

CANADIAN MODEL FOR PROVIDING A SAFE WORKPLACE

A best practice of the
Construction Owners
Association of Alberta

Alcohol and Drug
Guidelines and Work Rule



October 2005

ENDORISING ORGANIZATIONS

The Canadian Model for Providing a Safe Workplace is endorsed by:



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Alcohol and drug guidelines

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ALCOHOL AND DRUG GUIDELINES

INTRODUCTION

The Canadian Model for Providing a Safe Workplace (the Canadian Model) is a best-practice alcohol and drug policy that all stakeholders within the construction industry across Canada can adopt and follow. The purpose of the Canadian Model is to ensure a safe workplace for all workers by reducing the risks associated with the use of alcohol and drugs.

Prior to the introduction of the Canadian Model, the construction industry had no standard policy for addressing the use of alcohol and drugs in the workplace. While many parties in the industry had implemented their own policies, many others had none in place. At the same time, many companies who purchase construction services had their own policies that had to be adhered to, which often differed from what was in place at the construction services company. This lack of standardization and commonality led to confusion, redundancy and discrepancies, which may have resulted in unfair treatment.

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.

Recognizing that the development of a Canadian Model must take into account new information, technologies and trends that may arise over time, the COAA determined that periodic reviews and modifications would be necessary to keep the Canadian Model current and relevant. As a result, in the fall of 2000, the working group reconvened and reviewed the policy in light of the experience with the Canadian Model and the emerging law and public policy in this area. In May 2001, a second version of the Model was completed, with minor adjustments, and continued to be widely used among construction industry stakeholders.

The next step in the journey was in 2004 when a new committee was struck to re-examine the Canadian Model and, with a goal to further improve safety in the workplace, make modifications as necessary. In particular, the committee examined new technologies and tools that had come available, and reviewed industry and legislative trends, current scientific information relating to the use of alcohol

and drugs, and stakeholder feedback. The committee's work continued through 2005 and resulted in this newly revised version, effective October 2005.

The Canadian Model and corresponding implementation package continue to be available, free of charge, to any construction company and labour provider in Canada. The key stakeholders have committed to continuing their ongoing monitoring and review of the Canadian Model under the direction of the COAA Safety Committee and in conjunction with the supporting industry groups. In keeping with the goal of continually improving the Canadian Model in the journey to ensuring a safe workplace, the Canadian Model will be further reviewed in the future and enhanced as required.

This Canadian Model is part of an overall approach to safety and is intended to be an integral part of a safety or loss management policy. It can also be used as a tool for dealing with safety through performance management and education. The Canadian Model strives to establish a minimum industry standard for a safe workplace and recognizes that some companies may require even higher or alternative standards based on the specific nature of their operations or with technological breakthroughs in testing.

Provisions for site access and random testing are included in this Canadian Model for those companies that wish to adopt these practices based on the specific needs of their business. Pre-employment testing, although not included in this Canadian Model, should not be overlooked for those companies that may require it based on the specific nature of their operations.

An extensive review of point of collection testing (POCT) practices and technology indicated that this method of testing is still developmental and currently requires definitive laboratory validation. At the time of publication, the United States Department of Transportation does not recognize using POCT or timed urine testing for alcohol. As a result, POCT and timed urine testing have not been included in this Canadian Model revision. It should be noted that where alcohol breath testing is not readily available, employers should discuss with their lab or service provider the potential options and limitations for using alternative testing methods.

It is anticipated that mentoring relationships will be established between companies to maximize the effectiveness of these guidelines. Awareness training must be provided to management, bargaining agent or labour providers, supervisors and workers to ensure harmony and continuity of the guidelines.

ENDORSEMENTS AND ACKNOWLEDGMENTS

Canadian Model for Providing a Safe Workplace

Endorsements

By endorsing this Canadian Model, the following organizations provide their support to this critical standardized safety policy for reducing the risks associated with alcohol and drugs in the workplace.

The Canadian Model for Providing a Safe Workplace is endorsed by:

- Alberta Centre for Injury Control and Research
- Alberta Chamber of Resources
- Alberta Construction Association
- Alberta Construction Safety Association
- Alberta Forest Products Association
- Alberta Mine Safety Association
- Canadian Construction Association (CCA)
- Christian Labour Association of Canada (CLAC)
- Construction Labour Relations – An Alberta Association
- Construction Owners Association of Alberta
- Edmonton Construction Association
- Manufacturers Health & Safety Association
- Mechanical Contractors Association of Alberta
- Merit Contractors Association
- Oil Sands Safety Association
- Progressive Contractors Association of Canada
- Retail Safety Council of Alberta

Organizations choosing to add their endorsement to this Canadian Model, can contact the Construction Owners Association of Alberta (COAA) at (780) 420-1145.

Acknowledgments

The COAA gratefully acknowledges those organizations that contributed toward the development of this Canadian Model through active participation on the Review Committee and/or the provision of funding.

Review Committee participants

- Alberta Building Trades Council
- Alberta Human Resources and Employment
- Canadian Building Trades Council
- Canadian Construction Association (CCA)
- Christian Labour Association of Canada (CLAC)
- Construction Labour Relations – An Alberta Association
- Dynacare Kasper Medical Laboratories
- Fluor Constructors Canada Ltd.
- McLennan Ross LLP
- Merit Contractors Association
- North American Construction Group Inc.
- Progressive Contractors Association of Canada
- Syncrude Canada Ltd.

Organizations providing funding

- Alberta Construction Association
- Chemco Electrical Contractors Ltd.
- Christian Labour Association of Canada (CLAC)
- COHR (Canadian Occupational Health Resources) Health Inc.
- Construction Labour Relations – An Alberta Association
- Construction Owners Association of Alberta
- Drugtec Systems Inc.
- Dynacare Kasper Medical Laboratories
- Edmonton Construction Association of Alberta
- Merit Contractors Association
- NOVA Chemical Corporation
- Progressive Contractors Association of Canada
- Syncrude Canada Ltd.

GUIDING PRINCIPLES

Canadian Model for Providing a Safe Workplace

It is recognized that the use of illicit drugs and the inappropriate use of alcohol and prescription and non-prescription drugs can have serious adverse effects on a person's health, safety and job performance. A solid industry-wide model, including both a policy and guidelines, will help to enhance the level of health and safety at the workplace. In developing and revising the Canadian Model, the following principles were considered.

- The application of a standard alcohol and drug model across the construction industry helps to standardize the approach, testing, application and rehabilitation of workers. It also assists companies in implementing and managing consistent standards, and helps to ensure that all employees are treated fairly and with respect.
- Alcohol and drug policies do not reduce the need for effective performance management systems.
- Industry recognizes that awareness, education, effective interventions and rehabilitation are all key to a successful program. A standard policy will help provide a better understanding among industry stakeholders on the health and safety issues of the use of alcohol and drugs and on the sources of support available to workers for rehabilitation.
- Recognizing that every person has the right to a safe and reliable workplace, the industry is committed to ensuring no workers create a risk for themselves, others and/or physical plant equipment through the use of alcohol and drugs. Additionally, both individuals and companies have a legal and moral responsibility to ensure their own safety and the safety of others.
- The model must ensure and maintain confidentiality and credibility of the testing process and must be legally defensible.
- 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 model that will benefit all stakeholders.
- There is a shared responsibility between owner companies, contractors, workers and labour providers for the success of this model.

ALCOHOL AND DRUG GUIDELINES

Canadian Model for Providing a Safe Workplace

In the construction industry, a strong commitment exists to ensure all people are provided with a safe, healthy and reliable workplace. This commitment also extends to the safety of customers and the general public.

The inappropriate use of alcohol and drugs can have serious adverse effects on the safety and well-being of workers, contractors and the public. Awareness of the potential risks associated with the use of alcohol and drugs can assist in providing a safe, healthy and reliable workplace.

The objective of the following alcohol and drug guidelines and work rule is to reduce the risk of incidents (safety, health, environmental and operational) of which alcohol and drug use may be a contributing factor or cause. The Canadian Model strongly supports rehabilitation activities and opportunities for re-employment and applies to all positions within the company including management personnel.

1.0 Work standards

- No worker shall distribute, possess, consume or use alcohol or illegal drugs on any company workplace.
- No worker shall report to work or be at work under the influence of alcohol or drugs that may or will affect their ability to work safely.
- No worker shall test positive for any alcohol or drugs at concentrations as specified in section 3.1 of the alcohol and drug work rule.
- No worker shall misuse prescription or non-prescription drugs while at work. If a worker is taking a prescription or non-prescription drug for which there is a potential unsafe side effect, he or she has an obligation to report it to the supervisor.

2.0 Roles and responsibilities

The successful implementation of these guidelines and work rule is the shared responsibility of owner companies, contractors, workers and labour providers.

Workers 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 standards as part of their obligation to perform work activities in a safe manner
- comply with the work rule and 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.

Supervisors or leaders must:

- be knowledgeable about the company's alcohol and drug work rule and procedures
- ensure they comply with the work standards 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 the symptoms of the use of alcohol and drugs
- understand their company's performance management policy and how this Canadian Model is integral to that policy
- take action on performance deviations
- take action on reported or suspected alcohol or drug use by workers.

Owners and contractors must:

- provide a safe workplace
- provide prevention programs that emphasize awareness, education and training with respect to the use of alcohol and drugs
- ensure the guidelines and work rule support other performance management systems
- ensure effective employee assistance services are available to workers
- assist workers in obtaining confidential assessment, counselling, referral and rehabilitation services
- actively support and encourage rehabilitation activities and re-employment opportunities where applicable
- provide supervisory training and awareness in dealing with the use of alcohol and drugs in the workplace
- participate with unions, worker associations and employer organizations to assist in the provision of rehabilitating opportunities for persons who have problems with the use of alcohol and drugs
- ensure that all employees understand the existence of and content of the guidelines and work rule as part of the employee's orientation to that company
- ensure that the alcohol and drug testing is performed according to the standards set out in this document.

Unions, employer organizations, and worker associations must:

- communicate the work rule to their members
- support effective implementation of these guidelines
- participate in ongoing review and appropriate amendments of these guidelines
- ensure employee assistance services are identified or in place for members
- educate the industrial workforce about the risks associated with the use of alcohol and drugs and promote treatment programs.

The Construction Owners Association of Alberta (COAA), in partnership with the endorsing organizations, must:

- assume ownership of these guidelines and work rule
- ensure that reviews and amendments are made in an appropriate and timely manner with input from interested and appropriate stakeholders
- post the master copy of the Canadian Model for Providing a Safe Workplace on its Web site (www.coaa.ab.ca).

3.0 Education and awareness

The endorsers and their constituents recognize the importance of making workers aware through education of the actual and potential work site risks related to the consumption or use of alcohol or drugs. The endorsers and their constituents shall use education and awareness as the principal methods of ensuring commitment to and compliance with these guidelines and reducing workplace health and safety concerns associated with non-compliance.

An education package, designed to create awareness and enhance understanding, which can be found within this document (see Alcohol and drug awareness for employers, supervisors and workers), is available to all workers upon the implementation of this Canadian Model and during orientation for all new workers. Also in support of these guidelines, Section 4.0 identifies a number of additional resources available to all workers.

4.0 Available resources

In support of these guidelines and work rule, following are a number of additional resources available to all workers. Note that some of the following information may change as time elapses.

Training

- Better SuperVision (Ron Cherlet, Edmonton, 780-451-5444)
- Program implementation (Alberta Construction Safety Association, ACSA, 1-800-661-2272)
- COHR Health Inc. (ph 1-866-252-1183 or 403-243-1122, fax 403-243-3686, or www.cohrhealth.com)
- Our Responsibility for Safety: The Alcohol and Drug Policy That Works (3.5 hour supervisory workshop presented by CLRA, Ron Cherlet, 780-451-5444)
- Chandler Consulting Inc. (1-877-343-6869 or 403-343-6869, or www.chandlerconsulting.com)

Third-party administrators

- CannAmm Inc. (1-800-440-0023 or 705-472-7577)
- Drugtec Systems Inc. (1-888-378-4832 or 403-720-8005)
- COHR Health Inc. (1-866-252-1183 or 403-243-1122)
- Drivercheck Inc. (1-888-588-6604)
- Sapec Consulting (403-278-8029)
- ECS Safety Services (1-877-784-3784 or 403-362-5552)
- Chandler Consulting Inc. (1-877-343-6869 or 403-343-6869)

Laboratories (testing services)

- Dynacare Kasper Medical Laboratories, Edmonton, AB (1-800-661-9876)
- Maxxam Analytics Inc., Mississauga, ON (905-817-5700)
- Gamma Dynacare Medical Laboratories, London, ON (519-679-1630)

Employee assistance services

- Complete listing in yellow pages under *Employee assistance programs*

Alcoholism information and treatment centres

- Al-Anon/Alateen information services (Edmonton 780-433-1818, Calgary 403-266-5850)
- Alberta Alcohol and Drug Abuse Commission (AADAC) (1-866-33AADAC, 1-866-332-2322 or www.aadac.com)
- Alcoholics Anonymous (Edmonton 780-424-5900, Calgary 403-777-1212)
- Business and Industry Clinic (780-538-6350)
- Smoking Help Line (1-866-332-2322)
- Women for Sobriety (Edmonton 780-429-3855)
- Other listings in the yellow pages under *Alcohol addiction information and treatment centres* and *Drug addiction information and treatment*

Family physicians

- Complete listing in yellow pages under *Physicians*

Social service organizations

- Complete listing in yellow pages under *Social service organizations*

Business representatives

- At each local union office

Audiocassettes

- **Herald House/Independence Press, by Terrance T. Gorski (1-800-373-8382)**

- Personality styles and the emergence of relapse warning signs
- Relapse warning signs and the stages of recovery
- Core issues in relapse prevention
- Relapse and the DSM III R personality types
- Cocaine craving and relapse. A comparison between alcohol and cocaine
- Understanding the 12 steps. A guide for counselors and therapists
- The role of co-dependence in relapse
- Addictive relationships – Why love goes wrong in recovery
- Relapse prevention skills with difficult client. Post traumatic stress disorder and RP (Part 1-3)
- Relapse prevention skills with difficult client. Antisocial personality disorder and RP (Part 1-4)
- Relapse prevention skills with difficult client. Craving and relapse prevention (Part 1-4)
- Relapse prevention skills with difficult client. An overview of CENAPS dual diagnosis system

Pamphlets

- **Channing L. Bete Co. (1-800-628-7733)**
 - What everyone should know about drugs
 - About cocaine
 - About “crack” or “rock” cocaine
- **AADAC (1-866-33AADAC or www.aadac.com)**
 - **AADAC workplace information series**
 - Workplace health and wellness
 - Workplace peer support
 - The basics: Alcohol, other drugs and gambling
 - An addition in the family: What it means for the workplace
 - The addicted employee: After treatment
 - Alcohol/drug policy development
 - Employment-related alcohol/drug testing
 - Dealing with the troubled employee
 - Substance use and gambling in the workplace, 2002: A replication study
 - **It’s our business series**
 - Addressing alcohol, drugs and gambling in the workplace: Manual for leaders
 - Someone at work has a problem
 - Is drinking, using drugs or gambling affecting my work?
 - What you need to know about fitness for work

Videos

- **Canadian Learning Co. Inc. (1-800-267-2977 or 519-537-2360)**
 - Alcoholism and chemical dependency in women
 - The co-dependent woman
 - Dependent denial
 - Marijuana and the mind: Intoxication and addiction
 - Continuing recovery skills
 - ACA recovery: Meeting the child within
 - ACA: Breaking the continuum
 - Adult children of alcoholics
 - Substance abuse: A management intervention program
 - Alcohol abuse: The early warning signs
 - Relapse prevention
 - Overcoming co-dependency: The path to wellness
- **FMS Productions Inc. (1-800-421-4609)**
 - Father Martin’s guidelines
 - Responsibility and recovery (by Joseph A. Pursh, M.D.)
 - My father’s son
- **Films for the Humanities and Sciences Inc. (1-800-257-5126)**
 - The addicted brain
- **Focus on the Family (P.O. Box 9800, Stn Terminal, Vancouver, B.C., V6B 4G3)**
 - Face reality
- **GWC Inc. (1-800-851-5406)**
 - Crack Attack (David L. Ohlms, M.D.)
 - Heroin and other opiates (with David Ohlms, M.D.)
 - Marijuana in the 90s (with David Ohlms, M.D.)

- **Kinetic Inc.**
(1-800-263-6910)
 - Getting off the hook
 - Hallucinogens & designer drugs (with David Ohlms, M.D.)
 - Cocaine in the 90s (with Dave Ohlms, M.D.)
 - Too dangerous to work with
 - What everyone should know about drug abuse
 - Medical aspects of chemical dependency
 - Addictive relationships – Relationship styles
- **Medical Audiovisual Comm. Inc.**
(1-800-757-4868)
 - Last call – Alcoholism and co-dependency

ALCOHOL AND DRUG POLICY

ALCOHOL AND DRUG POLICY

Canadian Model for Providing a Safe Workplace

1. PURPOSES OF THE ALCOHOL AND DRUG POLICY

- 1.1 The 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.

2. THE ALCOHOL AND DRUG POLICY IS IMPORTANT

- 2.1 The use of alcohol and drugs adversely affects the ability of a person to work in a safe manner. Employees at construction workplaces are often working independently or with equipment or material in an environment that poses a threat to the safety of themselves, the workforce, the workplace and the property at the workplace, if handled without proper care and attention. In setting the requirements in the Work Rule it is acknowledged that assessments of risks relating to work activities, equipment and processes may lead to a workplace adopting more rigorous requirements in relation to the risks faced in particular work. This Policy will remind employees of the risks associated with the use of alcohol and other drugs and provide understandable and predictable responses when an employee's conduct jeopardizes the safety of the workplace.
- 2.2 By pursuing the purposes of this alcohol and drug policy, the company promotes
 - (a) the safety and dignity of its employees,
 - (b) the welfare of its employees and their families,
 - (c) the best interests of the bargaining agent or labour provider to which employees belong, and
 - (d) the best interests of the company, the owner, the construction industry and the public.
- 2.3 There are no other reasonable alternatives available to the company that impose a smaller burden on any rights an employee may have under Alberta's Human Rights, Citizenship and Multiculturalism Act and at the same time are equally as effective in promoting the purposes of this alcohol and drug policy.

3. ALCOHOL AND DRUG WORK RULE

3.1 An employee shall not

- (a) use, possess or offer for sale alcohol and drugs or any product or device that may be used to attempt to tamper with any sample for a drug and alcohol test while on company property or at a company workplace,
- (b) report to work or work
 - (i) with an alcohol level equal to or in excess of 0.040 grams per 210 litres of breath,
 - (ii) with a drug level for the drugs set out below equal to or in excess of the concentrations set out below:

or

- (iii) while unfit for work on account of the use of a prescription or nonprescription drug,
- (c) refuse to
 - (i) comply with a request made by a representative of the company under 4.3, or
 - (ii) comply with a request to submit to an alcohol and drug test made under 4.4, 4.5, 4.6 or 4.7, or
 - (iii) provide a sample for an alcohol and drug test under 4.8,
- (d) tamper with a sample for an alcohol and drug test given under 4.8.

Drugs or classes of drugs	Screening concentration equal to or in excess of ng/mL	Confirmation concentration equal to or in excess of ng/mL
Marijuana metabolites	50	15
Cocaine metabolites	300	150
Opiate metabolites	2000	2000
Phencyclidine	25	25
Amphetamines	1000	500

- 3.2 An employee complies with 3.1(a) or 3.1(b)(iii) of the alcohol and drug work rule if he or she is in possession while at a company workplace of a prescription drug prescribed for him or her or a nonprescription drug and
- (a) the employee is using the prescription or nonprescription drug for its intended purpose and in the manner directed by the employee's physician or pharmacist or the manufacturer of the drug, and
 - (b) the use of the prescription or nonprescription drug does not adversely affect the employee's ability to safely perform his or her duties, and
 - (c) 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 nonprescription drug.
- 3.3 The supervisor or manager who has received a notification under 3.2 may not disclose any information provided under 3.2 to any person other than a person who needs to know, to discharge a statutory or common-law obligation.

4. IMPLEMENTATION OF THE ALCOHOL AND DRUG WORK RULE

4.1 Education

- 4.1.1 The company is committed to informing employees of the existence of this alcohol and drug policy and to taking such other steps as are reasonable to inform its employees of the safety risks associated with the use of alcohol and drugs and the assistance available under the employee assistance services program.
- 4.1.2 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 the employee assistance services program.

4.2 Self-help

- 4.2.1 This policy encourages employees who believe that they may require the help provided by substance abuse experts (SAEs) and employee assistance services programs (EAPs) to voluntarily request that help. An employee requesting help will not be disciplined unless he or she:
- (a) has failed to comply with the alcohol and drug work rule,
 - (b) has been requested to confirm compliance with the alcohol and drug work rule under 4.3,
 - (c) has been requested to submit to an alcohol and drug test under 4.4, 4.6 or 4.7, or
 - (d) has been involved in an incident referred to in 4.5.
- 4.2.2 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 person responsible for the administration of the employee assistance services program,
 - (b) informing a family member or friend and asking for assistance in contacting a person responsible for the administration of the employee assistance services program, or

- (c) informing a co-worker, a supervisor, or a representative of the company, the bargaining agent or labour provider to which the employee may belong of his or her wish to contact a person responsible for the administration of the employee assistance services program.

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

- (a) inform the employee of the assistance available under the employee assistance services program,
- (b) encourage the employee to utilize the employee assistance services program which may assist the employee, and
- (c) inform the employee that if he or she fails to utilize the employee assistance services program the company may insist that the employee submit to any or all of the following:
 - (i) a medical assessment conducted by a physician,
 - (ii) alcohol and drug testing as set out in 4.8,
 - (iii) an assessment conducted by a substance abuse expert,

and that his or her failure to do so may result in the termination of his or her employment.

4.2.4 An employee who receives assistance from the employee assistance services program on account of his or her use of alcohol and drugs must comply with the terms and conditions of any program established to help the employee as a condition of his or her continued employment.

4.2.5 An employee who is at work and enrolled in the employee assistance services program must comply with the alcohol and drug work rule.

4.3 Possession of alcohol and drugs

4.3.1 A representative of the company or the owner who has reasonable grounds to believe an employee may not be in compliance with 3.1(a) of the alcohol and drug work rule, must request

- (a) that employee to confirm that he or she is in compliance with 3.1(a) of the alcohol and drug work rule, or
- (b) the assistance of appropriate authorities to confirm that employee's compliance with 3.1(a) of the alcohol and drug work rule.

4.3.2 A representative of the company or the owner must provide to the employee the reason for the request under 4.3.1.

4.4 Observation of employee conduct

4.4.1 A supervisor or a manager of an employee must request an employee to submit to an alcohol and drug test under 4.8 if the supervisor or manager and the next level of management present at the company workplace, if any, have reasonable grounds to believe that an employee is or may be unable to work in a safe manner because of the use of alcohol and drugs.

4.4.2 A supervisor or manager of an employee must provide to the employee the reason for the request under 4.4.1.

4.5 Incidents and near misses

4.5.1 A supervisor or manager of an employee must request an employee to submit to an alcohol and drug test under 4.8 if the supervisor or manager and the next level of management present at the company workplace, if any, have reasonable grounds to believe that an employee was involved in an incident or near miss.

4.5.2 A supervisor or manager of an employee must provide to the employee the reason for the request under 4.5.1.

4.5.3 A supervisor or manager must make a request under 4.5.1 immediately following an incident or near miss unless it is not practicable or reasonable to do so until a later time.

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

4.6 Random testing

- 4.6.1 At work sites where the employer has confirmed in writing that each employee is covered by an employee assistance services program, the employer may implement a lawful computer-generated random alcohol and drug testing program in accordance with the procedures set out in the United States Department of Transportation Workplace Drug and Alcohol Testing Programs in force as of the date of this publication. In the event a lawful random alcohol and drug testing program is to be adopted by an employer, a written notice shall be delivered to each employee and a written notice shall be provided to any bargaining agent of affected employees of the implementation of random alcohol and drug testing at least 30 days prior to implementation of that program at the work site.
- 4.6.2 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 at the work site.

4.7 Site access testing

When an owner directly or by contract requires site access testing, an employer may require alcohol and drug testing under 4.8 of any employee as a condition of access to the owner's property.

4.8 Alcohol and drug testing

- 4.8.1 The company agrees to retain a laboratory, as defined in this policy, to conduct drug testing under 4.8 in accordance with those parts of the United States Department of Transportation Workplace Drug and Alcohol Testing Programs in force as of the date of this publication, which relate to testing procedures in laboratories. Additionally, the company agrees to have alcohol testing under 4.8 conducted by personnel in accordance with the above standards and procedures as they relate to alcohol testing.

- 4.8.2 Alcohol and drug testing is conducted to determine the presence of any of marijuana metabolites, cocaine metabolites, opiate metabolites, phencyclidine, amphetamines and alcohol in the specimen provided by the employee.
- 4.8.3 A summary of the features of the alcohol and drug tests is set out in Appendix A of this alcohol and drug policy.
- 4.8.4 By continuing his or her employment with the company the employee accepts the terms of this alcohol and drug policy and 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 4.9.4, below. Further, the employee authorizes the medical review officer to provide the test results to a substance abuse expert to whom the employee has been referred under the provisions of this policy.

4.9 Alcohol and drug testing results

- 4.9.1 Alcohol and drug test results can be negative, positive, tampered and 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.
- 4.9.2 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 3.1(b) of the alcohol and drug work rule. The designated company representative must notify the employee of the negative test result and that no other steps under this alcohol and drug policy will be taken. It may be appropriate to pursue procedures under other policies or take other steps, including a medical assessment, in order to assist the employee to perform at a satisfactory level.

- 4.9.3 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 3.1(b) of the alcohol and drug work rule, unless the medical review officer has determined that there is a legitimate medical explanation for the positive test result whereby a fitness-for-work assessment should be conducted and there may have been a failure to comply with 3.2.
- 4.9.4 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 3.1(d) of the alcohol and drug work rule.
- 4.9.5 A confidential written report from the medical review officer to the designated company representative that the employee's sample is invalid or inconclusive means that the test cannot be relied upon for the purposes of this work rule.
- 4.9.6 Where a person is referred to testing required under 4.7 by the bargaining agent or labour provider of that person, a confidential written report from the medical review officer shall be issued to the designated representative of the bargaining agent or labour provider.
- 4.9.7 In order to preserve the confidentiality of test results, the designated company representative and any person to whom disclosure is permitted under this 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 this alcohol and drug policy.

4.10 Assistance of a representative

- 4.10.1 A representative of a bargaining agent or labour provider of which an employee is a member and with whom the employer has a bargaining relationship may assist the employee with any matter arising under this alcohol and drug policy if the employee wishes to have the assistance of a representative.
- 4.10.2 A representative of a bargaining agent or labour provider of which an employee is a member and with whom the employer has a bargaining relationship, may attend any meeting or discussion which takes place under this alcohol and drug policy if the employee wishes the representative to attend and the attendance of the representative does not unduly delay the time at which the meeting or discussion takes place.

5. CONSEQUENCES FOR FAILURE TO COMPLY WITH THE ALCOHOL AND DRUG WORK RULE

5.1 Company responses to violations

The company may discipline, or terminate for cause, the employment of an employee who fails to comply with the alcohol and drug work rule. The appropriate consequence depends on the facts of the case, including the nature of violation, the existence of prior violations, the response to prior corrective programs and the seriousness of the violation.

5.2 Violation of 3.1(b) of the alcohol and drug work rule

5.2.1 Prior to the company making a final decision with regard to disciplining or terminating the employment of an employee, who has failed to comply with 3.1(b) of the alcohol and drug work rule, the company shall direct the employee to and the employee shall meet with a substance abuse expert. The substance abuse expert shall make an initial assessment of the employee and make appropriate recommendations. The assessment by the substance abuse expert shall be applied utilizing the processes and approaches set out in Appendix B. The employee shall, through the substance abuse expert, provide to the company a confidential report of his or her initial assessment and recommendations. The company then shall make the final decision under 5.1. The initial assessment is to be completed as soon as possible, and the report shall be delivered to the company within two days of completion. Failure by the employee to attend the assessment or follow the course of corrective or rehabilitation action shall be cause for termination of the employee. During the period of assessment and corrective rehabilitative programs recommended by the substance abuse expert the employee shall be deemed to be suspended from his or her employment without pay.

5.2.2 In addition to disciplining or terminating for cause the employment of an employee who fails to comply with 3.1(b) of the alcohol and drug work rule, the company may give written notice to that person that the person will not be re-employed again by the company unless the person provides the company with the following:

- (a) a certificate issued
 - (i) by the rehabilitation program service provider certifying that the person who was terminated has successfully completed its rehabilitation program and continues to comply with all the requirements of the rehabilitation program, or
 - (ii) by a licensed physician with knowledge of substance abuse disorders certifying that the person who was terminated is able to safely perform the duties he or she will be required to perform if employed by the company, and
- (b) a statement signed by the person and, if represented by a bargaining agent or labourer provider, by the bargaining agent or labour provider acknowledging that the person agrees to any conditions imposed as part of a corrective rehabilitative 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.

5.3 Violation of 3.1 (a), (c) or (d) of the alcohol and drug work rule

If a company decides to discipline or terminate for cause the employment of an employee who fails to comply with 3.1(a) or (c) or (d) of the alcohol and drug work rule, the company shall refer such employee to a substance abuse expert and shall notify the bargaining agent or labour provider, if the employee has one, of such referral.

5.4 Owner responses to violations

5.4.1 The owner of a site where a person was working when he or she failed to comply with the alcohol and drug work rule may give the person who failed to comply with the alcohol and drug work rule written notice that he or she shall not enter the owner's site.

5.4.2 The owner of a site where a person was working when he or she failed to comply with the alcohol and drug work rule may give that person who has been denied permission to enter its site under 5.4.1 written notice that the person may enter the owner's site if

- (a) a company engaged in work at the owner's site, or
- (b) the bargaining agent or labour provider of that person, if the person is represented by a bargaining agent or labour provider, or
- (c) a company engaged in work at the owner's site and the bargaining agent or labour provider of that person

provides the owner with a written statement by the person who has been denied permission to enter the owner's work site under 5.4.1 acknowledging that that person agrees to reasonable conditions imposed by the owner or the contractor or the bargaining agent or labour provider or a part of a corrective or rehabilitative program.

- 5.4.3 The owner may withdraw permission given under 5.4.2 if the person given permission to enter the owner's work site under 5.4.2 fails to comply with the alcohol and drug work rule or any condition imposed under 5.4.2.
- 5.4.4 The owner is not obliged to give a person who has been denied permission to enter the owner's site under 5.4.3 another opportunity to work on the owner's site.

5.5 Bargaining agent or labour provider responses to violations

A bargaining agent or labour provider shall decline to dispatch a person to a company until that organization has reviewed the initial assessment, referred to in Article 5.2 or 5.3, and until the conditions set out therein for the person have been met.

6. DEFINITIONS

- 6.1 In this alcohol and drug policy, the following definitions apply:
 - (a) **Alcohol:** Any substance that may be consumed and that has an alcoholic content in excess of 0.5 per cent by volume.
 - (b) **Alcohol and drugs:** Alcohol or drugs or both.
 - (c) **Alcohol and drug test:** A test administered in accordance with 4.8.1 of this alcohol and drug policy.
 - (d) **Alcohol and drug work rule:** The alcohol and drug work rule set out in 3.1 of this alcohol and drug policy.
 - (e) **Company:** A corporation, partnership, association, joint venture, trust or organizational group of persons whether incorporated or not.
 - (f) **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.
 - (g) **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.
 - (h) **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 nonprescription medication lawfully sold in Canada and drug paraphernalia.
 - (i) **Employee:** Any person engaged in work on a work site where this policy applies.
 - (j) **Employee assistance services program:** Services that are designed to help employees who are experiencing personal problems such as alcohol and drug abuse.
 - (k) **Employer:** A person who controls and directs the activities of an employee under an express or implied contract of employment.

- (l) **Incident:** An occurrence, circumstance or condition that caused or had the potential to cause damage to person, property, reputation, security or the environment.
- (m) **Laboratory:** A laboratory certified by the United States Department of Health and Human Services under the National Laboratory Certification Program.
- (n) **Manager:** Includes team leaders and other persons in authority.
- (o) **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.
- (p) **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 3.1(b).
- (q) **Owner:** The person in legal possession of a site.
- (r) **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 3.1(b).
- (s) **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, 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.
- (t) **Rehabilitation program:** A program tailored to the needs of an individual which may include education, counselling and residential care offered to assist a person to comply with the alcohol and drug work rule.
- (u) **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.
- (v) **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 and team leader.
- (w) **Tamper:** To alter, meddle, interfere or change.
- (x) **Work:** Includes training and any other breaks from work while at a company workplace.
- (y) **Work site:** 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.

I Alcohol testing

General

1. The donor is the person from whom a breath or saliva sample is collected.
2. The donor is directed to go to a collection site in order to give a breath or saliva sample.
3. The breath alcohol technician (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.

Breath 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 and asks the donor to do so as well.

6. If the test result shows an alcohol level that is less than 0.020 grams/210 litres of breath, 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, 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 and asks the donor to do so as well.
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.

Confirmation test

1. If a breath alcohol testing device was used for the screening test, an evidential breath alcohol device must be used to conduct the alcohol confirmation test. If a saliva testing device was used for the screening test, the confirmation test will use an evidential breath alcohol testing device.
2. The BAT advises the donor not to eat, drink, put anything into his or her mouth or belch before the confirmation test is complete.
3. 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.
4. 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.
5. 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.
6. The BAT explains to the donor how to provide a breath sample and asks the donor to provide a breath sample.
7. 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 0.040 grams per 210 litres of breath, 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.
8. 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.
9. 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.

II Drug testing

1. The donor is the person from whom a urine specimen is collected.
2. The donor is directed to go to a collection site in order to give a urine specimen.
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 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 millilitres.
10. The collection site person notes on the chain of 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 donor and the collection site person complete the chain of custody form and seal 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 3.1 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, 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. 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. The MRO shall report to the employer whether the test result is negative, tampered, invalid or positive, or, if positive, whether or not there is a legitimate medical explanation.
28. An employee who has received notice from the MRO that he or she has tested positive may ask the MRO within 72 hours of receiving notice that he or she has tested positive to direct another laboratory to test the split specimen. The employee is responsible for reimbursing the company for the cost of the second test.
29. The laboratory reports the test results on the split specimen to the company's MRO in confidence.
30. The MRO will declare the test results negative if the test results for the split specimen are negative and the failure to reconfirm is not due to the presence of an interfering substance or adulterant.

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 work site by professionally evaluating the client and recommending appropriate education and/or 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 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.

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 in the construction industry.

When a client has failed to comply with 3.1(b) or 3.1(d) of the Canadian 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 in the construction industry. 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, and the bargaining agent or labour provider if the employee has one, 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.

INDEPENDENT LEGAL OPINION



LEGAL OPINION

INDEPENDENT LEGAL OPINION

Canadian Model for Providing a Safe Workplace

You have requested our opinion as to the compliance of the “Canadian Model for Providing a Safe Workplace” (2005 revision) (the “2005 Policy”), specifically the following parts of it:

- (a) Guiding Principles, and
- (b) Alcohol and Drug Guidelines.

We express no opinion on the appendices to the 2005 Policy.

This opinion is provided as of October 7, 2005.

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 Appeal of Alberta has remitted the *Elizabeth Metis Settlement* case discussed below, back to a Panel Member of the Alberta Human Rights and Citizenship Commission, making no comments on the Queen’s Bench decision that had been appealed to it other than that the learned Queen’s Bench Justice had overlooked the “threshold issue” of whether the alcohol and drug testing policy in question applied at all to the facts. Once the Panel has reheard and decided the case again, and any further appeals are completed, the 2005 Policy may have to be substantially reconsidered.
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. 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 recent 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 (which is, by nature, somewhat inflexible) difficult.

Accordingly, 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 drug and alcohol 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,
- (c) 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 Human Resources and Employment),
- (e) 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 on a civil lawsuit, or on appeal from the human rights tribunal, or review of a labour arbitration decision.

Accordingly, the differing practices, focuses and opinions of these various tribunals will likely lead to many more years of development of the law surrounding drug and alcohol 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 a 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”, and 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.

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 2005 Policy and we are of the opinion that the Guiding Principles and Alcohol and Drug Guidelines of the 2005 Policy are in compliance with the Human Rights, Citizenship and Multiculturalism Act of Alberta. We have some reservations about the provisions regarding random testing, discussed below, but on balance we are of the opinion that the 2005 Policy is in compliance with human rights law in Alberta as it has been pronounced by the courts and human rights tribunals to date.

Work standards

There is really no issue regarding the first, second and third bullet points under the heading “1.0 Work Standards” in the Alcohol and Drug Guidelines, which prohibit the use or distribution of alcohol, drugs or the misuse of prescription drugs in the workplace. The issues primarily surround testing and the consequences of a positive test.

Alcohol and drug testing

The 2005 Policy 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 fulfilment 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.

Every job on a construction site has a safety-sensitive aspect to it. With safety concerns in mind, it is clear that the 2005 Policy 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 2005 Policy expressly addresses accommodation of a worker suffering from alcoholism or a drug addiction.

Random testing

Random testing is only permitted under the 2005 Policy:

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

It is our understanding that a “work site” for any of the workers covered by the Canadian Model will be a location where there are hazards and the worker is in a safety-sensitive position. To the extent that the Canadian Model may be adopted by employers and workers outside the construction industry, consideration must be given as to whether the “work site” in question is one that has safety hazards present. If it is not, random testing would not be appropriate unless at least the nature of the work done by the individual may be said to be “safety sensitive” regardless of the environment in which the work is done.

Although the Ontario Court of Appeal did not approve of random drug testing in its decision in *Entrop v. Imperial Oil*, the Alberta Court of Queen’s Bench did authorize random drug testing in the circumstances present in *Alberta v. Elizabeth Metis Settlement*, and the Canadian Human Rights Tribunal also authorized random drug testing procedures in *Milazzo v. Autocar Connaissanceur*, provided that the duty to accommodate had been met.

The question of whether random drug testing will be allowed is one of the areas where the law has not yet been finally resolved. The reasons in *Entrop* (where it was stated that random drug testing was not in compliance with human rights law) 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 *Elizabeth Metis Settlement* case obliquely questioned the applicability of *Entrop* in Alberta and allowed random alcohol and drug testing in the circumstances of that case. In *Milazzo*, the Canadian Human Rights Tribunal allowed a policy to stand which provided for random drug testing, provided the duty to accommodate was appropriately recognized.

In *Suncor Energy Inc. v. Communications, Energy and Paperworkers Union, Local 707 (Pearson Grievance)*, (Jones, 2004), the arbitrator when summarizing the union’s position, 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 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.

The duty to accommodate and the right to discipline

The duty to accommodate has been expressly addressed in sections 4.2, 4.6, 5.1 and 5.2 of the 2005 Policy. Section 5.1 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 5.2.1, 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 5.1 should still be considered before an employee is dismissed. The need for flexibility 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 recent 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. Therefore, 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. Our opinion is that the 2005 Policy meets this standard.

In the 2005 Policy, a positive test result means non-compliance with the Policy (section 4.9.1) and this may lead to discipline or termination (section 5.1). 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 5.2) who shall make recommendations. The initial assessment is to be completed as soon as possible and the report delivered within two days of completion (section 5.2.1). 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 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). 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 5.2.1). Otherwise, the appropriate discipline depends on the facts of the case (section 5.1).

The 2005 Policy mandates providing accommodation to the dependent employee, and accordingly the third requirement has been satisfied.

Discretion

It should be noted that the 2005 Policy 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 5.1 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 2005 Policy contemplates a possible specific form of discipline (eg. dismissal) for a specific breach of the policy (eg. refusal to submit to a drug and alcohol test) does not necessarily mean that that form of discipline should be considered to follow automatically. The provisions dealing with “just cause” in a collective agreement and the principles 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 an employee’s refusal 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 to justify dismissal with cause 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).)

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 the 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.

I trust you will find the foregoing to be satisfactory.

Yours truly,

MACLEOD DIXON LLP

ANDREW R. ROBERTSON

/ll

Enclosure

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

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

In the area of human rights legislation, the Supreme Court of Canada has made it clear that slightly different wording in legislation in different provinces will not be interpreted differently, where it is possible to ascribe a common meaning to similar provisions: *Montreal (City) v. Quebec (Commission des Droits de la Personne)*, 185 D.L.R. (4th) 385, paras. 45 and 46. Accordingly, the courts and human rights tribunals are likely to adopt decisions from other Canadian jurisdictions, even though the precise wording of the legislation may be different.

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)*, *supra*, 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.

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.

1. *Toronto Dominion Bank v. Canadian Human Rights Commission*, 163 D.L.R. (4th) 193 (Fed. C.A. 1998).

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.

2. *Procor Sulphur Services and C.E.P., Loc. 57* 79 L.A.C. (4th) 341 Ponak, (1998).

In this arbitration case, a safety-sensitive employee had been convicted of possession and cultivation of marijuana, and 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.

3. *Trimac Transportation Services - Bulk Systems and T.C.U.*, 88 L.A.C. (4th) 237 (Burkett 1999).

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.

4. *Entrop v. Imperial Oil Ltd.*, 50 O.R. (3d) 18 (C.A. 2000).

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, or
- (d) 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 (Ms. Constance Backhouse, sitting alone) 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 *Meorin*, [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 fulfilment 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 breathalyser 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.

5. *Construction Labour Relations and C.J.A., Locals 1325 and 2103*, 96 L.A.C. (4th) 343 Beattie, (2001).

In this arbitration decision, the former version of the policy currently under review 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 work site. 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.

6. *Fluor Constructors Canada Ltd. and I.B.E.W., Local 424* (Elliott, 2001).

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.

7. *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).

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.

8. *Fraser Lake Sawmills Ltd. v. IWA Canada, Local I-424*, 2003 CLLC 143, 417 (B.C.L.R.B.).

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".

9. *Alberta v. Elizabeth Metis Settlement*, 19 Alta. L.R. (4th) 71 (Q.B. 2003), reversed on other grounds, May 20, 2005 (C.A.).

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 rehearing to give the Settlement an opportunity to justify the demands on other grounds.

10. *Milazzo v. Autocar Connaisseur Inc.*, [2003] C.H.R.D. No. 24.

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.

11. *Suncor Energy Inc. v. Communications, Energy and Paperworkers Union, Local 707*, [2004] A.G.A.A. No. 35 (Jones).

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.

12. *Construction Labour Relations v. International Union of Operating Engineers, Local 955* (Beattie, May 25, 2004).

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 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.

13. *Construction Labour Relations v. International Association of Heat and Frost Insulators and Asbestos Workers, Local 110* (Beattie, October 26, 2004).

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.

14. *Halter v. Ceda-Reactor Limited*, (Alberta Human Rights Panel, May 16, 2005).

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 six 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.

15. *Chiasson v. Kellogg, Brown & Root (Canada) Company*, (Alberta Human Rights Panel Member, June 7, 2005).

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 *Meorin* 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 is scheduled to be heard by the Alberta Court of Queen’s Bench on appeal from the decision of the Panel Member on November 8, 2005.)

INDEPENDENT MEDICAL OPINION

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Canadian Model for Providing a Safe Workplace

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 endeavour 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, the Construction Owners Association of Alberta (COAA) has added a medical opinion to its *Canadian Model for Providing a Safe Workplace*, (hereinafter referred to as the Canadian Model) to help delineate the current state-of-the-art thinking in addiction medicine. The explicit goal in this policy is 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. This policy 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.

Firstly, in terms of medical thinking, the use of psychoactive drugs must be reviewed. Current thinking suggests that there is a heterogeneous population of psychoactive drug users in our society. A small group use these drugs, and continue to use these drugs, in a way that causes negative consequences for them and others around them. Despite these negative consequences, use 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 this policy 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 "dependent" 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.

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 behavioural 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 per cent 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 genetics¹. 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 work site, 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”.

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^{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.^{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. 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 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 or unions to insist that their employees / members be psychoactive drug-free as a bona fide occupational requirement for professions which involve risk to self or others if the worker was impaired (driving, working at heights, manipulating machinery, or using dangerous substances such as explosives etc.)?

Turning first to the second-most common psychoactive drug in the workplace after alcohol, much 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. Increasingly, research in terms of neuropsychological factors is suggesting otherwise. 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^{5,6} and shift attention^{7,8} from one item to another. 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 marijuana⁹. While this, admittedly, is an acute effect, it contributes to the overall risk burden imposed on the work site 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 al¹⁰ (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"

Emerging work on schizophrenia and the permissive effects of marijuana¹¹ 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 per cent of all schizophrenia is attributable to marijuana use. 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.

In addition, there exists a well-defined withdrawal syndrome. A familiar argument defending the use of marijuana on a recreational basis is that, provided the user is not acutely intoxicated at work, no significant harm will

result from recreational 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. Aggressivity in the workplace is one of the correlations with poor work safety¹². Additionally, in this 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." 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 work site. 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 "what I do in my own time is my own business" is rendered invalid.

In terms of other psychoactive drugs, benzodiazepines (eg. Valium, Librium etc.) 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.

Other psychoactive drugs that are currently a concern in Canada are cocaine, amphetamine and its derivatives, including "crystal meth" (methamphetamine), as well as designer drugs such as ecstasy (3,4 methylenedioxymethamphetamine, MDMA). MDMA and driving impairment has been studied¹³. 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 studied¹⁴. "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 abstinence¹⁵. 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 sequelae of such drug use, even on a casual basis, is deleterious toward safety.

A special mention should be made of the subgroup of psychoactive drug users who suffer from the disease of addiction. This organization (COAA) 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 this policy 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.

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 a safety-sensitive workplace 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-punitive self or peer reporting of individuals suffering from addiction / abuse are all key elements addressed in this policy. 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 this policy is risk reduction, are there any studies which show that drug testing reduces work site accidents?

There are a significant number of studies addressing this question. Wickizer et al¹⁶ compared injury incidence rates between 261 companies enrolled in the drug-free workplace program and 20,500 nonintervention companies. The drug-free workplace intervention was significantly ($p < .05$) associated with a decrease in injury rates for three industry groups: construction, manufacturing and service. It was also associated ($p < .05$) with a reduction in incidence rate of more serious injuries involving four or more days off work for two industry groups – construction and service, thus speaking not only to incidence but also severity. They concluded, "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." Ozminowski et al¹⁷ 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 al¹⁸ specifically examined the construction industry, concluding that, "Analyses indicate that companies with drug-testing programs experienced a 51 per cent 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 al¹⁹ 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 al²⁰ looked at the effect drug-testing had on employee attitudes and found 65 per cent of 6,370 surveyed employees at a variety of work settings favoured pre-employment testing, 81 per cent supported testing after an accident and 49 per cent supported random testing. Support for work site 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 this organization 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.

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FREQUENTLY ASKED QUESTIONS

FREQUENTLY ASKED QUESTIONS

Canadian Model for Providing a Safe Workplace

Why do we need alcohol and drug guidelines?

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.

What determines whether an incident or accident is significant to warrant testing?

All potentially dangerous incidents or accidents 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.

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

Yes. You can access your company's employee assistance services program or contact alternative agencies such as AADAC for personal counselling.

What is a recognized rehabilitation program?

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

Is follow-up testing required for rehabilitation?

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

What happens to self-referrals to employee assistance services?

Self-referrals are confidential between the employee and the employee assistance service.

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

The Canadian Model for Providing a Safe Workplace states that self-referrals will not compromise employment. If you have a problem and are found to test positive after being tested for cause, you will be subject to the company's discipline and/or discharge policies.

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 seek assistance through an employee assistance service 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.

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?

The police 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. 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, in general, the acceptable level has been set lower. It is interesting to note that the United States Department of Transportation (U.S. DOT) uses a level of 0.02 grams of alcohol in 210 litres of breath as cause to suspend a driver from driving at the time without further disciplinary action and a level of 0.04 grams of alcohol in 210 litres of breath as cause for suspension and disciplinary action.

Why are we using the United States Department of Transportation (U.S. DOT) standards for testing of Canadian workers?

The U.S. DOT standards are a rigorous set of procedures and protocols for employment-related drug testing. They were developed to ensure fair and reliable testing of workers covered by the United States mandatory drug testing legislation. Canada, of course, has no mandatory drug testing. The U.S. DOT standards have been mandated for the COAA Best Practice (Canadian Model for Providing a Safe Workplace) to ensure quality testing and legal defensibility of results.

Where can a copy of the U.S. DOT standards be obtained?

Copies of the standards may be obtained from laboratories that are certified to perform testing under the U.S. DOT standards. Alternatively, the standards can be found on the Internet.

Can the company test me for other drugs besides those listed, or test for other medical purposes?

A company may choose to test for other drugs but these should be stated in the company's specific policy. The employee should be made aware of the drugs to be included in the testing. No testing for other medical purposes, such as pregnancy, AIDS, diabetes, etc., should ever be performed pursuant to this policy.

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.

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 standards. The act itself constitutes a breach of the standards set by the guidelines.

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 accident or incident is the hallmark of effective safety and loss management, testing is encouraged 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 standards 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 which 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 just having 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 guidelines and policy based on observations or discoveries, which are less conclusive and which seem more consistent with a breach of the guidelines 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 behavior 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 guidelines, 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.

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

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

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.

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.

I have a small company. How do I arrange for assistance in implementing an alcohol and drug policy and guidelines for my workers?

To assist companies in implementing the Canadian Model and to maximize its effectiveness, mentoring relationships are being established between larger and smaller companies. If you want information about becoming part of a mentoring relationship with a larger company, please contact the Construction Owners Association of Alberta (COAA) or the Alberta Construction Safety Association (ACSA) at the telephone numbers listed below.

COAA (780) 420-1145

ACSA 1-800-661-2272 (Edmonton),
1-800-661-6090 (Calgary)

Where can I get more information on this topic?

There is a list of resources in the Canadian Model, alcohol and drug guidelines (Section 4.0), which provides contact numbers for specific areas.

ALCOHOL AND DRUG AWARENESS FOR EMPLOYERS

EMPLOYERS' GUIDE: ALCOHOL AND DRUG AWARENESS FOR EMPLOYERS

*Canadian Model for Providing a
Safe Workplace*

Introduction

This employers' guide has been newly added to the Canadian Model for Providing a Safe Workplace (the Canadian Model). As an employer, you are encouraged to implement the policy and guidelines for your employees and your entire operations.

Endorsement

Successful implementation of this policy 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 chances of successful implementation and acceptance requires:

- a written policy that is readily accessible to each individual
- communicating to and cooperating with the organized labour provider (if applicable)
- 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 this Canadian Model, attitudes among all workers 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 workers, include the following subjects:

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

Excellent and well-established education programs about the policy are available through labour providers, employer associations, and community programs offered by organizations such as AADAC (Alberta Alcohol and Drug Abuse Commission). 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 Canadian Model

It is recognized that the use of illicit drugs and the inappropriate use of alcohol and prescription and non-prescription drugs can have serious adverse effects on a person's health, safety and job performance. Implementing a solid industry-wide model, including both a policy and guidelines, will help to enhance the level of health and safety at the workplace. In implementing the Canadian Model, it is critical to think through the structure prior to implementation. Here are some points to consider.

- Make arrangements for access to substance abuse expert (SAE) services.
- Identify your employee assistance services program (EAP) service provider, and ensure employees know how to access those EAP 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 so you ensure consistency with all people being identified as potential employees.

ALCOHOL AND DRUG AWARENESS FOR SUPERVISORS

SUPERVISORS' GUIDE: ALCOHOL AND DRUG AWARENESS FOR SUPERVISORS *Canadian Model for Providing a Safe Workplace*

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 construction industry regarding the safe operation of their enterprise. Companies are committed to providing a safe workplace for all their workers, at all times and in all situations.

As part of the construction industry's commitment to safety, new and revised standard alcohol and drug guidelines have been introduced, called the Canadian Model for Providing a Safe Workplace (the Canadian Model). Construction companies across Canada are implementing these standard guidelines for all their workers and operations.

Roles and responsibilities of supervisors and leaders

The successful implementation of the Canadian Model is the shared responsibility of owner companies, contractors, workers and labour providers. As part of this shared responsibility, supervisors and leaders must:

- communicate and give leadership in the implementation of the Canadian Model
- be knowledgeable about and communicate the company's alcohol and drug work rule and procedures to all workers
- 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 Canadian Model is integral to that policy
- take action on performance deviations
- take action on reported or suspected alcohol or drug use by workers.

Importance of education

Worker 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 work sites. In fact, awareness and education are the principal methods that our industry is utilizing to ensure compliance with the Canadian Model by all workers. With everyone complying with the standards defined in this policy, 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 work site 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 Canadian 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 apprentices. Supervisors must demonstrate behaviours that are consistent with the standards defined in the Canadian Model.

As a first principle, it is important to realize that the policy applies to all employees, regardless of whether or not a worker has problems relating to the use of alcohol or drugs. This understanding will avoid exclusively targeting workers who have substance abuse problems. Additionally, in communicating the intent of the policy to workers, it is helpful to emphasize that, in the first instance, the policy 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 Canadian Model.

This supervisors' guide has been 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 workers who are returning to work from counselling or a rehabilitation program
- recognizing that support systems are available that are designed to assist supervisors, leaders and other workers in addressing alcohol or drug related issues.

Desired outcomes

After reviewing this supervisors' 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 Canadian 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 key fundamental principles.

- **Shared responsibility for safety**

As a matter of law and as a practical fact, both individuals and companies in the construction industry have a shared responsibility for safety in the workplace. The Occupational Health and Safety Act of Alberta imposes a legal obligation on all workers to protect the health and safety of themselves and other workers.

- **Behaviour on and off the job**

The commitment of workers to safety cannot be measured only by their conduct and performance on the job. By necessity, given the nature of operations in the construction industry, workers 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 guidelines and policy.

- **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 workers (and their families) as well as business organizations. At the same time, it is also important that the rights of workers be respected, particularly regarding protection against unnecessary intrusion into their personal privacy, as we work towards achieving zero workplace incidents. When the Canadian 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 workers.

- **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 Canadian Model also stresses the importance of ensuring confidentiality of information and that in all circumstances workers be treated with dignity and respect in the application of the policy. Efforts have been taken to ensure that the Canadian Model complies with Alberta privacy legislation (Personal Information Protection Act) as well as federal privacy legislation PIPEDA (Personal Information Protection and Electronic Documentation Act).
- **Encourage worker self-referral**
Workers 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, labour provider, employer organization or worker association.

A closer look at the alcohol and drug guidelines

- **Work standards**
The guidelines set out, very definitively, the standards that must be met by all workers to ensure their safety and the safety of others.
 - No worker shall distribute, possess, consume or use alcohol or illegal drugs on any company workplace.
 - No worker shall report to work or be at work under the influence of alcohol or drugs that may or will affect their ability to work safely.
 - No worker shall test positive for any alcohol or drugs at concentrations as specified in section 3.1 of the alcohol and drug work rule.
 - No worker shall misuse prescription or non-prescription drugs while at work. If a worker is taking a prescription or non-prescription drug for which there is a potential unsafe side effect, he or she has an obligation to report it to the supervisor.
- **Alcohol and drug testing circumstances**
Alcohol and drug testing may be conducted in the following circumstances:
 - prior to accessing the owner's property
 - 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
 - where employees are covered by employee assistance services programs, the employer may conduct lawful computer-generated random alcohol and drug testing of the workforce.
- **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 rehabilitation program and other reasonable conditions set by the employer.
 - **Education**
The industry recognizes the importance of making workers 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 worker 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 workers 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 worker 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.

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 lost 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.

Drugs

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 nonprescription medication lawfully sold in Canada and any drug paraphernalia.

Employee assistance services

Services that are designed to help employees and their families who are experiencing personal problems such as the use of alcohol and drugs. These are also organizations that have the ability to put a rehabilitation program in place. Examples include Employee Assistance Programs (EAP) and Employee and Family Assistance Programs (EFAP).

Rehabilitation program

A program tailored to the needs of an individual that may include education, counselling 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 desired effect.

What is enabling?

While we may genuinely want to help a worker 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 worker from the potential consequences of his or her actions, such as loss of employment or

damage to the worker'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 worker, 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 worker with the performance problem and exposing ourselves and the team to unnecessary anxiety and risk. Furthermore, we prevent the worker 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 behaviors by:

- recognizing that enabling behaviors 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 worker 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 workers 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 a worker'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 counselling to the worker. 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 a worker'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 alcohol or drug use by a worker 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 guidelines and policy. 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.

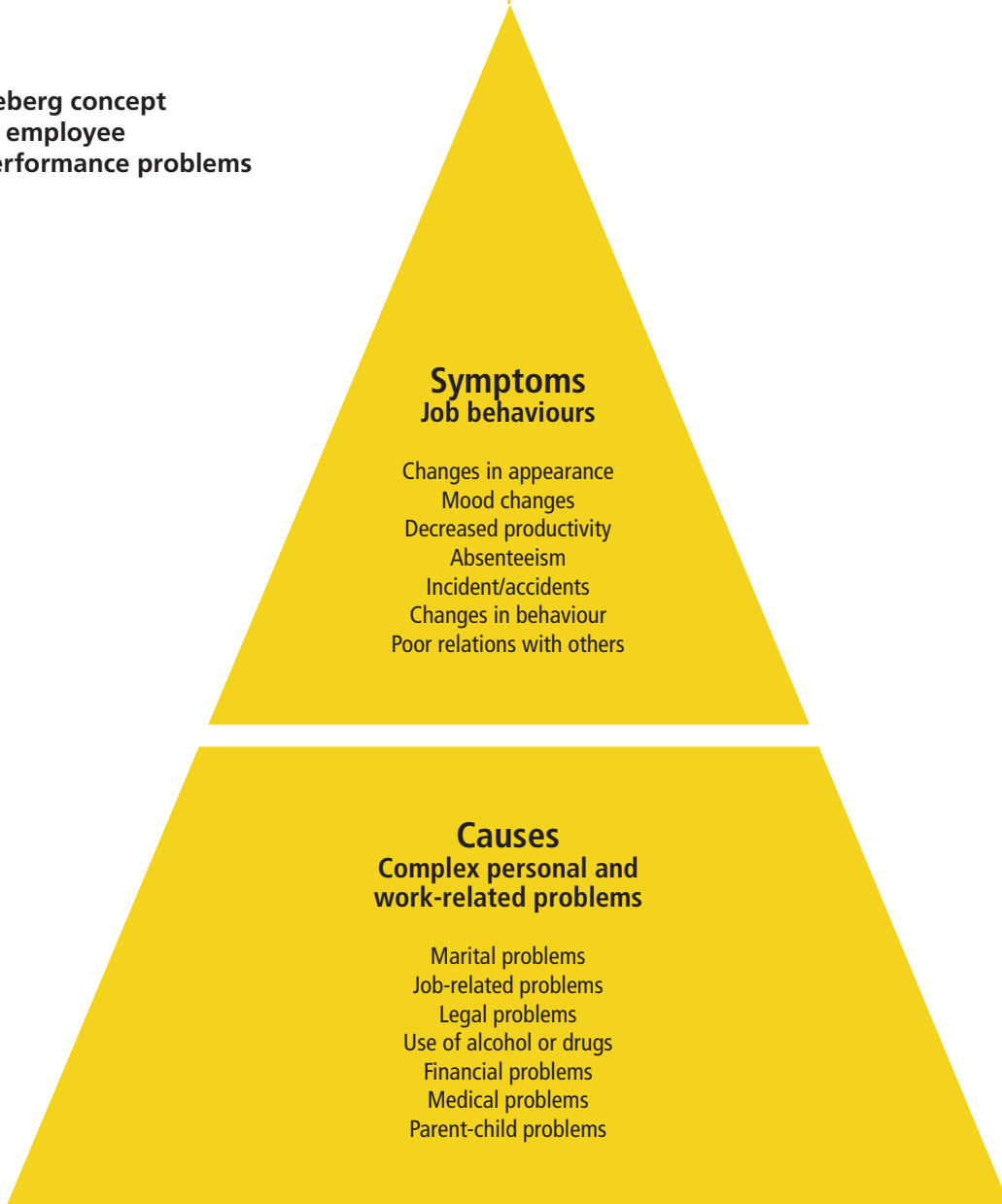
Performance and behaviour issues that are or may be related to alcohol or drug use off the workplace should be identified, documented, addressed and resolved using essentially the same process as any other performance concern.

- **Step one – Identify substandard performance**

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

Performance issues can arise in a worker'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



Noticeable and prolonged deviation in a worker'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 a worker 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 a worker'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 a worker's job performance without making moral judgments or assuming the role of counsellor.



- **Step two – Document performance and behaviour concerns**

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

All workers 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 a worker without showing to the manager the proper support for that request.

When documenting performance, supervisors should:

1. **Keep a daily journal of the worker's behaviour.** Record not only negative behaviours or substandard job performance but also cases where the worker has met or exceeded expectations. By keeping a daily log, a supervisor can more easily see changes or patterns in a worker's behaviour over an extended period of time.
2. **Keep all information strictly confidential.** Records of performance should be kept out of sight of other workers and should be safely stored and locked when not in use.
3. **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. **Relate all observations to job performance.** Explain in measurable terms how a worker is performing in relation to agreed upon expectations such as job descriptions, goals or objectives.

- 5. **Keep track of issues and communication.** Maintain a chronological account of performance issues and problems as well as meetings and coaching sessions with the worker 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 worker to improve his or her performance.

- **Step three – Meet with the worker to discuss observations and concerns**

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

It should be noted that, in keeping with the alcohol and drug policy, a representative of a union or employee organization of which a worker is a member and with whom the employer has a bargaining relationship, may attend any meeting or discussion if the worker wishes the representative to attend.

Supervisors must also be prepared for a worker'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 worker.

It usually helps to review the goals of the interview with the worker at the start of the meeting to ensure that the worker understands that the purpose of the interview is to discuss a 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. Have clear goals for the interview.
2. Review documentation and information prior to interview.
3. Conduct the interview in private and without interruption.
4. Direct the course of the interview. Do not allow the worker to direct the discussion away from his or her performance.
5. Discuss positive aspects of the worker's performance, as well as reviewing documented concerns.
6. Explain the consequences of not addressing and resolving substandard performance.
7. Conclude the interview with a positive outlook. Communicate your confidence that the worker 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 worker. 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. A description of the performance problem to be addressed by the action plan.
2. A description of the level of performance expected of the worker having regard to the worker's training and experience, years of service, level and past performance.
3. The course of action and schedule to bring the worker's performance to the expected level including, where applicable, targets and associated dates.

4. Special requirements or support, such as internal or external training courses or the involvement of an employee assistance services provider.
5. The role of the supervisor and the role of the worker 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 worker'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 worker's performance against the agreed upon expectations.

The supervisor should conduct regular follow-up meetings to review the worker's performance and to discuss progress. It is important that the worker 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 worker'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 worker 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 worker 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 worker'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 worker 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 worker seek assistance of an employee assistance services program by self-referral and allow the worker reasonable time to do so. Self-referral to an employee assistance services program usually involves a worker 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 worker in seeking that assistance.

Alternatively, if the supervisor would prefer to have confirmation that the worker 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 a worker to the program by another person such as the worker'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 worker has attended the program as requested.

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

As noted in this supervisors' guide, if a supervisor has a reasonable suspicion at any time that a worker's failure to correct a chronic performance problem is due to the worker using alcohol or drugs at work or being under the influence of alcohol or drugs at work, then the supervisor should so advise the worker and allow the worker an opportunity to provide an explanation. However, if the worker's explanation does not dispel or contradict the supervisor's suspicion, then the worker 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 a worker'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 a worker has admitted to being under the care of an employee assistance services program or where a worker was in a rehabilitation 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 a worker 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 worker's problem or the details of his or her absence with other staff members. The returning worker 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 a worker returns to work following rehabilitation for an alcohol or drug problem, an interview between the supervisor or designated team members and the returning worker should take place immediately. This interview should include:

- a discussion of the worker's job description noting any changes stemming from the personal action plan (i.e. limited duties, arrangements for continued counselling)
- a clear description of expectations and specific areas that require improvement

- development of a follow-up process, so that both the supervisor and worker know when regular follow-up sessions are to occur and what will be discussed
- a provision of time if the worker wishes to comment on his or her experience in counselling or the rehabilitation program. This discussion time may involve the worker 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 a worker'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 workers 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 counselling 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 worker and family members to obtain diagnosis, counsel and treatment for problems that can affect a worker'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 worker and the job.

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

In addition to providing counselling and referral services to workers 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 life style concerns is available through the employee assistance services program. Information will be mailed on a "personal and private" basis as requested by workers or family members.

ALCOHOL AND DRUG AWARENESS FOR WORKERS

WORKERS' GUIDE: ALCOHOL AND DRUG AWARENESS FOR WORKERS

*Canadian Model for Providing a
Safe Workplace*

Background

The construction industry is committed to ensuring a safe work environment for all workers, free from alcohol and drugs. To maintain this commitment, a group of stakeholders from the construction industry came together in 1998 to develop the Canadian Model for Providing a Safe Workplace.

The Canadian Model was revised and further enhanced in May 2001 and October 2005 based on experience, new information and the emerging law and public policy in this area. The Canadian Model establishes standardized alcohol and drug guidelines and a policy that will ensure fairness and consistency throughout the industry. It also helps to standardize the approach, testing, application and rehabilitation of workers.

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

Roles and responsibilities of workers

The successful implementation of the Canadian Model is the shared responsibility of owner companies, contractors, workers and labour providers. As part of this shared responsibility, workers 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 standards as part of their obligation to perform work activities in a safe manner
- comply with the work rule and 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 construction industry have a shared responsibility for safety in the workplace. The Occupational Health and Safety Act of Alberta imposes a legal obligation on all workers to protect the health and safety of themselves and other workers.
- **Behaviour on and off the job**
By necessity, given the nature of operations in the construction industry, workers 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 Canadian Model.
- **Balancing the needs of safety and individual rights**
The interests of ensuring safety in the workplace and respecting the rights of all workers are given equal consideration. For example, the Canadian Model balances human rights protecting individuals with disabilities (including alcohol and drug addiction) by providing for assessment, rehabilitation and return to work processes. The Canadian Model also balances privacy concerns by ensuring any information collected is used solely for the reasonable purpose for which it was collected.
- **Encourage worker self-referral**
Workers 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, labour provider, employer organization or worker association.

Common definitions and important concepts

Drugs

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 nonprescription medication lawfully sold in Canada and any drug paraphernalia.

Addiction

Traditionally, this term has been synonymous with physical dependence and full-fledged withdrawal symptoms. Addiction may be characterized by one or more of the following: change in tolerance, loss of control, blackouts, physical complications, psychological symptoms and social or family complications.

Dependency

There are two components involved with the concept of drug 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
- **psychological** – Users upon cessation of use believe that they cannot function without the drug and crave it.

Employee assistance services

Services that are designed to help employees and their families who are experiencing personal problems such as alcohol and drug abuse. These are also organizations that have the ability to put a rehabilitation program in place. Examples include employee assistance programs (EAP) and employee and family assistance programs (EFAP).

Rehabilitation program

A program tailored to the needs of an individual which may include education, counselling 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 a worker 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 worker from potential consequences of his or her actions, like loss of employment or damage to the worker’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 worker, 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 worker 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 worker 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 a worker'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 counselling 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 a worker 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**
Workers 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. Workers 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 counselling and referral services to workers and family members

who are experiencing problems, employee assistance services can also provide assistance to co-workers who may be concerned about a worker's behaviour but are unsure about what to do.

Helpful literature on a wide variety of health, behavioral and life style concerns is available through employee assistance services programs. See Section 4.0 of the Canadian Model for a list of available resources. Information will be mailed on a "personal and private" basis as requested by workers or family members.

