiction Survey:
### Table 6.8: Percentage reporting harms from one’s own drug use, lifetime, and past-year, Canada, aged 15+, 2004

<table>
<thead>
<tr>
<th>Types of harm</th>
<th>Lifetime(^1) drug users (including cannabis)</th>
<th>Past-year(^2) drug users (including cannabis)</th>
<th>Lifetime(^3) illicit drug users (excluding cannabis)</th>
<th>Past year(^4) illicit drug users (excluding cannabis)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>N=6,250 % yes</td>
<td>N=1,909 % yes</td>
<td>N=2,181 % yes</td>
<td>N=375 % yes</td>
</tr>
<tr>
<td>opportunities</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>6. Legal problems</td>
<td>4.2 [3.4-5.2]</td>
<td>1.3 [0.7-2.5]</td>
<td>10.0 [7.9-12.5]</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>S</td>
</tr>
<tr>
<td>7. Housing</td>
<td>1.9 [1.4-2.6]</td>
<td>S</td>
<td>4.4 [3.0-6.3]</td>
<td>3.3 [1.0-10.7]</td>
</tr>
<tr>
<td>One or more types of harm</td>
<td>23.8 [22.0-25.8]</td>
<td>17.5 [14.8-20.5]</td>
<td>45.7 [42.1-49.4]</td>
<td>36.7 [29.2-45.0]</td>
</tr>
</tbody>
</table>

\(^1\) Lifetime: Ever used a drug

\(^2\) Past-year: Used a drug in the past 12 months

\(^3\) Illicit: Used a drug other than cannabis

\(^4\) Past year: Used an illicit drug in the past 12 months
It can be seen from these data that approximately 45 percent of lifetime illicit drug users, excluding cannabis, report one or more types of harm from their usage. This figure falls to approximately 37 percent if we consider illicit drug users who have used in the past year, and are most likely to be detected on a urinary drug screen.

The purpose in presenting all of these facts and figures to the reader is to explain the opinion that psychoactive drug use, both alcohol and illicit substances, is a significant issue in Canada, based on population data, and that the harms caused by such drug use, while endlessly debatable, have been documented exhaustively, and are not insignificant. With this as background, we can now turn to the issue of the drugs themselves, why people use them, and whether such drugs impair workplace performance.

Current thinking suggests that there is a heterogeneous population of psychoactive drug users in our society. A small group uses these drugs, and continues to use these drugs, in a way that causes negative consequences for them and others around them. Despite these negative consequences, usage continues and may even escalate. Gradually, over time, the individual using in such a fashion experiences loss of control around the amount of substances consumed and the timing or place of consumption. This loss of control is loosely referred to as addiction. The user may also experience withdrawal symptoms when the drug is stopped, leading to the diagnosis of dependency. The loose and colloquial use of these terms has caused some confusion. It is the opinion expressed in the Alcohol and Drug Policy Model that addiction and thereby the disability inferred by such a term, should be diagnosed based on loss of control rather than physical dependency. Research has shown that chronic opiate users who take the drug for chronic pain may experience physical dependency without loss of control over time, place or amount of usage. They would reasonably be determined to be dependant but not addicted. The vast majority of users of recreational or prescribed psychoactive substances maintain control over amount, time or place of consumption, and although their patterns of use may, on occasion, be abusive and have negative consequences, they are not addicted. One of the major weaknesses of some of the legislative approaches to psychoactive substance use is a failure to understand the two separate populations. Not all users of psychoactive drugs are addicts, and therefore not all users of psychoactive drugs can be reasonably termed to have a disability, in the classic legal use of the word.

The use of psychoactive substances is generally understood in addiction medicine to involve stimulation of certain brain pathways most notably (but not exclusively) the dopamine neurotransmitter system, and to stimulate certain key centers in the brain. The cluster of nerve cells which is attracting the most research attention is the area called the nucleus accumbens in the brain stem. Current evidence suggests that stimulating the nucleus accumbens produces a potent pleasurable sensation for the human. Most psychoactive drugs stimulate the release of dopamine and cause the nucleus accumbens to be stimulated. The resulting powerful pleasurable effect causes behavioral reinforcement in the human, and tends to induce repeat drug use. Like other pleasurable events in life, such as sexual activity or consuming food, for most of the population this consumption remains under their control and this pleasure-seeking behaviour can be deferred, indefinitely if necessary, as life circumstances demand. For a small percentage of the population, three to six percent of all consumers of ethanol for instance, their brains appear to be wired differently. This is an area of very active medical research and we do not yet know the exact genetics or brain circuitry involved in the disease of alcohol addiction. It
does appear, currently, that approximately two thirds of alcoholism can be accounted for by genetics\textsuperscript{1}. Research in other psychoactive drugs lags behind that of alcohol and so these questions remain open for such drugs as marijuana.

**Drug Use and Work**

In terms of drug use and the worksite, there are a number of social and legislative issues which cause workplaces to become concerned about psychoactive drug use. Most notable of these is safety of self and others. It has been well recognized throughout history that various psychoactive drugs impair an individual’s ability to move, think, and exercise prudent judgment in order to remain safe and avoid harming self or others. Again, the drug with which we are most familiar, alcohol is acknowledged to cause psychomotor impairment to the point where operating machinery or making safety-sensitive decisions becomes unwise at certain blood levels. Other psychoactive drugs are known to impair time and distance perception, judgment and impulsivity, and auditory and visual perception. In general, this is referred to as *impairment*. While global statements concerning impairment are relatively easy to make, the devil is in the details. The concept of impairment itself is a complex one, and has been oversimplified in the past. One of the errors of judgment that often occurs in considering impairment is that we expect to see the same psychological and physical effects from other psychoactive drugs that we see with alcohol, the drug with which most of us are familiar.

When attempting to delineate impairment at various blood levels, only alcohol has reliably, and via multiple research studies, been demonstrated to impair in a reproducible fashion across individuals and over time. Consequently, most authorities today accept blood-alcohol levels as being indicative of impairment. Other psychoactive drugs have not been studied as much as alcohol and have different pharmacokinetics. One of the key issues around alcohol is the fact that it is water-soluble and eliminated by fixed order kinetics from the body. Consequently, areas of distribution in the body/brain and dose response curves are relatively easy to construct. Fat soluble psychoactive chemicals such as the cannabinoids, the active ingredients in marijuana, are eliminated by different pathways in a much more complex fashion, and distributed through the body in a much different manner. As such, blood or urine levels do not correspond nearly as well to measures of impairment. Coupled with the complex behavioral effects of some of these drugs, paradoxical results can even be seen. Several studies on impairment and marijuana use have actually shown drivers to be safer than control groups when intoxicated by marijuana\textsuperscript{2,3}. It has been speculated that this counterintuitive result devolves from the fact that drivers intoxicated by marijuana experience the perception of being much more intoxicated than they really are. As such, they tend to drive much more conservatively and make fewer errors on driving tests. This has been misinterpreted in the past as providing evidence that marijuana does not impair driving skills or is not relevant to safety-sensitive positions. Clearly, when a study is designed to look at driving performance versus marijuana dosage, impairment can be demonstrated\textsuperscript{4a,b,c}. Such misinterpretation is illustrative of the difficulty that faces us when someone looks at research data and attempts to extrapolate it to practical realities of the workplace. Adding to the confusion is the practice of mixing *acute* impairment data (i.e., the effects of a psychoactive drug on an acutely intoxicated individual), usually measured in hours, and *subacute or chronic* impairment through effects on ability to learn, concentrate and adverse mood phenomena such as irritability or depression.
In general, the pursuit of impairment estimation by means of biochemical testing has been an exercise in confusion and frustration. Objections have been raised in the medical community, and by others, against the widespread activity of psychoactive drug screening by means of urinary detection. The core objection is that urinary levels of psychoactive drugs do not correspond to impairment. Various human rights commissions have loosely based their opposition to urine drug tests on this objection. It is not the position of this policy that urinary levels of such substances as cocaine or tetrahydrocannabinol (and their metabolites) correspond to impairment in any individual. The only thing that a urine drug test is useful for, with our current state of knowledge, is stating whether an individual has consumed the drug in question or has not. Likewise, the presence of a drug in a urine test tells us nothing about whether the individual has a disability (addiction) or not. At current levels of knowledge, urine drug tests are extremely useful in monitoring individuals in whom the diagnosis of addiction has already been made, for ongoing drug use. Blood alcohol levels (or their biological equivalent, breath alcohol) has been shown to be an accurate measure of impairment. Thus we are faced with the counterintuitive reality that employers or unions who wish to ensure that a workplace is free of psychoactive drug related impairment face opposition to the use of urine drug tests because of the aforementioned inability of such tests to measure impairment.

While it is true that urine drug tests do not measure impairment, it is untrue that the use of psychoactive drugs does not impair individuals. Add to this the fact that individuals often use a variety of psychoactive drugs either together, or in close temporal proximity. As such, it is suggested that we move away from the impairment-based thinking which has governed drug testing up to this point, and instead move towards a risk-based approach. There are ample data to suggest that, with each psychoactive drug studied, the use of that drug(s) by an individual imposes measurable and reproducible risk in terms of complex psychomotor performance. The exact risk may vary by individual, or by task, but in a global fashion it can be measured and reproduced. The question before us then, is it medically reasonable to exclude psychoactive drug use from the workplace because it carries with it an unacceptable increase in risk? Put another way, is it reasonable for an employer to insist that their employees be psychoactive drug-free as a bona fide occupational requirement for safety-sensitive work (examples may include: driving, working at heights, manipulating machinery, or using dangerous substances such as explosives)?

**MARIJUANA**

Turning first to the second-most common psychoactive drug in the workplace after alcohol, significant research has been done on marijuana (tetrahydrocannabinol) and psychomotor performance. Much has been made of the fact that the acute effects of tetrahydrocannabinol generally last less than six hours. The argument is typically made that, provided that an individual does not consume marijuana within six hours of safety-sensitive work, the fact that it is present in urine is irrelevant in terms of safety or fitness to perform work. The reader is again referred to the demographic data at the start of this opinion to indicate that a significant minority of regular users are experiencing significant problems from their usage. In addition, up to one third of past-year users experience loss of control over when or where they use. However, even ignoring these data, increasingly, research in terms of neuropsychological factors is suggesting chronic impairment in terms of safety-sensitive work from marijuana is a significant issue. Firstly, marijuana use appears to affect the cerebellum and hippocampus areas of the brain in more pronounced fashions. This impairs the person’s ability to form memories and shift attention from one item.
to another. Loosely, this ability to focus on one task, while keeping another in memory, or the manipulation of complex three-dimensional forms, such as concerns construction or petroleum field workers, is termed *executive function* or *working memory*. The cerebellum is involved in coordination and balance and dysregulation of balance, posture and reaction time can occur. Additionally, marijuana has been shown to have deleterious cardiovascular effects, the risk of heart attack being four times that of normal baseline in the first hour after smoking marijuana\(^9\). While this, admittedly, is an acute effect, it contributes to the overall risk burden imposed on the worksite by this drug, and adds further support for excluding this drug from safety-sensitive work areas.

The research can best be summarized by quoting from Leirer et al\(^{10}\) (1991):

> Marijuana impaired performance at .25, 4, 8, and 24h after smoking. While 7 of the 9 (subjects) showed some degree of impairment at 24h after smoking, only one reported any awareness of the drug’s effects. The results support our preliminary study and suggest that very complex human/machine performance can be impaired as long as 24h after smoking a moderate social dose of marijuana, and that the user may be unaware of the drug’s influence.

A further bibliography of driving/flying and marijuana effects may be found online at: [The Pot and Driving Campaign | FAQs](http://www.potanddriving.cpha.ca/2_faq.html).

Emerging work on schizophrenia and the permissive effects of marijuana\(^{11}\) strongly connect the use of this substance with the emergence of schizophrenia in a susceptible population. Unfortunately, there is no way to know the exact genetic marker which determines whether one is susceptible or not. It has been estimated that 13 percent of all schizophrenia is attributable to marijuana use\(^{11}\). It is certainly defensible to state that this is yet another way that this substance and its usage contributes to risk, as an early emerging psychotic illness may make itself known through delusional behaviour and accidents caused thereby. This result has been challenged by skeptics, but despite reanalyzing the data to account for these criticisms, the findings remain robust.

Two recent research studies shed further light on marijuana and human performance. The first of these by Bolla et al\(^{23}\), indicated:

> as joints smoked per week increased, performance decreased on tests measuring memory, executive functioning, psychomotor speed and manual dexterity.

These results confirm that long-term heavy cannabis users show impairments in memory and attention that endure beyond the period of intoxication and worsen with increasing years of regular cannabis use. (Pope, 2002\(^{24}\))

As a correlate of these behavioral findings, Herning\(^{22}\) and his team measured blood flow in the brains of marijuana users during a month of monitored abstinence. This study, published in 2005, found:

> chronic marijuana use is associated with increased cerebrovascular resistance through changes mediated in blood vessels or brain parenchyma. These findings may provide a partial explanation for the cognitive deficits observed in a similar group of marijuana users.
In plain English, what this means is that marijuana use is actually altering the amount of blood flowing through critical areas in the brain, and that this effect can be measured for a substantial period of time after someone stopped smoking. This provides some anatomical explanation for the impairment measured by researchers such as Bolla and Pope\textsuperscript{24}.

In addition to the foregoing, there exists a well-defined withdrawal syndrome. A familiar argument defending the use of marijuana is that, provided the user is not acutely intoxicated at work, no significant harm will result from such use. A recent research study has measured aggressiveness in marijuana users who are in the withdrawal phase, and found that aggressive acts peak at seven days post drug use\textsuperscript{21}. Aggressivity in the workplace is one of the correlations with poor work safety\textsuperscript{12}. Additionally, in this second study there were other attitudinal problems:

- The surveys found that marijuana users were less likely than nonusers to commit to the organization, had less faith in management, and experienced low job satisfaction. These workers reported more absenteeism, tardiness, accidents, workers compensation claims (emphasis added), and job turnover than workers who did not use marijuana. They were also more likely to report to work with a hangover, miss work because of a hangover, and be drunk or use drugs at work.

This relationship between alcohol and drugs supports the direction of a risk-based approach to a psychoactive-drug-free workplace.

The sum total of the impairment data that are known about marijuana, as well as some of the neuropsychological effects of marijuana use, provides compelling arguments in terms of increased risk at a safety-sensitive worksite. The argument is often advanced that insisting on a psychoactive-drug-free state is an unwarranted intrusion into a worker’s private off-work life. The foregoing studies demonstrate that the off-work use of marijuana affects at-work risk, such that the colloquialism \textit{what I do in my own time is my own business} is rendered invalid.

**OTHER PSYCHOACTIVE DRUGS**

Other psychoactive drugs that are currently a concern in Canada are cocaine, amphetamine and its derivatives, including \textit{crystal meth} (methamphetamine), as well as designer drugs such as ecstasy (3,4 methylenedioxymethamphetamine, MDMA).

**METHAMPHETAMINE**

Methamphetamine production and usage are climbing alarmingly, particularly in some areas of the country associated with new prosperity. Methamphetamine is typically produced in clandestine laboratories using commonly available chemicals and over-the-counter medications such as ephedrine, pseudoephedrine, phenylpropanolamine, iodine, red phosphorous, hydrochloric acid, ether, hydriodic acid, and anhydrous ammonia\textsuperscript{25}. While separate statistics on methamphetamine as opposed to amphetamine usage were not compiled in the recent CAS, there is ample evidence that methamphetamine represents a growing concern in certain populations:

- Crystal methamphetamine use and production is a serious and growing problem in British Columbia. As encountered in some U.S. states, the rise of
crystal meth use in B.C. is being accompanied by an increase in related health problems and deaths amongst users. The resulting emotional, financial and social costs are enormous. (Quote from Crystal Meth Secretariat, BC Government).

The Canadian Addiction Survey measured the use of amphetamines (speed) in the Canadian population aged 15 and older, results revealed that 6.4 percent of respondents reported using amphetamines at least once in their life, and less than 1 percent reported past-year use. The provinces of Manitoba and Ontario have specifically included methamphetamine in their student drug use surveys. In 2001, 2.7 percent of students surveyed in Manitoba reported using meth in the past year. In 2003, 3.3 percent of students in Ontario reported using methamphetamine in the past year, and 1.2 percent reported using ice. (source CCSA ISBN 1-896323-68-5 (revised August 2005).)

From the Canadian Centre for Addiction and Mental Health:

Crystal Meth is one of the street names used for methamphetamine. It is also known as speed, meth or chalk. In its smoked form, it can be referred to as ice, crystal, crank, and glass. Methamphetamine belongs to a family of drugs called amphetamines--powerful stimulants that speed up the central nervous system. The drug can be made easily in clandestine laboratories with relatively inexpensive over-the-counter ingredients. Methamphetamine is a drug with high potential for widespread abuse.

When methamphetamine is injected or taken by mouth, the effects may last 6 to 8 hours. When it is smoked, the effects can last 10 to 12 hours. As with other amphetamines, users experience increased wakefulness, decreased appetite, and a sense of well being when they take the drug. Often people that use methamphetamines use it in a binge–and-crash pattern which can have harmful effects on the person’s health and can lead to dependence on the drug.

Crystal Meth can be smoked, snorted, taken orally, or injected. Depending on how it is taken, the drug can alter mood differently:

1. Smoking or injecting Crystal Meth can produce effects within seconds.
2. With smoking or IV methamphetamine use, there is an intense rush or flash that lasts only a few minutes, which is described as being extremely enjoyable.
3. Snorting or oral ingestion produces euphoria– a high, but not intense as with smoking or injection. Methamphetamine produces effects like euphoria and stimulation that are much like cocaine, except the effects last much longer. Methamphetamine is in the brain for longer, which can lead to prolonged stimulant effects.
4. Tolerance can develop with long-term use of methamphetamine, which means the user will need larger amounts of drug to achieve the same desired effects. Long-term use can result in addiction.
5. High dose use can result in violent behavior, anxiety, confusion, insomnia, and weight loss.
6. Methamphetamine causes increased heart rate and blood pressure, which can lead to strokes and death.
7. Other effects include risk of convulsions, respiratory problems, irregular heartbeat, and extreme anorexia.

8. With long-term use, psychosis can develop including paranoia, mood disturbances, delusions and hallucinations. For example, people may feel the sensation of insects creeping on the skin, and as a result scratch and pick at their skin until there are open sores, which can become infected.

9. Another problem found among Crystal Meth users is Meth mouth. Many users often have rotting teeth and it’s not known exactly why, although it may be because of a reduced blood flow to the teeth and gums, and dry mouth from less saliva.

Source: http://www.camh.net/About_Addiction_Mental_Health/Drug_and_Addiction_Information/crystal_meth_information.html

Ecstasy (MDMA) and driving impairment has been studied\(^\text{13}\). In this review study the conclusion is reached:

that MDMA use is not consistent with safe driving, and that impairment of various types may persist for a considerable time after last use.

Cocaine-related psychological impairment has also been studied\(^\text{14}\):

The results suggest that recent cocaine use is associated with impairment in memory, visuospatial abilities and concentration during the acute phase of withdrawal, independent of withdrawal-related depression. Furthermore, many of these deficits appear to persist at least two weeks beyond cessation of cocaine use.

By the time casual cocaine or crack cocaine use has progressed to dependence, cognitive deficits can be demonstrated at six months of abstinence\(^\text{15}\).

Again, each of these drugs can be detected by the use of urinary screening, but that does nothing to measure impairment. However, if we approach the use of these drugs from a risk-based concept it can be shown that neuropsychological consequences of such drug use, even on a casual basis, is deleterious toward safety.

In terms of licit (prescription) psychoactive drugs, benzodiazepines (e.g., Valium and Librium) have modes of action very similar to ethanol (alcohol). While measurement of benzodiazepine levels is not as easy to perform as breath-alcohol testing, there is still a good correlation between those levels and impairment. All of the data that is accepted in terms of alcohol use and safety also applies to benzodiazepines.

**Addiction (Dependency)**

A special mention should be made of the subgroup of psychoactive drug users who suffer from the disease of addiction. The Canadian Society of Addiction Medicine defines substance addiction as:

A primary, chronic disease, characterized by impaired control over the use of a psychoactive substance. Clinically, the manifestations occur along biological, psychological, sociological and spiritual dimensions. Common features are change in mood, relief from negative emotions, provision of pleasure, pre-
occupation with the use of substance(s); and continued use of the substance(s) despite adverse physical, psychological and/or social consequences. Like other chronic diseases, it can be progressive, relapsing and fatal.

The *Alcohol and Drug Policy Model* specifically recognizes addiction as a disease, constituting a disability in need of detection, treatment and accommodation. Given our current level of understanding of addiction and the involuntary nature of the drug use associated with it, as well as the classic unawareness that the person suffering from the illness typically has concerning their own impairment, that understanding demands a specific response. It is recognized that urinary drug screening is one method of detecting individuals who have used a variety of psychoactive substances in the recent past. As such, testing has a side benefit of potentially identifying those individuals in which further assessment is warranted by a substance abuse expert. Again, it must be explicitly stated that drug testing is not diagnostic of addiction, but in this case would be serving the purpose of initiating treatment in an individual unable to seek help for themselves (case finding).

It must also be explicitly stated that there are other, research validated, methods to detect addiction, such as observed behaviours, trauma questionnaires, impaired driving convictions etc., and the *Alcohol and Drug Policy Model* supports the education of supervisors and co-workers to enable them to also make use of these ancillary methods, to facilitate the addicted worker getting help. That being said, it is also medically well recognized that addicted individuals need to experience the negative consequences of their behaviours in order to move from a pre-contemplative (there is nothing wrong with me – I don’t need to change, the bad things in my life are someone else’s fault and substances help me cope with being a victim) to a contemplative stage of change (these bad things keep happening to me, they may be related to my use of substances – I may need to change). From there the challenge is to help the addict move to the active stage of change (these bad things ARE a result of my substance use – the thing I thought was helping me is in fact killing me – I must change or die). Too often, well meaning interventions from others prevent the addicted individual from experiencing such consequences, and thus, unintentionally but directly, assist them in becoming sicker. Where this has resulted from case law that impedes the testing, and therefore the discovery of addiction, and as a consequence impedes the movement to the active stage of change, it has been termed, *judicially mandated enabling* - the creation of a legal environment where continued use is effectively encouraged by preventing discovery short of some calamity occurring.

The foregoing data all support the position that psychoactive drug use entails increased risk by virtue of both acute and chronic effects. Risk minimization demands employees performing safety-sensitive work be drug-free. Any policy directed at risk reduction should consider multiple interventions to move towards this goal. Prevention in terms of education, programs to encourage non-punititive self or peer reporting of individuals suffering from addiction/abuse are all key elements addressed in the *Alcohol and Drug Policy Model*. The other key medical issue to consider is whether biochemical drug screening has any role to play in this multi-pronged approach. Additionally, since the stated purpose of the *Alcohol and Drug Policy Model* is risk reduction, are there any studies which show that drug testing reduces worksite accidents?

There are a significant number of studies addressing this question. Wickizer et al\(^\text{16}\) compared injury incidence rates between 261 companies enrolled in the drug-free
The drug-free workplace program we studied was associated with a selective industry-specific preventative effect. The strongest evidence of an intervention effect was for the construction industry.

Ozminkowski et al\textsuperscript{17} studied urinary drug testing at a manufacturing company over three years and its effect on medical expenditures and job injuries. A significant reduction in both medical expenditures and injury rates was found. Gerber et al\textsuperscript{18} specifically examined the construction industry, concluding that:

Analyses indicate that companies with drug-testing programs experienced a 51 percent reduction in incident rates within two years of implementation. Moreover, companies that drug test their employees experienced a significant reduction in their WCB (Workers’ Compensation Board) experience-rating modification factors.

Other objections to urinary drug testing programs often raised include the fact that workers view them in a negative light, and that there is no evidence that such programs discourage psychoactive drug use. Recent studies tend to refute these arguments. French et al\textsuperscript{19} studied the question as to whether workplace drug testing influenced drug use. 15,000 households were surveyed with respect to whether such programs influenced their drug-taking habits. They found that:

Estimated marginal effects of drug testing on any drug use were negatively significant, and relatively large...

Likewise, Howland et al\textsuperscript{20} looked at the effect drug testing had on employee attitudes and found 65 percent of 6,370 surveyed employees at a variety of work settings favored pre-employment testing, 81 percent supported testing after an accident and 49 percent supported random testing. Support for worksite alcohol testing was highest among blue-collar workers whose jobs involved manufacturing or exposure to work hazards.

In conclusion, it is the medical position of the Alcohol and Drug Policy Model that the use of psychoactive drugs as delineated above has an unacceptable negative effect on job safety both for the user and those around him or her. There is strong scientific support for the fact that drug testing as part of a multi-faceted enlightened approach to this problem is effective and justified. The non-usage of psychoactive drugs by people who wish to access safety-sensitive jobs is a bona fide occupational requirement.

**References:**

1. NIH Alcohol Alert Number 18: The Genetics of Alcoholism.  
2. Robbe, H.W.J. Marijuana’s effects on Actual Driving Performance, Netherlands.
3. Drummer, O.H. Drugs and Accident risk in Fatally Injured Drivers.

25. source Canadian Centre on Substance Abuse
26. Cognitive Functioning of Long-Term Heavy Cannabis Users Seeking Treatment; Solowij et al; JAMA 287; no 9, Mar. 6, 2002

NOTICE TO READER:

This document was prepared using the Canadian Model for Providing a Safe Workplace medical opinion as a basis, with the knowledge and permission of the Construction Owners Association of Alberta (COAA). Notwithstanding this, COAA takes no responsibility for any additional statements or alterations made to the original opinion, and are not affiliated in any manner with Enform.

Revised September 19, 2006
COMMON QUESTIONS/CONTROVERSIES/OBJECTIONS RELATED TO THIS MEDICAL OPINION:

1. Addiction physicians called to testify at drug-testing hearings have criticized urinary drug screening as not detecting addiction, or even impairment (fitness to work) and that there are far better diagnostic tools to detect these problems.

Answer: In the opinion of the author, such objections stand on a fundamental misunderstanding of the issues at play around urinary drug screening at the worksite. The primary purpose of urinary screening is not to detect addiction, although it may certainly help to identify individuals who are in need of further screening. As a concrete example of this principle, consider the worker who was warned that urinary screening for psychoactive drug metabolites will occur as part of his pre-placement assessment for a particular employer. In general, appointments for such screening occur with at least 48 hours warning. The information that cocaine metabolites only persist in urine for approximately 36 to 48 hours is widely available to anyone who is capable of searching the Internet. Despite this knowledge, which is widespread amongst drug using populations, the individual arrives for his urinary drug screening appointment, and subsequently tests positive for cocaine metabolites. Such behavior, in and of itself, is highly suggestive of an individual who is unable to control his psychoactive drug use for even the brief period of time necessary to produce a negative urinary drug screen. It may be inferred from such behavior that this individual is in need of further assessment as to whether s/he suffers from the disease of cocaine dependency. Notwithstanding the foregoing example, the criticism that urinary drug screening does not screen for addiction, disability or even impairment presupposes that that is the purpose to which it is being put, when it is not. As the studies quoted in the foregoing paragraphs indicate, urinary drug screening seems to have a negative effect on psychoactive drug use in the worksite in general, and may assist in identifying individuals who require further investigation in accordance with the principles of addiction medicine. It is not being employed as a diagnostic tool, nor can it serve this purpose.

2. In a recent significant legal case, note was made that the Canadian Senate Committee on Illicit Drug Use has determined that most marijuana users are casual, and that a hang-over effect, or long-term cognitive effects are minimal, if exist at all. (Para 134 of Chiasson v. KRB re hangover effects). If it is so insignificant, why test for it?

Answer: Briefly, this statement from the Canadian Senate Committee, in this author’s opinion, is wrong. Firstly, turning to the original data that the Committee used in its deliberations, these data are substantially out of date. They were summarized in a briefing paper by Barbara Wheelock, which was produced in 2002. Consequently all subsequent research from 2002 onwards has not been included in the summary relied upon by the Committee. There has been a flood of research papers published subsequently bearing on long-term cannabis use and chronic cognitive impairment. The bibliography of this medical opinion (supporting the Alcohol and Drug Policy Model) merely scratches the surface of a voluminous and robust literature. The authors Pope and Solowij, N. have both published extensively on the topic, and their bibliographies are useful. In addition, some of the statements made by this Committee are dubious at best, and run counter to current addiction medicine
thinking, appearing to be more political than thoughtful medical comment. For instance, there is no data to support the view that:

95 percent of users are recreational users and that the state of knowledge supports the belief that for the vast majority of recreational users, cannabis presents no harmful consequences for physical, psychological or social wellbeing either in the short or long-term. (Senate Special Committee on Illegal Drugs, Chair, Pierre Claude Nolan).

Even a cursory reading of the Canadian Addiction Survey produced by the same Federal Government calls into serious question this statement. Rather than enter into a highly politicized debate, the writer of this opinion would urge an independent and thoughtful review of the literature.
FREQUENTLY ASKED QUESTIONS

1.0 Why do we need alcohol and drug guidelines and policies?

As individuals, we may hold varying opinions about the use and the personal or societal impact of alcohol and drugs and make our own lifestyle choices accordingly. Regardless of a person’s opinion, the fact is that alcohol and drugs can adversely affect an individual’s mental and physical abilities. That fact presents an obvious and real concern for companies that are committed to providing employees with a safe workplace.

In addition, there may be certain requirements, either through regulations or owner/industry standards, which require guidelines and policies.

2.0 What determines whether an incident is significant to warrant testing?

All potentially dangerous incidents may provide cause for testing. If there is objective evidence to believe that the use of alcohol or drugs was not a factor in the occurrence, then the requirement for testing may be waived.

3.0 Can I get help if I think I have an alcohol or drug problem?

Yes. You can access your employer’s Employee Assistance Program (EAP), Employee and Family Assistance Program (EFAP) or alternative federal or provincial agencies such as the Alberta Alcohol and Drug Abuse Commission (AADAC) for personal counseling.

4.0 Will I get fired if I have an alcohol or drug problem?

If you voluntarily seek help and follow a recommended treatment program, you cannot be fired. However, if you do not voluntarily seek help and your problem is identified through a company testing program, you may be subject to discipline and/or termination under your employer’s alcohol and drug policy.

5.0 What is a recognized treatment program?

A recognized treatment program would be any substance abuse treatment program recognized by the Government of Alberta (or any other Canadian province/territory), or recognized by the Alberta College of Physicians and Surgeons (or any other provincial/territorial equivalent). In general, a physician, a social worker, an employee assistance plan, an employer’s occupational health department, or employer’s human resources department can direct individuals to a recognized treatment program.

6.0 Is follow-up testing required for treatment?

Normally, the designated treatment provider will make the determination of follow-up testing.

7.0 If I ask for help, who will know about it?
Self-referrals are confidential between the employee and the employee assistance program.

8.0 **What if someone I know at work has an alcohol or drug problem?**

Every individual at a workplace has a personal responsibility to ensure the safety of themselves and others. Part of that responsibility would be to encourage and help that individual to seek assistance through an employee assistance program or a supervisor. If that individual is putting him or herself or others in danger, you have a responsibility to report that individual to your supervisor or leader.

9.0 **Why are there various levels or standards for testing for alcohol? For example, if the level for impaired driving is 0.08 grams of alcohol in 210 litres of breath, why does this model use 0.04 grams of alcohol in 210 litres of breath?**

Law enforcement agencies use a level of 0.08 grams of alcohol in 210 litres of breath as the legal limit for alcohol when operating a motor vehicle. However, it is recognized that impairment can occur at much lower levels. Because the operation of vehicles and equipment in a commercial setting can be more demanding than the operation of a motor vehicle, the acceptable level has been set lower. While the *Alcohol and Drug Policy Model* sets a limit of 0.040 grams of alcohol in 210 litres of breath as the cut-off for which further action is necessary, the United States Department of Transportation (U.S. DOT) uses a level of 0.02 to 0.039 grams of alcohol in 210 litres of breath as cause to suspend a driver from driving at the time without further disciplinary action. It goes on to set a level of 0.04 grams of alcohol in 210 litres of breath as cause for suspension and disciplinary action.

10.0 **Why are we using the United States standards for alcohol and drug testing of Canadian workers?**

The U.S. DOT established a stringent standard for alcohol testing that defines both the mechanisms for testing and the requirements of the individuals conducting the tests. The U.S. Department of Health and Human Services (HHS) maintains a rigorous set of standards and protocols for employment-related drug testing. Both sets of standards were developed to ensure fair and reliable testing of workers covered by the United States mandatory drug testing legislation for such industries as transportation. Canada, of course, has no mandatory drug testing. The U.S. standards have been mandated for the *Alcohol and Drug Policy Model* to ensure quality testing and legal defensibility of results.

11.0 **Where can I find copies of the U.S. standards?**

Copies of the U.S. DOT standards may be obtained directly from the U.S. DOT or from its web site at www.dot.gov/ost/dapc. Copies of the HHS standard can be obtained directly from the laboratories that are certified to perform testing under the U.S. HHS standards. Alternatively, the standards can be found on the Internet at http://dwp.samhsa.gov/DrugTesting/DTesting.aspx.

12.0 **Who certifies the laboratories in Canada?**

In 1998 the Standards Council of Canada voted to abolish the Laboratory Accreditation Program for Substances of Abuse and to accept the standards of the U.S. Substance Abuse and Mental Health Services Administration (SAMHSA), an agency under the U.S. HHS. Since that time, SAMHSA has been responsible for
certifying laboratories for forensic urine drug testing in the US and Canada. At the
time of publication of the Alcohol and Drug Policy Model, only three laboratories in
Canada were SAMHSA certified.

13.0 Can my employer test me for other drugs besides those listed, or test
for other medical purposes?

An employer may choose to test for other drugs but these should be stated in the
employer’s specific policy. The employee should be made aware of the drugs to be
included in the testing. Testing for other medical purposes, such as pregnancy,
AIDS, diabetes, etc., must never be performed pursuant to this Alcohol and Drug
Policy Model.

14.0 Can I challenge a positive test?

A donor may challenge a positive test in the first sample by providing a legitimate
reason for the positive test when contacted by the medical review officer (MRO). The
donor may also request that the MRO arrange for a retest on the split portion of the
original specimen, normally at the donor’s expense, at the same laboratory or an
alternative certified laboratory. This request must be made within 72 hours of the
employee being notified by the MRO that the first test was found to be positive.

15.0 What are reasonable grounds?

In a case where an employee is caught distributing, possessing, consuming or using
alcohol or drugs at work, an alcohol and drug test is not required to establish a
breach of the employer’s alcohol and drug policy. The act itself constitutes a breach
of the standards set by the policy.

Appreciating that there may not always be direct evidence of a breach, and
recognizing that early detection of safety concerns before the occurrence of an
incident is the hallmark of effective safety and loss management, testing is
couraged in cases where there are reasonable grounds for a supervisor or leader
to believe that an employee may have consumed or used alcohol or drugs at work or
may be under the influence of alcohol or drugs.

Reasonable grounds for believing that an employee may be in breach of the policy
concerning detectable levels of alcohol or drugs can arise in two general situations.

Firstly, a situation where the supervisor or leader observes, overhears or otherwise
discovers something that would cause any reasonable person in that situation to
believe the employee is in breach of the guidelines, including, for example:

- where the smell of alcohol is detected on an employee’s breath, or
- where the supervisor or leader overhears a conversation at work in which an
  employee admits to having just consumed or used alcohol or drugs.

A supervisor or leader in such a case can, but is not required to, question the
employee about the observation or discovery to determine whether or not the belief
is reasonable. Alternatively, the supervisor or leader can simply request the
employee to submit to an alcohol and drug test.

Secondly, reasonable grounds can also exist in a situation where the leader has a
reasonable suspicion that an employee may be in breach of the policy based on
observations or discoveries, which are less conclusive and which seem more
consistent with a breach of the policy than with any other reasonable explanation, for example:

- where an empty liquor bottle or drugs are found in a vehicle used by the employee
- where the employee’s appearance and behaviour strongly suggests that the employee is under the influence of alcohol or drugs, or
- where the employee’s failure to correct a chronic performance problem strongly suggests that the employee may be using or is under the influence of alcohol or drugs at work.

A supervisor or leader in such a case should not request the employee to submit to an alcohol and drug test unless the leader has discussed the observations or concerns in question with the employee and has given the employee an opportunity to provide an explanation. If the explanation provides additional information that causes the supervisor or leader to conclude that the employee has not breached the policy, then the employee should not be required to submit to an alcohol and drug test. However, if the employee’s explanation does not dispel or contradict the supervisor or leader’s suspicion, then the employee should be tested.

16.0 **Do I have to report any non-prescription medication I take – like cold, flu, allergy or headache medications?**

Any medication, prescription or non-prescription, that may affect a worker’s ability to perform his or her job safely, must be reported. Other medications that do not affect a worker’s ability to perform their job safely, need not be reported. Any medications or medical information reported must be treated as confidential.

17.0 **How can I find out about the effects and side effects of medications prescribed for me?**

The effects and side effects of prescription medications are usually provided by pharmacies. Effects and side effects of non-prescription medications are also provided with the medication. More information can be obtained from your pharmacist or physician. Workers are advised to make their physicians or pharmacists aware of their safety-sensitive occupation and any other medications they may be taking.

18.0 **What are the issues for companies and employees regarding providing alcohol at social functions?**

There are both corporate and legal issues to this question.

The corporate issue: Companies that have alcohol and drug policies should be aware that offering alcohol at company events may be perceived by employees as inconsistent with the policy. Therefore, a company with an alcohol and drug policy may want to be more selective about when it will provide alcohol at company functions.

The legal issue: An employer who provides alcohol to employees has the same duty at law as a tavern-owner, namely to ensure that no employee is too impaired to drive and, if impaired, does not have access to a vehicle.
19.0  **Where can I get more information on this topic or guidance for implementation?**

There is a list of resources on the Enform website that can be accessed at: http://www.enform.ca; Safety Services; Projects; Alcohol & Drugs.
EMPLOYER’S GUIDE TO IMPLEMENTATION

INTRODUCTION

As an employer, you are encouraged to implement the Alcohol and Drug Policy Model for the Canadian Upstream Petroleum Industry for your employees and your entire operations.

ENDORSEMENT

Successful implementation of the Alcohol and Drug Policy Model throughout your company will only happen if it has the support, endorsement, and active participation of the highest level of management. That commitment must be communicated to everyone in your company and reinforced with the message that it is corporate policy.

Successful implementation also requires committing sufficient funds for effectively rolling out the policy and assigning the necessary people to make it happen.

COMMUNICATIONS PLAN

An effective policy requires communicating with every person at every level that a policy is in place. Every member of the management team must be committed to its implementation. To reinforce the importance, it is recommended that a policy statement, signed by the chief executive officer, is prominently displayed throughout the company and at various operations points.

The chance of successful implementation and acceptance requires:

- a written policy that is readily accessible to each individual
- communicating expectations and enforcement guidelines to each employee

COMMITMENT

Once the policy is endorsed, it will still require ongoing commitment and attention. Regular meetings with personnel assigned to implement the policy shows your ongoing interest and the importance you place on the implementation of the policy and its success. Your interest, as the employer, creates accountability that is transparent and effective.

It is important to note that commitment on the corporation’s part includes the need to apply the policy universally to all employees, at every level.

EDUCATION

To achieve true progress with the Alcohol and Drug Policy Model, attitudes among all employees relating to alcohol and drug use affecting workplace performance must shift such that no one accepts any workplace safety risks associated with alcohol and drug use. The proven tool for changing attitude is education. Employers will find that an investment in effective education will have a significant payback for reducing safety incidents. The following topics should be covered through various educational vehicles.
For all employees, include the following subjects:

- safety concerns and safety focus of the policy
- key elements of the policy, particularly the alcohol and drug work rule, the alcohol and drug testing procedures, and the circumstances where the policy requires alcohol and drug testing
- effects on employees that result from alcohol and drug use
- behaviours that a person demonstrates when under the influence of alcohol or drugs
- role of employee assistance services programs and how to access these services
- second-chance principles of the policy that focus on treatment and re-employment.

For company supervisors, include the following subjects:

- intervention techniques and styles with people who are suspected of being at work under the influence of alcohol or drugs
- proper investigation and inquiry procedures when interviewing employees and investigating incidents pursuant to the policy requirements
- effective decision-making procedures in applying the alcohol and drug testing requirements of the policy
- the company’s duty to accommodate employees who fail alcohol or drug tests
- return-to-work and relapse issues
- proper management of policy information obtained pursuant to policy application
- managing and structuring conditional return-to-work agreements
- appropriate communication with crew members about the content of the policy
- referral procedures to employee assistance services programs and the full capability and potential of these services

Education programs about the Alcohol and Drug Policy Model are available through Enform, and community programs offered by organizations such as AADAC (Alberta Alcohol and Drug Abuse Commission) can also be very effective. Utilizing them, along with customized communication and education packages for your company’s circumstances, will go a long way toward achieving the policy goal – to ensure workplaces are free from the safety risks associated with alcohol and drug use.

IMPLEMENTING THE ALCOHOL AND DRUG POLICY MODEL

It is recognized that the use of alcohol and drugs in the workplace can have serious adverse effects on a person’s health, safety and job performance. Implementing an industry-wide Alcohol and Drug Policy Model will help to enhance the level of health and safety at the workplace. In implementing the Alcohol and Drug Policy Model, it is critical to think through the structure prior to implementation. Here are some points to consider.

- Review your existing alcohol and drug policy, adjusting where necessary to address gaps with the Alcohol and Drug Policy Model. If no current company policy, develop one based on the Alcohol and Drug Policy Model.
• Obtain legal counsel in confirming the types of alcohol and drug testing programs that will be included in your alcohol and drug policy.

• Understand your company’s duty to accommodate employees who fail alcohol or drug tests.

• Make arrangements for access to substance abuse expert (SAE) services.

• Identify your Employee Assistance Services Program (EAP) or Employee and Family Assistance Services Program (EFAP) service provider, and ensure employees know how to access those services.

• Establish the testing and notification criteria you will use.

• Identify who your testing provider and medical review officer will be.

• Set up an account with your testing provider and receive your client code number.

• Identify who your designated employer representative will be and communicate that to the testing provider. Your designated employer representative is the person who will receive all confidential records and invoices.

• Identify who will be authorized to make appointments and receive results. This person(s) may or may not be the same person as the designated employer representative.

• Establish clear and concise guidelines and procedures for booking appointments.

Enform offers Implementation Workshops to assist employers in getting started or adjusting what they already have in order to address all components of the Alcohol and Drug Policy Model. For more information, contact Enform or check www.enform.ca.
SUPERVISOR’S GUIDE TO IMPLEMENTATION

INTRODUCTION

BACKGROUND

As individuals, we hold varying opinions about the use and the personal or societal impact of alcohol and drugs, and we make our lifestyle choices accordingly. Regardless of our opinions, the fact is that an individual’s mental and physical abilities are adversely affected by alcohol and drugs. That fact presents an obvious and real concern for companies in the upstream petroleum industry regarding the safe operation of their enterprise. Companies are committed to providing a safe workplace for all their employees, at all times and in all situations.

FORMAL TRAINING

Your company may offer formal training workshops for supervisors that will help you better understand the company alcohol and drug policy and your role in its implementation. As a service to industry, Enform offers workshops to help prepare supervisors to carry out their roles and responsibilities outlined in the Alcohol and Drug Policy Model for the Canadian Upstream Petroleum Industry.

ROLES AND RESPONSIBILITIES OF SUPERVISORS AND LEADERS

The successful implementation of the Alcohol and Drug Policy Model is the shared responsibility of owner companies, contractors and employees. As part of this shared responsibility, supervisors and leaders must:

- communicate and give leadership in the implementation of the Alcohol and Drug Policy Model
- be knowledgeable about and communicate the company’s alcohol and drug policy, work rule, and procedures to all employees
- be knowledgeable about and be able to recognize the symptoms of the use of alcohol and drugs
- understand the company’s performance management policy and how the Alcohol and Drug Policy Model is integral to that policy
- take action on performance deviations
- take action on reported or suspected alcohol or drug use by employees

IMPORTANCE OF EDUCATION

Employee awareness of the actual and potential risks, both on and off the job, related to the consumption or use of alcohol or drugs is very important. Education and communication are the vehicles through which we can bring this awareness to all people engaged on our worksites. In fact, awareness and education are the principal methods that our industry is utilizing to ensure compliance with the Alcohol and Drug Policy Model by all employees. With everyone complying with the standards defined in the Alcohol and Drug Policy Model, we can achieve our goal of eliminating workplace health and safety concerns associated with non-compliance.
As a supervisor, you have a very key role and responsibility in bringing this education alive in the worksite with your work crews. By investing in the education of the people you are responsible for in the workplace, and ensuring they understand the standards contained in the *Alcohol and Drug Policy Model* as well as the risks and dangers associated with alcohol and drug use, you will have gone a long way to achieving the necessary policy compliance. In the long run, this makes your job as a supervisor easier and meaningfully contributes to the success of ensuring a safe workplace.

Many opportunities exist that can help to ensure effective education and learning occurs in the workplace. While education can take place formally, such as in a classroom or a structured meeting, it will also very frequently happen through less formal means. For example, excellent opportunities arise when orienting new employees to their work areas. Other examples include tool box meetings and safety meetings. Leading by personal example is also a powerful means of education. Good supervisors are respected and looked at as a model of behaviour, especially by new employees. Supervisors must demonstrate behaviours that are consistent with the standards defined in the *Alcohol and Drug Policy Model*.

As a first principle, it is important to realize that the *Alcohol and Drug Policy Model* applies to all employees, regardless of whether or not an employee has problems relating to the use of alcohol or drugs. This understanding will avoid exclusively targeting employees who have substance abuse problems. Additionally, in communicating the intent of the *Alcohol and Drug Policy Model* to employees, it is helpful to emphasize that, in the first instance, the *Alcohol and Drug Policy Model* is designed to correct – not punish – unacceptable actions and behaviours because of the safety risks associated with alcohol and drug use. Employee assistance services programs will help assess and facilitate any corrections that are necessary to ensure ongoing compliance with the *Alcohol and Drug Policy Model*.

This guide is designed to provide supervisors with the skills and knowledge required to facilitate education within their work crews about alcohol and drug issues, as well as to effectively manage alcohol and drug related performance issues. To this end, the guide addresses matters beyond the alcohol and drug guidelines such as:

- understanding terminology associated with alcohol and drug use
- providing awareness of the needs of employees who are returning to work from counseling or a treatment program
- recognizing that support systems are available that are designed to assist supervisors, leaders and other employees in addressing alcohol or drug related issues.

**Desired Outcomes**

After reviewing this guide, you should:

- understand the fundamental purpose of the guidelines and know the standards and requirements established by those guidelines
- know the meaning of some common alcohol and drug related terms
- understand the concept of enabling and the importance of avoiding behaviours that allow problems related to alcohol or drug use to continue unaddressed
- have information about alcohol and drug issues related to the *Alcohol and Drug Policy Model* to help you in communicating policy issues to your work crews
know your role and responsibilities in addressing performance problems related to alcohol and drug use

have a greater ability to recognize the behaviours or conduct that may indicate performance problems related to alcohol and drug use

know and clearly understand the process and steps to manage and address performance issues in general, as well as performance problems related to alcohol or drugs specifically

know the support systems designed to assist supervisors and team members in addressing performance issues.

**ALCOHOL AND DRUG GUIDELINES**

**GUIDING PRINCIPLES**

The guidelines are based on a number of fundamental principles.

**SHARED RESPONSIBILITY FOR SAFETY**

As a matter of law and as a practical fact, both individuals and companies in the upstream petroleum industry have a shared responsibility for safety in the workplace. The *Occupational Health and Safety Act of Alberta* (and similar laws in other jurisdictions) imposes a legal obligation on all employees to protect the health and safety of themselves and other employees.

**BEHAVIOUR ON AND OFF THE JOB**

The commitment of employees to safety cannot be measured only by their conduct and performance on the job. By necessity, given the nature of operations in the upstream petroleum industry, employees must have regard to conduct or behaviour on and off the job that may adversely affect their ability to safely perform their duties at work. This specifically extends to the consumption or use of alcohol and drugs as addressed by the *Alcohol and Drug Policy Model*.

**BALANCING SAFETY AND PRIVACY INTERESTS**

Society’s view with respect to alcohol and drug use in Canada has been rapidly evolving in recent years, especially in regards to how this use potentially affects the safety and well-being of others. Well-recognized examples, such as those relating to the dangers of drinking and driving or the promotion of the use of seat belts, are becoming more prominent and common.

Initiatives to manage and eliminate safety risks in the workplace benefit all stakeholders including employees (and their families) as well as business organizations. At the same time, it is also important that the rights of employees be respected, particularly regarding protection against unnecessary intrusion into their personal privacy, as we work towards achieving zero workplace incidents. When the *Alcohol and Drug Policy Model*’s work rule, guidelines and procedures are followed, a balance can be attained between ensuring safety in the workplace and respecting the privacy of all employees.
PRIVACY OF INFORMATION

In 2004, privacy legislation was enacted that provides for protection surrounding the collection, use and disclosure of personal information about individuals. The *Alcohol and Drug Policy Model* also stresses the importance of ensuring confidentiality of information and that in all circumstances employees be treated with dignity and respect in the application of the policy. Efforts have been taken to ensure that the *Alcohol and Drug Policy Model* complies with privacy legislation (*Personal Information Protection Act* in Alberta and similar in other jurisdictions) as well as federal privacy legislation PIPEDA (*Personal Information Protection and Electronic Documentation Act*).

ENCOURAGE EMPLOYEE SELF-REFERRAL

Employees who feel they may be experiencing problems associated with alcohol or drug use should voluntarily seek help under an employee assistance services program that has been identified by the company.

A CLOSER LOOK AT THE ALCOHOL AND DRUG GUIDELINES

WORK STANDARDS

The guidelines set out very clear standards that must be met by all employees to ensure their safety and the safety of others. Employees must not:

- while at any company workplace, use alcohol, drugs (other than prescription and non-prescription drugs as described below) or any product or device that could tamper with any sample for an alcohol or drug test
- report to work or be at work under the influence of alcohol or drugs that may or will affect their ability to work safely
- tamper with a sample for an alcohol or drug test
- test positive for any alcohol or drugs at concentrations as specified in *Alcohol and Drug Policy Model*
- misuse prescription or non-prescription drugs while at work. If an employee is taking a prescription or non-prescription drug for which there is a potential unsafe side effect, they have an obligation to report it to the supervisor.

ALCOHOL AND DRUG TESTING CIRCUMSTANCES

Alcohol and drug testing may be conducted in the following circumstances:

- where the employer has reasonable grounds to believe an employee may be unable to work in a safe manner because of the use of alcohol or drugs
- as part of an investigation into an incident or near miss to determine if alcohol or drugs could have played a role
- prior to an offer being made to a prospective employee for a safety-sensitive position
- as part of the roll-out of the company’s alcohol and drug policy among employees in safety-sensitive positions
- to periodically re-qualify employees in safety-sensitive positions
as part of a follow-up program for employees who have been in treatment programs and are returning to duty
as part of a random testing program where the employer can demonstrate that random testing is a reasonable necessity
where an owner requires testing before employees can access the owner’s property

**CONSEQUENCES FOR NON-NEGATIVE TEST RESULTS**

- The employer may discipline or terminate for cause an employee who fails to comply with the alcohol and drug work rule.
- Prior to the employer making a decision with regard to discipline or termination, the employee shall meet with a substance abuse expert who shall make an assessment of the employee and make appropriate recommendations.
- The employee must demonstrate compliance with the recommendations of the substance abuse expert or licensed physician with knowledge of substance abuse disorders as well as sign an agreement specifying return-to-work conditions imposed as part of a treatment program and other reasonable conditions set by the employer.

**EDUCATION**

The industry recognizes the importance of making employees aware through education of the actual and potential risks, both on and off the job, related to the consumption or use of alcohol or drugs. As with other safety programs, the industry will use employee education and awareness as the principal method of ensuring compliance with the guidelines and reducing workplace health and safety concerns associated with non-compliance.

**SELF-REFERRAL TO EMPLOYEE ASSISTANCE SERVICES**

The industry encourages employees to seek professional assistance if they know or suspect they have a problem with drugs or alcohol, and supports self-referral to existing employee assistance services programs for that purpose.

Any employee who is receiving assistance from an employee assistance services program for an alcohol or drug problem must comply with the terms and conditions of the program and must comply with the standards set by the guidelines.

**COMMON DEFINITIONS**

To assist you, following are definitions of some terms commonly used in the context of alcohol and drug use. Additional definitions are provided in the *Alcohol and Drug Policy Model*.

**ADDITION**

Traditionally, this term has been synonymous with physical dependence and full-fledged withdrawal symptoms. Addiction is characterized by:

- **change in tolerance** – initially increases (more amount of the drug needed to produce the desired effect) and in later stages tolerance decreases (less amount of the drug needed to produce the same effect)
• loss of control – the amount of substance consumed, and the timing or place of consumption

• blackouts (if the drug of choice is alcohol) – no recall of events (alcohol-induced amnesia)

• physical complications – e.g. malnutrition, hypertension, liver damage

• psychological symptoms – defense mechanisms designed to minimize feelings of anxiety and despair. These defense mechanisms are a coping strategy as the person’s self esteem is diminished and his or her sense of powerlessness is increased. Examples include:

• denial (the most common defense mechanism) – denying that the person is experiencing negative consequences and that the person has control over the use and amount of drug of choice

• projection – blaming others and events that cause the person to use the drug of choice

• rationalization – using excuses to support the use of the drug of choice

• social or family complications – the drug of choice may replace people (family, friends, work) as the chief source of comfort, nurture and object of loyalty leading to social isolation, increased secrecy, inconsistent moods and loss of people who were important in the person’s life.

**DEPENDENCY**

• Physical – the user’s body has become so accustomed to the presence of the drug that when it is no longer used, withdrawal symptoms occur. These may be mild, such as sneezing and a runny nose, to very severe, such as potentially fatal convulsions. The severity of withdrawal increases with the level of the drug taken and the duration of its use.

• Psychological – users, though not experiencing withdrawal symptoms upon cessation of use, nonetheless believe that they cannot function without the drug and crave it.

**TOLERANCE**

An adaptation of the body to the presence of a drug. When tolerance occurs, the body requires greater amounts of the drug to produce the desired effect.

**WHAT IS ENABLING?**

While we may genuinely want to help an employee with a performance problem that is related to alcohol or drug use, often by our actions or inaction we allow the problem to continue unaddressed.

There are many reasons that may prevent or deter us from addressing alcohol or drug related performance problems. One of the most common reasons is that we want to protect the employee from the potential consequences of their actions, such as loss of employment or damage to the employee’s reputation and self-esteem. This is called enabling. Enabling is a natural reaction that many of us experience when we see someone who is in trouble or pain.
Ironically, by failing to deal directly with the issue, we may be exposing the employee, other team members and ourselves to even greater consequences (namely injury or death) when the performance issue becomes or may become a safety issue, which is inevitably the case in a work environment such as ours.

Enabling is an easy trap to fall into, particularly when it involves performance issues in a team. First, there is comfort in numbers, which causes us to wait for someone else in the team to raise or address the issue. Second, as social beings we naturally avoid conflict. Ignoring the situation is a common avoidance method. Another is to defer dealing with it by making adjustments and compromises, hoping that it will somehow resolve itself without conflict or our involvement.

In either case, we end up protecting the employee with the performance problem and exposing ourselves and the team to unnecessary anxiety and risk. Furthermore, we prevent the employee from taking the steps necessary to resolve the problem and from experiencing the associated learning and development to help reduce the risk of reoccurrence.

**BREAKING THE CYCLE OF ENABLING**

When performance issues arise in a team, and in particular the issues relate to a team member’s use of alcohol or drugs, it is important for the employer, team supervisor and other team members to avoid enabling behaviours by:

- recognizing that enabling behaviours do not solve performance issues, they allow them to continue and often result in them worsening
- realizing that the sooner performance issues are addressed (particularly sensitive ones) the easier they are to resolve
- remembering that everyone on the team, including the employee with the performance problem, shares a common objective – to create a healthy and safe team environment
- implementing a policy that leads by example and is consistent for all employees regardless of what title they may have
- ensuring that the company also leads by example
- making sure that all instances requiring an alcohol and drug test are assessed based on their individual circumstances.

**ADDRESSING PERFORMANCE ISSUES**

**SUPERVISORS’ ROLES AND RESPONSIBILITIES**

Every supervisor’s prime responsibility on a team is to help manage the performance of the other team members, by ensuring that:

- **job understanding** – each team member has a clear understanding of the expected level of performance required for his or her job
- **job skills** – each team member has the base competencies and skills required to achieve the expected level of performance
- **job performance** – performance that consistently exceeds the expected level of performance is promptly recognized and rewarded, and performance that
consistently or sporadically falls below the expected level is promptly addressed and resolved.

In their leadership role, supervisors need to be sensitive to changes in behaviour or performance of a fellow team member that may be related to alcohol or drug use off the workplace, and to be familiar with the support systems within the company designed to assist both the supervisor and that team member in dealing with the issue in a constructive and effective manner. The process to be followed in addressing and resolving alcohol and drug related performance issues is discussed in the next section.

Where a supervisor believes that an employee’s performance or behaviour problem is related to alcohol or drug use off the workplace, it is not the supervisor’s role or responsibility to make any further assessment or diagnosis or to provide counseling to the employee. In such cases, the supervisor should seek the assistance of his or her human resources representative, manager or both.

It is also inappropriate and counterproductive for a supervisor to judge or evaluate whether an employee’s behaviour is morally or socially acceptable. Supervisors must remain objective by focusing on the facts of each case and not let their personal views on alcohol and drugs affect their judgment and actions.

Whenever a supervisor believes that off-workplace alcohol or drug use by an employee may be impacting work performance, then the basis or focus for the intervention or discussion with the employee should be specific work performance indicators. The following sections look at basic fundamentals of how to manage work performance issues.

**MANAGING PERFORMANCE ISSUES**

Addressing alcohol or drug related performance issues is simply another component of performance management. It does not require any new skills other than an understanding of the application of the Alcohol and Drug Policy Model. The following discussion is a good opportunity for supervisors to refresh their memories and skills in the area of performance management. This discussion will also explain how addressing such issues falls within the usual performance management process.

Performance and behaviour issues that are or may be related to alcohol or drug use off the workplace should be identified, documented, addressed and resolved using essentially the same process as any other performance concern.

**STEP ONE – IDENTIFY SUBSTANDARD PERFORMANCE**

Supervisors are responsible for monitoring employee performance and addressing situations where performance consistently or sporadically falls below the expected level of performance.

Performance issues can arise in an employee’s career for a variety of reasons. Deteriorating work performance can be caused by a work related problem (such as a conflict with a team member or uncertainty about job responsibilities or employment security) or by personal problems (such as marital or financial stress or the use of alcohol or drugs).
ICEBERG CONCEPT OF EMPLOYEE PERFORMANCE PROBLEMS

Symptoms
Job Behaviours
Changes in appearance
Mood changes
Decreased productivity
Absenteeism
Incidents/accidents
Changes in behaviour
Poor relations with others

Causes
Complex personal and work-related problems
Marital problems
Job-related problems
Legal problems
Use of alcohol or drugs
Financial problems
Medical problems
Parent-child problems
Noticeable and prolonged deviation in an employee’s standard of performance or usual behaviour can sometimes be the result of use of alcohol or drugs. Behaviours that may be symptomatic of alcohol or drug use can appear singularly or in combination, as shown in the figure below.

However, it is important for supervisors to understand that a decline in work performance does not necessarily mean an employee has a problem associated with the use of alcohol or drugs. For example, some of the behaviours identified in this supervisors’ guide may indicate problems not related to alcohol or drug use, such as diabetes, high blood pressure, etc.

As mentioned previously, it is not the responsibility of the supervisor to determine whether or not an employee’s performance problem is a consequence of the use of alcohol or drugs off the workplace. The supervisor’s responsibility is limited to monitoring work performance and identifying, documenting and addressing performance problems in accordance with the company’s existing discipline policy.
Instead of looking for behaviours that may indicate a problem related to alcohol and drug use, supervisors should concentrate on identifying and documenting changes in an employee’s job performance without making moral judgments or assuming the role of counselor.

**STEP TWO – DOCUMENT PERFORMANCE AND BEHAVIOUR CONCERNS**

Once a potential performance problem has been identified, the supervisor must continue to monitor the employee’s behaviour and document what is observed.

All employees experience bad days or temporary periods where their performance may slip for a variety of reasons associated with the normal challenges of life. What distinguishes performance problems, which may be related to alcohol or drug use or to some other serious cause, from these normal and regular occurrences is the formation of a pattern, either continuous or repeating. Documentation allows a supervisor to properly record and identify trends that may indicate a performance problem requiring special attention. This documentation is critical because a supervisor cannot request an alcohol and drug test for an employee without showing to the manager the proper support for that request.

When documenting performance, supervisors should:

1.0 Keep a daily journal of the employee’s behaviour. Record not only negative behaviours or substandard job performance but also cases where the employee has met or exceeded expectations. By keeping a daily log, a supervisor can more easily see changes or patterns in an employee’s behaviour over an extended period of time.

2.0 Keep all information strictly confidential. Records of performance should be kept out of sight of other employees and should be safely stored and locked when not in use.

3.0 Follow the five w’s (who, what, where, when and why). Record specific details of observed behaviour, and ensure that such observations are objective and free of personal bias or judgment. Think of yourself as a newspaper reporter – document only what you see.

4.0 Relate all observations to job performance. Explain in measurable terms how an employee is performing in relation to agreed upon expectations such as job descriptions, goals or objectives.

5.0 Keep track of issues and communication. Maintain a chronological account of performance issues and problems as well as meetings and coaching sessions with the employee and related interactions and improvements.

It is important that the supervisor keep in mind that his or her job is to monitor job performance and record relevant facts. By identifying and addressing substandard performance, the supervisor is taking the first steps in assisting the employee to improve his or her performance.

**STEP THREE – MEET WITH THE EMPLOYEE TO DISCUSS OBSERVATIONS AND CONCERNS**

Discussing a performance problem with an employee is often the most difficult and uncomfortable step in the performance management process. A supervisor must overcome that discomfort and meet with the employee once sufficient information
has been gathered to adequately discuss the performance issue. This means establishing clear goals and expectations for the interview.

Supervisors must also be prepared for an employee’s anger and denial. It is common for a person who is confronted with a problem to deny it either because they do not recognize that their behaviour is inappropriate or because they fear reprisal or disciplinary action. At that point, the supervisor must be very careful not to enter into a debate or argument with the employee.

It usually helps to review the goals of the interview with the employee at the start of the meeting to ensure that the employee understands that the purpose of the interview is to discuss deterioration in job performance that the supervisor has observed and documented. By focusing on the facts in an objective, professional and concerned manner, the supervisor should be able to diffuse any anger so that the problem can be discussed in a calm and constructive manner.

**Tips for good interviews**

1.0 Have clear goals for the interview.

2.0 Review documentation and information prior to interview.

3.0 Conduct the interview in private and without interruption.

4.0 Direct the course of the interview. Do not allow the employee to direct the discussion away from his or her performance.

5.0 Discuss positive aspects of the employee’s performance, as well as reviewing documented concerns.

6.0 Explain the consequences of not addressing and resolving substandard performance.

7.0 Conclude the interview with a positive outlook. Communicate your confidence that the employee can improve his or her performance.

**STEP FOUR – DEVELOP AN ACTION PLAN**

Developing an action plan to correct a performance problem is an essential step in managing serious or potentially serious issues, particularly those that may be related to alcohol and drug use off the workplace. However, simple action plans can also be used in addressing relatively minor performance issues.

Ideally, the action plan should be developed and signed jointly by the supervisor and the employee. It should also be identified as one of the goals of the interview and completed at the end of the initial meeting whenever possible. Alternatively, it should be done as soon after the initial meeting as is reasonably practicable.

The action plan should address very clearly the following matters:

1.0 A description of the performance problem to be addressed by the action plan.

2.0 A description of the level of performance expected of the employee having regard to the employee’s training and experience, years of service, level, and past performance.
3.0 The course of action and schedule to bring the employee’s performance to the expected level including, where applicable, targets, and associated dates.

4.0 Special requirements or support, such as internal or external training courses or the involvement of an employee assistance services provider.

5.0 The role of the supervisor and the role of the employee in the successful completion of the action plan.

**Step Five – Continue to Document Performance and Conduct Follow-up Interviews**

Once the action plan has been completed, the supervisor must continue to monitor the employee’s performance to ensure that the goals and schedule of the action plan are being met. Using the techniques described earlier in this section, the supervisor needs to objectively and thoroughly document relevant behaviour and monitor the progress or status of the employee’s performance against the agreed upon expectations.

The supervisor should conduct regular follow-up meetings to review the employee’s performance and to discuss progress. It is important that the employee be supported and encouraged during this time. Follow-up meetings provide an opportunity to reinforce positive behaviours as well as offering assistance in areas where progress is lacking.

The frequency of follow-up meetings can be expressly addressed in the action plan.

**Step Six – Assessing the Outcome and Need for Further Action**

**When the plan objectives are met**

If the employee’s performance improves to the expected level in accordance with the action plan, then the supervisor’s responsibilities revert to normal monitoring and coaching with performance feedback occurring during regular performance review sessions.

**When the plan objectives are not met**

If the employee fails or later refuses to meet the requirements of the action plan and bring his or her performance to the expected level, or if the employee meets the requirements of the action plan but is unable to sustain the expected level of performance, then the supervisor should proceed with a formal corrective action process if the supervisor has not already adopted that process.

**When the failure may be related to alcohol or drug use**

If the supervisor suspects that the employee’s failure, refusal or inability to achieve or maintain the expected level of performance may be related to alcohol or drug use off the workplace, then the supervisor should meet with the employee to discuss that concern. At that meeting, the supervisor should refer to the documented behaviours that he or she feels may be symptomatic of alcohol or drug use. The supervisor should then suggest that the employee seek assistance of an employee assistance services program by self-referral and allow the employee reasonable time to do so.
Self-referral to an employee assistance services program usually involves an employee or family member attending the program without the knowledge or assistance of anyone else. Depending on the circumstances, the supervisor may also offer to help the employee in seeking that assistance.

Alternatively, if the supervisor would prefer to have confirmation that the employee is under the care of an employee assistance services program, then the supervisor can initiate an informal referral to the program. An informal referral means a referral of an employee to the program by another person such as the employee’s leader, health and wellness advisor or human resources representative. An informal referral is made on the express understanding that the program’s personnel will only confirm to the leader or other person requesting the referral whether or not the employee has attended the program as requested.

If the employee’s performance does not improve, the supervisor can also initiate a formal referral to an employee assistance services program where the program’s counselor provides the supervisor with reports on the progress of the employee.

As noted in this supervisors’ guide, if a supervisor has a reasonable suspicion at any time that an employee’s failure to correct a chronic performance problem is due to the employee using alcohol or drugs at work or being under the influence of alcohol or drugs at work, then the supervisor should so advise the employee and allow the employee an opportunity to provide an explanation. However, if the employee’s explanation does not dispel or contradict the supervisor’s suspicion, then the employee should be required to submit to an alcohol and drug test.

**QUESTIONS AND ANSWERS (TO BE COMPLETED BY SUPERVISORS)**

- What communications do you undertake to inform your team about the alcohol and drug guidelines?
- What do you currently do to monitor behaviour and performance within your team?
- What signs or indications in an employee’s performance or behaviour would alert you to the possibility that such performance or behaviour may be related to alcohol or drug use?

**SUPERVISOR AND TEAM SUPPORT**

**RETURNING TO WORK – WHAT CAN YOU DO TO HELP?**

In the cases where an employee has admitted to being under the care of an employee assistance services program or where an employee was in a treatment program as part of an offer of conditional rehire, there are things we can do as supervisors to make the return to work process successful in the long term.

The manner in which a supervisor manages an employee who has returned to work should not be different than management of other staff.

Good leadership involves establishing clear job performance expectations, open communication and mutual respect. Supervisors must be aware of the confidential nature of the situation and should not disclose or discuss the nature of the employee’s problem or the details of his or her absence with other staff members.
The returning employee needs to make his or her own decisions about sharing this personal information with other members of the team.

**THE RETURN-TO-WORK INTERVIEW**

When an employee returns to work following treatment for an alcohol or drug problem, an interview between the supervisor or designated team members and the returning employee should take place immediately. This interview should include:

- a discussion of the employee’s job description noting any changes stemming from the personal action plan (i.e. limited duties, arrangements for continued counseling)
- a clear description of expectations and specific areas that require improvement
- development of a follow-up process, so that both the supervisor and employee know when regular follow-up sessions are to occur and what will be discussed
- a provision of time if the employee wishes to comment on his or her experience in counseling or the treatment program. This discussion time may involve the employee proposing changes in how he or she intends to handle work-related stress
- an offer of support – this interview provides an opportunity to establish a new, positive working relationship based on a solid understanding of realistic and clear job performance expectations.

It is important to remember that the first several weeks of an employee’s return to work are crucial in setting a tone and atmosphere of cooperation and support.

**UNDERSTANDING WHAT HAS CHANGED**

People who have experienced negative effects from their use of alcohol or drugs may develop problems in many areas. For some, social and family relationships have suffered, while others have experienced financial, legal or physical health problems. Such an individual may be in the process of making a number of major lifestyle changes.

These changes will not occur overnight – new health-related skills must be learned. Family, social, and work expectations and relationships need to be re-negotiated and re-defined.

**WHAT IS A RELAPSE?**

Seventy-six per cent of relapses occur when individuals are trying to cope with negative emotional states such as loneliness, anger, and boredom (many of these problems may have been contributing factors in the individual’s initial use). Most people who have experienced problems from their alcohol or drug use may return to drinking or drug use not because they want to, but because they perceive themselves as having no other acceptable choices. Relapse indicates that the individual has not yet developed alternatives for dealing with day-to-day stresses.

Signs of a potential relapse may include:

- emotional outbursts, the person over-reacts to common situations and appears to be stressed
• physical and social isolation
• irritation with friends and co-workers, relationships with other employees become strained
• interruption of daily routines – the individual may change their normal eating and sleeping patterns leading to listlessness and fatigue
• development of an I don’t care attitude
• open rejection of help
• premature cessation of counseling and/or attendance of self-help groups.

ACCESS TO HELP OR SUPPORT

It is important to recognize that supervisors do not have all the answers and may require help or support from other resources within the company. There are a number of resources and/or support systems that can assist us in addressing alcohol or drug related concerns.

EMPLOYEE ASSISTANCE SERVICES PROGRAMS

The aim of employee assistance services is to assist the employee and family members to obtain diagnosis, counsel and treatment for problems that can affect an employee’s or family member’s ability to cope. The program places emphasis on prevention and early detection of potential problems before they become a threat to the employee and the job.

Employees are encouraged to seek help under the designated employee assistance services program for any alcohol or drug related problem. Employees can contact employee assistance services on their own, or with the assistance of their manager, supervisor or human resources representative.

In addition to providing counseling and referral services to employees and family members who are experiencing problems, employee assistance services can also provide assistance to co-workers and/or supervisors who may be concerned about an individual’s behaviour and/or actions but are unsure as to what to do.

Helpful literature on a wide variety of health, behavioral, and lifestyle concerns is available through the employee assistance services program. Information will be mailed on a personal and private basis as requested by employees or family members.
EMPLOYEE’S GUIDE TO ALCOHOL AND DRUG AWARENESS

BACKGROUND

The upstream petroleum industry is committed to ensuring a safe work environment for all employees, free from alcohol and drugs. To maintain this commitment, an industry Task Force led by Enform was initiated in 2005 to develop The Alcohol and Drug Policy Model for the Canadian Upstream Petroleum Industry. The Alcohol and Drug Policy Model is adapted from the October 2005 version of the Canadian Model for Providing a Safe Workplace, developed by the Construction Owners Association of Alberta. It has been updated to reflect new information, emerging law, and public policy in this area.

The Alcohol and Drug Policy Model establishes standardized alcohol and drug guidelines and policy elements that will ensure fairness and consistency throughout the industry. It also helps to standardize the approach, testing, application, and treatment of employees.

The intent of this awareness package is to help employees understand the alcohol and drug guidelines and work rule and their role in ensuring its success.

ROLES AND RESPONSIBILITIES OF EMPLOYEES

The successful implementation of the Alcohol and Drug Policy Model is the shared responsibility of owner companies, contractors and employees. As part of this shared responsibility, employees must:

- have an understanding of the alcohol and drug work rule
- take responsibility to ensure their own safety and the safety of others
- ensure they comply with the work rule as part of their obligation to perform work activities in a safe manner
- follow appropriate treatment if deemed necessary
- use medications responsibly, be aware of potential side effects and notify their supervisor of any potential unsafe side effects where applicable
- encourage their peers or co-workers to seek help when there is a potential breach or breach of policy

ALCOHOL AND DRUG GUIDELINES

The alcohol and drug guidelines are based on four fundamental principles:

Shared responsibility for safety

Both individuals and companies in the upstream petroleum industry have a shared responsibility for safety in the workplace. The Occupational Health and Safety Act of Alberta imposes a legal obligation on all employees to protect the health and safety of themselves and other employees. Similar laws exist in other provinces and territories.
**BEHAVIOUR ON AND OFF THE JOB**

By necessity, given the nature of operations in the upstream petroleum industry, employees must have regard to conduct or behaviour on and off the job that may adversely affect their ability to safely perform their duties at work. This specifically extends to the consumption or use of alcohol and drugs as addressed by the *Alcohol and Drug Policy Model*.

**BALANCING THE NEEDS OF SAFETY AND INDIVIDUAL RIGHTS**

The interests of ensuring safety in the workplace and respecting the rights of all employees are given equal consideration. For example, the *Alcohol and Drug Policy Model* balances human rights protecting individuals with disabilities (including alcohol and drug addiction) by providing for assessment, treatment and return-to-work processes. The *Alcohol and Drug Policy Model* also balances privacy concerns by ensuring any information collected is used solely for the reasonable purpose for which it was collected.

**ENCOURAGE EMPLOYEE SELF-REFERRAL**

Employees who feel they may be experiencing problems associated with alcohol or drug use should voluntarily seek help under an employee assistance services program which has been identified or put in place by the company.

**COMMON DEFINITIONS AND IMPORTANT CONCEPTS**

**DRUGS**

Includes any drug, substance, chemical or agent the use or possession of which is unlawful in Canada or requires a personal prescription from a licensed treating physician, any non-prescription medication lawfully sold in Canada and drug paraphernalia.

**ADDICTION**

Traditionally, this term has been synonymous with physical dependence and full-fledged withdrawal symptoms. Addiction is characterized by:

- **change in tolerance** – initially increases (more amount of the drug needed to produce the desired effect) and in later stages tolerance decreases (less amount of the drug needed to produce the same effect)
- **loss of control** – the amount of substance consumed, and the timing or place of consumption
- **blackouts** (if the drug of choice is alcohol) – no recall of events (alcohol-induced amnesia)
- **physical complications** – e.g. malnutrition, hypertension, liver damage
- **psychological symptoms** – defense mechanisms designed to minimize feelings of anxiety and despair. These defense mechanisms are a coping strategy as the person’s self esteem is diminished and his or her sense of powerlessness is increased. Examples include:
• **denial** (the most common defense mechanism) – denying that the person is experiencing negative consequences and that the person has control over the use and amount of drug of choice

• **projection** – blaming others and events that cause the person to use the drug of choice

• **rationalization** – using excuses to support the use of the drug of choice

• **social or family complications** – the drug of choice may replace people (family, friends, work) as the chief source of comfort, nurture, and object of loyalty leading to social isolation, increased secrecy, inconsistent moods, and loss of people who were important in the person’s life.

**Dependency**

• **Physical** – the user’s body has become so accustomed to the presence of the drug that when it is no longer used, withdrawal symptoms occur. These may be mild, such as sneezing and a runny nose, to very severe, such as potentially fatal convulsions. The severity of withdrawal increases with the level of the drug taken and the duration of its use.

• **Psychological** – users, though not experiencing withdrawal symptoms upon cessation of use, nonetheless believe that they cannot function without the drug and crave it.

**Employee Assistance Program (EAP)**

Services that are designed to help employees who are experiencing personal problems such as alcohol and drug abuse.

**Employee and Family Assistance Services Program (EFAP)**

Similar to an EAP, but services are designed to support families as well.

**Treatment Program**

A program tailored to the needs of an individual which may include education, counseling and residential care offered to assist a person to comply with the alcohol and drug work rule.

**Tolerance**

An adaptation of the body to the presence of a drug. When tolerance occurs, the body requires greater amounts of the drug to produce the same effect.

**What is enabling?**

While we may genuinely want to help an employee with an alcohol or drug problem, often by our actions or inaction we allow the problem to continue unaddressed. Many motives may prevent or deter us from addressing alcohol or drug related performance problems. One of the most common is protecting the employee from potential consequences of his or her actions, like loss of employment or damage to the employee’s reputation and self esteem. This is called *enabling*.

Enabling is an easy trap to fall into, particularly when it involves performance issues in a team. First, there is comfort in numbers which causes us to wait for someone
else in the team to raise or address the issue. Second, as social beings we naturally avoid conflict. Ignoring the situation is a common avoidance method. Another is to defer dealing with it by making adjustments and compromises, hoping it will somehow resolve itself without conflict or our involvement.

Ironically, by not dealing directly with the issue, we may be exposing the employee, other team members and ourselves to even greater consequences (namely injury or death) when a performance issue becomes a safety issue, which is inevitable in a work environment like ours. Also, we prevent the employee from taking the steps necessary to resolve the problem and from experiencing the associated learning and development to help reduce the risk of reoccurrence.

**BREAKING THE CYCLE OF ENABLING**

When performance issues arise in a team, and in particular when those performance issues relate to a team member’s use of alcohol or drugs, it is important for the team members to avoid enabling behaviours by:

- recognizing that enabling behaviours do not solve performance issues, instead enabling behaviours allow performance issues to continue and often result in them worsening
- realizing that the sooner performance issues are addressed (particularly sensitive ones) the easier they are to resolve
- remembering that everyone on the team, including the employee with the performance problem, shares a common objective – creating a healthy and safe team environment

**RETURNING TO WORK**

People who have experienced negative effects from their use of alcohol or drugs may develop problems in many areas. For some, social and family relationships have suffered, while others have experienced financial, legal or physical health problems. Such individuals may be in the process of making a number of major lifestyle changes to overcome these effects. These changes will not occur overnight and family, social and work expectations, and relationships need to be re-negotiated and re-defined. The first several weeks of an employee’s return to work are crucial in setting a tone and atmosphere of cooperation and support.

**WHAT IS A RELAPSE?**

Most people who have experienced problems from their alcohol or drug use may return to drinking or drug use, not because they want to but because they perceive themselves as having no other acceptable choices. Relapse indicates that the individual has not yet developed alternatives to the harmful behaviour for dealing with day-to-day stresses. Seventy-six per cent of relapses occur when individuals are trying to cope with negative emotional states such as loneliness, anger, and boredom, many of which may have been contributing factors in the individual’s initial use of alcohol or drugs.

Signs of a potential relapse may include emotional outbursts, physical and social isolation, irritation with friends and co-workers, interruption of daily routines, open rejection of help, and premature quitting of counseling or attendance at self-help groups.
ACCESS TO HELP OR SUPPORT

It is important to recognize that team members do not have all the answers and may require help or support from other resources. Regardless of whether you are an employee experiencing a problem or a concerned co-worker or supervisor, there are a number of resources and/or support systems that can assist you in addressing alcohol or drug related concerns.

EMPLOYEE ASSISTANCE SERVICES

Employees are encouraged to seek help for any alcohol or drug related problem from an employee assistance services program that has been identified by the company. Employees can contact employee assistance services on their own, or with the assistance of their manager, supervisor, leader, human resources representative, or the occupational health centre if one is established. In addition to providing counseling and referral services to employees and family members who are experiencing problems, employee assistance services can also provide assistance to co-workers who may be concerned about an employee’s behaviour but are unsure about what to do.

Helpful literature on a wide variety of health, behavioral, and lifestyle concerns is available through employee assistance services programs. See also the list of resources available on www.enform.ca.