

# Drugs & Alcohol – 2023 Year in Review



## FEDERAL

### LAWS & ANNOUNCEMENTS

**Jun 2:** Canada recognized World No Tobacco Day by announcing plans to adopt new laws requiring health warnings to be printed direct on individual cigarettes. If the law goes through, Canada will become the first nation on the planet to take this approach. The government has committed to cutting national tobacco use to less than 5% by 2035.

**Action Point:** Find out how to [effectively control substance abuse](#) at your workplace

**Sep 7:** From now through November 3 the federal government will hold [online consultations](#) reviewing the *Tobacco and Vaping Products Act* as part of a wider [proposed plan](#) to cut nationwide consumption of tobacco and vaping products to less than 5% of the population by 2035.

**Action Point:** Find out how to comply with [workplace smoking laws](#)

### CASES

#### **Drugs & Alcohol: Cannabis Odor Not Enough to Prove Employee Was Actually High**

Two facts were undisputedly true: 1. A cameraman backed up the company news van he was driving with the tailgate open; and 2. He reeked of marijuana when he pulled off the dangerous maneuver. The employer concluded that he must have been high and fired him. The cameraman denied the charge, contending that his jacket smelled of cannabis because he kept it in a part of his house where his nephew smoked pot. While dubious of the explanation, the federal arbitrator ruled that it **might have been** true and that the employer didn't meet its burden of proving the cameraman was impaired.

**Result:** It knocked the penalty down to a 5-day suspension for unsafe driving [*Syndicat des communications de Radio-Canada v Société Radio-Canada*, 2022 CanLII 115408 (CA SA), November 24, 2022].

**Action Point:** Find out how to [effectively control substance abuse](#) at your workplace

#### **Drugs & Alcohol: Supreme Court Upholds Quebec Cannabis Criminalization Law**

After the federal government decriminalized possession and cultivation of fewer than 4 cannabis plants for personal use, Quebec adopted its own law criminalizing any possession and cultivation of such plants for personal purposes in a dwelling house. A citizen sued on behalf of all those arrested and prosecuted under the provincial law claiming that it was unconstitutional. The lower Quebec court agreed but the province's highest court, the Court of Appeal, reversed. The case went all the way to Supreme Court of Canada, which dismissed the appeal and upheld the Court of Appeal's affirmation of the law's constitutionality [*Murray-Hall v. Quebec (Attorney General)*],

2023 SCC 10 (CanLII), April 14, 2023].

**Action Point:** Find out how to [effectively control substance abuse](#) at your workplace

#### **Drugs & Alcohol: Non-Negative Urine Test Doesn't Prove Conductor Was Impaired**

A conductor who was away from his post when his train car ran through a switch had to submit to for-cause drug testing. The urine test came back non-negative for cocaine. The conductor admitted to using cocaine after his previous shift 4 days earlier but claimed he wasn't impaired on the job or when the incident occurred. The federal arbitrator found that the urine drug test results didn't definitively prove impairment while noting that the swab test came back negative for cocaine. Result: The railway had to reinstate him immediately and without conditions [[Canadian Pacific Kansas City Railway v Teamsters Canada Rail Conference](#), 2023 CanLII 55343 (CA LA), June 19, 2023].

**Action Point:** Find out [how to create a legally sound drug testing policy](#) at your workplace

#### **Drugs & Alcohol: Procedural Gaffe Undermines Employer's Case for Drug Use Termination**

A railroad fired a locomotive engineer for violating the terms of his rehab agreement by testing positive for marijuana. But while the positive test might otherwise have been just cause to terminate, the railroad undermined its case by pulling the trigger right away without having the engineer undergo the medical assessment required by the rehab agreement in the event of a failed drug test. As a result, the federal arbitrator reinstated the engineer provided that he pass the fitness for work test, submit to random drug and alcohol testing for 2 years and meet all conditions set out in a last chance agreement [[Teamsters Canada Rail Conference v Canadian Pacific Kansas City Railway](#), 2023 CanLII 83425 (CA LA), September 13, 2023].

**Action Point:** Find out [how to create a legally sound drug testing policy](#) at your workplace

#### **Drugs & Alcohol: Federal Court Bars Random Drug Testing of Nuclear Plant Workers**

The unions asked a federal court to "stay," that is, bar enforcement of new Canadian Nuclear Safety Commission (CNSC) regulations requiring nuclear power plants to perform random, post-incident, reasonable cause and pre-assignment alcohol and drug testing on safety-sensitive and safety-critical workers. The court said no, and the unions appealed. Persistence paid off as the Federal Court of Appeal has now granted the stay, pending the outcome of litigation challenging the rule's constitutionality, finding that letting CNSC enforce the regulations would result in potentially irreparable harm without significantly reducing the risks of a nuclear incident [[Power Workers' Union v. Canada \(Attorney General\)](#), 2023 FCA 215 (CanLII), October 27, 2023].

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## ALBERTA

### LAWS & ANNOUNCEMENTS

**Mar 1:** The Alberta WCB published [new guidance](#) to help employers implement programs to make naloxone kits available in the workplace. Naloxone is a life-saving drug administered to victims of opiate drug overdoses.

**Action Point:** Implement a life-saving [naloxone opioid overdose plan](#) at your workplace

**Nov 23:** Alberta passed [Bill 3](#) broadening its power to hold opioid drug manufacturers and distributors, as well their advisors, accountable for the public healthcare costs and financial damages caused by their products. The government will invest the moneys it recovers into public programs supporting addicts with mental health challenges.

**Action Point:** Find out how to [effectively control substance abuse](#) at your workplace

### CASES

#### **Drugs & Alcohol: Alcohol Odour Is Reasonable Cause to Test Safety-Sensitive Employee**

After detecting a very strong smell of “booze,” a thermal energy plant supervisor ordered a safety-sensitive warehouse person to submit to alcohol and drug testing. The test came back non-negative and the employee was fired for violating the company’s alcohol and drug policy. The union objected but the Alberta arbitrator dismissed the grievance, finding that the smell of booze and other signs of impairment were reasonable cause for testing and that the non-negative result for alcohol and high levels of marijuana detected were just cause to terminate [[Transalta Generation Partnership \(TAGP\) v United Utility Workers’ Association of Canada \(UUWA\)](#)], 2022 CanLII 122750 (AB GAA), December 12, 2022].

**Action Point:** Find out [how to create a legally sound drug testing policy](#) at your workplace

#### **Drugs & Alcohol: Failure to Follow Test Procedures Makes Drug Test Invalid**

When it comes to drug testing, procedures count as much as results. Suncor learned this lesson the hard way when an Alberta arbitrator ruled that a manager didn’t have just cause to test a safety-sensitive grader worker who got fired after testing positive. The smell of pot inside the grader coupled with the worker’s safety record, overall nervousness and avoidance of eye contact might have been reasonable grounds to suspect he was impaired and not fit for duty. The problem is that the manager didn’t properly complete the paperwork and follow the procedures required by the Suncor drug testing policy. **Result:** The test was invalid and the company couldn’t use its results to justify termination without cause [[Suncor Energy Inc. v Unifor Local 707A](#), 2023 CanLII 6132 (AB GAA), January 25, 2023].

**Action Point:** Find out [how to create a legally sound drug testing policy](#) at your workplace

#### **Drugs & Alcohol: OK to Revoke Job Offer to Applicant Who Flunks Pre-Employment Drug Test**

A pipeline company offered an applicant the safety-sensitive job of Business Continuity and Emergency Management Advisor but withdrew the offer after he flunked his pre-employment drug test. The applicant admitted that he had marijuana THC in his system but claimed it came from CBD oil he legally used to treat a respiratory ailment and sued the company for disability discrimination. While agreeing that the applicant suffered an adverse effect—revocation of the job offer—due to a disability, the Alberta human rights tribunal dismissed the applicant’s case because the company didn’t know he was disabled. Nor did the company have a duty to inquire into whether he was disabled since the applicant, knowing that flunking the test might cost him the offer, never revealed his condition or the fact that he used CBD oil made from marijuana to treat it and there were no other reasonable grounds to suspect he had a

disability [[Greidanus v Inter Pipeline Limited](#), 2023 AHRC 31 (CanLII), March 13, 2023].

**Action Point:** Find out [how to create a legally sound drug testing policy](#) at your workplace

## BRITISH COLUMBIA

### LAWS & ANNOUNCEMENTS

**Nov 8:** BC passed legislation ([Bill 34](#)) banning drug use in public and recreational spaces, including within: i. a 6-metre radius from the entrances of business and residential buildings; ii. 6 metres of a bus stop; iii. 15 metres of playgrounds, spray and wading pools, and skate parks; and iv. completely at parks, beaches and sports fields. The idea is to align the rules of drug use more closely to those governing alcohol and tobacco.

**Action Point:** Find out how to [effectively control substance abuse](#) at your workplace

## NEW BRUNSWICK

### LAWS & ANNOUNCEMENTS

**Jun 16:** Newly passed [Bill 58](#), the Opioid Damages and Health Care Costs Recovery Act, gives the government of New Brunswick authority to sue pharmaceutical manufacturers to recover taxpayer money used to treat opioid drug users and addicts while also allowing private class action lawsuits against opioid drug manufacturers.

**Action Point:** Find out how to [effectively control substance abuse](#) at your workplace

## NEWFOUNDLAND & LABRADOR

### LAWS & ANNOUNCEMENTS

**Sep 27:** Effective today, smoking and vaping, whether by employees, visitors or contractors, is officially banned on all Newfoundland government property, including buildings, grounds, vehicles and parking lots.

**Action Point:** Find out how to comply with [workplace smoking laws](#)

## NOVA SCOTIA

### LAWS & ANNOUNCEMENTS

**Nov 9:** [Bill 322](#) amending the *Opioid Damages and Health-care Costs Recovery Act* to allow the government to recover costs from “consultants” of opioid drug manufacturers and wholesalers has received Royal Assent and taken effect.

**Action Point:** Find out how to [effectively control substance abuse](#) at your workplace

## NUNAVUT

### LAWS & ANNOUNCEMENTS

**Mar 20:** The GN began reviewing [applications](#) for funding of community-based programs designed to prevent alcohol and drug abuse during the 2023-2024 fiscal year. A second round of funding will be held later this year.

**Action Point:** Find out how to [effectively control substance abuse](#) at your workplace

**May 31:** New regulations took effect in Nunavut banning smoking within 9 metres of a workplace entrance as well as in public housing, motor vehicles where a minor is present, hospitals, schools, bus stops, child care facilities, sports and playing fields and spectator stands, parades, concerts, public events, sidewalks and

pedestrian walkways, trails and paths.

**Action Point:** Find out how to [effectively control substance abuse](#) at your workplace

**Aug 24:** The Department of Health's Inuusivut Division is now accepting [applications](#) from non-profits and municipal governments seeking GN funding for Upigivatsi suicide and alcohol and drug prevention initiatives for the 2023-2024 fiscal year. Review of applications will start on Sept. 8.

**Action Point:** Find out how to [effectively control substance abuse](#) at your workplace

**Nov 9:** Royal Assent for [Bill 28](#), the *Opioid Damages and Health Care Costs Recovery Act*, which gives the GN the right to sue opioid product manufacturers and wholesalers to recover the cost of health care benefits it provided to residents as a result of "opioid-related wrongs."

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## ONTARIO

### LAWS & ANNOUNCEMENTS

**Apr 25:** To prevent youth vaping, newly tabled [Bill 103](#) would amend the *Smoke-Free Ontario Act* to ban the sale or supply of vaping products to individuals under age 21 and limit the sale of such products to specially designated stores.

**Action Point:** Find out how to [effectively control substance abuse](#) at your workplace

### CASES

#### **Drugs & Alcohol: Workers Comp Covers Worker's Drunk Driving Accident Injuries**

A construction foreman was pled guilty to drunk driving after crashing a company-owned vehicle carrying 2 other crew members as passengers. The incident occurred after work. The WSIB ruled that the accident occurred during the course of employment because the foreman's job required him to drive the vehicle to and from the worksite and awarded him workers comp benefits. The employer appealed but to no avail. The Ontario court concluded that the WSIB's ruling was reasonable and in line with coverage rules and case law. Nor did the foreman's misconduct in driving drunk disqualify him from receiving workers comp benefits for the work-related serious impairment he suffered [[Interpaving Limited v. Workplace Safety and Insurance Appeals Tribunal](#), 2023 ONSC 5162 (CanLII), September 13, 2023].

#### **Drugs & Alcohol: "Unremarkable" Vehicle Accident Doesn't Justify Post-Incident Testing**

A non-negative drug test cost an electrical apprentice his job. The union claimed that the company didn't have just cause either to do the post-incident test or terminate the apprentice based on its results. The Ontario Labour Relations Board agreed, noting that the incident that triggered the test (the apprentice backed his vehicle into a trailer hitch) was "unremarkable" and didn't cause personal injury or serious property damage. And since the test wasn't justified, the company couldn't rely on test results to terminate [[IBEW, Local 530 v Mellon Inc.](#), 2023 CanLII 79409 (ON LRB), August 22, 2023].

**Action Point:** Find out [how to create a legally sound drug testing policy](#) at your workplace

## PRINCE EDWARD ISLAND

### LAWS & ANNOUNCEMENTS

**Feb 8:** Hundreds of PEI residents have benefitted since the province began covering the costs of the medications for the treatment of alcohol and opioid use disorders



without copays, deductibles or out-of-pocket costs at the start of 2022. According to the government, 783 people accessed treatment through the program, resulting in savings of \$523,000.

**Action Point:** Find out how to [effectively control substance abuse](#) at your workplace

## QUÉBEC

### LAWS & ANNOUNCEMENTS

**Feb 8:** Québec announced that it's raising the tax on tobacco products by \$8.00 per carton of 200 cigarettes as a public health measure to encourage residents to quit smoking. More than 13,000 people in the province die of smoking-related illnesses each year, according to the government.

**Action Point:** Find out how to [effectively control substance abuse](#) at your workplace

**Apr 19:** Québec implemented new measures to restrict vaping, especially by young people, including a ban on the sale of vaping products with a non-tobacco flavors and aromas and a new 20 mg/ml limit on nicotine concentration in all vaping products.

**Action Point:** Find out how to [effectively control substance abuse](#) at your workplace

**Aug 2:** New Tobacco Control Act regulations tightening restrictions on vaping products take effect in Québec on October 31. Highlights:

- Ban on sale of non-tobacco flavored or aroma vaping products
- Maximum nicotine concentration limit of 20 mg/ml
- New obligation to display certain information on vaping products and packaging.

**Action Point:** Find out how to [effectively control substance abuse](#) at your workplace

**Nov 30:** [Bill 35](#) giving the provincial government the right to sue manufacturers and distributors of opioid drugs liable for the costs of health care and related damages incurred as a result of those products is in Committee and moving closer to passage. While patterned on similar legislation in other jurisdictions, the bill is tailored to Québec's civil liability system.

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### CASES

#### **Drugs & Alcohol: Employer Not Obligated to Cover Medical Marijuana in Prescription Drug Plan**

A part-time professor filed a grievance against the university after learning that his employer-provided prescription drug coverage plan didn't cover the medical marijuana he needed to treat his sleep disorder. The university contended that the collective agreement required it to provide a plan covering "prescription drugs," defined as those that have a Health Canada Drug Identification Number (DIN). And since medical cannabis doesn't have a DIN, the university had no obligation to cover it. The Québec arbitrator agreed and tossed the grievance [[Association of Part-Time Professors of Concordia University v Concordia University](#), 2022 CanLII 116822 (QC SAT), December 8, 2022].

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#### **Drugs & Alcohol: Violating Last Chance Agreement Is Just Cause to Fire Alcoholic Worker**

A mine train operator with an alcohol addiction suffered a short-term relapse. As a result, the mining company fired him for violating his last chance agreement. The union claimed the company violated its duty to accommodate the engineer. We **have too** accommodated him on several occasions but now he was out of chances, the company

argued. The Québec arbitrator sided with the company, citing the support it provided during 2 unsuccessful rehab attempts. The operator didn't demonstrate any extraordinary reason for not being able to comply with the last chance agreement or exhibit any "real desire" to recover. In light of these circumstances, the company was reasonable in concluding that allowing him to continue doing this safety-sensitive job was undue hardship [[United Workers Transport \(1843\) v Rio Tinto \(IOC Mining Company\)](#), 2023 CanLII 13793 (QC SAT), February 27, 2023].

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### **Drugs & Alcohol: Automatically Firing Alcoholic for Drunk Driving Violates Duty to Accommodate**

A company figured it had just cause to terminate an employee arrested by the police for driving a heavy truck with a blood alcohol content well above the legal limit, especially since the driver admitted she was drinking beer and the collective agreement provided for termination as the penalty for impaired driving, even if it was a first offence. The legal sticking point was the driver's admission to having an alcohol abuse problem, a disability under human rights law. A pre-determined penalty in a collective agreement doesn't trump the employee's right to reasonable accommodations to the point of undue hardship, the Québec arbitrator reasoned. Upon learning of the employee's alcohol problem, the company should have activated the accommodations process before deciding to end her employment [[Teamsters Quebec, Local 106 c 1641-9749 Quebec inc.](#), 2023 CanLII 66780 (QC SAT), July 18, 2023].

**Action Point:** Find out how to [effectively control substance abuse](#) at your workplace

### **Drugs & Alcohol: OK to Fire Safety-Sensitive Worker for Smoking Pot While On Duty**

Citizens reported to the city that they observed members of a snow removal crew smoking cannabis while on duty. After investigating, the city suspended and then fired all 3 crew members. A month later, it notified the union. The union filed a grievance on behalf of one of the workers, the flagger, claiming the witnesses saw him smoking only a cigarette and that termination was too harsh even if the worker had actually used cannabis given that this was a first offence. The Québec arbitrator was unimpressed and tossed the grievance, finding the citizens' testimony that the crew was smoking a joint credible, especially since they had no personal involvement in the case and went out of their way to tell their story. And while progressive discipline is all well and good, smoking pot while on duty carrying out safety-sensitive flagging duties knowing he was violating city safety and anti-drug policies was grounds for immediate termination [[Syndicat des cols bleus de Ville de Laval inc., CUPE, local section 4545 c Ville de Laval](#), 2023 CanLII 110987 (QC SAT), November 23, 2023].

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## **SASKATCHEWAN**

### **LAWS & ANNOUNCEMENTS**

**Nov 8:** Saskatchewan passed amendments to *The Tobacco and Vapour Products Control Act* that increase the minimum age for tobacco and vapour product purchase from 18 years of age to 19. In addition to protecting youth, the change also aligns age restrictions for smoking and vaping with existing restrictions on liquor and cannabis sales in Saskatchewan.

**Action Point:** Find out how to comply with [workplace smoking laws](#)

## **YUKON TERRITORY**

### **LAWS & ANNOUNCEMENTS**

**Apr 28:** The Yukon Chronic Disease and Disability Benefits Program will now cover the cost of prescription drugs incurred by residents who are diagnosed with alcohol use disorder (AUD), including the medications Naltrexone and Acamprosate to cut the craving for alcohol.

**Action Point:** Find out how to [effectively control substance abuse](#) at your workplace

**Aug 23:** Yukon launched its Substance Use Health Emergency Strategy to combat substance abuse and organized crime in the territory. At least 14 of the Strategy's 43 action items are already underway, including broadened access to Opioid Treatment Services and expanded government authority to investigate and stop distribution of toxic illicit drugs in Yukon communities.

**Action Point:** Find out how to [effectively control substance abuse](#) at your workplace

**Dec 1:** Yukon ended the public engagement phase of its required 5-year review of the *Cannabis Control and Regulation Act*. The government will announce the results of the public survey by the end of the year or in early 2024.

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