

Drugs & Alcohol: Testing Scorecard



Here's a look at the leading cases challenging the legality of an employer's drug and alcohol testing policies. Because these issues are complex and layered, don't be surprised to find cases where the policy came away with a split decision.

TESTING UPHELD

CASE	TYPE OF TEST	WORKERS COVERED	COMMENTS
<i>Entrop v. Imperial Oil Ltd.</i> , [2000] O.J. No. 2689	Random alcohol breathalyser	Safety-sensitive	Testing limited in scope and positive test denotes current impairment

<p><i>Imperial Oil Ltd. v. Communications Energy & Paperworkers Union of Canada, Local 900</i>, [2006] O.L.A.A. No. 721, 157 L.A.C. (4th) 225 (Lab. Arb.)</p>	<p>Random alcohol breathalyser and post-incident drug and alcohol</p>	<p>Safety-sensitive</p>	<p>Testing limited in scope; positive alcohol test denotes current impairment; and post-incident testing is based on reasonable cause</p>
<p><i>McLean Grievance</i>, [2008] CanLII 13354 (ON L.A.)</p>	<p>Random drug</p>	<p>Truck drivers who transport vehicles to US dealers</p>	<p>Testing is bona fide occupational requirement because random testing of non-US drivers required by US Dept of Transportation regulations</p>

<p><i>CNR. v. National Automobile, Aerospace, Transp. & General Workers Union of Canada</i>, [2007] CanLII 43492 (ON L.A.)</p>	<p>Post-incident drug</p>	<p>Safety-sensitive railway workers</p>	<p>OK to discipline rail car inspector for refusing drug test after getting into serious truck accident at work given damage done and fact his driver's licence had been suspended</p>
<p><i>Stewart v. Elk Valley Coal Corp.</i>, 2017 SCC 30 (CanLII) (Canadian Supreme Court)</p>	<p>Post-incident drug</p>	<p>Safety-sensitive coal miners</p>	<p>OK to fire drug addict for testing positive given his deliberate decision not to disclose addiction under company's non-punitive 'no free accident policy'</p>

<p><u>Amalgamated Transit Union, Local 113 v. Toronto Transit Commission</u>, [2017] ONSC 2078 (CanLII)</p>	<p>Random drug & alcohol</p>	<p>Safety-sensitive workers and upper management</p>	<p>Applying Supreme Court's <i>Irving Paper</i> standards (see chart below), court refuses to enjoin testing as part of fitness for duty policy concluding that transit workers' and public health and safety overrides workers' privacy interests</p>
<p><i>Gilbert and D & D Energy Services Ltd., Re</i>, 2017 CarswellNat 2499 (Can. Lab. Code Adj.)</p>	<p>Post-incident drug</p>	<p>Safety-sensitive drivers</p>	<p>Failing marijuana test isn't just cause to fire because it doesn't prove current impairment but <i>cheating on</i> test by using a co-worker's urine is</p>

<p><i>Mielke v. Entrec Corp.</i>, [2015] C.L.A.D. No. 272</p>	<p>Post-incident drug and alcohol</p>	<p>Safety-sensitive</p>	<p>OK to fire driver for refusing drug test after accident given recent history of safety violations and worker's failure to give an explanation for his refusal</p>
---	---------------------------------------	-------------------------	--

TESTING STRUCK DOWN

CASE	TYPE OF TEST	WORKERS COVERED	COMMENTS
<p><u>Communications, Energy and Paperworkers Union of Canada, Local 30 v. Irving Pulp and Paper Ltd.</u>, [2013] SCC 34 (CanLII) (Supreme Court of Canada)</p>	<p>Random alcohol breathalyser</p>	<p>Safety-sensitive</p>	<p>While dangerous workplace and safety-sensitive nature of job may be enough to justify <i>post-incident</i> testing, to justify <i>random</i> testing, which is more intrusive, employer must also provide evidence that history of worker alcohol or drug use caused or contributed to safety incidents or problems at site</p>

<i>Entrop v. Imperial Oil Ltd.</i> , [2000] O.J. No. 2689	Random drug	Safety-sensitive	Testing limited in scope but unlike alcohol testing, drug testing doesn't necessarily denote current impairment
<i>Imperial Oil Ltd. v. Communications Energy & Paperworkers Union of Canada Local 900</i> , [2009] ON C.A. 420	Random drug	Safety-sensitive	Random urinalysis drug testing violates employer's duty under collective agreement to treat workers 'with dignity and respect'
<i>Communications, Energy & Paperworkers Union, Local 707 v. Suncor Energy Inc.</i> , [2008] A.G.A.A. No. 55	Post-incident drug and alcohol	Safety-sensitive oilsands workers	Policy requiring post-incident testing unless supervisor thinks drugs and alcohol weren't involved is overly broad and unreasonable
<i>Unifor, Local 707A v Suncor Energy Inc.</i> , 2017 ABQB 752 (CanLII)	Random drug and alcohol	Safety-sensitive oilsands workers	Court brushes aside evidence of history of drug/alcohol incidents and finds that workers' privacy outweighs employer's safety concerns in enjoining testing policy pending arbitrator's ruling on policy's validity; Canadian Supreme Court declines to hear case on appeal

<u>Mechanical Contractors Assn. Sarnia v. United Assn. of Journeymen and Apprentices of the Plumbing & Pipefitting Industry</u> , [2014] ONSC 6909 (CanLII)	Pre-access drug and alcohol	All workers	Court nixes policy requiring company contractors to test all their employees before giving them access to company worksite finding that privacy intrusion outweighs safety interest given lack of evidence of drug or alcohol issues at site
<u>Bombardier Transportation v. Teamsters Canada Rail Conference' Division 660</u> , [2014] CanLII 5318 (CA LA	Post-incident drug and alcohol	Safety-sensitive	Mandatory testing after every incident even if no injuries or damage occurs is overly broad; but court upholds mandatory testing for workers as part of their certification for safety-sensitive positions
<u>United Steelworkers, Local Union 5890 v. Evraz Regina Steel (Holtskog Grievance)</u> , [2014] S.L.A.A. No. 9	Post-incident drug and alcohol	Safety-sensitive	Policy OK but applying it to worker after minor incident was unreasonable' mere fact that worker left scene without reporting incident wasn't reasonable suspicion of drug/alcohol impairment

<u>Jacobs Industrial v. International Brotherhood of Electrical Workers, Local 353</u> , [2016] CanLII 198 (ON LA)	Post-incident drug and alcohol	Safety-sensitive	Policy OK but applying it to worker with solid safety record after a minor incident without reasonable suspicion of impairment'the worker was even allowed to drive himself home after the incident'was unreasonable
<i>Teck Coal Ltd. (Fording River and Elkview Operations) v United Steelworkers, Locals 7884 And 9346</i> , 2018 CanLII 2386 (BC LA)	Random drug and alcohol	Safety-sensitive coal miners	Not enough evidence of drug/alcohol-related safety problems at coal mine site to justify subjecting miners to the indignities of random testing