



Canadian Model Best Practice Review

COAA Best Practices Conference Canadian Model Best Practice Review

May 16, 2012





Workshop Ground rules

Please:

- put your cell phone on silent or vibrate, and
- Please avoid side conversations.





Sean Evans

- Chairperson for the COAA Canadian Model Best Practice for Alcohol and Drug Guidelines and Work Rule

Dr. Randy Leavitt

- Dr. Randy Leavitt is Vice President of Pharmaceutical, Forensic and DNA Services at Maxxam Analytics.

Neil Tidsbury

- President of Construction Labour Relations

Philip Ponting

- Partner in McLennan Ross practicing administrative law with the major focus on employment law.



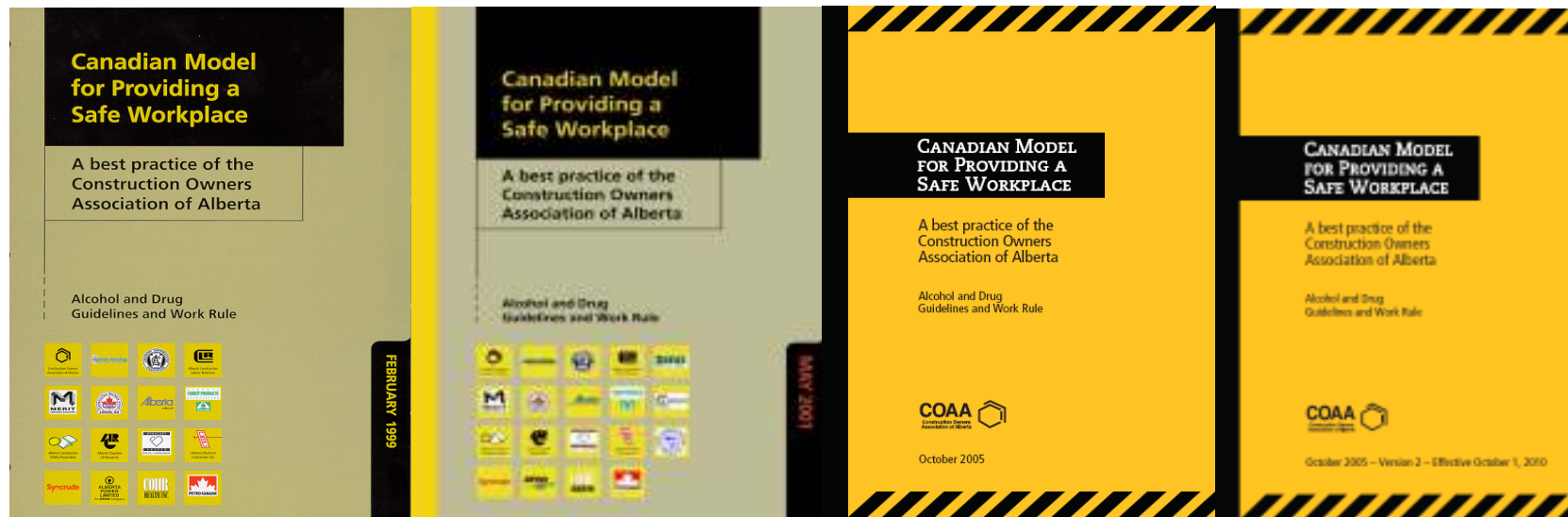
Canadian Model Best Practice Review

COAA Best Practices Conference **Canadian Model Best Practice Review** **~ Canadian Model Review Team ~**

Sean Evans

Enbridge

Canadian Model History



Development of the Model has been an evolving process since 1999

The Model has been updated and revised to reflect the state of law and industry needs with versions published is 1999, 2001 and 2005

The most recent version of the Model was published as an Addendum in October 2010



Canadian Model Review Team Members

Sean Evans - Enbridge

Wayne Prins – Christina Labour Association of Canada

Paul DeJong – Progressive Contractors Association Canada

Richard Wassill – Local 222

Bob Blakely – Building Trades

Jim Corson – CNRL

Stephen Kushner – Merritt Contractors

Tom Gondek – Suncor

Hal Middlemiss – NWR Partnership

Neil Tidsbury – Construction Labour Relations

Mark Rice – Alberta Government

Ivan Krissa – Stuart Olson



Canadian Model Review Team Subject Matter Experts

Maxxam Analytics

McLennan Ross LLP

DynaLife Dx

Gamma - Dynacare

CannAmm Occupational Testing Services

Dr. Brendan Adams

Canadian Model Review Team Focus Areas

- Address the “variations” in the application of the model.
- Examine the use of POCT devices in industry.
- Explore the possibilities of establishing IITF’s in Alberta.
- Better define the self help / self assessment requirements.





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Pending Changes to DOT Drug & Alcohol Regulations:

Implications for Canadian Model Stakeholders

Presented by Dr. Randy Leavitt

Maxxam Analytics

CANADIAN MODEL FOR PROVIDING A SAFE WORKPLACE

A best practice of the
Construction Owners
Association of Alberta

Alcohol and Drug
Guidelines and Work Rule

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 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

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.

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.



Why US DOT?



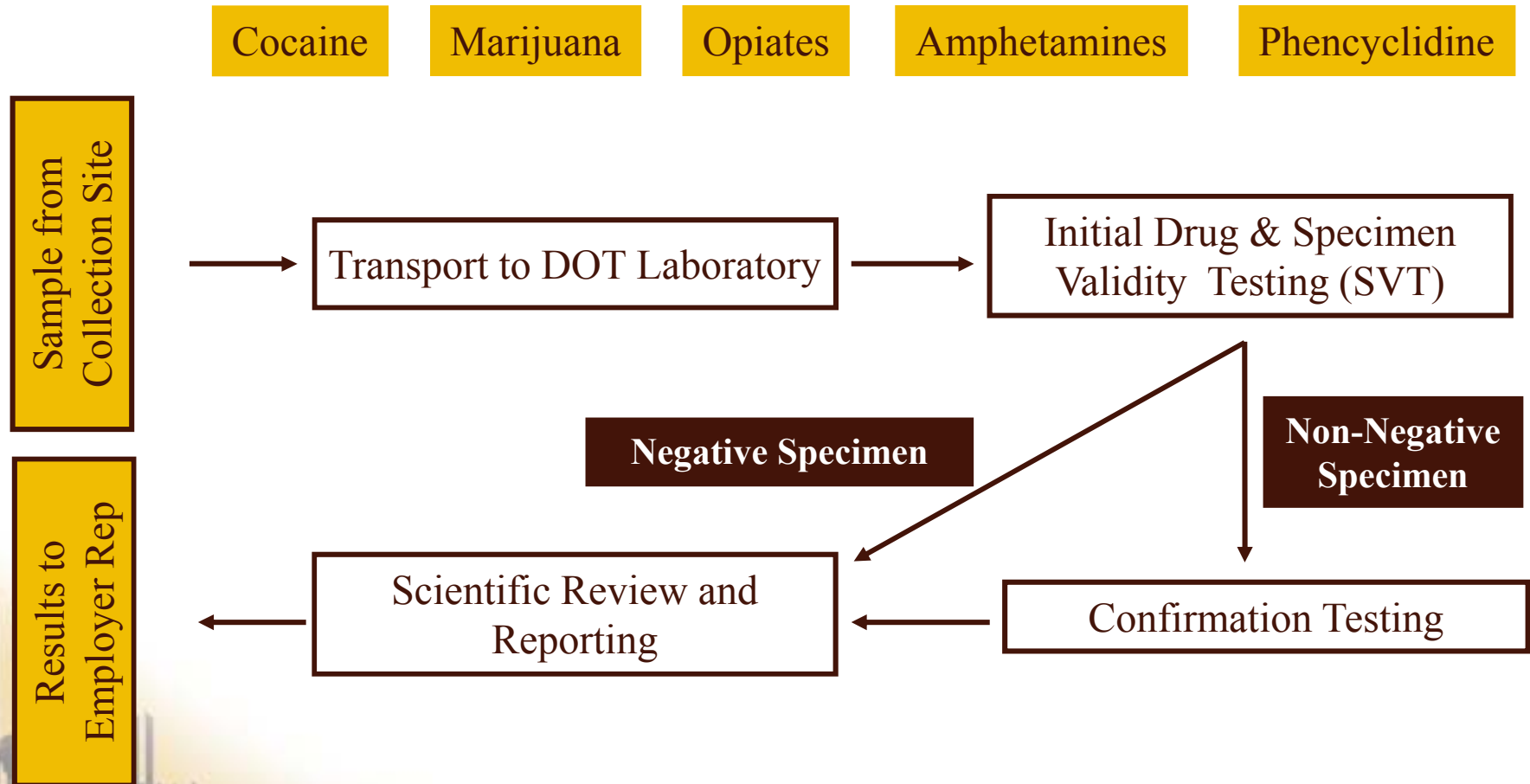
DOT establishes rules (49 CFR Part 40) on drug and alcohol testing:

- Specimen Collection
- Drugs/concentrations to be tested
- Specimen validity tests
- What scientific procedures to use when testing
- Standards for certification and review of laboratories

$$\begin{array}{ccc} \text{Scientific Accuracy} & & \\ + & & \\ \text{Forensic Integrity} & = & \text{Legal Defensibility} \end{array}$$



DOT Analytical Strategy





April 2004 Proposed Changes

1. Addition of heroin and ecstasy (MDMA) to initial test suite
2. Lower cutoff concentrations for cocaine and amphetamines
3. ~~Oral fluid, sweat and hair as alternative matrices~~
4. ~~Point of Collection Testing Devices — Quick Tests~~
5. Certification of Instrumented Initial Test Facilities (IITF)
6. Additional standards for collectors, collection facilities and MRO's

Notice of Final Revisions Nov. 2008 → Implementation Oct 2010

“HHS believes that the addition of alternative specimens to the Federal Workplace Drug Testing Program would complement urine drug testing and aid in combating the risks posed from available methods of suborning urine drug testing through adulteration, substitution, and dilution.”

Since 2009...Scientific Research in OF

Analytes/cutoffs

SVT/validity

Collection

Collection devices

Testing Methodology

Laboratory Capabilities



January 2012 HHS approved...

- (1) inclusion of oral fluid as an alternative specimen in the Mandatory Guidelines for Federal Workplace Drug Testing Programs.
- (2) addition of additional Schedule II prescription medications (e.g., oxycodone, oxymorphone, hydrocodone and hydromorphone) in the Mandatory Guidelines for Federal Workplace Drug Testing Programs.





COAA
Construction Owners
Association of Alberta

Oral Fluid Test Suite

Drugs	Canadian Model (Oct. 2010)		SAMHSA PROPOSED	
	Initial Test Cutoff	Confirmation Test Cutoff	Initial Test Cutoff	Confirmation Test Cutoff
Marijuana Metabolites (THC)	4	2	4	2
Cocaine Metabolites	20		15	
Cocaine		8		8
Benzoylcegonine		8		8
Opiates	40		30	
Codeine		40		15
Morphine		40		15
Heroin Metabolite (6-AM)	4	4	3	2
Synthetic Opiates			30	
Hydrocodone				15
Hydromorphone				15
Oxycodone				15
Oxymorphone				15
Phencyclidine	10	10	3	2
Amphetamines	50		50	
Amphetamine		50		25
Methamphetamine		50		25
MDMA (Ecstasy)	50		50	
MDMA		50		25
MDA		50		25
MDEA		50		25



Expected Timelines

Jan 2012

HHS Approval for OF and Synthetic Opiates
Development of program elements
(cutoffs, collection standards, MRO guidelines)

Late 2012

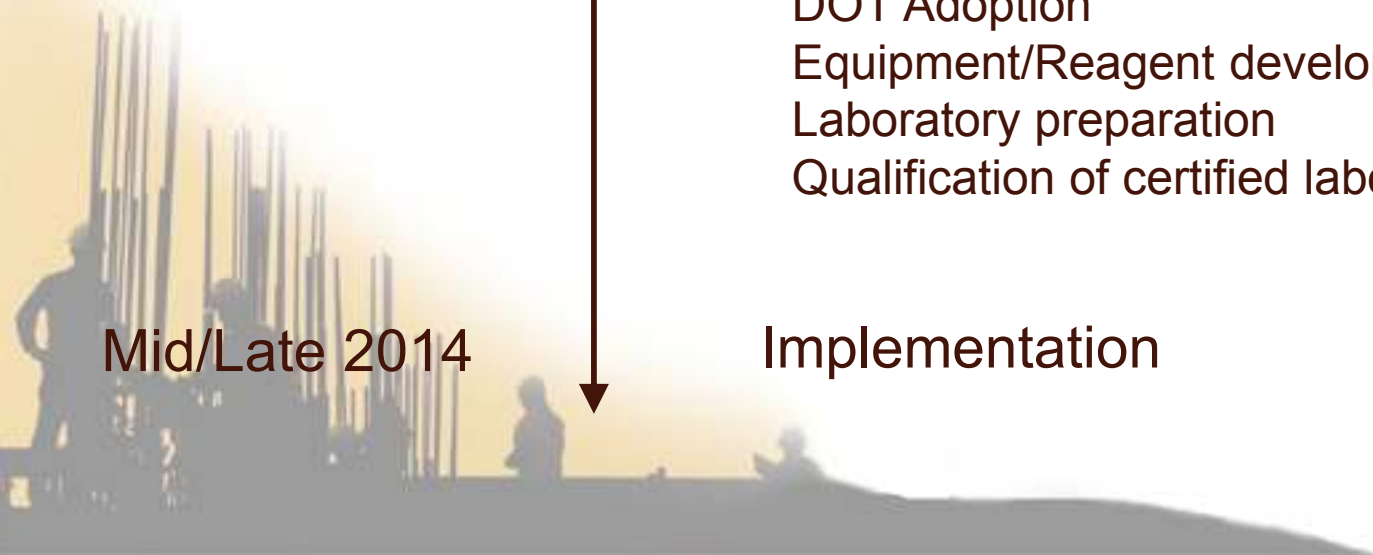
Draft Mandatory Guidelines
Public comment
Revisions
Regulatory approvals

Mid 2013

Final Mandatory Guidelines in Fed. Reg.
DOT Adoption
Equipment/Reagent development and manufacture
Laboratory preparation
Qualification of certified laboratories

Mid/Late 2014

Implementation





Implications of Required Changes

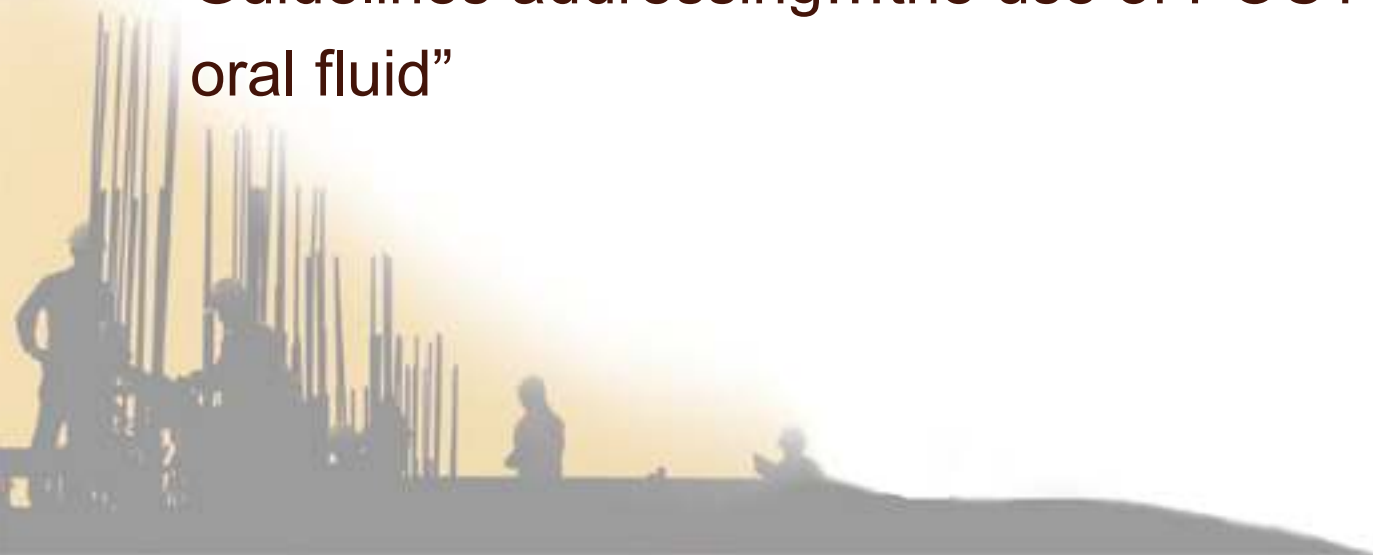
- Longer detection times compared to current Canadian Model
- Increased costs for drug testing programs
- Longer turnaround times





Addendum – Point of Collection Testing

- “The scientific, legal, and public policy information for drug testing...using POCT devices...is not as complete as it is for the laboratory-based urine drug testing program”
- “HHS anticipates issuing further revisions to the Mandatory Guidelines addressing...the use of POCT devices for urine and oral fluid”





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~ Canadian Model Status ~

Presented by Neil Tidsbury
Construction Labour Relations

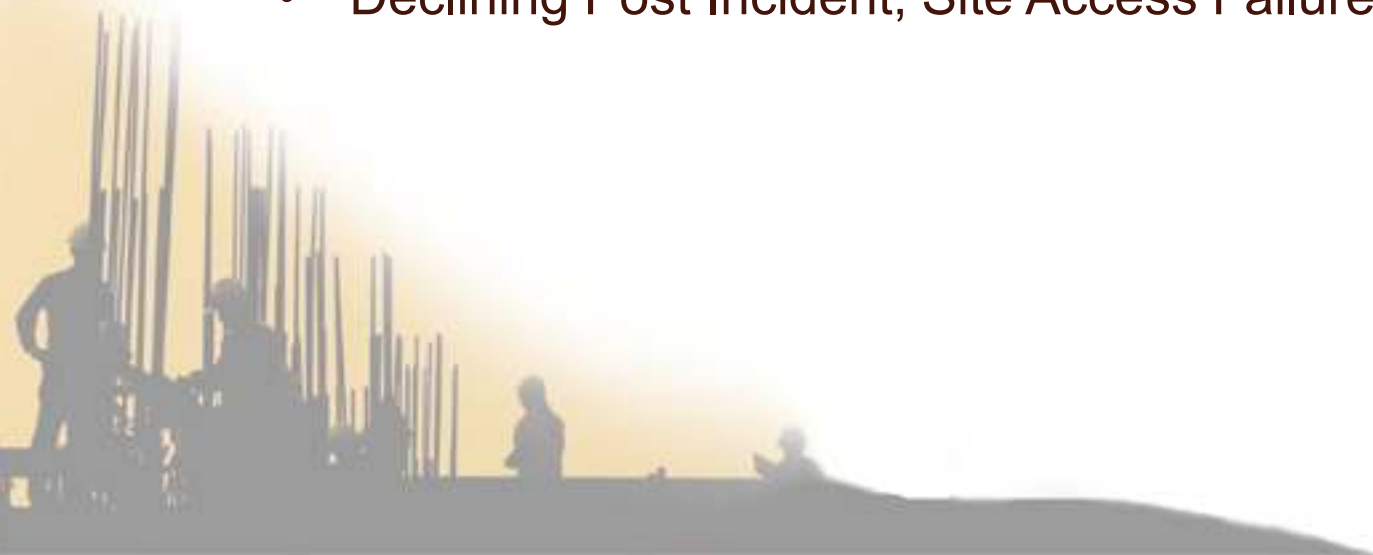
13 Years of Application: What Have We Got?

- Model Policy and Practice Envied Nationally
- Recognized Leadership
- Comprehensive Training
- Medical Assessment, Treatment, Re-Deployment Model
- Application by Agreement



13 Years of Application: What Are Recent Trends?

- Low and Declining Reasonable Cause Frequency
- Challenge of Workers Intervening With Co-Workers
- Propensity for “Short Cuts”
- Declining Post Incident, Site Access Failure Rates



13 Years of Application: What Do We See?

- Acceptance of Policy By Workers
- BUT Evidence of Cavalier Treatment
- Reliance on POCT
- Site, Camp Rules and Administration
- Policy “Variations” and Breaches



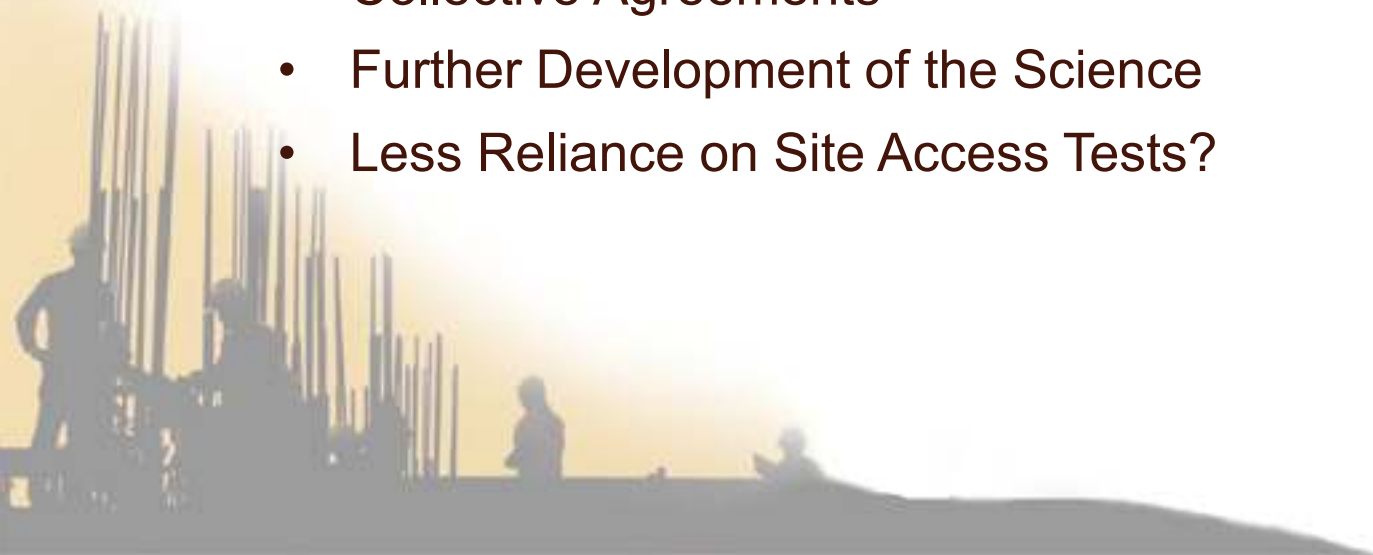
13 Years of Application: What Do We Need?

- Test Result Turnarounds Improving
- BUT Need to Further Improve to Preserve Policy
- Rigorously Follow Policy
- Collaboration in Application



13 Years of Application: What's Next?

- D&A Risk Reduction Pilot Project
- Potential for Challenges
- Perception of Disability
- Privacy
- Collective Agreements
- Further Development of the Science
- Less Reliance on Site Access Tests?





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~ Legal Review ~

Presented by Philip G. Ponting
McLennan Ross LLP

City of Thunder Bay v. Amalgamated Transit Union Local 966, Arbitrator Marcotte, 212 LAC (4th) 414

1. Last Chance Agreement
2. 12 year employee, Transit Operator moved to Service Technician under Last Chance Agreement and random tested under agreement
3. Grievor – after taking some random test says no as believes Technician position is not safety sensitive position although agreed Operator position was.
4. Over 2 year period Employer accommodated Grievor on 4 separate occasions for rehabilitation, some for long periods of time to attend treatment facilities.

City of Thunder Bay v. Amalgamated Transit Union Local 966, Arbitrator Marcotte, 212 LAC (4th) 414

5. Decision:

- a) Based on wording of Last Chance Agreement testing tied to employment not to employed in specific position
- b) Without random testing employer would have no means to ensure Grievor does not present health & safety concern to himself and co-workers.
- c) By not participating in random testing, Arbitrator agrees that Grievor has been accommodated to point of undue hardship
- d) Discharge upheld.

Government of Province of Alberta v. Alberta Union of Provincial Employees, Arbitrator A. Sims, Q.C.

1. Privacy concern – while not Drug & Alcohol, lessons to be learned.
2. Maintenance Enforcement Program believes fraudulent cheques are being issued.
3. Subsequently learns that responsible parties were outside government services.
4. But in investigating Government Special Investigations Unit does credit check on program employees to see if any in financial difficulty.

Government of Province of Alberta v. Alberta Union of Provincial Employees, Arbitrator A. Sims, Q.C.

(cont'd)

5. Once heard of checks being made, complaint filed with Privacy Commission. Investigation says destroy records produced by investigation but no need for formal inquiry.
6. Government does and apologizes to all affected employees.
7. Grievance filed for damages using Wolser & Parry Sound decision for basis of arbitration for jurisdiction.
8. Arbitrator says has jurisdiction
9. Awards damages in amount of \$1,250.00 per employee

Government of Province of Alberta v. Alberta Union of Provincial Employees, Arbitrator A. Sims, Q.C.

(cont'd)

5. Says damages awarded based on:
 - a. Employer conduct intentional to point of reckless
 - b. Employees privacy invaded without law justification dealing with private concerns of employees
 - c. Invasion highly offensive causing distress, humiliation or anguish

Irving Pulp & Paper Ltd. v. Communications Energy and Paperworkers Union of Canada Local 30

- Decision Court of Appeal of New Brunswick, 2011 NBCA 58
 - 1) Going to Supreme Court of Canada
 - 2) Irving operated Kraft paper mill on banks of St. Johns River where it empties into the Bay of Fundy and is contiguous to Reversing Falls.
 - 3) Irving unilaterally institutes a policy of random alcohol testing for safety sensitive position.

Irving Pulp & Paper Ltd. v. Communications Energy and Paperworkers Union of Canada Local 30

(cont'd)

4. Arbitration Board upholds grievance saying Irving failed to establish that the mills operation posed a sufficient risk of harm to outweigh employees right of privacy
5. Court of Queen's Bench quashed award saying decision unreasonable because Board said basis of its decision was Irving had not adduced sufficient evidence of pre-existing alcohol problem. Court said sufficient to show that workplace has "the potential for catastrophe".

Driving Pulp & Paper Ltd. v. Communications Energy and Paperworkers Union of Canada Local 30

(cont'd)

6. Court of Appeal uphold Court of Queen's Bench.
 - a) Not difficult to support contention mill qualifies as an inherently dangerous workplace as would a chemical plant
 - b) Evidence of existing alcohol problem not required to support policy

THANK YOU!

Any Questions?

