GRIEVANCE ARBITRATION

BETWEEN

UNIFOR, LOCAL 707A
(the Union)
and

SUNCOR ENERGY INC., OIL SANDS
(the Employer)

Policy grievance: Random Alcohol and Drug Testing Policy

ARBITRATION BOARD

Chair:	Tom Hodges
Employer Nominee:	David Laird, Q.C.
Union Nominee:	Gwen Gray, Q.C.

For the Employer:	Barbara Johnston, Q.C. Counsel April Kosten, Counsel Allen Kirk, Director Legal Affairs, Oil Sands Bradley Droppo, Director Labour and Employee Relations Ryan Danielson, Manager, Labour Relations
For the Union:	John R. Carpenter, Counsel Michelle L. Westgeest, Co-counsel Roland Lefort, President Unifor Local 707A Angela Adams, Vice President Unifor Local 707A
Hearing Dates:	January 2, 3, 2013; February 11, 12, 13, 2013; March 5, 2013; April 24, 25, 28, 30, 2013: May 1, 2013; September 16-20, 23-25, 27-28, 2013: November 21, 22, 2013
Award:	March 18, 2014

TABLE OF CONTENTS

I - INTRODUCTION

[1] This arbitration concerns a policy grievance filed by the union against the introduction by the employer of random alcohol and drug testing at Suncor operations located in the Athabasca oil sands, in the Regional Municipality of Wood Buffalo ("RMWB"), approximately 30 km north of Fort McMurray, Alberta (the "Base Plant"). In addition, Suncor has in situ operations at McKay River and Firebag ("In Situ Operations") located approximately 120 km north of Fort McMurray. Together, Suncor's operations in the RMWB will be referred to in this decision as the "Oil Sands Operations".

[2] In this award Suncor Energy Inc. Oil Sands is defined as the Employer. It is part of Suncor, an integrated international energy company. Unifor is defined as the Union. At the time the grievance was filed, the Union was the Communications, Energy and Paper Workers Union (CEP) Local 707. During the course of the hearings a merger occurred between the CEP and the CAW creating Unifor. Those employees represented by Unifor are referred to as "Union Employees". Suncor also has a sizeable workforce that is not represented by the Union. These employees will be referred to as "Non-Represented Employees" in this decision. The third type of employee working at the Base Plant and In Situ Operations are those who are not employed by Suncor but by contractors. These employees are referred to in this decision as "Contractor Employees". Reference to "worker" is a deliberate term when the specific category cannot be determined.

[3] The arbitration was conducted over the course of 23 days. The Board heard from 19 witnesses. The union called seven witnesses including one expert. The employer called 12 witnesses including three experts. Extensive evidence was offered by both sides; the chart listing these Exhibits is 32 pages long. Both parties filed written submissions and reply submissions, totalling 188 pages. In summary, this was a lengthy, technical and complex arbitration involving significant evidence and extensive oral and written submissions.

II - BACKGROUND

A. Suncor's Workforce

[4] As of July, 2013, the Union represented 3,383 workers employed at the Oil Sands Operations. In 2003, this number was 1,526. The Unionized workforce has more than doubled in the past decade (Ex. 69). There are a further 2,963 Non-Represented Employees. There can also be up to 3400 Contractor Employees working at the Oil Sands Operations at one time. Consequently, there can be over 9700 employees – of three different types - working in the Oil Sands Operations at any one time. Of these, 34% (just over one third) are represented by Unifor.

[5] The vast majority of the Union Employees (3,078) are male, with an average age of all employees of 40.2 years. Twenty-six point eight percent of the Union Employees maintain a permanent residency outside the RMWB and "commute" to work. Two hundred and fifteen Union Employees are located at the more remote site of Firebag and are "fly in/fly out" employees.

[6] The Oil Sands Operations run 24 hours a day, seven days a week, 365 days a year. Most of the Unionized Employees work 12 hour shifts. A typical shift rotation for the Union Employees is three days on, three nights on and six days off.

[7] As of July 2013, 12.36% of the Union Employees had less than one year of service with Suncor; 22.74% had more than one year but less than three years of service, and a further 19.82% had more than three years but less than five years of service. Consequently, 54.92% of the Union Employees – more than half of its Unionized workforce – have less than five years of service with Suncor. Only 18.07% of the Unionized workforce has been employed with Suncor for more than 10 years.

B. The Employer's Past Initiatives Against Drugs and Alcohol in the Workplace

[8] In addition to alcohol and drug policies Suncor has put in place a number of initiatives with respect to controlling the use of drug and alcohol by Union Employees, Non-Represented Employees and Contractor Employees.

[9] In 1999, the Employer introduced pre-employment drug and alcohol testing for all new employees.

[10] The Courage to Care program is what is often referred to as a peer based program that encourages workers to intervene when it is recognized that their coworkers have a problem with alcohol or drugs. It was developed jointly by Suncor and the Union in 2000 to change attitudes and the culture towards the use of alcohol or drugs in the workplace. The Union withdrew from the Courage to Care program in 2003 with the introduction by Suncor of the 2003 Alcohol and Drug Policy.

[11] In 2005, Suncor introduced a pre-access standard for contractors. In 2007, Suncor approved the Rapid Site Access Program ("RSAP") for contractors, whereby some workers who access the Suncor site voluntarily submit to random alcohol and drug testing in exchange for quick access to Suncor operations. In 2008, Suncor implemented a Drug Interdiction at Suncor Accommodations Procedure. This Procedure involved the use of sniffer dogs at Accommodations owned by Suncor, but used predominantly by Contractor Employees. Sniffer dogs alert to the scent of drugs**.** In July 2009, in a further attempt to address the issues associated with alcohol being present at these camps, Suncor implemented an Alcohol Free Lodge Policy. In July 2011, Suncor extended the Drug Interdiction policy to the operating footprint.

[12] Suncor also participated in the development of the Drug and Alcohol Risk Reduction Trial Project (DARRPP). Suncor and representatives of Alberta's energy and construction industries were involved in creating a two-year trial evaluation project monitoring the introduction of random workplace alcohol and drug testing. The project was developed after two years of consultation with a multi-stakeholder group and announced on June 20, 2012. However in June of 2012 Suncor announced that it would proceed with its own policy. CEP local 707 was not invited to participate in the development of DARRPP. Although Suncor had participated in the development of the project it was not implemented at Suncor.

C. Drug and Alcohol Testing Policies

[13] On October 1, 2003, the Employer introduced an alcohol and drug policy that provided for post-incident, reasonable grounds, follow-up and post-rehabilitation, return to work alcohol and drug testing (the "2003 A & D Policy"). This type of testing is also referred to in the jurisprudence as "for cause" testing.

[14] Two days later, on October 3, 2003, the Union filed a policy grievance, challenging that policy. That grievance raised issue with the manner in which the 2003 A & D Policy was being applied, and argued certain elements of the policy were unreasonable. The board who heard this grievance was chaired by Arbitrator Elliott, with Employer nominee David Laird, Q.C. (who is also on this Board) and Union nominee Reg Basken.

[15] The grievance proceeded to arbitration, with nineteen days of hearings held between April 6, 2006 and March 10, 2008. That board rendered a unanimous decision on September 3, 2008 resulting in a number of revisions to the policy: *Communications, Energy and Paperworkers Union, Local 707 v Suncor Energy Inc. (Alcohol and Drug Policy Grievance)*, [2008] AGAA no. 55 (Elliott) (the "*Elliott Decision*")**.** The policy that emerged following the *Elliott Decision* is referred to in this decision as the "2008 A & D Policy". The *Elliott Decision* also references the Employer's safety efforts up to that time, including its "Courage to Care" and "Journey to Zero" programs. We do not intend to repeat that summary here.

[16] In May of 2012, the Union was advised that the Employer was introducing *random* alcohol and drug testing at its Oil Sands Operations, testing would apply to employees which occupy "safety sensitive" positions, as defined in the policy (the "2012 Policy"). Of the 3,383 Unionized Employees, approximately 82% of them (2,771) occupy safety-sensitive positions and would therefore be subject to random testing. The safety sensitive nature of the positions designated as safety sensitive is not an issue in this dispute. The Union filed a grievance against the 2012 Policy on July 19, 2012.

[17] The 2012 Policy was to become effective October 15, 2012. On October 12, 2012, the Union applied for – and was granted – an injunction to prevent the implementation of the 2012 Policy pending the result of this arbitration: *C.E.P., Local 707 v. Suncor Energy Inc.* 2012 ABQB 627 (Macklin, J.). On December 5, 2012, the Court of Appeal upheld the injunction: 2012 ABCA 373.

III – THE GRIEVANCE

[18] As the jurisdiction of this Board has been challenged in part on the basis of what has been grieved, we have attached the full Grievance Form as Appendix "A". The basis of the grievance is:

> "The union and all employees, including those employed at Suncor's Firebag operations, grieve the Employer's decision to institute a random drug and alcohol testing policy. The Employer indicates this policy will come into effect October 15, 2012…the policy is unjustifiable, unreasonable, and violates employees' privacy rights, human dignity, and human rights. The policy sanctions unreasonable and unjustifiable searches of employees' persons."

With respect to remedy, the Grievance states:

> The Union seeks a direction compelling the employer to comply with the Collective Agreement and the general law…

IV – THE COLLECTIVE AGREEMENT

[19] The following articles of the collective agreement are relevant to this dispute:

ARTICLE I – PURPOSE

1.01 The purpose of this Agreement is to promote harmonious relations between the Company and the employees; encourage safety; promote the morale of all employees through procedures for the fair and peaceful resolution of grievances and disputes; to provide a means for continuing dialogue between the Company and the Union that has the mutual objective of resolving differences and matters of concern to either party and to promote a shared commitment to effective and efficient operation in the interest of both parties.

ARTICLE III – MANAGEMENT RIGHTS

3.01 The Company shall retain and exercise all management functions, duties and responsibilities except as limited, restricted or precluded by this Agreement.

ARTICLE IV – UNION RELATIONS

4.01 This Agreement shall be administered and applied in a fair and just manner to all employees. The parties further agree that there shall be no intimidation of and no discrimination against an employee either by the Company or by the Union, by reason of activity or lack of activity in, or in respect of the Union or by reason of sex, sexual orientation, race, creed, colour, national origin, political or marital status.

V – EVIDENCE

[20] We do not intend this summary of evidence to be exhaustive. Considering the extent of the evidence offered at this hearing, it would be an impossible task. The parties can be assured we have read and considered the evidence in its totality.

A. Union Witnesses

[21] Mohammad Al-Dhaby was first to testify on behalf of the Union. He has worked at Suncor since June of 2008 as a heavy equipment operator and process operator. He is an observant Muslim. His religion forbids him from using alcohol and drugs. He described the post-incident alcohol and drug testing process as being detained without handcuffs – the supervisor is looking at you the whole time, you cannot eat, you cannot drink, you cannot go to the bathroom. He feels "panicked" when ordered to submit to a test. He testified that he panicked the first time he had to take a breathalyser test and it took him three tries to obtain a suitable breath sample. The third time he was tested, he had to wait in his supervisor's office for three to four hours before being sent for the test. Each time he is tested he is confident he will pass yet there is always a lingering doubt. How will he explain being sent home to his wife? He confirmed that his drug test was by urinalysis and that the collection of the urine sample was conducted behind a closed door and not observed.

[22] Ian Beaton, a machinist at Suncor was the second Union witness. He became a Union steward shortly after becoming a Suncor employee in 2003 and has held the positions of Vice President and Interim President. He has been subject to two alcohol and drug tests. He described alcohol and drug testing as "stressful" and "embarrassing" for himself and other bargaining unit members. As a steward Ian has accompanied bargaining unit members to the testing facility. He tells members "it is going to be okay", despite knowing the same reassurance would not comfort him.

[23] Don MacNeill was the third Union witness. He started with Suncor in June of 2007 and has worked as a heavy equipment operator before being elected Union Area Safety Representative for Mining Operations. He described an incident he attended as part of his safety officer duties in which a haul truck had made contact with a high voltage cable. As part of his duties he began taking pictures of the incident. After working at the incident site for some time, another

supervisor arrived and told him he would be required to take an Alcohol and Drug test. He testified that he and seven or eight other employees present at the incident were taken in separate trucks for alcohol and drug testing. The supervisor that sent him for post-incident testing is his neighbour, someone who knows him and his lifestyle. The process left him feeling disrespected, distrusted, angry and humiliated. He was confident he would pass the test, but was concerned about something going wrong and the impact a false positive would have on him.

[24]Brenda Sitko began her employment with Suncor in 1998. Ms. Sitko, an aboriginal woman, proudly gave evidence of her extensive training and qualifications to operate all of Suncor's heavy equipment including the largest haul trucks, dozers, loaders, graders and shovels. She has been tested for alcohol and drug use on three occasions. She testified that the first time she was subjected to testing was "the most inhumane experience" she had ever experienced. She had her dream job: she was one of the first female shovel operators at Suncor. After that test she did not want to run the shovel anymore. She felt "totally diminished".

[25] Ms. Sitko has been tested with negative test results multiple times. Ms. Sitko also gave evidence regarding the frustration of an initial positive or "false positive". Following that test she was advised that she was not fit to go back to work. She testified that she was never told why she failed the initial test and she sat at home for several days. When she called to find out what was happening she was told that she could return to work. She was not told anything other than that she was OK to return to work. Ms. Sitko spoke of the stress related to the uncertainty of sitting at home waiting for results and the frustration of never being told why she had originally been found not fit for work.

B. Suncor Witnesses

[26] The Employer's first witness was Mike Agnew, Vice President of Operations and Integration. He has worked at Suncor for over thirteen years. Mr. Agnew explained the Suncor extraction of bitumen from oil sands through both surface mining and in situ (steam injection) operations. The majority of extracted bitumen is then upgraded on site. The Oil Sands Operations consist of two operating mining sites, two operating in situ extraction sites, two primary extraction plants and two upgrading facilities. There are also power generation facilities, crushers and sizers, tailings ponds, a series of interconnected roadways, office and administrative

buildings, storage facilities, landfill, fabrication and maintenance shops, and an aerodrome and landing strip.

[27] Mr. Agnew explained that surface mining extraction occurs at two operating mining sites at Base Plant: the Millennium Mine and the North Steepbank Mine. The Millennium Mine occupies approximately 63 square kilometres whereas the North Steepbank Mine occupies approximately 32 square kilometres. He noted that these operations are adjacent to the Athabasca River.

[28] Mr. Agnew explained that the operation continues twenty four hours a day, three hundred and sixty five day a year. He noted that most employees work twelve hour shifts. The shifts generally consist of a cycle of three day shifts followed by 24 hours off, then three night shifts which are followed by six days off.

[29] Mr. Agnew gave evidence regarding the surface mining process. The Employer mines approximately 450 kilo tonnes (kt) of oil sands per day using shovels with buckets that hold approximately 100 tons per pass. The ore is transported for processing in some of the world's largest trucks, carrying close to 400 tons per load at average speeds of 35 to 40 km per hour. The same fleet is used to move approximately 780 kt of overburden material daily, which is backfilled into the mined out pits or stockpiled externally. The remaining materials (muskegs, sands, gravels and limestone) are mined with smaller trucks and hoes and used in final reclamation of the mined land or for civil works.

[30] Mr. Agnew testified that the Oil Sands Operations use some of the largest and most complex mining, industrial and upgrading equipment in the world, including heavy hauler trucks that weigh in excess of 400 tons; and cable shovels and hydraulic shovels, which stand as high as 21 metres tall (the height of a five-storey building). He also explained how the Employer's In Situ Operations use steam assisted gravity drainage technology to inject steam into the oil sands deposit and collect the bitumen released by the heat. The recovered bitumen is sent by pipeline to Suncor's upgrader facilities at the Base Plant.

[31] Mr. Agnew gave evidence of how extracted bitumen from both the surface mining process and the in situ process is upgraded by two upgraders on site. During the upgrading process, the bitumen is heated and sent to drums where excess carbon, in the form of petroleum coke, is

removed. The superheated hydrocarbon vapours from the coke drums are sent to facilities called fractionators where vapour condenses into naphtha, kerosene and gas oil. These products are then blended into synthetic crude oil and diesel fuel. Following the upgrading process, synthetic crude is then shipped by pipeline to refineries throughout North America where it is further processed to produce a range of consumer and industrial products.

[32] Mr. Agnew emphasized the Oil Sands Operations are complex and hazardous and there are a number of risks to people, property and the environment on site. The slightest moment of inattention by a worker can lead to catastrophic consequences including serious injury, fatalities and environmental harm. He noted that much of the Base Plant is encompassed by a blast zone. A "blast zone" is an industry term used in upgrading wherein, given the volatility of the products and high pressures and temperatures used, there is a significant risk of auto ignition and an explosion. The blast zone is calculated by determining the risks associated with a blast and how far-reaching the impacts of that blast may be. At the Oil Sands Operations, the blast zone encompasses the majority of the upgrading and energy and utilities areas. At any given time, hundreds, if not thousands, of individuals are working within the blast zone. Any type of explosion within that blast zone could result in extensive damage, potential fatalities and serious injuries to multiple workers. He noted that as many as 1000 workers may be in the blast zone at a time.

[33] In cross-examination, Mr. Agnew confirmed his participation in the 2010 contract negotiations as part of the Employer's team negotiating with the Union. He acknowledged the common goals of safety and harmonious relations. He agreed that the alcohol and drug policy was not the subject of collective bargaining with the Union.

[34] Anne Marie Toutant was the second Suncor witness. She is a mining engineer with extensive mining experience, joining Suncor in 2004. At the time of the hearing she was Vice President Optimization and Integration, Oil Sands and In Situ.

[35] Ms. Toutant provided testimony and over forty documents (Ex. 21, Tabs 1-42) relating to the comprehensive safety programs at Suncor. She noted that new safety policies are constantly created and old ones amended to meet the needs and concerns in the workplace. She provided evidence regarding the progress of Journey to Zero, a Suncor workplace initiative founded on the

belief that all workplace incidents and injuries are preventable. She also provided extensive information regarding the introduction of Life Saving Rules in 2009 and the requirement to arrive "Fit for Duty" as it related to compliance with the existing alcohol and drug policy at the time (Ex. 31, 36 and 37).

[36] Ms. Toutant explained that the risk of injury or death and environmental catastrophe is high in the Oil Sands Operations. The cost of a lapse in judgment is extraordinary in terms of ensuring safety. She noted that there have been 20 fatalities at the Oil Sands Operations. These have been the result of many different hazards and/or situations, including explosions, fires, heat exposure in a confined space, heavy equipment mishaps, and falls from height.

[37] Ms Toutant reviewed three fatalities in which she knew drugs or alcohol had played a role:

In the first fatal incident which occurred in 2007 a contractor employee, who had been previously banned from the Employer's site, stole a van and drove through the gates at high speed into the upgrader area. In the "Coker Area" he abandoned the van and climbed up a structure which he then jumped off. Ms. Toutant noted that he had twice the legal limit of alcohol for driving and also tested positive for cocaine.

In the second incident that occurred in 2009, a contractor employee working for a tire repair company was killed while repairing a truck tire. In the morning, while airing up a multi piece haul truck tire that he had just repaired, the tire rapidly deflated and the rim of the tire struck the contractor causing his death by blunt force trauma. Although he was working alone at the time of the incident, earlier that morning he had been under supervision by his contractor supervisor. The investigation revealed that he had more than twice the legal limit of alcohol in his system and there was a bottle of rye whiskey found in his truck.

In the third incident described by Ms. Toutant, which occurred in 2011, a contract employee died at the McKay River camp. He was found unresponsive. He had consumed a considerable amount of alcohol and chocked on his own vomit.

[38] In cross-examination regarding the second fatality incident, Ms. Toutant acknowledged that the contractor supervisor had been present shortly before the contractor employee was killed. She

also confirmed that Journey to Zero and Occupational Health and Safety training for Suncor employees was encouraged for contractors as well.

[39] In cross-examination, Ms. Toutant also acknowledged that Suncor keeps statistics on reportable injuries and that there is an overall downward trend in reportable injuries at Suncor. This was confirmed in documents tendered through Ms. Toutant: see Exhibits 21(18) and 21(31)(b). Ms. Toutant confirmed that, at the time of the hearing, the last death of a bargaining unit employee occurred in 1994.

[40] Robert Tidsbury also gave evidence on behalf of Suncor. Mr. Tidsbury joined Construction Labour Relations ("CLR") in 1975 and has been the Chief Operation Officer and President since 1985. CLR, an Alberta association, is funded by hourly dues and monthly fees and represents unionized employers in general construction. He described CLR's objective as facilitating contractors safe work performance. Its programs try to assist management of contractors in safety training, including better supervision. CLR represents contractors on the various Oil Sands operations – those involved with both long and short-term maintenance - including the Employer's Millenium Mine**,** the Steep Bank Mine and Firebag.

[41] Mr. Tidsbury testified there is a co-mingling of Union Employees and Contractor Employees at these sites, and that he has been at the Base Plant and Firebag Sites and has seen Union and Contractor Employees intermingling in their work. His evidence is that "shutdown" occurs most years, and takes from seven weeks to three months. During this time there is a close relationship between Union Employees and Contractor Employees. Some Contractor Employees are on site for short periods; other Contractor Employees are on site for longer periods of time. If a contractor does not meet Suncor's various standards they are removed from the oil sands site.

[42] CLR has had an increasing concern over drug and alcohol in the workplace for the past two decades and was among the parties who asked for a drug and alcohol policy to be developed. A drug and alcohol policy was ultimately developed by the Construction Owners Association of Alberta in 1999 ("the COAA Policy") (Ex. 35). The policy prohibits employees from working while "under the influence" of alcohol or drugs that may or will affect their ability to work safely while ensuring that employees are treated fairly and with respect. It includes four types of testing: site access, reasonable cause, post-incident and return to work. It also "contemplates"

random testing: an employer must give notice to the union and employees that it intends to implement random testing.

[43] Mr. Tidsbury explained the COAA Policy (also referred to as the "Canadian Model") contemplates random testing by either oral fluid (also called buccal swab, or saliva testing) or urine. During his testimony he described pre-employment urine testing as "a test that can be studied for". His workshop presentation material on Trends and Emerging Issues in the Industry was provided to the Board (Ex. 45). It indicated a preference for oral fluid (buccal swab) testing. Mr. Tidsbury's evidence is that he feels that reasonable cause testing has not been effective at controlling the drug and alcohol issues faced by management and that a "next step" of random testing should be implemented.

[44] The COAA Policy provides in section 4.6.2 that if an owner does not require random testing, then the contractor will not be required to implement random testing. Suncor gave notice in June of 2012 that it would be implementing random testing. It is Mr. Tidsbury's testimony that contractors working for Suncor were prepared to implement random testing in January of 2013.

[45] Mr. Tidsbury gave evidence regarding some alcohol and drug testing statistics of union building trade contractor employees. He noted that between 2009 and 2011, CLR recorded 2,335 non- negative pre-access alcohol and drug tests; 275 non-negative post incident tests; and 155 non-negative reasonable cause tests (CLR refers to a positive test as non-negative). In cross-examination, he indicated that the non-negative site access tests represented four to five percent of all site-access testing; the non-negative post-incident testing represented seven to nine percent of all post-incident testing; and the non-negative reasonable cause testing represented 50% of all reasonable cause testing. He estimated that the percentage of Rapid Site Access Tests that were non-negative was less than five percent.

[46] Mr. Tidsbury also provided evidence regarding his involvement in the development of the Drug and Alcohol Risk Reduction Pilot Project (DARRPP) (Ex. 42). The 24 month trial project was to run from 2012 to December 31, 2014. It was aimed at bringing labour and management together to collaboratively manage and evaluate, in compliance with legal requirements, the risks associated with alcohol and inappropriate drug use in the workplace.

[47] The pilot project contained provisions for: protection of privacy, random testing based on oral fluid (buccal swab) samples; a dispute resolution appeal process and provisions for guidance of Management and Union participants in the project (Ex.43). The project also required that participants have a policy that meets or exceeds the COAA Policy (also referred to as the "Canadian Model").

[48] In re-examination, Mr. Tidsbury agreed that contractors could impose random testing on their employees under the terms of the COAA Policy and their respective collective agreements without owners, such as Suncor, adopting random testing for their own work forces. He indicated that doing so would be possible, but challenging because of the need to co-ordinate random testing across the site for contractor employees, the perceived lack of equity between contractor employees and the owner's employees, and the irritation to owners caused by loss of time due to the random testing of contractor employees.

[49] Ms. Elizabeth Anne Diamond, Employee Health and Safety Manager at Suncor, testified regarding Suncor's Employee and Family Assistance Program (EFAP). She also testified regarding the random testing process, substance abuse assessments and statistics regarding Suncor's positive alcohol and drug tests. She confirmed that effective June 20, 2012, Suncor began paying for the cost of the Substance Abuse Professionals' recommended treatment program for employees. Prior to that time the costs were only paid on an ad hoc basis.

[50] Ms. Diamond gave evidence that a third party contractor, Driver Check, is conducting alcohol and drug tests on behalf of Suncor. The tests are conducted in a trailer onsite using U.S. Department of Transportation (DOT) standards. She gave extensive evidence regarding the complete process of testing and the laboratory testing procedures conducted by Gamma Dynacare in London, Ontario.

[51] Ms. Diamond gave evidence that in the nine year period between October 1, 2003 and December 31, 2012, there have been 224 positive alcohol and drug tests of Suncor Employees at the operations in RMWB. Of the 224 positive tests, 216 were Union Employees. Considering only the four year period between January 1, 2009 and December 31, 2012, 54% tested positive for marijuana, 32% for cocaine, 12% for alcohol, 1% for heroin and 1% for opiates. Ms.

Diamond also gave evidence regarding the number of employees being referred for substance abuse as well as those self-referring.

[52] Mr. Ian Grant MacPhee, Senior Security Advisor at Suncor is a former RCMP officer. He testified regarding his involvement in drug enforcement and alcohol and drug finds at Suncor sites and camps in the RMWB. Mr. MacPhee testified regarding the number of measures used to evade detection for alcohol and drugs at Suncor, such as: concealing drugs in public areas such as roof panels; vents; laundry rooms, bathrooms; and areas within the operating footprint, such as between beams, under pallets and using various camouflage agents. He testified regarding the wide variety of drugs found in camps and the operating footprint.

[53] Mr. MacPhee testified regarding Suncor's implementation of the Drug Interdiction Procedure at Suncor in 2008. The procedure involves the use of sniffer dogs and dog handlers to detect drugs at Suncor camps, bunkhouses or lodges. The use of sniffer dogs was later introduced at operating sites. Mr. MacPhee testified that between 2004 and August 2013, there have been 2,276 security incidents involving alcohol and drugs (Ex. 63). Among those incidents were finds of devices used to defeat urine drug tests such as whizzinators, bottles of urine and urine testing kits. Mr. MacPhee testified to indications of drug trafficking at camps in the RMWB such as the way drugs are packaged, finds of weigh scales and finding a sawed off 22 caliber rifle.

[54] Under cross examination Mr. MacPhee indicated that he was not concerned whether the incidents contained in Exhibit 63 were contractor incidents or Suncor employee incidents. He indicated that it is up to security how they report incidents and that there is not necessarily any follow up after incidents are referred to the RCMP and it is not common for the police to lay any charges.

[55] Eric Engle has been Vice President HR Business Partners and a Suncor employee since 1997. He provided evidence regarding Suncor demographics and the recent growth of Suncor in the RMWB (Ex. 69). He gave evidence regarding the wage rates and average annual wages of Suncor employees. Mr. Ingle noted that unlike Fort McMurray, the Firebag operation is mostly fly in and fly out with Suncor providing the transportation. At Firebag, the approximately 215 employees work 12 hour shifts on a 7 days on and 7 days off rotation. Mr. Ingle testified regarding meetings with the union regarding alcohol and drug related issues in which no progress

was made. He noted that the decision to introduce random alcohol and drug testing was made by the CEO of Suncor in early June of 2012. He testified that there are currently approximately 70 grievances in abeyance dealing with the 2008 drug and alcohol policy, most of which deal with the question of whether there was a reasonable basis for conducting tests.

[56] Colin Emmett Foley is Vice President of EH&S at Suncor. He has accountability for all safety programs at Suncor. He spoke of the strong safety culture at Suncor. Although he was not involved in its development, he is responsible for the administration of the 2012 Policy.

[57] Mr. Foley gave evidence regarding the variety of injuries that are sustained at Suncor as well as three significant fires that have occurred in the RMWB causing significant damage. He testified regarding a number of incidents that have resulted in a positive alcohol or drug test (Ex.74 & 75). Mr. Foley reviewed a site map indicating the location of some of the alcohol, drugs and drug paraphernalia finds on Suncor's operations in the RMWB (Ex.76). The map illustrated that many of the finds were within the operating footprint and the blast zone. Mr. Foley gave evidence regarding the roll-out of the new alcohol and drug testing policy. He reviewed the communications that went out to employees and leaders. He also reviewed contractor requirements that require meeting or exceeding the 2012 Policy. He noted that as of October 2012 there are 2,771 Union Employees deemed to hold the approximately 15 designated safety-sensitive positions in the RMWB. He provided the Board with updated testing statistics, positive test results and referrals.

[58] In cross-examination, Mr. Foley acknowledged that since 2009 (post-*Elliott decision*) there has been a decrease in the percentage of positive drug and alcohol tests. He indicated that the numbers were trending in the right direction but they were still unacceptable to Suncor.

[59] Sergeant Peyton, Special Enforcement, RCMP in Ford McMurray gave evidence regarding drugs and drug trafficking in the RMWB. He testified that the main drugs in the area are marijuana and cocaine and that Fort McMurray is considered an end use destination. He described a project that led to a number of convictions in the area. He described some recent charges with "Alert", a program in which he runs the regional team in the area. He provided anecdotal information regarding grow ops found in the area and his observations on how drugs are sold in the area. Under cross examination he was questioned regarding charge rates and

comparative data. He indicated that he did not have that type of information. He could not testify to any increase in charge rates since 2008.

[60] Joseph Anthony Vetrone, is Vice President Integration and Planning, and was Vice President EH&S at the time the 2012 Policy was being developed. He has been employed with Petro-Canada and Suncor for over 25 years. He testified regarding the rationale for moving towards random alcohol and drug testing in the RMWB for safety sensitive positions. Mr.Vetrone gave evidence regarding Suncor's Risk Matrix tool used to evaluate risk. Mr. Vetrone testified regarding Suncor's Life Saving Rules related to following the Alcohol and Drug Policy by arriving at work "Fit for Duty". He testified regarding the ongoing review of controls in place and the rate of drug and alcohol and drug incidents within the RMWB operations. He indicated that alcohol and drug use was evaluated at risk level 1, the highest risk level and Suncor decided to move to random testing. Mr. Vetrone reviewed various documents that he had signed relating to the implementation of the new policy. He also gave evidence regarding his participation in DARRPP as a Board member.

[61] In cross examination he indicated that DARRPP provided an opportunity to share data. He noted that Suncor did not keep detailed information regarding positive test results such as by seniority, new hires or location. He also acknowledged that Suncor did not consider the false positive situations like that of Brenda Sitco in reaching the decision to move to random testing.

C. Union Reply Witnesses

[62] Lori McDaniel also gave evidence at this hearing. She began working with Suncor in 2008 and became an Area Safety Representative in 2010. As a heavy equipment operator, her commitment to safety was reaffirmed after a tire fire erupted on the haul truck she was operating. She fought for a thorough investigation of that incident to ensure it considered root causes and planned appropriate follow up. Shortly after Lori returned to the mine, the heavy haul truck she was operating touched a berm on a narrow dump. She was sent for a test. Lori felt "degraded". She described the experience as "terrible". It was a manager on the other end of the phone who sent her for testing based on an incident he had not even witnessed.

[63] As a Safety Representative, she has served as investigator in over 20 safety incidents from January 1, 2011 to February 7, 2013. These incidents range from investigating damage of a cat

walk to a contractor smoking in a bulk explosives truck. Ms. McDaniel focused her safety efforts on three issues: having the right tools for the job for cleaning haul truck lights; making Personal Protection Equipment easily accessible to operators in the mine; and driving incident investigations to find the root cause. Suncor has since recognized Ms. McDaniel's dedication to safety by nominating her for the President's Operational Excellence Award.

[64] Roland LeFort is the president of CEP Local 707, now Unifor Local 707A. He gave evidence that he began working for Suncor in Fort McMurray in 1983 and became active in the Union in 1987. He held various positions in the Local and began his second term as President of the Local in 2010. Mr. LeFort gave evidence regarding the history of alcohol and drug testing and the efforts of the Union in dealing with related issues. He acknowledged that the Union's position has been to oppose alcohol and drug testing. He stressed that the Union proposed counselling Union members and advocated Employee and Family Assistance Programs which were started in 1987 through the Personal Support Network, (PSN) a non-profit society. The PSN also offers services to non Suncor Employees. Mr. LeFort has been on the PSN board since 1994.

[65] Mr. LeFort testified regarding the Courage to Care Program, a joint Union and Management initiative which began in 2001. He noted that the program was about changing the attitude of employees and encouraging them to get involved if they were aware of employees who needed help in dealing with alcohol or drug issues. Employees were encouraged to counsel employees against working while under the influence. Mr. LeFort felt that Suncor had given a commitment to support EFAP and Courage to Care which would be evaluated after five years.

[66] Mr. LeFort felt that EFAP and Courage to Care were about building trust, while he regarded testing as discipline. He was frustrated when Suncor chose to introduce post-incident and reasonable cause testing in 2003 without waiting for the two programs to be evaluated. Following the introduction of alcohol and drug testing, the Union withdrew from Courage to Care but continued its support and participation in PSN.

[67] Mr. LeFort testified that there were 70 grievances relating to the 2003 and 2008 alcohol and drug testing policy that are in the grievance procedure but yet to be resolved. He testified that the Union had attempted to focus on five grievances related to problems with testing. Mr. LeFort

testified that he inquired in May of 2012 if Suncor was considering random testing. He was aware that Suncor was involved in the DARRPP initiative. In June of 2012, he was advised that Suncor had decided to introduce random testing.

[68] Mr. LeFort questioned the Employer's Alcohol and Drug Incident report containing over 2000 incidents (Ex. 63). He noted that most of the incidents related to camps where contractors were the primary residents. He noted that very few Suncor employees stayed in camps and that he could only identify less than 20 of the incidents as relating to his members.

[69] Mr. LeFort found the Policy contradictory to what his members were being told. The urine test provided evidence of use days past yet "Fit for Duty" was explained to his members as what they did on their own time was their business (Ex. 21, Tab 37). He noted the "Fit for Duty" concept had been introduced some time ago. Mr. LeFort expressed concern that some employees were testing positive for past use who may not have been under the influence of drugs. They felt forced to claim a drug problem and go into rehabilitation in order to keep their jobs. If they do not they are fired.

D. Summary of the Changes to the Alcohol and Drug Policy Post - *Elliott Decision*

[70] After the *Elliott Decision,* the Employer changed its language and began adopting a "Fit for Duty" standard. Fit for duty is defined as:

> **Fitness for Duty or Fit for Duty** means the ability to safely and acceptably perform assigned duties without any limitations due to the use or after-effects of Alcohol or Drugs.

[71] Extensive training has been given to employees to flesh out what this standard means practically to them. Suncor relies on its policy as comporting with US DOT regulations. DOT regulations require employees not to be under the influence of drugs or alcohol. Likewise with Transport Canada Regulations, the CLR's COAA Policy and the DARRPP project, in which Suncor was a participant, which all refer to "under the influence" of alcohol or drugs, as opposed to the standard of "fit for duty".

[72] The Employer has also introduced a new provision in the 2012 Alcohol and Drug Testing Standard (4 (c)) which gives supervisors sole discretion to allow employees to return to work when they test positive with a 0.02% to 0.039% BAC level. In contrast, US DOT, Federal Motor

Carrier Regulations also provide for a four hour pre-duty abstinence period for truck drivers performing safety sensitive functions.

[73] In the new 2012 policy, the Employer has also removed paragraph 1(b), which provided for the fair and respectful treatment of employees during testing. The requirement for treating employees fairly and with respect remains in provision 1.1(b) in CLR's COAA Policy and is also required in DARRPP. The Employer also changed the cut off levels for drug testing in the 2012 policy by eliminating the screening concentration levels found in the 2003 A & D Policy. The screening concentration levels were not changed in CLR's COAA Policy or in the DARRPP project. No evidence was provided to the Board to indicate the need for changing those levels or the expected effect of these changes on testing results. No evidence was provided indicating that employees were made aware of the changes to the cut off levels or to the potential impact of these changes for detecting use during their off duty hours. Suncor did produce ongoing evidence during the hearings suggesting higher substance levels being found in test results without acknowledging that the higher levels may have been due in part to the change to cut off levels.

[74] Ms. Toutant gave evidence explaining the comprehensive Health and Safety Policies of Suncor as well as the training for Leaders and union employees. The New Hire Orientation has been provided to over nine thousand contractors and five thousand Suncor employees. Ms. Toutant reviewed the "Journey to Zero" initiative, introduced by Suncor in 2002, as the foundation for a path to safety excellence. She reviewed the extensive workshops and related training. She also reviewed the development of the 2003 A & D Policy, as well as the related training materials. With respect to how the Employer trains its employees on what "Fit For Duty" means, Ex. 37 was offered. It is a set of screen shots from a power point presentation from the mining orientation, and in particular heavy haul truck drivers. The first two statements on the first slide state:

> We are not Robots!
> Suncor will not dictate what you do on your own time

[75] The slide goes on to emphasize that the employee must report "fit for duty", which is defined in a further slide as:

> Being physically and mentally fit to safely perform assigned duties without excessive risk or harm to yourself or others

[76] A subsequent slide urges employees to follow "the 7 "Be's" to be "well on your way" to being "Fit for Duty", which includes being free of all drugs and alcohol at work. This "Be" is also explained as "There is no place for drugs and alcohol in our work environment". Ex. 36 refers to the "Life Saving Rule #7: Follow the Drug and Alcohol policy by Arriving "Fit for Duty". It is also screen shots of a power point presentation. A subsequent slide refers employees to the Alcohol and Drug Procedure and employees are also told that "we cannot tolerate the use of alcohol and drugs on our site". Ex. 35 also refers to "Fit for Duty". It states that following the policy and being "fit for duty" means to, *inter alia,* "Come to work sober; free of all drugs and alcohol". The second page in that Exhibit states that following the policy and being "fit for duty" means to "Come to work drug & alcohol free".

[77] Exhibit 35 is a "Leader's Kit", dated September 22, 2010. It states "All leaders are responsible to ensure that workers who are not fit for duty are removed from the job and proper follow up actions are taken according to the area's procedures". It asks leaders to explain to their workers the "consequence of reporting for duty under the influence and/or incapable of safely doing his or her work" (emphasis added).

[78] Ex. 31 is another power point presentation on "Fit for Duty". The first slide states:

> "Much of the work done at Suncor is in areas or on systems that are highly hazardous if not properly controlled. Because of this, we cannot tolerate the use of alcohol and drugs on our site".

[79] Some new employee orientation and training material provided to the Board indicated cut of levels for alcohol breath tests. However, no evidence was provided of orientation material which indicated the detection times for drugs.

E. Evidence of Involvement of Contractors at the Oil Sands Operations

[80] Mr. Agnew's evidence is that Contractor Employees and Union Employees interact on the Suncor site, and that it is important the Contractor Employees follow Suncor procedures. A turnaround is a shutdown of a large portion of the facility at the same time (for example, an upgrader, which occurs every 5 years). Agnew's evidence is that a large number of Contractor Employees are brought onto the site for turnarounds. His testimony is that there is a higher risk

of accidents during turnarounds, including vapour release and opening of pipes under pressure. A "shutdown" is where one component of the plant is taken out of service. Shutdowns are not always planned, and can result from power outages and leaks.

[81] At any given time – there can be up to 3400 Contractor Employees at the Oil Sands Operations. These employees may be involved in construction, maintenance (planned and unplanned), repairs and mining operations. Numbers can peak during turnarounds. Such events are measured by "hours worked" and can range from 100,000 to 1,000,000 workforce hours. The evidence is this work is hazardous, with workers working at heights, at multiple levels, in confined spaces. The evidence is that there is a considerable integration of Contractor Employees and Union Employees in the Oil Sands Operations and that the safety of each group is affected by the actions of the other.

[82] Contractor employees are represented by various other unions in other bargaining units. Those unions did not give evidence and representatives were not present at the hearings in this matter.

F. Expert Witnesses

[83] Dr. Louis Hugo Francescutti was Suncor's first expert witness. He has a MD/PhD (Immunology) is currently a professor of Epidemiology and Injury Control in the School of Public Health at the University of Alberta and regularly practices emergency medicine at both the Royal Alexandra Hospital and the Northeast Community Emergency Departments in Edmonton, Alberta. Dr. Francescutti is also the current President of the Royal College of Physicians and Surgeons of Canada and the President-Elect of the Canadian Medical Association. He has a MD/PhD (Immunology) from the University of Alberta and completed a Masters of Public Health degree and a Preventive Medicine Residency at the Johns Hopkins School of Public Health in Baltimore.

[84] Dr. Francescutti provided a written report (Ex. 23) with several supporting documents and expert testimony on behalf of Suncor on the degree to which injuries are preventable; the degree to which alcohol and drugs contribute to injuries; and the subsequent impact of injuries on society. Specifically, Dr. Francescutti opined on the desirability, feasibility and pervasiveness of avoiding injuries as it relates to random alcohol and drug testing. The thesis of Dr. Francescutti's

testimony was that all injuries are preventable. In fact, throughout his expert testimony, Dr. Francescutti carefully used the word injury rather than accidents because while accidents are unpredictable and unpreventable, injuries are preventable. Dr. Francescutti gave evidence that injury is a disease with widespread consequences.

[85] Dr. Francescutti stated that alcohol and drug use has an impact on workplace injury. He reviewed a United States study that found that 12.7 million of the 20.6 million adults with substance dependence or abuse issues were employed full time; these are people who self-identify that they have substance dependencies and who attend work. Dr. Francescutti testified in his expert opinion that there are people at work who are under the influence of alcohol and drugs. He opined that research has found a deterrent effect of drug and alcohol policies and that random policies show "great promise" in reducing "needless pain and suffering**" (**at 7). He opined that random alcohol and drug testing policies also decrease an employer's expense on healthcare, citing the experience of a US transportation company. He also noted research of the deterrent impact of a "zero tolerance" drug policy amongst U.S. military personnel.

[86] Under cross-examination Dr. Francescutti was questioned regarding the connection between the United States "War on Drugs" and the advocacy of random drug testing in Canada. He responded that he had never made that analogy. He acknowledged that not all substance users have a problem. Dr. Fancescutti acknowledged that he was not aware of what would occur under Suncor's policy if an employee tested positive and it was determined the employee did not have a substance problem. He also acknowledged that he was not an expert on the policy matters of how employees should be treated after limited substance use on their days off.

[87] Dr. Kadehjian provided an expert report with over 70 supporting documents (Ex.49) and testified on behalf of Suncor as an expert in forensic toxicology. He has a Ph.D. in Biochemistry, with experience in the neurobiology of addiction, psychomotor and cognitive effects of alcohol and drugs, pharmacology and pharmacokinetics of drugs of abuse, alcohol and drug testing technologies and specimens, and the clinical interpretation of alcohol and drug results. He is an independent biomedical consultant based in Palo Alto, California.

[88] Dr. Kadehjian gave evidence with respect to: (a) the effects of alcohol and drug testing on psychomotor and cognitive functions relevant to the functioning in a safety-sensitive position;

(b) the role of urine drug testing in accurately identifying those whose drug use creates a "red flag" for increased safety-related risks; and (c) the role of random alcohol and drug testing as part of a comprehensive alcohol and drug testing workplace safety program.

[89] Dr. Kadehjian testified that with the cut-off levels used in the Suncor test menu, which comport with the US DOT Standards, an occasional marijuana user may test positive for one to two days following use, and rarely longer, depending on dose. Despite this, in his opinion, urine drug testing does provide objective information about a donor's recent drug use, the status of the donor and the associated safety-related risks. He noted that he was not advocating urine testing over any other testing method but rather his evidence was that urine testing was effective in identifying "recent use". Dr. Kadehjian testified that the 2012 Policy is well-crafted to fairly and accurately identify this "recent use" and that this "recent use" creates a "red flag" for safety-related risks.

[90] Dr. Kadehjian referred to the United States Department of Transportation (DOT) standards, for the performance of alcohol and drug testing. It has also established recognized cut-off levels that are used worldwide. These cut-offs were designed to identify "recent use" of drugs and, in Dr. Kadehjian's opinion, the DOT cut-offs demonstrate recent use that is consistent with known psychomotor and cognitive deficits associated with alcohol and drugs. Dr. Kadehjian further confirmed that the cut-off levels used by Suncor in its Alcohol and Drug Testing Standard are consistent with the cut-off levels in the DOT Standards.

[91] Appended to Dr. Kadehjian's report is a paper published by the U.S. DOT, National Highway Traffic Safety Administration, called "Drugs and Human Performance Fact Sheet" ("Fact Sheet") (Ex. 49, Tab1). This document reviews various drugs, their various performance effects and duration of those effects, interpretation of blood and urine test results and other information. Dr. Kadehjian stated the Fact Sheet was an excellent compilation of drug effects and information. With respect to performance effects of cannabis, this paper notes those effects are "usually observed for at least 1-2 hours following marijuana use, and residual effects have been reported up to 24 hours" (at p.11). It should be noted this 24 hour residual effect is in fact controversial. Dr. Macdonald refers to the limitations of the study referred to in this report, in his evidence.

[92] With respect to urine testing, the Fact Sheet states:

> Detection of total THC metabolites in urine, primarily THC-COOH-glucuronide, only indicates prior THC exposure. Detection time is well past the window of intoxication and impairment…It can take as long as 4 hours for THC-COOH to appear in urine at concentrations sufficient to trigger an immunoassay (at 50 ng/mL) following smoking. Positive test results generally indicate use within 1-3 days; however the detection window could be significantly longer following heavy, chronic, use. Following single doses of Marinol [medical marijuana], low levels of dronabinol metabolites have been detected for more than 5 weeks in urine (at p. 10).

[93] Even with blood testing, the Fact Sheet states: "It is difficult to establish a relationship between a person's THC blood or plasma concentration and performance impairing effects. Concentrations of part drug and metabolite are very dependent on pattern of use as well as dosage".

[94] With respect to the limitations of urine testing generally, Dr. Kadehjian argues that such testing provides

> …"information about the recent drug use" [and the]… "associated safety risks",…[Suncor's policy]…. can "fairly and accurately identify sufficient recent drug use creating a "red flag" for safety-related risks" (at 14)… "these cut-offs [in Suncor's policy] have been established so as to accurately identify recent drug use which would create a "red flag" for safety-related risks" (at 14).

[95] He admits that while a breathalyser can give positive results immediately, and a urine test cannot, a urine test can give negative results immediately. It is only positive results which require "additional time" as they must be sent away to a laboratory, which he describes as a "strength" of the program. Dr. Kadehjian gave extensive evidence regarding the effects of alcohol & drugs on safety-related performance. He noted that alcohol causes a dramatic reduction in psychomotor skills and cognitive function, including visual disturbance, effects on judgment, lack of coordination and lack of motor skills. There are also hangover effects associated with alcohol use which last beyond the period in which alcohol can be detected through an alcohol test and as such, alcohol use is incompatible with safe work performance in a safety-sensitive work environment.

[96] Dr. Kadehjian confirmed that Suncor's alcohol cut-off levels of 0.02% and 0.04% comport with well recognized and established criteria to identify individuals presenting increased safety

risks from alcohol use. These cut-offs also comport with the DOT standards, however he notes that DOT regulations in fact require the removal from the workplace of anyone at 0.04% or above, as being incompatible with working in transportation, and require that individual to be seen by a "Substance Abuse Professional" before they can return to duty**.** He also notes that an individual testing below 0.04% but above 0.02%, is also removed from the workplace under DOT regulations, and are not allowed to return to duty until his or her blood alcohol concentration level ("BAC") has dropped to below 0.02%.

[97] Further, Dr. Kadehjian's evidence is that workplace studies have demonstrated that supervisors and co-workers are often reluctant to report and identify individuals who are not fit for duty. Dr. Kadehjian noted that workplace substance abuse programs should include training supervisors to recognize signs and symptoms of an unfit and unsafe employee. However, co-workers and supervisors should not be expected to make a diagnosis of whether alcohol or drugs are, in fact, involved. Dr. Kadehjian further noted that in many workplaces, a worker may be unsupervised, and therefore co-worker or supervisor observation and identification of alcohol or drug-related performance deficits may not be possible.

[98] In his opinion, random alcohol and drug testing, with its important deterrent effect, is a proactive and ongoing response to mitigate workplace safety risks. Dr. Kadehjian provided various studies that examined the implementation of random drug testing as well as peer care programs and random testing. He emphasised that he was not recommending urine testing but rather supporting that it was effective in determining "recent use". He noted that he had also provided the Board with a recent study on oral swab testing as evidence of balance on the issue.

[99] In cross-examination, Dr. Kadehjian agreed that, as a toxicologist, he is primarily concerned with the measurement of drugs and alcohol in humans, and acknowledged that he is not an expert in physiology, which is concerned with the effect of alcohol and drugs on performance deficits. He also acknowledged that he is not an epidemiologist.

[100] The Employer's third expert witness, Dr. Mace Beckson, is a Forensic Psychiatrist. He is a licenced physician in the States of California, Florida and New York, a Clinical Professor of Psychiatry & Biobehavioral Sciences, UCLA, and Medical Director, Psychiatric Intensive Care Unit, VA [Veterans Affairs] Greater Los Angeles Healthcare System. He is Board Certified in

Psychiatry, Addiction Psychiatry, Addiction Medicine and Forensic Psychiatry. Dr. Beckson provided a written report with over 150 supporting documents (Ex. 58) as well as giving evidence.

[101] Dr. Beckson's expert opinion is that drug and alcohol use, abuse and addiction are particularly common in industries that are inherently dangerous. Using drugs and alcohol in combination is also common among those who use such substances, and often takes place in recreational contexts, and not just among those with substance abuse issues. Such use in "close temporal proximity to the work shift" can result in performance deficits which increase the risk of human error. As to what "close temporal proximity" means, Dr. Beckson's evidence is that, "depending on the substance, the amount used, and the use pattern, using substances on off-days may result in performance deficits" (at 12). His opinion is "only very recent use of the drug detected in the urine" is in fact detected with the cut offs used in Suncor's policy. He notes generally that detection times in urine range from two hours to four days following the last use of the drug and that the time period from 2 hours to 4 days is associated with "clinical phenomena".

[102] It is also his opinion that performance deficits caused by drugs and alcohol will manifest "mostly or entirely" during times of "high cognitive loads", such as multi-tasking or responding to non-routine, unexpected or emergency situations.

[103] Dr. Beckson also gave evidence with respect to the effects of substance use, including "diminished performance monitoring" whereby an employee does not have the ability to monitor his or her own errors, which increases the risk of incidents, and the difficulty of an employee to self-monitor their "fitness for duty". He agreed with Dr. Kadehjian that it can be difficult even for people who are trained to identify individuals under the influence of substances, and "risk-enhancing performance deficits" can in fact occur when an individual is not acutely under the influence. Therefore supervisors cannot be relied upon to detect use, intoxication or performance deficits. It is not until an addicted employee proceeds very far along in his addiction that his demeanor and physical appearance have deteriorated to the extent that others perceive the possibility of a substance abuse problem. He opined that same employee has "likely" been at work on numerous occasions while "under the influence", or during a "crash" or "withdrawal",

all of which are incompatible with working in a safety-sensitive environment. A "for cause" incident test is often the source of first detection.

[104] With respect to alcohol and drugs, it is Dr. Beckson's opinion that brain function can be disrupted even when the blood concentration is zero, and that "carry over" effects can exist – performance deficits remain, even with no detectible substance – with the "hangover" from alcohol, or the "crash" following stimulant use. Also, withdrawal syndromes and long-term toxicity affects can also impact an employee.

[105] Dr. Beckson states that "the notion that a blood alcohol concentration (BAC) of 0.08% defines a scientifically derived threshold for driving performance deficit is inaccurate"; performance deficits begin at the" lowest measurable alcohol concentrations" and increase approximately in a dose-related fashion (quoting a 2012 study, at 18). Further:

> Alcohol has been demonstrated to impair driving performance even in low dosage. Complex measures of cognitive functioning, such as divided attention and mental workload, show significant performance deficit at very low blood alcohol concentrations (less than 0.02%) (at 18).

[106] He also gave evidence regarding the carry-over and hangover effects of alcohol, which occurs "well after" BAC returns to zero. His evidence is this effect can last up to 8 hours, although it is not clear from his evidence whether this is impacted by the amount of alcohol consumed. He also refers to the problem of sleep deprivation in chronic alcohol abusers. Further, even those who achieve abstinence for 2 to 12 months suffered performance deficits across 10 areas. The study concluded cognitive dysfunction "may linger for up to an average of 1 year after achieving abstinence from alcohol in individuals with alcohol dependence" (at 19-20). Recreational users also have performance deficits. Cognitive deficits can also occur in the abstinence phase, in those who are chronic users and cocaine-dependent, including sleep abnormalities.

[107] Like Dr. Kadehjian, Dr. Beckson believes a "risk-reduction strategy relies upon both deterrence and detection of alcohol and drug use" (at p. 6 of his report). His opinion is deterrence

is very effective for modifying alcohol and drug-using behaviour of individuals who are not addicted as well as for addicts who are ready to change. He believes random testing can move addicts into that stage. In his opinion, random testing is also effective for "detecting such high risk employees before they have an incident" (at 6) and is important for detecting and removing these "high risk addicted employees" from the workplace. This can be a "life-changing intervention" for individuals struggling with addiction (at 7). If such individuals continue to come to work "repeatedly unfit for duty", these individuals "elevate the risk" of incidents and injuries in hazardous workplaces (at 6).

[108] With respect to the value of urine drug testing, his expert opinion is:

> Urine drug tests detect use in close temporal proximity to work, precisely the time period in which use can cause performance deficits and undermine fitness for duty (at 7).

[109] Dr. Beckson's evidence regarding performance deficits and detection windows is general. Where that evidence contradicts that in the Fact Sheets, we prefer the evidence in the Fact Sheets. Dr. Beckson also gave general evidence, such as the number of individuals killed in motor vehicle accidents in Canada each year, their gender, the rates of drivers who are legally impaired by alcohol, those individuals who admitted to driving within an hour of drug use and alcohol use, etc. With respect to the workplace, his evidence is that according to research in the UK and Germany, 7 to 10% of incidents are alcohol-related, and that the issue is more of a concern in safety-sensitive workplaces, because certain industries carry a higher risk than others.

[110] With respect to Alberta, Dr. Beckson noted that the 2002 Alberta Alcohol and Drug Commission conducted a survey which indicated 5% of working adults reported very heavy drinking prior to coming to work, with 4% reporting drinking within 4 hours of coming to work, and 11% reporting using alcohol at work. One percent reported using illicit drugs at work in the past year and 2% reported to using those drugs within 4 hours of coming to work. In a 1995 study, 14% of oil and gas workers admitted to having been at work under the influence of alcohol. Dr. Beckson also related statistics relating to haul trucks in the mining industry in the U.S.

[111] Dr. Beckson's evidence is that the number of assessed dependent employee (combining self-assessed and assessed by an abuse professional) have increased 122%: 18 employees in 2010; 23 employees in 2011 and 40 employees in 2012. It is not clear in the evidence if these numbers related to Union Employees or Non-Represented Employees**.** He opines:

> The determination of addiction in 40 employees in 2012 suggests a workforce culture in which substance use is endemic.

[112] He goes on to state:

> In addition to those identified addicted employees, there were likely a greater number of undetected employees who would be assess as substance abusers; as well as even a greater number still of undetected employees who may not be addicts or abusers, but who intermittently use alcohol and drugs in a manner that increases their risk of performance deficits.

[113] Dr. Beckson goes on immediately to state:

> I infer from the statistics that in the Suncor workforce, there is a permissive attitude towards alcohol and drug use among the employees, despite the comprehensive multifaceted alcohol and drug program. In my professional opinion, random alcohol and drug testing as part of the Suncor alcohol and drug program would strengthen deterrence, improve detection, and decrease the risk of incidents and injuries in the workplace (at 8).

[114] Dr. Beckson did not provide evidence of the percentage of individuals addicted in the general population, or in particular industries, nor whether he was aware of the increase of Suncor's Unionized workforce in sheer numbers between 2010 and 2012, which may affect whether the percentage overall of addicted employees is increasing or decreasing. There was no evidence given of what percentage of "undetected employees" are found in workforces as substance abusers for each percentage of "addicted employees", (to show it is in fact "greater") nor how many intermittent users of alcohol there generally are, as related to "substance abusers" (to show this is even "greater"). His evidence is only there are "likely" greater and greater numbers on the continuum of addicted to substance abusers to intermittent users, presumably all are using at work or coming to work in "close proximity to using", and presumably all individuals would present performance deficits and safety risks in the workplace, but the basis for this conclusion is not clear from either his expert report or his testimony, nor is it clear if this number is greater than the data offered by Suncor that 16-22% of all individuals employed in

Canada experience serious personal problems which adversely affect their work performance (Ex. 31).

[115] His evidence is that, while employees can be subject to random testing, the "odds are" that on average, each employee will be subjected to random testing once every two years. It is unclear how these "odds" are derived.

[116] With respect to the urine test itself, Dr. Beckson's evidence is that, when a positive test is sent away, it is tested with "highly accurate and specific methodology" to identify a "single specific molecule that must be present in quantities greater than the established cut off", and that these cut offs are the same as those used in the DOT standards. He does not refer to the DOT Fact Sheets with respect to detection windows and duration of effects, for urine testing.

[117] Dr. Beckson's evidence is that a positive urine random test will catch addicted employees, because they use "more frequently and in greater quantities" than non-addicted employees, and therefore these "high risk employees" will be detected and removed from the workforce. Detection is in fact listed by Dr. Beckson as the "secondary function" of random testing. It is his evidence this goal serves to "remove from the workplace those addicted employees who otherwise would continue to present to work in an unfit state". Dr. Beckson's evidence is that "deterrence" is the "primary strategy" in random testing, and that random testing is "an effective deterrent" (at 65).

[118] Dr. Beckson's noted in his report that the Independent Inquiry into Drug Testing at Work (IDTW) (Ex.58, Tab 62) in 2004 accepted the following:

> [I]t is a reasonable supposition that testing could deter and detect drug use in some circumstances, and that in some occupations the consequences of a single error could be very grave. IDTW (2004) concluded that, in the safety-critical industries, there is a *prima facie* case for alcohol and drug testing (at 51).

[119] The IDTW study also noted that drug testing was an unreliable measure of impairment (at 68) and that detection times were as high as 30 days for marijuana use (16). In cross examination Dr. Beckson also acknowledged that a positive urine test may occur without impairment but argued that there could be performance deficits. He acknowledged that non problematic use of

marijuana is possible. In his opinion random testing should introduced if related data suggested the need.

[120] Like Dr. Kadehjian, Dr. Beckson's expert report was written prior to the release of the Supreme Court of Canada's decision in *Irving Pulp & Paper, Ltd., supra.*

[121] The union's expert witness was Dr. Scott Macdonald. Dr. Macdonald gave oral evidence, as well as filing a report with over 100 supporting documents (Ex. 93). Dr. Macdonald is the Assistant Director of Research at the Centre for Addictions Research of BC and a Professor in the School of Health Information Science, University of Victoria. He previously worked as a Scientist for 20 years at the Centre for Addiction and Mental Health, formerly the Addiction Research Foundation in Ontario. His educational background includes a PhD in Epidemiology and Biostatistics from the University of Western Ontario. Dr. MacDonald explained that epidemiology is an emphasis on the "methodological issues in the collection of data that could potentially bias findings" (at p. 3 of his report). Dr. Macdonald has focused his career on research issues in the substance use and abuse field, with empirical studies in a variety of areas, such as the role of substance use in injuries, program evaluation, and alcohol policy. He has been an expert witness in several cases related to drug testing in the workplace, and a consultant with groups such as the International Labour Office, the World Health Organization and Transport Canada. Dr. MacDonald gave expert evidence on the "relationship between use of alcohol and/or drugs and injuries and the importance of context of use; the impact of workplace alcohol and drug testing on safety, and specifically random testing; the usefulness of urine concentration as a measure of fitness for work; deterrence; and alternatives to testing" (at 4).

[122] Dr. MacDonald's expert evidence is "There currently are no accepted standards to assess impairment for other drug concentrations in the blood (except alcohol)" (at 9). His evidence is the acute effects of different drugs vary "considerably" with respect to their effect on performance, noting that alcohol and PCP can cause severe performance deficits, while cannabis and opiods are less harmful. He notes that blood tests are much better than urine tests for detecting cannabis as the detection times are much shorter. In his opinion, only studies which have been conducted using blood tests for cannabis "have enough validity to draw tentative

conclusions regarding their impact on collision risk" (at 10). While a consensus group has prepared cut off levels in the blood for cannabis impairment, these cut offs are not "internationally accepted", as "positive THC readings may linger for days in chronic users" with "no conclusive evidence of performance deficits" (at 10). The case control studies that have used blood tests to assess acute effects of cannabis and collisions have found a relationship between higher levels of THC and collisions. With respect to the impacts of hangovers, withdrawal and long-term heavy use on performance, his opinion is the experimental studies are sparse and the research on how such conditions might affect workplace performance are inconclusive, although he agrees such effects are possible. A review of all the research indicates that while alcohol hangovers are associated with performance deficits, the impact of this on safety risk is unknown.

[123] With respect to withdrawal, these would be associated in the situation of dependence, and would only occur in a small sub-set of problem users. In his opinion, only a small proportion of users of alcohol and drugs would be classified to be "problematic". His evidence from a review of the studies is there is no evidence of the existence of a withdrawal syndrome for cannabis, and that the effects of abstinence for daily cannabis users, is similar to nicotine withdrawal. It is not known how this would impact safety.

[124] His conclusion after review of the studies is that "Overall, research indicates that meaningful performance deficits are unlikely the morning after smoking cannabis" (at 12). He notes experimental studies were reviewed in 2004 and concluded that "performance and cognition effects" are zero 3-4 hours after THC use (at 12). He notes several methodological limitations to a study which found long-term deficits for 24 hours after using cannabis (which amount of time is referred to in the Fact Sheet, noted below), so this conclusion is in fact unsubstantiated in his opinion. The "methodologically rigorous" studies show no long-term effects.

[125] Dr. MacDonald disagrees with Dr. Beckson's opinion that "Urine drug tests detect drug use in close proximity to work, precisely during the time period in which substance use can cause performance deficits and undermine fitness for duty" (p. 7). His opinion is that the empirical evidence is in fact contrary to this opinion, and in particular urine tests cannot detect

acute effects of cannabis, and long-term effects are not correlated with positive test results in collision risk. Further, certain aspects of Dr. Beckson's evidence are also directly challenged by Dr. Macdonald and his review of the literature.

[126] Where that evidence contradicts, we prefer the more specific evidence of Dr. Macdonald for the following reasons. Dr. Beckson's area of expertise is psychiatry, which involves the diagnosis and treatment of psychiatric illnesses, with a specialty in addiction illnesses. He is also involved in experimental research in areas of addiction. However, he, like Dr. Kadehjian, a toxicologist, is not an expert in epidemiology. As Dr. MacDonald sets out in his report, epidemiology assesses the risk of diseases from various exposures (such as the risk of workplace injuries from substance use) and emphasizes the methodological issues in the collection of data that could bias findings. Dr. MacDonald's report and testimony thoroughly reviewed the methodological issues at play in this area of research and explained the validity or lack thereof of research outcomes. His report provides the most thorough analysis of the issues, compared, in particular, to Dr. Francescutti, who is qualified as an epidemiologist, but whose expert report is not as thorough or rigorous as Dr. MacDonald's. In addition, Dr. MacDonald has conducted social epidemiological research related to substance use and abuse since 1978 while Dr. Fracescutti has conducted few studies in the area of accidents and substance use. Dr. Beckson and Dr. Kadehjian both relied on studies reviewed critically, from an epidemiological point of view, by Dr. MacDonald.

[127] Dr. MacDonald gave evidence that several studies were done in the U.S. in the late 1980's and 1990's with respect to the impact of testing on safety. This was after such testing was implemented by President Reagan. The articles which reviewed these studies all came to the same conclusion: "the evidence is inconclusive with respect to an impact on reducing job accidents" (at 18). Since then, the reviews have been consistent with that conclusion, and Dr. MacDonald lists several of those reviews in his Report. In 2010, he published a review of the literature which found "urinalysis has not been shown to have a meaningful impact on job injury/accident rates" (at 18). He referred to a book that reviews the studies on this topic: *Frone, M.R. (2013). Alcohol and Illicit Drug Use in the Workforce and Workplace. Washington, DC: American Psychological Association*. Frone concludes:

> On the whole, research exploring relations of substance involvement to attendance and performance outcomes suggest that these relations are weak and inconsistent. The studies that have found statistically significant relations have methodological problems that undermine any conclusion regarding causal effects. (Frone, p. 141, 2013, quoted at p. 18).

[128] Dr. MacDonald outlines the methodological limitations of these studies in his expert opinion, which won't be repeated in this decision.

[129] With respect to the argument of drug testing as a deterrent, Dr. Macdonald opines that studies have shown that declines in reports of positive drug tests for those companies in the U.S. who do test can in fact be due to other factors, including a growth in products designed to produce negative results. His review of the studies indicates that "testing does not appear to have had any impact on overall drug use in the US population" (at 29).

[130] Dr. Macdonald also gave evidence with respect to urine test as a measure of determining fitness to work. His evidence is that urine tests detect metabolites of each drug. Such metabolites are eliminated through the urine at different rates, depending on the drug, usage, dose, preparation and on the individual's metabolism. There are two approaches for assessing these samples: immunoassay or mass spectrometry in combination with gas/liquid chromatography (MS/GC). Immunoassay tests are typically used to screen, with low sensitivity. The "gold standard" for drug detection and identification is MS/GC, which requires sophisticated laboratory equipment. The sensitivity of immunoassay in comparison to MS/GC ranges from 25% for cocaine, 40% for methamphetamines, 47% for amphetamines, 91% for marijuana and 92% for morphine. False negatives are more common with immunoassay tests, although false positives can also occur when a molecule with a similar structure is detected. For example, a positive test for morphine could result from ingestion of poppy seed cakes, over-the-counter hemp products can produce a positive result for THC and over-the-counter medications can produce false positives for amphetamines. Most immunoassay tests require sophisticated equipment and are conducted in laboratories and as such, results are not immediately available.

[131] Dr. Macdonald's evidence is that one of the most significant limitations of urine tests are the inability of such a test to assess the acute effects of drugs, including when the drug was taken or how much was taken. This is because urine is a "waste" product. As such, the excretion of a

drug through urine continues after the physiologic effects cease: there is a lack of correlation between the level of the drug and intoxication.

[132] Further, the "window of detection" for drugs is "highly variable". A positive urine test can only indicate prior exposure to a particular drug, and not present impairment. He disagrees with Dr. Beckson that occasional users of marijuana can only be detected for 2 days. He referred to a literature review demonstrating that THC can be detected in the urine of regular users for "many weeks". For occasional smokers it would be unusual to detect cannabinoids in the urine beyond 3-4 days with a 50 ng/ml cut-off.

[133] Dr. MacDonald included a table with the time periods that an individual would "normally be considered to be under the influence of each drug", and the detection periods for urine drug tests, at typical laboratory cut-offs. He notes that for every drug listed, the detection period in urine exceeded the portion of time the individual experienced the acute effects of the drug. His conclusion is that since urine tests cannot detect whether individuals are in fact under the influence of drugs at the time of the test, they are a "poor measure of fitness to work". His further opinion is that both alcohol and drug tests have "little utility" in detecting individuals experiencing symptoms of withdrawal, or long-term effects after abstinence, as such individuals will likely test negative on a urine test. He agrees with Dr. Beckson that individuals who are abstinent from alcohol may in fact experience "long-term cognitive deficits" for 12 months. In his opinion, urine tests detect "users of drugs", rather than those who are actually suffering from acute or long-term effects at the workplace. He disagrees with Beckson that the detection time for urine tests is "precisely that in which substance abuse can cause performance deficits", noting that "experimental and epidemiological research studies have not shown performance deficits correspond to the detection periods of urine (at 28). Dr. Macdonald acknowledged the accuracy of breath testing. He also noted that oral fluid has a shorter detection window and there was recent advancements in oral swab testing in Australia. He indicated that M. R. Frone, *Alcohol and Illicit Drug Use in the Workforce and Workplace*, published in 2013 (Ex. 60) represented some of the most recent information on the subject of alcohol and drug testing and the efficacy of testing methods.

VI – SUBMISSIONS

[134] While we have considered all of the arguments in our deliberations, we do not intend the following to be an exhaustive summary of these submissions, considering their length.

A. The Union's Argument

[135] The Union argues that random testing is particularly intrusive and extraordinary, as it subjects *all* employees to the indignity and humiliation of a test, regardless of any precipitating event or cause for concern with respect to that individual. It urges such testing has been overwhelmingly rejected in arbitral jurisprudence, even for employees in "safety sensitive" positions in dangerous workplaces and is indefensible, save in extreme circumstances, which are not present at the Oil Sands Operations.

[136] The Union argues the Supreme Court of Canada's recent decision in *Communications, Energy and Paperworkers Union of Canada, Local 30 v Irving Pulp & Paper, Ltd*, 2013 SCC 34 ("*Irving Pulp & Paper, Ltd".)* once again affirmed the "fundamental importance" of privacy rights in this country, and in particular affirmed the approach of Arbitrator Picher in *Imperial Oil Ltd. v. Communications, Energy and Paperworkers Union of Canada, Local 900* [2006] O.L.A.A. No. 721 (Picher); upheld on appeal [2009] O.J. No. 2037 (C.A.) ("*Nanticoke")* and Arbitrator Venoit in the underlying grievance arbitration award, which the Court upheld as reasonable: *Re Irving Pulp & Paper Ltd., and C.E.P., Local 30 (Day)* 100 C.L.A.S. 43 ("Irving Board"). These cases dictate a "balancing of interests" approach which requires that an arbitrator ask whether there is "proportionality between the benefit gained by random testing and the harm done to be done to employees by random testing".

[137] The Union urges that unparticularized evidence, anecdotal evidence, broad-based statistical inferential reasoning and unsupported presumptions cannot discharge an employer's onus or over-ride the significant privacy rights to which Union Employees are entitled. The Employer must use "clear, cogent evidence" to demonstrate that its random testing policy is "reasonably necessary and proportionate in the circumstances". The Union argues the Employer has not met this onus because:

a) there is no "significant safety concern" with respect to the bargaining unit;

b) even if there was such a concern, random testing is ineffective; and

c) there are less intrusive, effective means to address any concerns with respect to drug and alcohol use"

[138] The Union also addressed the nature of the right to privacy, arguing that it has been long recognized that employees do not give up those rights when coming to work, that the taking bodily fluids without a person's consent has been recognized by the Supreme Court of Canada as highly intrusive and an affront to an individual's dignity, and that the impact of drug and alcohol testing on the privacy, dignity, and bodily integrity of an employee is significant. It urges that the evidence before this Board is that testing is humiliating and degrading, even under the current "for cause" testing policy. The Union argues that because of these important rights, the threshold that the Employer must meet to justify random testing is "high".

[139] The Union further notes that even the Criminal Code in this country requires that a police officer have "reasonable grounds" before demanding that an individual driving a vehicle take a drug or alcohol test – random testing of drivers is not legal. In the unanimous *Elliott Decision* between these parties, the Employer was required to have a "justifiable reason" following an incident, before they could demand that an employee involved in that incident submit to a drug or alcohol test. The Union argues that this "Canadian approach" is further reflected in arbitral jurisprudence finding random testing unreasonable.

a) <u>No Significant Concern with Respect to the Bargaining Unit</u>

[140] The Union argues the Employer has failed to demonstrate that there is a safety concern related to drug and alcohol among the members of this bargaining unit and that unparticularized, anecdotal evidence and broad-based assumptions are not sufficient to meet the Employer's burden. The Union argues this is the type of evidence the Employer has tendered as it has failed to discriminate its evidence among its workforce. As such, the Employer has not demonstrated that a random drug and alcohol testing policy is reasonably necessary, or proportionate, for the members of this bargaining unit.

[141] The Union states that much of the evidence the Employer brought forward did not involve Union Employees. In particular, the Employer offered Ex. 63 into evidence – a listing of 2,276 Alcohol and Security Drug Incidents for the period 2004-2013 – a 9 year period. Of these, 1,518 of the incidents were related to the camps. Union Employees, for the most part, do not reside in camps; Contractor Employees do. Only 12 incidents over this 9 year period specifically identify a Union Employee or suggest that a Union Employee was involved due to the incident involving Suncor equipment. This lack of discrimination is also evident in the evidence of Ms. Toutant relating to the three fatalities: all related to Contractor Employees, not bargaining unit employees.

[142] While the Employer provided evidence of other "significant" incidents in the Oil Sands Operations, there was no suggestion that drugs or alcohol were involved in those incidents. The Employer has not provided any evidence of its workplace accident and injury rates, and in particular no evidence of any accident and injury rates caused by alcohol or drug use. The evidence that has been available indicates that such rates are "low, declining and well within their targets". In fact, while the Employer did provide evidence of positive tests, it did not demonstrate any causal link between a positive test and a safety incident involving a Union Employee. Further, evidence has demonstrated that the presence of inactive metabolites in urine is insufficient to demonstrate that the drug substance played a causal role in an incident.

[143] The Employer's arguments of "what if" an employee is not" fit for duty" due to drugs and alcohol in its dangerous workplace are "fear-mongering" and are not a legitimate basis for nullifying significant and well-entrenched privacy rights of employees who have not given the Employer any cause for concern by their actions. This "risk management" and "what if reasoning" is akin to the arguments discredited in *Irving Pulp & Paper, Ltd., supra*. A "safety sensitive" workplace does not – in and of itself – attract a rationale for random testing.

[144] While the Employer points to the number of positive "for cause" tests in its workforce as justifying its policy, the Union argues that positive urine tests for drugs alone do not equate with a "legitimate safety concern", as urinalysis is a "waste" product test. As such, it can only identify past use of a substance and not impairment of job function or ability of an employee at

the time the test was taken. Therefore, the Employer's assumption that positive tests for drugs by urinalysis can be used to demonstrate a Union Employee is "unfit for duty" is inaccurate. The Union argues that the expert evidence is clear that a urine test cannot measure impairment, or determine whether a user is chronic, casual or dependent. To determine if performance deficits are likely from the levels found in a positive test requires a further level of analysis that is not part of the Employer's proposed policy. It urges there are no studies "correlating performance deficits with different urine concentrations or "cut offs". The Employer's own expert, Dr. Kadehjian admits that the period of time that drug users may in fact experience performance deficits does not correlate to the "detection window" of urinalysis. With respect to marijuana, even using the Human Performance Fact Sheet, (which the Employer's expert, Dr. Kadehjian described as "an excellent compilation of the effects of 16 various drugs on human performance") demonstrates most behavioural and psychological effects of smoking marijuana "return to baseline levels within 3-5 hours after drug use", with residual effects reported up to 24 hours (this particularly was challenged by Dr. Macdonald) and performance on driving tasks lasting for approximately three hours. The period that marijuana can be measured in urinary elimination, however is "best estimated at 3-4 days", which is well beyond where any impairment exists.

[145] As for the justification that an individual who could cause a "safety risk" due to recent drug use should be removed from the workplace (even if not impaired at the time of the test), the Union raises the issue of what level of performance constitutes a "safety risk"? The Employer's reference to "raising red flags" and "finding potential risk of deficits" in drug users" as the benefits that it gains from random drug testing for "recent use" as opposed to "impairment" are simply not good enough to tip the balance in the Employer's favour, and subject that employee to discipline or dismissal.

[146] The Employer's evidence regarding "how far above cut offs" some test levels have been is an attempt to "bootstrap" its argument, urges the Union. The inference is that those levels – being so high - "must" suggest impairment or dependence. However, the Union argues there is no scientific evidence that provides a foundation for this inference. There is no evidence indicating what 2, 5, 10 or even 50 times the cut off level means. There was evidence that a

toxicologist may be able to adduce impairment from concentrations 16,600% above the Employer's cutoff for hydrocodone, for example.

[147] The Employer did not distinguish its dependency data as between Union Employees and Contractor Employees so its evidence with respect to dependency is of limited use, argues the Union. In fact, the Employer has created an incentive for Union Employees to report as dependent, as non-dependent employees are terminated, while dependent employees can be subject to a last chance agreement.

[148] The Union also notes that the Medical Review Officer ("MRO"), who reviews positive test results does not determine if that individual could safely work at the time of the test; as he or she does not determine if there is a risk of performance deficits. A Substance Abuse Professional likewise can determine if an individual is dependent, but not whether they came to work impaired at the time of the test.

[149] While a breathalyzer is able to measure present impairment, the Union notes the number of positive alcohol tests in the Oil Sands Site is small: 3 positive tests in 2012, and 1 to date in 2013. Four tests in two years does not equate to such a pressing concern with alcohol in the Oil Sands Operations, that highly invasive random alcohol testing is justified.

[150] In summary, the Union argues that the evidence demonstrates a *decreasing* need for concern at the Oil Sands Operations with respect to alcohol and drug use among Union Employees. It points out that positive rates of testing since the *Elliott Decision* in 2008 have in fact declined, despite an increase in the number of Union Employees working at the Oil Sands Operations. Further, the number of non-camp Alcohol and Drug Security Incidents is comparable with pre-*Elliott Decisi*on levels, even though the number of Union Employees has increased. The Union argues the evidence demonstrates a "downward trend" in injury rates and notes that the Employer is well within its injury targets.

[151] The inference from the Employer's failure to enter into evidence its current safety record is that there is no pressing safety concern at the Oil Sands Operations. Despite what the Union

describes as "fear mongering", the Union argues the Oil Sands Operations are "safe and are not plagued by substance abuse related safety incidents" and therefore Suncor has not met its onus to establish an alcohol and drug problem in its workplace, sufficient to justify the imposition of random testing policy.

b) <u>Random Testing is Ineffective</u>

[152] Secondly, the Union urges that random drug and alcohol testing is ineffective at improving safety. It argues substance use is a factor in only a small number of work accidents and the majority of drug users are "recreational users" who do not use at work and who also do not experience withdrawal or effects from chronic use which impact their work performance. Urinalysis only demonstrates past "use" of a substance and not impairment and past "use" alone is not associated with an increased safety risk as drugs can appear in urine far beyond the point at which an individual's behaviour would be impaired by them. Further, testing has "little impact" on how often workplace injuries occur.

[153] The Employer's experts state the "key benefit" of random testing is deterrence, but the Union argues that those likely to be deterred are in fact occasional users who were unlikely to attend work impaired in any event. With respect to random testing, the Union argues it does not impact safety and there would be "no measurable safety benefit" achieved through random testing that would balance the significant and highly intrusive effect on privacy rights.

[154] While Arbitrators accept the lack of scientific evidence in support of testing as tolerable in for cause" testing situations, such situations are distinct from random testing situations. "For cause" testing situations are linked to some form of antecedent event or circumstance that give an employer a cause for concern, while random testing has no such event that would support a suspicion of workplace impairment. The intrusion on privacy rights in such a situation is therefore more significant.

c) <u>Less Intrusive Means Have Not Been Exhausted</u>

[155] According to the Union, there are less intrusive means to achieve safety in the Employer's workplace that have not been exhausted, including random checks (which Dr. Macdonald's

evidence indicates are as effective as random testing), toolbox meetings, planned observations and audits, supervisor and employee training, Peer Care programs, improvement of the existing Incident Learning Prevention Program, and Drug Interdiction Program involving sniff searches by dogs. While it was acknowledged such searches do invade privacy, they are described as "minimally intrusive, narrowly targeted and can be highly accurate". In summary, the Union argues that – given Suncor's concern – there are other, less intrusive measures that Suncor can use prior to resorting to the extreme step of random drug and alcohol testing.

[156] The Union raises concerns that the proposed random testing policy is removing responsibility from supervisors, who are in the best position to observe an employee's ability to perform his or her jobs safely. The Union argues that it is the increased certainty of detection – and not the form of intervention – that provides a deterrent effect.

[157] The Union further argues that there is no basis to depart from the *Elliott Decision* with respect to drug and alcohol testing for the Oil Sands Operations. While Suncor had what the Union described as a "dismal" safety record at the time of the *Elliott Decision,* a permissive attitude to drug and alcohol use at work and a 10% positive testing rating in the first four-five months of testing, that unanimous board held that the "dismal" record was not sufficient for that board to impose "for cause" testing in the wake of an incident, unless there was also a reason to suspect the involvement of drugs or alcohol. The application of testing just because an incident occurred did not properly balance employee rights with Suncor's desire to improve its safety performance: the policy was not "reasonable" when applied in that manner. Further that unanimous board found testing to be psychologically traumatic and that Suncor's interests – even if legitimate – could only outweigh the employee's right to privacy if there was a justifiable reason to test.

B. The Employer's Argument

[158] The Employer argued the grievance must be dismissed. It argues that it has met the test in *Irving Pulp & Paper Ltd, supra,* with respect to the imposition of a random testing policy, as it has established that there is "evidence of a problem with alcohol and drugs" in its workplace. Further, it argues this "problem" is "pervasive", "profound" and "unparalleled in any other workplace in Canada". It argues that none of the arbitral jurisprudence to date has considered

such "compelling evidence" of a problem, as that marshalled in this arbitration. It further notes that many Suncor employees continue to test positive, and that some of these tests are 5000% over the cut-offs. Random testing is therefore within its management rights and consistent with the collective agreement.

[159] The Employer argues that alcohol and drugs are incompatible with working in a safety-sensitive environment such as the Oil Sands Operations. It notes its operations in the RMWB are complex and hazardous (with 21 fatalities in its history in the RMWB), and that the least amount of inattention could produce catastrophic consequences.

[160] It argues its operations are dangerous and in fact this point has not been contested by the Union. While it has tried to address its concerns through incremental measures, the problems associated with alcohol and drug use are "pervasive", as noted in its evidence regarding positive tests and security incidents, and there have been 3 fatalities involving drugs or alcohol. The Employer argues its implementation of the "Random Testing Standard" in June of 2012 was an "additional incremental step to address the pressing safety concerns related to alcohol and drugs in the Suncor Operations". The Employer also argues there is a "significant community problem" with drugs and alcohol in the RMWB.

[161] The Employer argues that privacy rights are not absolute, but must be considered within the context of the work environment, and the Employer's obligations to make its work environment safe for all workers. The Employer notes the information collected through its random testing program would be protected in accordance with its privacy policies. Further, there are measures taken at the testing trailer in order to ensure the privacy of Union Employees subject to testing; it is done in a respectful manner, to minimize privacy concerns.

[162] It is the Employer's position that its "pressing safety concerns" outweigh the privacy interests of employees who may be subject to random testing.

[163] The Employer further argues it is under onerous statutory obligations to ensure a safe workplace, including those imposed by the *Occupational Health and Safety Act,* R.S.A. 2000, c.

O-2, s. 2**,** ("*OHSA*") which has severe penalties for breach (s. 41), and the *Criminal Code,* R.S.C. 1985, c. C-45, s. 217.1, citing the decision in *R. v. Metron Construction Corp.* 2012 ONCJ 506; aff'd by 2013 ONCA 541. A recent hazard assessment conducted in accordance with the *OHSA, supra,* ranked hazards related to alcohol and drugs as a "risk rank 1", obligating Suncor to take all reasonable measures to control the hazard, which the Employer has determined includes random drug and alcohol testing. In addition to these statutory obligations with respect to worker health and safety, the Employer argues it has onerous environmental statutory obligations, including obligations under the *Alberta Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12, with significant fines, and possible environmental catastrophe, in cases of breach.

[164] The Employer argues workplace alcohol and drug use pose a significant workplace hazard to workers, the public and the environment, and are simply incompatible with the nature of its operations and this has been recognized by Arbitrators and court. The incompatibility of the use of alcohol and drugs in a safety-sensitive environment was also recognized by all of the experts.

[165] The Employer also urges that the effects of alcohol and drug use, including intoxication, hangovers, carry-over effects, withdrawal and chronic use do result in performance deficits and can "negatively impact alertness, concentration, reaction time, perception, memory, visual-spatial skills, motor-skills and coordination". This is particularly important in a safety-sensitive workplace, where subtle impacts on function can have "catastrophic consequences".

[166] The Employer argues its experts are in agreement that policies like random alcohol and drug testing act to reduce workplace safety incidents through deterrent effects. It also argues that Courts have accepted the deterrent effect of random alcohol and drug testing measures: Canadian Human Rights Commission in *Milazzo v Autocar Connaisseur Inc.*, 2003 CHRT 37, (2003), 47 C.H.R.R. D/468 (a positive drug test is a "red flag" requiring further assessment); *Skinner v. Railway Labour Executives Association et al.* (1989) 109 S. Ct. 1402 (USSC); and *NZ Amalgamated Engineering Printing and Manufacturing Union Inc.* [2004] NZ Emp C. [2004] 1 ERNZ 614**.**

[167] While the Employer engages in extensive training of its supervisors on alcohol and testing policies, the Employer refers to expert evidence that performance deficits may not be obvious to observation. In addition, the Employer's worksite is expansive, and workers are often out of sight of each other and of leaders for long periods of time. The Employer also argues that even those specially trained to identify drug use and problems are limited in their ability to accurately identify individuals using drugs and alcohol. The Employer also notes that supervisors can be reluctant to report individuals. Individuals who are themselves users of drugs and alcohol are "poor judges" of their own fitness for duty, so cannot be relied upon to stay at home when such use has made them "unfit". In addition, such individuals can be deficient in self-monitoring errors, resulting in a greater likelihood of injuries and fatalities.

[168] The Employer urges that is has in fact exhausted alternative methods of addressing its concerns with drug and alcohol use in its Oil Sands Operations. Since 2008, the Employer has also taken further steps in response to its continued safety concerns:

- Drug Interdiction at Suncor Accommodations Procedure (at the Suncor lodges) (2008)
- Alcohol Free Lodge Policy (for Suncor lodges) (2009)
- Site Interdiction Procedure (including the use of sniffer dogs) (2011)
- Extensive safety training and education, including with respect to alcohol and drugs

C. The Union's Reply

[169] The Union argues that it is important to remember that this decision is to be made within the context of Canadian values, and not American. It argues the differences between the two countries with respect to their approach to random testing are significant. The U.S. has taken a legislative approach to testing, in response to President Reagan's *Executive Order No 12564* in 1986. As early as 1996, 80% of American firms were testing for drug use. This experience arose with "little or no regard" to privacy rights, focusing instead on the employer's interests. The Canadian approach, in contrast, has "consciously sought to give the fullest possible protection to the privacy and dignity of individual employees". As such, the Employer's attempt to impose "suspicionless" random drug and alcohol testing cannot be considered an "incremental step", nor is it consistent with Canadian values.

[170] In *Irving Pulp & Paper Ltd., supra,* the majority accepted that the "blueprint" for dangerous workplaces was as articulated by Arbitrator Picher in *Nanticoke, supra.* This requires reasonable cause and only supports random testing as part of a rehabilitation program for substance abusers. It urges that the Supreme Court did not "endorse" *Strathcona, supra,* or *G.T.A.A., supra* and in fact those awards failed to apply a "balancing of interests" approach as required by *Irving Pulp & Paper Ltd., supra.* In particular, *Strathcona, supra,* arose in the context of a termination grievance as opposed to a policy grievance and ignored that the employer must demonstrate that the measures are reasonably necessary and that less intrusive, alternative means have been exhausted. Further, *Strathcona, supra,* has not been followed by any other arbitrator. The *MCAS, supra,* decision is the only decision post-*Irving Pulp & Paper, Ltd.,, supra* to engage in a "fulsome proportionality approach", taking into account the nature of the employee's privacy rights, whether testing is intrusive, whether a demonstrable need has been shown for the measures, the issue of whether testing improves safety, and whether less intrusive measures were available.

[171] The Union argues that *Irving Pulp & Paper, Ltd., supra,* is not a decision supporting random, suspicionless testing, but is rather a decision which restored the board's award that such testing was unreasonable. The Court left the question of whether such testing could be justified for another day. The Union also argues that the collective agreement between these parties contemplates a workplace free of harassment and where workers are treated fairly and with respect, in promotion of their dignity and self-esteem, which reinforces the importance of privacy rights in this collective agreement.

[172] It is also the position of the Union that the *Elliott Decision* already addressed the "reach" of the Employer's rights regarding the imposition of a unilateral drug and alcohol policy, and found that a near miss or incident alone was "insufficient" as a basis on which to breach an employee's privacy right and subject them to a "for cause" test; there must be a further inquiry based on "individualized suspicion". That board was unanimous in this determination. This was not a "minor adjustment" to the policy, as the Employer claims, but a fundamental alteration to that policy.

[173] With respect to the Employer's legislated safety obligations, the Union notes that no law requires the Employer to institute random testing; no employer has ever been prosecuted or convicted under criminal or occupational health and safety legislation for failure to impose random drug and alcohol testing. It distinguishes *Metron, supra*, and the cases cited for environmental liability.

[174] The Union urges that the Employer is "playing to fears" by raising the "spectre of catastrophe" to support its arguments. As the most common shift at the Oil Sands Operations is a rotating day and night 12 hour shift, with three 20 minute breaks, the Union argues that to suggest that "any slight moment of inattention" has "dire results" is a gross overstatement. The Union argues this is alarmist reasoning without adequate evidence to support. Likewise, the Employer has over-stated the evidence and depends on the Board to "uncritically" evaluate it.

D. The Employer's Reply

[175] The Employer argues that the Supreme Court in *Irving Pulp & Paper Ltd.* set the standard for random testing as "a general workplace problem with alcohol and drugs" (at para. 2, emphasis in original) and not a "significant concern with respect to the bargaining unit", and the question requires a contextual analysis of the worksite and the surrounding community. It argues the "jurisdiction" for random testing is "precisely related to concerns around preventing a catastrophic incident" and it disagrees with the Union that *Irving Pulp & Paper Ltd.* discredits the "risk management" approach. It urges its duty is proactive, not reactive, citing Arbitrator Smith in *Bantrel Constructors. Co*. (2007), 162 LAC (4th) 122, 2007 ("*Bantrel"*).Whether Suncor's safety record is improving or not (as the Union argues) is not the test urges the Employer; the test is whether there is "a general problem in the workplace" (at para. 54, emphasis in original).

[176] The Employer argues that the Union has attempted to minimize the "real and significant problems" which exist at the Oil Sands Operations by suggesting that a smaller percentage of a "staggering" number of positive tests is acceptable. Suncor argues the number of positive tests is "completely unacceptable from a safety perspective" as "one individual unfit for duty at the Suncor Operations could lead to a catastrophic outcome" (at para. 55). It is alarming for *any*

individual to test positive following an incident or near miss in such a dangerous work environment and to consider this acceptable shows a "callous disregard for worker safety, the public and the environment" (at para. 58). It argues that the percentage of positive test results of the workforce is not a "factor" considered by *Irving Pulp & Paper, Ltd., supra,* the evidence required is that of a "problem" and the evidence of a problem in this case is unprecedented.

[177] The Employer notes that its own employees are "integrated" at the Oil Sands Operations with Contractor Employees, and the actions of these employees impact one another. The Employer is concerned whether *any* employee working on its site attends for work "unfit for duty". Many Contractor Employees are permanent and provide support to the Employer that is ongoing. It further argues that the decision made by this Board will impact its ability to address the drug and alcohol problem among Contractor Employees: if it is given the ability to test the Union Employees, it will likewise gain the ability to test its Contractor Employees due to section 4.6.2 of the OCAA Policy. It notes it would be a "violation" of CLR's collective agreements and this model for Contractors to be required to submit to random testing if the Employer does not impose such testing on its own workforce. There is a "public interest" therefore which weighs in favour of random testing; Suncor's ability to address its workplace hazards appropriately will be affected by this decision.

[178] Suncor argues the evidence in this case is more compelling than the other two cases where random testing has been allowed: *Strathcona, supra,* and *G.T.A.A., supra*; and completely eclipses those decisions which have rejected random testing. A contextual analysis of the worksite is necessary to assess the evidence, argues the Employer, and it notes the lack of positive test results in *Nanticoke, supra,* and in *Trimac, supra.* The Employer notes that *Nanticoke, supra,* did leave open the possibility that random testing could be available if an "out-of control drug culture" was taking hold in a worksite or a community, as akin to a form of "for cause" testing. The Employer argues that Dr. Beckson's evidence indicates this type of culture is taking hold in the Oil Sands Operations.

[179] The Employer further argues there is an "out-of-control drug culture" in the community of RMWB, similar to that contemplated by Arbitrator Picher in *Nanticoke, supra,* and given

significance by the Supreme Court of Canada in *Irving Pulp & Paper Ltd., supra*. It argues the volume of drugs coming into Fort McMurray is "significant", especially given Fort McMurray's population. It has a "particular concern" with respect to cocaine as 58% of the positive tests between January 1 and June 30, 2013 tested positive for cocaine. It also offers the evidence of Mr. Tidsbury with respect to the building trade data on positive alcohol and drug tests. It argues many of these employees work in the RMWB, and in the Oil Sands Operations.

[180] It is the Employer's argument that the case of *MCAS v. UA, supra,* had no application to this grievance, as it considered pre-access testing, was contrary to settled law with respect to such testing, and is under judicial review. The Employer notes it has had pre-access testing for almost a decade and no issue is taken with this type of testing by the Union. The Employer also points out there was no out of control drug culture or in fact any drug or alcohol culture found on the facts of that case.

[181] With respect to the Union's arguments that there is not a problem with alcohol, the Employer argues there have been 14 positive alcohol tests in the four year period between 2009 and June 2013, and that between July, 2013 and September, 2013, there have been 2 positive alcohol tests. It notes that not one witness took issue with the use of breathalyzers for alcohol testing; the concerns were limited to urine testing, and that there is no therefore no evidence with respect to privacy issues surrounding breathalyzer testing.

[182] The Employer also argued that the concerns with "proving impairment" are "unfounded", as the Employer's policy is intended to address "safety risk" and does not rely on proof of impairment. It argues the test in *Irving Pulp & Paper, Ltd.,* had "nothing to do with impairment" but was only interested in a "problem" in the workplace. In any event, it states that "recent use" is in fact consistent with cognitive and psychomotor deficits incompatible with working in a dangerous environment. It cites Dr. Kadehjian's report that the cut offs showing "recent use" are sufficient to create a "red flag". It cites *Milazzo, supra; Bantrel, supra* (arbitration decision) **[note this was overturned]** and the New Zealand case of *Air New Zealand* as support for the significance of a "red flag" risk and for the deterrent effect of drug testing regimes. It also notes Arbitrator Christain's rejection of "impairment". That decision quoted the U.S. decision in *Exxon*

Corporation v. Esso Workers' Union 118 F3d841 (1st Cir. 1997), at p. 849. It argues Dr. Beckson confirms deficits can occur up to 4 days, and as the use of drugs is incompatible with a safety-sensitive work environment, and is not shielded by the law. This is sufficient.

[183] The Employer urges the evidence of Dr. Beckson with respect to dependency assessments should be preferred and his evidence on addiction is uncontroverted. It takes issue with Dr. Macdonald's evidence with respect to cut-off levels and what urinalysis measures, as he is not a toxicologist.

[184] With respect to deterrence, the Employer has argued that random testing is an effective deterrent and that the jurisprudence recognizes these effects, although it acknowledges the Supreme Court of Canada did not find any evidence of a deterrent effect in *Irving Pulp & Paper, Ltd., supra.* It argues its expert evidence establishes that such deterrent effects can alter the behaviour of those not addicted and those who are addicted and ready to change, and facilitates the removal of "high risk" addicted individuals who are not yet ready to change.

[185] The Employer reiterates its comprehensive training initiatives on orientation, including training of employees on the requirement that they report to work "fit for duty" and the training for employees on what that term means.

[186] The Employer argues that there is no support for the contention that it must establish cause and effect between the use of alcohol and drugs in the workplace and an incident: *Strathcona, supra*. Even so, it argues it has presented "cogent evidence" of such a link, both in its evidence of "near misses" that have triggered post-incident testing and in its expert evidence. It notes all witnesses agreed that alcohol and drug use are "incompatible with working at a safety-sensitive environment such as the Suncor Operations" (at para. 26)

[187] The Employer argues there are no less intrusive measures available. It notes the "Courage to Care" program was a failure and rejected as a viable alternative in the *Elliott Decision.* The Employer does continue to extensively train its supervisors but cannot rely on them to detect whether employees are "unfit for duty", as this is a difficult task. The Union led no evidence

regarding the effectiveness of peer care or "enhanced supervisor training". It argues the role of its supervisors is the same in the Random Policy as in the 2008 A & D Policy, in contrast to the Union's assertions. It maintains the existing controls are simply "not enough" to address the "ongoing safety hazards" in the Oil Sands Operations.

[188] Finally, it is the Employer's position that its move towards random testing is consistent with the *Elliott Decision*, noting that the *Elliott Decision* did not in fact consider the issue of random alcohol and drug testing.

VII – DECISION

A. Jurisdictional Issue

[189] An issue arose with respect to the jurisdiction of this Board, and in particular the breadth of the question this Board is to address.

1. The Employer's Position

[190] The Employer argues the Union can only raise issues that appear on the face of the grievance; for this Board to address issues beyond the face of the grievance would be a reviewable error. In particular, it argues the Alcohol and Drug Testing Standard - which established urinalysis as the method of drug testing - is not in issue in this arbitration. It argued the method of testing is outside the scope of this Grievance, as the Union did not grieve urinalysis as a testing method before the Elliott Board, but only the *manner* in which the policy was applied. Further, it argues the Elliott Board found urinalysis reasonable, quoting the following excerpt from that decision in support:

> [w]e have no quarrel with the technicalities of the test and the appropriate and necessary care for proper labelling, transmission, testing and reporting of samples (at para. 89).

[191] The Employer argues this excerpt demonstrates that the testing methods used were accepted in the *Elliottt Decision* and therefore this decision found that testing method to be "reasonable". It argues that decision is "final and binding" on the parties by virtue of the Collective Agreement. If the Union had concerns with urinalysis, those concerns should have

been raised earlier; the Union is out of time and is seeking to reopen an issue previously decided. Any new determination would be based on the same evidence and facts as that before the Elliott Board. The argument continues that the grievance is therefore limited to the "reasonableness" of the "Random Testing Standard" only. It points out that no other grievances with respect to alcohol and drug issues have been advanced to arbitration since the *Elliott Decision*, (there are approximately 70 grievances relating to drug and alcohol testing matters that have been held in abeyance).

2. The Union's Position

[192] The Union argues it did not simply grieve the "Random Testing Standard". It urges that the grievance form makes it clear that it grieved the proposed new random drug and alcohol testing policy as unreasonable and unjustified. The Union argues that it grieved the "system" of random testing, which included the Random Testing Standard, the underlying policy, and other supporting standards. It argues this policy is an "integrated whole"; the Random Testing Standard is not an independent document. The Union argues there is nothing in the grievance – or in its actions to date – which would limit the Board considering the entirety of the 2012 Policy in this grievance.

3. Decision With Respect to Jurisdiction

[193] The Board takes no issue with an employer's right to review policies as part of a progressive human resources function. The growth of Suncor, the movement of employees between facilities and the need to review the effectiveness of the previous policy are all legitimate reasons for an employer to consider a harmonized policy. When a policy has been imposed unilaterally, however, without the agreement of the Union, the principles developed in *K.V.P., supra*, are engaged. The standard such a policy must meet are:

(1) It must not be inconsistent with the collective agreement
(2) It must not be unreasonable
(3) It must be clear and unequivocal
(4) It must be brought to the attention of the employee affected before the company can act on it;

(5) The employee concerned must have been notified that a breach of such rule could result in his discharge if the rule is used as a foundation for discharge; and

(6) Such rule should have been consistently enforced by the company from the time it was introduced

K.V.P., supra, at 85

[194] Evidence before this Board established that the Union was advised verbally by Suncor Director of Labour Relations, Bradley Droppo, and other employer representatives that Suncor would be introducing a new alcohol and drug policy which would include random testing. Suncor released a bulletin on June 20, 2012, outlining the new policy. In that bulletin it was noted that one of the changes to the new policy was the introduction of random workplace drug and alcohol testing. There were other changes to this policy, as discussed below. The Union filed a Policy Grievance against this policy on July 19, 2012.

[195] The primary authority offered by either party with respect to this Board's jurisdiction generally was Brown & Beatty, where the authors indicate an arbitrator has no inherent jurisdiction to "extend, amplify or add to the issues nor substitute other issues for or in lieu of the issues defined by the submission to arbitration": *Canadian Labour Arbitration,* 4th ed. (Toronto: Canada Law Book, 2012), at para. 2:1300. This squarely raises the question of what "issues" are before this Board.

[196] First, considering the grievance form itself, the Union has grieved that the "proposed new harmonized drug and alcohol policy" was "an intrusion into the privacy and dignity of its members that was unreasonable and unjustified". The Union has not specifically named the "Random Testing Standard"; the grievance form is simply not that specific. The Union has argued the policy is an "integrated whole"; the Employer has argued that the Random Testing Standard is the only part of the policy in issue.

[197] As in the case before this Board, it is generally accepted that grievance procedures are invariably conducted by laymen. Similarly, as in this dispute, the drafting of grievances is usually done by persons who have no formal legal training. There are no provisions in the collective agreement between these parties governing the form of a grievance. The Employer raised no issue of prejudice or surprise flowing from the Union`s position. Looking at the policy

itself, the process and procedures for conducting random testing are not in fact found in the Random Testing Standard section of the policy. Standing alone, the Random Testing Standard does not dictate how testing is to be carried out. With any reasonable reading of the grievance, it can be understood on its face as a policy grievance challenging random testing under the 2012 Policy and the alleged collective agreement violations created by the policy.

[198] The Employer has argued that testing by urinalysis has been foreclosed by the *Elliott Decision.* It argues the Union has acquiesced in that method and should have challenged it long before this arbitration. These are in fact two different issues. With respect to the breadth of the *Elliott Decision*, we are not convinced that – by referencing the reasonableness of the "technicalities" of how urinalysis was actually carried out in "for cause" testing situations (which is all the *Elliott Decision* did with respect to urinalysis), it was the intention of the board in the *Elliott Decision* to decide once and for all that urinalysis as a testing method would be appropriate and reasonable for any random form of testing the Employer chose to implement in the future. The *Elliott Decision* simply does not go that far, nor should it, since, as the Employer noted in its Reply Submissions, the reasonableness of a testing method for a random testing program was not in issue before that Board.

[199] That the *Elliott Decision* is limited to the issue of "for cause" testing situations makes juridical - as well as logical - sense as there are important distinctions between "for cause" testing and "random" testing in the arbitral jurisprudence. In that jurisprudence, neither the Employer's right to advance safety interests in its workplace, nor an employee's right to privacy are absolute. In *Irving Pulp & Paper Ltd., supra,* the Supreme Court of Canada endorsed the "balancing of interests" approach as developed in the arbitration jurisprudence for determining the interplay between these rights, in the particular circumstances of each case. In applying this approach to determine the "reasonableness" of a random policy for drug and alcohol testing, the *benefits gained* by an employer in reducing its safety risks must be proportional to the *harm that will occur* when significant privacy rights are infringed. The Supreme Court of Canada quoted the following from the board's decision on this issue (which they upheld as reasonable):

> The question is now one of proportionality. What needs to be measured are the benefits that will accrue to the employer through the application of the random alcohol testing policy against the harm that will be done to the employee's right to

> privacy. If the random alcohol testing policy is to be justified, these must be in proportion. Here the employer's scheme gets into heavier weather (at para. 14).**]**

[200] The "harm that will be done to the employee's right to privacy" – and therefore the proportional analysis that must be carried out - may well be different in a random testing regime by urinalysis than in one based on "for cause" testing by urinalysis. It may also be different for a random testing regime based on alcohol testing versus one based on drug testing, as random drug testing and random alcohol testing do not stand on similar footing in the jurisprudence. In fact, even the minority in *Irving Pulp & Paper, Ltd., supra,* which would have held that the employer was subject to a lower evidentiary standard than that found by the majority prior to implementing random *alcohol* testing, noted the following with respect to drug testing:

> ...the cases recognize that testing for alcohol "stand[s] on a different footing" from testing for drugs (*Entrop,* at para. 106). For example, alcohol tests are usually conducted with a breathalyser, which provides an immediate result concerning present alcohol impairment in a minimally invasive manner. Though drug testing technology has advanced, it does not provide an immediate detection of drug impairment, ***which may affect the determination of whether it is reasonably necessary to ensure safety in the workplace*** (citing *Imperial Oil Ltd. v. Communications, Energy & Paperworkers Union of Canada, Local 900* 2009 ONCA 420 at para. 61) ("*Nanticoke*") (emphasis added)

[201] The "benefit" gained from a random drug test by urinalysis is therefore not necessarily the same as the benefit gained by random alcohol testing by breathalyser, as considered by the Court in *Irving Pulp & Paper, Ltd., supra*. For example, it has been well accepted in the jurisprudence that random alcohol testing provides an important benefit to an employer as it can determine whether an individual is "presently impaired", which serves a legitimate safety concern by facilitating removal of that impaired individual from the workplace. Random drug testing by urinalysis does not enjoy the same acceptance in the jurisprudence. There are live and important issues as to whether the "benefit gained" to an Employer by urinalysis drug testing in a random regime is proportional to the harm caused by that method. The Union has argued the Employer recognizes this dichotomy and so speaks of urinalysis as "red flagging" potential safety risks and enabling an employer to remove these "high risk" individuals from the workplace. This Board is entitled to consider if the "benefits gained" to this Employer by randomly testing for drugs using urinalysis is sufficient to tip the balance in its favour.

[202] Further, random testing by urinalysis is also quantitatively different from "for cause" testing for drugs by urinalysis. The Employer has argued that a contextual analysis of a worksite is important in making a determination of "reasonableness". In our view this Board is entitled to consider the quantitative effect of random testing in this workplace. Under the proposed Random Policy, a *minimum* of 50% of the approximately 2770 Unionized Employees in safety sensitive positions will be tested in each calendar year. To contrast this with existing jurisprudence, the policy at issue in *Irving, supra,* tested 10% of 334 employees – 34 employees – a year. The testing proposed by the Employer is quantitatively more than in any other case that has considered random testing in this country; the sheer scale of what is proposed is truly unique. In fact, the Employer has proposed 50% of its vast Union workforce as a *minimum* number. Under its proposed policy, that number could in fact increase. Unlike "for cause" testing, these tests will be prompted solely on the fact of employment, as opposed to any other precipitating incident or suspicious behaviour in the workplace.

[203] Under the Employer's proposed 2012 Policy, some individuals may in fact be randomly tested multiple times within each calendar year, as their names are added back to the pool after being selected. While Dr. Beckson's evidence is that the "odds are" that individuals will be tested once every two years, it is not clear how he arrived at that conclusion. In a "for cause" testing regime – in contrast - multiple testing of the same individual would only occur if there were multiple reasons to give an Employer concern.

[204] The privacy concerns that are engaged in a "for cause" testing program and a "random" testing program are likewise not identical. The Alberta Court of Appeal in *Communications, Energy and Paperworkers Union, Local 707 v. Suncor Energy Inc.* 2012 ABCA 373 (appeal of injunction granted pending this arbitration decision) stated:

> The non-consensual taking of bodily fluids is a substantial affront to an individual's privacy rights (at para. 5).

[205] The Alberta Court of Appeal's comment with respect to privacy foreshadowed the Supreme Court of Canada's pronouncements, six months later, in *Irving, supra* with regard to the importance of privacy rights in Canada:

> Early in the life of the *Canadian Charter of Rights and Freedoms*, this Court recognized that "the use of a person's body without his consent to obtain information about him, invades an area of personal privacy essential to the maintenance of his human dignity" (*R v. Dyment* [1988] 2 S.C.R. 417, at pp. 431-432). And in *R. v. Shoker*, 2006 SCC 44…, it notably drew no distinction between drug and alcohol testing by urine, blood or breath sample, concluding that the "seizure of bodily samples is highly intrusive and, as this Court has often reaffirmed, it is subject to stringent standards and safeguards to meet constitutional requirements" (para. 23).

[206] Despite the Employer's concerns with the slightest inattention in its dangerous workforce, it has not drafted a "zero tolerance" alcohol policy, or one that requires a period of abstinence from alcohol before an employee shows up to work (as do the DOT Regulations, to which the Employer referred both in evidence and argument). The 2012 Policy requires an employee be "fit for duty", which is a subjective phrase. In "for cause" testing, there is a precipitating event that raises suspicion an employee may not meet this subjective standard; an employer has reason to suspect they may not be "fit for duty". As recognized in the jurisprudence, a positive result is merely one piece of evidence to add to the mix in a "for cause" testing regime. In random testing, in contrast, there is no precipitating event that prompts the test, or history of past substance abuse to justify the intrusion. The only "triggering event" is the fact of employment; the only evidence of whether an employee is "fit for duty" is the random positive test itself. The [207] Irving Board quoted the following from *C.N.R., supra*, which accepted the value of a positive urine drug test "for broader purposes in "for cause" testing, such as corroborative value in the face of other compelling evidence of impairment", but stated:

> ….it is undisputed that a positive drug test reading does not confirm impairment at the time a urine sample is taken. For that reason any rule which mandates automatic discharge, or any disciplinary consequence, for a positive drug test *alone* is manifestly unreasonable, by KVP standard, and would clearly run afoul of the just cause provision of a collective agreement (quoted at para. 223) (emphasis added).

[207] The veracity of the particular test used by this Employer - which involves questions such as: What does a positive test establish? What are its limitations? What are the "detection windows" for drugs using this test? Are there less invasive tests available in the marketplace? – are all essential components to any reasonableness analysis. In a random testing regime, a positive test result will not be "one more piece of evidence" to add to further facts and together

build a foundation for discipline. In a random testing regime, a positive test will be the only result on which significant discipline – or even dismissal – may rest. This Board is charged with considering whether this may impact a "proportionality assessment" on a "balancing of interests" approach.

[208] Turning to the matter of what was established by the Elliott Board, it is clear that Board reached their unanimous decision based on consideration of the policy, evidence, jurisprudence and overall facts before it at that time. The Elliott Board clearly set out the basis for decision:

> *Basis for the decision*
>
> This decision must be based on KVP principles and in particular whether Suncor's unilaterally imposed Alcohol and Drug Policy is a reasonable exercise of management rights. In most respects the Policy is reasonable and should be supported. The question for this Arbitration Board is whether section 4.5 of the Policy is reasonable. This necessarily involves a balancing of interests - neither the right to privacy nor the right to impose obligations on employees to address safety concerns are absolute rights.
>
> As Arbitrator Picher put it in *Re: Canadian National Railway Co and Canadian Auto- Workers; United Transportation Union* (2000) 95 L.A.C. (4th) p 367
>
> ... in determining whether an employer may resort to drug and alcohol testing of its employees, a board of arbitration must endeavour to balance the interests of the employees in the privacy and integrity of their person with the legitimate business and safety concerns of the employer. Within that theoretical framework, neither the employee nor the employer can assert any absolute right. Rather, the analysis focuses on whether, given the nature of the enterprise and the work performed, reasonable limitations on the individual rights of the employees can fairly be implied. If so, then a correlative right may vest in the employer to require a medical examination of the employee, including alcohol or drug testing.
>
> The Supreme Court of Canada has described the taking of bodily samples as "highly intrusive". *R v Shoker*, [2006] S.C.J. No 44. The Supreme Court of Canada has explained the right to privacy includes protection from psychological trauma which can be occasioned by an invasion of privacy.
>
> The importance of this point, the psychological trauma that can be caused by an invasion of privacy, was apparent in the evidence of most of the Union's witnesses. Confident, seasoned and experienced men and women were mildly or significantly traumatized by the alcohol and drug testing experience. An employee who felt respected and trusted in 30 years of working for Suncor suddenly feels accused, distrusted, and disrespected. Most other Union test case

> witnesses expressed similar feelings that we are satisfied were genuine. *The lesson to be learned from this is that there needs to be a justifiable reason for testing. If there is a justifiable reason, the test may still be a traumatic experience but the person tested should be better able to understand why the test was conducted and be better able to accept the need for the test even if it is negative.*
>
> This requires that the testing be done in an atmosphere and in a manner that is sensitive to the employee being tested and the trauma they may well be experiencing. (at paras. 84-88, emphasis added)

[209] It should be noted that the evidence of the Union witnesses in the case before this Board was that such testing was humiliating, embarrassing and degrading and caused considerable stress and discomfort and concern with the possibility of false negatives (which in fact occurred for Brenda Sitco), and the impact such a result would have on the individual's reputation in the community. The Elliott Board stated:

> We are satisfied that Suncor should have an Alcohol and Drug Policy that is effective. There is no excuse for working ***while under the influence*** of alcohol or drugs. Employees are entitled to a safe workplace and employers should take every reasonable step to ensure a safe workplace. Extending the right of privacy so as to impede a justified attempt to keep the worksite free of alcohol and drugs would, as the Court of Appeal has put it, fly in the face of logic (at para. 83, emphasis added)

[210] This Board also agrees with the need for a policy that is effective. In the safety sensitive world at Suncor's Oil Sands Operations, there is no excuse for working under the influence of alcohol or drugs**.** While the policy considered by the Elliott Board provided for the prohibition of employees working while under the influence of drugs or alcohol at specific levels, the 2012 Policy is framed around a "Fit For Duty" standard, and further allows individuals to work under the influence of alcohol so long as their blood alcohol level is below 0.04%.

[211]The concern for employees reporting for work within 4 hours of consuming alcohol was provided in Suncor's Expert witness Dr. Beckson. He provided the Board with the Alberta Alcohol and Drug Abuse Commission Report of 2002 which pointed out the risk situation and that 4% of those surveyed reported consuming alcohol within 4 hours of reporting for work.

[212] Dr. Kadehjian gave evidence that even trained people cannot be relied on to effectively identify alcohol or drug use. In closing submissions to the Board, Suncor emphasised their reluctance to allow supervisors to determine fitness for duty based on observations:

> ***Supervisors Cannot Be Relied on Solely to Ensure Employees Are Fit for Work***
> Suncor engages in ongoing extensive education and training of Suncor supervisors on the application of Suncor's alcohol and drug testing policies.
> Nevertheless, it is clear from past jurisprudence and the evidence from Suncor's experts, that dealing with performance deficits through vigilant observation alone is not possible. Performance deficits may not be readily obvious and, in any event, due to the expansive worksites at the Suncor Operations, Suncor Employees often work out of sight of co-workers and leaders for extended periods of time.

[213] There is evidence of how "Fit for Duty" has been explained to employees in the time period since the *Elliott Decision.*

[214] The Employer has not simply added a random testing provision to its current policy. It has significantly revised the policy reviewed by the Elliott Board. Under Suncor's policy, an employee who tests positive for marijuana indicating that the employee may have used marijuana on her or his own time, days before the test while on vacation, may be subject to discipline or dismissal based on the potential risk from after effects of the marijuana, and there are issues with whether or not those risks can be assessed through urinalysis as a testing method. To pass a *K.V.P., supra,* test, random testing must meet the standard of reasonableness, and must be clear and unequivocal. This Board is entitled to consider whether the "Fit for Duty" standard – as that has been defined and explained to employees - meets that criteria.

[215] With respect to the argument of "acquiescence", it may well be that the Employer's method of testing by urinalysis in "for cause" testing situations has not been – and cannot now be – challenged by the Union with respect to the findings of the *Elliott Decision* and the passage of time. However, this Board makes no finding with respect to this issue as it not the Employer's policy of "for cause" testing that is before us in this arbitration. Despite the Employer's assertions about what has already been decided, the Union cannot be found to have acquiesced in the use of urinalysis for a random testing regime that has not yet been implemented by the Employer. We limit our decision to the issue of whether the Employer has exceeded its management rights in implementing its policy to *randomly* test its workforce for drugs by urinalysis and alcohol by the provisions under which the random testing will be conducted.

[216] In summary, the issue of the reasonableness of urinalysis as a testing method for random drug testing was not determined in the *Elliott Decision.* This Board is tasked with determining

the "reasonableness" of the 2012 Policy, which provides for random alcohol and drug testing by breath and urinalysis tests. That question is not limited to consideration of the Random Drug Testing Standard standing on its own, but whether the testing methods and procedures are appropriate in a random testing program. Both the *fact* of random testing, and the *method* used to random test are relevant in the proportionality assessment this Board must undertake. Without such an assessment, the balancing of interests approach, as mandated by arbitral jurisprudence and recognized as appropriate in *Irving Pulp & Paper Ltd., supra,* cannot be undertaken.

[217] In our view, our conclusion on jurisdiction does not serve to "extend, amplify or add to the issues nor substitute other issues for or in lieu of the issues defined by the submission to arbitration. We cannot agree the Union is foreclosed from the very analysis this Board is charged with by virtue of *Irving Pulp & Paper, Ltd., supra,* and the body of arbitral jurisprudence on which that decision is based. In particular, this Board must determine whether the method by which random drug testing will be accomplished under the 2012 Policy provides gains to this Employer, in the least intrusive manner possible, sufficient to outweigh the harm caused to an employee's privacy rights as a result of such testing.

B. Random Testing: The Jurisprudence

[218] As previously noted, random alcohol testing and random drug testing have not run on parallel paths in the jurisprudence. That said, the starting point for any analysis of the arbitral jurisprudence relating to random drug and alcohol testing is the recent Supreme Court of Canada decision in *Irving Pulp & Paper, Ltd., supra.* The facts in that case are noted in the decision of the arbitration board: *Re Irving Pulp & Paper, Ltd. and C.E.P., Local 30 (Day)* 100 C.L.A.S. 43 (the "Irving Board"). The Supreme Court of Canada ultimately upheld the decision of the Irving Board that random alcohol testing was unreasonable.

[219] This case is significant not only for what it decides, with respect to random testing, but for what it does not. It is also significant for the deference which it gives to arbitral jurisprudence which has developed in this area. Some background of the case is necessary to place it in context to the issues facing this Board. The employer operated a kraft paper mill in Saint John, New Brunswick, already had a "for cause" drug testing policy and chose to implement a random alcohol testing policy. That testing policy had already been in place for approximately two years,

by the time the arbitration was heard. The employer did not implement a random drug testing policy. Drug testing was therefore not at issue in the *Irving* decision. Three hundred and thirty-four employees in "safety sensitive" positions were on the testing list, with 10% of the employees (or 34 people) subject to testing in any 12 month period. The cut off level for alcohol was 0.04%. Significant disciplinary sanctions were associated with failing the test. The Irving Board in that case had factual evidence of the random testing results - or lack of such results - to consider in determining the nature of the "problem" in that workplace.

[220] The refinery was found to be a "dangerous workplace". While the Supreme Court found that could justify "for cause" testing, it did not imbue the Employer with the ability to implement random testing:

> …the fact that a workplace is found to be dangerous does not automatically give the employer the right to impose random testing unilaterally. The dangerousness of the workplace has only justified the testing of particular employees in certain circumstances; where there are reasonable grounds to believe than an employee was impaired while on duty, where the employee was directly involved I a workplace accident or significant incident, or where the employee returns to work after treatment for substance abuse. It has never, to my knowledge, been held to justify random testing, even in the case of "highly safety sensitive" or "inherently dangerous" workplaces like railways (*Canadian National*) and chemical plants (*Dupont Canada Inc. and C.E.P. Loc. 28-0 (Re)…* or even in workplaces the pose a risk of explosion (*ADM Agri-Industries)*, in the absence of a demonstrated problem with alcohol use in that workplace. That is not to say that it is beyond the realm of possibility in extreme circumstances, but we need not decide that in this case (at para. 45)

[221] While upholding the Board's decision as reasonable, the Supreme Court rejected the distinction made by that board between dangerous and "highly dangerous" workplaces. The majority justices at the Supreme Court held that whether the workplace was "dangerous" or "highly dangerous" did not relieve the employer of the requirement to prove the need for testing:

> But I have been unable to find any cases, either before or since *Nanticoke*, in which an arbitrator has concluded that an employer could unilaterally implement random alcohol or drug testing, even in a highly dangerous workplace, absent a demonstrated workplace problem (at para. 37).

[222] The majority of the Supreme Court upheld the decision of the Irving Board that the policy failed the test of reasonableness mandated by *K.V.P., supra.* The policy was subject to the following constraints, including the right to be disciplined for just cause:

> When employers in a unionized workplace unilaterally enact workplace rules and policies, they are not permitted to "promulgate unreasonable rules and then punish employees who infringe them"…This constraint arises because an employer may only discharge or discipline an employee for "just cause" or "reasonable cause" – a central protection for employees. As a result, rules enacted by an employer as a vehicle for discipline must meet the requirement of reasonable cause [citing several decisions] (at para. 22).

Further:

> The heart of the "*KVP* test" which is generally applied by arbitrators, is that any rule or policy unilaterally imposed by an employer and not subsequently agreed to by the union, must be consistent with the collective agreement and be reasonable (at para. 24).

[223] *Irving, supra,* affirmed that a determination of whether a random alcohol testing policy was "reasonable" requires an arbitrator to apply a carefully calibrated "balancing of interests" proportionality approach, which had already been developed in arbitral jurisprudence. The Court described the approach in this manner:

> Under it, and built around the hallmark collective bargaining tenet that an employee can only be disciplined for reasonable cause, an employer can impose a rule with disciplinary consequences only if the need for the rule outweighs the harmful impact on employees' privacy rights. The dangerousness of a workplace is clearly relevant, but this does not shut down the inquiry, it begins the proportionality exercise…**Was the benefit to the employer from the random alcohol testing policy in this dangerous workplace proportional to the harm to employee privacy?** (at paras. 4 and 43) (emphasis added)

[224] The arbitration board in *Irving, supra,* described the proportionality approach as follows:

> In essence, what must be shown by the employer, at the end of the day, having regard to its goals and the evidence, **is that the benefit gained by the rule is proportionate to the damage done by that rule to the employee's right to privacy** (at para. 37) (emphasis added)

[225] While the Irving Board was limited to considering random testing for alcohol, it did comment on the differences between random drug and alcohol testing with respect to the "means chosen" to reach a particular end, and the importance of impairment in the jurisprudence:

> In the cases, the breathalyser method has been treated somewhat differently and more kindly than have the various other drug testing methods. This has occurred for two principal reasons.
>
> One is that it is a test which shows present impairment. This feature covers an important and obvious employer interest. It holds out the possibility of

> intercepting a dangerous combination – impairment and the performance of safety-sensitive work – while the impairment is operating and when the connection between an impaired worker and the work can be broken. **In the cases, the lack of such a result was appreciated as a failing of drug testing regimes, and formed part of the reasons for not permitting random drug tests.**
>
> A second reason is that while it is physically intrusive to a degree, breath testing is less so than other testing methods discussed in the cases – blood testing, urine analysis, buccal swabs, etc. The Supreme Court, which has consider the breathalyzer testing procedure in the light of *Charter* protections of individual body integrity by an encroaching state, has referred to it as "minimally intrusive". See *R v. Stillman* [1997] 1 S.C.R. 607 at p. 659. This helps with privacy concerns (at paras. 110-113, emphasis added).

[226] The only decision to have considered *Irving, supra,* to date is that of Arbitrator Surdykowski in *MCAS v. UA, supra*. That decision concerned pre-access testing which was being implemented by contractors in order to meet Suncor's requirements for access to its Sarnia plant. While the Board takes the Employer's point that the decision does not consider random testing, the arbitrator made the following comments which this Board views as relevant:

> The fundamental underpinning of our entire reactive justice system is reasonable or probable cause. It does not favour non-cause-related preventative measures which impinge on the fundamental rights of individuals in our society. Perhaps that is why *K.V.P.* has remained the starting point for the management rights rule-making discussion (at para. 127)

[227] The majority of the Supreme Court in *Irving Pulp & Paper, Ltd., supra,* also emphasized the importance of privacy rights in this country. With respect to breathalyzer testing, the Court noted that the Irving Board found that the scheme of random testing for alcohol "effects a significant inroad" on privacy, involving:

> …coercion and restriction on movement. Upon pain of significant punishment, the employee must go promptly to the breathalyzer station and must co-operate in the provision of breath samples…Taking its results together, the scheme effects a loss of liberty and personal autonomy. These are at the heart of the right to privacy (at para. 49).

[228] The Court found the board's conclusion to be "unassailable":

> Early in the life of the *Canadian Charter of Rights and Freedoms,* this Court recognized that "the use of a person's body without his consent to obtain

> information about him, invades an area of personal privacy essential to the maintenance of his human dignity" (*R v. Dyment* [1988] 2 S.C.R. 417, at pp. 431-432). And in *R. v. Shoker*, 2006 SCC 44…, it notably drew no distinction between drug and alcohol testing by urine, blood or breath sample, concluding that the "seizure of bodily samples is highly intrusive and, as this Court has often reaffirmed, it is subject to stringent standards and safeguards to meet constitutional requirements" (para. 23) (at para. 50).

[229] While Justice Cotê, writing in dissent in the Court of Appeal injunction decision, would have disagreed that giving a urine sample constituted a significant impact on privacy rights (he noted individuals choose to give such samples to their doctors) his comments were made prior to the decision in *Irving, supra*, which reinforced the intrusiveness of an employer demanding bodily fluids from an employee. He also overlooked the fact that medical doctors are governed by a code of conduct and laws that requires them to maintain the confidentiality of patient health information.

C. Random Alcohol Testing post-*Irving Pulp & Paper, Ltd., supra*: What Constitutes a "Problem" and What is the "Workplace"?

1. The Jurisprudence

[230] In *MCAS v. UA*, the Arbitrator made the following comments with respect to evidence required in a post-*Irving, supra,* landscape:

> Our labour relations justice system is as reasonable and probable cause-based as the other components of our civil law and litigation system. It is evidence-based, not faith or belief-based. Accordingly, assumptions, unsupported presumptions, anecdotal or unparticularized evidence, and broad-based statistical inferential reasoning is typically "not good enough" to satisfy the balance of probabilities onus of proof. The extent to which an employer can require an employee to undergo alcohol and drug testing will depend on the degree of safety sensitivity and demonstrated (not presumed) legitimate need in the particular workplace. The evidence sufficient for the purpose will depend on the circumstances of the particular case, but it must in any event always include cogent direct non-anecdotal evidence from that workplace (at para. 127).

[231] He went on to make the following comments with respect to the "benefit to be gained" from such a policy:

> The employer must establish that the rule or policy will probably improve workplace health and safety. Uncertain or speculative health and safety gains do not justify a significant invasion of employee privacy. The resulting threshold may be a high one, but the Supreme Court of Canada in *Irving Pulp & Paper, Ltd.*

> has made it clear that is the way it should be, particularly when fundamental individual privacy rights are in the balance (at para. 127)

[232] It is the task of this Board to test the veracity of evidence offered by the Employer with respect to the problems in its workforce and the safety gains expected from random testing. While the Employer has argued that the test from *Irving Pulp and Paper, supra* is "a problem" the Court in *Irving, supra* did not consider the issue of a "problem" in a vacuum. The Court considered the positive alcohol testing history to determine whether there was a "problem" in that case. Further, the Board also had almost two years of random alcohol testing results to consider, in addition to a "for cause" testing history. Due to the injunction, this Employer does not have any random alcohol testing history to use in determining the extent of a "problem" in its workplace.

[233] In *Irving, supra*, there were eight (8) specific alcohol incidents over a period of just under 15 years, including 5 incidents where employees attended work under the influence of alcohol. This calculated to roughly one incident (as measured by a BAC reading greater than 0.04%) of a positive test of alcohol impairment in 334 employees, every 3 years. Put another way, in *Irving, supra*, 0.3% of the workforce (1 out of 334 workers) tested positive for alcohol impairment every three years (or 0.1% per year). The majority of the Court agreed with the Irving Board that this evidence disclosed an "absence of evidence of any real risk" (at para. 14). This was the case even though this workplace was inherently dangerous, where even one positive test could result in tragic consequences. While there was also general evidence of alcohol use in *Irving, supra,* regarding employees who were simply sent home before being tested, and employees discussing their experiences, the Board rejected that general evidence as not persuasive. With respect to a "causal link", the Supreme Court found the evidence did not disclose any "accidents, injuries or near misses connected to alcohol use" (at para. 13).

[234] The Court held that it was not unreasonable for the Irving Board to have found – on these facts - the "gains likely to result to the employer from random alcohol testing run from uncertain to exist at all to minimal at best" (at para. 119), while the impact on privacy rights was significant. As a result, the Supreme Court found that the employer in *Irving, supra, "*exceeded

the scope of its management rights under a collective agreement by imposing random testing in the absence of evidence of a workplace problem with alcohol use*"* (at para. 8).

[235] The majority and minority decisions of the Supreme Court in fact differed on what amount of evidence was required to justify random alcohol testing. In dissent, the minority justices in the Supreme Court held that all that was necessary was "some" evidence of alcohol use to constitute a "problem" that "could not be combated in some less invasive way" (at para. 93, citing previous jurisprudence). They would have found the board's decision to require "significant" evidence as unreasonable as it elevated the evidentiary threshold an employer had to meet above that recognized in arbitration jurisprudence. The Court was referring to *Strathcona, supra,* and *G.T.A.A., supra,* the only two decisions to allow random alcohol testing in this country. G*.T.A.A., supra,* found the random drug testing policy to be unreasonable. In the view of the dissenting justices, one positive test demonstrated an "alcohol problem"; demonstrating a "significant" or "serious" problem was unnecessary. Further, the minority disagreed with the Board's finding that the evidence of alcohol use must be causally tied or "causally linked" to "accident, injury and near-miss history" at the plant, in order to demonstrate a problem (at para. 105).

[236] The majority disagreed. They upheld the Board's decision – including the need to demonstrate a "significant" or "serious" problem, and its requirement of a causal connection to the accident, injury and near miss history at the plant – as reasonable:

> This evidence of alcohol–related incidents is not to be dismissed, and I do not do so, but it cannot be said to be indicative of a significant problem with alcohol-related impaired performance at the plant. *As well, such as it is, it is not tied in with what the actual experience has been in this plant, with accident, injury and near miss history, and with what group or group of employees*. I therefore have no idea of what the elements of any such record are; still less whether any lapses have been causally linked to the abuse of alcohol (at para. 105, Board decision, emphasis added)

[237] As noted by the majority in *Irving Pulp & Paper, Ltd., supra,* in *Strathcona, supra,* the evidence was:

> the plant operations group, which included the grievor's position had a disproportionately high rate of accidents due to substance abuse, with 2.7% of

> employees reporting that they had personally had near misses due to substance use in the previous 12 months." (at para. 39).

[238] The majority held that this evidence was a "rational and sufficient foundation for the random testing policy" (quoted at para. 39). There is no such evidence before this Board.

[239] Unfortunately, the Supreme Court did not give any further direction on what evidence would be sufficient to meet the threshold of establishing a "general problem in the workplace". Further, the Court did not elaborate on what constituted "legitimate safety concerns", a phrase also referred to in their decision. While *Irving, supra,* has given guidance on the level of evidence that is *not* sufficient to justify privacy intrusions, this Board is left with very little guidance on what evidence *would be* sufficient in a post-*Irving,* world. There is some direction in past arbitral jurisprudence on this issue which would aid this Board in determining what does constitute a "problem" sufficient to justify random alcohol testing.

[240] The decision of Arbitrator Devlin in *G.T.A.A., supra,* is the only decision in this country to decide a policy grievance in favour of the imposition of random alcohol testing. No decision in this country has allowed random drug testing. In *G.T.A.A., supra,* there was "considerable" evidence of not just alcohol use or finds of empty alcohol containers or paraphernalia, but also of a culture which accepted drinking on the job – a culture which developed not just between employees, but was also due to the attitude of the past management at the airport. Employees openly kept beer in the refrigerators, office parties were held which served alcohol and encouraged employees to drop by, employees would attend at local bars on their lunch hour and breaks and then return to work, and it was "common" to smell alcohol on the breath of fellow employees. There were several management witnesses who had previously been union members who gave evidence regarding this issue and these practices. There was also evidence employees were reluctant to report fellow employees who had been drinking, and they were not encouraged to do so. Between 1994 and 1997, there was evidence that employees assigned to the day shift "often spent the afternoon in bars in the vicinity of the Airport drinking and playing cards" (at para.257), and in some cases these individuals returned to the airport to carry out snow-clearing operations. This practice continued as late as 2001, when employees were seen in bars ordering beer while on a break from snow-clearing operations. This evidence was in addition to finding

empty beer and liquor containers in various locations. There was also evidence of employees bringing incidents to management's attention (prior to the transfer of operations to the GTAA) with respect to inebriated fellow employees, and *nothing was done by management.*

[241] After the GTAA took over in 1996, there was an increased presence of managers, and directives were given regarding the use of drugs and alcohol, but considering the culture that had developed in the workforce, the employer decided to implement random drug and alcohol testing. The arbitrator found the evidence of alcohol use extended over a significant period of time and "indicates a far more pervasive problem, extending well beyond the case of employees who consumed a bottle of beer during a meal break" (at 261). The drug testing aspect of the policy was struck down by the arbitrator in *G.T.A.A., supra,* as unreasonable. More will be said regarding this aspect of the decision later in this award.

[242] *Strathcona, supra,* is also mentioned by the majority of the Supreme Court of Canada in *Irving Pulp & Paper, Ltd., supra,* and has been quoted by the Employer in support of its arguments. The background to this case is important to note. This was a termination grievance, heard in 1999, with the award issued in May of 2000. The grievor was an employee who occupied a safety-sensitive position in an oil refinery and was terminated due to a positive alcohol test, administered randomly. Drug testing was not in issue. In that case, the random alcohol testing policy had been in place for 6 years prior to the incident with the grievor, and for 8 years by the time the arbitration was heard. In *Strathcona, supra,* the union did file a policy grievance against the random policy, but it was after the incident with this grievor. That policy grievance had not yet been resolved at the time of the arbitration decision.

[243] The evidence of the grievor showing up at work and registering 0.051% and 0.055% was found by the arbitrator to be "compelling evidence" of a violation of the policy. With respect to the reasonableness of the policy itself, the arbitrator accepted a survey which indicated that 2.7% of the employees in the grievor's operations group reported that their own substance abuse in the last 12 months had resulted in "near misses" at work, that such evidence did justify a random testing policy, and that the impairment of the grievor by alcohol at work "vindicated" the need for the policy. The Board particularly noted this that this was not a case of an abstract policy

grievance (at pp. 73, 74). In *Strathcona, supra,* the arbitrator did not conduct any balancing of interests approach with respect to determining the interplay of the employer's right to impose a random testing policy and the employee's right to privacy. With respect to the issue of privacy, the arbitrator held that "We do not believe that the Grievor can have a reasonable expectation that his blood alcohol level will be kept private" (at p. 78). This was despite the fact that the development of the balancing of interests approach was argued by the union. The arbitrator noted the earlier decision of the Supreme Court of Canada in *R. v. Stillman, supra,* that a breathalyser is "minimally intrusive" (As noted earlier in this award, the more recent view of the Supreme Court in Canada - as quoted in *Irving Pulp & Paper Ltd., supra,* is that all bodily fluid tests – whether by breath or otherwise – are highly intrusive (at para. 50)). Further, in *Irving, supra,* the Court endorsed the "balancing of interests" approach, which was not applied in *Strathcona, supra*. While the arbitrator in *Strathcona, supra,* did refer to *Trimac, supra,* which was released after argument was concluded, he distinguished it on the basis of the lack of evidence in that case, and on the fact that the employer in *Strathcona, supra,* had a distinct example of alcohol impairment, and so was not depending on residual effects, as in *Trimac, supra*.

[244] While the Supreme Court of Canada did refer to *Strathcona, supra,* in *Irving, supra,* it did so to demonstrate that this case had evidence on which to base a decision, and did not depend on the dangerousness of the workplace as directing the result. In this Board's view, that Court was not endorsing the nature or extent of the evidence, nor whether such evidence would be successful when pitted against privacy rights on a proper balancing of interests approach in the context of a policy grievance. While there are other distinctions between that case and the issues before this Board, in our view it is not necessary to list them given the finding that no balancing of interests approach was undertaken in that case.

2. The Evidence Offered by the Employer

[245] Against this backdrop, we turn to the evidence and arguments before this Board. The Employer has offered four types of "evidence" to support its allegation of a problem: evidence of positive drug and alcohol "for cause" testing results (post-incident, reasonable cause and post-rehabilitation tests); evidence of "security incidents" (Ex. 63); dependency assessments and

evidence relating to the community in the RMWB. It bears repeating at this stage that the evidence offered to this Board relates to three types of employees: Union Employees (3,383 employees), Contractor Employees (up to 3400 employees) and Non-Represented Employees (2,963 employees).

[246] While there is no question that alcohol or drugs do not belong in a dangerous workplace, this begs – rather than answers – the question of what measures an employer is entitled to take to address such use when that workplace is governed by "just cause" requirements. The parties agree to the safety sensitive nature of this workplace. The Employer has argued that the reasoning in *Irving Pulp & Paper Ltd, supra,* is based on avoiding "catastrophic consequences". We do not agree. The decision was based on balancing the interests of the Employer in maintaining a safe workplace with the privacy rights of employees, with respect to random alcohol testing. The Employer's argument that *any* positive test is "one too many" was in fact accepted by the *minority* of the Court in *Irving Pulp & Paper Ltd.* It was not accepted by the majority. While there was clearly evidence of alcohol impairment in the dangerous workplace in *Irving, supra,* that evidence was found insufficient to reach the threshold of a "problem", in the minds of the majority justices.

[247] In the case before us, the Employer argued that it need not establish a causal connection between the positive test results and the accident, injury and near miss record at the Oil Sands Operations. They urged it "flies in the face of logic" to require such a connection. The Union argued this evidence was not offered by the Employer because the evidence is that the record is improving and is within targets. The Employer has argued that this is not the point – the Supreme Court of Canada requires evidence of a "problem", and this is shown on the evidence it has offered; and any other conclusion "flies in the face of logic"; it need not wait for a disaster to happen.

[248] With respect to the Employer's argument, the Supreme Court has in fact taken that "leap into the face of logic" to which they refer. In upholding the Board's decision as reasonable, the majority of the Supreme Court of Canada noted that the employer had <u>not</u> established a causal connection between the positive test results which the employer offered in that case and the safety record in the plant. As a result, in our view, in order to establish that its proposed policy

of random testing serves a legitimate business interest in improving safety, the Employer must establish such a connection.

[249] Evidence before the Board indicated that the recordable injuries frequency (RIF) in mining operation reduced from a ratio of 3.0 in 2003 to less than 0.5 in 2009 (Ex. 21, Tab 30). In the same document employees were thanked for also increasing production through load factor improvement. By 2013, Suncor was congratulating employees in mining operations for reducing the RIF to .29 (Ex.104). Recordable injuries at the Firebag operation were down to .27 by October 2011 while two contractors had recordable injuries in that month (Ex. 21, Tab 18). The downward trend in reportable injuries was also noted in Exhibits 21, Tab 31(b) and 103.

[250] With respect to the effectiveness of measures already in place, the evidence which was offered shows a declining "for cause" testing experience, since the *Elliott Decision.* In 2009, the year immediately following the *Elliott Decision,* there were 395 tests conducted under the "for cause" provisions of the policy with 34 of those testing positive (8.6% positive tests). In 2010, there were 492 tests conducted, with 32 positive tests (or 6.5% of the total as positive). In 2011, 419 tests were conducted, with 25 positive (or 5.96% positive). In 2012, there were 549 tests with 19 positive (or 3.46% of the total testing positive). In the first eight and one half months of 2013 there were 455 tests conducted, with 16 positive (or 3.5% positive). This reduction in positive testing history under the "for cause" provisions of the policy is despite the fact that in that same time period, Suncor's workforce has increased substantially and employee orientation-training material regarding the policy has been inconsistent.

(a) Testing results under the "for cause" alcohol and drug policy

[251]Turning to the specific alcohol "for cause" testing evidence before us, the Employer notes that, since 2000 (over 13 years), there have been 14 positive breathalyser tests for alcohol. Three of these tests were in 2012, and one was in 2013, with the remaining 10 being prior to that date. There was no evidence of what type of incidents prompted the post-incident tests.

[252] Even if the tests in 2012 and 2013 related to those in safety-sensitive positions (and it is not clear if this is in fact the case), and even if the "integrated" workplace position of the Employer were accepted (as discussed below), such that all test results are relevant no matter the

type of employee, three positive tests in 2012 and one positive test in 2013 represents 0.020% of the total workforce of over 9000 testing positive for alcohol in 2012 and 0.0103% of employees testing positive for alcohol in 2013. Taking only Suncor employees (and not including Contractor employees), that would be 3 tests for approximately 6300 employees in 2012 (0.05% of the workforce testing positive for alcohol), and 1 test for 6300 employees in 2013 (0.02% of the workforce testing positive for alcohol) in 2013. Using either figure, the evidence offered by Suncor with respect to its positive testing results is in fact lower than that offered to the Board in *Irving, supra*, where 0.3% of the workforce tested positive every three years, (or 0.1% per year). The Court in *Irving, supra*, agreed that such a record would offer minimal safety gains to an employer, and could not justify the imposition of random testing.

(b) Evidence relating to Alcohol and Drug Security Incidents

[253] In addition to its positive "for cause" testing experience, the Employer relied heavily on Exhibit 63 as demonstrating further evidence of the "problem" with alcohol at its Oil Sands Operations. This was a document relating to what the Employer considers are "Alcohol and Drug Security Incidents" between 2004 and September 2013 – a nine year period. It includes reference to alcohol "finds" such as empty bottles and also drug paraphernalia and drug finds. The Employer argues the evidence is "profound", "pervasive" and "more compelling" than any evidence in any other case. Another adjective could be added to that list: "unrefined". The evidence from Suncor's witness is that security was interested in recording incidents, rather than breaking them down by specific employee or contractor group, seniority, specific location, follow-up results. In contrast, Suncor clearly demonstrated the ability to produce refined employee data throughout the hearings in other areas.

[254] While 2,276 incidents sounds like a very large number, the Union argues the report does not delineate whether the incidents listed involved Union Employees, Non-Represented Employees or Contractor Employees and is precisely the type of evidence against which the arbitrator in *MCAS, supra*, cautioned. This lack of particularity is confusing to the Board, given the sophisticated data collection abilities that the Employer has shown with respect to other evidence which was offered (for example the graphs in Exhibits. 88-91, and Exhibits. 54-57 with

respect to all alcohol and drug tests). Similarly the Employer has the ability to maintain electronic records of every training session attended by each employee (Ex. 108 & 109).

[255] In assessing the 2,276 alcohol and drug incidents in Exhibit 63, as noted earlier, bargaining unit employees only make up approximately one-third (1/3) of the total employees who work on the Oil Sands Operations. Two-thirds (2/3) of other workers have access to the operating footprint. The "camps" or "Lodges" are in fact primarily home to Contractor Employees. Exhibit 63 does not distinguish the types of Employees involved in its "incidents" listed. The document counts as "incidents" situations which are not "incidents" at all. For example, this listing incudes as an "incident" a situation where a sniffer dog (trained to sniff out drugs) "alerted" to a hockey bag and another where it alerted to toiletries, but nothing was in fact found. It also refers as an "incident" to a situation where a Suncor truck was struck by an impaired driver, even though that situation did not cast any aspersions on a Suncor particular employee. While there are several references of "New Hires" showing up at the gate with alcohol in their possession, the Employer has not distinguished whether these "New Hires" are Union Employees or Non-Represented Employees, or even Contractor Employees. Are they employed in safety sensitive positions or non-safety sensitive positions? There is also no particularization between the incidents by noting whether they involved junior or senior employees. In a workforce where more than 50% of the Unionized Employees have less than 5 years of service, this evidence may have been particularly significant. For example, of the 321 "incidents" noted in Exhibit 63 to have occurred between August 26, 2012 and August 26, 2013, over 250 of those incidents occurred at camp facilities, determined by location and bunkhouse name. The majority of those incidents appear, from the location of the camps, to involve contractors.

[256] Of further note, a choice has been made in this document to treat Fire Bag and the Fort McMurray base plant as one location even though they are approximately 100 km apart, and even though Fire Bag is a staffed almost entirely by workers in camp accommodations, while most Main plant employees live in Fort McMurray. The Alberta Alcohol and Drug Abuse Commission noted the increased risk for workers traveling to work and working at remote job sites. The Commission also emphasized that actions to deal with workplace substance abuse must be based on reliable and current information. Suncor has chosen not to keep data on testing

results that differentiate between the two locations, length of employment or work area within the sites. Without this evidence, we cannot determine if a problem is isolated to one location or to new employees. We are asked to tar all employees with the same brush with respect to random testing.

[257] According to the Union's analysis of this document, 1,518 incidents of the 2,276 offered were connected to the camps, not to the Oil Sands Operations themselves and of the remaining incidents, only 12 specifically refer to a bargaining unit employee or suggest that a Union Employee may have been involved as the incident occurred on Suncor Equipment. Converting this to a percentage, the Union argues that of the 2,276 Security Incidents listed in Ex. 63, only 12 incidents,- 0.527% of the total security incidents - relate to Union Employees.

(c) The Relevance of the Evidence of the Entire Workforce

[258] The Employer has argued that there is an "integrated" workforce at its Oil Sands Operations: all three types of employees (Union Employees, Non-Represented Employees and Contractor Employees) intermingle and their actions impact each other. Therefore, it urges this Board to consider the drug and alcohol evidence of its entire workforce in determining whether a "problem" exists in this "workplace", and not just the experience of the members of Local 707. It argues *Irving Pulp and Paper, supra,* supports this interpretation as it refers to a problem "in the workplace".

[259] The difficulty for the Employer in using the decision in *Irving, supra,* to support this argument is the lack of facts with respect to the workplace in *Irving, supra.* While it was noted by the Board that the 334 employees on the testing list were made up of bargaining unit members, I.B.E.W. member and non-union members, there was no indication in that case of how many employees in that unit were in in fact union members, nor was it clear whether the testing history was that of the bargaining unit or otherwise. The evidence is simply lacking on this point. The Board in fact noted the lack of a causal connection between the evidence and the various groups of employees (at para. 105) as a failing of the evidence in that case. There was no evidence of what the "actual experience has been in this plant, with accident, injury and near miss history, *and with what group or group of employees* (at para. 105). Was evidence lacking

because the bulk of those individuals were bargaining unit members and the numbers of other employees was minimal? It is simply not clear. It does not appear that an argument was made in that case of what makes up the "workforce" in that decision, but the Board did not appear to have accepted evidence of the workforce as an integrated whole in making its determination on the lack of a causal connection.

[260] The Employer has argued that, as it is not a member of CLR, "Suncor cannot require contractor organizations to have their own random alcohol and drug testing policy, if the Random Testing Standard is not implemented" (at para. 156), although it also recognizes in argument that all contractors reporting to any Suncor site must be "fit for duty", and it has developed a "Contractor Alcohol and Drug Standard" to ensure this is in fact the case. That standard ties the Contractor experience to its own policy. The Employer argues that it must test its Union Employees to gain the right to address the problem with its Contractor Employees, and that this is a "public interest" argument in addressing safety that is relevant for this Board to consider.

[261] An arbitration board is a statutory entity with no inherent jurisdiction; its jurisdiction arises out of a contractual relationship between an employer and a union. The bargaining unit in this case, the (former) C.E.P., Local 707 is subject to a collective agreement, which engages our jurisdiction as between the Employer and the bargaining unit members to determine the exercise of the Employer's management rights. The *Alberta Labour Relations Code* states that our decision is binding on the employer and on employees *bound by the agreement* who are affected by the award" (section 144 (c) emphasis added).

[262] In *Irving, supra,* the grievance was filed as a complaint that "the employer lacks the power to mandate random alcohol testing for bargaining unit members" (Irving Board, para. 9). As noted in *Irving, supra*:

> The legal issue, as a result, is whether implementing a random alcohol testing policy was a valid exercise of the employer's management rights under the collective agreement (at para. 21).

[263] In our view, to consider the experience of the bargaining unit to determine the "problem" which *Irving, supra,* contemplates is consistent with the proportionality assessment which *Irving, supra,* dictates, and is supported by *Trimac, supra* and by the legislation by which we are governed. In *Trimac, supra,* Arbitrator Burkett made the following comment:

> The Company has failed to establish any pre-existing experience or incidents *within this bargaining unit as* would support the need for mandatory random drug testing of all bargaining unit employees (at para. 74).

[264] As our jurisdiction derives from the collective agreement, and extends to the Employer and the bargaining unit members only, and as the impact on privacy rights will be felt by this bargaining unit by virtue of our decision and is binding only on them, it makes logical sense that this Board consider the cost/benefit analysis as it relates to this bargaining unit, and not its impact vis-a-vis the other two thirds of workers who are also present at the Oil Sands Operations. In our view, in weighing the "gain" to be achieved to this Employer by considering other arrangements the Employer may or may not have with other groups of employees or contractors, the Board would be exceeding its jurisdiction. This makes logical as well as labour relations sense. Taken to its logical conclusion, if in fact such arrangements could dictate the results of a proportionality assessment, that term would have no meaning: a group of employees could have their privacy invaded whether or not they pose any sufficient risk to an employer themselves – in order to gain access to require random testing of another group of employees outside the four corners of the collective agreement.

[265] In this Board's opinion, it must be the risk that this particular group poses – and therefore the gain from testing this particular group – that frames the inquiry. In the end, we find our jurisdiction is simply not broad enough to reach the end the Employer argues. We cannot agree that evidence of gains which do <u>not</u> relate to this bargaining unit are relevant to a determination of whether members of <u>this</u> bargaining unit should be subject to what the Supreme Court of Canada has determined are highly intrusive random tests on their bodily fluids. If the Employer has a problem with its Contractor Employees – and we make no determination on whether this is in fact the case – it must address this problem through other avenues (whether in conjunction with the CLR or otherwise).

(d) Site Bans

[266] Likewise, the Employer's reference to "site bans" is also unrefined. There is no evidence before this Board of how many of these site bans relate to Union Employees, nor was there clear evidence of the timeline which this site ban list spanned, only that it "could" be "over a decade". Mr. Ingle's evidence was that – were he to hypothesize – "maybe 8%" of the site bans over "perhaps" a decade related to bargaining unit employees. We do not consider this evidence in its unparticularized form to be persuasive.

(e) Fatalities related to alcohol use

[267] With respect to the evidence of fatalities "linked" to drugs or alcohol, while the evidence does demonstrate three fatalities involving alcohol use have occurred, all three fatalities involved Contractor Employees and not bargaining unit employees.

(f) Comparison with rates of positive tests in other Suncor operations

[268] Suncor has argued that the difference in positive tests in its Oil Sands Operations is significant in comparison to the rest of Suncor's operations across the country. They note that there was a total of 115 positive employee alcohol and drug tests in the Oil Sands Operations between January 1, 2009 and December 31, 2012, while there were only 5 positive alcohol tests and 0 positive drug tests in Suncor's operations in the rest of Canada (excluding the RMWB) during the same time frame. Not considered in this statement is the comparative size of the workforce, age/time of service demographics, camp accommodation and contractor comparisons, nor the effect of how an expanding workforce has been trained with respect to the meaning of "Fit for Duty" (as discussed later in this award). Significantly, as well, we were not provided with information on the rate of testing in Suncor's other operations.

(g) Alcohol and drug dependency assessment results

[269] The Employer did tender evidence of the outcomes of assessments for dependence on alcohol and drugs for employees in the RMWB. However, the data was not particularized by the type of dependency so we do not know, for example, how many employees in the bargaining unit

have been assessed as alcohol dependent. This evidence will be considered later in relation to the issue of whether there is an "out-of-control" culture with respect to drugs and alcohol.

(h) Evidence of alcohol use/abuse in RMWB

[270] The only evidence related to community rates of alcohol use was the earlier AADAC study which analysed alcohol and drug use in Alberta. Suncor is justifying its imposition of random testing only in the RMWB based on its assessment, in part, that the RMWB is unusually high in its alcohol and drug use. No specific evidence was provided to the Board that would allow us to conclude that Fort McMurray is any different, with respect to alcohol use and abuse, than other communities in Alberta.

(i) Conclusions on evidence with respect to random alcohol testing

[271] In summary, the evidence in Exhibit 63 is unrefined, unparticularized and does not distinguish between Union Employees, Non-Represented Employees or Contractor Employees. When distilled (as best as is possible), it predominantly relates to Suncor's experience in its "Lodges" or camp accommodations (where the significant majority are Contractor Employees), and not to its bargaining unit generally. This is consistent with the majority of Suncor's more recent measures being ones that relate to detection of drugs and alcohol at its bunkhouses or "Lodges".

[272] Unlike in *G.T.A.A., supra,* in our view, the evidence does not demonstrate a culture at the Oil Sands Operations where the consumption of alcohol is so pervasive as to be accepted by employees, where employees go together to drink openly and where such activity is either condoned or encouraged by management's practices or inaction. Finally, when Suncor's raw data on positive alcohol test results are converted to percentages to compare it with the experience in *Irving, supra,* the experience before the Supreme Court in *Irving* showed a higher rate of positive alcohol test results than what has been offered to this Board.

[273] The Employer has argued that there was no evidence of the intrusive nature of breathalyzer testing in this workforce; such evidence was limited to the intrusiveness of testing by urinalysis. We disagree with the Employer's assessment of the evidence. Mr. Al-Dhaby testified that he felt "panicked" when asked to blow into the breathalyser and needed to try three times before succeeding. Witnesses for the Union who experienced testing reported feeling stressed. They described the manner in which they were detained by supervisors prior to testing – placed in supervisors' trucks; told not to eat, smoke, drink, or go to the washroom; watched all the time by supervisors; kept in the supervisor's office for hours. The "detention" aspect of testing does not differ depending on the test used. In our view, the Supreme Court of Canada recognized in *Irving Pulp & Paper, Ltd., supra,* that all tests which demand bodily fluids from employees are highly intrusive tests which impact the privacy rights of individual employees (at para. 50). The Supreme Court described the arbitrator's conclusion that the detention aspect of testing resulted in a loss of liberty and personal autonomy as "unassailable."

[274] Considering all these factors, and the limitations of the evidence as noted, we cannot conclude that the gains which this Employer would achieve from randomly testing its workforce for alcohol would be sufficient to justify random testing on a balancing of interests approach in view of the evidence which has been offered with respect to the problem in this bargaining unit.

D. Random Drug Testing

1. *The Jurisprudence*

[275] As noted by the Irving Board, random drug and alcohol testing have not run in tandem in the jurisprudence. The reason for the distinction is imbedded in the proportionality assessment itself: the benefit that is gained to an employer by the imposition of random *drug* testing has been found to be different than that gained with respect to random *alcohol* testing. The issue has revolved around the inability of random drug testing by urinalysis to demonstrate impairment of job functions at the time the test was taken.

[276] While the Court in *Irving Pulp & Paper, Ltd., supra,* gave general direction with respect to random drug testing, it did not consider a proportionality assessment under the balancing of interests approach in a situation where random drug testing was in issue. However, the Court did

recognize the decision in *Nanticoke, supra,* (a case considering random testing) as establishing the "blueprint for dealing with dangerous workplaces", and as accurately summarizing the principles emerging from 20 years of arbitral jurisprudence with respect to testing for drugs and alcohol in such workplaces. Two of those principles as quoted by the Court were as follows:

> No employee can be subjected to random, unannounced alcohol or drug testing, save as part of an agreed rehabilitative program.
>
> …
>
> *This* [testing as part of a return to work contract after rehabilitation*] is the only exceptional circumstance in which the otherwise protected employee interest in privacy and dignity of the person must yield to the interests of safety and rehabilitation, to allow for random and unannounced alcohol or drug testing* (emphasis in original)

[277] As noted by the majority in *Irving, supra,* Arbitrator Picher did comment that random drug testing could be permitted under a balancing of interests approach "in some extreme circumstances". The Court quoted the following from *Nanticoke, supra:*

> It may well be that the balancing of interests approach….would allow for general random, unannounced drug testing in some extreme circumstances. If, for example, an employer could marshal evidence which compellingly demonstrates an out-of-control drug culture taking hold in a safety sensitive workplace, such a measure might well be shown to be necessary for a time to ensure workplace safety. That might well constitute a form of "for cause" justification (at para. 34).

[278] After quoting this "exception", the Supreme Court noted that Arbitrator Picher did not find evidence of any substance abuse problem in *Nanticoke, supra,* and further noted that his decision was upheld by the Ontario Court of Appeal. It made no further comment with respect to the "exception".

[279] In *Nanticoke, supra,* both a random drug and alcohol testing policy were initially at issue, however a preliminary award had determined that the Union could not grieve the random alcohol testing policy by breathalyser, as that form of random testing had been unchallenged for eight years prior to the award. Consequently, the issues in *Nanticoke, supra,* were with respect to post-incident and random drug testing only. The evidence was that the employer, Imperial Oil Ltd., operated a refinery in Nanticoke, Ontario. It employed 230 people. Work at the refinery was found to be "highly safety sensitive" (at para. 8). The workforce at the refinery was found to be "extremely stable", with principally long-term employees, many in their 50's, most of whom

lived within 30 miles of the facility in Nanticoke. No member of the bargaining unit had in fact ever tested positive for drugs. On one occasion, a contractor employee tested positive for drugs on a post-incident test and his employment at Imperial Oil's refinery was terminated. There was one positive test for alcohol. The method of testing for drugs was limited to testing for cannabis (marijuana) by oral fluid (buccal swab).

[280] While Arbitrator Picher found that the evidence of a positive buccal swab test (used in that case) did demonstrate impairment for cannibanoids, he further held that it did not equate with a breathalyser, as it could not result in a finding of impairment at the time the test was taken, which would facilitate immediate removal of the impaired individual from the worksite and thus serve the legitimate safety interest of the employer. The test had to be sent off to a laboratory for further analysis before any result was known, and the worker was immediately sent back into the workplace until that result was received. It should be noted that, in *Nanticoke, supra,* urinalysis had been the original testing measure under the policy at issue, but a change to oral fluid testing was made by the Employer, with the testing limited to determining impairment by cannabinoids.

[281] Arbitrator Picher made the following comments with respect to the jurisprudence:

> It is fair to say that over time the arbitral jurisprudence in Canada has developed relatively clear lines as to what constitutes an acceptable drug and alcohol testing policy in a safety sensitive workplace which is governed by a collective bargaining regime (at para. 98).

[282] Arbitrator Picher found the imposition of random drug testing to be an unwarranted infringement of employee privacy rights in the circumstances of that case. He undertook a review of the arbitral jurisprudence (which will not be repeated here) and found that, while it supported the imposition of drug testing "for cause", in safety-sensitive industries, "random" testing had been "universally rejected":

> From the outset it was recognized that to conduct a drug test is an extraordinary and intrusive measure, justified only by the touchstone condition of reasonable cause. The notion that under a collective agreement bargaining regime based on bargaining between union and employer it is implicitly open to an employer to subject all employees, regardless of cause, to speculative, random drug testing has been all but universally rejected (at para. 92)

[283] With respect to urinalysis, Arbitrator Picher noted Arbitrator Burkett's concerns – raised the previous year before in *Trimac, supra* - that urinalysis "cannot identify impairment at work and, therefore, "tended to provide information involving personal lifestyle choices made within the employee's private life, and not at work". Arbitrator Picher noted it was this fact, "**coupled** with the lack of any evidence of a serious alcohol or drug related problem in the workplace, which also prompted Arbitrator Burkett in *Trimac, supra,* to rule against the policy of mandatory, random drug testing" (at para. 96, emphasis added). The "risk" the employer was trying to address – assessing as it did the "delayed or residual effects" of taking drugs via testing by urinalysis - was simply not at a level that would justify the intrusion into privacy rights which resulted from urinalysis. Arbitrator Picher quoted the following:

> .. the *urinalysis drug test here cannot identify impairment at work and, therefore, does not serve a legitimate business purpose as would override employee privacy* … Finally, ***insofar as the Company has based its need for mandatory random drug testing on the risk caused by the delayed or residual effects of drug taking, it has failed to establish that the level of risk so caused meets the threshold necessary to establish an overriding business interest and, thereby, to legitimize the resultant invasion of privacy*** (as quoted at para. 96) (emphasis added).

[284] Of note, it was <u>both</u> the inability of the employer to establish "legitimate business interests" in removing an employee for delayed or residual effects <u>and</u> the lack of a "serious alcohol or drug related problem" in the bargaining unit that led Arbitrator Burkett to this conclusion:

> The Company has failed to establish any pre-existing experience or incidents within this bargaining unit as would support the need for mandatory random drug testing of all bargaining unit employees. **Furthermore,** urinalysis, the mechanism used to detect drug use, does not establish whether an employee is under the influence at work (para. 96) (emphasis added).

[285] The decision in *Nanticoke, supra,* was appealed. At both the Divisional Court level and the Ontario Court of Appeal, it was affirmed. While there were several bases for the appeal, the Court of Appeal stated:

> Moreover, the Majority was alert to Imperial's contention that its random oral fluid drug testing was analogous to the random alcohol breathalyser testing approved in *Entrop.* As it was entitled to do, the Majority considered, and rejected, this contention on the basis of the evidence before it that oral fluid drug testing in fact did not permit immediate detection of drug impairment on-the-job (at para. 61).

[286] Unlike the jurisprudence relating to testing by breathalyzer, the jurisprudence relating to testing for drugs requires an assessment of the effectiveness of the testing methodology in meeting legitimate safety interests of the Employer: *Trimac, supra*, *Nanticoke, supra.* and *G.T.A.A., supra.* If the methodology does not do so, the balance cannot tip in the Employer's favour on a proportionality assessment.

[287] As previously noted, in *G.T.A.A., supra,* Arbitrator Devlin rejected random drug testing as unreasonable, even though she allowed random alcohol testing. In doing so, the arbitrator found the nexus between a positive drug test and job performance was lacking when urinalysis was used as a testing methodology for drugs, on the evidence in that case. Of note for the board was the lack of compelling evidence that urinalysis was able to accurately measure deficits in job function – either due to acute or sub-acute effects (withdrawal effects, etc.) – at the time the test was taken. As such, the "gain" to the employer required by a proportionality assessment was not met without a test which could establish this nexus (at para. 270).

[288] Like the Employer in this case, the employer in *G.T.A.A., supra,* sought to address this difficulty by framing their policy and their evidence on a "fit for duty" standard, and on the risk of sub-acute affects, and not just acute impairment. The arbitrator addressed this argument by quoting Arbitrator Burkett's decision in *Trimac, supra,* where Arbitrator Burkett found that, while this "risk avoidance" argument from residual effects of drug use had a "surface attraction", arbitral jurisprudence had rejected mandatory drug testing based on this type of risk as not meeting the "risk threshold" of a "legitimate business interest", absent compelling evidence that such residual effects impaired ability at work:

> Implicit in the Company's risk avoidance argument and the evidence tendered in support is the **premise that any risk, regardless of degree, gives rise to a business interest that trumps an employee's privacy interest. This cannot be so. Where countervailing privacy interests are at stake, there must be a balancing of impacts such that the degree of risk must meet a threshold sufficient to over-ride the privacy interest**. There are levels of impairment brought on by minor medical conditions such as cold, allergies, a poor night's sleep, a headache, etc. that normally do not pose a sufficient safety risk as to prevent an employee from working, even in a safety-sensitive environment. Indeed, there is nothing to suggest that this employer, even though acutely sensitive to safety issues, has ever taken active steps to keep employees suffering

> from these minor "aches and pains" away from work. It follows that if impairment caused by the residual effects of drugs poses a safety risk sufficient to allow mandatory drug testing, it must be a risk **greater** than that caused by these minor everyday maladies. The onus is on the Company, as the party seeking to force employees to submit to mandatory random drug testing, to establish that the risk threshold necessary to validate its initiative is met. The Company has not met this onus in this case…it is not sufficient to simply refer to "fatigue", "crash phase" or "excited state" without establishing, by empirical studies or otherwise, the nature, extent and duration of the impairment caused by the residual effects of drug taking, relative to the work function at issue. Without such evidence, a finding cannot be made as to the extent of the risk (quoted at para. 270, emphasis in original and added).

[289] In *Trimac, supra*, it was found the "evidence did not demonstrate the nature, extent or duration of impairment caused by the residual effects of drug use relative to the work function in issue" (at para. 270).

[290] While noting that there was some dispute in the case before her on the period during which performance could in fact be impaired by drug use, (like in the case before this Board), the evidence in *G.T.A.A., supra*, was that cannabis could in fact be detected in urine past whatever window was ultimately accepted as establishing performance risk (in that case the evidence was detection from one to two days for a single joint, and up to several weeks for a chronic user).

[291] As further support for its argument that its policy is not concerned with "proving impairment" but addresses "safety risk" which is a beneficial and legitimate goal, the Employer argues that *Irving Pulp & Paper, Ltd.*, had "nothing to do with impairment" but with proof of a "problem". It cites Dr. Kadehjian's report that the cut offs showing "recent use" are sufficient to create a "red flag". It cites *Milazzo, supra; Bantrel, supra* and the New Zealand case of *Air New Zealand* as support for the "red flag" risk and for the deterrent effect of drug testing regimes. It also notes Arbitrator Christian's rejection of "impairment".

[292] First, we note the arbitrator's decision in *Bantrel, supra*, was ultimately quashed by the Court of Appeal. In any event, the issue before that panel was whether contractors had breached their respective collective agreements (which agreements incorporated an earlier, 2001 COAA policy), by imposing pre-site access testing of employees who had already been working on the

job site. The testing was in response to a new requirement by the site owner. That case did not consider whether an employer could randomly test its employees, as random testing had been expressly disallowed in the 2001 COAA Model (as noted in the Court of Appeal's decision, at para. 41). As noted by the Court of Appeal, the issue in *Bantrel* was constrained by the particular collective agreements in place and it was those collective agreements which governed the result. With respect to Milazzo, supra, we note the Supreme Court has determined in *Irving Pulp & Paper Ltd.* that human rights case law is not relevant, as the assessment to be performed by labour arbitrators under a balancing of interests approach is distinct from that used in a human rights context.

[293] Secondly, we have already noted the distinguishing features of Arbitrator Christian's decision in *Strathcona, supra,* including the evidence before him of the connection between substance abuse and near miss history at the plant, and further the fact that his decision does not apply a balancing of interest approach, which is now mandated by the Supreme Court of Canada.

[294] Third, we note that there was evidence in *Irving, supra,* of impairment. As it was a random alcohol policy in dispute in that case, the evidence was a BAC of over 0.04%. While the evidence in *Irving, supra,* was not sufficient to demonstrate a significant problem in that workplace, it was capable of measurement.

[295] Fourth, while Dr. Khadehjian's opinion was that urine tests served to raise a "red flag" of drug use, and in so doing, gave to this Employer the "benefit" of identifying and removing such "high risk employees" from the workplace - even if it could not be established that the work performance of those employees had been impaired by the use of drugs at the time of the test - we disagree that by altering the "risk" its policy is stated to address, an employer can circumvent the "recent use" versus "impairment" difficulties already outlined in the jurisprudence with respect to drug testing. This does not change because the Employer has crafted a policy based on this very "risk": *G.T.A.A., supra*. The issue remains whether the policy the Employer has created can pass a *KVP* reasonableness assessment, which includes applying a balancing of interests approach.

[296] Fifth, the Employer argues it gains significant benefits of deterrence from a random drug testing policy, and that these "gains" can tip the balance in the Employer's favour, despite the limitations of the particular testing method used and the limitations of urinalysis. In fact, both Dr. Beckson and Dr. Khadehian urged that the "primary goal" of random drug testing policies is to "deter" employees coming to work "unfit for duty" due to the impact of drugs. They urged this type of deterrence argument has been accepted to tip the balance in the employer's favour in other cases. "Detection" was only a "secondary" goal of these types of policies - to remove "high risk employees" who have "recently used" drugs from the workplace.

[297] The Supreme Court of Canada has addressed the question of the impact of deterrence as a theoretical goal, in a balancing of interests assessment:

> While the employer had argued that deterrence was a major benefit of random alcohol testing, the board was not satisfied that there was any evidence of a deterrent effect at the mill. The only evidence supporting the employer's view was that of its expert witness, who described deterrence as the main theoretical goal of random alcohol testing policies, but had no information about this particular workplace (at para. 48)

[298] The Employer argued there is evidence to show a decrease in positive "for cause" testing results once random testing was announced, with a corresponding increase again when the injunction was successful, which it argued was evidence of the deterrent effect of random testing at its Oil Sands Operations. In our view, this conclusion is speculative. We note that the number of tests increased as well. However, the percentage of positive tests relative to the total number of tests had been declining for some time – from 8.6% in 2009 to 5.96% in 2011 and 3.46% in 2012. The rate remained essentially unchanged in 2013 (3.5%).

[299] The Employer also pointed to the evidence of increased self-referral rates for addictions assessment in the period between the announcement of random testing and the court injunction as evidence of a deterrent effect. The increase, however, also coincided with the Employer's decision to pay for employee's addiction treatment. It is not known if this was a factor in increasing the number of employees who came forward for assessment and treatment.

[300] It is not lost on this Board that in this case the Employer was prevented from gathering its own evidence of the deterrent effect of random testing as a result of the court injunction stopping implementation of its random testing policy. However, unlike the 24 month DARRPP pilot project on random testing that Suncor had originally participated in, which would have enabled such evidence to be gathered, Suncor is now proposing a permanent policy without evidence.

3. The Evidence Offered by the Employer

(a) ***Evidence of Drug Testing results under the "for cause" alcohol and drug policy***

[301] As previously noted, unlike in *Irving Pulp & Paper, Ltd., supra,* the Employer has no random drug testing experience to offer, due to the imposition of the injunction. The Employer has had "for cause" testing for a number of years and offers that evidence in support of a "problem" with drug use in its workforce. "For cause" testing applies to all employees, and not just those in safety sensitive positions. The Employer argues these "for cause" testing results create a "risk" sufficient to meet the evidentiary burden of a "problem" in its workforce. However, "for cause" testing by urinalysis suffers from the same flaw with respect to proof of a "problem" as it does with respect to establishing a "risk": while urinalysis determines "recent use", it lacks specificity to determine present impairment. With respect to sub-acute effects, without compelling evidence to establish their impairing effects, arbitrators in this country have not accepted that the harm caused to employees' privacy by random testing is outweighed by the benefit to the employer of "red flagging" such individuals: *G.T.A.A., supra; Trimac, supra*.

[302] As with respect to alcohol, a further difficulty is the Employer has chosen to treat Fire Bag and the Fort McMurray base plant as one location even though they are approximately 100 kms apart. Fire Bag is a staffed almost entirely by workers in camp accommodation while most Main plant employees live in Fort McMurray. The Employer has chosen not to present data on testing results that differentiate between the two locations and thus we cannot determine if a problem is isolated to one location from testing results.

[303] We also have evidence that the rates of positive tests have declined steadily from 2009 to date while workplace reportable injuries have also declined.

(b) ***Evidence relating to Alcohol and Drug Security Incidents***

[304] The difficulty for the Employer with respect to its paraphernalia and drug find evidence is that the majority of it cannot be attributed to any particular type of employee. While the Employer did offer evidence of finding marijuana flakes in the jacket pocket of an employee in a locker, and pictures of a grow op in a pocket of an employee's jacket in a locker, in our view this evidence does not indicate that this employee is arriving at work unfit for duty from consumption of marijuana, that he or she is using marijuana at work, or that the problem with drugs is endemic on this worksite. While the finding of a "joint" of marijuana in equipment is some evidence, *G.T.A.A., supra* did not find evidence of the occasional use of marijuana on the Employer's dangerous airport apron to be evidence of a demonstrated problem in that workplace.

[305] The Employer has also offered evidence that one of its former employees was arrested for drug trafficking. The inference we are asked to draw is that this employee was trafficking drugs at the Oil Sands Operations. There is no evidence this in fact was the case with respect to this employee and we are unable to infer from the fact of his arrest that this occurred. As Mr. Lefort explained, the employee in question had been hired after the trafficking charge had been laid and he wondered why Suncor was unaware of this charge.

[306] With respect to the finding of whizzinators and other devices meant to adulterate a urine test, it is clear that there are individuals trying to "beat" the test; it is a test you can "study for". The ability to adulterate a test is a further failing of urinalysis. The difficulty for the Employer is there is no specific evidence of the type of employee who was caught with this equipment: were those employees Union Employees, Non-Represented Employees or Contractor Employees? No particularized evidence was offered. Without further particularization this Board cannot determine if this evidence is relevant to the experience of <u>this</u> bargaining unit.

(c) ***Evidence regarding accidents, injuries and near miss history***

[307] As previously noted, the Employer did not offer extensive evidence of its accident, injury and near miss history experience with respect to this bargaining unit. Some mention of declining

reportable injury rates can be gleaned from the exhibits noted earlier in this Award. Mr. Foley also testified that rates were declining. Like in *Irving Pulp & Paper, Ltd., supra,* the evidence of positive test results was not placed in a context which would tie it to any actual risk in the Oil Sands Operations. This Board is mindful of Arbitrator Picher's comments in *C.N.R., supra,* where at para. 195 he states:

> …boards of arbitration should be cautious before requiring documented near disasters as a pre-condition to a vigilant and balanced policy of drug and alcohol detection in an enterprise whose normal operations pose substantial risk for the safety of employees and the public.

[308] That said, in our view Arbitrator Picher was not envisioning a paucity of evidence with respect to accidents, incidents and near misses. We are attempting to assess whether alcohol and drug testing on a random basis is effective in reducing workplace accidents, incidents and near misses. Here, the Employer has a sophisticated system of recording and analyzing safety incidents. As part of its health and safety program, it determines the "root cause" of each incident. Some examples were provided in evidence where employees tested positive following a significant incident or refused to undergo the testing. However, we were not provided with the "root cause" assessments – was it determined that drug use was a factor in causing the incident?

[309] We agree with the Irving Board – and the Supreme Court of Canada – that without evidence of some connection between drug use at this workplace and the accident and near miss history in this workplace and this group of Unionized Employees, an arbitration board cannot determine that random drug testing of these employees is a reasonable response to the risk they may pose in the workplace. Evidence of positive test results – standing alone – do not provide this connection, neither does the unparticularized evidence offered in Exhibit 63.

(d) ***Other Evidence***

[310] The summary of evidence pertaining to site bans, fatalities, rates at other Suncor operations, dependency assessments, and the relevance of evidence of the entire workforce, as we discussed under alcohol testing above, also apply to drug testing.

(e) ***Evidence of Drug Use in RMWB***

[311] The evidence concerning this issue is summarized below in our discussion of whether Fort McMurray experiences higher rates of drug use/abuse than other communities. We find that the evidence presented was insufficient to draw this conclusion.

(f) ***Conclusions on evidence with respect to random drug testing***

[312] As we have discussed, urinalysis does not demonstrate current impairment. It does indicate use, but not the quality, quantity or time of use. Given this evidentiary limitation, evidence of positive tests, without more, does not allow us to conclude that drug use by Suncor employees in the bargaining unit poses a safety risk of such a magnitude that would justify the imposition of random testing for safety sensitive positions. We find that the evidence tendered with respect to drug and alcohol security incidents does not demonstrate a serious drug issue among employees in this bargaining unit. Additionally, although the Employer has a sophisticated health and safety system, it did not present this Board with information that would link accident, injury and near miss incidents to drug use or abuse. On balance, we do not find random drug testing as proposed by the Employer to be a reasonable policy.

E. The "out of control drug culture" "exception" in Nanticoke, supra

[313] The Employer has argued that both the Supreme Court of Canada in *Irving, supra,* and Arbitrator Picher in *Nanticoke, supra,* left open the "exception" of random testing in certain exceptional circumstances. Arbitrator Picher described this as a form of "for cause" testing (at *Nanticoke*, para. 127):

> It may well be that the balancing of interests approach, which we favour, would allow for general random, unannounced drug testing in some extreme circumstances. If, for example, an employer could marshal evidence which compellingly demonstrates an out-of-control drug culture taking hold in a safety sensitive workplace, such a measure might well be shown to be necessary for a time to ensure workplace safety. That might well constitute a form of "for cause" justification.

[314] This exception was quoted – but not applied - by the majority justices of the Supreme Court in *Irving, supra*. While the Supreme Court quoted the initial part of that paragraph, Arbitrator Picher went on in that same paragraph to state:

> In the case at hand, however, the evidence is manifestly to the contrary…. Nor is there any significant evidence of drug use generally within the workforce away from work, or within the surrounding community.

[315] The Court did not comment further on whether evidence of the use of drugs in the community at large, away from work would be a relevant consideration.

[316] The Employer has argued that the evidence before this Board supports this "exceptional circumstance" as an "out of control" drug culture has taken hold, both in its workforce and in the greater community of the RMWB. Imbedded in this argument is an assumption that we have accepted that our jurisdiction is broad enough to review the Employer's integrated experience of all of its employees, and not just the experience of this bargaining unit. We have rejected that argument. However, in case our jurisdiction is found on review to be broader than we have determined, we will consider this argument.

1. Is there an "Endemic Problem" or "Out-of-Control" Culture?

[317] The Employer relies on Dr. Beckson's evidence regarding dependence as establishing an "endemic problem" with drugs and alcohol at its workplace. It was Dr. Beckson's opinion that the increase in the number of addicted employees which has risen from 18 in 2010, to 23 in 2011, to 40 in 2012 represents a "122% increase" and as such indicates an "endemic problem" – and a workplace culture permissive of drug and alcohol use.

[318] It is not clear from this evidence whether these numbers represent Union Employees or Non-Represented Employees, or drug addiction or alcohol addiction. Further, his evidence that this number is increasing by 122%, assumes that Suncor's work population has not increased between 2010 and 2012 and therefore the figures show a problem which is significantly increasing – and "endemic". Exhibit 69, however, indicates this is not the case. In 2010, the total number of Union Employees was 2,782. Eighteen employees represents 0.65% of the Unionized workforce at that time. In 2011, there were 3,208 Union Employees. Twenty three employees represents 0.72% of the Unionized workforce. Between 2010 and 2011 therefore, there was there a 0.07% increase in the number of dependent employees. In 2012, there were 3,383 Union Workers. 40 employees represents 1.18% of the Unionized workforce. That is an increase of 0.463% from 2011. While these numbers are increasing, to say the increase is 122%

ignores the fact that the workforce in 2012 has 600 more people than the workforce in 2010. Raw numbers again do not tell this story. Further, there is also no evidence of how these numbers relate to other workforces, or in the mining industry as a whole. What number constitutes an "endemic"? What is the experience of the industry as a whole? What is the rate of addiction in the general population? Is it greater than 1.18%? Is the addiction risk for this Employer the same as that of any other employer due to the rate of addiction in the general public?

[319] The only decision to have considered that a "culture" had gained hold in a particular bargaining unit was that in *G.T.A.A., supra*, with respect to alcohol testing. As noted earlier in this decision, the permissive and accepting attitude towards alcohol on the part of employees and management which had taken hold in that workplace does not exist in this one. In fact, what evidence that was offered demonstrates that positive tests for drugs and alcohol have been decreasing at the Oil Sands Operations since the *Elliott Decision.*

[320] The Employer also urged that Exhibit 63 would demonstrate such a culture. Even assuming that to be the case, the Employer's current policy has several weaknesses with respect to addressing an "out of control drug culture" as that exception was referred to by Arbitrator Picher and by the Supreme Court of Canada in *Irving Pulp & Paper, Ltd., supra.* The first and most important distinction was that Arbitrator Picher was not envisioning imposing on one bargaining unit testing for a "culture" that may well be created by other employees. We have not found that an "out-of-control" drug or alcohol culture exists with respect to this bargaining unit. The evidence is simply lacking. Further, this bargaining unit only makes up 1/3 of the workforce. Arbitrator Picher's exception contemplated a time-limited policy to address this culture, and not one that is open-ended and without restriction. His contemplated exception was said to be akin to "for cause" testing, with the cause being the "culture". He did not contemplate – and the Supreme Court of Canada did not endorse – a policy that would have no time restrictions. In our view such a policy would also require evidence which serves to allow a Board to differentiate between various aspects of the workforce in this type of workplace which spans several worksites and types of living arrangements (those living in camps versus those living in Fort McMurray, for example), and further to differentiate between the workforce on the

basis of longevity of employment, such that the Policy is targeted as narrowly as possible, at the offenders. In view of the rapidly expanding workforce in Fort McMurray, it could well be that it is the junior employees, who have not yet been integrated fully into Suncor's safety work culture – that are in fact the greatest offenders. Unfortunately, the "New Hire" evidence in Exhibit 63 did not allow the level of analysis that would be required to make that determination.

[321] As the Employer has not chosen to keep statistics with respect to seniority of workforce or location, we are unable to determine whether such a culture may exist in the Employer's Lodges or camps. If in fact the culture is in the camps, the workforce in those camps is predominantly Contractor Employees. If so, for reasons already stated, that issue will have to be resolved in another arena, as this Board lacks jurisdiction to impose a solution on this bargaining unit for a problem or a culture which exists predominantly among another group of employees.

[322] In imposing the 2012 Policy, Suncor has significantly deviated from the COAA Policy and the recent direction proposed by the multi-employer DARRPP project. The DARRPP project provided for: oral fluid testing, a dispute resolution mechanism for addressing employee concerns or complaints and a defined timeframe for the project after which it would be evaluated. All are absent in Suncor's 2012 Policy. The experience of Brenda Sitko in being repeatedly tested in a needlessly intrusive manner, and in not being told why she might have tested positive, illustrate the need for the DARRPP provisions, especially where – as here – over 1300 tests are contemplated each year.

2. Is there an "Out-of-Control Drug or Alcohol Culture" in Fort McMurray?

[323] The Employer has also urged that there is an out-of-control drug and alcohol culture in the broader community of Fort McMurray. Suncor's Security Manager Ian MacPhee and Sergeant Kirk Peyton of the RCMP gave evidence regarding alcohol and drugs in Fort McMurray and RMWB. They noted that there is a number of organized crime groups actively involved in drug trafficking in the RMWB. Sergeant Peyton noted that Fort McMurray is considered an end use destination for drug trafficking, unlike drug hubs like Vancouver and Edmonton. He also testified that there have been a number of significant criminal charges and convictions relating to drug possession and trafficking in the RMWB. One of the most significant convictions was part of Project Koker. Project Koker involved a long-term investigation into an outlaw motor cycle

gang, the Hells Angels, moving large amounts of cocaine going into Fort McMurray. Jeffrey Caines, a supplier out of Edmonton, ran a significant drug distribution network in Fort McMurray. Sergeant Payton also gave evidence regarding charges laid by the Alberta Law Enforcement Response Team, ("**ALERT**") is a proactive team addressing organized crime and drug trafficking in Alberta. The number of seizures made in Fort McMurray relating to alcohol and drugs is alarming given that Fort McMurray is a small community. Given the higher disposable income found in Fort McMurray, individuals have an ability to make larger purchases of more expensive drugs. There is also a different type of street level user in Fort McMurray; it is a high end business. Currently, much of the drug sales are being trafficked through sophisticated dial-a-dope operations. People call specific numbers based on the type of drug and volume they want to purchase.

[324] While we have no difficulty in understanding from this evidence that there are drugs, including cocaine, coming into Fort McMurray and that Sergeant Peyton believes the amounts are "significant", there is no way to test the veracity of this statement or place it into context of other communities. This Board has no evidence with which to consider whether the experience in Fort McMurray is any different from that of any other community similar in size. No data was put before the Board to establish that the alcohol or drug problem in RMWB is significantly different from any other community in Alberta. No facts or data regarding charges per capita, convictions, seizure rates or any other comparative information upon which to make a determination were provided. The anecdotal information of individual seizures and crime activity was no different than might be read in any community newspaper in Alberta. For example, while the Employer argued that 12 kilograms a week is a large amount of cocaine, there is no way for this Board to understand if this is in fact the case without also knowing the amount of cocaine flowing into other communities of similar size in the province, or in the country for that matter. Providing evidence that there are drugs in the RMWB, and drug use among its population, does not provide evidence that a culture is then created which is "out-of-control".

[325] Similar to the Elliott Board finding, the evidence provided to this Board did not establish that Fort McMurray has a higher rate of consumption of alcohol and drug use than in other locations in Alberta with similar demographics.

F. Do the Random Alcohol and Random Drug Policy Meet KVP Requirements?

[326] The key elements of the *KVP supra* standards which are of consideration with respect to this policy are that it must not be unreasonable and it must be clear and unequivocal. In addition to our findings above on the unreasonableness of the proposed policy, we find there are other aspects of the policy that give rise for concern.

[327] First, there is a question of fairness in the treatment of alcohol users and drug users. In *G.T.A.A., supra,* the arbitrator made the following comment with respect to the inconsistencies between a drug policy based on "recent use" and one based on alcohol impairment:

> Drawing an analogy to alcohol, an employee who consumed two or even three alcoholic beverages on a Friday or Saturday evening and reported for work on Monday morning would undoubtedly be disturbed if his or her employer could detect the alcohol consumed and take disciplinary action, impose special terms and conditions of employment or even terminate his or her employment solely on that basis. That scenario, of course, could not occur as a breathalyzer can accurately measure impairment resulting from the use of alcohol. The same cannot be said of a positive drug test which demonstrates only past use and does not indicate the amount, quantity or point in time at which the drug was ingested. Accordingly, there is not the necessary nexus between a positive drug test and job performance (at para. 273).

[328] The Employer's 2012 Policy allows alcohol to be consumed right before work, so long as a BAC is below 0.04%. Dr. Beckson gave evidence at paragraph 21 of his expert opinion that:

> Alcohol has been demonstrated to impair driving performance in low dosage. Complex measures of cognitive functioning, such as divided attention and mental workload, show significant performance deficit at very low blood alcohol concentrations (<0.02%)(Ogden and Moskowitz, 2004)

[329] Suncor's evidence before the Board is that those testing 0.02% have decreased ability to understand commands, especially radio and at 0.03% are at one and one half times greater risk of a fatal motor vehicle accident (Ex. 21,Tab 22). However, if an employee were to measure a BAC of between 0.02% and 0.39%, Suncor's 2012 Policy allows supervisors (leaders) to determine – in their discretion – whether that individual is capable of performing their job functions: section 4(c) of the Alcohol and Drug Testing Standard. The expert evidence offered on behalf of the Employer indicates that such discretion is extremely difficult to properly exercise. Dr.Kadehjian

gave evidence that even trained people cannot be relied on to effectively identify alcohol or drug use. In closing submissions to the Board, Suncor emphasised their reluctance to allow supervisors to determine fitness for duty based on observations, yet their policy allows precisely that function.

[330] The concern with allowing employees to report for work within 4 hours of consuming alcohol was noted in Dr. Beckson's expert evidence. He provided the Board with the Alberta Alcohol and Drug Abuse Commission Report of 2002 which pointed out the risk situation and that 4% of those surveyed reported consuming alcohol within 4 hours of reporting for work. While Kadehjian indicated he had read Suncor's policy and noted that the cut off levels in the policy comported well with US DOT regulations he did not mention that the policy is inconsistent with DOT regulations requiring 4 hours of pre-duty abstinence for truck drivers operating motor vehicles in safety sensitive positions. It is also worthwhile to note that Transport Canada Regulations also require pre-duty abstinence periods for certain safety sensitive and federally regulated occupations. There is no pre-duty abstinence specified in the Employer's policy with respect to alcohol, as there was in *G.T.A.A., supra* and which also existed in *Strathcona, supra*. As such, an individual could come to work one hour after having ingested alcohol with their supper meal and not be subject to discipline, termination or any adverse consequence under the 2012 Policy, even in this highly safety-sensitive workplace, where even the slightest moment of inattention can have tragic consequences, and even when the Employer's own experts indicate judgment is impaired by alcohol even at levels well below .02%. While the Employer's evidence is that alcohol is a drug, that same individual, had they ingested marijuana on their vacation several days prior, and were no longer subject to any acute or sub-acute effects, could have a positive urine test result and be subject to discipline and even termination upon their return to work. This eventuality is made even more likely by the fact that Suncor has significantly changed the drug testing drug cut off levels without any indication or evidence as to what effect those changes will have on initial testing results.

[331] This result is logically inconsistent. The Employer cannot have it both ways. They cannot have a risk threshold set so low for cannabis, for example, that it is appropriate to discipline individuals for "recent use" potentially days beyond when that drug has any impairing effect –

whether acute or sub-acute - and yet in managing risk for alcohol allow individuals to consume this impairing substance right up to the point they enter the front gate.

[332] Second, the policy with respect to "fitness for duty" is unclear. In Exhibit 37, Suncor has indicated to employees that it is not their intention to dictate what employees choose to do on their own time. By using urinalysis as the testing method, when other, more advanced methods exist and can determine present impairment, this Employer is in fact seeking to regulate the personal lifestyle and moral choices of its employees, on their own time.

[333] For example, in the 2012 Alcohol and Drug Policy, Section 3 (b) v. provides that if an Employee is under the influence of alcohol or drugs and is contacted by the Company to perform unscheduled services, the employee must decline the work request without any adverse consequences to the Employee. It is not unreasonable that a new employee who is aware of this provision – and bearing in mind his or her knowledge of Suncor's statement that it will not regulate what he does on his own personal time - is confused when he has declined work due to ingestion of marijuana – with no adverse consequences – yet is disciplined and potentially dismissed for that same action when he comes to work two days later. From the evidence before this Board, employees were not given any charts or information which would indicate that ingesting drugs could result in a positive urine test days or weeks past the point of use or influence. The provisions of the policy under which random testing would take place are neither clear nor unequivocal.

[334] Roland LeFort gave evidence that there are 70 outstanding individual grievances pending. The positive tests, the contradictory messages to employees and the outstanding grievances combine to raise concern that employees may not clearly understand the expectations placed on them by the 2008 Policy or the 2012 Policy. This is compounded by the contradictory messaging in the new "Fit for Duty" standard introduced after the *Elliott Decision.* For employees, it is fundamental to understand what is expected of them, particularly when it may affect their employment. *K.V.P., supra,* requires that a policy be clear and unequivocal. Understanding expectations is not only important for the employee in order to maintain discipline free employment. It is also important in order to ensure the effectiveness of the policy. In a workplace which consists of over 12% (or 405) of the Union Employees having less than one year; over 35% (or 1184) with less than three years and 55% (or 1860) of the Union Employees with less

than five years of service, proper training and education of employees becomes even more significant in order to ensure clear and unequivocal understanding of important policies. Suncor argued that it takes an average of five years to train and qualify workers and that the demographic suggests that very few Union Employees working at the Suncor Operations are fully qualified. While it is clear that Suncor was referring to overall qualifications, such demographics demonstrate how important it is that employees have full training and clear understanding on such an important policy from the time of initial employment.

[335] Dr. Beckson noted at paragraph 114 of his expert opinion;

> A policy is most effective when the policy is clear, employees are educated about the policy, and the employer is consistent about enforcing the policy. Employees can then adapt their behavior to the reality of a strictly enforced substance-free workplace; this serves to deter alcohol and drug use in close temporal proximity to the workday.

[336] In summary, at its very foundation, the random drug testing policy as explained to employees is unreasonable, lacks clarity and is not unequivocal, as required by *K.V.P., supra.*. The inconsistencies and contradictions within the policy and training materials themselves are significant. In the absence of compelling evidence that urinalysis can detect impairment and not just "recent use", we do not find that the Employer's business interest which is served by random testing is sufficient to over-ride an employee's right to privacy with respect to his or her bodily fluids.

G. The Availability of Other Types of Testing

[337] This Board agrees with the fundamental findings of the Elliott Board in noting:

> We are satisfied that Suncor should have an Alcohol and Drug Policy that is effective. There is no excuse for working while under the influence of alcohol or drugs. Employees are entitled to a safe workplace and employers should take every reasonable step to ensure a safe workplace.

[338] The policy before the Elliot Board was evaluated based on the evidence available during the 2006 to 2008 hearings. Suncor's expert witness Dr. Kadehjian provided evidence to this Board relating to urinalysis testing and his testimony in *NZ Amalgamated Engineering Printing and Manufacturing Union Incorporated v. Air New Zealand Limited*, [2004] NZ Emp C, [2004]

1 ERNZ 614. While that 2004 decision ruled in favour of the use of urinalysis at that time it did so with significant reference to the future:

> We emphasise, also, that scientific advances in testing methods, especially for drugs, can be anticipated. It seemed to be common ground that it is likely that less intrusive but equally effective methods of testing will in future become available. These may include, but will not be limited to, testing saliva and perhaps analysis of hair or skin. It is likely that testing methods will become more sophisticated, less intrusive and more sensitive. Air New Zealand's policy should be dynamic so that account can be taken of these less objectionable means of testing for impairment.

[339] That those advances have occurred was evident in the expert evidence given at this hearing. Evidence was given that oral fluid testing was available, was able to determine present impairment, and had the added advantage of being more difficult to adulterate or "cheat" than urine testing. The expert evidence indicated developments in the ability of oral fluid testing measures to deduce impairment by drugs, as noted in *Strano-Rossi S, (2012). Evaluation of four oral fluid devices For Sci Int* 221:70-76 a report provided by Suncor's expert Dr. Beckson (Ex. 58, Tab 144). Dr. Macdonald also provided the most recent evidence regarding oral fluid testing in *Frone MR* (2013*). Alcohol and Illicit Drug Use in the Workforce and Workplace*. Washington, DC: American Psychological Association which noted that collection of oral fluid is less intrusive, the parent drug is more likely to be present than a metabolite and it is difficult to adulterate (Ex.60, p 160). It can be argued that the taking of any bodily fluid is invasive, however, oral fluid is closely aligned to the long accepted breathalyizer. While Dr. Kadehjian and Dr. Francescutti gave evidence before this Board in support of this policy it is not without notice to the Board that they also gave evidence as experts in *Nanticoke, supra* in which Imperial Oil was proposing to introduce oral swab testing.

H. Summary

[340] As noted in the Employer's submissions, the Supreme Court did not foreclose the possibility of random alcohol testing in the workplace:

> This is not to say that an employer can never impose random testing in a dangerous workplace. If it represents a proportionate response in light of both legitimate safety concerns and privacy interests, it may well be justified (at para. 52).

That Court also sounded a caution, however:

> But where, as here, the employer proceeds unilaterally without negotiating with the union, it must comply with the time-honoured requirement of showing reasonable cause before subjecting employees to potential disciplinary consequences. Given the arbitral consensus, **an employer would be justifiably pessimistic that a policy unilaterally imposing random alcohol testing in the absence of reasonable cause would survive arbitral scrutiny** (at para. 53) (emphasis added)

[341] With respect to the random alcohol policy before this Board, we find that the 14 positive alcohol tests over a 9 year period in a workforce this size of this Employer does not establish that there is a significant problem, or legitimate safety risk, with respect to the use of alcohol at the Oil Sands Operations. The evidence offered does not provide to the employer sufficient basis on which to justify random alcohol testing on the balancing of interests approach. Neither have we found that there is a culture with respect to alcohol which is out-of-control, or which would justify the imposition of random alcohol testing. The imposition of a random alcohol testing policy by this Employer is therefore an unreasonable exercise of management rights.

[342] With respect to random drug testing, Suncor's position on the use of urine testing is made more confusing in that oral fluid (buccal swab) testing was recognized by the DARRPP project which Suncor originally participated in, and was also noted as a preferred method in Mr. Tidsbury's evidence. Evidence of oral fluid testing as a more accurate testing measure was offered to this Board. The issue of adulteration of urinalysis was also raised by Suncor witnesses as a concern. There are employees who know they are certain to fail urine tests and who are engaged in efforts to adulterate those tests. In effect, the most serious of offenders are finding ways to beat the test. Oral fluid testing is difficult to adulterate. However, oral fluid is not the testing method chosen by the Employer.

[343] After hearing and assessing the extensive expert evidence given in this case, we find that a urinalysis test is simply unable to provide to an employer the specificity of information necessary with respect to impairment or influence by drugs - whether by acute or sub-acute effects - at the time the test is taken. The evidence offered in this case is not compelling. As such, the interest in "red flagging" an employee who has "recently used" drugs does not meet the threshold of a legitimate business interest which would justify the significant intrusion into privacy which a

demand for urine entails, even were we to determine significant or serious safety concerns existed in this bargaining unit, in this workplace. The 2012 Policy would cause intrusions into the privacy of employees beyond what is reasonably necessary to address the issues which have been raised by the Employer.

[344] The 2012 Policy is proposed without any time limits for reviewing its effectiveness, is not targeted as narrowly as possible, does not use the least intrusive or most accurate testing measures available and does not contain provisions for communicating with employees around false positive results. There is legitimate concern that 23% of the bargaining unit has less than 3 years of service. Between August 2012 and 2013 there were approximately 53 incidents of new hires (not identified as employee or contractor) attempting to access restricted areas with prohibited substances. These concerns do not justify implementation of random alcohol and drug testing on all the employees of this bargaining unit. A reasonable policy, targeted as narrowly as possible may have targeted new employees for random testing for a period of time (such as 2 years), using oral fluid drug testing, had the Employer been able to establish that the offenders were, in fact, Unionized Employees.

[345] With respect to the existence of an "out-of-control" drug culture, the Employer has not established that such a culture exists in this bargaining unit. Even assuming we had jurisdiction broad enough to impose a response on this bargaining unit for a broader culture among other groups of employees, the Employer's 2012 Policy is not one which is a reasonable response, depending as it does on urinalysis as a testing measure, and with the limitations already stated.

[346] The parties have not provided jurisdiction to this Board to determine what would be a reasonable policy. Had they done so, this Board would have applied the DARRPP principles, which involve a time-limited trial project, measurement of effects and results (including false positives); maintaining respect for the dignity of employees; a dispute solution mechanism; a clear and unequivocal, "under the influence of alcohol or drugs" prohibition; consistent training and using oral fluid testing as the testing method. The policy would be applied initially to employees with less than 2 years of service and coincide with a peer-based initiative similar to Courage to Care. Every six months the policy would be evaluated and expanded, reduced, maintained or eliminated based on clear data indicating results. The 2012 Policy does contain provisions for ongoing review and modification.

[347] That is not to say we agree that employees should come to work when their ability to work is impaired by drugs. We do not. We do, however, recognize the limitations on the ability of an employer to address such use when the Random Testing method chosen is urinalysis, in a workplace governed by the basic tenet of "just cause". We hope these obiter comments will assist the parties in resolving this matter without undue delay.

[348] For all the foregoing reasons the grievance is allowed. The 2012 Policy, in its present form, as it applies to random drug and alcohol testing is an unreasonable exercise of the Employer's management rights.

[349] We reserve jurisdiction to resolve any issues arising with respect to the implementation, interpretation or application of this award.

All of which is respectfully submitted this 18th, day of March, 2014.

_____

Tom Hodges, Chair

David Laird, Q.C., Suncor Nominee: dissents - with written reasons attached
Gwen Gray, Q.C., Unifor Nominee: concurs

APPENDIX "A"

CEP Local 707 Grievance Form

Grievance#: SU-85-7-2012

Date: July 19, 2012

Employee Name: Policy Grievance

Date of alleged violation: July 19, 2012

Supervisor with whom the matter was discussed: Bradley Droppo, Tom Diamond and Ryan Danielson

Date of discussion with Supervisor: June 19, 2012

Describe the events giving rise to this grievance (see fact sheet) The union and all employees, including those employed at Suncor's Firebag operations, grieve the Employer's decision to institute a random drug and alcohol testing policy. The Employer indicates this policy will come into effect October 15th, 2012.

Articles of the Collective Agreement allegedly violated This policy is contrary to the Collective Agreement, particularly Articles 1.01 and 4.01, and contrary to the common law, the Personal Information Protection Act, SA 2003, c 6-5, the Alberta Human Rights Act, RSA 2000, c A-25.5, and any other applicable legislation and any other applicable Article.

Describe how the Articles indicated above support the grievor's claim The policy is unjustifiable, unreasonable, and violates employee's privacy rights, human dignity, and human rights. The policy sanctions unreasonable and unjustifiable searches of employees' persons.

Adjustment desired: In terms of remedies, the Union seeks a direction compelling the employer to comply with the Collective Agreement and the general law, and a direction that the Employer not implements the policy or revoke the policy if it has already been implemented at the time the arbitration board makes a decision. If the policy is implemented before an arbitration board makes a decision on this grievance, the union also seeks damages for breach of the dignity, privacy and human rights of employees.

The Union seeks an expedited arbitration hearing and asserts that this policy should not be implemented until an arbitration board has issued a decision on this grievance and any other remedies required to make the Grievor whole.

Date submitted by CEPU Steward: July 19, 2012
Employee Name: Stephen Drover
Steward's Name: Angela Adams

APPENDIX "B"

UNIFOR AUTHOITIES

Communications, Energy and Paperworkers Union, Local 707 v Suncor Energy Inc. (Alcohol and Drug Policy Grievance), [2008] AGAA no 55 (Elliott); *Trimac Transportation Services - Bulk Systems and Transportation Communications Union,* [1999] CLAD no 750 (Burkett*); Finning International Inc., and I.A.M. Local 99*, [2004] AGAA no 80 (Smith); *Spectra Energy v Canadian Pipeline Employees' Association*, [2011] CLAD no 266 (Laing) (excerpt); *Peace Country Health v United Nurses of Alberta*, [2007] AGAA no 17 (Sims) (excerpt); *Re Amalgamated Electric Corp. Ltd (Markham) and International Brotherhood of Electrical Workers, Local 1590* (1974), 6 LAC (2d) 28 (O'Shea) (excerpt); *Re Monarch Fine Foods Ltd. and Milk and Bread Drivers, Dairy Employees, Caterers and Allied Employees, Local 647* (1978), 20 LAC (2d) 419 (MG Picher) (excerpt); *Retail, Wholesale and Department Store Union, Local 558 v Pepsi-Cola Canada Beverages (West) Ltd*., [2002] 1 SCR 156 (excerpt); *Toronto Transit Commission v Amalgamated Transit Union, Local 113 (Belsit Grievance)*, [1999] OLAA no 861 (Chapman) (excerpt); *R v Dyment*, [1988] 2 SCR 417 (excerpt); *R v Cole*, 2012 SCC 53 (excerpt); *R v O'Connor*, [1995] 4 SCR 411 (excerpt); *A.M. v Ryan*, [1997] 1 SCR 157 (excerpt); *R v Sharpe*, [2001] 1 SCR 45 (excerpt); *R v Shaker*, [2006] 2 SCR 399 (excerpt); *Canadian National Railway Co. and C.A.W* , [2000] CLAD no 465 (Picher) (excerpt); *Esso Petroleum Canada v C.E.P. Loe. 614*, [1994] BCCAAA no 244 (MCAipine); *Imperial Oil Ltd. v Communications, Energy and Paperworkers Union, Local 900* (Policy Grievance), [2006] OLAA no 721 (Picher); *Suncor Energy Inc. v Communications, Energy and Paperworkers Union, Local 707 (Woods Grievance)*, [2008] AGAA no 11 (Abells) (excerpt); *Imperial Oil Ltd. v Communications, Energy and Paperworkers Union, Local 900 (Policy Grievance)*, [2008] OJ no 489 (SCJ); *Imperial Oil Ltd. v Communications, Energy and Paperworkers Union, Local 900 (Policy Grievance)*, [2009] OJ no 2037 (CA); *Local 143 of the Communications, Energy and Paperworkers Union of Canada v Goodyear Canada Inc*., [2007] JQ no 13701 (CA); *Imperial Oil Ltd v Communications, Energy and Paperworkers Union of Canada, Local 900 (Policy Grievance),* [2006] OLAA no 721 (Picher) (QL); *Canadian National Railway Co v National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada)*, [2000] CLAD no 465 (Picher) (QL); *Communications, Energy and Paperworkers Union, Local 707 v Suncor Energy Inc*, 2012 ABQB 627, [2012] AJ no 1049 (QL); *Communications, Energy and Paperworkers Union, Local 707 v Suncor Energy Inc*, 2012 ABCA 373, [2012] AJ no 1207 (QL); *Mechanical Contractors Association Sarnia v United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 663*, 2013 CanLII 54951 (Surdykowski); *Communications, Energy and Paperworkers Union of Canada, Local 30 v Irving Pulp & Paper, Ltd*, 2013 SCC 34 (CanLII); *Irving Pulp and Paper, Ltd v Communications, Energy and Paperworkers Union, Local 30 (Day Grievance)*, [2009] NBLAA no 28 (Veniot) (QL); *Trimac Transportation Services – Bulk Systems v Transportation Communications Union*, [1999] CLAD no 750 (Burkett) (QL); *Peace Country Health v United Nurses of Alberta*, [2007] AGAA no 17 (Sims) (QL) (excerpt citing *Victoria Times-Colonist Newspaper Guild, Local 233* (unreported, 12 February 1986) (Hope)); *Re Monarch Fine Foods Ltd. and Milk and Bread Drivers, Dairy Employees, Caterers and Allied Employees, Local 647*, [1978] OLAA no 8 (Picher) (QL); Ritu Khullar and Vanessa Cosco, "Employee Privacy Rights and Drug and/or Alcohol Testing: Getting the Right Balance" (2012) 25 Can J Admin L & Prac 237; *Re Amalgamated Electric Corp. Ltd (Markham) and International Brotherhood of Electrical Workers, Local 1590*, [1974] OLAA no 1 (O'Shea) (QL); *R v Dyment*, [1988] SCJ no 82 (QL); *R v Shoker*, 2006 SCC 44, [2006] 2 SCJ no 44 (QL); *Entrop v Imperial Oil*, [2000] OJ no 2689 (CA) (QL); *R v Chehil*, 2013 SCC 49, [2013] SCJ no 49 ; *R v MacKenzie*, 2013 SCC 50, [2013] SCJ no 50; *Criminal Code*, RSC 1985, c C-46, s. 254; American Civil Liberties Union, *Drug Testing A*

Bad Investment (New York: ACLU, 1999); *Esso Petroleum Canada v Communications, Energy and Paperworkers Union, Local 614*, [1994] BCCAAA No 244 (QL) (McAlpine); *Petro-Canada Lubricants Centre (Mississauga) v Communications, Energy and Paperworkers Union of Canada, Local 593 (Alcohol and Drug Policies Grievance)* [2009] OLAA No 400 (QL); National Transportation Safety Board, *Marine Accident Report: Grounding of The U.S. Tankship Exxon Valdex on Bligh Reef, Prince William Sound Near Valdez, Alaska March 24, 1989* (Washington, DC: National Transportation safety Board Public Inquiries Section, 1990) (excerpt)

EMPLOYER AUTHORITIES

Occupational Health and Safety Act, RSA 2000, c-O-2 (excerpts); *Occupational Health and Safety Code*, 2009 (excerpts); *An Act to Amend the Criminal Code* (*criminal liability of organizations*), S.C. 2003, c. 21, p. 3, amending R.S.C. 1985, c. C-45 (excerpts*); Oak Bay Marina Ltd. v British Columbia (Human Rights Commission*), 2002 BCCA 495, (2002), 5 B.C.L.R. (4th) 115; *U.A. Local 488 v Bantrel Constructors. Co.* (2007), 162 L.A.C. (4th) 122, [2008] A.W.L.D. 85 (Smith), aff'd by 2007 ABQB 721, reversed for other reasons in 2009 ABCA 84; *R. v. Metron Construction Corp*., 2012 CarswellOnt 9497, 2012 ONCJ 506 *Entrop v Imperial Oil Ltd*., [2000] O.J. No. 2689, (2000), 189 D.L.R. (4th) 14 (ON C.A.); *Milazzo v Autocar Connaisseur Inc*., 2003 CHRT 37, (2003), 47 C.H.R.R. D/468; *Walker v. Imperial Oil Ltd*., [1998] L.V.I. 2982-1, (1998), 230 A.R. 325 (ABQB); *Luka v Lockerbie & Hole Inc*., 2008 AHRC 1 (AB Human Rights Panel, 2008-02-15), rev'd 2009 ABQB 241, 7 Alta. L.R. (5th) 248, aff'd 2011 ABCA 3, (2011), 329 D.L.R. (4th) 76; *Chiasson v Kellogg Brown and Root (Canada) Company*, 2005 AHRC 7 (AB Human Rights Panel, 2005-06-07), rev'd 2006 ABQB 302, (2006), 267 D.L.R. (4th) 639, aff'd 2007 ABCA 426, (2007), 289 D.L.R. (4th) 95, leave to appeal to SCC refused 32505 (May 29, 2008*); Lumber & Sawmill Workers' Union, Local 2537 v KVP Co*. (1965), 16 L.A.C. 73 (excerpts); *Communication Energy and Paperworkers Union, Local 777 v Imperial Oil Limited* (May 27, 2000, T.J. Christian, Chair, unreported*); Alberta (Human Rights & Citizenship Commission) v Elizabeth Metis Settlement*, 2003 ABQB 342, (2003), 19 Alta. L.R. (4th) 71; rev'd 2005 ABCA 173; *Greater Toronto Airports Authority v P.S.A.C., Local 0004*, (2007), 90 C.L.A.S. 177, 2007 Carswell Ont 4531 (Devlin); *Irving Pulp & Paper Ltd. v C.E.P., Local 30* (2009), 189 L.A.C. (4th) 218 rev'd by 2010 NBQB 294 aff'd by 2011 NBCA 58; leave to SCC granted, 2012 Carswell NB 87; *Exxon Corporation v. Esso Workers' Union, Inc*., 118 F3d 841 (1st Cir. 1997); Alberta Human Rights Commission Information Sheet, "Drug and alcohol dependencies in Alberta workplaces"; *American Federation of Government Employees v Skinner*, 885 F.2d 884 (1989); *Personal Information Protection Act*, SA 2003, c P-6.5 (excerpts*); Vancouver Shipyards Co. v U.A., Local 170* (2006), 156 L.A.C. (4th) 229, [2007] B.C.W.L.D 4076 (Hope*); Skinner v. Railway Labour Executives Assn*. 489 U.S. 602, 617, 625-626 (1989*); R v. Cole,* [2012] S.C.J. No. 53 (excerpts); *Irving Pulp & Paper Ltd. v. CEP, Local 30* (2009), 189 LAC (4th) 218, 2009 CarswellNB 543 (NB Arb) (Veniot), rev'd by 2010 NBQB 294, 2010 CarswellNB 494, aff'd by 2011 NBCA 58, 2011 CarswellNB 356, rev'd by 2013 SCC 34, 2013 CarswellNB 275; *R. v. Cole*, 2012 SCC 53, 2012 CarswellOnt 12684; *Communication Energy and Paperworkers Union, Local 777 v. Imperial Oil Limited*, (27 May 2000) (Alta Arb) (Christian), unreported; *Personal Information Protection Act*, SA 2003, c P-6.5 (excerpts); *Vancouver Shipyards Co. v U.A., Local 170* (2006), 156 LAC (4th) 229, 2006 CarswellBC 3405 (BC Arb) (Hope); *Occupational Health and Safety Act*, RSA 2000, c-O-2 (excerpts); *Occupational Health and Safety Code*, 2009 (excerpts); *R. v. XI Technologies Inc*., 2013 ABCA 282, 2013 CarswellAlta 1395; *R. v. Canadian Consolidated Salvage Ltd*., 2013 ABPC 120, 2013 CarswellAlta 769; Ministry of Human Services, "Convictions under the Alberta Occupational Health and Safety Act" (1 November 2013), online: http://humanservices.alberta.ca/working-in-alberta/6752.html; *Criminal Code*, RSC 1985, c C-45 (excerpts); *R. v. Metron Construction Corp*., 2012 ONCJ 506, 2012 CarswellOnt 9497, aff'd by 2013 ONCA 541, 2013 CarswellOnt 12217; *Environmental Protection and Enhancement Act*, RSA 2000, c E-12

(excerpts); *R. v. Jovnic Ltd*., 2011 ABPC 62, 2011 Carswell Alta 163; *R. v. Syncrude Canada Ltd*., 2010 ABPC 229, 2010 CarswellAlta 1157; Environment Canada, "$3 Million Award Imposed As Syncrude Canada Ltd. Convicted Of Violating Environmental Laws" (22 October 2010), online: http://www.ec.gc.ca/alef-ewe/default.asp?lang=En&n=9BECA453-1#archived; *C.E.P., Local 707 v. Suncor Energy Inc*., 2012 ABQB 627, 2012 Carswell Alta 1719, aff'd by 2012 ABCA 373, 2012 Carswell Alta 2071; *Suncor Energy Inc. v. C.E.P., Local 707* (2004), 128 LAC (4th) 48, 2004 CarswellAlta 1247 (Alta Arb) (Jones); *U.A. Local 488 v. Bantrel Constructors. Co*. (2007), 162 LAC (4th) 122, 2007 CarswellAlta 1453 (Alta Arb) (Smith), aff'd by 2007 ABQB 721, 2007 CarswellAlta 1621, rev'd on other grounds by 2009 ABCA 84, 2009 Carswell Alta 304; *Milazzo v. Autocar Connaisseur Inc*., 2003 CHRT 37, 2003 CarswellNat 4798
Chiasson v. Kellogg Brown & Root (Canada) Co. (2005), 56 CHRR D/466, 2005 CarswellAlta 2325 (Alta HR & Cit Comm), rev'd by 2006 ABQB 302, 2006 CarswellAlta 621, rev'd by 2007 ABCA 426, 2007 Carswell Alta 1833, leave to appeal to SCC refused (2008), 460 AR (note), 2008 Carswell Alta 704;
Skinner v. Railway Labour Executives Association et al. (1989),109 S Ct 1402, 489 US 602 (USSC);
NZ Amalgamated Engineering Printing and Manufacturing Union Incorporated v. Air New Zealand Limited, [2004] NZ Emp C, [2004] 1 ERNZ 614; *National Treasury Employees Union v. Von Raab* (1989), 489 US 656, 109 S Ct 1384 (USSC); *Greater Toronto Airports Authority v. PSAC, Local 0004*, [2007] LVI 3734-2, 2007 Carswell Ont 4531 (Ont Arb) (Devlin); Donald J.M. Brown & David M. Beatty, *Canadian Labour Arbitration*, 4th ed. (Toronto: Canada Law Book, 2012); *Saskatchewan (Board of Education) and Allen, Re, 2005 Carswell Sask* 1034 (Sask Arb) (Pelton) ; Sarnia Judicial Review Application *; Luka v Lockerbie & Hole Inc*., 2008 AHRC 1 (CanLII) (AB Human Rights Panel, 2008-02-15), rev'd 2009 ABQB 241, 7 Alta. L.R. (5th) 248, (reversed only on the issue of who was employer under *Alberta Human Rights Act*) aff'd 2011 ABCA 3, (2011), 329 D.L.R. (4th) 76 *; Stilwell v. Edmonton Exchanger & Manufacturing Ltd*., 2010 AHRC 5 (CanLII) (AB Human Rights Panel, 2010-07-21); *McNamara v. Lockerbie & Hole Inc*., 2010 AHRC 7 (CanLII) (AB Human Rights Panel, 2010-07-22); *Bley v. Syncrude Canada*, 2010 AHRC 6 (CanLII) (AB Human Rights Panel, 2010-07-21); *PCL Industrial Constructors Inc. and BBF Local Lodge No 146* (2007), 91 CLAS 378, 2007 CLB 12629 (Jones) ; *R. v. Malmo-Levine*, 2003 SCC 74, 2003 Carswell BC 3133; *Imperial Oil Ltd. v. C.E.P., Local 900*, 2005 Carswell Ont 3873, 138 L.A.C. (4th) 122

APPENDIX "C"

Unifor V. SUNCOR - GRIEVANCE #SU-85-7-2012
Exhibit Index

Exhibit No.	Description
1	Collective Agreement
2	Grievance Form #SU-85-7-2012 dated July 19, 2012 re Random Drug and Alcohol Testing Policy
3	Suncor letter dated June 20, 2012 Re: New Alcohol and Drug Policy to take effect October 15, 2012 and information package
4	Suncor Alcohol and Drug Policy, Number: CO-104
5	Suncor Alcohol and Drug Testing Standard, Number: CO-S21
6	Suncor Random Testing Standard, Number: CO-S24
7	Suncor Contractor Alcohol and Drug Standard, Number CO-S22
8	Suncor Medication Standard, Number CO-S23
9	Suncor Social and Business Hosting Standard, Number: CO-S25
10	Suncor Substance Abuse Assessment Standard, Number: CO-S26
11	Suncor Alcohol and Drug Procedures, Number: LMP0057A
12	Oil Sands Personnel Training Breakdown for Mohammed Al-Dhaby
13	Mine Departmental Sample Orientation Checklist
14	Grievance SU-21-4-2012 dated April 28, 2012
15	Communications, Energy and Paperworkers Union, Local 707 v. Suncor Energy Inc. (Alcohol and Drug Policy Grievance) [2008] A.G.A.A. No. 55 (Elliott)
16	Mine Operations Critical Task Review – Employee Sign-off Sheet -- 2011 PPRs dated September 17, 2011 and signed by Brenda Sitko
17	HEO Critical Task Review – Employee Sign-off Sheet -- 2012 PPRs dated February 20, 2012 and signed by Brenda Sitko
18	Grievance 03-11-044 dated October 29, 2003 filed on behalf of Brenda Sitko re post-incident test
19	Training Acknowledgement – Alcohol and Drug Policy Overview dated October 30, 2012 and signed by Brenda Sitko
20	**General** 1. Maps of Operation 2. List of Standards and Procedures

	3. Risk Matrix 4. Sample Permits 5. Safety Alert – Working Within Permit System 6. Permit to Work and Control of Hazardous Energy Awareness Presentation 7. Permit Signs 8. PPE Signs **Mining** 9. Status Map of Millennium Mine 10. Equipment Information 11. Mining Pictures 12. Safe Equipment Parking Presentation 13. Haulage Truck Spotting at Shovels Work Practice 14. Driving in the Mine Standard 15. Driving in the Mine Regional Code of Practice 16. Recovering Stuck Equipment Work Practice 17. Hopper Area Light Vehicle Closure Restriction Presentation 18. Dozer-Pickup Major Contact Investigation Report 19. Operating within the Proximity of High Voltage Standard 20. Sample of Rules/Work Practices & Standards in the Mine 21. Heavy Equipment Fire Reduction RRT Closeout Presentation **Extraction** 22. Extraction Process Flow Schematic 23. Extraction Pictures 24. Sample of MSDS Sheets of products found in Extraction 25. Diluent Naptha MSDS Sheet 26. Sample of Rules/Work Practices & Standards in Extraction 27. Extraction Incident Alert **Energy & Utilities** 28. Energy & Utilities Pictures 29. Sample of Energy and Utilities MSDS Summaries **Upgrading** 30. Upgrading Process Flow Diagram 31. Upgrading Pictures

	32.	Valve Isolation Verification Checklists
	33.	Suncor Upgrading Chemicals
	34.	MSDS Sheets of chemical products found in Upgrading
	35.	Hydrogen Sulphide Standard
	36.	Suncor MSDS Cover Sheet for Chlorine
	37.	Chlorine Emergency Response Plan
	38.	Butane Emergency Response Plan
	39.	Sample of Rules/Work Practices & Standards in Upgrading
	40.	Emergency – Fire/Explosion/Bad Leaks Procedure
	41.	Incident / Hazard Investigation Summary
	42.	Safety Moment & Sharing Lessons Learned Presentation
21	1.	"Safety Moment" Presented by Shenandoah Johns at Leader Alignment Meeting January 2011
	2.	Environment, Health and Safety – Policy Statement, Guiding Principles & Key Beliefs by Richard L. George, President and Chief Executive Officer dated April 2010
	3.	Leader's Kit regarding Safety Moment on EHS Policy Statement dated January 4, 2011 (excerpts)
	4.	Oil Sands – EHS Management System – Communication and Group Meetings Standard (Revision Date: September 1, 2010)
	5.	Oil Sands – EHS Management – Training, Competency and Awareness Standard (Revision Date: November 1, 2010) (excerpts)
	6.	Welcome to Suncor – New Hire Orientation PowerPoint Presentation - 2013 (excerpts)
	7.	Powerhouse Orientation – Energy & Utilities PowerPoint Presentation
	8.	Upgrading Orientation PowerPoint Presentation
	9.	Extraction Orientation PowerPoint Presentation
	10.	Mine Hazards PowerPoint Presentation
	11.	EHS Learning Unit (2006)
	12.	Mine Operations – Solo Follow-up Checklist for New Employees
	13.	Communication to Oil Sands Employees regarding Journey to Zero dated January 23, 2003
	14.	Letter from Sonia Burgett to All MEM Shift Supervisors regarding Journey to Zero dated April 6, 2004
	15.	2004 Schedule for: J2Z Walk-abouts
	16.	Leader's Kit regarding Journey to Zero dated January 21, 2010 (excerpts)

	17. Leader's Kit regarding Journey to Zero Training dated February 14, 2012 (excerpts) 18. Firebag Journey to Zero PowerPoint Presentation 19. Letter from Mario DeCrescentis, Vice President, Mining regarding using drugs in the workplace dated August 1, 2003 20. Letter to "All Suncor Energy Oil Sands Employees" from Steve Williams, Executive Vice President, Oil Sands regarding changes to the Alcohol and Drug Policy dated September, 2003 21. Web-based Training Requirements for Extraction 22. Drugs and Alcohol in the Workplace: A Problem of Impairment PowerPoint by Dr. Brendan Adams (April 2006) 23. Pamphlet regarding Alcohol and Drug Work Rule included in Connect November, 2008 24. Alcohol & Drug Procedure (LMP0057A) PowerPoint Presentation to Crew (August, September 2011) 25. Alcohol and Drug Policy Training Manual (April, 2009) (excerpts) 26. Mine Practical Experience – Portions of Mining Delivered Training which cover A&D Policy knowledge for Supervision (June 2011) 27. Leader's Kit regarding Roll out of Life Saving Rules at Oil Sands dated November 15, 2009 (excerpts) 28. Leader's Kit regarding Life Saving Rules dated June 8, 2010 (excerpts) 29. Communication to employees from Kirk Bailey, EVP – Oil Sands regarding Life Saving Rules (November 2010) 30. Letter, Agenda and corresponding presentations from December 2009/January 2010 Mine Ops Safety Meeting (a) Letter dated November 24, 2009 (b) Safety Meeting Schedule and Dates (c) Safety Meeting Agenda (d) Life Saving Rules: Working Safely at Suncor PowerPoint presentation (e) Introduction of the New Mining Accountability Based Management Team PowerPoint presentation 31. Agenda and Presentations from February/March Mine OPPS Safety Meeting from February/March 2010 (a) Agenda (b) Journey to Zero Update – Mine Operations PowerPoint Presentation (c) "Sid the Kid" Presentation (d) Personal Support Network: Providing EFAP Services to Employees and Families PowerPoint Presentation (e) Fit for Duty – Working Safely at Suncor

	32. MEM Quarterly Offsite Safety and Communication Meeting (April, 2010) 33. Mine Operations April/May Safety Communication Meeting (April/May 2010) 34. Leader's Kit regarding Fit for Duty dated September 22, 2010 (excerpts) 35. Life Saving Rules Posters from shifts I, J, K, L posters (November, 2011) (excerpts) 36. Life Saving Rule #7 – Follow the Drug & Alcohol Policy by Arriving "Fit for Duty" PowerPoint (February, 2010) 37. Fit for Duty – Section 1 – Introduction – PowerPoint Presentation (part of mining training orientation) 38. Photos of safety signage 39. Safety Reflection email from Mike Agnew regarding Suncor Values dated December 9, 2012 40. Sample of Safety Reflection Emails (2012) 41. Safety Reflection Email from Anne Marie Toutant to all Oil Sands & In Situ employees (September 23, 2012) 42. Steve Williams Webcast (Safety Moment by Anne Marie Toutant) (November 1, 2012)
22	Dr. Louis Hugo Francescutti's Curriculum Vitae
23	Dr. Louis Francescutti's Statement of Expert Opinion
24	A. Roberts, M. (2004). Drug testing in the workplace: The report of the independent inquiry into drug testing at work. York, UK: Joseph Rowntree Foundation (excerpts, pp viii-ix, 38, 43-71) B. Roberts, M. (2004). Drug testing in the workplace: The report of the independent inquiry into drug testing at work. York, UK: Joseph Rowntree Foundation (excerpts, Executive Summary)
25	Gordis, Leon, Epidemiology Third Edition (2004), "Epidemiology and Public Policy", p 301-302, 312-313
26	Mehay, S. L., & Pacula, R. L. (1999). The effectiveness of workplace drug prevention policies: Does 'zero tolerance' work? National Bureau of Economic Research, NBER Working Paper 7383
27	Glantz, L. H. (1989). A nation of suspects: Drug testing and the fourth amendment. American Journal of Public Health, 79, 1427-1431. doi: 10.2105/AJPH.79.10.1427
28	Wickizer, M., Kopjar, B., Franklin, G., & Joesch, J. (2004). Do drug-free workplace programs prevent occupational injuries? Evidence from Washington State. Health Services Research
29	Miller, T. R., Zaloshnja, E., Spicer, R. C. (2007). Effectiveness and benefit-cost of peer-based workplace substance abuse prevention coupled with random testing. Accident Analysis and Prevention, 39, 565-573
30	Ross, H. L. (1984) Social Control Through Deterrence: Drinking-and-Driving Laws, Annual Review of Sociology, August, Vol. 10, Pages 21-35

31	McNeilly, B., Ibrahim, J. E., Bugeja, L., & Ozanne-Smith, J. (2010). The prevalence of work-related deaths associated with alcohol and drugs in Victoria, Australia, 2001-6. Injury Prevention, 16, 423-428
32	Gerberich, Susan Goodwin, et al, Marijuana Use and Injury Events Resulting in Hospitalization, *Annals of Epidemiology* (Ann Epidemiol 2003;13:230-237)
33	Dominic Zaal April (1994); Traffic Law Enforcement: A Review Of The Literature; Report No. 53
34	Construction Labour Relations Alberta – Hours Reported January 2000 – February 2013
35	Canadian Model for Providing a Safe Workplace: A Best Practice of the Construction Owners Association of Alberta – Alcohol and Drug Guidelines and Work Rule, COAA, October 2005 – Version 2 – Effective October 1, 2010
36	Amendment to the Provincial Operating Engineers Collective Agreement
37	Construction Labour Relations Alberta – A&D Testing Results – Non-Negative
38	Rapid Site Access Program – Participating Alberta Building Trades
39	CEFAP Utilization January, 2002 to January, 2013
40	DARRPP – Good to go. Alcohol and Drugs have no place in our workplace. Alberta's Drug and Alcohol Risk Reduction Pilot Project pamphlet
41	June 20, 2012 DARRPP Press Release– Alberta's oil sands and construction industries launch Drug and Alcohol Risk Reduction Pilot Project – Two-year evaluation project will monitor the introduction of random workplace testing
42	Drug and Alcohol Risk Reduction Pilot Project Principles (DARRPP) as approved by DARRPP Board November 24, 2011
43	Occupational Health and Safety Pilot Project: Reducing Safety Risks Related to the Use of Alcohol and Other Drugs, Guidance Document for the Oil Sands Operations and Maintenance, Industrial Construction, and Industrial Maintenance Industries approved by DARRPP Board November 24, 2011
44	Neil Tidsbury, "It's All About Safety: What's Happening on the Alcohol and Drug Front" Article
45	Canadian Model Workshop – May 18, 2011PowerPoint presentation by Neil Tidsbury, "Trends and Emerging Issues in Industry"
46	Addressing Workplace Impairment in Alberta – A Report and Recommendations to Alberta Human Resources & Employment dated July 2003
47	Dr. Leo J. Kadehjian's Curriculum Vitae
48	Dr. Leo J. Kadehjian Expert Report dated April 2, 2013

49	**Volume 1** 1. F. Couper and B. Logan, Drugs and Human Performance Fact Sheets, NHTSA, DOT HS 809 725 4/04 2. J. Morland, Driving under the influence of non-alcoholic drugs, For. Sci. Rev., 12(1/2), 80 (2000) 3. R. Jones et al., State of Knowledge of Drug-Impaired Driving, NHTSA, DOT HS 809 642, September 2003 www.nhtsa.dot.gov/people/injury/research/StateofKnwlegeDrugs/StateofKnwlegeDrugs/ 4. The effects of drugs on human performance and behavior, For. Sci. Rev., 14 (1/2) (2002) Benzodiazepines, cannabis, cocaine, GHB, methamphetamine, and in a subsequent issue: For. Sci. Rev., 15(1) (2003) PCP, MDMA, opioids carisopradol (a) Cannabis (b) Cocaine (c) Methamphetamine (d) Phencyclidine (e) 3,4-Methylenedioxymethamphetamine (f) Opioids 5. H. Moskowitz and C. Robinson, Effects of Low Doses of Alcohol on Driving-Related Skills: A Review of the Evidence, DOT HS 807 280, 7/88 6. H. Moskowitz and D. Fiorentino, A Review of the Literature on the Effects of Low Doses of Alcohol on Driving-Related Skills, National Highway Traffic Safety Administration, April 2000, DOT HS 809 028. www.nhtsa.dot.gov/people/injury/research/pub/Hs809028/Title.htm 7. T. Roehrs et al., Residual sedating effects of ethanol, Alc. Clin. Exp. Res., 18, 831 (1994) 8. D. Morrow et al., The influence of alcohol and aging on radio communication during flight, Aviat. Space Environ. Med., 61, 12 (1990) 9. Federal Register/ Vol.53 No. 192 / Tuesday, October 4, 1988, Rules and Regulations 10. D. Isenschmid, Cocaine – Effects on human performance and behavior, For. Sci. Rev., 14 (2), 61 (2002) 11. E. Pace-Schott et al, Cognitive performance by humans during a smoked cocaine binge-abstinence cycle, Am. J. Drug Alc. Abuse., 31(4), 571 (2005) 12. R. Hester et al., Post-error behavior in active cocaine users: Poor awareness of errors in the presence of intact performance adjustments, Neuropsychopharm., 32, 1974 (2007) 13. G. Stoduto et al., Examining the link between collision involvement and cocaine use, Drug Alc. Depend., 123, 260 (2012) 14. S. MacDonald et al., Driving behavior under the influence of cannabis or cocaine,

Traffic Inj. Prev., 9 (3), 190 (2008)

15.

(a) C. Dussault et al., The contribution of alcohol and other drugs among fatally injured drivers in Quebec: Some preliminary results, presentation at 16th International Conference on Alcohol Drugs and Traffic Safety, Montreal, 2002. p. 423–430

(b) C. Dussault et al., The role of cocaine in fatal crashes: First results of the Quebec drug study, Annu. Proc. Assoc. Adv. Automot. Med., 45, 125 (2001)

16. P. Hurst, The Effects of d-amphetamine on risk taking, Psychopharmacologia, 3, 283 (1962)

17. M. Wittmann et al., Impaired time perception and motor timing in stimulant dependent subjects, Drug Alc. Dep., 90 (2–3), 183 (2007)

18. F. Musshoff and B. Madea, Driving under the influence of amphetamine-like drugs, J. For. Sci., 57 (2), 413 (2012)

19. B. Silber et al., The effect of d-methamphetamine on simulated driving performance, Hum. Psychopharmacol. Clin. Exp., 27, 139 (2012)

20. B. Silber et al., The effect of d,l-methamphetamine on simulated driving performance, Psychopharmacol., 219 (4), 1081 (2012)

21. D. Bosanquet et al., Driving on ice: impaired driving skills in current methamphetamine users, Psychopharmacol., 225 (1), 161 (2013)

22. B. Silber et al., The effects of dexamphetamine on simulated driving performance., Psychopharmacol., 179 (3), 536 (2005)

23. S. Shappell et al., Chronopharmacokinetics and chronopharmacodynamics of dextromethamphetamine in Man, J. Clin. Pharmacol., 36 (11), 1051 (1996)

24. B. Logan, Methamphetamine and driving impairment, J. For. Sci., 41 (3), 457 (1996)

25. P. Hurst, Amphetamines and Driving Behavior, in G. Austin, ed., Drug Users and Driving Behaviors, GPO, 1977

26. J. Ramaekers et al., Effects of stimulant drugs on actual and simulated driving: perspectives from four experimental studies conducted as part of the DRUID research consortium, Psychopharmacol., 222, 413 (2012)

27. W. Bosker et al., MDMA (ecstasy) effects on actual driving performance before and after sleep deprivation, as a function of dose and concentration in blood and oral fluid, Psychopharmacol., 222 367 (2012)

28. M. Wittmann et al., Impaired time perception and motor timing in stimulant-dependent subjects, Drug Alc. Dep., 90, 183 (2007)

29. L. Downey et al., Examining the effect of dl-methylenedioxymethamphetamine (MDMA) and methamphetamine on the standard field sobriety tests, For. Sci. Int., 220, e33 (2012)

30. B. Logan and F. Couper, 3,4-Methylenedioxymethamphetamine – Effects on human

performance and behavior, For. Sci. Rev., 15, 11 (2003)

31. M. Linnoila and S. Hakkinen, Effects of diazepam and codeine, alone and in combination with alcohol, on simulated driving, Clin. Pharmacol. Ther., 15 (4), 368 (1974)

32. J. Zacny, A review of the effects of opioids on psychomotor and cognitive functioning in humans, Exp. Clin. Psychopharmacol., 3, 432 (1995)

33. National Safety Council, Committee on Alcohol and Other Drugs, Position on the use of cannabis (marijuana) and driving, J. Anal. Toxicol., 37, 47 (2013)

34. M–C Li et al., Marijuana use and motor vehicle crashes, Epidemiol. Rev., 34, 65 (2012)

Volume 2

35. M. Asbridge et al., Acute cannabis consumption and motor vehicle collision risk: systematic review of observational studies and meta-analysis, BMJ, 344, e536 (2012)

36. W. Bosker et al., Medicinal THC (Dronabinol) impairs on-the-road driving performance of occasional and heavy cannabis users but is not detected in standardized field sobriety tests, Addiction, 107 (10), 1837 (2012)

37. R. Mann et al., Self-reported collision risk associated with cannabis use and driving after cannabis use among Ontario adults, Traff. Inj. Prev., 11, 115 (2010)

38. D. Fergusson et al., Is driving under the influence of cannabis becoming a greater risk to driver safety than drink driving? Findings from a longitudinal study., Acc. Anal. Prev., 40, 1345 (2008)

39. C. Jones et al., Preventing cannabis users from driving under the influence of cannabis, Accid. Anal. Prev., 38 (5), 854 (2006)

40. P. Terry and K. Wright, Self-reported driving behavior and attitudes towards driving under the influence of cannabis among three different groups in England, Addict. Behav., 30 (3), 619 (2005)

41. R. Hartman and M. Huestis, Cannabis effects and driving skills, Clin. Chem., 59 (3) 478 (2013)

42. H. Kalant, Adverse effects of cannabis on health: An update of the literature since 1996, Prog. Neuro-Psychopharm. Biol. Psychiatry, 28 (5), 849 (2004)

43. S. Macdonald et al., Injury risk associated with cannabis and cocaine use, Drug Alc. Dep., 72 (2), 99 (2003)

44. M. Huestis, Cannabis (Marijuana) – Effects on human behavior and performance, For. Sci. Rev., 14(1/2), 15 (2002)

45. E. Wadsworth et al., Cannabis use, cognitive performance and mood in a sample of workers, J. Psychopharm., 20 (1), 14 (2006)

46. E. Wadsworth et al., A community based investigation of the association between cannabis use, injuries and accidents, J. Psychopharm., 20 (1), 5 (2006)

47. K. Papafotiou et al., An evaluation of the sensitivity of the Standardised Field Sobriety Tests (SFSTs) to detect impairment due to marijuana intoxication, Psychopharmacol.,

180 (1), 107 (2005)

48. J. Ramaekers et al., Dose related risk of motor vehicle crashes after cannabis use, Drug Alc. Dep., 73 (2), 109 (2004)

49. V. Leirer et al., Marijuana carry-over effects on aircraft pilot performance, Aviat. Space Environ. Med., 62 (3), 221 (1991)

50. J. Yesavage et al., Carryover effects of marijuana intoxication on aircraft pilot performance: A preliminary report, Am. J. Psych., 142 (11), 1325 (1985)

51. S. Heishman et al., Acute and residual effects of marijuana: Profiles of plasma THC levels, physiological, subjective, and performance measures, Pharmacol. Biochem. Behav., 37 (3), 561 (1990)

52. E. Kouri and H. Pope, Abstinence symptoms during withdrawal from chronic marijuana use, Exp. Clin. Psychopharmacol., 8 (4), 483 (2000)

53. T. Moore et al., Cannabis use and the risk of psychotic or affective mental health outcomes: A systematic review, Lancet, 370, 319 (2007)

54. M. Kopala, Reefer madness, Can. Med. Assoc. J., 177 (8), 988 (2007)

55. A. Mozayani, Phencyclidine – Effects on human performance and behavior, For. Sci. Rev., 15, 61 (2002)

56. T. Bey and A. Patel, Phencyclidine intoxication and adverse effects: A clinical and pharmacological review of an illicit drug, Cal. J. Emerg. Med., 8 (1), 9 (2007)

57. W. Bosker at al., A placebo-controlled study to assess Standardized Field Sobriety Tests performance during alcohol and cannabis intoxication in heavy cannabis users and accuracy of point of collection testing devices for detecting THC in oral fluid, Psychopharmacol., 223 (4), 439 (2012)

58. L. Downey et al., Detecting impairment associated with cannabis with and without alcohol on the Standardized Field Sobriety Tests, Psychopharmacol., 224 (4), 581 (2012)

59. B. Silber et al., An evaluation of the sensitivity of the standardised field sobriety tests to detect the presence of amphetamine., Psychopharmacology, 182 (1), 153 (2005)

60. K. Papafotiou et al., The relationship between performance on the Standardised Field Sobriety Tests, driving performance, and the level of ΔΔ9-tetrahydrocannabinol in blood, For. Sci. Intl., 155 (2-3), 172 (2005)

61. D. Shinar and E. Schechtman, Drug identification performance on the basis of observable signs and symptoms, Acc. Anal. Prev., 37 (5), 843 (2005)

62. S. Heishman et al., Laboratory evaluation study of Drug Evaluation and Classification Program: Alprazolam, d-amphetamine, codeine, and marijuana, J. Anal. Toxicol., 22 (6), 503 (1998)

63. S. Heishman et al., Laboratory evaluation study of Drug Evaluation and Classification Program: Ethanol, cocaine, and marijuana, J. Anal. Toxicol., 20 (6), 468 (1996)

64. D. Beirness et al., Evaluation of the Drug Evaluation and Classification Program: A

	critical review of the evidence, Traf. Inj. Prev., 8, 368 (2007) 65. J. Bennett and W. Lehman, Supervisor tolerance-responsiveness to substance abuse and workplace prevention training: Use of a cognitive mapping tool, Health Education Research, 17 (1), 27 (2002) 66. I. Kazanga et al., Prevalence of drug abuse among workers: Strengths and pitfalls of the recent Italian Workplace Drug Testing (WDT) legislation, For. Sci. Int., 215 (1–3), 46 (2012) 67. Amalgamated Engineering Printing and Manufacturing Union, et al. vs. Air New Zealand, AC 22/04 68. K. Dyer and C. Wilkinson, The detection of illicit drugs in oral fluid: another potential strategy reduce illicit drug-related harm, Drug Alc. Rev., 27 (1), 99 (2008) 69. R. Ozminkowski et al., Relationships between urinalysis testing for substance abuse, medical expenditures, and the occurrence of injuries at a large manufacturing firm, Am. J. Drug Alc. Abuse, 29 (1), 151 (2003) 70. T. Miller et al., Effectiveness and benefit-cost of peer-based workplace substance abuse prevention coupled with random testing, Acc. Anal. Prev., 39, 565 (2007) 71. Department of Transportation, Federal Aviation Administration, Anti-drug Program for Personnel in Specified Aviation Activities; Final Rule, 53 FR 47024, November 21, 1988 72. Senate Report 102–54, on the Omnibus Transportation Employee Testing Act of 1991, May 2, 1991 73. Omnibus Transportation Employee Testing Act of 1991, Pub. L. 102-143, October 28, 1991 74. (a) S. James-Burdumy et al., The effectiveness of mandatory-random student drug testing: a cluster randomized trial, J. Adolesc. Health 50 (2), 172 (2012) (b) S. James-Burdumy et al., The effectiveness of mandatory-random student drug testing, U. S. Department of Education, NCEE 2010-4025, July 2010
50	EFAP pamphlet, PSN pamphlets and EFAP signage pictures
51	Regional Municipality of Wood Buffalo – Employee Last Chance Agreement chart
52	Base Plant (West Trailer) pictures
53	Steepbank (East Trailer) pictures
54	Regional Municipality of Wood Buffalo – Suncor Positive A&D Testing Statistics by Type (see Exhibits 88 and 89 for Update)
55	Regional Municipality of Wood Buffalo – Suncor Positive Tests by Substance Pie Charts (see Exhibits 88 and 89 for Update)
56	Regional Municipality of Wood Buffalo – Suncor Substance Abuse Referral Data (see Exhibits

	88 and 89 for Update)
57	Regional Municipality of Wood Buffalo – Suncor 2013 A&D Stats (see Exhibits 88 and 89 for Update)
58	**<u>Volume I</u>** Dr. Beckson's Expert Report dated July 31, 2013, and *Articles:* 1. Addenbrooke M (2011). *Survivors of Addiction: Narratives of Recovery*. London: Routledge. 2. Albalate D (2008). Lowering blood alcohol content saves lives: the European experience. *J Policy Anal Manag* 27:20-39. 3. Alberta Alcohol and Drug Abuse Commission (2002). *Substance Use and Gambling in the Alberta Workplace, 2002*. www.aadac.com/87_491.asp 4. American Psychiatric Association (2000). *Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition,* Text Revision. Washington, D.C.: American Psychiatric Publishing. 5. American Psychiatric Association (2013*). Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition.* Washington, DC: American Psychiatric Publishing. 6. American Society of Addiction Medicine (2011). Public Policy Statement: Definition of Addiction. <u>www.asam.org/research-treatment/definition-of-addiction</u> (accessed on 6/4/2013). 7. Baldacchino A, Balfour DJK, Passetti F, Humphris G, Matthews K (2012). Neuropsychological consequences of chronic opioid use: a quantitative review and meta-analysis. *Neurosci Biobehav Rev* 36:2056-2068. 8. Barrett PR, Horne JA, Reyner LA (2004). Alcohol continues to affect sleepiness related driving performance deficit, when breath alcohol levels have fallen to nearzero. *Hum Psychopharmacol Clin Exp* 19: 421–423. 9. Blencowe T, Pehrsson A, Lillsunde P, Vimpari K, Houwing S, Smink B, Mathijssen R, Van der Linden T, Legrand SA, Pil K, Verstraete A (2011). An analytical evaluation of eight on-site oral fluid drug screening devices using laboratory confirmation results from oral fluid. *Foren Sci Int* 208:173-9. 10. Bolla KI, Lesage SR, Gamaldo CE, Neurbauer DN, Wang N-Y, Funderburk FR, Allen RP, David PM, Cadet JL (2010). *Sleep Medicine* 11:882-889. 11. Borack JI (1996). An estimate of the impact of drug testing on the deterrence of drug use. *Military Psychology* 10:17-25. 12. Borschos R (2000). An evaluation of the Swedish drunken driving legislation implemented on February 1, 1994. In: Laurell H, Schlyter F (Eds.). *Online Proceedings of the 15th International Council on Alcohol, Drugs and Traffic Safety Conference, Stockholm:* 22-26 May. <u>http://www.icadts.org</u> 13. Boserman C (2009). Diaries from cannabis uses: an Interpretive Phenomenological

Analysis. *Health Interdisciplin J Soc Stud Health IllMed* 13:429-448.

14. Bosker WM, Kuypers KPC, Conen S, Kauert GF, Toennes SW, Skopp G, Ramaekers JG (2012a). MDMA (ecstasy) effects on actual driving performance before and after sleep deprivation, as a function of dose and concentration in blood and oral fluid. *Psychopharmacology* 222:367-375.

15. Bosker WM, Theunissen EL, Conen S, Kuypers KPC, Jerrery WK, Walls HC, Kauert GF, Toennes SW, Moeller MR, Ramaekers JG (2012b). A placebo-controlled study to assess Standardized Field Sobriety Tests performance during alcohol and cannabis intoxication in heavy cannabis users and accuracy of point of collection testing devices for detecting THC in oral fluid. *Psychopharmacol* 223:439-446.

16. Bosker WM, Karschner EL, Lee D, Goodwin RS, Hirvonen J, Innis RB, Theunissen EL, Kuypers KPC, Huestis MA, Ramaekers JG (2013). Psychomotor function in chronic daily cannabis smokers during sustained abstinence. *PLoS ONE* 8(1): e53127.doi: 10.1371/journal.pone.0053127.

17. Brady JE, Baker SP, DiMaggio C, McCarthy ML, Rebok GW, Li G (2009). Effectiveness of mandatory alcohol testing programs in reducing alcohol involvement in fatal motor carrier crashes. *Am J Epidemiol* 170:775-782.

18. Brady JE, Li G (2013). Prevalence of alcohol and other drugs in fatally injured drivers. *Addiction* 108:104-114.

19. Bray RM, Hourani LL (2007). Substance use trends among active duty military personnel: Findings from the United States Department of Defense Health Related Behavior Surveys, 1980-2005. *Addiction* 102:1092-1101.

20. Brenneisen R, Meyer P, Chtioui H, Saugy M, Kamber M (2010). Plasma and urine profiles of [delta-9]-tetrahydrocannabinol and its metabolites 11-hydroxy-[delta-9]-tetrahydrocannabinol and 11-not-9-carboxy-[delta-9]-tetrahydrocannabinol after cannabis smoking by male volunteers to estimate recent consumption by athletes. *Anal Bioanal Chem* 396:2493-2502.

21. Brower KJ, Krentzman A, Robinson EAR (2011). Persistent insomnia, abstinence, and moderate drinking in alcohol-dependent individuals. *Am J Addict* 20: 435–440.

22. Bruehl AM, Lende DH, Schwartz M, Sterk CE, Elifson K (2006). Craving and control: methamphetamine users' narratives. *J Psychoactive Drugs SARC Suppl* 3:385-392.

23. Burke RJ (2010). Human frailties and toxic organizations. In: Burke RJ, Cooper CL, Eds. *Risky Business: Psychological , Physical and Financial Costs of High Risk Behavior in Organizations*. Burlington, VT: Ashgate Publishing Company, pp. 3-66.

24. Callaghan RC, Gatley JM, Veldhuizen S, Lev-Ran S, Mann R, Asbridge M (2013). Alcohol- or drug-use disorders and motor vehicle accident mortality: a retrospective cohort study. *Accid Anal Prev* 53:149-155.

25. Carpenter CS (2007). Workplace drug testing and worker drug use. *Health Services Research* 42:795-810.

26. Cashman CM, Ruotsalainen JH, Greiner BA, Beirne PV, Verbeck JH (2009). Alcohol and drug screening of occupational drivers for preventing injury. *Cochrane Database of Systematic Reviews*, Issue 2.

27. Chamberlain E, Solomon R (2012). *The 2012 Federal Legislative Review*. MADD Canada.

28. Cheng W, Henry J (2005). Ethical, legal and practical aspects of testing. In: Ghodse H, Ed. *Addiction at Work: Tackling Drug Use and Misuse in the Workplace*. Burlington, Vermont: Gower Publishing Company, pp. 185-207.

29. Cobiac L, Vos T, Doran C, Wallace A (2009). Cost-effectiveness of interventions to prevent alcohol-related disease and injury in Australia. *Addiction* 104:646–1655.

30. Connors GJ, Donovan DM, DiClemente CC (2001). *Substance Abuse Treatment and the Stages of Change*. New York: Guilford Press.

31. Crane NA, Schuster RM, Fusar-Poli P, Gonzalez R (2012). Effects of cannabis on neurocognitive functioning: recent Advances, neurodevelopmental Influences, and sex differences. *Neuropsychol Rev* DOI 10.1007/s11065-12-9222-1

32. Dassanayake T, Michie P, Carter G, Jones A (2011). Effects of benzodiazepines, antidepressants and opioids on driving: a systematic review and meta-analysis of epidemiological and experimental evidence. *Drugs Safety* 34:125-156.

33. Davey J, Davies A, French N, Williams C, Lang CP (2005). Drug Driving from a User's Perspective. *Drugs: Educ, Prev, Policy* 12:61-70.

34. Davey J, Freeman J, Palk G (2010). Deterring the drug drivers: a study into the initial impact of oral random roadside drug testing. Paper presented at: *International Conference on Alcohol, Drugs and Traffic Safety (ICADTS)*: August 22-26, 2010; Oslo, Norway.

35. Department of Transportation (2010). Part 40 DOT 5-Panel Notice. http://www.dot.gov/odapc/part40/40_87.

36. Downey LA, King R, Papafotiou, Swann P, Ogden E, Boorman M, Stough C (2012). Detecting performance deficit associated with cannabis with and without alcohol on the Standardized Field Sobriety Tests. *Psychopharmacol* 224:581-589.

37. Drummer O (2009). Summary from the experience in Victoria, AUS. In: Blencowe T, Lillsunde P, Eds. *Protocol of "Workshop on drug driving by means of oral fluid screening."* DRUID (Driving under the Influence of Drugs, Alcohol and Medicines), pp. 66-68.

38. Drury CG, Porter WL, Dempsey PG (2012). Patterns in mining haul truck incidents. *Proceedings of the Human Factors and Ergonomics Society 56th Annual Meeting*, pp. 2011-2015.

39. Dupont RL, Voas RB, Walsh J M, Shea C, Talpins SK, Neil MM (2012). The need for drugged driving per se laws: a commentary. *Traffic Inj Prev* 13:31-42.

40. Dussault C, Brault M, Bouchard MJ, Lemire, AM (2004). The contribution of alcohol

and other drugs among fatally injured drivers in Quebec: some preliminary results. *Road Traffic and Psychoactive Substances, Strasbourg, 18-20 June 2003 Proceedings (Pompidou Group)*, pp. 215-224.

41. Elliott K, Shelley K (2006). Effects of drugs and alcohol on behavior, job performance and workplace safety. *J Employment Counseling* 43:130-134.

42. Erke A, Goldenbeld C, Vaa T (2009). The effects of drink-driving checkpoints on crashes—a meta-analysis. *Accid Anal Prevent* 41:914-923.

43. European Monitoring Centre for Drugs and Drug Addiction (EMCDDA, 2009) *Polydrug Use: Patterns and Response* http://www.emcdda.europa.eu/attachments.cfm/att93217 EN EMCDDA S109 polydrug%20use.pdf

44. Fell JC, Voas RB (2006). The effectiveness of reducing illegal blood alcohol concentration (BAC) limits for driving: evidence for lowering the limit to .05 BAC. *J Safety Res* 37:233-243.

45. Fishbain DA, Cutler RB, Rosomoff HL, Rosomoff RS (2003). Are opioiddependent/tolerant patient impaired in driving-related skills? A structured evidence-based review. *J Pain Symptom Management* 25:559-577.

46. French MT, Roebuck MC, Alexandre PK (2004). To test or not to test: do workplace drug testing programs discourage employee drug use? *Social Science Research* 33:45-63.

47. Frone MR (2004). Alcohol, drugs and workplace safety outcomes: A view from a general model of employee substance use and productivity. In: Frone MR, Ed., *Psychology of Workplace Safety*, pp. 127-156.

48. Frone MR (2006). Prevalence and distribution of illicit drug use in the workforce and in the workplace: findings and implications from a U.S. national survey. *J Applied Psychol* 91:856-869.

49. Frone MR (2013). *Alcohol and Illicit Drug Use in the Workforce and Workplace*. Washington, DC: American Psychological Association.

50. George S (2005). A snapshot of workplace drug testing in the UK. *Occupational Medicine* 55:69-71.

51. Gerber JK, Yacoubian GS (2002). An assessment of drug testing within the construction industry. *J Drug Education* 32:53-68.

52. Goldenhar LM, LaMontage AD, Katz T, Heaney C, Landsbergis P (2001). The intervention research process in occupational safety and health: an overview from the National Occupational Research Agenda Intervention Effectiveness Research Team. *J Occup Environ Med* 43:616-622).

53. Grayson JK, Gibson RL, Shanklin SL, Neuhauser KM, McGhee C (2004). Trends in positive drug tests, United States Air Force, Fiscal Years 1997-1999. *Military Med* 169:499-504.

54. Hammer RR, Dingel MJ, Ostergren JE, Nowakowski KE, Koenig BA (2012). The experience of addiction as told by the addicted: incorporating biological understandings into self-story. *Cult Med Psychiatry* 36:712-734.

55. Hanninen V, Koski-Jannes A (1999). Narratives of recovery from addictive behaviours. *Addiction* 94:1837-1848.

56. Heishman SJ, Huestis MA, Henningfield JE, Cone EJ (1990). Acute and residual effects of marijuana: profiles of plasma THC levels, physiological, subjective, and performance measures. *Pharmacol Biochem Behav* 37:561-565.

57. Howland J, Rohsenow DJ, Bliss CA, Almeida AB, Calise TV, Heeren T, Winter M (2010). Hangover predicts residual alcohol effects on psychomotor vigilance the morning after intoxication. *J Addict Res Ther* 1(101): doi:10.4172/2155-6105.1000101

58. Huestis MA, Henningfield JE, Cone EJ (1992). Blood cannabinoids. I. Absorption of THC and formation of 11-OH-THC and THCCOOH during and after smoking marijuana. *J Anal Toxicol* 16:276-282.

59. Huestis MA, Mitchell JM, Cone EJ (1995). Detection Times of Marijuana Metabolites in Urine by Immunoassay and GC-MS. *J Anal Toxicol* 19:443-449.

60. Huestis MA, Mazzoni I, Rabin O (2011). Cannabis in sport: anti-doping perspective. *Sports Med* 41:949-966.

61. Hunt CA, Jones RT (1980). Tolerance and disposition of tetrahydrocannabinol in man. *J Pharmacol Exp Therapeutics* 215:35-44.

62. Independent Inquiry into Drug Testing at Work (2004). *Drug Testing in the Workplace: The Report of the Independent Inquiry into Drug Testing at Work*. York, England: York Publishing Service Ltd (first published 2004 by the Joseph Rowntree Foundation).

63. Jacobson M (2003). Drug testing in the trucking industry: the effect on highway safety. *J Law Econ* 46:131-15/6.

64. Jacobson JM, Sacco P (2012). Employee assistance program services for alcohol and other drug problems: implications for increased identification and engagement in treatment. *Am J Addictions* 21:468-475.

65. Johnson MB, Kelley-Baker T, Voas RB, Lacey JH (2012). The prevalence of cannabis involved driving in California. *Drug Alcohol Dep* 123:105-109.

66. Jones AW (2010). Evidence-based survey of the elimination rates of ethanol from blood with applications in forensic casework. *Forensic Sci Int* 200:1-20.

67. Jones C, Donnelly N, Swift W, Weatherburn D (2006). Preventing cannabis users from driving under the influence of cannabis. *Accid Anal Prev* 38:854-861.

68. Jovanowski D, Erb S, Zakanis KK (2005). Neurocognitive deficits in cocaine users: a quantitative review of the evidence. *J Clin Exp Neuropsychol* 27:189-20

69. Karschner EL, Schwilke EW, Lowe RH, Darwin WD, Herning RI, Cadet JL, Huestis MA (2009a). Implications of plasma [delta-9]-tetrahydrocannabinol, 11-hydroxy-THC, and 11-nor-9-carboxy-THC concentrations in chronic cannabis smokers. *J Anal Toxicol* 33:469-477.

70. Karschner EL, Schwilke EW, Lowe RH, Darwin WD, Pope HG, Herning RI, Cadet JL, Huestis MA (2009b). Do [delta-9]-tetrahydrocannabinol concentrations indicate recent use in chronic cannabis users? *Addiction* 104:2041-2048.

71. Kraus JF (2001). The effects of certain drug-testing programs on injury reduction in the workplace: an evidence-based review. *Int J Occup Environ Health* 7:103-108.

72. Kristensen TS (2005). Intervention studies in occupational epidemiology. *Occup Environ Med* 62:205-210.

73. Krowczyk C (2003). *Haulage fatalities at surface mines, 1999-2003*. Program Evaluation and Information Resources, Office of Injury and Employment Information, Mine Safety and Health Administration, U.S. Department of Labor.

74. Kuypers KPC, Samyn N, Ramaekers JG (2006). MDMA and alcohol effects, combined and alone, on objective and subjective measures of actual driving performance and psychomotor function. *Psychopharmacology* 187:467-475.

75. Kuypers KPC, Wingen M, Ramaekers JG (2008). Memory and mood during the night and in the morning after repeated doses of MDMA. *J Psychopharmacology* 22:895-903.

76. Kuypers KPC, Bosker WM, Ramaekers JG (2009). Ecstasy, driving and traffic safety. In: Verster JC, Pandi-Perumal SR, Ramaekers JG, de Giver JJ, Eds. *Drugs, Driving and Traffic Safety*. Switzerland: Birkhauser Verlag, pp. 501-518.

77. Lamers CTJ, Ramaekers JG, Muntjewerff ND, Sikkema KL, Samyn N, Read NL, Brookhuis KA, Riedel WJ (2003). Dissociable effects of a single dose of ecstasy (MDMA) on psychomotor skills and attentional performance. *J Psychopharmacology* 17:379-387.

78. Larson SL, Eyerman J, Foster MS, Gfroerer JC (2007). *Worker Substance Use and Workplace Policies and Programs*. Rockville, MD: Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, Office of Applied Studies, June 2007.

79. Lawental E, McLellan AT, Grissom GR, Brill P, O'Brien C (1996). Coerced treatment for substance abuse problems detected through workplace urine surveillance: is it effective? *J Subst Abuse* 8:115-128.

80. Lehtola MM, van der Molen HF, Lappalainen J, Hoonakker PLT, Hsiao H, Haslam RA, Hale AR, Verbeek JH (2008). The effectiveness of interventions for preventing injuries in the construction industry: a systematic review. *Am J Prev Med* 35:77-85.

81. Lehman WEK, Bennett JB (2002). Job risk and employee substance use: the influence of personal background and work environment factors. *Am J Drug Alcohol Abuse* 28:263-286.

82. Leirer VO, Yesavage JA, Morrow DG (1989). Marijuana, aging, and task-difficulty effects on pilot performance. *Aviation, Space and Environ Med* 60:1145-1152.

83. Leirer VO, Yesavage JA, Morrow DG (1991). Marijuana carry-over effects on aircraft pilot performance. *Aviation, Space and Environ Med* 62:221-227.

84. Lenne MG, Salmon PM, Liu CC, Trotter M (2012). A systems approach to accident causation in mining: an application of the HFACS method. *Accid Anal Prev* 48:111–

117.

85. Levin KH, Copersino ML, Heishman SJ, Liu F, Kelly DL, Boggs DL, Gorelick DA (2010). Cannabis withdrawal symptoms in non-treatment-seeking adult cannabis smokers. *Drug and Alcohol Dependence* 111:120-127.

86. Li M-C, Brady JE, DiMaggio CJ, Lusardi AR, Tzong KY, Li G (2012). Marijuana use and motor vehicle incidents. *Epidemiol Rev* 34:65-72.

87. Ling J, Stephens R, Heffernan TM (2010). Cognitive and psychomotor performance during alcohol hangover. *Curr Drug Abuse* Rev 3:80-87.

88. Lukcso DG (2013). Drug and alcohol testing. In: Guidotti TL, Arnold MS, Lukcso DG, Green-McKenzie J, Bender J, Rothstein MA, Leone FH, O'Hara K, Stecklow, M, Eds. *Occupational Health Services: A Practical Approach, Second Edition*. London: Routledge, pp. 337-351.

89. Mann RE, Stoduto G, Ialomiteanu A, Asbridge M, Smart RG, Wickens CM (2010). Self-reported collision risk associated with cannabis use and driving after cannabis use among Ontario adults. *Traffic Injury Prevention* 11:115-122.

90. McHale S, Hunt N (2008). Executive function deficits in short-term abstinent cannabis abusers. *Hum Psychopharmacol Clin Exp*: DOI10.1001/hup.941.

91. McIntosh J, McKeganey N (2000). Addicts' narratives of recovery from drug use: constructing a non-addict identity. *Soc Sci Med* 50:1501-1510.

92. McNeilly B, Ibrahim JE, Bugela L, Ozanne-Smith J (2010). The prevalence of workrelated deaths associated with alcohol and drugs in Victoria, Australia, 2001-6. *Injury Prevention* 16:423-428.

93. Mehay SL, Pacula RL (1999). The effectiveness of workplace drug prevention policies: does "zero tolerance" work? *National Bureau of Economic Research*: Working Paper 7383 (http://www.nber.org/papers/w7383).

94. Mehay S, Webb NHJ (2007). Workplace drug prevention programs: does zero tolerance work. *Applied Economics* 39:2743-2751.

95. Mills KC, Spruill SE, Kanne RW, Parkman KM, Zhang Y (2001). The influence of stimulants, sedatives, and fatigue on tunnel vision: risk factors for driving and piloting. *Human Factors* 42:310-327.

96. Miller TR, Lestina DC, Smith GS (2001). Injury risk among medically identified alcohol and drug users. *Alcoholism: Clin Exp Res* 25:54-59.

97. Miller TR, Zaloshnja E, Spicer RS (2007). Effectiveness and benefit-cost of peer-based workplace substance abuse prevention coupled with random testing. *Accident Analysis Prevention* 39:565-573.

98. MSHA (2008). Trucking loading safety. MSHA's Accident Prevention Program. Tag#AP0095057. www.msha.gov/Accident_Prevention/ideas/truckload.asp (accessed 02/09/2013).

99. Morgan PT, Pace-Schott EF, Sahul ZH, Coric V, Stickgold R, Malison RT (2006). Sleep, sleep-dependent procedural learning and vigilance in chronic cocaine users: evidence

for occult insomnia. *Drug Alcohol Depend* 82:238–249.

100. Morgan PT, Pace-Schott EF, Sahul ZH, Coric V, Stickgold R, MalisonRT (2008). Sleep architecture, cocaine and visual learning. *Addiction* 103:1344–1352.

101. Morrow D, Leirer V, Yesavage J, Tinklenberg J (1991). Alcohol, age, and piloting: judgment, mood, and actual performance. *Subst Use Misuse* 26:669-683.

102. Moyers WC (2006). *Broken: My Story of Addiction and Redemption*. London: Penguin Books Ltd.

103. Mumenthaler MS, Yesavage JA, Taylor JL, O'Hara R, Friedman L, Lee H, Kraemer HC (2003). Psychoactive drugs and pilot performance: a comparison of nicotine, donepezil, and alcohol effects. *Neuropsychopharmacology* 28:1366-1373.

104. Musshoff F, Madea B (2012). Driving under the influence of amphetamine-like drugs. *J Forensic Sci* 57:413-419.

105. NIOSH (2011). *Mining Publication: Coal Operator Mining Facts -2008*. Pittsburgh, PA: U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control and Prevention, National Institute for Occupational Safety and Health, DHSS (NIOSH) Publication No. 2011-163.

106. Ogden EJD, Moskowitz H (2004). Effects of alcohol and other drugs on driver performance. *Traffic Inj Prev* 5:185-198.

107. Osborn CE, Sokolov JJ (1990). Drug use trends in a nuclear power facility: data from a random screening program. *NIDA Research Mono* 100:69-77.

108. Osterloh J (1990). Drug testing in the workplace. *Occup Med* 5:617-632.

109. Owens KP, Boorman M (2011). *Evaluating the deterrent effect of random breath testing (RBT) and random drug testing (RDT)—The driver's perspective*. Canberra, Australian Capital Territory: National Drug Law Enforcement Research Fund (NDLERF).

110. Ozminkowski RJ, Mark TL, Goetzel RZ, Blank D, Wash JM, Cangianelli L (2003). Relationships between urinalysis testing for substance use, medical expenditures, and the occurrence of injuries at a large manufacturing firm. *Am J Drug Alcohol Abuse* 29:151-167.

111. Paris R, Bradley CL (2001). The challenge of adversity: three narratives of alcohol dependence, recovery, and adult development. *Qual Health Res* 11:647-667.

112. Patterson JM, Shappell SA (2010). Operator error and system deficiencies: analysis of 508 mining incidents and incidents from Queensland, Australia using HFACS. *Accid Anal Pre*v 42:1379-1385.

113. Penning R, Veldstra JL, Daamen AP, Olivier B, Verster JC (2010). Drugs of abuse, driving and traffic safety. *Current Drug Abuse Reviews* 3:23-32.

114. Phillips CV, Goodman KJ (2004). The missed lesson of Sir Austin Bradford Hill. *Epidemiol Perspect Innovat* 1:3 doi:10.1186/1742-5573-1-3 (http://epiperspectives.com/content/1/1/3)

115. Pidd K, Roche Am, Buisman-Pijlman F (2011). Intoxicated workers: findings from a national Australian survey. *Addiction* 106:1623-1633.

116. Prochaska JO (2003). Enhancing motivation to change. In: Graham AW, Schultz TK, Mayo-Smith MF, Ries RK, Wilford BB, Ed. *Principles of Addiction Medicine, Third Edition*. Chevy Chase, Maryland: American Society of Addiction Medicine, Inc., pp. 825-837.

117. Quest Diagnostics (2012). Drug testing index. http://www.questdiagnostics.com/home/physicians/health-trends/drug-testing.html (accessed 07/14/2013).

118. Raes E, Van den Nest T, Verstraete AG (2008). *EMCDDA Insights: Drug use, impaired driving and traffic incidents. European Monitoring Centre for Drugs and Drug Addiction (EMCDDA)*. Luxembourge: Office for the Official Publications of the European Communities, 2008.

119. Ramaekers JG, Berghaus G, van Laar M, Drummer OH (2006). High-potency marijuana impairs executive function and inhibitory motor control. *Neuropsychopharmacology* 31:2296-2303.

120. Ramaekers JG, Berghaus G, van Laar MW, Drummer OH (2009). Dose related risk of motor vehicle crashes after cannabis use: an update. In: Verster JC, Pandi-Perumal SR, Ramaekers JG, de Gier JJ, Eds. *Drugs, Driving and Traffic Safety*. Basel, Switzerland: Birkhauser Verlag AG, pp. 477-499.

121. Ramchand R, Pomeroy A, Arkes J (2009). *The effects of substance use on workplace injuries*. Santa Monica, California: Rand Corporation.

122. Reisfield GM, Goldberger BA, Gold MS, DuPont RL (2012). The mirage of impairing drug concentration thresholds: a rationale for zero tolerance per se driving under the influence of drug laws. *J Anal Toxicol* 36:353-356.

123. Road Safety and Motor Vehicle Regulation Directorate (2011). *Alcohol Use by Drivers Fatally Injured in Motor Vehicle Collisions in Canada in 2008 and the Previous 21 Years*. Fact Sheet TP 2436E. May 2011.

124. Robb G, Sultana S, Ameratunga S, Jackson R (2008). A systematic review of epidemiological studies investigating risk factors for work-related road traffic crashes and injuries *Inj Prevent* 14:51–58.

125. Roman PM, Blum TC (1999). Prevention in the workplace. In: Ammerman RT, Ott PJ, Tarter RE. *Prevention and Societal Impact of Drug and Alcohol Abuse*. Mahwah, New Jersey: Lawrence Earlbaum Associates, Inc., pp. 307-325.

126. Roman PM, O'Brien LA (2010). Dangerous concoctions: alcohol, employment and the family. In: Burke RJ, Cooper CL, Eds. *Risky Business: Psychological, Physical and Financial Costs of High Risk Behavior in Organizations*. Burlington, VT: Ashgate Publishing Company, pp. 135-154.

127. Ronen A, Gershon P, Drobiner H, Rabinovich A, Bar-Hamburger R, Mechoulam R, Cassuto Y, Shiner D (2007). Effects of THC on driving performance, physiological state and subjective feelings relative to alcohol. *Accid Anal Prev*, doi:10.1016/j.app.2007.10.011

128. Rubenzer S (2010). Judging intoxication. *Behav Sci Law* 29: 116–137.

129. Rushworth AM, Talbot CF, von Glehn FH, Lomas RM (1999). Investigate the causes of transport and tramming incidents on coal mines. *Safety in Mine Research Advisory Committee Final Report Project Number COL 506*. Pretoria, South Africa: Department of Minerals and Energy.

130. Sanmiquel L, Freijo M, Edo J, Rossell JM (2010). Analysis of work related incidents in the Spanish mining sector from 1982-2006. *J Safety Res* 41:1-7.

131. Santos BR, Porter WL, Mayton AG (2010). An analysis of injuries to haul truck operators in the U.S. mining industry. *Proceedings of the Human Factors and Ergonomics Society 54th Annual Meeting*.

132. Satel SL, Farabee DJ (2005). The role of coercion in drug treatment. In: Lowinson JH, Ruiz P, Millman RB, Langrod JG, Eds. *Substance Abuse: A Comprehensive Textbook, Fourth Edition*. Philadelphia: Lippincott Williams & Wilkins, pp. 690-706.

133. Scott JC, Woods SP, Matt GE, Meyer RA, Heaton RK, Atkinson JH, Grant I (2007). Neurocognitive effects of methamphetamine: a critical review and meta-analysis. *Neuropsychol Rev* 17:275–297.

134. Shahandeh B (2003). Ethical issues in workplace drug testing in Europe. Report: Ethics, Professional Standards and Drug Addiction. *Seminar organised by the Cooperation Group to Combat Drug Abuse and Illicit Trafficking in Drugs (Pompidou Group)*, Drugs and Addiction Council of Europe, Strasbourg, 6-7 February 2003.

135. Shinebourne P, Smith JA (2009). Alcohol and the self: an interpretive phenomenological analysis of the experience of addiction and its impact on the sense of sense and identity. *Addict Res Theory* 17:152-167.

136. Silber BY, Papafotiou K, Croft RJ, Stough CKK (2005). An evaluation of the sensitivity of the standardised field sobriety tests to detect the presence of amphetamine. *Psychopharmacol* 182: 153–159.

137. Simon RI (2008). Clinically-based risk management of potentially violent patients. In: Simon RI, Oildiff K, Eds. *Textbook of Violence Assessment and Management*. Washington, DC: American Psychiatric Publishing, pp. 555-565.

138. Snowden CB, Miller TR, Wachrer GM, Spicer RS (2007). Random alcohol testing reduced alcohol-involved fatal crashes of drivers of large trucks. *Journal of Studies on Alcohol and Drugs* 68:634-640.

139. Soar K, Mason C, Potton A, Dawkins L (2012). Neuropsychological effects associated with recreational cocaine use. *Psychopharmacol* 222:633-643.

140. Solomon R, Chamberlain E, Abdoullaeva M, Tinholt B (2011). Random breath testing: a Canadian perspective. *Traffic Inj Prevent* 12:11-118.

141. Spicer RS, Miller TR (2005). Impact of a workplace peer-focused substance abuse prevention and early intervention program. *Alcoholism: Clinical and Experimental Research* 29:609-611.

142. Stahl P, Donmez B, Jamieson G (2011). A field study of haul truck operations in open pit mines. *Proceedings of the Human Factors and Ergonomics Society 55th Annual Meeting*, pp. 1845-1849.

	143. Stavro K, Pelletier J, Potvin S (2012). Widespread and sustained cognitive deficits in alcoholism: a meta-analysis. *Addict Biol* 18:203-213. 144. Strano-Rossi S, Castrignano E, Anzillotti L, Serpelloni G, Mollica R, Tagliaro F, Pascali JP, di Stefano D, Sgalla R, Chiarotti M (2012). Evaluation of four oral fluid devices (DDS (R), Drugtest 5000 (R), Drugwipe 5+(R) and RapidSTAT (R)) for on-site monitoring drugged driving in comparison with UHPLC-MS/MS analysis. *For Sci Int* 221:70-76. 145. Swena DD, Gaines W (1999). Effect of random drug screening on fatal commercial truck accident rates. *Int J Drug Testing* 2:1-13. 146. Terry P, Wright KA (2005). Self-reported driving behavior and attitudes towards driving under the influence of cannabis among three different user groups in England. *Addict Behav* 30:619-626. 147. Toennes SW, Kauert GF, Steinmeyer S, Moeller MR (2005). Driving under the influence of drugs—evaluation of analytical data of drugs in oral fluid, serum and urine, and correlation with performance deficit symptoms. *For Sci Int* 152:149-155. 148. Turin FC, Wieghagen WJ, Jaspal JS, Mayton AG (2001). *Haulage Truck Dump Site Safety: An Examination of Reported Injuries*. Information Circular 9454. DHHS (NIOSH) Publication No. 2001-124. Cincinnati, OH: National Institute for Occupational Safety and Health. 149. van Elslande P, Fournier, J-Y, Afford M (2012). Influence of cannabis on fatal traffic incidents: detailed analysis. *Transportation Research Record: Journal of the Transportation Research Board, No. 2281*, Transportation Research Board of the National Academies, Washington, D.C., pp. 43-50. 150. Veldstra JL, Brookhuis KA, de Waard D, Dolmans HW, Verstraete AG, Skopp G, Janos R (2012). Effects of alcohol (BAC 0.5%) and ecstasy (MDMA 100 mg) on simulated driving performance and traffic safety. *Psychopharmacology* 222:377-390. 151. Wetherell MA, Atherton K, Grainger J, Brosnan R, Scholey AB (2012). The effects of multitasking on psychological stress reactivity in recreational users of cannabis and MDMA. *Hum Psychopharmacol* 27:167-176. 152. Wickizer TM, Kopjar B, Franklin G, Joesch J (2004). Do drug-free workplace programs prevent occupational injuries? Evidence from Washington State. *Health Services Research* 39:91-110. 153. Wiebe J, Vinje G, Sawka (1995). Alcohol and drug use in the workplace: a survey of Alberta workers. *Am J Health Promotion* 9:179-181, 187.
59	Time Periods for Drug Detection and Time Periods of Increased Risk of Performance Deficits Chart
60	Frone MR (2013). *Alcohol and Illicit Drug Use in the Workforce and Workplace*. Washington, DC: American Psychological Association (Excerpts)
61	ALERT Bulletins
62	Suncor Security Total Incidents Summary January 1, 2008 to July 31, 2013, Regional

	Municipality of Wood Buffalo
63	Alcohol and Drug Security Incidents -2004 to August 26, 2013, Regional Municipality of Wood Buffalo
64	Suncor Drug Interdiction at Accommodations Procedure
65	Suncor Drug Interdiction at Suncor Sites Procedure
66	Sniffer Dog Signage
67	Suncor Alcohol-Free Lodge Policy
68	Representative Alcohol, Drug and Drug Paraphernalia Significant Finds Regional Municipality of Wood Buffalo (April 2009 to July 2013)
69	Suncor Employee Demographics
70	Union Executive – HR Leadership Meeting -Meeting Agenda, February 21, 2012
71	A&D Policy Grievance dated October 28, 2003
72	Interdiction Policy Grievance dated June 21, 2011
73	Updated Suncor EH&S Policy Statement and Policy
74	Oil Sands Upgrading 2, Plant 52 Fire, January 4, 2005 PowerPoint
75	Oil Sands Upgrading 1, Plant 5 Fire, February 9, 2010 Pictures
76	Representative Alcohol, Drug and Drug Paraphernalia Significant Finds & Suncor Employee Positive Tests Map
77	Email from Mark Little dated June 20, 2012 regarding Suncor to Introduce New Alcohol and Drug Policy
78	Mark Little Radio Announcement Script, June 15, 2012
79	EFAP communications, September 11 & 20, 2012
80	Email from Colin Foley dated September 19, 2012 regarding Alcohol & Drug Policy Leaders Guide
81	Email from Colin Foley dated September 21, 2012 regarding Required Training – Alcohol & Drug Policy
82	Email dated October 5, 2012 regarding Leader Role in Random Testing
83	Email from Colin Foley dated October 10, 2012 regarding Alcohol & Drug Policy - Required Course
84	Safety-Sensitive Position Lists for Represented Hourly (CEP) and Staff (Non-CEP Represented), October 2012
85	Letter from Colin Foley to Employees dated August 20, 2012
86	Personal Information Privacy Policy Guidance & Standard and Health & Wellness Privacy Standard
87	Consents

88	Updated Suncor Employee Alcohol and Drug Testing Statistics, June 30, 2013 • Employee Positive Alcohol & Drug Tests by Type Oct 1, 2003 – June 30, 2013, Regional Municipality of Wood Buffalo • Total Employee Alcohol & Drug Tests by Type, Represented Hourly (CEP) Employees and Staff (Non CEP-Represented) Employees, October 1, 2003 – June 30, 2013, Regional Municipality of Wood Buffalo • Employee Positive Alcohol & Drug Test Results by Substance, Jan 1, 2009 to June 30, 2013, Regional Municipality of Wood Buffalo • Employee Positive Drug Test Results Percentage of Cut-Off Level, January 1, 2005 to October 15, 2012, Regional Municipality of Wood Buffalo • Employee Substance Abuse Assessment Charts, Jan 1, 2010 to June 30, 2013, Regional Municipality of Wood Buffalo • Total Number of Positive Employee Alcohol & Drug Tests By Employment Status and Type, Update and Substance Abuse Assessment Outcomes for Positive Employee Alcohol & Drug Tests Update, July 1, 2013 - August 31, 2013, Regional Municipality of Wood Buffalo
89	Updated Alcohol and Drug Testing Statistics, September 8, 2013 • Employee Positive Alcohol & Drug Tests by Type, Oct 1, 2003 – September 8, 2013, Regional Municipality of Wood Buffalo • Total Positive Employee Alcohol & Drug Tests By Employment Status and Type, Update and Substance Abuse Assessment Outcomes for Positive Employee Alcohol & Drug Tests Update, September 1, 2013 – September 8, 2013, Regional Municipality of Wood Buffalo
90	Total Positive Employee Alcohol & Drug Tests in Suncor Operations Canada Wide, January 1, 2009 – December 31, 2012
91	Updated Alcohol and Drug Testing Statistics, September 18, 2013 • Total Positive Employee Alcohol & Drug Tests By Employment Status and Type, Update and Substance Abuse Assessment Outcomes for Positive Employee Alcohol & Drug Tests Update, September 9, 2013 – September 18, 2013, Regional Municipality of Wood Buffalo • Employee Positive Alcohol & Drug Tests by Type, Oct 1, 2003 – September 18, 2013, Regional Municipality of Wood Buffalo • Employee Positive Alcohol & Drug Tests by Type, Oct 1, 2003 – November 7, 2013, Regional Municipality of Wood Buffalo • Total Positive Employee Alcohol & Drug Tests By Employment Status and Type, Update and Substance Abuse Assessment Outcomes for Positive Employee Alcohol & Drug Tests Update, October 19 to November 7, 2013, Regional Municipality of Wood Buffalo
92	Dr. Scott Macdonald's Curriculum Vitae

93	Dr. Scott Macdonald's Expert Report dated August 30, 2013 *References:* **Volume 1** 1. Addiction & Mental Health, Community & Treatment Supports, Knowledge & Strategy. (2012) *The Canadian alcohol and drug use monitoring survey: Alberta results.* Online: http://www.albertahealthservices.ca/Researchers/if-res-amh-cadums-ab-report.pdf 2. Adlaf, E.M., Begin, P., & Sawka, E. (Eds). (2005). *Canadian Addiction Survey (CAS): A national survey of Canadians' use of alcohol and other drugs: Prevalence of use and related harms: Detailed report.* Ottawa: Canadian Centre on Substance Abuse. 3. Asbridge, M., Hayden, J.A., & Cartwright, J.L. (2012). Acute cannabis consumption and motor vehicle collision risk: systematic review of observational studies and meta-analysis. *British Medical Journal,* 344, e536-e536. 4. Beach, J., Ford, G., & Cherry, N. (2006). *Final report A literature review of the role of Alcohol and Drugs in contributing to work-related injury.* Edmonton: Department of Public Health Sciences, University of Alberta. 5. Bierness, D.J., LeCavalier, J. & Singhal, D. (2007). Evaluation of the drug evaluation and classification program: a critical review of the evidence. *Traffic Injury Prevention*, 8, 368-376. 6. Blaze-Temple D. (1992). Drug testing in the Australian workplace: overview of the issues. *Drug and Alcohol Review*, 11, 59-73. 7. Blomberg, R.D., Peck, R.C., Moskowitz, H., Burns, M. & Fiorentino, D. (2009). The Long Beach/Fort Lauderdale relative risk study. *Journal of Safety Research*, 40(4), 285-292. 8. Budney, A.J., Hughes, J.R., Moore, B.A., & Novy, P.L. (2001). Marijuana abstinence effects in marijuana smokers maintained in their home environment. *Archives of General Psychiatry* 58, 917-924. 9. Butler, B. & Tranter, D. (1994). Behavioral tests to assess performance. In: Macdonald, S. and Roman, P. (Eds). *Research Advances in Alcohol and Drug Problems.* New York: Plenum Press. 10. Campbell, D. & Stanley, J. (1963). *Experimental and quasi-experimental designs for research.* Chicago, IL: Rand-McNally. 11. Carpenter C.S. (2007). Workplace drug testing and worker drug use. *Health Services Research*, 42, 795–810. 12. Cary, P. (2004). Urine drug concentrations: the scientific rationale for eliminating the use of drug test levels in drug court proceedings. *National Drug Court Institute*, 4(1), 1–8. 13. Cary, P. (2006). The marijuana detection window: determining the length of time cannabinoids will remain detectable in urine following smoking: a critical review of relevant research and cannabinoid detection guidance for drug courts. *National Drug*

Court Institute, 4(2), 1–15.

14. Chait, L.D. & Zacny, J.P. (1992). Reinforcing and subjective effects of oral delta 9-THC and smoked marijuana in humans. *Psychopharmacology (Berlin),* 107, 255-62.

15. Coambs, R.B., & McAndrews, M.P. (1994). The effects of psychoactive substances on workplace performance. In: Macdonald, S. & Roman, P. (Eds.), *Drug testing in the* workplace. New York: Plenum Press.

16. Cone, E., & Huestis, M. (2007). Interpretation of oral fluid tests for drugs of abuse. *Annals of the New York Academy of Science*, 1098, 51-103.

17. Couper, F., & Logan, B. (2004). *Drugs and human performance fact sheets* (p. 100). Washington, DC. DOT HS 809 725

18. Crant, M.J. & Bateman, T.S. (1990). An experimental test of the impact of drug testing programs on potential job applicants' attitudes and intentions. *Journal of Applied Psychology*, 75(2), 127-131.

19. Crouch, D., Vebb, D., Peterson, L., Buller, P., & Rollins, D. (1989). A critical evaluation of the Utah Power and Light Company's substance abuse management program: absenteeism accidents, and costs. In: Gust SW, Walsh JM, Eds. Drugs in the workplace: research and evaluation data, NIDA Research Monograph, No. 91. Washington, DC: US Government Printing Office.

20. Dussault, C., Brault, M., Bouchard, J., & Lemire, A. M. (2002). The contribution of alcohol and other drugs among fatally injured drivers in Quebec: some preliminary results. In Mayhew, D.R., & Dussault, C. (eds), *Alcohol, drugs and traffic safety* — T'2002, Société de l'assurance automobile du Québec, Québec, 423–430.

21. Dyer, K.R., & Wilkinson, C. (2008). The detection of illicit drugs in oral fluid: another potential strategy to reduce illicit drug-related harm. *Drug and Alcohol Review*, 27, 99-107.

22. Elder, R.W., Shults, R.A., Sleet, D.A., Nichols, J.L., Zaza, S., & Thompson, R.S. (2002). Effectiveness of sobriety checkpoints for reducing alcohol-involved crashes. *Traffic Injury Prevention*, 3, 266-274.

23. Elvik, R. (2012). Risk of road accident associated with the use of drugs: A systematic review and meta-analysis of evidence from epidemiological studies. *Accident Analysis & Prevention* (in press).

24. Evans et al. (2004). *Drug testing in the workplace: Summary conclusions of the Independent Inquiry into Drug Testing at Work.* York: York Publishing Services.

25. Feinauer D.M., Haviovic S.J. (1993). Drug testing as a strategy to reduce occupational accidents: a longitudinal analysis. *Journal of Safety Research*, 24, 1–7.

26. Ferrara, S.D., Giorgetti, R., & Zancaner, S. (1994). Psychoactive substances and driving: State of the art and methodology. Alcohol, Drugs and Driving, 10, 1-55.

27. Finnigan, F., Hammersley, R., & Cooper, T. (1998). An examination of next-day hangover effects after a 100 mg/100 ml dose of alcohol in heavy social drinkers. *Addiction*, 93(12): 1829-1838.

28. Frone, M.R. (2006) Prevalence and distribution of illicit drug use in the workforce and in

the workplace: Findings and implications from a US national survey. *Journal of Applied Psychology*, 91(4), 856-869.

29. Frone, M.R. (2013). *Alcohol and Illicit Drug Use in the Workforce and Workplace.* Washington, DC: American Psychological Association.

30. Gawin, F.H. & Kleber, H.D. (1988). Evolving conceptualizations of cocaine dependence. *Yale Journal of Biology and Medicine*, 61, 123-136.

31. Gerber, J., & Yacoubian, G. (2001). Evaluation of drug testing in the workplace: study of the construction industry. *Journal of Construction Engineering Management*, 127, 438–444.

32. Gerberich, S. G., Sidney, S., Braun, B. L., Tekawa, I. S., Tolan, K. K., & Quesenberry, C. P. (2003). Marijuana use and injury events resulting in hospitalization. *Annals of Epidemiology*, 13(4), 230–237.

33. Gordis, L. (2009). *Epidemiology* (4th Ed). Philadelphia: Saunders.

34. Grotenhermen, F. (2003) Pharmacokinetics and pharmacodynamics of cannabinoids. *Clinical Pharmacokinetics*, 42(4), 328-360.

35. Grotenherman F., Leson G., Berghaus G., Drummer O., Krüger H., Longo M., et al. (2007). Developing limits for driving under cannabis. *Addiction*, 102, 1910-1917.

36. Hart, C.L., Marvin, C.B., Silver, R. & Smith, E.E. (2012). Is cognitive functioning impaired in methamphetamine users? A critical review. *Neuropsychopharmacology*, 37(3), 586-608.

37. Health Canada. (2011). *Canadian Alcohol and Drug Use Monitoring Survey Summary of Results for 2011.* Online: http://www.hc-sc.gc.ca/hc-ps/drugs-drogues/stat/_2011/summary-sommaire-eng.php

38. Health Canada. (2012). *Drug use and alcohol statistics*. Online: http://www.hc-sc.gc.ca/hc-ps/drugs-drogues/stat/index-eng.php

39. Heishman, S.J., Huestis, M.A., Henningfield, J.E. & Cone, E.J. (1990). Acute and residual effects of marijuana: profiles of plasma THC levels, physiological, subjective, and performance measures. *Pharmacology Biochemistry and Behaviour*, 37, 561-565.

40. Hingson, R., Lederman, R., & Walsh, D. (1985). Employee drinking patterns and accidental injury: A study of four New England states. *Journal of Studies on Alcohol and Drugs,* 46(4), 298-303.

41. Hoffman, J. & Larison, C. (1999). Drug use, workplace accidents and employee turnover. *Journal of Drug Use*, 29(2), 341-364.

42. Jaffee, W.B., Trucco, E., Teter, C., Levy, S. & Weiss, R.D. (2008). Ensuring Validity in Urine Drug Testing. *Psychiatric Services*, 59, 140-142.

43. Jacobson, M. (2003). Drug testing in the trucking industry: the effect on highway safety. *Journal of Law and Economics*, 46, 131-56.

44. Jones, J. P. (1990). Drug Testing Did Not Reduce Southern Pacific's Accident Rate. *Forensic Urine Drug Testing,* 2-4.

45. Kapur, B. (1994) Drug testing methods and interpretations of drug testing results. In: Macdonald, S. and Roman, P. (Eds). *Research Advances in Alcohol and Drug Problems.* New York: Plenum Press.

46. Karschner, E. L., Schwilke, E. W., Lowe, R. H., Darwin, W. D., Herning, R. I., Cadet, J. L., & Huestis, M. A. (2009). Implications of Plasma Δ 9 -Tetrahydrocannabinol, Concentrations in Chronic Cannabis Smokers. *Journal of analytical toxicology*, *33*(October), 469–477.

47. Kim, D-J, Yoon, S-J, Lee, H-P, Choi, B-M, & Go, H.J. (2003). The effects of alcohol hangover on cognitive functions in healthy subjects. *International Journal of Neuroscience*, 113(4), 581–594.

48. Kraus, J.F. (2001). The effects of certain drug-testing programs on injury reduction in the workplace: an evidence based review. *International Journal of Occupational and Environmental Health*, 7(2), 103-108.

49. Lago, J.A. & Kosten, T.R. (1994). Stimulant withdrawal. *Addiction*, 89, 1477-1481.

50. Last, J. M. (1995). *A Dictionary of Epidemiology* (3rd ed). New York: Oxford University Press.

51. Leirer, V.O., Yesavage, J.A. & Morrow, D.G. (1991). Marijuana carry-over effects on aircraft pilot performance. *Aviation Space and Environmental Medicine*, 62, 221-227.

52. Longo, M.C., Hunter, C.E., Lokan, R.J., White, J.M. & White, M.A. (2000). The prevalence of alcohol, cannabinoids, benzodiazepines and stimulants amongst injured drivers and their role in driver culpability. Part I: The prevalence of drug use in drivers and characteristics of drug positive group. *Accident Analysis and Prevention*, 32, 613-622.

53. Lum, G., & Mushlin, B. (2004). Urine Drug Testing: Approaches to Screening and Confirmation Testing. *Laboratory Medicine*, 35(6), 368–373.

54. Macdonald, S., Wells, S., & Fry, R. (1993). The limitations of drug screening in the workplace. *International Labour Review*, 132, 95-113.

55. Macdonald, S. & Wells, S. (1994) The types, extent and effectiveness of drug screening programs. In: Macdonald, S. and Roman, P. (Eds). *Research Advances in Alcohol and Drug Problems.* New York: Plenum Press.

56. Macdonald, S. (1995). The role of drugs in workplace injuries: Is drug testing appropriate? *Journal of Drug Issues*, 25(4), 703-722.

57. Macdonald, S. (1997). Work-place alcohol and other drug testing: A review of the scientific evidence. *Drug and Alcohol Review*, 16, 251-259.

58. Macdonald, S., Lothian, S. & Wells, S. (1998) Evaluation of an employee assistance program at a transportation company. *Evaluation and Program Planning*, 20(4), 495-505.

59. Macdonald, S., Anglin-Bodrug, K., Mann, R.E., Erickson, P., Hathaway, A., Chipman, M., & Rylett, M. (2003). Injury risk associated with cannabis and cocaine use. *Drug and Alcohol Dependence, 72*(2), 99-115.

60. Macdonald, S., Mann, R. E., Chipman, M., & Anglin-Bodrug, K. (2004). Collisions and

traffic violations of alcohol, cannabis and cocaine abuse clients before and after treatment. *Accident Analysis & Prevention*, *36*(5), 795–800.

Volume 2

61. Macdonald, S., Csiernik, R., Durand, P., Rylett, M. & Wild, T.C. (2006) The prevalence and factors related to Canadian workplace health programs. *Canadian Journal of Public Health*, 97(2), 121-125.

62. Macdonald, S., Hall, W., Roman, P., Stockwell, T., Coghlan, M. & Nesvaag, S. (2010). Testing for cannabis in the workplace: A review of the evidence. *Addiction*, 105(3), 408-416.

63. Manchikanti, L., Malla, Y., Wargo, B.W., & Fellows, B. (2011). Comparative evaluation of the accuracy of immunoassay with liquid chromatography tandem mass spectrometry (LC/MS/MS) of urine drug testing (UDT) opioids and illicit drugs in chronic pain patients. *Pain Physician*, 14, 175-187.

64. Marquet, P., Delpla, P-A, Kerguelen, S., Bremond, J., Facey, F., Garnier, M., et. al. (1998). Prevalence of drugs of abuse in urine of drivers involved in road accidents in France: a collaborative study. *Journal of Forensic Science,* 43(4), 806-811.

65. McKim, W. (1986). *Drugs and Behavior*. Prentice-Hall, New Jersey.

66. McLeod, J. (2010). The effectiveness of workplace counseling: A systematic review. *Counseling and Psychotherapy Research,* 10(4): 238-248.

67. McNeilly, B., Ibrahim, J. E., Bugeja, L., & Ozanne-Smith, J. (2010). The prevalence of work-related deaths associated with alcohol and drugs in Victoria, Australia, 2001-6. I*njury Prevention*, 16(6), 423–8.

68. Mehay, S.L. & Pacula, R. (1999). *The effectiveness of workplace drug prevention policies: Does "zero tolerance" work?* National Bureau of Economic Research, Working Paper 7383.

69. Meulemanns, A., Hooft, P., Van Camp, L., De Vrieze, N., Buylaert, W., Verstraete, A., et al. (1996). *Belgian toxicology and trauma study: une étude portant sur la présence d'alcool, de médicaments et de drogues illicites chez des conducteurs victimes d'accidents de la route*. Toxicological Society of Belgium and Luxembourg.

70. Miller T.R., Zaloshnja E., & Spicer R.S. (2007). Effectiveness and benefit-cost of peer-based workplace substance abuse prevention coupled with random testing. *Accident Analysis and Prevention*, 39, 565-573.

71. Moeller, K.E., Lee, K.C., & Kissack, J.C. (2008). Urine drug screening: practical guide for clinicians. *Mayo Clinic Proceedings*, 83(1), 66-76.

72. Morantz, A.D. & Mas, A. (2008). Does post-accident testing reduce injuries? Evidence from a large retail chain. *American Law and Economics Review*, 10(2), 246-302.

73. Movig, K.L., Mathijssen, M.P., Nagel, P.H., van Egmond, T., de Gier, J.J., Leufkens, H.G. & Egberts, A.C. (2004). Psychoactive substance use and the risk of motor vehicle accidents. *Accident Analysis & Prevention*, 36(4), 631–636.

74. National Institute of Drug Abuse. (2005). *National Institute of Drug Abuse Research Report Series: Heroin Abuse and Addiction.* NIH Publication Number 05-4165. Online:

http://www.drugabuse.gov/sites/default/files/rrheroin.pdf

75. Newcomb, M.D. (1994). Prevalence of alcohol and other drug use on the job: Cause for concern or irrational hysteria? *Journal of Drug Issues*, 24(3), 403-416.

76. Normand, J., Salyards, S.D., & Mahoney, J.J. (1990). An evaluation of pre-employment drug testing. *Journal of Applied Psychology,* 75, 629-639.

77. Normand, J., Lempert, R., & O'Brien, C.P. (Eds.). (1994). *Under the Influence? Drugs and the American Work Force*. Washington, D.C.: National Academy Press.

78. Ontario Law Reform Commission. (1992). *Report on drug and alcohol testing in the workplace*. Toronto: Law Reform Commission.

79. Ozminkowski, R.J., Mark, T.L., Goetzel, R.Z., Blank, D., Walsh, J.M. & Cangianelli, L. (2003). Relationships between urinalysis testing for substance use, medical expenditures, and the occurrence of injuries at a large manufacturing firm. *American Journal of Drug and Alcohol Abuse*, 29, 151–167.

80. Pope, H.G., Gruber, A.J., Hudson, J.I., Huestis, M.A., & Yurgelun-Todd, D. (2001). Neuropsychological performance in long-term cannabis users. *Archives of General Psychiatry*, 58, 909-915.

81. Porath-Waller, A.J., Bierness, D.J., & Beasley, E.E. (2009). Toward a more parsimonious approach to drug recognition expert evaluations. *Traffic Injury Prevention*, 10, 513-518.

82. Quest Diagnostics Incorporated. (2012). Drug Testing Index. Online: http://www.questdiagnostics.com/home/physicians/health-trends/drug-testing

83. Raes, E., Van den Neste, T., & Verstraete, A. (2008). *EMCDDA Insights: Drug use, impaired driving and traffic accidents*. Luxembourg: European Monitoring Centre for Drugs and Drug Addiction.

84. Ramaekers, J.G., Berghaus, G. van Laar, M., & Drummer, O.H. (2004). Dose related risk of motor vehicle crashes after cannabis use. *Drug and Alcohol Dependence*, 73(2), 109-119.

85. Rothman, K.J., & Greenland, S. (1998). *Modern Epidemiology* (2nd Ed). Philadelphia: Lippincott-Raven.

86. Ryan, J., Zwerling, C., & Jones, M. (1992). The effectiveness of preemployment drug screening in the prediction of employment outcome. *Journal of Occupational Medicine*, 34(11), 1057-1063.

87. Schmidt, W., Smart, R.G., & Popham, R.E. (1962). The role of alcoholism in motor vehicle traffic accidents. *Traffic Safety Research Review*, 6, 21–28.

88. Schuckit, M.A. (2009). Alcohol-use disorders. *The Lancet*, 373(9662), 492-501.

89. Shipp, E., Tortolero, S, Cooper, S., Baumler, E., Weller, N. (2005). Substance use and occupational injuries among high school students in South Texas. *American Journal of Drug and Alcohol Abuse*, 31(2), 253-265.

90. Shults, R.A., Elder, R.W., Sleet, D., Nichols, J.L., Alao, M.O., Carande-Kulis, V.G., et al. (2001). Reviews of evidence regarding interventions to reduce alcohol-impaired

driving. *American Journal of Preventive Medicine*, 21(4 Suppl), 66–88.

91. Smith, J.A., Hayes, C.E., Yolton, R.L., Rutledge, D.A., & Citek, K. (2002). Drug recognition expert evaluations made using limited data. *Forensic Science International*, 130, 167-173.

92. Solowij, N., Michie, P.T., & Fox, A.M. (1995). Differential impairments of selective attention due to frequency and duration of cannabis use. *Biological Psychiatry*, 37, 731-739.

93. Spicer, R.A., Miller, T.R., & Smith, G.S. (2003). Worker substance use, workplace problems and the risk of occupational injury: a matched case-control study. *Journal of Studies on Alcohol*, 64(4), 570-578.

94. Stallones, L., & Kraus, J.F. (1993). The occurrence and epidemiologic features of alcohol-related occupation injuries. *Addiction*, 88, 945-951.

95. Standridge, J.B., Adams, S.M. & Zotos, A.P. (2010). Urine drug screening: a valuable office procedure*. American Family Physician*, 81(5), 635-640.

96. Stavro, K., Pelletier, J., & Potvin, S. (2013). Widespread and sustained cognitive deficits in alcoholism: a meta-analysis. *Addiction Biology*, 18(2), 203–213.

97. Stoduto, G., Mann, R. E., Ialomiteanu, A., Wickens, C. M., & Brands, B. (2012). Examining the link between collision involvement and cocaine use. Drug and alcohol dependence, 123(1-3), 260–3.

98. Taggart, R. (1989(. Results of the drug testing program at Southern Pacific Railroad. In: Gust, S. W., & Walsh, J. M. (Eds). *Drugs in the Workplace: Research and Evaluation Data*. Rockville, MD: National Institute on Drug Abuse, NIDA Monograph 91.

99. Veazie, M.A., & Smith, G.S. (2000). Heavy drinking, alcohol dependence, and injuries at work among young workers in the United States labor force. *Alcoholism, clinical and experimental research*, *24*(12), 1811–1819.

100. Verstraete, A.G. (2004). Detection times of drugs of abuse in blood, urine, and oral fluid. *Therapeutic Drug Monitoring*, 26, 200-206.

101. Wadsworth, E.J.K., Moss, S.C., Simpson, S.A., & Smith, A.P. (2006). Cannabis use, cognitive performance and mood in a sample of workers. *Journal of Psychopharmacology*, 20(1), 14–23.

102. Walsh, J.M. (2008). New technology and new initiatives in US workplace testing. *Forensic Science International*, 174, 120-124.

103. Webb, G.R., Redman, S., Hennrikus, D.J., Kelman, G.R., Gibberd, R.W., & Sanson-Fisher, R.W. (1994). The relationships between high-risk and problem drinking and the occurrence of work injuries and related absences. *Journal of Studies on Alcohol and Drugs,* 55(4), 434-446.

104. Webb, G.R., & Fresta, J. (1994). Alcohol and other drug problems at the workplace: Is drug testing an appropriate solution? *Journal of Occupational Health Safety*, 10(2), 95-106.

	105. Wickizer, T., Kopjar, G., & Jutta, J. (2004). Do drug-free workplace programs prevent occupational injuries? Evidence from Washington State. *Health Services Research*, 39(1), 91-110. 106. Wiese, J., Shlipak, M., & Browner, W. (2000). The alcohol hangover. *Annals of Internal Medicine*, 132, 897–902. 107. Wolff, K., Farrell, M., Marsden, J., Monteiro, M. G., Ali, R., Welch, S., & Strang, J. (1999). A review of biological indicators of illicit drug use, practical considerations and clinical usefulness. *Addiction*, *94*(9), 1279–98. 108. Woratanarat, P., Ingsathit, A., Suriyawongpaisal, P., Rattanasiri, S., Chatchaipun, P., Wattayakorn, K., & Anukarahanonta, T. (2009). Alcohol, illicit and non-illicit psychoactive drug use and road traffic injury in Thailand: a case-control study. *Accident Analysis & Prevention*, 41(3), 651–657. 109. Yesavage, J. A., Leirer, V. O., Denari, M., & Hollister, L. E. (1985). Intoxication on Aircraft Pilot Performance : A Preliminary Report. *American Journal of Psychiatry*, *142*(11), 1325–1329. 110. Zaal, D. (1994). *Traffic Law Enforcement: A Review of the Literature* (Monash University Accident Research Centre Report #53.). 111. Zacny, J. P. (1995). A review of the effects of opioids on psychomotor and cognitive functioning in humans. *Experimental and Clinical Psychopharmacology, 3*(4), 432-466. 112. Zwerling, C., Ryan, J., & Orav, E.J. (1990). The efficacy of pre-employment drug screening for marijuana and cocaine in predicting employment outcome. *Journal of the American Medical Association*, 264(20), 2639-2643.
94	Pakula, B., Macdonald, S. and Stockwell, T. (2009). Multiple Substance Use. Settings and Functions Related to Simultaneous Use of Alcohol with Marijuana or Cocaine Among Clients in Treatment for Substance Abuse. *Substance Use & Misuse,* 44:212-226.
95	Macdonald, S., Wells, S. and Lothian, S. Comparison of Lifestyle and Substance Use Factors Related to Accidental Injuries at Work, Home and Recreational Events. *Accid. Anal. And Prev.,* Vol. 30, No. 1, pp. 21-27, 1998.
96	Cherpitel, C.J., Martin G., Macdonald, S., Brubacher, J.R. and Stenstrom, R. Alcohol and Drug Use as Predictors of Intentional Injuries in Two Emergency Departments in British Columbia. *The American Journal on Addictions,* 22: 87-92, 2013.
97	Macdonald, S., DeSouza, A., Mann, R., and Chipman, M. Driving Behaviour of Alcohol, Cannabis, and Cocaine Abuse Treatment Clients and Population Controls. *The American Journal of Drug and Alcohol Abuse*, Vol. 30, No. 2, pp. 429-444, 2004.
98	Jones, A.W., Holmgren, A., and Kugelberg, F.C. Driving Under the Influence of Cannabis: a 10-Year Study of Age and Gender Differences in the Concentrations of Tetrahydrocannabinol in Blood. doi: 10.1111/j.1360-0443.2007.02091.x.
99	Mura, P., Chatelain, C., Dumestre, V., Gaulier, J.M., Ghysel, M.H., Lacroix, C., Kergueris, M.F., Lhermitte, M., Moulsma, M., Pépin, G., Vincent, F. and Kintz, P. Use of Drugs of Abuse in Less Than 30-Year Old Drivers Killed in a Road Crash in France: A Spectacular Increase for Cannabis, Cocaine and Amphetamines. *Forensic Science International* 160 (2006) 168-172.

100	Kouri, E.M. and Pope, H.G. Abstinence Symptoms During Withdrawal From Chronic Marijuana Use. *Experimental and Clinical Psychopharmacology* 2000, Vol. 8, No. 4, 483-492.
101	Suncor Safety Representative Standard, Number: LMS0088A
102	ILP No. 100000069999, re: Lori McDaniel, Truck Fire, Event date: 2010/02/23
103	Suncor MIOPS EH&S Performance Stewardship Summary, September 2013
104	Suncor Mine Operations Celebrates Strong Safety Performance in 2013, September 2013
105	Suncor President's Operational Excellence Awards 2013 letter to nominee Lori McDaniel, September 12, 2013
106	ILP No. 100000043309 re: Randy Burton, Truck Fire, Event date: 2008/05/23
107	ILP table from January, 2011 to February, 2013
108	Suncor Haulage Truck Task Check List for New Hire, Lori McDaniel, April 30, 2008
109	Lori McDaniel Training History
110	Suncor Fire Suppression Video
111	Suncor Training Progress Report: Lori McDaniel, 2010/07/03
112	ILP No. 100000075987, re: Lori McDaniel, Berm Contact, Event date: 2010/07/21
113	ILP No. 100000044311, re: Lori McDaniel, Fuel Hose Malfunction, Event date: 2008/06/08
114	Suncor Employee and Family Assistance Program: Policies & Procedures, January 25, 2001
115	Employee and Family Assistance Program Committee (EFAP Committee)
116	Suncor Courage to Care powerpoint presentation
117	Suncor Courage to Care DVD
118	Suncor efap Decision Tree for Supervisors
119	Email from Kevin Smith (HR) attaching meeting notes from the courage to care rep training day held September 29, 2003
120	Suncor second stage grievance denial letter dated September 11, 2013 re: Grievance #11-08-115 (unjustifiable post-incident test)
121	Suncor Union Executive – HR Leadership Meeting, Meeting Agenda/November 21, 2011
122	Suncor Drug and Alcohol Test Table, October 2003 – April 30, 2012 provided to R. Lefort
123	Suncor Drug and Alcohol Test Table, October 2003 – April 30, 2012 with handwritten notes of R. Lefort
124	Grievance withdrawal letter dated September 18, 2013, re: drug interdiction policy (sniffer dogs)
125	Positive Alcohol and Drug Testing Rates for Bargaining Unit Members • Bargaining Unit Members Positive Testing Rate 2003-2008 and 2009-2013 • Bargaining Unit Member Positive Testing Rates for All Drug and Alcohol Tests

	• Bargaining Unit Member Positive Testing Rates, Post-Incident • Bargaining Unit Member Positive Testing Rates, Return to Work • Bargaining Unit Member Positive Testing Rates, Follow-up • Bargaining Unit Member Positive Testing Rates, Reasonable Cause
126	Web-Based Training: Alcohol and Drug Policy Overview
127	Suncor Update. Manley Visits Oil Sands, March 6, 2003
128	Article from EFAP Connection, Fall 2001, page 3. What will it Take – Drugs are not welcome in our work place!
129	Email from Kevin Smith (HR) dated September 10, 2003 Re: EFAP Joint Committee, Minutes from September 10, 2003
130	Suncor letter from Ryan Danielson, HR Manager, to Roland Lefort, dated July 19, 2011 re: drug interdiction policy grievance (sniffer dogs)
131	Jeromy Laporte Termination Letter dated May 22, 2013
132	Last Chance Agreement dated July 13, 2011, re: Sulphur Pit Overflow
133	CEP Local 707 notice to members re: Drug and Alcohol Random Testing, dated August 27, 2012
134	CEP Local 707 Grievance Form re Use of Safety Reps, Grievance # SU-16-8-2013 dated August 6, 2013