

Alcohol And Drug Testing: Where Are We Now?



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Over the last several years, the debate surrounding the legal parameters of alcohol and drug testing in Canada has escalated, particularly for industrial employers engaged in safety sensitive work.

The complexity of the debate stems from several factors. First, unlike the situation in the United States, there are no statutes or regulations that directly address alcohol and drug testing in Canada. Second, challenges to alcohol and drug testing policies come in various forms, including human rights complaints, labour arbitration grievances and complaints to privacy commissioners. The analysis in these venues differs, making it difficult to articulate a unified, coherent approach. Finally, alcohol and drug testing raises a number of competing interests and values that are not easily reconciled, as demonstrated by the conflicting case law across Canada. Although these factors make it difficult to provide definitive answers in this area, there is a growing body of case law that provides a certain degree of guidance. While a summary of all alcohol and drug testing cases is beyond the scope of this paper, we have highlighted below the leading and most recent authorities in an attempt to provide those affected by alcohol and drug testing with information about the current scope of alcohol and drug testing in Canada.

What follows is a general summary of the law at the time of writing. This paper is not intended to be an exhaustive survey of the case law, but rather will provide a broad overview of the approaches taken in alcohol and drug testing cases. It must also be noted that the law in this area is constantly evolving and is heavily fact-specific; as a result, employers are strongly urged to obtain legal advice when drafting or implementing a policy that incorporates alcohol and drug testing.

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