COAA
Construction Owners Association of Alberta

The Canadian Model for Providing a Safe Workplace

FAQs

NOTE: All references in this document (e.g. Section 4.9.2) refer to the Canadian Model Version 5.0

Section Q of the Canadian Model contains FAQs and answers developed at the time that the 2005 version was published. The following FAQs have been received since the 2010 version was published; this list is updated from time to time and posted on the COAA website at www.coaa.ab.ca.

Click on any one of the questions on the following page to be directed to the answer in this document

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CLICK HERE TO VIEW THE CANADIAN MODEL (Version 5.0)
Updated October 8, 2014

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GENERAL QUESTIONS

1. **Is There a Canadian Model 'Help Desk'?**
   Like all of the COAA Best Practices, the Canadian Model is developed and updated by a committee of volunteer experts. Staff in the COAA office do not have technical expertise, therefore are only able to answer basic questions about the Model Policy. The answers to questions asked over the years are collected in this document as a resource for all users.

2. **Is There a Presentation on the Canadian Model and/or an Expert Who Can Speak About Treating and Managing Substance Issues with Employees?**
   The Canadian Model is updated by a committee of volunteer experts; COAA has no staff expertise and therefore cannot provide a presentation. At most COAA Best Practices Conferences (held annually in Edmonton during May), there is a workshop on issues of current interest to users of the Canadian Model. These are excellent learning opportunities which provide the chance to interact with experts. Click here for more information about the Best Practices Conferences.

3. **When Will the Canadian Model be Updated?**
   The current Canadian Model was updated on October 8, 2014.
   The Canadian Model Committee continuously monitors the evolving situation with respect to Alcohol & Drug (A&D) safety in the workplace, including any updates from the U.S. Department of Transportation. The U.S. Drug Testing Advisory Board has been deliberating for some time regarding a number of issues, including the standard drugs being tested (e.g. the addition of four synthetic opioids has been recommended).

   In order to facilitate better alignment between the heavy industrial construction sector and the upstream operations sector, COAA and Enform are currently working together on the next version of the Canadian Model (Version 6.0). The goal is to have this version approved by the respective Boards and issued in mid-2018. It is anticipated that changes will be minor, mainly for clarity and to generalize processes to be appropriate for a broader range of organizations.

4. **Can I Access an Editable Form of the Canadian Model?**
   The Canadian Model PDF file is free-of-charge for COAA members and other companies to download and use as a guide to developing their own A&D Policy. As for all Best Practices, the COAA recommends that each company adapting the Model Policy consult competent legal counsel to ensure the policy fits with their specific company needs. COAA has not been making the Model Policy available in editable format for simple cut-and-paste adaptation. The main reason is document control: COAA does not want a document in the public domain which appears to be the Canadian Model but has been edited and distributed with non-approved content.

5. **How Can an Organization Endorse the COAA A&D Guidelines & Work Rule to be Named in the Best Practice for Third Party Qualifications Database Organizations, such as ISN, to Accept the Policy?**

   The Canadian Model is freely available as a Model Policy to be adopted by COAA members and other companies. *Adopting* means making the generic policy part of the company's policies (I.e. signed off by a Senior Executive, included in your policy manual, communicated to employees, etc.) In other words, the Model Policy has become the company's policy and will guide the company's procedures and actions.

   Typically, third party qualifications database organizations accept such company policies when there is evidence of effective adoption and implementation. Two cautions:

   - Be sure you are working with the current version of the Canadian Model (at the time of writing, Version 5.0 – effective October 8, 2014). Please be sure to check www.coaa.ab.ca for updates.
   - As companies adopt the Model Policy, typically non-substantive customizations must be made to "fit" the policy to the specific circumstances of the company (e.g. when and to whom the policy applies, the designated employer representatives, procedure for one-up consultations, etc. It is very important that your company seek legal and other expert advice to confirm that the as-modified company policy is legally defensible in the context of your own worksite. The independent legal opinion on the Model Policy (page L-1 of the Canadian Model) provides a good starting point for the legal review.

6. **Why is this Guideline Called the Canadian Model? Have Other Provinces Endorsed It?**

   The Model Policy is called the "Canadian Model" because, while based on a recognized standard developed by the US Department of Transport, it has been adapted for use in this country (i.e. legal milieu and A&D policies in Canada). The COAA multi-stakeholder development and review committee included groups such as the Canadian Construction Association, Progressive Contractors Association of Canada, Christian Labour Association of Canada, Canada's Building Trade Unions. The "Canadian Model" is not formally endorsed by any provincial or other levels of government in Canada. It is being applied beyond Alberta by some companies that have operations in other provinces or territories.

7. Am I Able to Send Samples for Lab Analysis *Only* When the Point of Collection Test (POCT) Results Are Non-Negative?

There are no provisions in the Canadian Model for the use of POCT for pre-employment, reasonable cause or post-incident tests. All such drug tests must be conducted in accordance with the requirements in the Canadian Model, i.e. using laboratory tests.

Because POCT are not as accurate as laboratory tests, the Canadian Model provides for the use of POCT only for the limited purpose of assessing the risk of returning an employee to work while awaiting the results of a laboratory drug test (I.e. receipt of the medical review officer's report). Specifications for the POCT devices that may be used for this limited purpose and the procedures that must be followed are prescribed in *Section 4.8.5*.

8. Does the Canadian Model State that Post-Incident Testing and Reasonable Cause Testing be Done Only by Urinalysis?

The Canadian Model contemplates either oral fluid or urinalysis for post incident and reasonable cause testing: both oral fluid and urine laboratory testing are appropriate. Under *Section 4.8.2*, oral fluid testing is not permitted for site access or follow up as part of return-to-work agreements; these tests must be done by urine based laboratory testing.

The only use of POCT (urine-based) is as a risk assessment tool located under *Section 4.8.5* (there is no provision in the Canadian Model for oral fluid POCT testing).

A distinction should be made between the Model Policy and individual company policies or collective agreement provisions. For instance, the Canadian Model identifies both urinalysis and oral fluid analysis testing for post incident, reasonable cause and random triggers. However, many collective agreements with the Building Trades of Alberta require oral fluid testing for post incident, reasonable cause and random triggers.

9. Why Isn't Oral Fluid Testing Permitted for Site Access Testing?

The Canadian Model Committee took the decision that oral fluid testing should not be used for tests where the worker has advance knowledge (e.g. pre-access testing and testing required under a return-to-work plan). The use of laboratory oral fluid testing has been approved for post-incident, reasonable cause and random testing.

10. What is the Criteria for Collecting POCT Oral Fluid Samples?

There is no provision in the Canadian Model for oral fluid POCT testing; the reliability of such devices and the accuracy and precision at the Model Policy cut-off levels are not yet sufficient.

11. *Section 3.1 (b)(i)* of The Canadian Model States That an Employee May Not Report to Work, or Work with a Breath-Tested Alcohol Level, Equal to or In Excess of 0.040 grams per 210 litres of Breath. The Testing Procedures (Appendix A, Breath Testing, 7) State if the Breath-Tested Result Show an Alcohol level at or Above 0.020 grams/210 litres of breath, the BAT Informs the Donor of the Need to Conduct a Confirmation Test.

If the Cut-off level is 0.040 grams/210 litres of Breath in the Policy, Why is There a Need for Confirmation Testing at 0.020 grams/210 litres of Breath?

The difference lies in the testing equipment used. When an evidential breath alcohol device is used the results are accurate and may reliably be compared with the policy limit of 0.040 grams per 210 litres of breath. Breath alcohol devices used for screening tests are not as accurate, so a “factor of safety” is applied to the policy limit. The screening test can quickly alleviate a concern (below 0.020), or confirm the necessity (above 0.020) of doing a confirmatory test using an evidential breath alcohol device before any judgement is made regarding compliance or non-compliance with the Canadian Model.

12. Which Test Meets COAA Standards - BAT or Ethanol Urine Test? Is One More Accurate than the Other? Are Both Tests Required to Meet COAA Standards?

For alcohol testing, the Canadian Model provides for either breath or saliva for the screening test. Only evidentiary-quality breath alcohol testing is appropriate for confirmation. The Canadian Model does not provide for urine testing for alcohol.

13. How Should Reasonable Grounds be Documented Under *Section 4.3.1 – Company rep with reasonable grounds re: non-compliance of 3.1(a) ...*?

"Reasonable grounds" is defined in *Section 6.1(t)*. Observations and objective evidence are required before asking the worker if he or she is in possession of alcohol or drugs while on the work site. The observations and evidence should be documented. Note that, while one-up consultation is not required under 4.3, as it is under 4.4 and 4.5, it is considered to be good practice. Reviewed with the next higher level of management is prudent to assure support by the company of supervisor actions.

14. How Should *Section 4.4 - Observation of employee conduct …* be Documented and Dealt With?

"Reasonable grounds" is defined in section 6.1(t). Observations may include conditions such as slurred speech, glassy eyes, odor, inattentiveness or distracted behaviour. Or it may include patterns of behaviour over time. Observations should be documented and reviewed with the next higher level of management so that they can be supported by the company.

On the other hand, alcohol and drug issues should not always be the first assumption when subtle changes in behaviour occur over time. Mood swings, emotional outbursts, negativity, long term depression, or increased absenteeism might signal the misuse of alcohol or drugs... or they might signal personal stresses such as illness, interpersonal issues or domestic problems. It is important that a supervisor or human resource specialist speak privately with the employee to ask if they wish to seek help and to make sure access to Employee and Family Assistance counselling is available.

15. Is "Reasonable Cause" A&D Testing Appropriate if an Employee Leaves for the Day at the End of the Shift, Returning the Next Morning?

Normally, the answer to this question is "no". The employer must ensure that an employee to be tested is in the care and control of a supervisor until the test is conducted, to prevent either naive or intentional actions which might affect test results. If delays are lengthy or continuity of care and control is lost, the defensibility and relevance of doing the tests comes into question. Some employer policies include prohibitions on alcohol or drug use for 24 hours or longer after an incident, but this normally is not as defensible as actual supervisory care and control.

The Canadian Model does not include a specific time frame for a test other than *Section 4.5.3* "A supervisor or manager of an employee must make a request under *Section 4.5.1* immediately following an incident or near miss unless it is not practicable or reasonable to do so until a later time."

16. Can Employees Suspected of A&D Possession be Searched During Work Hours?

Section 4.3 requires that a representative of the company or the owner, who has reasonable grounds to believe an employee may be in possession of alcohol or drugs

while on company property or at a company workplace, request the employee to confirm their compliance with the Canadian Model, and may request assistance of appropriate authorities in doing so. It is a violation of the Canadian Model if the employee refuses to comply with the request.

17. Does *Section 3.1 (c) Refuse to (i) Comply with a Request made by a rep of the company…* Mean that a Simple Refusal by an Employee to Confirm Whether or Not They're in Possession, Using or Selling, Can be Grounds for Discipline, Including Dismissal?

Yes. If the employer has reasonable cause for asking the question, then under the Canadian Model the worker must comply with the request or be determined to be in non-compliance with the Policy. The consequences of non-compliance are specified under section 5.1.

18. Explain the term "use" as it Relates to *Section 3.1 (a) Use, possess of offer for sale*. Why is "Distribution" not included in *Section 3.1 (a)*?

"Use" includes on-site personal consumption of alcohol or drugs; "distribution" is implied in "offer for sale".

19. Where in the Canadian Model Can Details be Found Regarding Testing of More than One Employee Who Is Involved in an Incident on the Job? *For Example, If a vehicle backs into a parked car; should the driver and the spotter be tested?*

Following an incident, an investigation is required. The Canadian Model poses three questions:

1. With reference to *6.1(m),* was there an actual "incident"?
2. Are there reasonable grounds to believe that an employee was involved *(4.5.1)*? An employee is involved if, by their action or inaction, or decisions or failure to make decisions, they could have been part of the cause of the incident. In the example given, it is probable that both the driver and the spotter were involved in the collision of a reversing vehicle.
3. Is there objective evidence *(4.5.4)* which leads to the conclusion that alcohol and drugs can be ruled out as a causal factor?

The answers to these questions, together with the one-up consultation, would determine which (if any) employees must be tested in the wake of an incident.

20. When an Injured Worker is Hospitalized, can a Physician be Requested to Perform an A&D Test? Are Hospitals Equipped as Collection Sites? How do the Test Results get to the Employer?

If the worker is injured to the extent that hospitalization is required, it is generally inappropriate for the employer to ask for A&D testing. The employer's primary concern must always be for the well-being and health of the employee and his/her family. At this point compassion and empathy is more important from an employer than trying to determine if the use of alcohol or drugs was a factor in an incident.

The attending physician's responsibility and priority is first and foremost with his/her patient. The doctor, and by extension the hospital, will rightfully focus on the immediate needs of the injured worker. If an employer requests that an A&D test be conducted in the hospital, it is highly unlikely that the doctor or hospital would provide it. Further, even if a sample was collected, hospitals are generally not familiar with the chain-of-custody, analysis and reporting protocols of the Canadian Model.

21. Explain the Term "fitness for work" as it is used in *Section 4.9.2*.

The "fitness for work" assessment referred to in *4.9.2* is not a particular methodology, such as the SAE assessment or a physical demands analysis (although the latter could, in some circumstances, be a consideration). Rather, it is a risk assessment, normally in consultation with a physician or another person with relevant medical expertise, as to whether the employee's work assignment can be performed safely with the employee continuing to use the prescription or non-prescription medication as directed or prescribed - or if not, what work, if any, can be performed safely while using the medication. This has, since the inception of the Model Policy, been an obligation for supervisors and managers in receipt of a safety advisory, or when privy to a disclosure pursuant to *3.2*.

22. When Should the Police Become Involved and to What Level?

Whether the police may be involved depends on the specific situation. First person observations or reports that an individual has been selling in the workplace would warrant consultation with the police before confronting the individual. In cases of alcohol use by one or two persons on-site, police involvement is normally not needed.

Judgement is necessary for situations on the spectrum in between. In the event that a person suspected of alcohol or drug use insists on operating a vehicle to leave the site, every effort to dissuade the person should be made, and the police should be notified immediately if the efforts fail.

23. What are the Policies and Procedures Stated in the Canadian Model for Prescription Drugs, Including Medical Marijuana?

As a point of clarification of the question, marijuana is not prescribed in Canada. Rather, there is a legal framework that authorizes possession and use, but may place limits on the form and amount of the substance.

For most organizations and industrial work sites in Alberta, workers are required to pass a site access alcohol and drug test. In the event the lab result is positive, the Medical Review Officer will engage in discussion with the worker to determine if there is a medical explanation for the positive results.

For a worker employed onsite, if he or she is in possession of any prescription or non-prescription drug which has potentially unsafe side effects, *Section 3.2 (c)* requires that the worker must notify their supervisor or manager before starting work. An informed decision can then be made, possibly with the assistance of an occupational physician, about appropriate work assignments.

When a worker has authorization to use marijuana in respect to a health condition, it is likely that an occupational physician will be asked to individually assess the worker to determine whether they can safely perform work in a safety sensitive environment. A number of factors will be considered by the physician, including specific information about the tasks and the work environment.

Fundamentally, the Canadian Model is concerned with elevated workplace safety risks when alcohol and drugs levels exceed the limits specified in the *Section 3.1*. A valid medical reason does not by itself reduce the safety risks; therefore, the test result must be reported to the employer, so they can then take appropriate action to protect the safety of that worker and others on the worksite.

In the U.S., the DOT directs the Medical Review Officer not to accept a physician's recommendation for use of marijuana as a valid medical reason to overturn a positive laboratory test. In Canada, there is no specific regulation, making it less cut and dry. If such a test were to be reported as a negative test it must be accompanied by a safety advisory requiring medical evaluation for fitness to work.

The Independent Medical Opinion in the Canadian Model is a good initial resource when considering potential safety risks arising from use of prescription or authorized medications.

24. How Should Organizations be Preparing for the Legalization of Marijuana Legislation?

In the absence of new science-based evidence on marijuana use and attendant workplace safety risks, there is no rationale to change the Canadian Model upon the legalization of marijuana in Canada - either the drug panel maxima or the overarching principle.

The Canadian Model states as part of the A&D Work Rule: “An employee shall not … report to work or work … while unfit for work on account of the use of a prescription or non-prescription drug.” The overarching principle of the Canadian Model is that workers as well as supervisors and companies are responsible for ensuring that fellow workers are not placed at unacceptable risk due to potential safety deficits, whether from cocaine, marijuana or prescription pain medication.

Employers can be proactive in educating their workers that very little will change with respect to worksite safety once marijuana is legalized. Additionally, it will be helpful to educate workers about the workplace safety risks associated with marijuana use. Ensuring supervisors have current training, with respect to employee observation and response and reminding employees of the availability of EAP, are worthwhile efforts at any time.

Both employers and employees who are interested in learning more can access an authoritative review of marijuana facts by Dr. Brendan Adams, posted on the CLR-A website: https://clra.org/p/marijuana+and+the+safety+sensitive+worker.

COMMUNICATIONS / RECORDS QUESTIONS

25. Does the Canadian Model Require That All Positive Drug Test Results Receive MRO Review? Can the Designated Company Representative Receive that Result Directly from the Lab?

Section 4.8 requires the employer to retain a laboratory as defined by the Model; Appendix A (II) #26 – 30 describe the steps to be taken by the Laboratory to communicate test results to the company Medical Review Officer (MRO). *Section 4.9* of the Model requires that all non-negative test results be reviewed by an MRO who will make the final determination whether the test is positive, negative, negative with safety advisory, refusal to test, or cancelled with or without further direction. The MRO will then provide a confidential written report to the company representative.

26. Should the Site Owner be Provided with the A&D Drug Test Results from Employees of Contractors?

The employee's test results must only be disclosed to a person who needs to know the results in order to discharge an obligation under the Canadian Model, i.e. the direct employer of the employee and not the site owner. Under *Sections 5.4 and 5.5*, owners and bargaining agents/labour providers may also exercise a role under the Canadian Model: to fill those roles, they need to know only that a violation of the Canadian Model occurred, not the details of the test results.

27. Should There be a Repeat Violation of *Section 3.1(b)* After a Person is Back On-Site Under a return-to- work agreement (i.e. strike two)? Does the Employer Have the Right to Terminate? Is the Employer Obligated to go Through the Whole Process Again?

The answer to this will be determined by the specific provisions of the return to work agreement.

28. How Long do Records of A&D Test Results Need to be Retained? Is there a Recommended Time, a Mandatory Time, or No Limit?

Records retention has not been addressed in the current version of the Canadian Model. There are several considerations that an employer may weigh when deciding to retain A&D test results for shorter or longer periods:

a) **Privacy Legislation** – requires an employer to only maintain records for as long as reasonably necessary for legal or business purposes. Consult your Corporate Privacy Officer to confirm your company-specific timelines.
b) **Legal** – Employers should review their retention policies to ensure they are retaining records in accordance with any statutory requirements and for as long as necessary for the purposes of any legal proceedings.

Records should include: documented reasons for asking for an A&D test, referral to a Substance Abuse Expert, referral and follow-up through Employee and Family Assistance Program, return to work conditions, etc.