AH866

IN THE MATTER OF AN ARBITRATION UNDER THE *Canada Labour Code, RSC 1985, c L-2.*

BETWEEN:

TEAMSTERS CANADA RAIL CONFERENCE – MAINTENANCE OF WAY EMPLOYEES DIVISION; TEAMSTERS CANADA RAIL CONFERENCE; TEAMSTERS CANADA RAIL CONFERENCE – RTC; INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS – SYSTEM COUNCIL #11; UNIFOR; and UNITED STEELWORKERS

(Unions)

-and-

CANADIAN PACIFIC KANSAS CITY RAILWAY COMPANY

(CPKC)

POLICY GRIEVANCES – ALCOHOL AND DRUG POLICY – SEPTEMBER 1, 2019 AMENDMENTS

Arbitrator: Graham J. Clarke
Date: June 19, 2026

Legal Counsel (Full appearances in Appendices):

Unions:
M. Church: Legal Counsel, CaleyWray
D. Brown: Legal Counsel, TCRC-MWED

CPKC:
J. Laurier: Legal Counsel, BLG
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Arbitration held in Ottawa on October 18, December 5-6, 2023; January 15-17, August 13, December 4-5, 2024; September 16-18, October 7-9, November 4, 2025 and January 20-21, 2026. Further written submissions May 19 – June 18, 2026.

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Award

BACKGROUND

1. On March 23, 2023, CPKC[1] and the Unions appointed the arbitrator to hear multiple policy grievances[2] contesting the amended 2019 Drug and Alcohol Policy (DAPP)[3]. The Unions include virtually all of CPKC's bargaining agents except the Canadian Pacific Police Association.

2. In the lengthy Joint Statement of Issues[4] (JSI), the Unions asked the arbitrator, *inter alia*, to apply KVP[5] and declare unreasonable various parts of the DAPP. CPKC asked the arbitrator to confirm the reasonableness of the DAPP modifications and to conclude that it respected its legal obligations.

3. Exceptionally, this railway arbitration required many hearing days due to the extensive expert evidence on drug and alcohol testing.

4. A central element in this arbitration concerned the relevance of impairment when evaluating a policy like the DAPP. Two arbitral schools of thought now appear to exist. The arbitrator concluded that the KVP analysis must give effect to the just cause requirement in the parties' various collective agreements. This conclusion that CPKC would have to continue to demonstrate impairment impacted multiple determinations in this arbitration.

5. The arbitrator also considered at length and ultimately dismissed the Unions' reply stage request to reject CPKC's expert evidence.

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[1] For ease of reference, this award will use CPKC throughout despite some events taking place prior to the merger.
[2] Unions' Brief, paragraph 10.
[3] The DAPP involves three separate policies: 1. #HR 203 (CPKC BoD, tab 1C); 2. #HR 203.1 (CPKC BoD, tab 1D; and 3. #HR 203.2 (CPKC BoD, tab 1E).
[4] Unions' BoD, tab 1.
[5] *Re Lumber & Sawmill Workers' Union, Local 2537, and KVP Co. Ltd.*, 1965 CanLII 1009

6. For the following reasons, given the need to show impairment, the arbitrator concluded that three DAPP requirements did not satisfy the KVP test:

- Requiring newly hired trainees for safety sensitive or safety critical positions to undergo both a pre-employment drug test and a later second drug test prior to completing their training;
- A minimum 28-day cannabis ban; and
- Oral fluid drug testing thresholds of 4ng/ml and 2ng/ml, reduced from the previous 10ng/ml standard.

7. The arbitrator did not find the other contested DAPP changes unreasonable, at least at this policy grievance stage. The jurisprudence confirms that the Unions' can still contest the reasonableness of the application of CPKC's DAPP to their individual members in future rights arbitrations.

FORMAT OF THIS AWARD

8. This award may use SS and/or SC to refer to safety sensitive and safety critical employees. Similarly, since a lot of evidence concerned marijuana, it may on occasion use THC as a short form. The many scientific studies examined do not contain standard definitions for THC users. The arbitrator will use the term "casual users" for those who smoke marijuana infrequently, such as less than once a week, in contrast with "chronic users" who smoke daily.

9. For ease of reference only, this lengthy award will repeat in the footnotes full case law citations and CanLII links, where available.

10. The arbitrator will first review the context and applicable principles for this arbitration. This analysis will consider, *inter alia*, the chronology of events, the KVP test, the applicable legal analysis, the relevance of impairment and whether to exclude CPKC's expert evidence.

11. The arbitrator will then decide the specific issues described in the parties' JSI.

CHRONOLOGY

12. A few key dates provide essential context for this award.

13. **September 21, 2018**: CPKC wrote a letter[6] to its bargaining agents about 2018 amendments to the DAPP which took effect October 17, 2018.

14. **July 25, 2019**: CPKC sent a letter[7] to its bargaining agents describing further changes to the DAPP taking effect on September 1, 2019. One of several key changes reduced the cutoff level for THC oral fluid (OF) testing from 10ng/ml to 4ng/ml for the screening test and 2ng/ml for the confirmation test:

> The key changes include:
>
> 1. The introduction of a qualification drug test for all candidates and trainees in a Safety Critical or Safety Sensitive Position, which is to be completed prior to final qualification. This is in addition to the drug test completed post offer.
>
> 2. Notification of CP's intent to implement random testing at work locations with a demonstrated problem with alcohol and/or drug use.
>
> 3. The introduction of 28-Day Cannabis Ban for employees in or subject to a Safety Critical or Safety Sensitive Positions, requiring that employees refrain from using or consuming cannabis from any source for at least 28 days before being on duty or subject to duty. This 28-Day Cannabis Ban is consistent with Transport Canada's policy for flight crews and flight controllers and well as policies established by the Department of National Defence and the RCMP.
>
> 4. Extending Reasonable Suspicion and Post Incident testing to all employees (formerly limited to Safety Critical and Safety Sensitive Positions).
>
> - Will include testing for non-safety sensitive positions for Reasonable Suspicion Testing when there is a threat to the health and safety of employees (including the employee subject to the testing) or the public, or a threat to the environment.
>
> - Will include testing for non-safety sensitive positions for Post Incident Testing following a work related incident.
>
> - Will also include testing for non-safety sensitive positions in Reinstatement Agreements and Monitoring for Alcohol and/or Drug related Medical Condition(s).
>
> 5. The laboratory-testing cut off levels for Cannabis/Marijuana in saliva samples will now be screened at 4ng/ml and confirmation testing for Tetrahydrocannabinol, THC (the psychoactive component of Marijuana/Cannabis) will be at 2ng/ml. Drug testing levels will be subject to ongoing review and adjustment to reflect minimum detection levels.

[6] CPKC BoD, tab 11.
[7] Unions BoD, tab 2. CPKC BoD tab 1B.

6. Updating the Alcohol and Drug Testing Acknowledgement Form to acknowledge and authorize release of alcohol and drug test results including drug type and levels to Company representatives for investigating policy violations and participating in legal proceedings or responding to notice of legal proceedings.

7. Adjusted timelines for Reasonable Suspicion and Post Incident testing to reflect realities of CP's 24/7/365 business operations in multiple locations. Attempts to collect specimens for testing will be as soon as possible after the decision to test has been made. However, attempts to collect specimens will cease if an alcohol test is not administered within 8 hours or if a drug test is not administered within 32 hours following the triggering event.

15. **August 1, 2019**: CPKC wrote[8] to its employees about the DAPP changes and attached a summary of the key changes:

…

A fundamental part of our commitment to health and safety in the Company's Alcohol and Drug Policy and Procedures, which we continue to update. These changes will come into effect September 1, 2019. The Policy and Procedures will cover all employees of CP and its subsidiaries in Canada, with additional standards for employees who work in Safety Critical Positions and Safety Sensitive Positions.

The enclosed documents contain a Key Changes summary and the Alcohol & Drug Policy and Procedures to help you understand how the policy is applied. Please take this opportunity to read and become familiar with the Policy and Procedures – it is important that you are aware of your responsibilities.

The Policy and Procedures emphasize prevention as well as assistance for employees who may be having alcohol and drug problems and request support prior to compromising workplace safety. These services are largely coordinated through CP's Health Services and Employee and Family Assistance Program, (EFAP).

…

16. **August 14, 2019**: CPKC advised[9] employees about an online course it had created summarizing the 2019 DAPP changes.

[8] CPKC BoD, tab 4. CPKC posted comparable information to CPStation on July 30, 2019 (CPKC BoD, tab 5).
[9] CPKC BoD, tab 7.

17. **August 19, 2019**: CPKC responded in an email[10] to multiple concerns the Unions had raised about the revised DAPP.

18. **September 1, 2019**: The revised DAPP came into effect.

19. **September 2, 2019**: CPKC posted[11] a reminder for employees that the 2019 DAPP changes had come into force on September 1.

20. **March 13, 2022**: The parties drafted a lengthy JSI[12] setting out their perspectives on the issues for this arbitration.

21. **March 23, 2023**: The parties retained the arbitrator.

THE APPLICABLE LEGAL ANALYSIS

22. In AH881-S[13], the arbitrator contrasted what might initially appear to be similar cases. The legal analysis differs between these two categories of cases[14]. One category of cases applied the *Charter*[15] while the labour arbitration cases applied the KVP test.

23. This arbitration does not involve the Legislator exercising its authority to impose drug and alcohol standards. That type of governmental action can lead to *Charter* cases[16].

24. Instead, CPKC's DAPP constituted a private employer's unilateral policy, the reasonableness of which the Unions can contest under KVP.

25. Two recent cases illustrate the analytical difference between a Charter case and a KVP case.

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[10] CPKC BoD, tab 6.
[11] CPKC BoD, tab 8.
[12] Unions' BoD, tab 1.
[13] *Section locale TC 1976 du syndicat des métallos c Canadien Pacifique Kansas City*, 2025 CanLII 114332. A judicial review application has been filed (No: 500-17-136500-256). Pasting the above CanLII URL into Google Translate provides an unofficial translation of this French award.
[14] AH881-S at paragraphs 69-72.
[15] Canadian Charter of Rights and Freedoms.
[16] See section 32(1) of the Charter and *McKinney v. University of Guelph*, 1990 CanLII 60.

Power Workers' Union v. Canada (Attorney General)

26. The Federal Court of Appeal (FCA) in *Power Workers*[17] examined the Canadian Nuclear Safety Commission's requirement for pre-placement and random alcohol and drug testing for safety-critical workers. That requirement impacted a category of employees which constituted less than 10% of the entire workforce.

27. The FCA highlighted the difference between the Charter analysis it had to apply and the KVP test labour arbitrators use:

> [108] Contrary to the appellants' submissions, I believe the Application Judge was correct in considering arbitral jurisprudence with caution, as not being conclusive in a section 8 analysis context.
>
> [109] **Arbitral jurisprudence arises in an entirely different statutory context and applies a different analysis. The arbitral decisions relied upon by the appellants in the present matter are concerned with management rights clauses found in collective agreements and their use by employers to unilaterally impose safety measures, including drug and alcohol random testing, in a dangerous workplace.**
>
> [110] **The validity of such unilateral measures must be assessed using a specific test developed in the labour law context, requiring case-by-case balancing to preserve public safety concerns while protecting privacy (Communications, Energy and Paperworkers Union of Canada, Local 30 v. Irving Pulp and Paper, Ltd., 2013 SCC 458 at paras. 4, 22−23 (Irving)**. **One important consideration in assessing the validity of this type of unilateral measures is the employees' right not to be discharged or disciplined by an employer, save for "just cause" or "reasonable cause" where the impugned measure is enacted as a vehicle for discipline** (Irving at para. 23).
>
> [111] **According to that test – known as the "KVP" test –, "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" (Irving at para. 24).**
>
> …
>
> [114] **In my view, the Application Judge was right to distance himself from arbitral jurisprudence on the ground that it lacks authoritative value for the purposes of the section 8 analysis that he was called upon to perform in the present matter**.

[17] Power Workers' Union v. Canada (Attorney General), 2024 FCA 182. The SCC denied leave to appeal on May 29, 2025: *Power Workers' Union, et al. v. Attorney General of Canada, et al.*, 2025 CanLII 48636.

(Emphasis added)

28. In another recent Charter case, the Ontario Court of Appeal examined the constitutionality of the *Criminal Code*'s[18] provisions on drivers' blood THC levels[19].

Amalgamated Transit Union - Local 1587 (Policy) v Ontario (Metrolinx)

29. In contrast, the 2025 *Metrolinx*[20] decision applied the KVP analysis. In that case, the Grievance Settlement Board (GSB), chaired by Arbitrator Nairn, examined Metrolinx' Fitness for Duty Policy which it implemented after Canada's legalization of recreational cannabis. That policy included a "ban on the off-duty use of recreational cannabis for persons employed in safety-sensitive positions" (para 2).

30. *Metrolinx* examined, *inter alia*, "whether imposing a complete prohibition on the off-duty use of recreational cannabis by persons employed in safety-sensitive positions in the Go Transit Division at Metrolinx is a reasonable exercise of management rights". This question required a KVP analysis (para 226-227).

31. In short, any analysis of the instant award must keep in mind the fundamental distinction between a KVP case and a Charter case.

The analysis for CPKC's DAPP

32. In AH881[21], the arbitrator commented on the *Railway Safety Act*[22] (RSA) which mandates regular medical exams for those occupying safety critical, but not safety sensitive, railway positions. Pursuant to RSA section 21, the Minister of Transport has approved the Canadian Railway Medical Rules Handbook[23] which requires regular medical examinations for safety critical employees. That Handbook includes "Section 12 – Substance-Related Disorders".

33. Other than the RSA, which did not arise in this case, there is no "governmental action" at issue. The DAPP constitutes a purely private employer policy for which KVP requires an arbitrator to conduct a reasonableness analysis. While Transport Canada has imposed obligations for some industries when it comes to cannabis, it did not do so for railways. For example, Transport Canada introduced "a new policy prohibiting flight crews

[18] RSC 1985, c C-46
[19] *R. v. Robertson*, 2026 ONCA 281
[20] *Amalgamated Transit Union - Local 1587 (Policy) v Ontario (Metrolinx)*, 2025 CanLII 18169.
[21] *Section locale TC 1976 du syndicat des métallos c Canadien Pacifique Kansas City*, 2024 CanLII 118271
[22] RSC 1985, c 32 (4th Supp). See sections 20 and 35.
[23] Canadian Railway Medical Rules Handbook.

and flight controllers from consuming cannabis for at least 28 days before being on duty"24.

34. The parties can certainly reference Charter cases. But they must exercise caution when citing short extracts from Charter cases and asking the arbitrator to apply those principles to a KVP case. As the FCA in *Power Workers* explained, a KVP case differs from a Charter case.

35. In short, the Legislator can decide whether to enact rules for SS/SC railway employees for matters like cannabis use. It can decide, subject to court review, to act based solely on the possible risk of impairment. But the instant case requires the arbitrator to apply a different analysis, i.e., the KVP reasonableness test, for CPKC's DAPP.

KVP

36. The parties did not contest the KVP test's 7 elements which the Unions summarized in their Brief:

> 64. The analysis into the validity of any unilaterally promulgated employer policy necessarily commences with the decision in Lumber & Sawmill Workers' Union, Local 2537 v. KVP Co. (1965), 16 L.A.C. 73. In that decision, the Board held that such a rule or policy "must satisfy the following requisites":
>
> a. It must not be inconsistent with the collective agreement.
> b. It must not be unreasonable.
> c. It must be clear and unequivocal.
> d. It must be brought to the attention of the employee affected before the company can act on it.
> e. 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.
> f. Such rule should have been consistently enforced by the company from the time it was introduced.

37. The parties' main but not exclusive focus during the arbitration concerned applying KVP's reasonableness test to the DAPP changes.

[24] Unions BoD, tab 30.

KVP: policy vs rights grievances

38. This arbitration concerned policy grievances. Some awards suggest a difference exists when applying KVP to a policy grievance as opposed to a rights grievance. In *Peace County Health*[25], Arbitrator Sims alluded to the distinction[26]:

> There is a limit to what can be decided about a policy in a policy grievance. Some issues, by their nature, must be decided based on individual circumstances and through individual grievances, if necessary. Even if a unilaterally introduced policy is *prima facie* valid under the KVP test, the application of that rule in individual cases must still be reasonable in the circumstances of that case.

39. In other words, despite an arbitrator finding a provision reasonable in a policy grievance, a party can later contest its reasonableness when applied to an individual employee's situation. In *Humber River Health*[27], the Divisional Court recently commented on this KVP distinction when considering a vaccination policy:

> [54] While discipline may never be appropriate in a normal scenario for the failure to take medicine or be vaccinated, the Amended Policy was issued in the context of a pandemic that had caused a significant number of deaths and life-threatening illnesses, both of patients and staff who worked in the hospital and continued to do so. Unvaccinated employees posed greater risks not only for themselves but for all employees, patients and their families who might be exposed to unvaccinated employees.
>
> [55] **In finding that non-compliance with a mandatory vaccination policy can never be met with discipline because these policies engage an employee's right to consent to medical treatment and/or disclose medical information, the Arbitrator failed to engage in any balancing of Humber's duty to protect its patients, staff and visitors against the significant health and safety risks associated with the COVID-19 virus as required by KVP and Irving**.
>
> [56] Other than this Decision, no COVID-19 mandatory vaccine case supports that a mandatory vaccination policy can never be met with discipline. Central West cites 12 COVID-19 cases that support, expressly or impliedly that a refusal to be vaccinated can be the subject of discipline. Lakeridge explicitly considered and rejected the argument that discipline is never an appropriate response to an employee's exercise of their right to refuse medical treatment. Central West found that there is no question that non-compliance with an otherwise reasonable COVID-19 mandatory vaccination policy – a refusal to be

[25] *Peace Country Health v United Nurses of Alberta*, 2007 CanLII 80624.
[26] See also Arbitrator Sims comments on this issue in *Interfor Acorn v United Steelworkers, Local 2009*, 2020 CanLII 47162.
[27] *Humber River Health v. Teamsters Local Union No. 419*, 2025 ONSC 2270.

> vaccinated unsupported on medical or human rights grounds – can be the subject of discipline. **Central West exemplifies the balancing of interests called for by KVP and Irving between employee rights and employer needs in the extraordinary circumstances under which mandatory vaccination policies were promulgated. The award distinguishes between the reasonableness of a mandatory vaccination requirement per se, and the reasonableness of its implementation in individual circumstances. That award definitively upholds an enforcement mechanism that includes potential disciplinary termination from employment for non-compliance, while clarifying that the forum of the individual grievance is the appropriate place for consideration of individual consequences**.
>
> (Emphasis added)

40. In short, the instant award deals with the Unions' policy grievances. This award does not deal with any rights grievances involving the DAPP's application to an individual employee.

The KVP reasonableness test incorporates the just cause standard

41. As noted in Arbitrator Picher's seminal 2000 award in SHP530[28], the KVP reasonableness analysis in the railway industry incorporates the collective agreements' substantive rules, such as employee protection against discipline or discharge without just cause:

> An essential part of the balancing of interests is to determine whether an employer promulgated rule is reasonable. All of the parties before the Arbitrator acknowledge that, absent contrary language in a collective agreement, it is open to an employer to make policies and rules governing its employees, subject to certain generally recognized standards. Those standards, best articulated in the KVP decision, include the requirement, recently acknowledged by the courts, that a policy or rule must be related to the legitimate business interests of the employer, and that it must be reasonable (Re Municipality of Metropolitan Toronto v. C.U.P.E., Local 43 (1990), 69 D.L.R. (4th) 268 (Ont. C. A.)). **As further discussed below, an element to be considered in the assessment of reasonableness is whether a rule introduced by management is inconsistent with any substantive provision of a collective agreement, including the protection of employees against discipline or discharge without just cause**.

[28] SHP530 – Canadian National Railway Company v. CAW-Canada et al.

42. The passage of almost 26 years since Arbitrator Picher's award has not lessened the importance of considering the just cause requirement when evaluating a unilateral employer policy[29].

THE RELEVANCE OF IMPAIRMENT

Oral fluid testing

43. Railway arbitrators have consistently accepted that an employee's positive oral fluid (OF) test indicated impairment. Those findings led to a presumption that termination constituted the appropriate response.

44. However, those arbitral comments reflected the reality when railways used a 10ng/ml cutoff. An OF test does not show impairment the way an alcohol breathalyzer test does. But the 10ng/ml cutoff did allow for a reasonable inference of impairment, subject to a party's right to produce evidence to the contrary. However, when the DAPP significantly lowered the cutoff threshold, that unofficial "inference" evidently disappeared.

45. For example, in *Felix*[30], Dr. Snider-Adler, one of CPKC's experts in this case, could not conclude impairment existed at the 2ng/ml cutoff threshold which CPKC applied to a non-union employee:

> [102] **Dr. Snider-Adler testified that she could not reach a conclusion about whether the complainant was impaired based on a review of his urine and OF results**. She stated that she could identify a risk of impairment but not actual impairment. In particular, Dr. Snider-Adler testified that OF tests cannot be used to determine impairment. This testimony is contrary to the findings of the CROA arbitrators that OF test results above a certain level confirm that a person is impaired.
>
> [103] **The Board prefers Dr. Snider-Adler's oral and written testimony about residual impairment and the meaning of OF test results over the conclusions reached by the arbitrators in the CROA case law. The Board accepts Dr. Snider-Adler as an expert in substance use disorders, noting that, in addition to providing expert testimony in numerous legal proceedings, the CROA arbitrators have regularly relied on reports from her. It is clear from Dr. Snider-Adler's testimony that the complainant's test results do not establish that he was impaired or unfit for duty when he was at work on March 10, 2021**.

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[29] See also paragraph 23 in *Communications, Energy and Paperworkers Union of Canada, Local 30 v. Irving Pulp & Paper, Ltd.*, 2013 SCC 34

[30] *Felix v Canadian Pacific Railway Company (now known as Canadian Pacific Kansas City Railway)*, 2024 CIRB 1122

(Emphasis added)

Two arbitral schools of thought on impairment

46. CPKC asked the arbitrator no longer to insist on impairment when considering the DAPP. Two schools of thought appear to exist among labour arbitrators about the relevance of impairment when applying the KVP test.

47. One school accepts that a policy's drug testing levels will respect KVP if they reflect standards used elsewhere, such as in the *Criminal Code*[31]. For that school, violating the policy, even in the absence of impairment, may justify discipline. Conversely, other arbitrators have insisted that impairment remain the key criterion in any unilaterally imposed drug and alcohol policy[32].

48. The arbitrator will examine each "school" below.

Cases not requiring impairment

49. In *Gibson*[33], Arbitrator Ish upheld an employer drug policy and did not insist on evidence of impairment. Dr. Snider-Adler, one of the experts in this arbitration, provided expert evidence in *Gibson*:

> [70] The issue is whether the 2 ng/ml cut-off set out in the policy is a valid measure of marijuana use within the last 24 hours. It is my conclusion that 2 ng/ml is a reasonable measure. I accept Dr. Snider-Adler's expertise and evidence in assessing the preponderance of studies that show a concentration of THC greater than 2 ng/ml is after 24 hours is not only unlikely, but highly unlikely. The possibility of a significantly higher concentration well beyond 24 hours, perhaps for days, has not been verified by any studies. One study (Andas 2014 – see para. 52 above) detected oral fluid after an eight-day abstinence but the cut-off concentration used in the study was only .3 ng/ml. **The 2 ng/ml concentration limit is the commonly accepted cut-off in industry and by government agencies in Canada (see para. 45 above). It is well established that reasonable cut-off scores are an acceptable means of screening. In Canada's criminal law there are fixed cut scores for alcohol and THC which, if breached while driving, result in criminal conviction.** This result occurs even if cognitive testing may show an individual is not impaired at these levels – see para. 54 above**. It is my conclusion that the concentration levels contained in the Drug and Alcohol Policy are reasonable and the**

[31] *Gibson Energy (Moose Jaw Refinery Partnership) v Unifor, Local (Mike Chow)*, 2021 CanLII 16446 (Ish).
[32] *Western Forest Products Inc. v United Steelworkers, Local 1-1937*, 2023 CanLII 78832 (Jackson).
[33] *Gibson Energy (Moose Jaw Refinery Partnership) v Unifor, Local (Mike Chow)*, 2021 CanLII 16446 (Ish).

24-hour detection window for determining likely use within the past 24 hours is also reasonable.

[71] The policy does not directly address impairment by drugs or alcohol. The union argued that exceeding the detection cut-offs is not proof that an employee is not fit for duty because an employee may not be clinically impaired even through the employee exceeds the cut-off limits. Dr. Snider-Adler and Dr. Richardson both acknowledged that other than clinical examination there is no true impairment test for cannabis. Nevertheless, oral fluid testing can assess the risk of impairment.

[72] **I accept that concentration of THC in oral fluid above the limits in the policy are not definitive of impairment, although the likelihood or risk of impairment is greater if the oral fluid concentration is high. This does not render the policy unreasonable, including the statement in the definition of "Fit for Duty": "Under no circumstances is an individual who exceeds an applicable threshold of a Drug or Alcohol test Fit for Duty". The policy is breached when the thresholds are exceeded; the employer need not prove the employee was clinically impaired.** This is a parallel to what occurs in general driving laws where exceeding criminal code alcohol and drug concentration levels is an offence, and in provincial driving laws the threshold levels are even lower than in the criminal code. In short, the policy is valid and reasonable with respect to the concentration limits contained in it.

(Emphasis added)

50. In *Asplundh*[34], the Nova Scotia Labour Board adopted Arbitrator Ish's reasoning when considering a policy's 2ng/ml cutoff:

[66] These statements from the Gibson case are consistent with the testimony of Mr. Johnstone in this case, and I accept that they are applicable to the facts before me. In the present case Mr. Chipman's THC levels were 18 ng/ml, nine times the confirmation limit. As indicated in Gibson, 2 ng/ml is the commonly accepted cut-off. If 2 ng/ml is the standard cut-off in the criminal context and potentially indicative of impairment, it is reasonable to conclude that nine times this limit is substantial and is highly indicative of impairment. This is supported by Gibson where the arbitrator found that though it could not definitively be said that 2 ng/ml of THC constituted impairment, the likelihood or risk of impairment increases the higher the oral fluid concentration. This was supported by Mr. Johnstone's testimony as well.

[67] **Notwithstanding this question of whether the cut-off level was indicative of impairment in the case of Mr. Chipman, I conclude the Employer does not need to demonstrate that Mr. Chipman was impaired**

[34] *Asplundh Tree Service ULC v Chipman*, 2021 NSLB 81.

> **in order to apply the Policy in this instance. The Employer needed to demonstrate that Mr. Chipman exceeded the permitted levels of THC in oral fluid during a drug test**. The evidence clearly demonstrated that Mr. Chipman was significantly in excess of the Policy's cut-off levels, six hours after beginning his shift. He was also significantly in excess of the criminal laws cut-off levels for the operation of a vehicle. This approach was adopted by arbitrator Ish in Gibson:
>
> [quote from Gibson para 72 omitted]
>
> [68] **The result of Mr. Chipman's score may not definitively prove impairment, but I find that it does establish a heightened risk of impairment, the avoidance of which risk was reasonable in a safety sensitive workplace. I accept the Employer's position that within the context of available oral fluid testing, which cannot accurately test for THC impairment, regulators, employers, and legal authority recognize the importance of reducing the risk of impairment by testing based on cut-off levels as was done in this case**.
>
> (Emphasis added)

51. CPKC also relied on *CST Canada*[35] which examined a 4ng/ml threshold. Arbitrator Casey accepted the policy's threshold as reasonable under KVP and further held that the employer did not have to prove impairment to have grounds for discipline:

> [88] Given my conclusion that the D & A Policy clearly and unequivocally established the obligation on employees to not report for work with THC metabolites exceeding the Concentration Limits and that this obligation was brought to the attention of the Grievor, **that leaves for consideration the Union's argument that the Employer cannot justify any discipline unless the Employer proves impairment. I disagree with this assertion**.
>
> [89] With respect to the jurisprudence provided by the Union, it is unclear in many of these cases whether the drug and alcohol policy in questioned contained similar obligations to the D & A Policy before us: namely, an obligation to not attend for work while impaired by drugs or alcohol and an independent obligation to not report for work in excess of the Concentration Limits set out in the policy.
>
> [90] In any event, I consider the analysis in Asplundh Tree Service ULC and Chipman, Re 2021 CarswellNS 666, 2021 NSLB 81 ("Asplundh") and Gibson Energy and Unifor, Local 595 (Chow), Re 2021 CarswellSask 99, 147 C.L.A.S. 331 (Ish) ("Gibson Energy") to be compelling. In Asplundh the employer's drug and alcohol policy had a cut-off limit for THC at the same level as the D & A

[35] *CST Canada Coal Limited v United Mine Workers of America, Local 2009*, 2025 CanLII 5367 (AB GAA) (Casey)

> Policy- 2ng/ml for an oral fluid test. Like the D & A Policy, the policy prohibited employees from attending work with drugs or alcohol in their system exceeding the cut-off limits. An employee tested in excess of the cut-off limit for THC and was terminated. The employee argued that the drug test did not in itself demonstrate impairment and as a result there was no just cause for discipline. The Nova Scotia Labour Relations Board concluded that proof of impairment was not required relying heavily on the reasoning in Gibson Energy…
>
> …
>
> [91] **The Labour Relations Board in Asplundh adopted this analysis finding that the employer did not need to demonstrate that the employee was impaired. To demonstrate a breach of the policy, the employer only needed to demonstrate that the employee exceeded the permitted levels of THC in oral fluid during a drug test**. The Board noted that policy was clear. If employees test beyond the THC limits set out in the policy, they would face discipline including termination. The Board held that the employer had just cause for terminating the employee.
>
> [92] **Similarly, I conclude that it is not necessary for the Employer to demonstrate impairment before it can discipline the Grievor for breaching the D & A Policy by working while exceeding the Concentration Limits for THC.**
>
> (Emphasis added)

Cases requiring impairment

52. For decades, railway jurisprudence has required proof of impairment as a precondition for discipline. An employer needed to show more than the mere presence of a drug in an employee's system[36].

53. In reviewing Arbitrator Weatherill's award in which he required proof of impairment[37], the Ontario Divisional Court confirmed the reasonableness of his analysis:

> [36] The arbitrator found that the grievor tested negative for breath alcohol and oral fluids, but positive on the urine drug test, and admitted in the investigation to smoking marijuana off-duty the night before the incident. The arbitrator found that the grievor was not impaired, although the positive urine test revealed that there were "residual traces of marijuana" in the grievor's body. As the parties agreed that traces of marijuana may remain in the body for a month or more, the arbitrator held that by itself a positive urine test does not establish impairment where negative breath alcohol and oral fluid tests strongly indicate there was no impairment. He found as a fact that there was no

[36] See, for example, CROA 4584 and CROA 4695-M, upheld by the Divisional Court in *Canadian Pacific Rail Company v. Teamsters Canada Rail Conference*, 2020 ONSC 6683.
[37] *Canadian Pacific Rail Company v. Teamsters Canada Rail Conference*, 2020 ONSC 6683

suggestion that the grievor's conduct, movement or verbal behaviour revealed impairment. **He concluded on all of the evidence that the grievor was not impaired during his shift and did not violate the Drug Policy. The arbitrator stated that this conclusion was consistent with arbitral jurisprudence in the railway sector, citing a CROA decision that "a positive urine drug test, standing alone, does not establish impairment**."

[37] Reasonableness review is not "a line-by-line treasure hunt for error" (Vavilov at para. 102). There must be no fatal flaw in the logic of the decision, and there must be a line of analysis that can lead the decision-maker from the evidence to the conclusion.

[38] The arbitrator's analysis, based on the facts before him, shows a line of analysis leading from the evidence to the conclusion. His reliance on arbitral caselaw was reasonable. **The Union relies on eight CROA decisions, from 2008 to 2019, which all state that a failed urinalysis test is not by itself sufficient proof of impairment. Oral fluid testing, on the other hand, can reliably show impairment. In basing his decision on the CROA caselaw, on the facts found by the arbitrator, the arbitrator's analysis was reasonable**.

(Emphasis added)

54. The arbitrator's award in AH706[38] summarized the case law this way [footnotes omitted]:

30. It is for this reason that CROA case law can be placed in two distinct categories: "impaired" and "unimpaired".

31. CROA jurisprudence regularly imposes significant sanctions, including a rebuttable presumption of termination being the appropriate penalty, for a railway industry employee who works when impaired through drugs or alcohol. Cases have also noted the importance of deterrence.

...

36. The facts do not support BTC's suggestion that the "impaired" line of cases apply to Mr. Ouimet's situation. Unlike in CROA&DR 4527, Mr. Ouimet's oral swab test came back negative. Railway arbitrators have consistently concluded that this test result signifies the individual was not impaired. BTC had to demonstrate that the "impaired" line of cases applied to Mr. Ouimet. It failed

[38] AH706 - *Bombardier Transportation Canada Inc. v Teamsters Canada Rail Conference*, 2020 CanLII 53040

to meet this burden when it referred to its amended 2018 Policy but without providing evidence of impairment as well.

37. The "unimpaired" line of cases has commented on the implications flowing from a negative oral swab test. For example, in CROA&DR 4524, the arbitrator noted:

> 24. CP had the burden of proof to demonstrate that Mr. Playfair was impaired at the time of the November 15, 2015 incident. As numerous CROA decisions have already noted, it is not enough to show that a urine test indicates an employee may have traces of marijuana in his/her system. Those results do not demonstrate impairment at the material times. In Mr. Playfair's situation, he tested negative for the more specific oral fluid drug test.
>
> 25. CP's position, as set out in its policy and as argued, posits that employees should never take illegal drugs. But the case law has not upheld a policy that extends that broadly.

55. Railway arbitrators continued to require evidence of impairment during the lengthy period during which the parties pleaded this policy grievance[39]. The Canada Industrial Relations Board (CIRB) followed the same line of reasoning in *Felix*[40].

56. The longstanding requirement for impairment continues to find favour among other arbitrators such as in *Western Forest*[41]*.* In that award, Arbitrator Jackson considered the relevance of other safety standards, the scientific evidence provided about impairment and how the parties in a collective bargaining relationship can jointly negotiate this issue:

> In final submission the Employer described the 2ng/ml cut off level as "the safety standard in the workplace" and added the following:
>
> > There are many safety standards in workplaces, many of which interfere with employees' personal choices. We require employees to wear hard hats, even though they seldom get hit in the head. We require employees who have to wear certain industrial masks to be clean- shaven, notwithstanding that the fumes are not always toxic. We require employees to hold handrails on the stairs of a catwalk, notwithstanding that employees seldom fall.

[39] See, as just one example, AH877 - *International Brotherhood of Electrical Workers, System Council No. 11 v Canadian Pacific Kansas City Railway*, 2024 CanLII 62438.
[40] *Felix v Canadian Pacific Railway Company (now known as Canadian Pacific Kansas City Railway)*, 2024 CIRB 1122
[41] *Western Forest Products Inc. v United Steelworkers, Local 1-1937*, 2023 CanLII 78832 (Jackson)

(para. 197)

Counsel submitted these safety rules exist because they mitigate known safety risks and reflect the precautionary principle of workplace safety.

In my view the comparison between the 2ng/ml cut off level and other safety standards is not well founded. **The requirement of a drug test, whether urine or an oral swab, is a trespass upon an employee's dignity and bodily integrity unlike a hard hat, a mask or the use of a handrail**.

Although the two experts disagreed on a number of issues what was common between them was the conclusion that the scientific evidence cannot and does not establish that a cut off level of 2ng/ml can confirm a likelihood of impairment. As such that cut off level cannot be considered to be reasonable.

In his submission the Employer has argued that as an arbitrator I am left with a very stark choice: "Either [I] accept the THC Cut-Off Level, or else [I] declare that employers cannot conduct oral fluid testing for cannabis": para. 204.

I must respectfully disagree with that characterization. **My conclusion concerning the cut off level of 2ng/ml for THC in oral fluid is based on the balancing of interests required of an arbitrator when determining if a workplace rule that infringes on employee privacy rights is reasonable and justified**. No one wants an employee in a safety sensitive workplace if he is impaired. And I recognize that under the Memorandum of Agreement signed by the parties at the conclusion of bargaining it was agreed that dismissal would not be the result for an employee with a first time positive test for THC. That agreement, however, does not extend beyond that first time exception. **The result is that an employee whose test is above that cut off level, other than for the first time, is in violation of the Policy, the consequence of which is discipline up to and including termination in a situation where it has not been confirmed on scientific evidence that the cut off level reasonably corresponds to impairment.**

The parties have the option of negotiating a cut off level that both can accept. The Employer has the option of establishing a cut off level where the relationship between that level and the likelihood of impairment can reasonably be considered legitimate or what Dr. Macdonald described as a valid measure. (I note in passing that Dr. Macdonald added that if the cut off level was higher, he might not be here.) The issue, however, must be left to the parties.

(Emphasis added)

Decision

57. For several reasons, and with due respect to arbitrators who have concluded otherwise, the arbitrator prefers in this KVP case to retain the longstanding impairment requirement as a precondition to any discipline:

- This conclusion recognizes the Legislator's decision to impose specific drug and alcohol standards for some industries, like aviation and nuclear energy, but not for railways;
- The impairment requirement incorporates the CBA's just cause standard when analyzing an employer's unilaterally imposed policy;
- The impairment requirement applies the SCC's comment in *Irving*[42] (para 23) about the need for "cause": "As a result, rules enacted by an employer as a vehicle for discipline must meet the requirement of reasonable cause".
- While impairment may not be required when the Legislator adopts standards to address possible risks in what could become a Charter case, a KVP case requires a different analysis;
- Absent new and compelling scientific evidence, it appears incongruous that a unilateral employer policy in a collective bargaining relationship could overturn decades of railways jurisprudence in an industry where the Legislator has decided not to impose drug and alcohol standards.

58. The arbitrator's conclusion to retain the longstanding impairment requirement will impact the resolution of several issues in this case.

EXPERT EVIDENCE

Preliminary comments

59. A procedural issue arose early in this arbitration. Initially, the three experts filed their reports. However, the Unions filed a reply expert report from Dr. Wood without providing notice to CPKC.

60. In AH866-P[43], the arbitrator concluded the Unions' late filing of their expert's reply report, without notice, caused prejudice to CPKC and forced a change to the agreed-upon procedure for this arbitration.

[42] *Communications, Energy and Paperworkers Union of Canada, Local 30 v. Irving Pulp & Paper*, Ltd., 2013 SCC 34

[43] *Teamsters Canada Rail Conference - Maintenance of Way Employees Division et al v Canadian Pacific Kansas City Railway Company*, 2023 CanLII 113715

61. Ultimately, CPKC later filed its own expert reply reports.

62. In reply argument, the Unions asked the arbitrator to exclude CPKC's expert evidence. This request required the arbitrator to examine in greater detail the parties' expert evidence.

The duties experts owe to tribunals

63. The arbitrator had the benefit of three experts testifying about the current science for drug and alcohol testing. Witnesses generally cannot give opinion evidence in a legal proceeding. Regular witnesses can only testify about their personal knowledge of the facts.

64. The three experts acknowledged the crucial duty imposed on them when granted the privilege of giving opinion evidence. Dr. Evan Wood noted at the start of both of his reports[44] that "I am aware that under Subrule 11-2(1) of the Rules of Court, I have a duty to assist the court and not be an advocate for any party". Dr. Snider-Adler similarly acknowledged her duty[45]:

> As an expert, I acknowledge my duty is to assist the Arbitrator impartially on matters relevant to my area of expertise and not to be an advocate for any party. I further acknowledge that my duty as an expert to provide evidence pursuant to the above principles prevails over any obligation which I may owe to any party by whom or on whose behalf I am engaged.

65. Dr. Heustis commented on her duty in her reply report[46]:

> As an expert, I acknowledge my duty is to assist the Arbitrator impartially on matters relevant to my area of expertise and not to be an advocate for any party.

66. Tribunals expect experts to provide impartial testimony and to avoid advocating for any party. In *White Burgess*[47], the Supreme Court of Canada described this expert witness duty:

> [32] Underlying the various formulations of the duty are three related concepts: impartiality, independence and absence of bias. **The expert's**

[44] Unions' BoD, tab 29 and Ex-6.
[45] CPKC BoD, tab 23 and Ex-23.
[46] Ex-24.
[47] *White Burgess Langille Inman v. Abbott and Haliburton Co.*, 2015 SCC 23.

> **opinion must be impartial in the sense that it reflects an objective assessment of the questions at hand. It must be independent in the sense that it is the product of the expert's independent judgment, uninfluenced by who has retained him or her or the outcome of the litigation. It must be unbiased in the sense that it does not unfairly favour one party's position over another. The acid test is whether the expert's opinion would not change regardless of which party retained him or her**: P. Michell and R. Mandhane, "The Uncertain Duty of the Expert Witness" (2005), 42 Alta. L. Rev. 635, at pp. 638-39. **These concepts, of course, must be applied to the realities of adversary litigation. Experts are generally retained, instructed and paid by one of the adversaries. These facts alone do not undermine the expert's independence, impartiality and freedom from bias**.
>
> (Emphasis added)

67. Experts are not the only ones owing important duties in a legal proceeding.

68. Legal counsel owe a court or tribunal an important duty of candour. For example, Rule 5.1-2 in the *Rules of Professional Conduct*[48] states[49]:

> 5.1-2 When acting as an advocate, a lawyer shall not
>
> ...
>
> (i) deliberately refrain from informing the tribunal of any binding authority that the lawyer considers to be directly on point and that has not been mentioned by an opponent.

69. By analogy, the duty imposed on experts requires them to provide the decision maker with the relevant materials, in this case research studies, even if those studies may not support their position.

70. Duties owed to a decision maker are not one-sided; a tribunal, in turn, owes important obligations to the parties. For example, a decision maker cannot meet with one

[48] Law Society of Ontario, *Rules of Professional Conduct*.
[49] Subject to the requirement to provide proper notice, a court can sanction a lawyer who does not respect this duty: *Blake v. Blake*, 2019 ONSC 4062, appeal allowed for breach of procedural fairness: *Blake v. Blake*, 2021 ONSC 7189.

party without the other's knowledge[50] and must conduct an impartial hearing for all parties[51].

71. In short, in a legal hearing, an expert, regardless of who has retained and paid them, must satisfy the SCC's *White Burgess* acid test that "the expert's opinion would not change regardless of which party retained him or her".

The railway model of arbitration

72. The duty imposed on experts has special importance for the railway model of arbitration.

73. These parties regularly plead one or more grievances in a single hearing day. Exceptionally, given the subject matter, this policy arbitration took 18 days. At CROA[52], during an 18-day period, these parties could usually plead close to 100 grievances on the merits and receive final awards shortly thereafter.

74. Exceptionally again, the arbitrator benefitted in this railway arbitration from having skilled, experienced legal counsel representing all parties. In the usual course under the railway model, however, legal counsel representing both sides constitutes an exception to the usual practice.

75. In many railway cases, the arbitrator may represent the only legally trained person in the room. The parties expressly designed their arbitration system to allow railroaders to plead cases, though any party can retain legal counsel if they choose.

76. Thus, a railway arbitrator, working essentially as a sole practitioner, does not have the resources courts and law firms have for cases involving complex scientific evidence about drug and alcohol testing. This means that experts giving opinion evidence, consistent with their duty, must be scrupulously accurate in their reports. This obligation increases in importance given that some railway arbitrations may sometimes involve only a single expert.

77. This case differed from some of the reported arbitration awards in that the arbitrator did not just hear testimony from one or more experts commenting on third party scientific

[50] *R. v. Cowan*, 2022 ONCA 432
[51] *Environmental Appeal Board v. District Director, Metro Vancouver*, 2025 BCCA 303 and *Gardaworld Cash Services Canada Corporation v. Smith*, 2020 FC 1108
[52] Canadian Railway Office of Arbitration & Dispute Resolution

studies. CPKC also called Dr. Marilyn Heustis whose career has included conducting scientific research studies and publishing myriad peer reviewed papers, including on the issue of THC impairment.

78. The arbitrator therefore heard expert evidence from different perspectives: a toxicologist and THC scientific researcher (Dr. Heustis); an epidemiologist (Dr. Wood); and a medical practitioner in the drug addiction field (Dr. Snider-Adler).

Scientific studies

79. The experts discussed the "quality" of scientific research.

80. For example, Dr. Wood described[53] the important difference between double blind randomized control studies and non-randomized studies. The former involve comparing two identical groups "where different exposures (e.g. medications, drugs) can be compared between identical groups of exposed and unexposed populations". For example, a potential cancer drug might be tested using this method.

81. Dr. Wood indicated that lower-level studies do not involve randomization and "have no control group and just observe outcomes in study samples". Dr. Wood noted that non-randomized studies can lead to "confounding":

> A classic example of confounding would be the report of higher rates of pancreatic cancer once associated with coffee consumption, which was later found to be due to the confounding effect of cigarette smoking (which was more prevalent in coffee drinkers at the time this study was published in the New England Journal of Medicine in 1981).

82. Beyond the problem of compounding, Dr. Wood also described the concepts of "sensitivity" and "specificity" when evaluating testing results[54]. Similarly, he always questioned who funded the studies.

83. For cannabis studies in particular, Dr. Wood looked at the test subjects. Sometimes heavy cannabis users from lower socio-economic groups volunteered for a study to receive the associated monetary benefit. Thus, the control group, for example athletes and lawyers, might come from very different backgrounds. Differing test results may result not from cannabis but from those differing backgrounds.

[53] Unions BoD, tab 29, page 3.
[54] Unions' BoD, tab 29, page 11.

84. Dr. Heustis acknowledged the challenges in designing THC studies. Researchers cannot always use double blind randomized control studies. For example, ethical concerns prevent researchers from locking up two separate but identical groups for a long period of time and administering daily doses of marijuana to just one group.

85. The scientific community follows an impressive and robust peer review process. Not only do the researchers themselves habitually describe their studies' potential limitations, but they also subject their results to peer review by other experts. In addition, others, like Dr. Wood, will critique those studies.

86. This extensive internal and external review process helps to distinguish higher quality studies from others.

The Experts

87. As noted above, decision makers rely on experts to provide unbiased evidence. The arbitrator expects all experts, in line with their duty, to provide their professional opinion on what the scientific studies demonstrate.

88. As mentioned, the Unions near the end of the hearing asked the arbitrator to reject CPKC's expert evidence. For this reason, the arbitrator will briefly describe the experts and then review key points from their evidence.

Dr. Evan Wood

89. Dr. Wood, a full professor at the Medicine Department at UBC, produced two expert reports[55]. Dr. Wood, whose CV[56] demonstrates his extensive experience in addiction medicine, has testified in multiple labour arbitrations.

90. Dr. Wood holds a PHD and Post-Doc degrees (2003) from UBC in Clinical Epidemiology. He obtained his MD from the University of Calgary in 2007 and later was certified as an FRCPC[57] in Internal Medicine from UBC. In 2012, Dr. Wood received a certification in addiction medicine from the American Board of Addiction Medicine.

[55] Unions BoD, tab 29 (original report) and Ex-6 (reply report).
[56] Ex-7.
[57] Fellow, Royal College of Physicians and Surgeons of Canada.

91. In his original report[58] at page 3, Dr. Wood described the importance of applying evidence-based principles to workplace policies:

> My focus in preparing this report is to improve workplace and public safety through greater integration of the evidence-based medicine principals and substance use epidemiology when shaping workplace policies. For those who are less familiar with the term "epidemiology," it is an area of public health and medicine focussed on the rigorous pursuit of the causes of health outcomes in populations. This involves well defined and rigorous methods enabling conclusions (and strength of conclusions based on the strength of evidence) on the possible causes of health and illness in populations,

92. On page 5 of Dr. Wood's original report[59] he described, *inter alia*, his expertise in Clinical Epidemiology:

> My additional qualifications include a PhD in Clinical Epidemiology, which enables me to assess and interpret the validity of research findings as well as review and synthesize published research. I subsequently undertook a post-doctoral fellowship during which time the focus of my research was the impacts of substance use and addiction treatment on HIV/AIDS treatment outcomes among addicted HIV-infected patients.
>
> ...
>
> This report is being prepared in my personal capacity as an epidemiologist and expert in addiction medicine, substance use and impairment rather than representing the views of any of the above organizations.

93. Dr. Wood concluded his report[60] by emphasizing the importance of evidence-based approaches:

> Stepping back, clearly, the focus should be on identifying and avoiding workplace impairment and implementing reasonable approaches towards this critically important goal. Here, safer workplaces can be best achieved through evidence-based policies that seek to develop evidence-based testing regimes alongside other important tools to prevent and assess for workplace impairment. Non-evidence-based approaches risk the opposite effect.

94. The arbitrator took the following key points from Dr. Wood's cross-examination and evidence:

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[58] Unions' BoD, tab 29, PDF page 262/302.
[59] Unions' BoD, tab 29, PDF page 264/302.
[60] Unions' BoD, tab 29, PDF page 279/302.

Expertise and Outside Activities

- Dr. Wood agreed that he had never conducted studies on residual impairment. Neither had he published any articles on THC and impairment. He had not conducted studies giving controlled substances to volunteers since he was not a toxicologist.
- Dr. Wood acknowledged his role as a co-founder of Stop the Violence BC. He disagreed he advocated for the legalization of THC but instead advised he called for its regulation. He agreed that he had appeared before the House of Commons in 2014 and may have said "cannabis itself is relatively safe", within the context of everything he said during that appearance.
- Dr. Wood also agreed he acted as Chief Medical Officer for Numinus between 2020 and 2022. He received equity instead of a salary. At the time of the cross-examination, Dr. Wood still held a significant equity stake in Numinus.
- Numinus provided psychedelic assisted therapies. Dr. Wood did not disagree that a Numinus press release issued when he held the CMO position indicated they were improving the lab for cannabis. He added that Numinus never produced a cannabis product but achieved this by merging with Salvation Botanicals. He agreed that his equity stake would increase the more Numinus shares increased in value. In re-exam, Dr. Wood added that Numinus was no longer involved with marijuana.
- Dr. Wood agreed that he received grants from the US National Institute on Drug Abuse (NIDA). During his cross-examination on December 6, 2023, he advised he currently had one NIDA grant.

Comments on various studies

- Dr. Wood agreed that the *Verstraete*[61] study referenced at footnote 12 of his original report used a 0.5 cutoff level when detecting THC after 34 hours, a cutoff level well below the 4/2ng/ml in CPKC's DAPP.
- Dr. Wood agreed that the *McCartney* meta-analysis[62] he referenced dealt only with occasional users and not chronic users. That study involved one low dose and an examination of the acute effects of THC. In later reply evidence, Dr. Wood noted *McCartney* had examined two different groups of users: "regular" and "other (mostly occasional)".

Lee

- Dr. Wood agreed the *Lee*[63] study involved only chronic users who smoked roughly 10 joints a day for 10 years. He agreed he did not mention this explicitly in the last two paragraphs on page 10 of his report but noted the study's title itself referenced chronic THC smokers.

[61] CPKC Book of Scientific Articles, tab 46.
[62] CPKC Book of Scientific Articles, tab 38.
[63] CPKC Book of Scientific Articles, tab 34. Dr. Heustis was a co-author.

- Dr. Wood again agreed, when taken to his comment at page 12 of his report (subtitle “a”), that *Lee*[64] only involved chronic users:

> As only one example and as highlighted in my review of the study above by Lee et al. which had participants reside "on the Johns Hopkins Behavioral Pharmacology Research Unit under continuous surveillance to ensure cannabis abstinence" individuals were documented to have oral fluid levels positive at 2ng/mL up to 28 days of monitored abstinence.

- For his comments about *Lee*[65] at page 18 of his reply report, Dr. Wood agreed that that study used a 0.5 cutoff rather than CPKC’s 2ng/ml. He agreed that the 0.5 cutoff would provide a longer THC detection window.
- Dr. Wood agreed that *Anizan*[66], which he referenced at page 10 of his original report, used a 0.5 cutoff, rather than CPKC’s 4/2ng/ml.

Fischer

- Dr. Wood agreed that his report, and its page 13 reference to the review study “Lower-Risk Cannabis Use Guidelines: A Comprehensive Update of Evidence and Recommendations” by *Fischer*[67], did not mention their first recommendation for abstinence:

> RECOMMENDATIONS
>
> Recommendation 1: The most effective way to avoid any risks of cannabis use is to abstain from use. Those who decide to use need to recognize that they incur risks of a variety of—acute and long-term—adverse health and social outcomes. These risks will vary in their likelihood and severity with user characteristics, use patterns, and product qualities, and so may not be the same from user to user or use episode to another. [Evidence Grade: None required.]

- Dr. Wood further agreed, when he wrote on page 12-13 of his original report that “[evidence-based organizations... have concluded that safety-sensitive activities like operating a motor-vehicle should be delayed for a period of hours (e,g, 6 hours) after cannabis use”, that *Fischer* had used the phrase ”at least 6 hours” and had added this further caveat:

> Recommendation 8: Driving while impaired from cannabis is associated with an increased risk of involvement in motor-vehicle accidents. It is recommended that users categorically refrain from driving (or operating other machinery or mobility devices) for at least 6 hours after using cannabis. This wait time may need to be longer, depending on the user and the properties of the specific cannabis product used. Besides these behavioral recommendations, users are bound by locally applicable legal limits concerning cannabis impairment and

[64] CPKC Book of Scientific Articles, tab 34.
[65] CPKC Book of Scientific Articles, tab 34. Dr. Heustis co-authored this study.
[66] CPKC Book of Scientific Articles, tab 1.
[67] CPKC Book of Scientific Articles, tabs 19 and 20. *Fischer (2017)* updates *Fischer (2011)*.

> driving. The use of both cannabis and alcohol results in multiply increased impairment and risks for driving, and categorically should be avoided. [Evidence Grade: Substantial.]

- Dr. Wood also agreed that his report did not include this additional comment from page E6 in *Fischer* which stated "Some of these impairments have been found to persist after acute intoxication, particularly in chronic users".
- For Dr. Wood's reference to *Arkell*[68] at page 13 of his original report about the detection of cannabis impairment, he acknowledged the dose given involved 13.75mg of THC and that the study involved only casual users and not chronic users.
- When asked about his fourth paragraph on page 13 of original report which started "Collectively...these studies imply impairment from cannabis generally lasts < 6 hours...", Dr. Wood could only reference *Chait*[69] (1990). The participants in *Chait* reported smoking marijuana 1 or 2 days a week (page 331).

Dr. Scott MacDonald Book

- For the reference on page 13 of his original report to Dr. Scott MacDonald's book[70], Dr. Wood agreed that the book had not been peer reviewed, though he added books are not usually peer reviewed. He further agreed that the Acknowledgements section in the book differed from a peer review process.
- CPKC took Dr. Wood to this paragraph in his original report at page 13[71]:

> "For instance, a recent comprehensive review by Dr. Scott MacDonald, a professor and expert on substance use and injuries based at the Canadian Institute of Substance Use Research at the University of Victoria concluded that studies implying prolonged impairment from cannabis use are "highly misleading" due to "confounding variables with cross-sectional research designs." Based on my own independent review of the literature, this conclusion is accurate".

- Dr. Wood agreed in cross-examination that Dr. MacDonald's book only used the phrase "highly misleading" once, on page 104, and that it referred solely to *Dahlgren*[72].
- Dr. Wood agreed that Table 10 on page 106 in Dr. MacDonald's book entitled "Studies of hangover effects from cannabis" did not include *Hirvonen*, *Bosker* or *Bergameshi*[73].
- When Dr. Wood noted that *Bosker* was not a randomized study, he agreed that Table 10 included other studies which were not randomized.

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[68] CPKC Book of Scientific Articles, tab 2.
[69] CPKC Book of Scientific Articles, tab 9.
[70] CPKC Book of Scientific Articles, tab 48.
[71] Dr. Wood also quoted the phrase "highly misleading" again in his reply report at pages 18-19 (Ex-6).
[72] CPKC Book of Scientific Articles, tab 14.
[73] CPKC Book of Scientific Articles, tabs 24, 7 and 3.

- Dr. Wood agreed that his original report did not reference the section entitled "Long Term Cognitive Deficits" at pages 108-111 of Dr. MacDonald's book. That section started "Long-term cognitive deficits from long-term heavy cannabis use are possible based on studies of long-term abstinent cannabis users versus controls. The research is not conclusive due to other methodological flaws in the study designs and mixed findings". Dr. Wood added that he relied on Dr. MacDonald's book for his report.
- For *Bosker*[74], a study which Dr. Heustis co-authored, Dr. Wood agreed that the authors stated on page 5 "Results showed that psychomotor performance of chronic, daily cannabis smokers improved throughout 3 weeks of abstinence, but remained significantly poorer than performance of a control group of occasional drug users". Dr. Wood found the study of poor quality since the improvement in performance for chronic cannabis users could result from people repeating the same test. Dr. Wood also commented that the study did not consider race and social status. He described *Bosker* as a low-quality study trying to infer causation. He agreed that the subjects' improvements occurred over several weeks as opposed to hours. In re-exam, Dr. Wood emphasized that *Bosker* does not show chronic cannabis use leads to residual impairment.
- For his report at page 14, Dr. Wood agreed that *Dahlgren*[75] did not list the gender differences he raised between the groups (Cannabis users v. healthy controls) as a limitation. Dr. Wood indicated he could not comment if a gender difference existed for cannabis without doing a literature search. He noted that a study's failure to mention a limitation was meaningless when evaluating it.
- For *Bidwell*[76], Dr. Wood commented on Dr. Snider-Adler's evidence in his reply report at page 6 stating "However, upon review of the Bidwell paper, the word "titration" does not appear in the author's interpretation of their results". Dr. Wood acknowledged on cross-examination that he missed Bidwell's reference to "titration" on page 4 of that study.
- For his comments about Dr. Snider-Adler's opinion at pages 7-8 of his reply report, Dr. Wood acknowledged that *Menetrey*[77] and *Fant*[78] examined casual users and did not measure beyond 24-25 hours. For *Fant*, Dr. Wood had stated at page 8 of his reply report "Lastly, in a study by Fant et al. showing no residual impairment in a study involving a cannabis cigarette estimated to contain 20mg THC...".
- For page 13 of his reply report, Dr. Wood agreed he quoted from the abstract of the systemic review of various studies in *Biasutti*[79] but did not include the 7th line in that abstract which read "None of the studies assessed cannabis-related impairment".

[74] CPKC Book of Scientific Articles, tab 48.
[75] CPKC Book of Scientific Articles, tab 14.
[76] CPKC Book of Scientific Articles, tab 5.
[77] CPKC Book of Scientific Articles, tab 39.
[78] CPKC Book of Scientific Articles, tab 18.
[79] CPKC Book of Scientific Articles, tab 4.

- Dr. Wood agreed that *Ramaekers*[80] was an acute impairment study and that it did not see a difference between chronic and casual users for acute impairment. He disagreed with Dr. Heustis' view[81] that *Ramaekers* supported a conclusion of residual neurocognitive impairment with frequent cannabis use.
- Dr. Wood agreed he had an H-index rating of 79 and did not dispute that Dr. Heustis had a rating of 102. In re-exam, Dr. Wood mentioned that the H-index rating comes from how often an author is cited and that both Dr. Heustis and he were in the top 1% percentile.
- When questioned about his reply report's page 16 comments on *Pope*[82], Dr. Wood agreed with the suggestion that cannabis associated deficits are reversible. He acknowledged that he had personally never conducted any studies of this type. He disagreed with *Pope*'s conclusions at pages 45-46 since those came from assessing two different groups.
- For *Bolla*[83] Dr. Wood agreed that that study's "protocol was approved by the National Institute on Drug Abuse–Intramural Research Program (NIDA-IRP), the Joint Committee on Clinical Investigation, and the Johns Hopkins Bayview Medical Institutional Review Boards". He agreed that the abstract said *inter alia* "Very heavy use of marijuana is associated with persistent decrements in neurocognitive performance even after 28 days of abstinence". Dr. Wood testified that the study did not show cause/effect and only involved 7 people in the "heavy users group".
- Dr. Wood agreed he was not saying that no risk existed from residual cannabis impairment. But he had concerns with the studies' designs. He agreed one must consider all the scientific studies but also consider their limitations.
- Dr. Wood testified he did not disagree with this statement in Health Canada's "Information for Health Care Professionals"[84]:

> Nonetheless, studies generally suggest that chronic cannabis users may suffer varying degrees of cognitive impairment that have the potential to be long-lasting, especially if use begins earlier on in adolescence (< 16 years of age), is frequent (i.e. daily or near-daily), and persistent (i.e. over the course of years).

Blood Alcohol Concentration

- In his original report on page 17 about the DAPP's revised Blood Alcohol Concentration (BAC) of .02, Dr. Wood wrote:

> For instance, according to an easily interpretable chart provided by the University of Notre Dame, it has been reported that this level of alcohol concentration (0.020 - 0.039%) is generally associated with "No loss of coordination, slight euphoria, and loss of shyness. Relaxation, but depressant effects are not apparent.

[80] CPKC Book of Scientific Articles, tab 43.
[81] See, for example, Ex-24 Dr. Heustis reply report.
[82] CPKC Book of Scientific Articles, tab 42. Dr. Heustis co-authored this study.
[83] CPKC Book of Scientific Articles, tab 6.
[84] Ex-32, PDF page 172/266.

- In cross-examination, Dr. Wood acknowledged that he obtained this information from a chart/table[85] found on a website for the "Rev James E. McDonald[86], C.S.C. Centre for Student Well-Being" at the University of Notre Dame. He agreed that the chart/table was not a scientific article or study.

- At page 18 of his original report, Dr. Wood opined: "Generally, a level of 0.02 in itself would be considered non-impairing absent other factors". On cross-examination, Dr. Wood did not disagree with the opening statement in *Zador*[87] at page 387 that:

> Based on extensive research over several decades, we now have overwhelming evidence showing that even blood alcohol concentration (BAC) levels as low as 0.02% impair driving-related skills.

- When CPKC cross-examined Dr. Wood about *Irwin*[88], he did not disagree with that study's conclusion:

> Results from the meta-regression analyses in the present study demonstrate that, when using a car-based simulator, acute alcohol consumption causes an increase in SDLP, starting from as low as 21 mg·dL-1[89] BAC, with a 0.7 cm increase in SDLP for every 10 mg·dL-1 increase in BAC thereafter.

- Dr. Wood described *Irwin* as a rigorous study.
- The arbitrator's notes include Dr. Wood agreeing on cross-examination words to the effect that "I agree there is an impact at a low level like 0.02".
- For the 32-hour testing window on which Dr. Wood commented at page 18 of his original report, he advised that he had not been aware when he wrote the report that the DAPP had an 8-hour window for alcohol testing. He agreed that an 8-hour testing window for alcohol can show impairment.
- Dr. Wood also acknowledged that he is not an expert in pharmacokinetics and agreed that THC can build up in a person's fat deposits.
- At page 7 4th paragraph of his original report, Dr. Wood wrote:

> For instance, although it is known that THC and metabolites transition out of fat cells and into plasma prior to excretion, it is estimated that only approximately 25% of the variability in THC excretion patterns is dependent on an individual's body fat percentage.

- Dr. Wood acknowledged that his supporting reference, *Goodwin*[90]*,* never mentioned 25%.

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[85] Ex-34.
[86] Ex-33.
[87] CPKC Book of Scientific Articles, tab 47.
[88] CPKC Book of Scientific Articles, tab 30.
[89] Dr. Wood agreed that "21 mgdl" meant .02 BAC.
[90] CPKC Book of Scientific Articles, tab 23. Dr. Heustis co-authored this study.

Dr. Melissa Snider-Adler

95. Dr. Snider-Adler produced an original expert report[91] and a later reply report following the Unions filing of Dr. Wood's reply report[92].

96. Dr. Snider-Adler has testified as an expert for employers in numerous labour arbitrations, several of which have involved Dr. Wood testifying for the trade union involved. Her original report indicated she has been involved in addiction medicine since 2000:

> I am a physician licensed by the College of Physicians and Surgeons of Ontario, a Fellow for the American Society of Addiction Medicine, certified as a Diplomat of the American Board of Addiction Medicine and hold a Certificate of Added Competence in Addiction Medicine by the Canadian College of Family Physicians. I am also certified as a Medical Review Officer through the American Association of Medical Review Officers (AAMRO) in compliance with the U.S. Department of Transportation Alcohol and Drug Testing regulations.
>
> …
>
> I began my practice in Addiction Medicine in 2000 and since then have worked in over nine clinics in a variety of communities across Ontario. I have over this time treated thousands of patients suffering from Substance Use Disorder, mainly Opioid Use Disorder with concurrent disorders and polysubstance use including alcohol, cocaine, methamphetamine and cannabis.

97. She described her work for DriverCheck Inc.:

> I began working as a Medical Review Officer (MRO) in 2007 at DriverCheck Inc. DriverCheck Inc. was founded in 1996 and continues to provide comprehensive Alcohol and Drug Testing Programs to more than 6,500 companies spanning across Canada. I am presently the Chief Medical Review Officer for DriverCheck Inc., which involves MRO work, overseeing the other MROs who provide work for DriverCheck and answering questions that may arise regarding Alcohol and Drug Testing. DriverCheck Inc. conducts over 300,000 drug and alcohol tests annually. DriverCheck Inc. also provides comprehensive Third Party Administrator Services (TPA), including test booking services, computerized random testing selection services, specimen collection services, mobile collection services and a host of occupational health services.

[91] CPKC BoD, Tab 23.
[92] Ex-23, Dr. Snider-Adler's reply report.

98. Dr. Snider-Adler testified that in August 2023 she completed the "Harvard Medical School Postgraduate Medical Education, Foundations of Clinical Research Program, Certificate Program[93]". She advised that while she did not conduct research, she took this certificate to upgrade her analysis of research studies.

99. The arbitrator took the following key points from Dr. Snider-Adler's cross-examination and evidence:

Expertise and outside activities

- Dr. Snider-Adler agreed she was not a trained researcher and did not have a masters or Phd degree. She started out as a family physician and has a speciality in family medicine.
- Dr. Snider-Adler has been providing expert reports and testimony since 2014, including on multiple occasions for CPKC. In re-exam, she referenced her CV which listed 42 legal cases, 11 of which were for CPKC.
- Dr. Snider-Adler agreed she had never worked as a railroader. She never worked for a railway or in a train yard. She had never conducted any railway studies since she is not a researcher. She similarly had never conducted any residual impairment studies herself.

DriverCheck involvement

- For her medical review officer (MRO) work for DriverCheck (DC), Dr. Snider-Adler reviews roughly 210-240 tests a month and has been Chief MRO since 2016. She supervises between 7-9 other MROs. She provides roughly 16 hours of availability per month and receives a monthly stipend.
- Dr. Snider-Adler receives roughly 35-45% of her income from DC. That estimate includes income if DC asks her to do an expert report for a client, such as for CPKC. Independent of DC, Dr. Snider-Adler receives income from her consulting work, such as when lawyers contact her to do expert reports. Through her corporation, she also does independent medical evaluations, chart reviews and OHIP work in her medical practice.
- She agreed she would not expect residual impairment from casual THC users.
- Dr. Snider-Adler agreed that DC conducted lots of testing but could not say if they conducted hundreds of thousands of tests as suggested by the Unions. She presumed DC made more money the more tests it conducted.
- DC has paid her since 2007. She only gets paid if a positive test occurs. As an MRO, she will speak with an employee who tests positive.
- Dr. Snider-Adler agreed that as of August 2023 DC had roughly 6500 clients.
- She had never worked directly for CannAmm, the other major Third Party Administrator in the market, but had provided reports to lawyers who had used CannAmm.

[93] CPKC BoD, Snider-Adler CV, PDF page 1827/2068.

- Dr. Snider-Adler agreed she had reviewed hundreds of positive tests for CPKC but could not agree to having reviewed thousands. She agreed her work for CPKC had been continuous.
- For DC, Dr. Snider-Adler might also do work for its Occupational Health department, such as reviewing whether someone with a medical cannabis prescription could perform safety sensitive work. She might also review whether an individual with a substance use disorder could return to work.
- She agreed that DC used her picture on its website. Each year she spoke at DC's annual client conference.
- Dr. Snider-Adler advised she worked as an independent contractor for DC. She agreed that employers hired her for her expertise on drug and alcohol issues. In re-exam, she noted that 1 or 2 trade unions had retained her to provide information on drug testing and passive exposure, but she had only prepared reports for them.
- She disagreed she had a conflict of interest and was biased, even unconsciously, when evaluating the studies despite having an independent contractor relationship with DC. She agreed she received income from defending test results for employers. Dr. Snider-Adler advised she gave her opinion no matter who retained her.
- She advised that she did not write or review drug and alcohol policies but would respond to employer questions about things such as cutoff levels.

Expert Report

- Dr. Snider-Adler shared her original report with CPKC's legal counsel but did not send a copy to Dr. Heustis
- Dr. Snider-Adler agreed that confounding and a small sample size could negatively impact a study's conclusions. She did not know what a type 1 and type 2 error was since that was not part of her day-to-day work.
- She agreed that chronic cannabis users differed from casual users. Chronic users may suffer from other factors which impact their performance. She disagreed these other factors explained all performance differences since chronic users would improve their performance over days and months when abstaining from cannabis.
- Dr. Snider-Adler disagreed that confounding might explain the results since subjects improved performance during abstinence. If confounding factors like IQ or personality traits existed, she would not expect to see improvement during abstinence.
- She agreed that randomizing can eliminate confounding. In an ideal world, one would randomize, but that does not work for substance abuse. Randomizing could however work for people testing a new cancer drug.
- She agreed that random trials were at the top of the research hierarchy, but added one cannot conduct a true random study for 20 years to see how chronic cannabis users fare compared with non-users.
- She agreed that low dose studies with chronic users will not show any effects.

- For the meta-analysis in *McCartney*[94], Dr. Snider-Adler stated that that study only drew conclusions about casual users.
- For Dr. MacDonald's self-published book[95], Dr. Snider-Adler took issue with Dr. Wood's criticism of her report's review of the literature. She noted that Dr. Wood relied on Dr. MacDonald's book which also reviewed the literature.
- When faced with the suggestion that her reply report, but not her original report, said that only chronic users had residual impairment, Dr. Snider-Adler referenced pages 16, 18-19 and 21 of her original report which in her view said implicitly that she was talking about daily users having residual impairment. She agreed that only chronic users have residual impairment.
- Dr. Snider-Adler agreed that testing results at 4/2ng/ml could be positive for up to 24 hours.
- Dr. Snider-Adler indicated that OF testing did not indicate impairment. But it showed a time frame for use which could then be compared with the research on impairment.
- Dr. Snider-Adler disagreed that *McCartney*[96] applied to both chronic and casual users. In her view, that meta-analysis came to conclusions only for casual users.
- For the 28-day ban, Dr. Snider-Adler agreed that casual users had no residual impairment after the acute impairment phase. She agreed that Transport Canada had put in place a 28-day ban for pilots but had not done the same for railway workers.
- She could not comment on Arbitrator Peltz allegedly not accepting her expert evidence without reviewing the decision.

Dr. Marilyn Heustis

100. Dr. Heustis prepared an expert report[97] and a reply report[98] which responded to Dr. Wood's reply report. Dr. Heustis' 109-page CV[99] on pages 9-10 summarized, *inter alia*, her research career:

> [Dr. Heustis] retired as a tenured senior investigator and Chief, Chemistry and Drug Metabolism Section, IRP, National Institute on Drug Abuse, National Institutes of Health in 2016 after 23 years of conducting controlled drug administration studies. She was an Adjunct Professor, University of Maryland School of Medicine, Baltimore, MD from 1999-2017. Currently, she is a Senior Fellow at the Institute on Emerging Health Professions, Thomas Jefferson University, Philadelphia, PA, Adjunct Professor, University of New Mexico, College of Pharmacy, Honorary Professor, Barts & London School of Medicine & Dentistry, Queen Mary University of London, England on the Smart Approaches to Marijuana (SAM) Science Advisory Board, and President of

[94] CPKC Book of Scientific articles, tab 38.
[95] CPKC Book of Scientific articles, tab 48.
[96] CPKC Book of Scientific articles, tab 38.
[97] CPKC BoD, Tab 24.
[98] Ex-24.
[99] Ex-40.

Huestis & Smith Toxicology, LLC. Her research program focuses on the neurobiology and pharmacokinetics of cannabinoid agonists, kratom/mitragynine, oral fluid drug testing, and driving under the influence of drugs. She published 588 peer-reviewed manuscripts and book chapters and hundreds of invited lectures and abstracts were presented at national and international meetings. Professor Huestis has an AB in biochemistry from Mount Holyoke College, a MS in clinical chemistry from the University of New Mexico, and a PhD in toxicology from the University of Maryland. Professor Huestis received a Doctor Honoris Causa from the Faculty of Medicine, University of Helsinki in Finland. Other important awards include the 2025 Widmark Award from ICADTS, 2023 CMCR Pioneer in Medicinal Cannabis Research Award, 2023 Mechoulam Award from ICRS, 2021 AACC Outstanding Lifetime Achievement Award, 2021 NSC Distinguished Service to Safety Award, 2021 AAFS Alexander O. Gettler Award, 2018 NSC Borkenstein Award, 2016 Victorian Institute of Forensic Medicine Orator, Melbourne, Australia, 2016 Marian W. Fischman Lectureship Award from the College on Problems of Drug Dependence, 2015 Distinguished Fellow from AAFS, 2010 TIAFT Alan Curry Award, 2007 IATDMCT Irving Sunshine Award, 2005 AAFS Rolla N. Harger Award, and 1992 Irving Sunshine Award for Outstanding Research in Forensic Toxicology. The journal Clinical Chemistry featured her as an “Inspiring Mind”. She currently serves on the World Anti-doping Agency’s Prohibited List Committee, and the National Safety Council’s Alcohol, Drugs and Impairment Division Executive Board. She is a SOFT past president, past Toxicology Chair and Board of Directors, AAFS, and TIAFT past president.

101. The arbitrator took the following key points from Dr. Heustis’ cross-examination and evidence:

Prior testimony

- Dr. Heustis agreed that drug testing impacts privacy rights.
- Over the last 5 years she had testified on 5 previous occasions in criminal and civil cases, including depositions. She had testified as an independent expert for a company making a kratom supplement, attended a deposition for plaintiffs in a case, testified about residual impairment for a defendant charged after being in an accident and gave evidence for defence attorneys for allegations involving a toxicologist.

CPKC Involvement

- She had never previously been retained in a case involving CPKC.
- Dr. Heustis had no knowledge of how CPKC applied its DAPP beyond reading it.
- She acknowledged she had never been in the field observing how railways operated.
- Dr. Heustis commented on CPKC’s screening at 4ng/ml. She understood the testing process stopped if the person tested negative at 4ng/ml. If positive, then the sample was sent for confirmation testing at 2ng.

- In preparing her original opinion[100], Dr. Heustis advised that CPKC had provided her with the old and revised DAPP. CPKC also provided policies from other Canadian entities. During the hearing, the parties resolved certain legal issues which resulted in CPKC filing Dr. Heustis' retainer letter[101] as an exhibit.
- Dr. Heustis agreed she never met any of the Unions' representatives before the arbitration. She did not interview them, or any employees they represented, when preparing her expert report. Neither did she ride on a CPKC train or visit one of its freight yards or tracks.
- She suggested that for CPKC 32 hours was a reasonable testing time frame for THC given that accidents can happen anywhere and it can be tough to reach people.
- She agreed she did not know how many CPKC employees would fall into the chronic user category. She only knew that surveys suggested 23% of Canadians consumed THC daily.
- She did not know if CPKC had a great safety record. She had no knowledge of any accidents or deaths attributed to THC.
- Dr. Heustis agreed she received no demographic information (age, service, safety records, etc) about the Unions' members; she knew only that they occupied SS/SC positions at CPKC. She had the DAPP when preparing her opinion but had no information about how CPKC applied it in the field.
- She had no information about chronic cannabis users at CPKC which she advised could not be obtained without testing and evaluating everyone. She only had the Canadian survey about cannabis use.
- For *Bosker*[102], one of her own studies where some participants had left during testing[103], Dr. Heustis acknowledged the volunteers came from the Baltimore area. For 30-day residential studies, Dr. Heustis acknowledged that they usually had more men than women due to childcare.
- For cannabis studies, compared to those involving heroin, Dr. Heustis had a better socio-economic class mix for participants since college students and the unemployed could participate. She agreed she did not have people, like those working full time at CPKC for example, participating in a 30-day study.

Conflicts

- She advised she had no conflict of interest in testifying given her role as a researcher. Researchers must disclose any potential conflicts in the manuscripts they submit.
- Dr. Heustis agreed she became a Scientific Advisor for Cannabix Technologies after she retired in 2016. Cannabix was developing a cannabis breath test. She received stock options to help develop randomized studies. She left in 2022 before Cannabix had any commercial cannabis breath test.

[100] CPKC BoD, tab 24.
[101] Ex-46.
[102] CPKC Book of Scientific Articles, tab 7.
[103] *Ibid*., at PDF page 87/942.

- In re-exam, she advised she provided advice based on her experience as a forensic toxicologist and someone who conducted controlled studies. She had never held the position of scientific advisor for a company which marketed a commercial product.
- When asked where her CV[104] listed Cannabix, she pointed to page 1 under the heading Professional Positions.
- Dr. Heustis agreed she testified as an expert in California possibly in 2016. In her 3-minute presentation she recalled opining that THC blood concentration does not correlate with THC impairment.
- Dr. Heustis also agreed she testified at the district attorney's request before an elected committee in Sacramento.
- She disagreed she testified in California on behalf of Cannabix or that she had any conflict of interest. The California Attorney General invited her to speak about blood testing and not breath testing.
- She agreed she was a Scientific Advisor to Smart Approaches to Marijuana (SAM). She received no compensation. SAM advocated against legalizing marijuana. She provided them with scientific information. She only signed onto their communications if she agreed with them.
- She agreed she was a consultant for Pinney Associates with the title Science and Policy Advisor. Pinney paid her as a consultant if she performed services. She disagreed Pinney developed prescription drugs. They instead advised pharmaceutical companies. She advised Pinney about cannabinoids but never did anything for them related to drug testing.
- In re-exam, Dr. Heustis advised that Pinney conducted no drug testing or development. It was not a pharmaceutical company.
- Dr. Heustis agreed that her for profit company, Heustis and Smith, consulted for companies like CPKC. She had last testified for an employer in a Canadian labour arbitration roughly 10 years ago in a case examining whether a contract allowing for random drug testing had been violated.
- She agreed she had never testified for any unions in Canada.
- Despite her picture appearing on their website, Dr. Heustis had no involvement with the group Foundation for Drug Policy Solutions[105]. She had worked with some of the people pictured on the Leadership Counsel web page. Several were members of SAM.
- Dr. Heustis had worked for Suncor before the pandemic. She provided advice on OF and urine/blood testing in their drug and alcohol policy.
- She also worked for the Canadian Nuclear Safety Commission (CNSC) serving as a science expert when their advisory committee met to discuss drug and alcohol policy. She received payment for her services just as other experts do. While she provided her opinion, she did not participate or testify in any of the subsequent litigation about that policy.

[104] Ex-40. An earlier version of this CV is found in CPKC's BoD at tab 24, PDF page 1881/2068.
[105] Ex-55.

- In re-exam, she disagreed with the suggestion she defended the CNSC policy. She was asked to review the CNSC policy and suggest changes. She participated in numerous emails and phone calls about the revisions to the CNSC policy.
- She advised she never received or reviewed a draft opinion from Dr. Snider-Adler. She did not discuss the original reports until after their filing. After being surprised when Dr. Wood filed a supplementary report, she independently prepared her own supplementary report. She did not discuss it with Dr. Snider-Adler.
- She disagreed that Dr. MacDonald's book[106] helped this case since other experts had not reviewed it. She did not know that that book had referenced her research 11 times.
- Dr. Heustis opined that the issue Dr. Snider-Adler addressed in her report involving titration and higher THC potencies remained an open question for her.
- Dr. Heustis agreed that Ex-47[107], a 2007 article critical of the American College of Occupational and Environmental Medicine (ACOEM)[108], stated that the ACOEM represented "…the interests of its company-employed physician members". That article further stated, *inter alia*, "The controlling influence of industry over the ACOEM physicians should cease".
- She agreed that drug and alcohol testing was useful as a deterrent and to help people. It represented an important tool in an overall safety program.

Scientific studies

- Dr. Heustis disagreed with Dr. Wood's suggestion she relied on lower quality studies and omitted higher quality ones. She suggested Dr. Wood's opinions and testimony confused studies examining chronic users versus casual users.
- She agreed that studies with chronic users cannot eliminate all possible confounding factors. Her studies had tested chronic users as they went through a period of abstinence. Due to withdrawal symptoms, some participants chose to leave prior to the study's scheduled end.
- Dr. Heustis agreed that she did not list all studies' limitations in the body of her expert opinion. She added neither did the two other experts
- For *Sorkhou*[109], Dr. Heustis agreed that it was proper for that review paper to discuss overall strengths and limitations (page 14), including that confounding could impact the results. She noted that one does not exclude studies from a scientific analysis just because they identify possible limitations.
- She agreed that it was possible that there was no causal link between chronic users and residual impairment. She maintained that residual impairment studies remained important despite possible limitations.

[106] CPKC Book of Scientific Articles, tab 48.
[107] Int J Occup Environ Health 2007; 13:404-426.
[108] Ex-44. The ACOEM prepared a paper on Cannabis which provided recommendations from an "Evidence-based Practice Chronic Pain Panel".
[109] CPKC Book of Scientific Articles, tab 45.

- For her *Hirvonen* and *Bosker* studies[110] which involved heavy daily cannabis users, Dr. Heustis acknowledged she had no information about the Unions' members' own cannabis use. She only knew about general Canadian population usage from the Canadian survey[111]. That survey did not reflect participants' level of daily use in *Hirvonen* and *Bosker*.
- For *Bosker*, Dr. Heustis agreed that psychomotor improvement could improve through practice though they took steps to eliminate that factor. She agreed that the study commented on its possible limitations on page 6.
- For *Brands*[112], Dr. Heustis advised she did not reference this study in her report since it did not deal with chronic cannabis users.
- For the OF test, Dr. Heustis confirmed her comment at page 4 of her supplementary report that "…no one proposes that oral fluid testing identifies impairment, rather that it identifies recent cannabis use". OF testing provides a window of detection which can be compared with studies on the impact of this window on individual performance.
- Dr. Heustis opined that acute impairment lasted between 6-12 hours. She agreed that a 2ng/ml cutoff does not prove impairment. When asked what percentage of people testing positive at a 2ng/ml are impaired, she answered that no one has that information.
- She testified that at 2ng/ml, a positive test could fall outside the window of impairment. But the previous 10ng/ml at CPKC was too short and only showed a 3-hour window for recent use.
- For *McCartney*[113], Dr. Heustis commented that the study dealt only with casual users since its definition of regular cannabis users included those who used weekly or more often (page 186). In her view, weekly users are casual not chronic users.
- For *Arkell*[114], Dr. Heustis agreed it was a good study, but it was not about residual impairment for chronic users, which is what Dr. Wood's opinions had implied.
- When asked if impairment for casual users ended after 5 hours, Dr. Heustis disagreed and indicated that, while some believe it can last up to 24 hours, her research showed it lasted from 6-12 hours.
- For *Hubbard*[115], Dr. Heustis noted that they stopped testing for impairment after 4.4 hours. She agreed that 3 hours constituted the likely period of greatest impairment.
- Dr. Heustis agreed that *Hubbard* used 10ng/ml to show use within 3 hours. Using 2ng/ml would constitute a wider window of drug detection going up to 24 hours and might catch some people who were not impaired.

[110] CPKC Book of Scientific Articles, tabs 24 and 7.
[111] Ex-37 Government of Canada, *Canadian Cannabis Survey 2023: Summary*. The government conducts this survey annually.
[112] CPKC Book of Scientific Articles, tab 8.
[113] CPKC Book of Scientific Articles, tab 38.
[114] CPKC Book of Scientific Articles, tab 2.
[115] CPKC Book of Scientific Articles, tab 25. Dr. Heustis coauthored this study.

- Dr. Heustis disagreed that it was safer to use 10ng/ml as they did in *Hubbard* since it only detected use for 3 hours whereas impairment lasted longer than that. She advised she had previously recommended 4ng/ml and 2ng/ml for the confirmation test when advising the Canadian Nuclear Safety Commission.
- Dr. Heustis agreed that lowering the cutoff from 10ng/ml to 2ng/ml increased the detection window but added that the employee would first have to test positive at 4ng/ml for the screening window. She understood that a negative test at 4ng/ml meant no confirmation testing took place which is the standard practice in the US.
- Dr. Heustis agreed that chronic users could go from negative to positive on their blood and urine tests. In *Lee*[116], they mentioned that chronic users take in more THC than they can excrete which builds up a reservoir which when released can produce positive blood and urine tests. They also suspected when they saw spikes that some participants had taken cannabis during the study. They still included the data despite these suspicions.
- For her retainer letter[117] to provide an expert opinion, Dr. Heustis advised she did not consult about or draft the DAPP.
- Dr. Heustis agreed that chronic and casual users had similar detection times on the OF test.
- Dr. Heustis disagreed with Dr. Wood's suggestion that someone could be positive at 2ng/ml for several days and up to a week.
- She agreed that there are few studies[118] about chronic users given the cost of housing them in a secure environment for a significant period of time.
- For the *Andas*[119] study, Dr. Heustis noted that participants illicitly took drugs (page 809) and that they used a cutoff of .3ng/ml (page 812), a threshold far lower than 2ng/ml.
- Dr. Heustis disagreed that someone living with a chronic cannabis smoker could, due to second hand smoke, test positive at 4/2ng/ml.

The Unions' objection to CPKC's experts' evidence

102. The Unions in their Reply Brief[120] asked the arbitrator to reject Dr. Snider-Adler's expertise for this policy grievance:

> 5. We are fortunate that the law as to an arbitrator assessing whether a person can qualify as an expert witness is fairly settled and straightforward. It is very clear in the case of alleged experts in the area of alcohol and drug policies. It has evolved very recently largely due to successful union challenges mostly against Dr. Snider-Adler acting as an expert in policy grievance cases (versus individual grievance testing results) in this area.

[116] CPKC Book of Scientific Articles, tab 34. Dr. Heustis coauthored this study.
[117] Ex-46.
[118] Cf. *Andas* Ex-51 and *Lee* Tab 34 CPKC Book of Scientific Articles.
[119] Ex-51.
[120] See also the Unions' Brief on the expert evidence at paragraphs 27 – 46.

103. In their oral Reply argument[121], the Unions also asked the arbitrator to exclude Dr. Heustis' evidence. They argued that she went outside her "lane" and clearly showed she wanted to help CPKC. For example, they criticized her independence because she never spoke to any union officers. They further found fault when she referenced, during her cross-examination, the testing protections in CPKC's DAPP without, according to the Unions, any knowledge of how CPKC applied them in practice.

104. The Unions further suggested[122] that both Dr. Heustis, and Dr. Snider-Adler, behaved more like "guns for hire":

> 29. With respect, CPKC experts defended CPKC's case and DAPP (policies) more than any expert should have done in this case. They both crossed the line from fair and impartial experts to passionate advocates of CPKC's positions and also elected to testify in areas (i.e. operational issues) outside their expertise and knowledge. They each behaved more like "guns for hire" as opposed to fair, impartial and independent experts obliged to assist the Arbitrator as required under the applicable caselaw.

105. For the reasons which follow, the arbitrator dismisses the Unions' request to exclude CPKC's expert evidence.

Preliminary comments

106. Expert commentary on scientific studies resembles how lawyers work with case law. Lawyers frequently distinguish cases for various reasons. For example, they may suggest the facts deal with a completely different scenario. They may also distinguish a case by emphasizing important different wording in a legislative provision or a collective agreement article.

107. Putting forward a legal case based only on its conclusion, but without analyzing the underlying facts, does not help a decision maker. In AH794[123], the arbitrator noted:

> 19. It is not enough to rely on previous cases which may have awarded a penalty of 25 demerits for running a switch. The parties must consider the context of each case they put forward since the underlying facts remain crucial to any analysis.

[121] See also the Unions' Brief on the expert evidence at paragraphs 27-46.
[122] Unions' Brief on Expert Evidence, paragraph 29.
[123] *Teamsters Canada Rail Conference v Canadian National Railway Company*, 2022 CanLII 95947.

108. To analyse case law, lawyers traditionally prepared case briefs summarizing various elements of a legal case such as the facts, issues, reasoning, and legal principles. Where a dispute existed before a decision maker, lawyers would review the case in detail and suggest the applicable legal principles for which it stands.

109. The presentation of contested scientific evidence lends itself to a similar approach. While an expert's written opinion resembles a brief or a factum, ultimately the parties must review the actual studies which constitute the underlying source material.

110. The arbitrator found helpful CPKC's "Book of Scientific Articles"[124] which contained, with tabs, the myriad studies to which the experts referred in this arbitration. A table format, such as those used in meta-analyses like *Ganzer*[125], would also assist in the presentation of this evidence.

111. Besides forcing an attention to detail, such as grouping studies together by the subject(s) examined, a tabular format would highlight far better, compared to reports with page after page of prose with endnotes rather than footnotes, each study's key elements, including:

- What was the testing cutoff level (ex: 4/2ng/ml vs .5)?
- What backgrounds did the participants have?
- Did the study involve casual or chronic users or both?
- Did the study examine residual impairment or acute impairment or both?
- What dose(s) did researchers give to participants?
- What measuring instrument did researchers use (OF test vs other measuring devices)?
- How long did the researchers test the participants' THC levels (ex: 4 hours vs. 30 days)?
- Did the participants reside in a controlled environment during the study?

112. A table could also include a column with an expert's comments about each study's strong and/or weak points.

113. The use of this format in this case might well have saved the parties significant time and expense.

[124] Exhibits 8 and 31, as well as other exhibits.
[125] CPKC Book of Scientific Articles, tab 21, PDF page 262/942.

Experts' other activities

114. As described in detail above, the parties questioned the experts about their outside activities.

115. For example, CPKC asked Dr. Wood about his efforts to legalize (Dr. Wood insisted on the term regulate) marijuana. He answered questions about his work as a co-founder of Stop the Violence BC. CPKC also asked Dr. Wood about his marijuana comments before the House of Commons, and he acknowledged his statement "cannabis itself is relatively safe". Dr. Wood answered questions about his financial stake as CMO in Numinus, a company offering various drug treatments, including, for a period at least, via marijuana.

116. Similarly, the Unions asked Dr. Snider-Adler about her work for DriverCheck, an activity which provided a significant percentage of the revenue for her medical practice.

117. The Unions also asked Dr. Heustis about some of the consulting work she did for companies like Cannabix Technologies, which, during her time there, had been trying to develop a THC breath test.

118. This normal line of questioning reflects how experienced legal counsel test an expert. They want to know if the expert has a hidden agenda which would conflict with the duty owed to the tribunal and which would run counter to the SCC's "acid test" in *White Burgess*[126].

119. None of the experts' evidence about their outside activities would justify rejecting their evidence. The arbitrator must instead consider the weight their evidence deserves.

Dr. Wood

120. The arbitrator will not repeat the above extensive summary of Dr. Wood's evidence, mainly from cross-examination. However, the arbitrator will comment on two specific areas which raised concerns.

[126] *White Burgess Langille Inman v. Abbott and Haliburton Co*., 2015 SCC 23.

121. Dr. Wood's cross-examination examined his reliance on Dr. MacDonald's self-published book[127]. The lack of a peer review process caused the arbitrator no concern. Books do not get peer reviewed the way a researcher's published study would.

122. But the accuracy of Dr. Wood's reference to this book when commenting on residual impairment is a different matter. Dr. Wood's original report[128] stated (page 13):

> "For instance, a recent comprehensive review by Dr. Scott MacDonald, a professor and expert on substance use and injuries based at the Canadian Institute of Substance Use Research at the University of Victoria concluded that studies implying prolonged impairment from cannabis use are "highly misleading" due to "confounding variables with cross-sectional research designs." Based on my own independent review of the literature, this conclusion is accurate".
>
> (Emphasis added)

123. CPKC's cross-examination demonstrated that the MacDonald book's (page 104) passage[129] did not make this sweeping characterization about "studies" plural. The book's only use of the phrase "highly misleading" referenced a single study conducted by *Dahlgren*[130].

124. Perhaps Dr. Wood's paragraph simply demonstrated a lack of attention to detail. He did however repeat the same "highly misleading" comment in his reply report[131].

125. The arbitrator's far greater concern about Dr. Wood's evidence arose from his opinion on the DAPP lowering the allowable blood alcohol concentration (BAC) from .04 to .02.

126. On page 18 of his original report[132], Dr. Wood opined "Generally, a level of 0.02 in itself would be considered non-impairing absent other factors".

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[127] CPKC Book of Scientific Articles, tab 48.
[128] Unions BoD, tab 29, PDF page 272/302.
[129] CPKC Book of Scientific Articles, tab 48, PDF page 791/942.
[130] CPKC Book of Scientific Articles, tab 14.
[131] Ex-6 reply report at pages 18-19. CPKC's cross-examination, *supra*, did identify a different part of Dr. MacDonald's book (pages 108-111), not referenced in Dr. Wood's opinion, where he examined residual impairment and noted some of the studies' limitations.
[132] Unions BoD, tab 29, PDF page 277/302.

127. Dr. Wood's BAC opinion on page 17 of his original report[133] referenced an "easily interpretable chart provided by the University of Notre Dame" (Chart):

> The impairing effects of alcohol at various BAC levels has been summarized by others with the lowest range often being at or above 0.020 to 0.39%. **For instance, according to an easily interpretable chart provided by the University of Notre Dame, it has been reported that this level of alcohol concentration (0.020 - 0.039%) is generally associated with "No loss of coordination, slight euphoria, and loss of shyness**. Relaxation, but depressant effects are not apparent." Conversely, regarding the 0.08 threshold, this summary notes that in the range of 0.06-0,099 is associated with "slight impairment of balance, speech, vision, reaction time, and hearing. Euphoria. Reduced judgment and self-control. Impaired reasoning and memory" (sic).
>
> (Emphasis added)

128. Only on cross-examination did the arbitrator learn that the Chart to which Dr. Wood referred had come from a webpage for the "Rev. James E. McDonald, C.S.C, Center for Student Well-Being" at Notre Dame. Rev. James E. McDonald, C.S.C.[134], despite impressive educational credentials, has no scientific background.

129. Moreover, the Chart[135] did not result from any scientific study. Neither did the Chart contain any references to support its content.

130. Dr. Wood repeatedly used the term "evidence-based" in his two reports[136] and in his CV[137]. In both of his reports[138], Dr. Wood described an "evidence-based medicine pyramid of evidence". The arbitrator suspects the website Chart Dr. Wood put forward to support his BAC opinion would find no place on this pyramid.

131. While Dr. Wood quickly acknowledged in cross-examination that the Chart was not a strong reference, that admission provided little comfort to an arbitrator trying to ascertain the key scientific facts for this case.

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[133] Unions' BoD, Tab 29, PDF page 276/302.
[134] Ex-33.
[135] Ex-34.
[136] Unions BoD, tab 29 and Ex-6.
[137] Ex-7.
[138] See Ex-6, page 4.

132. Given how railway arbitrations proceed expeditiously and often without legal counsel, the arbitrator might never have realized that Dr. Wood's reference to a prestigious institution like the University of Notre Dame in fact led to an uncredited 2-page Chart from its Center for Student Well-Being website. If Dr. Wood's original report had been the only expert evidence in a railway arbitration, a scenario which can also happen in other legal proceedings as well, then it might well have led the arbitrator to come to the wrong conclusion about BAC .02.

133. CPKC's cross-examination raised two further concerns about Dr. Wood's BAC .02 evidence.

134. First, Dr. Wood co-chaired the committee which published the Canadian Clinical Guideline – High Risk Drinking and Alcohol Use Disorder[139] (Guideline). On cross-examination, Dr. Wood agreed that his committee endorsed the adoption and use of Canada's Guidance on Alcohol and Health: Final Report (January 2023)[140] (Guidance):

> **This guideline endorses the adoption and use of Canada's Guidance on Alcohol and Health as an educational resource and discussion tool in primary care practice**. Canada's Guidance on Alcohol and Health was released in 2023 as an update to the Low-Risk Alcohol Drinking Guidelines published in 2011 following new evidence on alcohol-related morbidity, mortality, and social harms. The guidance introduces significant changes to the thresholds for low- and high-risk drinking and removes distinctions by age and sex.
>
> (Emphasis added)

135. That adopted Guidance, which referenced various scientific studies, commented on the risk of any use of alcohol on pages 30-31:

> With alcohol use during any drinking occasion, each drink increases one's blood alcohol concentration (BAC). An increased BAC is what leads to alcohol impairment (a reduced ability to think clearly or perform certain activities) and intoxication (which is the appearance or sensation of being drunk). **The risk begins to increase with any use of alcohol, and with more than two standard drinks, most individuals will have a demonstrably increased risk of "acute" problems**. For example, compared to no alcohol use, studies of injuries in emergency departments show increasing risk for each drink

[139] Ex-26.
[140] Ex-25.

> consumed for both men and women (Cherpitel et al., 2015; Vinson et al., 2003) **Similarly, studies of motor vehicle crash fatalities demonstrate increasing risk above a BAC of 0.02% (Blomberg et al., 2009; Compton & Berning, 2015; Voas et al., 2012), which corresponds to about one drink.** After about two standard drinks consumed within an hour, one's BACs may be approximately 0.05% (the level will differ on the basis of body mass and other factors). Above this level, risk gets progressively and substantially higher the more one drinks on any occasion and the higher one's BAC. It is important to recognize that people typically exhibit behaviour changes or become impaired starting at BAC levels below those at which they feel "drunk" or appear intoxicated (Midanik, 1999).
>
> (Emphasis added)

136. The Guidance further noted that sometimes no alcohol is safe for those performing functions involving safety (page 46)[141]:

> Finally, it should be pointed out that **there are circumstances, other than those related to reproductive health, where the guidance's main recommendation does not apply and where no alcohol is safest**. **That is when driving a motor vehicle, using machinery and tools, taking medicine or other drugs that interact with alcohol, doing any kind of dangerous physical activity, being responsible for the safety of others or making important decisions**.
>
> (Emphasis added)

137. Second, as described previously, during his cross-examination Dr. Wood readily agreed that *Zador*[142] and *Irwin*[143] represented good scientific studies on the BAC issue. Those studies supported CPKC's BAC .02 level.

138. This testimony left the arbitrator wondering why two expert reports from an evidence-based epidemiologist like Dr. Wood did not include these clearly relevant studies. The arbitrator adds, however, that Dr. Heustis only referenced the *Zador* and *Irwin* studies in her reply report, i.e., after Dr. Wood had filed both his original and reply reports.

[141] See also page 10 for similar comments.
[142] CPKC Book of Scientific Articles tab 47.
[143] CPKC Book of Scientific Articles tab 30.

139. Nonetheless, Dr. Snider-Adler's and Dr. Heustis' original reports both referenced other studies to support their opinion on BAC .02[144]. Dr. Wood's reply report did not evaluate them. Surprisingly, given his own reliance on an unscientific Notre Dame website page, Dr. Wood's reply report[145] suggested Dr. Heustis' BAC .02 opinion was just a summary of the literature and, at least for "agency positions", criticized her for not "contemplating the research underpinning them":

> I have little to add about the remainder of Dr. Huestis' report which appears to be a summary of agency positions and regulations, and a summary of the literature of impairment from alcohol. However, where agency positions are noted, I'll share that it is highly curious to me that Dr. Huestis would uncritically accept these selected agency positions without contemplating the research underpinning them.

140. The arbitrator will consider Dr. Wood's opinion for the various issues but gives no weight to his expert reports' comments on BAC .02.

Dr. Snider-Adler

141. The Unions asked the arbitrator to exclude Dr. Snider-Adler's evidence on two bases: i) bias and ii) because other arbitrators had allegedly done so.

Differing opinions do not constitute bias

142. Evidently, the arbitrator respects what other neutrals have concluded in their own cases. They were there. But, for procedural fairness reasons, the analysis for this issue, just as for conclusions about the state of the current science, must focus solely on the evidence heard in this case.

143. The Unions' referenced the GSB's comments in *Metrolinx*[146] in support of their bias argument:

> [110] **It is the case that Dr. Snider-Adler's expert reports, particularly her initial report, need be read with considerable caution**. It is apparent that she feels strongly about workplace safety and has 'real world' experience in assisting employers in managing the impact of drug and alcohol abuse as it affects those workplaces. That work is to be credited.
>
> [111] **However, Dr. Snider-Adler's reports take on a significant advocacy role**. **She expressly advocates for the adoption and application of a "precautionary principle" in support of an off-duty ban on recreational cannabis use by employees in safety-sensitive positions to the exclusion**

[144] CPKC BoD, tab 23 (Snider-Adler), PDF page 1819/2068 and tab 24 (Heustis), PDF pages 1867/2068.
[145] Ex-6, PDF page 18/22.
[146] *Amalgamated Transit Union - Local 1587 (Policy) v Ontario (Metrolinx)*, 2025 CanLII 18169; See also paragraphs 157-186.

> **of other factors. That is not an issue of scientific and/or medical expertise**. **It reflects the policy position taken by this Employer in asserting that its FFD Policy is reasonable**. This position has previously been accepted based on Dr. Snider-Adler's experience as a "workplace safety expert", having experience in the "real world" application of occupational standards applying to drug and alcohol use. However, that experience did not yield evidence of workplace safety problems associated with the use of cannabis, either at Metrolinx or more broadly.
>
> [112] This advocacy has also been undertaken in relation to a lesser, 24-hour ban on recreational cannabis use for employees engaged in safety-sensitive work. Dr. Snider-Adler was aware that this Employer imposed a ban on all recreational cannabis use, both on and off-duty for persons employed in safety-sensitive positions. In Ornge Air, where Dr. Snider-Adler's opinion went unchallenged, and in Newmont-Goldcorp Canada, where her opinion was accepted, she urged the application of a precautionary principle in support of a 24-hour ban on cannabis use in relation to safety-sensitive positions.
>
> [113] **Of more concern is the reliability of Dr. Snider-Adler's opinion. I am aware that Dr. Snider-Adler's expert reports regarding the effects of cannabis use have been admitted and accepted unchallenged in a number of earlier cases. However, as reviewed below, it became apparent that her opinion too often relied on overstatement of a concern or misstatement of a study result, and/or stated or implied determined fact when the proposition remained supposition or theory. This is particularly the case with respect to the assertion of residual impairment**. Having had her initial report challenged by the other expert witnesses in this proceeding, her reply report is more balanced although it continues to reflect these concerns.
>
> (Emphasis added)

144. In her original August 26, 2023 opinion for this arbitration, Dr. Snider-Adler referenced the same "precautionary principle"[147]. Under that precautionary principle, Dr. Snider-Adler argued in favour of using the upper limits of risk when considering a policy's reasonableness[148]:

> When considering the risk in safety-sensitive workplaces for those performing safety-sensitive and safety-critical duties, it is essential that when reviewing the literature, the minimum or average length of time of impairment is not the focus. Beckson et al. (2021) authored a commentary regarding a study by McCartney et al., (2021). Beckson et al. discussed the implications for safety-sensitive workers and state:

[147] CPKC BoD, tab 23, page 1806/2068.
[148] CPKC BoD, tab 23, pages 1806-1807/2068.

> "A policy impacts individuals and therefore should address all or almost all cases, i.e., the **worst-case scenario**, which is rarely equivalent to the mean (average) effect. An employer in a hazardous industry may want to take a very cautious and conservative approach, given the potential consequences of an accident. This would suggest relying on results towards one extreme of the range, rather than relying on the mean."
>
> When reviewing studies and conclusions as guidance for those who work in safety-sensitive and safety-critical workplaces, the upper limits of risk are highly relevant and important. Using the average timeframe of impairment as a recommendation in such environments would increase the risk for those working in these environments.
>
> Until there are definitive answers regarding cannabis impairment for all users of cannabis (those who use occasionally, regularly, low dose, high dose, medical cannabis, smoked, vaporized and ingested cannabis etc.) the approach for safety-sensitive workplace is to provide guidance based on the risk of all types of cannabis use that is noted at this time.
>
> (Emphasis in original)

145. The arbitrator sees a nuance when considering Dr. Snider-Adler's expert opinion. As noted above, two schools of thought now exist on the importance/relevance of impairment for unilaterally imposed employer drug/alcohol policies. CPKC urged the arbitrator to adopt the school of thought which does not require impairment. Many of the questions posed to their experts reflected this position.

146. Experts answer the specific questions put to them. Given its position in this arbitration, CPKC did not limit Dr. Snider-Adler and Dr. Heustis to opinions about the issue of impairment. Instead, CPKC posed more general questions. For example, for the 28-day cannabis ban, CPKC asked both experts this general question[149]:

> Comment on the appropriateness of a 28-day cannabis ban policy in the context of safety critical and safety-sensitive duties.

147. For the DAPP's 4/2ng/ml cutoff levels, CPKC asked its experts[150] questions touching on impairment, but also more generally about what government and other entities have adopted:

[149] CPKC BoD, Tabs 23 (Pdf page 1779/2068) and 24 (PDf page 1858/2068).
[150] See, for example, Dr. Snider-Adler's opinion, CPKC BoD, tab 23, PDF page 1780/2068.

> 14.Comment on the appropriateness of changing the THC cut-off levels to 4 ng/ml (screening) and 2 ng/ml (confirmation testing) following the legalization of cannabis in Canada in 2018
>
> ...
>
> 17.Comment on how the threshold of 2 ng/ml may relate to impairment, generally, and also specifically in the context of safety-critical / safety-sensitive positions.
>
> 18.Comment on the adoption of the threshold of 2 ng/ml in current industry practices/ standards and by government agencies

148. In contrast, the Unions asked Dr. Wood about impairment and the 28-day ban[151]:

> 3. In your professional opinion, can an individual be considered impaired up to 28 days following the use of cannabis?

149. The same observation applies to the question the Unions asked Dr. Wood about the 4/2ng/ml cut off level[152]:

> 2. In your professional opinion, do cut off levels for Cannabis/Marijuana in oral fluids test samples screened for THC at 4ng/ml and confirmation testing for THC at 2ng/ml correlate with a conclusion that the individual in question is impaired by cannabis at the time of the test? Please explain the basis for your opinion

150. While the "ultimate issue rule" may no longer find broad application[153], tribunals still protect their role to decide the actual legal questions in a case. In *OPSEU (Haist)*[154], the GSB, chaired by Arbitrator McLean, commented:

> [24] **However, in the circumstances of this case I do not find it appropriate to hear expert evidence about whether the force used by the Grievor was excessive. That is the very issue (or one of them) which I must determine, and Mr. Houston's opinion is based on his own factual findings based on largely disputed evidence**. In these circumstances it is appropriate that I make that determination without opinion evidence once I have had made my findings of fact. On the other hand, I am prepared to hear evidence about the circumstances, if any, that it is appropriate for a correctional officer to use a closed fist or re-engage with an inmate and, assuming I accept that evidence, I

[151] Unions BoD, tab 29, PDF page 272/302.
[152] Unions BoD, tab 29, PDF page 265/302.
[153] See, for example, *D.W.P. v Owner*, 2025 BCSC 612.
[154] *Ontario Public Service Employees Union (Haist) v Ontario (Solicitor General)*, 2022 CanLII 122326.

> can assess whether the circumstances before me met those criteria (again, subject to fact finding about what actually occurred in this case).
>
> (Emphasis added)

151. As noted above, this is a KVP case, not a Charter case. Some of the questions CPKC asked its experts may have relevance for Charter cases but, given the need for impairment, provide little assistance in a KVP case[155].

152. Under an "ultimate issue" analysis, CPKC's experts have no expertise for a KVP analysis, even though they might have heard of KVP in previous cases. While all three experts have impressive educational credentials, they can offer little value on the KVP reasonableness test the arbitrator must apply. That legal analysis involves multiple factors including understanding KVP, *Irving* and the longstanding railway jurisprudence on impairment.

153. In short, Dr. Snider-Adler answered the questions posed to her. Given the arbitrator's conclusion in this award about the need for impairment, CPKC's questions, in hindsight only, did not always address the relevant questions for this arbitration. Nonetheless, Dr. Snider-Adler's answering of the questions CPKC posed to her did not give rise to any suggestion of bias.

Arbitrators regularly accept Dr. Snider-Adler's evidence

154. The Unions further suggested that other arbitrators had rejected Dr. Snider-Adler's evidence and invited the arbitrator to do likewise. The case law submitted did not support the Unions' assertion.

155. For procedural fairness reasons, the arbitrator cannot adopt expert evidence conclusions from different cases and apply them to this case. The evidence heard in this case governs that determination. However, since the Unions referenced other arbitral decisions beyond *Metrolinx* to support their argument contesting the admissibility of Dr. Snider-Adler's evidence, the arbitrator reviewed them. Those cases deal mainly with weight.

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[155] In a Charter case, concepts like the "defence-in-depth principle" may justify the Legislator's imposition of drug testing: *Power Workers' Union v. Canada (Attorney General)*, 2023 FC 793 at paragraphs 127-128.

156. In *Heidelberg*[156], Arbitrator Sims accepted Dr. Snider-Adler as an expert for several issues, subject to weight, but not for the disciplinary or quasi-disciplinary follow-up process[157]:

> **As in Western Forest Products (supra) much of Dr. Snider-Adler's evidence is derivative. She offers an extensive tour through the available literature on the scientific justification for the level and the duration of impairment. Such a "tour guide" approach by an informed practitioner can be useful, even though she is not herself engaged in primary research. I will accept her evidence on such matters, but obviously subject to the weight of her evidence compared to the weight of other experts**. The Union objects to her lack of evaluation experience, although it has been supplemented since the earlier decisions by her Harvard course. On this point, I am somewhat troubled by her assertion that all research, despite qualitative differences, is worthy of consideration. Like Arbitrator Jackson in Western Forest Products (supra) I have "concerns about her conclusion in that regard". **Dr. Snider-Adler will be accepted as an expert in these areas, without at this point assessing the weight to be given to her opinion**. The question posed to her within question 1, as to how common the thresholds are in Canadian industry is addressed separately below.
>
> **The Union accepts and I agree that Dr. Snider-Adler has appropriate expertise in testing and confirmation processes including when and how tests are taken, the analysis of samples taken, and the confirmation of their validity**.
>
> **Dr. Snider-Adler is, I find, qualified to give an opinion on the issues involved when an employer makes the choice of addiction practitioner, as opposed to one selected by the grievor, the Union, some third party, or by an agreed upon union-management process**. However, subject to what experts say about these options, there are important policy choices involved and the questions are only partially a matter of expertise. There are also serious questions about employee privacy.
>
> **The fourth issue, involving the disciplinary or quasi-disciplinary follow-up process, is not, I find, a matter on which Dr. Snider-Adler has useful expertise**. **This is also an area where her relationship to DriverCheck, that provides such services, outweighs the utility of such evidence as she might offer.**
>
> (Emphasis added)

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[156] *Heidelberg Materials Canada Ltd. (Delta Cement) v International Brotherhood of Boilermakers, Local Lodge D277*, 2025 CanLII 4268.

[157] In *Western Forest Products Inc. v United Steelworkers, Local 1-1937*, 2023 CanLII 78832, Arbitrator Jackson relied on both experts' opinions, including that of Dr. Snider-Adler, to support her finding about a 2ng/ml cutoff level.

157. The Unions also referenced *Felix*[158]. In that case, which appears helpful to the Unions' position on impairment in this arbitration, the CIRB adopted Dr. Snider-Adler's evidence that the 2ng/ml testing level did not show impairment. This conclusion meant that CPKC did not have cause under s.240 of the *Code* to terminate Mr. Felix's employment:

> [102] **Dr. Snider-Adler testified that she could not reach a conclusion about whether the complainant was impaired based on a review of his urine and OF results**. She stated that she could identify a risk of impairment but not actual impairment. In particular, Dr. Snider-Adler testified that OF tests cannot be used to determine impairment. This testimony is contrary to the findings of the CROA arbitrators that OF test results above a certain level confirm that a person is impaired.
>
> [103] **The Board prefers Dr. Snider-Adler's oral and written testimony about residual impairment and the meaning of OF test results over the conclusions reached by the arbitrators in the CROA case law**. The Board accepts Dr. Snider-Adler as an expert in substance use disorders, noting that, in addition to providing expert testimony in numerous legal proceedings, the CROA arbitrators have regularly relied on reports from her. **It is clear from Dr. Snider-Adler's testimony that the complainant's test results do not establish that he was impaired or unfit for duty when he was at work on March 10, 2021**.
>
> (Emphasis added)

158. In *Felix,* Dr. Snider-Adler gave her best opinion on the science of impairment despite that testimony preventing her own client, CPKC, from meeting its burden of proof. This candour respects the duty tribunals require from experts.

159. In AH663[159], the arbitrator dismissed a TCRC preliminary objection to Dr. Snider-Adler testifying as an expert. The arbitrator noted in that case that Dr. Snider-Adler provided helpful evidence to both sides when she testified:

> 57. **The TCRC objected to Dr. Snider-Adler testifying as an expert witness. Dr. Snider-Adler is an independent contractor who DriverCheck retains to work as its Chief Medical Review Officer given her expertise in**

[158] *Felix v Canadian Pacific Railway Company (now known as Canadian Pacific Kansas City Railway)*, 2024 CIRB 1122; See also *Western Forest Products Inc. v United Steelworkers, Local 1-1937*, 2023 CanLII 78832 (Jackson).
[159] *Teamsters Canada Rail Conference v Canadian Pacific Railway*, 2019 CanLII 89682

addictions medicine. She provides her expertise to multiple organizations.

58. CP called her to testify about i) the likely time of consumption given the test results; ii) Mr. A's impairment from cocaine given the test results; iii) the interpretation of the test which showed a positive saliva test for cocaine; iv) whether the test showed Mr. A was a regular user of cocaine at the time the test was performed; v) the difference between cocaine and opioids; and vi) Mr. A's ability to control consumption.

59. Dr. Snider-Adler also testified about the 2018 hair analysis results which the TCRC had produced.

60. **The TCRC argued that CP is a client of DriverCheck which prevents Dr. Snider-Adler from giving expert evidence that is impartial, independent or unbiased as required by the case law**. It also suggested that DriverCheck's error regarding the word "metabolites" would colour her testimony in order to preserve a client relationship.

61. CP noted that the SCC's decision in White Burgess held that a mere employment relationship did not automatically disqualify an expert witness. And Dr. Snider-Adler was not a DriverCheck employee.

62. The TCRC did not satisfy the arbitrator that Dr. Snider-Adler could not give impartial, independent and unbiased evidence. Employee status in an organization, or that of an independent contractor providing services, does not disqualify an expert. More is needed.

63. **Dr. Snider-Adler clearly had the relevant expertise. The arbitrator did exclude her from the hearing given her hybrid role. When she testified, her demeanour showed that she gave evidence favourable to both sides, including during cross-examination when she commented on how to accommodate an employee suffering from an addiction. During her testimony, Dr. Snider-Adler did not advocate for CP but instead provided the arbitrator with helpful expertise regarding the meaning of the drug test results at the heart of this case**.

(Emphasis added)

160. In both AH663 and *Felix*, Dr. Snider-Adler provided her opinion evidence on the science and did so even if it went counter to CPKC's position. As a result, the arbitrator will not exclude Dr. Snider-Adler's evidence. Like Arbitrator Sims in *Heidelberg*, the arbitrator will instead consider the weight to give to that evidence.

Dr. Heustis

161. The arbitrator also disagrees with the Unions' request to exclude Dr. Heustis' expert evidence.

162. In the specific case of Dr. Heustis, she has rarely testified in labour or other proceedings. Instead, Dr. Heustis' CV shows she has spent the majority of her a career in the academic sphere conducting scientific studies, notably in pharmacokinetics. While the Unions attempted to suggest that Dr. Heustis had an anti marijuana bias, the arbitrator found no support for this allegation. She and her colleagues conducted numerous THC focussed scientific studies, all of which passed the peer review process.

163. Dr. Wood acknowledged the expertise of Dr. Heustis in a non-legal sense. His opinions referenced several of her studies. As in the case of the objection to Dr. Snider-Adler, the arbitrator concludes that disagreeing on the science, which is virtually guaranteed in cases like this, does not justify the disqualification of an expert. The issue instead goes to weight.

164. No basis exists to disregard Dr. Heustis' lengthy evidence.

Conclusion on admitting the expert evidence

165. Dr. Wood has testified for trade unions and Dr. Snider-Adler for employers. That does not make them "guns for hire". As other cases have shown, arbitrators accepted their expertise but will decide the weight, if any, to give to that evidence.

166. Dr. Wood and Dr. Snider-Adler occasionally testify in the same labour arbitration case.

167. With one caveat, the arbitrator's view of Dr. Wood's and Dr. Snider-Adler's evidence resembles that of Arbitrator Peltz in *Vancouver Shipyards*[160]. Both parties referenced Arbitrator Peltz' award.

168. In *Vancouver Shipyards*, Arbitrator Peltz declined to disqualify both Dr. Wood and Dr. Snider-Adler. Instead, he had generally positive comments about both experts:

> 238. I also decline to rule on Snider-Adler's qualification and independence pursuant to the test in White Burgess Langille, supra, as urged by the Union. **I would not disqualify an expert in a labour arbitration solely because she provides drug testing services and opinions to employers, as long as she provides a transparent opinion that can be assessed for validity and**

[160] *Vancouver Shipyards Co. Ltd v Marine and Shipbuilders, Local 506*, 2022 CanLII 100825

> **reliability. That was done here. Snider-Adler was exhaustively and effectively cross examined.**
>
> 239. **I agree with the Union that Wood is better qualified to assess the body of research that was discussed by both experts. He also holds strong views on testing and residual impairment. He is an aggressive skeptic on the subject. Wood probably should have declined to give a diagnosis of the grievor without an in-person examination, but this was not disqualifying as suggested by the Employer. Wood was responding to questions from counsel. His opinion was transparent and amenable to review for validity and reliability**.
>
> 240. **In my view, both experts honestly attempted to provide objective opinion evidence based on the science as they understood it. The arbitration process is better served by encouraging a full range of evidence on difficult issues like residual impairment, rather than seeking to strike out testimony as in a court of law. This was not like B.C. Hydro Power, supra, where a proposed expert was deceitful in hiding an obvious predisposition against one of the participants (at para. 28).** I endorse Arbitrator Moore's approach in B.C. Hydro that the discretion to admit evidence under the Labour Relations Code, R.S.B.C. 1996, c. 244, should be exercised in a manner consistent with a fair hearing (at para. 33).
>
> (Emphasis added)

169. Every arbitrator's comments flow from their experience in their specific case. The arbitrator would add one caveat regarding Arbitrator Peltz' comment suggesting Dr. Wood is better qualified to assess the body of research.

170. Based on what transpired in this case, especially for the BAC .02 issue, the arbitrator would not give a preference to Dr. Wood's evidence over that of another medical professional when interpreting third party researchers' work. Neither would the arbitrator give a preference to a researcher like Dr. Heustis over the comments of those critiquing her studies.

171. Instead, the arbitrator will assess the diverging opinions on an issue by issue and study by study basis.

172. As summarized above, the parties extensively cross-examined all three experts. The arbitrator has concluded that they had no "obvious predisposition", as Arbitrator Peltz used that term in *Vancouver Shipyards*. This arbitration benefitted from these experts' different perspectives on the difficult issues facing employers and trade unions.

173. The arbitrator dismisses the Unions' request to reject CPKC's expert evidence.

THE JOINT STATEMENT OF ISSUES

174. The railway model of arbitration works so efficiently because the parties have agreed to limit their arguments to the issues set out in the JSI. In AH891[161], the arbitrator refused to hear an issue which formed no part of the JSI:

> 39. CPKC clearly raised delay and estoppel in the JSI. But CPKC did not raise laches. The parties' supplemental submissions satisfied the arbitrator that a distinct legal issue which arises for the first time from a party's case law cannot be added to those already found in the JSI. This is consistent with SHP744 which held that the issue of mitigation does not open the door to adding further issues never contained in the JSI.

175. The same result occurred in AH825[162] when a party's brief contained an issue not found in the JSI:

> 25. The arbitrator agrees with CP that the TCRC took a new position in its Brief despite the parties' agreed upon JSI. A vague reference to an ET in a Step 1 grievance, and nothing else thereafter, does not justify filing a Brief which focussed mainly on the arbitral case law examining ETs.

176. The JSI provides the parties with the opportunity to set out the issues requiring resolution. A vague reference to other materials does not allow a party to incorporate new issues during the arbitration if they did not explicitly identify them in the JSI. This important requirement, which avoids surprises, allows railway arbitrators to hear one or more grievances in a single day, on the merits, and to issue awards shortly thereafter.

177. In the JSI, the Unions described the main issues as follows:

> 1. Requiring trainees in Safety Sensitive positions to undergo drug tests in addition to their pre-employment drug tests is unnecessary, unreasonable and in violation of the Unions' members' privacy rights.
>
> 2. The Company's introduction of a 28-day cannabis ban is unreasonable, unenforceable and plainly in violation of the long past practice between the parties, CROA jurisprudence, and general rail industry standards. Cannabis use is legal in Canada. It is well understood and established that the test for

[161] *Teamsters Canada Rail Conference v Canadian Pacific Kansas City Railway*, 2024 CanLII 99591
[162] *Teamsters Canada Rail Conference v Canadian Pacific Railway Company*, 2023 CanLII 26191

improper employee drug usage is impairment at work and not the mere presence of cannabis in a urine sample.

3. Thresholds of 4 ng/ml and 2 ng/ml are unreasonable, unnecessary, arbitrary and in violation of the past practice between the parties. In the Company's 2018 "Alcohol and Drug Procedures #HR 203.1 (October 7, 2O18)" version of the Policy the same threshold numbers were 10 ng/ml and 10 ng/ml. No scientific or operational reason has been given that could justify the introduction of the change in the new version of the Policy.

4. The threshold that "an alcohol test result of 0.02 BAC or higher as determined through the Company testing program" constitutes a violation of the Policy is unreasonable, arbitrary and in violation of past practice and jurisprudence. This cut-off level of .02 BAC is not shown to relate to impairment and is therefore an unreasonable and unsupportable exercise of management's rights and must be declared null and void as being in violation of the collective agreement.

5. The change to the Alcohol and Drug Testing Acknowledgement Form deeming a refusal to sign to be grounds for imposition of discipline constitutes a violation of employee rights and constitutes an unreasonable exercise of management rights.

6. The introduction of a period of up to 32 hours allowing the Company to administer post-incident or reasonable suspicion testing is by its very nature unreasonable. The Unions contend that the administration of a test that could not possibly reveal the presence of impairment at the time of an incident can only be viewed as arbitrary, unreasonable and in violation of privacy and other rights.

...

178. Before dealing with these six specifically identified JSI issues, the arbitrator will first examine three other matters which the Unions' Brief[163] lumped together.

Random testing

179. The Unions contested[164] the DAPP at section 5.2[165]:

> 5.2 Random Testing
>
> To protect the safe operation of its business, the Company may, from time to time, implement random testing at specific workplaces with a demonstrated problem with alcohol and/or drug use.

[163] Unions' Brief, paragraphs 280 et ss which described them as issues 7, 8 and 9.
[164] Unions Brief, paragraphs 79, 100-102.
[165] HR 203.1

180. The Unions in their Brief argued:

> 100. Although the Company initially advised that it reserved the right to do so over four years ago, it has never advised the Unions of any intention to implement random testing on any of the Unions' members in any of the bargaining units nor has it ever suggested that any of the work locations have a demonstrated problem with alcohol and/or drug use. **The Unions all objected to such in their grievances which are incorporated into the JSI but the Unions understand that it will not be necessary to ask the Arbitrator to rule on this issue at this time unless and until CPKC attempts to implement such**.
>
> (Emphasis added)

181. CPKC objected to this issue on the basis the Unions did not raise it in the JSI[166].

182. CPKC's random testing language mirrors a phrase found at paragraph 45 in the majority's decision in *Irving*[167] that random testing is not justified "in the absence of a demonstrated problem with alcohol use in that workplace". For current purposes, since the random testing reference remains theoretical at this stage, the arbitrator, in line with the Unions' request, will not rule on this issue.

Fair and impartial

183. The JSI contained this bullet point:

> The Unions contend that the lack of any reference to, or application of, the principles of fairness and impartiality in the Policy breaches the Collective Agreements.

184. In their Brief, the Unions argued that CPKC had failed to state in the DAPP that it would apply its policies in a fair and impartial manner:

> 285. As noted earlier, the Unions object to the fact that there is no reference to, requirement or acknowledgment that CPKC will apply the new policies and procedures in a fair or impartial manner. This is important to the Unions because CPKC has demonstrated to date that it will not do so. On the contrary, it has interpreted and applied its policies in unjustified and unreasonable ways and outright ignored many arbitration awards which ruled that CPKC was applying

[166] CPKC Amended Brief, paragraph 94(1).
[167] *Communications, Energy and Paperworkers Union of Canada, Local 30 v. Irving Pulp & Paper*, Ltd., 2013 SCC 34

> its policies and procedures in breach of the collective agreements and settled jurisprudence.

185. CPKC argued orally that the Unions provided no case law to support this argument. In its view, the DAPP must meet the KVP test. No additional requirement existed that a policy fails the KVP test unless it explicitly states that it will be applied in a fair and impartial manner.

186. The arbitrator understands the Unions' concern given the high number of drug testing cases that go to arbitration. Multiple cases examine situations involving a positive urine test but a negative OF result. The case law has been consistent on that issue for many years though there may be an occasional nuance when other factors beyond the urinalysis come into play[168].

187. Nonetheless, the arbitrator concludes that the KVP test already imposes this implicit standard which the Unions can raise at a rights arbitration. Similarly, a good faith requirement already exists for contracts[169].

188. Moreover, arbitrators have issued significant remedial awards, including for damages[170], if a railway has failed to respect its important obligations in this area.

Vague, arbitrary and unspecific

189. In their Brief, the Unions' take issue with CPKC's alleged failure to educate its members about the 2019 DAPP changes:

> 287. The Unions also submit that the 35-page Alcohol and Drug Procedures #H$203.1 (September 1, 2019) is vague, arbitrary and unspecific. Its stipulations are not understood by the Union's members. No serious effort was made to educate the Union's members about the proposed changes and consequences. As such, the Policy is in contravention of the KVP principles which have been accepted by many arbitrators issuing awards in this industry, including but not limited to M.G. Picher in Shopcraft 530 and yourself in the awards quoted earlier.

---

[168] AH906 - *International Brotherhood of Electrical Workers, System Council No. 11 v Toronto Terminals Railway Company*, 2026 CanLII 10266.
[169] AH801- *Teamsters Canada Rail Conference (CTY-West) v Canadian National Railway Company*, 2022 CanLII 112672 at paragraph 29.
[170] See, for example, *Teamsters Canada Rail Conference v Canadian Pacific Kansas City Railway*, 2025 CanLII 32982; *Canadian National Railway Company v Teamsters Canada Rail Conference*, 2024 CanLII 87115 and *Canadian National Railway Company v United Steelworkers, Local 2004*, 2021 CanLII 30111.

190. CPKC satisfied the arbitrator that it took reasonable steps to inform its employees and the Unions, in advance, about the 2019 DAPP changes[171]. As the Chronology shows, CPKC sent letters highlighting the changes to employees and the Unions. Moreover, it updated an online training course. Prior to the amended DAPP coming into force, CPKC also had conference calls with the Unions and responded directly in writing to their concerns[172].

191. CPKC satisfied its KVP obligations by giving advance notice about upcoming DAPP amendments. The arbitrator will review the remaining issues from the JSI in the above numerical order.

1. REQUIRING TRAINEES IN SAFETY SENSITIVE POSITIONS TO UNDERGO DRUG TESTS IN ADDITION TO THEIR PRE-EMPLOYMENT DRUG TESTS IS UNNECESSARY, UNREASONABLE AND IN VIOLATION OF THE UNIONS' MEMBERS' PRIVACY RIGHTS.

Conclusion

192. CPKC's DAPP did not satisfy the KVP test when it required new trainees to undergo testing twice, first when hired for an SS/SC position and, a second time, before receiving final qualification for those positions.

DAPP wording

193. HR203.1 states:

> 5.1 Pre-Employment and Qualification Testing
>
> **Safety Critical Position or Safety Sensitive Position candidates are required to pass a drug test as a pre-employment qualification for the position. This requirement will be set out in a conditional offer of employment. Safety Critical Position or Safety Sensitive Position candidates are also required to pass a drug test during the training process before receiving final qualification for the position.**
>
> Candidates with a positive drug test will be advised that they did not meet the qualifications required for the position. Drug test results or other reasons that disqualify a candidate from occupying a Safety Critical Position or Safety Sensitive Position will be handled on a confidential basis in accordance with established procedures.

[171] CPKC Brief, paragraphs 37-45.
[172] CPKC BoD, tab 6.

> **Candidates who are current employees applying for a Safety Critical Position or Safety Sensitive Position that test positive on a test may be removed from service, subject to an investigation, a medical fitness for duty assessment and discipline up to and including dismissal.**
>
> (Emphasis added)

Positions

194. As the arbitrator understood the Unions' position, they agreed a trainee for a SS/SC position could undergo a pre-employment drug test but objected to CPKC conducting a second test as part of the final qualification for that position.

195. The Unions further argued that the arbitrator had already decided this issue in AH731[173].

196. CPKC disagreed and argued in its Brief, *inter alia*:

> (2) Qualification Drug Test
>
> 230. Section 5.1 of the DAPP requires that Safety Critical Position or Safety Sensitive Position candidates pass a drug test during the training process before receiving final qualification for the position.
>
> 231. The requirement to undergo qualification drug testing is clearly explained to Safety Critical Position or Safety Sensitive Position candidates, in multiple documents, including first in the job posting, then in the contingent offer and finally, in the confirmation offer of employment. Attached as EXHIBIT 15, Tab 25 are excerpts of the relevant wording found in each of the said documents.

197. CPKC's Brief touched on different scenarios where an employer can test an employee moving into an SS/SC position. The arbitrator understood from the JSI that the Unions did not contest CPKC's right to test an existing non-safety employee who applied for a transfer or promotion to an SS/SC position. CPKC referenced this scenario in its Brief:

> 257. In fact, as shown by the authorities described above, this declaration is not accurate. Indeed, as found in *Seaspan* above, "*there has been wide acceptance in the law that an employer may require testing for employees who transfer into or are promoted into safety-sensitive positions*." (para. 115). This was also

[173] AH731- *Canadian Signals and Communications System Council No. 11 of the IBEW c Canadian Pacific Railway Company*, 2021 CanLII 70484 and Unions' Brief, paragraphs 94-99.

> recognized by this CROA office in *Bombardier* (CROA Case No. 4277 (TAB 21)) as referenced above. In addition, the Federal Court recently found pre-placement testing to be reasonable in the context of its Charter analysis of the Canadian Nuclear Safety Commission's regulations.
>
> (Italics in original)

198. The issue in this arbitration involved double testing an employee, once when hired as a trainee for an SS/SC position and a second time just prior to qualifying for that same position.

Analysis

199. The case law allows CPKC to conduct drug testing as a pre-employment condition. It can also conduct a drug test for a candidate who does not occupy an SS/SC position, but who applies to move into that type of position.

200. However, to the extent section 5.1 obliges a new employee training for an SS/SC position to have both a pre-employment drug test and then a second drug test prior to final qualification, CPKC's DAPP does not meet the KVP test. CPKC provided no legal authority to justify this double testing scenario.

201. In SHP530[174], Arbitrator Picher concluded that an employee being promoted or transferred into a risk sensitive position could be tested:

> In the result, **I am satisfied that those aspects of the drug and alcohol testing policy which would require an employee, under pain of discipline, to undergo drug and alcohol testing** on the basis of reasonable grounds, including after a significant accident or incident, or **as a pre-condition to promotion or transfer into a risk sensitive position are not, of themselves, unreasonable by the standards of KVP, and are not a violation of the collective agreements**. Obviously an employee can decline to undergo a drug or alcohol test where it is manifest that there are no reasonable grounds to do so.
>
> (Emphasis added)

202. However, the fact an employer can legitimately drug test an employee moving into an SS/SC position does not answer the specific double testing scenario to which the Unions object.

[174] SHP530 – Canadian National Railway Company v. CAW-Canada et al.

203. In AH731[175], the arbitrator examined a similar situation and did not agree with CPKC's double testing practice for an SS/SC position [Footnotes omitted]:

> 43. **The parties do not dispute CP's pre-hiring practice to require prospective employees to pass a drug test. Ms. Daniher met this requirement**.
>
> 44. **But Ms. Daniher's situation brought into focus DAPP Section 5.1 dealing with additional testing "before receiving final qualification for the position":**
>
> [text of section 5.1 omitted]
>
> 45. CP added this provision to the DAPP in September 2019.
>
> 46. **Despite the IBEW arguing the jurisprudence did not support testing for Ms. Daniher's situation, CP provided no authority to support this additional testing. No accident or incident had occurred which satisfied the testing requirement. Neither did CP lead any evidence suggesting a workplace problem with drug or alcohol use which might justify random testing**.
>
> 47. **Section 5.1 appears to impose mandatory testing as a condition for every already-hired employee to complete his/her probationary period. It was incumbent on CP to demonstrate a legal justification for this requirement. In the absence of such, the arbitrator cannot find a basis for CP's testing of Ms. Daniher.**
>
> 48. This lack of justification for testing meant that CP acted arbitrarily when it rejected Ms. Daniher during her probationary period.
>
> 49. **A second challenge for CP, even on the probation analysis, is that its evidence, based solely on a positive urine test, does not show impairment. Railway arbitral awards have consistently required evidence of on-the-job impairment**. This aspect will be explored further when dealing with the just cause analysis.
>
> (Emphasis added)

204. In short, CPKC did not demonstrate the reasonableness of the double testing scenario. In the absence of that, CPKC cannot satisfy the KVP test. The arbitrator emphasizes that this conclusion applies to the specific scenario in question. DAPP

[175] *Canadian Signals and Communications System Council No. 11 of the IBEW c Canadian Pacific Railway Company*, 2021 CanLII 70484. See also CROA 4836.

section 5.1 may contemplate other scenarios which the parties did not address in this arbitration.

2. THE COMPANY'S INTRODUCTION OF A 28-DAY CANNABIS BAN IS UNREASONABLE, UNENFORCEABLE AND PLAINLY IN VIOLATION OF THE LONG PAST PRACTICE BETWEEN THE PARTIES, CROA JURISPRUDENCE, AND GENERAL RAIL INDUSTRY STANDARDS. CANNABIS USE IS LEGAL IN CANADA. IT IS WELL UNDERSTOOD AND ESTABLISHED THAT THE TEST FOR IMPROPER EMPLOYEE DRUG USAGE IS IMPAIRMENT AT WORK AND NOT THE MERE PRESENCE OF CANNABIS IN A URINE SAMPLE.

Conclusion

205. CPKC's imposition of a cannabis ban "for a minimum 28 days" failed the KVP test.

DAPP wording

206. CPKC's #HR203.1 imposed a minimum 28-Day Ban on the use or consumption of cannabis for SS/SC employees:

> 28-Day Cannabis Ban
>
> **Employees in or subject to a Safety Critical Position or Safety Sensitive Position are further prohibited from using or consuming cannabis from any source for a minimum 28 days before being on duty or subject to duty**. This 28-Day Cannabis Ban is in addition to and does not in any way limit the prohibitions set out in the above three bullets or other employee obligations set out in the Policy or Procedure. For clarity, an employee is still required to report to work and remain at work free from the effects of cannabis regardless of the last date of use or consumption. For example, chronic use of cannabis may create adverse effects that impair an employee's fitness for work beyond the 28-day period.
>
> (Emphasis added)

Positions

207. As mentioned earlier, two schools of thought may now exist when applying the KVP test to employer drug and alcohol policies. One school requires impairment while the other does not.

CPKC

208. CPKC urged[176] the arbitrator to eliminate impairment as a condition precedent for discipline in drug testing cases:

[176] CPKC Amended Brief. See also its original Brief at paragraph 136 et ss.

> 210. However, as detailed above in the Company Brief, this reasoning fails to address the fundamental issue at the heart of the present case. The validity of the 28-day policy should not be judged solely on whether drug testing can detect impairment. As shown in the scientific evidence and explained by the Company's experts during the hearing, scientific evidence demonstrates that residual impairment from cannabis may persist beyond the acute intoxication phase. Given the safety-sensitive nature of the work, it is entirely reasonable for CPKC to enforce a 28-day abstinence period before duty. The inability of urine (and oral fluid) tests to precisely measure impairment does not undermine the legitimacy of the DAPP, especially when long-term cognitive and psychomotor risks are documented, as further explained in the Scientific Brief.
>
> 211. The Unions base their arguments notably on case SHP 530, which has already been extensively explained in this Company Brief. We reiterate that this decision was rendered more than 25 years ago. We do not intend to revisit that decision and we refer the Arbitrator to our previous comments on this matter.
>
> 212. The Unions also cite several other decisions in paragraphs 115 to 149 of the Unions' Brief to support that a drug test cannot prove impairment, and thus cannot justify disciplinary action. **With respect, all these decisions should be disregarded as they are either wholly irrelevant to the present matter, or simply outdated. Most importantly, none of them was issued on the basis of any scientific evidence on residual impairment, let alone in light of the extensive scientific evidence presented in the current case. This distinction is particularly significant because the reasonableness of the 28-day cannabis ban must be assessed based on the latest scientific literature as well as the expert testimony provided in the current matter.**
>
> (Bold added; Underlining in original)

209. To support the DAPP's 28-day cannabis ban, CPKC in its Brief referenced what Transport Canada had done for some federal employers as well as other government policies:

> 112. Following the legalization of cannabis, the Company revised its Policy and Procedure to introduce a 28-day cannabis ban for employees in or subject to a Safety Critical Position or Safety Sensitive Position, aligned with the adoption by Transport Canada of a 28-day cannabis ban for flight crews and flight controllers, and the adoption of similar policies by the federal government for the Canadian Armed Forces members, the Department of National Defence employees and the Royal Canadian Mounted Police.

210. CPKC noted that users can ingest cannabis in ways other than smoking[177]. Similarly, the concentration of THC in cannabis products had increased significantly over the years[178]. CPKC noted that while acute THC impairment continues for a short period of time, recent studies have noted that residual impairment, even after the acute phase, can remain for certain chronic regular users[179].

211. CPKC argued that long term impairment for chronic cannabis users justified the 28-day ban for all SS/SC employees [Footnotes omitted]:

> 150. Contrary to what was alleged by the Unions and their expert, Dr. Wood, during the hearing, both Professor Huestis and Dr. Snider-Adler's original reports clearly stated that such residual impairment was expected in chronic frequent cannabis users, that is, daily or almost daily users:
>
> > (1) Professor Huestis explained and summarized many studies showing such residual impairment in a section of her report entitled "Residual cannabis impairment in chronic frequent cannabis users". Wherever there is a mention of "residual impairment" in Professor Huestis' report, it is clearly in reference to "chronic frequent cannabis use" or "chronic frequent cannabis users". There is absolutely no ambiguity, nor reference to "residual impairment" in occasional users, or less-than daily or almost daily users.
> >
> > (2) Dr. Snider-Adler also clearly states that risks of residual impairments "is most concerning for chronic, daily users of cannabis".

The Unions

212. The Unions argued that the 28-day cannabis ban ran counter to the longstanding jurisprudence that the mere presence of a drug in a urine test did not demonstrate impairment:

> 103. Through the unilateral introduction of the 28-day cannabis ban, the Company seeks to discipline and/or dismiss its employees for simply having the traces of a legal drug (marijuana) in their system.
>
> 104. This policy provision is unreasonable and contrary to the law of Canada. CPKC has incorporated this 28 day cannabis ban despite the fact that for many years in many cases, every single learned railway Arbitrator who has adjudicated on such cases has ruled that the Company is unable to establish cause for any discipline, let alone discharge, simply based on the fact that a drug test revealed the mere presence of a drug in an employee's system. This of course includes the now legal drug of cannabis which makes this ban even

[177] CPKC, Amended Brief, paragraphs 114-121.
[178] CPKC, Amended Brief, paragraphs 122-128.
[179] CPKC, Amended Brief, paragraphs 129-138.

worse. CPKC continues to violate the above awards – see Union's BOD at Tab 28 -page 2.

105. To the extent that urine testing employed by this Policy will result in discipline for breach of a 28-day Cannabis ban, it is long settled law in Canada that such a positive urinalysis drug test cannot be just cause for any discipline. The arbitral jurisprudence in respect of drug testing in Canada is now extensive. It has been repeatedly sustained by the courts and is effectively the law of the land.

Residual impairment

213. The parties do not dispute that both casual and chronic THC users will experience acute impairment when they smoke marijuana. Chronic users may develop some tolerance due to their frequent use; something not found in casual users[180].

214. The THC gets delivered rapidly to the brain when smoked. Dr. Heustis testified that this acute impairment for casual users would last from between 6-12 hours, though she added that some researchers believe impairment can last longer, up to 24 hours.

215. Acute impairment causes significant safety risks[181]. No one suggested acute impairment did not justify a severe disciplinary response. In the railway industry, dismissal has long constituted the presumed appropriate penalty for impairment.

216. CPKC satisfied the arbitrator, on a balance of probabilities, that chronic users will experience residual impairment.

217. The evidence indicated that, for chronic i.e., daily users, the body cannot eliminate all the THC the way it does for casual users. THC, which is the psychoactive compound, therefore gets stored in fat tissues, like the brain, and will be excreted over time. The active THC compound continues to impact brain function.

218. In Dr. Heustis' view, research has shown that cognitive impairment could last for up to 28 days for these chronic users[182]. While Dr. Wood cautioned that some of these

[180] See, for example, *Desrosiers*, CPKC Book of Scientific Articles, tab 16, PDF page 198/942.
[181] For a recent example, see Ex-42, *Meda*, "A randomized, placebo-controlled, double-blind, pilot study of cannabis-related driving impairment assessed by driving simulator and self-report", Journal of Psychopharmacology 2025, Vol. 39(4) 364-372. Dr. Heustis participated in this study.
[182] See CPKC Book of Scientific Articles, *Bola*, tab 6, PDF page 78/942 and *Pope*, tab 42, PDF page 607/942.

results might arise from other factors, the arbitrator found quite compelling the evidence that these chronic users improved their performance the longer they abstained.

219. In *Hirvonen*[183], the researchers, which included Dr. Heustis, described how abstinence impacted chronic daily users:

> In conclusion, we report for the first time decreased CB1 receptor binding in cortical, but not in subcortical, brain regions in chronic daily cannabis smokers, and that this downregulation is reversible after ~4 weeks of abstinence. Downregulation of CB1 receptors may underlie tolerance to effects of cannabis, and may provide insight into the role of CB1 receptors in diseases that are associated with chronic cannabis smoking, such as psychosis and depression. Future studies should determine whether occasional cannabis smokers or females show similar downregulation, and examine the time course of reversal of downregulation in greater detail.

220. During her testimony, Dr. Heustis acknowledged that certain subjects had opted to leave that residential study, which is a continuing problem because participants suffer withdrawal symptoms.

221. In *Bosker*[184], the chronic users improved performance on various tests during a 3-week period of abstinence. The authors highlighted several limitations in the study, as did Dr. Wood, but nonetheless concluded that abstinence improved psychomotor function:

> In sum, psychomotor function of chronic cannabis smokers improved during 3 weeks of monitored abstinence, but did not recover to a normal performance level as assessed in a control group of occasional drug users. Between group differences however need to be interpreted with caution since chronic smokers and controls were not matched for education, social economic status, life style and race.

222. *Ramaekers*[185] came to a similar conclusion about chronic cannabis use:

> The present demonstration of absence of tolerance to cannabis impairment has important implications for risk perception in frequent users. It implies that neurocognitive function of daily or near daily cannabis users can be substantially impaired from repeated cannabis use, during and beyond the initial

[183] CPKC Book of Scientific Articles, tab 24, PDF page 316/942.
[184] CPKC Book of Scientific Articles, tab 7, PDF page 85/942. The *Bergamaschi*, *Bosker* and *Hirvonen* studies in which Dr. Heustis participated all arose from the same residential stay program.
[185] CPKC Book of Scientific Articles, tab 43, PDF page 614/942.

> phase of intoxication. As a consequence, frequent cannabis use and intoxication can be expected to interfere with neurocognitive performance in many daily environments such as school, work or traffic.

223. Chronic cannabis users suffer from residual impairment. Their performance improves following abstinence. While studies of this nature have limitations, as their authors themselves routinely point out, that did not persuade the arbitrator simply to ignore their existence.

224. The legal evidentiary standard of a balance of probabilities does not mean that no contrary evidence about residual impairment exists. Dr. Snider-Adler candidly admitted in her opinion that some studies had come to a different conclusion[186]. Similarly, any analysis of the issue must distinguish between casual and chronic users[187]. Residual impairment only arises in the latter group.

225. The arbitrator has not come to a novel conclusion. The record in this arbitration contained other sources which accepted that impairment could continue after acute intoxication. For example, Dr. Wood acknowledged in cross-examination that the *Fischer*[188] article on which he relied in his expert report[189] also contained this passage about longer term impairment for chronic users (footnotes omitted):

> Cannabis use acutely impairs key executive functions critical for driving, including cognition, attention, memory, decision making, and psychomotor functioning. This occurs in a dose-dependent way, although the magnitude and persistence of impairments may vary with use patterns, THC concentration, tolerance, metabolism, and other factors. **Some of these impairments have been found to persist after acute intoxication, particularly in chronic users**.
>
> (Emphasis added)

226. The record also contained Health Canada's "Information for Health Care Professionals"[190] which noted, despite the challenges in studying this issue, that the

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[186] CPKC BoD, Tab 23, PDF page 1797/2068.
[187] The arbitrator understands paragraph 34 in *Deering and Cougar Helicopters inc*., 2020 CarswellNat 144 as implicitly referring only to chronic users and not casual users. See also *Unifor, Local 2121 v Hibernia Platform Employers' Organization*, 2022 CanLII 48653
[188] CPKC Book of Scientific Articles, tab 20; PDF page 250/942: "Lower-Risk Cannabis Use Guidelines: A Comprehensive Update of Evidence and Recommendations", August 2017, Vol 107, No. 8 AJPH.
[189] Unions BoD, tab 29, PDF page 272/302.
[190] Ex-32, PDF page 172/266.

studies “Nonetheless…generally suggest that chronic cannabis users may suffer varying degrees of cognitive impairment”.

227. Given the arbitrator’s conclusion about residual impairment, does CPKC’s 28-day cannabis ban therefore satisfy the KVP reasonableness test?

The potential of residual impairment does not justify the 28-day ban

228. The arbitrator’s earlier conclusion about the need for impairment impacts the reasonableness of CPKC’s 28-day cannabis ban.

229. CPKC pursues the legitimate objective of maintaining a safe workplace for its employees and the public. An employee working when impaired creates intolerable hazards, especially for co-workers. This scenario explains why arbitrators generally apply a presumption that termination constitutes the appropriate penalty for working while impaired.

230. Nonetheless, CPKC’s 28-day cannabis ban does not satisfy the KVP test for several reasons.

231. As noted above, the ban arises from a purely private employer policy. No governmental authority has imposed it for railways, unlike for the nuclear energy and aviation industries[191]. The arbitrator cannot ignore this legislative reality.

232. Moreover, for decades, railway jurisprudence has demanded evidence of impairment as a precondition to discipline. This requirement gives meaning to the just cause provisions in the various collective bargaining agreements. Upholding the 28-day ban would necessarily result in some employees, despite no evidence of impairment, being subject to discipline, and possibly dismissal, merely for engaging in legal behaviour during their personal time.

233. In AH906[192], a case which involved a 28-day cannabis ban, the arbitrator overturned discipline since the railway employer could not prove impairment:

> 45. The IBEW satisfied the arbitrator that Mr. DiMaria’s case requires the same conclusion. TTR did not demonstrate that Mr. DiMaria’s accident arose

[191] Transport Canada - Cannabis legalization.
[192] *International Brotherhood of Electrical Workers, System Council No. 11 v Toronto Terminals Railway Company*, 2026 CanLII 10266

> due to impairment. Accordingly, it had no cause to discipline him for the specific grounds it raised. Without any grounds for discipline, TTR could not order Mr. DiMaria to undergo both assessments and drug testing.

234. In AH706[193], the arbitrator applied the requirement for impairment in a case arising from Bombardier's decision to implement a total cannabis ban for safety sensitive employees. The arbitrator overturned the dismissal since Bombardier had not demonstrated impairment at the time of the incident [Footnotes omitted]:

> 36. The facts do not support BTC's suggestion that the "impaired" line of cases apply to Mr. Ouimet's situation. Unlike in CROA&DR 4527, Mr. Ouimet's oral swap test came back negative. Railway arbitrators have consistently concluded that this test result signifies the individual was not impaired. BTC had to demonstrate that the "impaired" line of cases applied to Mr. Ouimet. It failed to meet this burden when it referred to its amended 2018 Policy but without providing evidence of impairment as well.
>
> ...
>
> 38. Marijuana, of course, has since become lawful. As noted in CROA&DR 4524, there is a clear difference for just cause cases between consuming and then working impaired versus consuming and then later working unimpaired. A unilateral policy change cannot treat both situations as the same.

235. The 28-day ban would essentially reverse the current jurisprudence by allowing CPKC to discipline employees despite no evidence of impairment. CPKC did not demonstrate the reasonableness of its unilaterally imposed policy making such a fundamental change.

236. CPKC asked the arbitrator to distinguish recent decisions which examined cannabis bans. The arbitrator cannot do so. Those cases appear consistent with the arbitrator's conclusion about the unreasonableness of the 28-day ban.

237. In *Felix*[194], an unjust dismissal decision under Part III of the *Code*, the CIRB commented on a 28-day cannabis ban and also found unreasonable CPKC's decision to conduct random alcohol and drug testing for all non-union employees in SS/SC positions:

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[193] *Bombardier Transportation Canada Inc. v Teamsters Canada Rail Conference*, 2020 CanLII 53040.
[194] *Felix v Canadian Pacific Railway Company (now known as Canadian Pacific Kansas City Railway)*, 2024 CIRB 1122

> [54] It is the Board's view that the respondent's implementation of its random alcohol and drug testing was an unreasonable exercise of management rights because random testing was applied as a universal program to all non-union employees in safety-sensitive and safety-critical positions across its entire operations without evidence of a demonstrated problem in a particular workplace. Given that the respondent's reason for implementing a random testing program is to ensure a safe workplace, it also appears inconsistent to implement a program that excludes the vast majority of employees who work in safety-sensitive and safety-critical positions for the sole reason that they are employed in unionized positions.
>
> …
>
> [75] **There is simply insufficient evidence for the respondent to justify a 28-day ban on the use of cannabis, which as of the date of the complainant's use was a legal narcotic. The Board finds that the application of the 28-day ban to the complainant was an unreasonable exercise of management rights and that the respondent cannot rely on a breach of this ban to impose discipline.**
>
> (Emphasis added)

238. CPKC suggested[195] that *Felix* did not have the extensive expert evidence this arbitration heard about a 28-day ban. But the CIRB in that case did accept Dr. Snider-Adler's evidence and her frank admission that the testing results could not confirm impairment.

239. CPKC also asked the arbitrator to distinguish *Metrolinx*[196] on the basis that that case involved a blanket prohibition as opposed to the DAPP's science supported 28-day ban. CPKC in its final oral argument also suggested that the GSB in *Metrolinx* had failed to consider the precautionary principle and inappropriately applied the framework for random testing[197].

240. The arbitrator cannot agree. No real difference exists between a ban "for a minimum 28 days" and a blanket ban. The DAPP's ban would effectively prevent an employee from ever working at CPKC.

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[195] CPKC Brief, paragraphs 224-226.
[196] *Amalgamated Transit Union - Local 1587 (Policy) v Ontario (Metrolinx)*, 2025 CanLII 18169 (ON GSB).
[197] CPKC Brief, paragraphs 221-223.

241. Similarly, the GSB's decision in *Metrolinx* explicitly considered the precautionary principle[198] and commented, *inter alia*:

> [276] Missing in the Employer's argument is recognition that the application of a precautionary principle implies that an appropriate risk assessment has been conducted so as to determine the threat to safety. To continue the example, during the SARS and COVID-19 outbreaks, people were suffering significant harm. The threat was clear. The effectiveness of lockdowns were not known with scientific certainty, yet were found to be warranted. In this case, people might or could suffer harm if employees engaged in safety-sensitive work attended work unfit for duty. I have no interest in minimizing that potential outcome. However, any threat must be objectively assessed. If the risk of harm is negligible, there may be no threat. As the risk of harm increases, so does the threat. Risk is measured by looking at a number of factors. It includes the science but also includes factors such as employee behaviour and workplace rules.

242. Neither did CPKC satisfy the arbitrator that the GSB in *Metrolinx* applied the wrong legal test. An analysis of the DAPP must apply the SCC's decision in *Irving*[199]. Throughout *Irving*, the SCC expressly accepted the essential balancing of interests at the heart of the KVP analysis and noted:

> [81] The arbitral jurisprudence does not recognize an unqualified right of employers to unilaterally impose workplace rules on their employees outside of the collective bargaining process. Rather, the onus is on the employer to justify such rules based on compliance with standards first articulated in the seminal arbitral decision of Re Lumber & Sawmill Workers' Union, Local 2537, and KVP Co. (1965), 1965 CanLII 1009 (ON LA), 16 L.A.C. 73 (Robinson). The "KVP test" has six distinct elements, the primary one being that the rule must be reasonable. In this case, the only question was the reasonableness of the rule (board's reasons, at para. 30). Before this Court, neither party challenges the applicability or reasonableness of the KVP test and we therefore accept it as establishing the guiding framework for analysis for the purposes of the present appeal.

243. In this case, the Unions emphasized that no evidence existed that any of CPKC's SS/SC employees, who work constantly, were chronic as opposed to casual cannabis users. Similarly, while covid cases dealt with a situation where everyone was at risk, residual impairment only presents a risk if chronic users work at CPKC. Dr. Heustis indicated in her cross-examination that she could not identify chronic users without testing

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[198] *Metrolinx*, paragraphs 259 et ss.

[199] *Communications, Energy and Paperworkers Union of Canada, Local 30 v. Irving Pulp & Paper, Ltd.*, 2013 SCC 34

everyone. She did add, however, that the Canadian cannabis survey[200] suggested that 23% of Canadians smoked marijuana daily.

244. CPKC understandably has safety concerns arising from residual impairment. To a certain extent, the expert evidence addressed this concern since both casual and chronic cannabis users will experience acute impairment. Therefore, if reasonable grounds existed for OF testing, then the results would seemingly identify impaired employees, whether they were casual or chronic users.

245. In short, the KVP analysis applies to unilaterally imposed employer workplace rules, including those addressing drugs and alcohol. CPKC did not persuade the arbitrator that the analysis used in *Irving* and *Metrolinx* should not apply to the DAPP.

246. Other entities, like Transport Canada, may decide that the risk of potential impairment in some employees is too great in an industry to allow the *Irving* balancing process to apply. But that is a matter falling outside the parameters of this arbitration and would involve a Charter analysis, like in *Power Workers*[201].

247. On May 19, 2026, CPKC emailed the arbitrator a copy of the May 6, 2026 aviation sector French arbitral award in *Air Transat*[202]. The arbitrator provided the parties with an opportunity to comment, a process which finished on June 18, 2026.

248. *Air Transat* dismissed CUPE's grievance contesting the employer's policy banning cannabis for employees working in safety positions (postes à risque). The arbitrator in *Air Transat*, after considering the expert evidence, concluded that residual impairment existed (paragraphs 170 & 178).

249. The arbitrator has considered the parties' submissions on *Air Transat*. *Air Transat* does not impact the arbitrator's conclusion in the instant case. This view arises not from the conclusions about the expert evidence in *Air Transat*, but instead due to the legal analysis it applied.

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[200] Ex-37 Government of Canada, *Canadian Cannabis Survey 2023: Summary*. The government conducts this survey annually.
[201] Power Workers' Union v. Canada (Attorney General), 2024 FCA 182. The SCC denied leave to appeal on May 29, 2025: *Power Workers' Union, et al. v. Attorney General of Canada, et al.*, 2025 CanLII 48636.
[202] *Syndicat canadien de la fonction publique, section locale 4041 c Air Transat*, 2026 CanLII 44306.

250. *Air Transat* contained a few references to KVP. However, the parties seem to have pleaded the case as if the *Charter*[203] (paragraph 13) and/or Quebec's *Charte des droits et libertés de la personne*[204] (*La Charte*) (paragraph 12) applied to the legal analysis (footnotes omitted):

> 14. Par conséquent, une politique ayant des incidences sur le droit à la vie privée doit aussi être compatible avec la Charte et doit donc être analysée sous le prisme du test établi à l'article 9.1 de celle-ci. Ce test, élaboré par la Cour d'appel dans l'arrêt Goodyear, exige que lorsqu'un droit garanti est limité, celui qui veut en limiter les effets doit pouvoir prouver qu'il poursuit un objectif légitime et important, que la limitation est rationnellement liée à cet objectif et que l'atteinte au droit protégé est minimale.

251. The Legislator can impact the legal analysis conducted at a provincial level through legislation like *La Charte*. But *La Charte* has no application to a federal undertaking like Air Transat. Similarly, the award did not identify any type of governmental action which might give rise to a *Charter* analysis[205].

252. For CPKC's federal undertaking, the arbitrator remains satisfied that KVP, which the SCC supported in *Irving*, and which focuses on the collective bargaining context including a CBA's just cause provisions, provides the proper analytical framework for this case.

253. In sum, while CPKC demonstrated that chronic cannabis users suffer from residual impairment, that finding alone, given the need to prove impairment, did not justify the imposition of a 28-day cannabis ban for all SS/SC employees.

[203] Canadian Charter of Rights and Freedoms.
[204] RLRQ c C-12, Partie -1.
[205] See section 32(1) of the Charter and *McKinney v. University of Guelph*, 1990 CanLII 60.

3. THRESHOLDS OF 4 NG/ML AND 2 NG/ML ARE UNREASONABLE, UNNECESSARY, ARBITRARY AND IN VIOLATION OF THE PAST PRACTICE BETWEEN THE PARTIES. IN THE COMPANY'S 2018 "ALCOHOL AND DRUG PROCEDURES #HR 203.1 (OCTOBER 7, 2O18)" VERSION OF THE POLICY THE SAME THRESHOLD NUMBERS WERE 10 NG/ML AND 10 NG/ML. NO SCIENTIFIC OR OPERATIONAL REASON HAS BEEN GIVEN THAT COULD JUSTIFY THE INTRODUCTION OF THE CHANGE IN THE NEW VERSION OF THE POLICY.

Conclusion

254. CPKC did not demonstrate, given the arbitrator's conclusion that it must prove impairment as a condition precedent to discipline, that the significantly reduced cutoff thresholds met the KVP reasonableness requirement. Had CPKC shown that 4/2ng/ml provided the type of reliability about impairment that the previous threshold of 10ng/ml had shown over the decades, then the arbitrator might have concluded otherwise.

DAPP wording

255. HR 203.1 at section 4.1 and Appendix 2 changed the cutoff thresholds from 10ng/ml for both screening and confirmation to 4ng/ml for screening and 2ng/ml for confirmation. The DAPP's wording focused on the drug test results rather than on impairment:

> The following will also constitute violations of the Policy and Procedure:
>
> > □ a positive drug test as determined through the Company testing program, (a drug level equal to or in excess of the Company drug concentration test levels* where a Medical Review Officer has verified the results as a positive test);
>
> …

ORAL FLUID (SALIVA		
Drugs or classes of drugs	***Screening concentration equal to or in excess of ng/ml**	****Confirmation concentration equal to or in excess of ng/ml**
Marijuana (THC)	4	2

Positions

CPKC

256. CPKC noted that, as drug testing has evolved, multiple organizations have adopted lower cutoff levels[206]. It described the challenges associated with the previous 10 ng/ml threshold:

> 280. The THC cut off levels were revised in the DAPP to obtain a window of detection of about 10 to 24 hours based on the scientific research and industry recommendations. The new thresholds were selected to target the length of time of acute impairment, and to take into consideration the fact that drug testing typically occurs after an employee has started working and after they were subject to call or duty.
>
> 281. The scientific evidence demonstrates that a 10 ng/ml cut off provides a window of detection that is too short to capture impairment of employees for the entire time that they are subject to call or duty and actually working, thereby creating risks to the health and safety of employees and the public.
>
> 282. Professor Huestis was involved in conducting many controlled cannabinoid administration studies at the National Institute on Drug Abuse, evaluating smoked, vaporized and edible cannabis in chronic frequent and occasional cannabis users.
>
> 283. These studies demonstrate that, at a screening and confirmation oral fluid THC cut off of 10ng/mL, the window of detection is too short. It is less than 5 hours in 9 occasional and 11 chronic frequent cannabis users after smoking, vaporizing or eating 50.6 THC. With the 2 ng/mL confirmation cut off, the window of detection was approximately 10 to 24 hours.

257. CPKC relied on its expert evidence to support the new cutoff thresholds:

> 285. Consequently, using a confirmation test at 2 ng/mL indicates use of cannabis sometime during approximately 24 hours prior to the collection. Although oral fluid testing is not a test of impairment per se, it demonstrates very recent use of cannabis, which is an indicator of the highest risk of performance deficits after the use of cannabis.
>
> 286. Professor Huestis explains that there are clearly some cognitive and psychomotor effects of acute impairment that persist for up to 24 hours. In the context of a safety challenging work environment, the performance decrement can result in serious safety issues, and this justifies the adoption of a 2 ng/mL threshold for confirmation testing.

[206] CPKC Brief, paragraphs 275 et ss.

…

289. In her report, Professor Huestis clearly recommends the 4 ng/mL screening and the 2 ng/mL confirmation cut offs for CPKC.

290. Notably, the Canadian Nuclear Safety Commission (CNSC) consulted with Professor Huestis who prepared a report in 2019 dealing, inter alia, with oral fluid testing. In her report to the CNSC, Professor Huestis recommended a screening cut off of 4 ng/mL and confirmation of 2 ng/mL. She noted that the window of THC detection at a 2 ng/mL is about 10 hours in occasional smokers and 24 hours in chronic cannabis smokers. The CNSC adopted the confirmation cut off level at 2 ng/mL. In June 2023, the Federal Court commented on the cut off levels set out in the CNSC regulations (which include the 2 ng/mL confirmation threshold). The Federal Court accepted that "the cut-off levels in the RegDoc are set so that a positive test result would indicate very recent use and be a better signal for possible impairment."

258. CPKC also referenced other decisions discussed above which accepted the 2ng/ml threshold for testing without the need to prove impairment: *Gibson*[207], *Asplundh*[208], and *CST Canada*[209] the latter of which examined a 4 ng/ml threshold.

The Unions

259. The Unions urged the arbitrator to retain the requirement for impairment given the just cause provisions in their respective collective agreements:

165. Under Procedure # HR 203.1, laboratory-testing cut off levels for Cannabis/ Marijuana in saliva samples screened at 4ng/ml and confirmation testing for Tetrahydrocannabinol, THC (the psychoactive component of Marijuana/Cannabis) is at 2ng/ml.

166. CPKC has offered no scientific or operational reason to justify the introduction of these thresholds in the Policy in 2019.

167. Since the Employer's legitimate interests in a test for alcohol or drug usage is and always has been impairment, the administration of a threshold cut-off level that could not possibly reveal the presence of impairment at the time of a significant incident or alleged reasonable cause can only be viewed as arbitrary, unreasonable and in violation of privacy and other rights.

[207] *Gibson Energy (Moose Jaw Refinery Partnership) v Unifor, Local (Mike Chow)*, 2021 CanLII 16446.
[208] *Asplundh Tree Service ULC v Chipman*, 2021 NSLB 81.
[209] *CST Canada Coal Limited v United Mine Workers of America, Local 2009*, 2025 CanLII 5367 (AB GAA) (Casey)

260. The Unions summarized why railway arbitrators have accepted a 10ng/ml cutoff in the search for impairment[210]. In SHP726[211], Arbitrator Schmidt relied on Dr. Snider-Adler's expert evidence to conclude that:

> The Union does not contest the science of the testing undertaken by the Company or Dr. Snider-Adler's opinion. The laboratory results of the urine and oral fluid samples are consistent with prior marijuana use. The level of the marijuana parent at 40 ng/ml (four times higher than the accepted cut-off level) is consistent with marijuana use within the four hours immediately prior to the administration of the oral swab. A concentration of marijuana higher than 10 ng/ml not only demonstrates very recent use, it is in turn a scientifically reliable and valid indicator of impairment.

261. In AH717[212], Arbitrator Moreau examined the dismissal of an employee who tested non-negative on a drug and alcohol test. That award commented directly on CPKC's 4/2ng/ml cutoff level and the absence of a reliable link to impairment:

> The facts in this case are different in that there is no admission of recent use by the grievor; no evidence of a combined positive oral swab and urine test; and, what **I find to be persuasive expert evidence of Dr. Rosenbloom over that of Dr. Snider-Adler regarding the absence of a reliable link between an oral swab test reading of 4ng/mL (using a cut-off or 2ng/mL) and impairment**.
>
> (Emphasis added)

262. In their Brief, the Unions also highlighted Arbitrator Jackson's conclusions in *Western Forest Products*[213]:

> 202. In a notable recent Drug and Alcohol Policy Grievance Award, *Western Forest Products Inc. v United Steelworkers, Local 1-1937*, 2023 CanLII 78832 (BC LA) (Tab 62) Arbitrator Marguerite Jackson provided a detailed review of the expert evidence before her and the applicable authorities and concluded:
>
> > In my view the comparison between the 2ng/ml cut off level and other safety standards is not well founded. The requirement of a drug test, whether urine or an oral swab, is a trespass upon an employee's dignity and bodily integrity unlike a hard hat, a mask or the use of a handrail.

---

[210] Unions Brief, paragraphs 174 et ss.
[211] SHP726 – Canadian National Railway v. Unifor. In AH727 at paragraph 59, Arbitrator Schmidt also noted that the 10ng/ml cutoff had been accepted as a reasonable level since 2008.
[212] AH717 – Teamsters Canada Rail Conference v. Canadian Pacific Railway.
[213] *Western Forest Products Inc.* v *United Steelworkers, Local 1-1937*, 2023 CanLII 78832 (Jackson).

> **Although the two experts disagreed on a number of issues what was common between them was the conclusion that the scientific evidence cannot and does not establish that a cut off level of 2ng/ml can confirm a likelihood of impairment. As such that cut off level cannot be considered to be reasonable. (Tab 62, pp. 67-68, emphasis added)**

> 203. For the foregoing reasons, the Unions submit that you should draw the same conclusion in the instant matter.
>
> 204. As CPKC has been repeatedly told, to the extent that a policy stipulates that for unionized employees a positive drug test is, of itself, grounds for discipline or discharge - absent proof of present impairment - it is unreasonable and beyond the well accepted standards of Canadian law.
>
> 205. For the foregoing reasons, the Unions submit that cut-off levels of 2 ng/mL and 4 ng/mL correspond with presence of marijuana in an individual's system, but offer insufficient evidence to conclude the individual was impaired given the very low quantitative levels. As such, CPKC's cut off levels cannot be considered to be reasonable.
>
> (Original emphasis from the Unions' Brief)

Analysis

263. The arbitrator's conclusion about the need to prove impairment impacts this issue as well.

264. As the Unions acknowledged[214], CPKC has legitimate concerns about any employee working while impaired. The arbitral presumption that dismissal constitutes the appropriate penalty for impaired employees illustrates the seriousness of this issue and the need for deterrence.

265. A level slightly lower than 10ng/ml may exist which would broaden the window of detection to help identify impaired employees. But the evidence did not show that 4/2ng/ml represented that appropriate cutoff level.

266. In the past, the parties implicitly accepted the previous OF 10ng/ml threshold as indicative of impairment. This does not mean an OF test constituted an impairment test like a breathalyzer. But the parties accepted over time that, subject to the right to present

[214] Unions Brief, paragraph 21.

contradictory evidence, the window of detection from a 10ng/ml test generally corresponded with an accepted window of impairment.

267. In short, the 10ng/ml threshold allowed the parties to determine impairment with some certainty. This allowed discipline cases to proceed under the expedited railway model without the lengthy and expensive expert evidence heard in the instant case.

268. On multiple occasions during her testimony, Dr. Heustis opined that impairment lasted from 6-12 hours. Dr. Wood thought it was much shorter. However, both Dr. Snider-Adler and Dr. Heustis confirmed that the 4/2ng/ml cut off threshold would provide a detection window of around 24 hours.

269. Under the DAPP's wording, detection at 4/2ng/ml would justify discipline, usually dismissal in the arbitrator's experience, despite a disconnect between the detection window and the window of impairment. In essence, the change to the DAPP, coupled with an acceptance of CPKC's request not to require impairment, would completely reverse the railway industry's longstanding jurisprudence on drug testing.

270. The Legislator may decide to make this type of change, but an employer's unilaterally imposed policy, given these parties' collective bargaining relationship, cannot meet the KVP reasonableness test.

271. Dr. Snider-Adler, both directly and indirectly, seemingly acknowledged that the 4/2ng/ml cutoff threshold would not show impairment the way the previous 10ng/ml standard did. Evidently, she would never have needed to highlight the precautionary principle in her expert opinion if the 4/2/ng/ml cut off levels still reliably demonstrated that an employee had worked while impaired.

272. As noted in *Felix*[215], Dr. Snider-Adler could not confirm impairment for a non-union supervisor whose marijuana use had been detected using the 4/2ng/ml threshold standard:

> [102] **Dr. Snider-Adler testified that she could not reach a conclusion about whether the complainant was impaired based on a review of his urine and OF results**. She stated that she could identify a risk of impairment but not actual impairment. In particular, Dr. Snider-Adler testified that OF tests

[215] *Felix v Canadian Pacific Railway Company (now known as Canadian Pacific Kansas City Railway)*, 2024 CIRB 1122

> cannot be used to determine impairment. This testimony is contrary to the findings of the CROA arbitrators that OF test results above a certain level confirm that a person is impaired.
>
> [103] **The Board prefers Dr. Snider-Adler's oral and written testimony about residual impairment and the meaning of OF test results over the conclusions reached by the arbitrators in the CROA case law. The Board accepts Dr. Snider-Adler as an expert in substance use disorders, noting that, in addition to providing expert testimony in numerous legal proceedings, the CROA arbitrators have regularly relied on reports from her. It is clear from Dr. Snider-Adler's testimony that the complainant's test results do not establish that he was impaired or unfit for duty when he was at work on March 10, 2021**.
>
> (Emphasis added)

273. Dr. Snider-Adler appears to have held the same view about a 2ng/ml threshold and its impact on a finding of impairment in *Western Forest Products*[216]*:*

> In my view the comparison between the 2ng/ml cut off level and other safety standards is not well founded. The requirement of a drug test, whether urine or an oral swab, is a trespass upon an employee's dignity and bodily integrity unlike a hard hat, a mask or the use of a handrail.
>
> **Although the two experts disagreed on a number of issues what was common between them was the conclusion that the scientific evidence cannot and does not establish that a cut off level of 2ng/ml can confirm a likelihood of impairment. As such that cut off level cannot be considered to be reasonable.**
>
> (Emphasis added)

274. The evidence in this case, and these real-world examples, highlight the difficulty with CPKC's unilateral change from 10ng/ml to 4/2ng/ml. While 10ng/ml may have missed detecting some employees, it nonetheless constituted a standard which all parties accepted. This supported the arbitral presumption that termination constituted the appropriate penalty.

[216] *Western Forest Products Inc.* v *United Steelworkers, Local 1-1937*, 2023 CanLII 78832 (Jackson).

275. The arbitrator also preferred Dr. Wood's evidence that a 4/2ng/ml cutoff might inadvertently catch those who tested positive due to passive exposure to marijuana smoke[217].

276. In the absence of evidence that the 4/2ng/ml cutoff will allow the parties to identify impairment, the DAPP cannot meet the KVP reasonableness test.

277. Moreover, the use of that standard would seemingly require the parties to engage in complex and long arbitrations like the current one for each alleged DAPP violation. While not a factor retained for the arbitrator's KVP analysis, that still constitutes a practical labour relations observation about the impact of the 4/2ng/ml threshold on the efficiency of the railway model of arbitration the parties use.

4. THE THRESHOLD THAT "AN ALCOHOL TEST RESULT OF 0.02 BAC OR HIGHER AS DETERMINED THROUGH THE COMPANY TESTING PROGRAM" CONSTITUTES A VIOLATION OF THE POLICY IS UNREASONABLE, ARBITRARY AND IN VIOLATION OF PAST PRACTICE AND JURISPRUDENCE. THIS CUT-OFF LEVEL OF .02 BAC IS NOT SHOWN TO RELATE TO IMPAIRMENT AND IS THEREFORE AN UNREASONABLE AND UNSUPPORTABLE EXERCISE OF MANAGEMENT'S RIGHTS AND MUST BE DECLARED NULL AND VOID AS BEING IN VIOLATION OF THE COLLECTIVE AGREEMENT.

Conclusion

278. CPKC met the KVP reasonableness test when it lowered the blood alcohol concentration (BAC) to 0.02.

DAPP wording

279. HR203.1 in section 4.1[218] contains the following wording which reduced the blood alcohol concentration (BAC) from 0.04 to 0.02:

> The following will also constitute violations of the Policy and Procedure:
>
> > □ a positive drug test as determined through the Company testing program, (a drug level equal to or in excess of the Company drug concentration test levels* where a Medical Review Officer has verified the results as a positive test);

[217] Ex-49, *Moore*, Cannabinoids in oral fluid following passive exposure to marijuana smoke, Forensic Science International 212 (2011) 227-230.
[218] See also section 4.2 and 4.3 for similar references to 0.02.

 an alcohol test result of 0.02 BAC or higher as determined through the Company testing program;

 a failure/refusal to test as determined through the Company testing program.

(Emphasis added)

Positions

CPKC

280. CPKC noted that, unlike THC testing, breath alcohol measuring constitutes an impairment test. It noted that, while SHP503 did not accept a BAC of 0.02, the science has evolved significantly since July 2000[219]:

> 350. The CROA office has not assessed the reasonableness of a BAC other than 0.04 since the issuance of the decision issued by Arbitrator Picher in SHP 530 in 2000. In that decision issued more than 25 years ago, the only scientific evidence referenced by the Arbitrator as having been relied upon by the employer in support of a 0.02 BAC indicated that there was "no reliable evidence that BACs as low as 20 mg/100 mL can impair performance on a divided attention task." (para. 122) Based on that information, CN was arguing that there was no conclusive evidence that a 0.02 BAC does not in fact impair the performance of an employee involved in a task which requires divided attention.
>
> 351. It is based on this lack of scientific evidence that Arbitrator Picher found the 0.04 BAC to be a reasonable cut off level (para. 225). Arbitrator Picher found that "in light of the scientific evidence presented" to him, he could not conclude that the BAC cut off of 0.02 was justified as meaningfully related to impairment for employees performing divided attention tasks (para. 226).
>
> 352. **As the evidence demonstrates in the present matter, the scientific knowledge has now evolved, and it is apparent that even with low concentration of alcohol, below 0.02 BAC, alcohol consumption causes deterioration in the cognitive skills (including divided attention) that are essential for safety-sensitive and safety-critical workers.**
>
> 353. Consequently, the decision by Arbitrator Picher in SHP 530 on the issue of the BAC threshold can no longer be relied upon as a reference.
>
> (Emphasis added)

[219] CPKC also referenced a French award by Arbitrator Jobin which found a 0.00 BAC reasonable in a highly sensitive workplace: *Syndicat des métallos, section locale 7493 et Poudres métalliques du Québec limitée*, 2011 CanLII 100515, see paragraphs 298-316.

281. CPKC noted that it had filed sufficient expert evidence to support a BAC threshold of 0.02:

> 362. In any event, as stated above, the BAC threshold of 0.02 is not new. It has been in the Company's policy since October 17, 2018 (EXHIBIT 15, Tab 28). Therefore, the Union cannot rely on past practice to support its claim.
>
> 363. Finally, it must be reiterated that a reading greater than a 0.02 BAC leads to an investigation. There is no automatic termination. The actions or steps taken by CPKC in the event of such an alcohol test reading are dependent on the findings of the investigation and the particular circumstances of each case. It should also be stressed that alcohol tests are not typically requested at the start of a working shift, but often after a significant work-related incident, or safety related incident that occurred a number of hours after the employee commenced his/her shift. A reading of 0.02 BAC may reveal significant impairment existed at the start of a working shift.
>
> 364. Based on the scientific evidence presented by Dr. Snider-Adler and Professor Huestis and the above considerations, it is submitted that the BAC threshold of 0.02, which has been in place for many years, is reasonable.

The Unions

282. The Unions referenced Arbitrator Picher's comments in SHP530 where he did not accept a BAC of .02:

> Conversely, there is no documented or scientific evidence to confirm that the .02 BAC cut off level bears any demonstrable relationship to impairment.

283. They argued in their Brief that CPKC had not supported its imposition of BAC .02 and referenced Dr. Wood's report, which included his reference to that University of Notre Dame website Chart, as discussed above:

> 217. CPKC has not provided any evidence that its 0.02 BAC cut off level corresponds to any empirical evidence of a nexus to impairment.
>
> 218. At pages 17-18 of his October 4, 2023 Report, Dr. Wood summarizes the relevant studies that associate alcohol concentration with the impairing effects of alcohol. He notes that, "For instance, according to an easily interpretable chart provided by the University of Notre Dame, it has been reported that this level of alcohol concentration (0.020 – 0.039%) is generally associated with "No loss of coordination, slight euphoria, and loss of shyness. Relaxation, but depressant effects are not apparent."" (BOD Tab 29, page 17). Dr. Wood concludes, "Generally, a level of 0.02 in itself would be considered non-impairing absent other factors" (BOD Tab 29, page 18).
>
> 219. The cut-off level of 0.02 BAC is not shown to relate to impairment and is therefore an unreasonable and unsupportable exercise of management's rights

and must be declared null and void as being in violation of the collective agreement.

Analysis

284. The evidence satisfied the arbitrator of the reasonableness of a BAC .02 standard for SS/SC employees. There are two aspects of the change which meet the KVP test.

285. First, alcohol testing results differ significantly from those for THC. The evidence showed that alcohol testing results can be extrapolated in a linear fashion. In other words, as both Dr. Snider-Adler and Dr. Heustis testified, a positive test can show what the BAC level would have been for each earlier hour.

286. Second, as explained above in detail, the arbitrator gave no weight to Dr. Wood's expert report contesting a BAC threshold of .02.

287. CPKC's cross-examination took Dr. Wood to both the *Zador*[220] and *Irwin*[221] studies. Dr. Wood did not disagree that *Zador* had concluded people were impaired at 0.2 BAC. He also did not dispute the *Irwin* study's conclusions about BAC 0.02 opining words to the effect of "No, it looks like a rigorous study".

288. Dr. Wood then confirmed that based on that evidence presented to him he no longer maintained his view on BAC .02 by stating words to the effect "I agree there is an impact at a low level like 0.02".

289. CPKC has demonstrated the reasonableness of the BAC threshold of .02.

5. THE CHANGE TO THE ALCOHOL AND DRUG TESTING ACKNOWLEDGEMENT FORM DEEMING A REFUSAL TO SIGN TO BE GROUNDS FOR IMPOSITION OF DISCIPLINE CONSTITUTES A VIOLATION OF EMPLOYEE RIGHTS AND CONSTITUTES AN UNREASONABLE EXERCISE OF MANAGEMENT RIGHTS.

Conclusion

290. The Form, as the arbitrator reads it, does not support the Unions' JSI suggestion that it deems a refusal to sign as grounds for discipline. A Form which required an

[220] CPKC Book of Scientific Articles, tab 47; Pdf page 668/942.
[221] CPKC Book of Scientific Articles, tab 30, Pdf page 376/942.

employee to make a binding admission against interest would evidently cause significant concern.

291. But the Form merely puts an employee on notice of the possible consequences arising from a refusal to test. The case law already deals with this type of scenario. In their Brief, the Unions commented further about its concerns with CPKC's usage of the confidential medical information it received.

Wording

292. CPKC's Acknowledgement Form Alcohol and Drug Testing[222] (Form) starts with this wording:

> The purpose of this form is to obtain your consent to participate in CPKC's alcohol and drug testing program and to notify you as to how your personal information is collected, used and disclosed. Under CPKC's Alcohol and Drug Policy and Procedures, this form must be signed in order to proceed with testing. **Any refusal to sign this form will be reported as a 'Refusal to Test' under the Company Policy and testing will not proceed**.
>
> (Emphasis added)

Analysis

293. In CPKC's July 25, 2019 letter[223] to the Unions, it commented on how it would use information arising from testing:

> …
>
> 6. Updating the Alcohol and Drug Testing Acknowledgement Form to acknowledge and authorize release of alcohol and drug test results including drug type and levels to Company representatives for investigating policy violations and participating in legal proceedings or responding to notice of legal proceedings.

294. The scope of this issue remains unclear. The Unions' Brief initially appeared to address the issue as the JSI described it:

> 251. The Unions object to any change to the Alcohol and Drug Testing Acknowledgment form that would require employees to sign the form if a refusal to sign would result in the assessment of any form of discipline. The imposition

[222] CPKC Documents, tab 26. See also DAPP section 4.6 about a "Refusal to Participate in an Alcohol and/or Drug Test".
[223] CPKC BoD, tabs 1A and 1B, PDF page 5/2068.

> of discipline. The imposition of discipline would constitute a violation of employee rights and would constitute an unreasonable exercise of management rights. (sic).

295. The Unions' Brief then focused on the general use of employees' private information:

> 222. The Company has not demonstrated that it had any necessity for the extraordinary, broad power to release employee's personal health information without their knowledge or consent. The Company did not really answer the Unions' concerns. The Company has never set forth the reasons, evidence or rationale that led it to impose the expanded discretion to release personal health information of its employees to virtually anyone in management.
>
> 223. In short, the Company has failed to identify a need or problem that exists sufficient or adequate to justify the extraordinary, systemic incursion into employees' privacy rights represented by the Company's Policy and Practice. The Company's Policy and Practice are by their very nature intrusive and inherently invasive of employee dignity and privacy interests.
>
> ...
>
> 256. The Unions remains unable to accept the unnecessary and invasive disclosure of private information to Company supervisors that is being requested. The Unions requests that the Company immediately cease this initiative of having its members sign consent forms to release information to Company representatives including investigating Officers.

296. The arbitrator respectfully disagrees with the Unions' suggestion that discipline will follow a refusal to sign the form. The Form's text does not support that interpretation. DAPP section 4.6 also contains the sentence "Refusal to test may be taken as a negative inference by the Company in its subsequent investigation".

297. As the arbitrator noted in AH879[224], an employee has no obligation to submit to a DAPP test if the employer had no valid grounds to request one [footnotes omitted]:

> 39. In short, CPKC did not have grounds to test Mr. MacLeod. Therefore, it did not have just cause to discipline Mr. MacLeod for refusing to take a drug test. While the IBEW acknowledged the risk Mr. MacLeod took in refusing to

[224] See AH879 - *International Brotherhood of Electrical Workers, System Council No. 11 v Canadian Pacific Kansas City Railway*, 2024 CanLII 60992 at paragraphs 33 et ss. and AH732 - *Canadian Signals and Communications System Council No. 11 of the IBEW v Canadian Pacific Railway Company*, 2021 CanLII 69959 at paragraphs 31 et ss.

> take the test given the adverse inferences that could arise, Mr. MacLeod's refusal provided no grounds for termination.
>
> 40. In the circumstances, the arbitrator will order Mr. MacLeod's reinstatement with full compensation.

298. Testing without valid cause can also lead to significant damages awards, including for violating an employee's privacy rights[225].

299. However, should the circumstances demonstrate that CPKC, in properly applying its policy, had reasonable grounds to test the employee, then it can discipline an SS/SC employee who, without valid grounds, refused to test[226]. In SHP530, Arbitrator Picher summarized the applicable principles:

> In the result, I am satisfied that those aspects of the drug and alcohol testing policy which would require an employee, under pain of discipline, to undergo drug and alcohol testing on the basis of reasonable grounds, including after a significant accident or incident, or as a pre-condition to promotion or transfer into a risk sensitive position are not, of themselves, unreasonable by the standards of KVP, and are not a violation of the collective agreements. Obviously an employee can decline to undergo a drug or alcohol test where it is manifest that there are no reasonable grounds to do so.

300. The Form merely puts an employee on notice how CPKC may treat a refusal to test. That transparency, as part of the consent process, does not violate KVP.

301. And what of CPKC's use of the information obtained from testing?

302. In its Brief, the Unions seemingly argued that CPKC violated privacy rights by allowing managers to use the results obtained from DAPP tests[227]. The Unions referenced generally the use of employees' private medical information.

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[225] See AH807 – *Teamsters Canada Rail Conference v Canadian Pacific Railway Company*, 2022 CanLII 120899 and AH807-S - *Teamsters Canada Rail Conference v Canadian Pacific Kansas City Railway*, 2025 CanLII 32982. See also, for example, *ATCO Electric Ltd.(ATCO) v Canadian Energy Workers Association (CEWA)*, 2024 CanLII 127098 (Casey); *Interfor Acorn v United Steelworkers, Local 2009*, 2020 CanLII 47162 (Sims) and *Interfor Corporation v United Steelworkers, Local 1-405*, 2022 CanLII 15915 (Fleming).
[226] See, for example, CROA 4339 and its reference to Arbitrator Picher's award in CROA 1703.
[227] Unions Brief, paragraphs 220 et ss.

303. For example, Arbitrator Kaplan[228] had dealt with an issue, which did not involve DAPP testing, about the disclosure of personal health information obtained pursuant to a Functional Abilities Form (FAF):

> Moreover, it is beyond normative and well accepted in the authorities that medical information cannot be disclosed without consent, unless required by law. **To my knowledge, there is no accepted arbitral authority to the contrary. Indeed, the cases establish a guiding principle when it comes to employee health records and information: limited disclosure and based on consent (unless otherwise required by law). Managers are entitled to know about functional limitations and restrictions, not diagnosis or other private health information**. Generally, when medical information is disclosed in the workplace it is for purposes of accommodation and it is always limited to functional abilities to further the accommodation process (as anyone reading the FAF form would readily conclude). Moreover, there is no interpretation of the award where required by law would include pursuant to a Company policy. Whatever PIPEDA stands for, it does not include the discretionary disclosure of medical information without employee consent in many of the circumstances set out in Policy 1804 and as outlined by the union in its submissions. It does not escape attention that the Company did not make any submissions that Policy 1804 passed a KVP analysis.

304. Arbitrator Kaplan's award clearly explained how an employer must treat medical information mainly in a duty to accommodate scenario. His case did not involve the DAPP.

305. The Unions similarly referenced Arbitrator Picher's CROA 4521[229] about the mishandling of confidential medical information obtained from testing. Arbitrator Picher awarded compensation for the negligent disregard of the employee's privacy and dignity:

> **In the result, I am satisfied that the Union is correct in its position that the grievor's privacy rights were violated**. The unchallenged submission of the Union is that this is the second time such an event has occurred. On that basis it asks the Arbitrator to issue a cease and desist order to the Company as well as to award damages to the grievor for any loss of dignity resulting from the failure to protect his personal information.
>
> I do not consider it necessary to make any cease and desist order in the instant case as I am satisfied that the Company fully appreciates the importance of respecting the privacy of its employees and the gravity of the error which occurred in the instant case. I do not reject out of hand, however, the Union's

[228] *Canadian Pacific Railway Company v Teamsters Rail Conference*, 2022 CanLII 117428.
[229] CROA 4521. A reported and edited version can be found here: *Canadian National Railway Company and Teamsters Canada Rail Conference*, 2013 CarswellNat 4961, 117 C.L.A.S. 217, 240 L.A.C. (4th) 100 (Unions' authorities, tab 70).

> submission that an incentive is necessary to enforce this obligation among some rank and file officers of the Company. **I therefore direct that the grievor be compensated in the amount of five hundred dollars ($500.00) for the Company's negligent disregard for his privacy and dignity by its failure to handle his personal medical information and drug testing results in a confidential fashion.**
>
> (Emphasis added)

306. The arbitrator agrees with Arbitrator Picher's reasoning. If CPKC had grounds to test, then it does not violate KVP when it uses those results to evaluate whether an employee worked while impaired. But CPKC will render itself liable to damages if it does not protect the confidentiality of those results and instead disregards an employee's privacy and dignity.

307. CPKC's Form satisfies the KVP test.

6. THE INTRODUCTION OF A PERIOD OF UP TO 32 HOURS ALLOWING THE COMPANY TO ADMINISTER POST- INCIDENT OR REASONABLE SUSPICION TESTING IS BY ITS VERY NATURE UNREASONABLE. THE UNIONS CONTEND THAT THE ADMINISTRATION OF A TEST THAT COULD NOT POSSIBLY REVEAL THE PRESENCE OF IMPAIRMENT AT THE TIME OF AN INCIDENT CAN ONLY BE VIEWED AS ARBITRARY, UNREASONABLE AND IN VIOLATION OF PRIVACY AND OTHER RIGHTS.

Conclusion

308. In the context of a policy grievance, the arbitrator finds that the 32-hour window for drug testing satisfies the KVP reasonableness test.

DAPP wording

309. HR 203.1 states in Appendix 2:

> For Reasonable Suspicion and Post Incident testing, specimens for testing will be collected as soon as possible after the decision to test is made. However if an alcohol test is not administered within 8 hours following the triggering event, or if a drug test is not administered within 32 hours following the triggering event, attempts to collect specimens will cease.

Positions

CPKC

310. CPKC emphasized the need for a 32-hour window due to its continuous operations over 7,700 miles of track[230]. It noted that other employers had adopted similar 32-hour maximum testing windows[231]. CPKC noted that the Unions did not raise the reasonableness of a 32-hour window in other drug testing arbitration cases[232]. Moreover, the DAPP confirmed the intent to conduct testing "as soon as possible".

Unions

311. In their Briefs, the Unions commented on the unreasonableness of the 32-hour window:

> 270. The introduction of a period of up to 32 hours allowing the Company to administer post incident or reasonable suspicion testing is by its very nature unreasonable.
>
> 271. Since the Employer's legitimate interests in a test for alcohol or drug usage is and always has been impairment, the administration of a test that could not possibly reveal the presence of impairment at the time of an incident can only be viewed as arbitrary, unreasonable and in violation of privacy and other rights.
>
> 272. The Company had never previously suggested it would seek to administer a substance screening test 32 hours post incident. Such invasive inquires bear no connection with the employee's physical condition at the time of a test. Any such egregious delayed request for a test would have been met with grievances.
>
> 273. The Union is unaware of any such prior belated attempts at a substance screening test whatsoever and objects to any suggestion of these timelines going forward.

312. The Unions relied on Dr. Woods' reports which raised concerns whether a 32-hour window could ever assist with proving impairment[233]. Dr. Wood also raised the possibility that an employee may consume legal drugs post incident at home which a later test would catch.

[230] CPKC Brief, paragraphs 403 et ss.
[231] CPKC Brief, paragraphs 408 et ss.
[232] CPKC Brief, paragraphs 412 et ss.
[233] Unions Brief, paragraphs 276 et ss.

Analysis

313. The DAPP at HR 203.1 Appendix 2[234] deals with alcohol and drug testing. Drug testing extends beyond THC.

314. The DAPP's "Drug Concentration Limits" chart specifies the concentrations (screening and confirmation) for multiple drugs:

Marijuana Metabolite (THC)
Cocaine Metabolite
Opioids
- Codeine/Morphine
- Hydrocodone/Hydromorphone
-Oxycodone/Oxymorphone

6-Acetylmorphoine (Heroin)
Phencyclidine (PCP)
Amphetamines
- Amphetamine
- Methamphetamine
- Ecstasy (MDMA, MDA, MDEA)

315. The issue of the 32-hour window therefore extends beyond the evidence heard about THC[235].

316. For the following reasons, the arbitrator has concluded that a self-imposed 32-hour time limit did not violate the KVP reasonableness test for this policy grievance. Whether CPKC can prove impairment from these different drugs during this collection window raises an issue which rights arbitrations can address.

317. CPKC operates a vast geographic undertaking. Employees do not work in a single location. Cases involving some of these parties have noted the challenges which arise when employees work away from home[236]. The vastness of the undertaking itself can prevent CPKC from testing immediately. Moreover, CPKC must first investigate to conclude whether it even has proper grounds to test an employee.

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[234] CPKC Documents, tab 1D, PDF page 46/2068.
[235] Other cases have involved employees consuming cocaine. See, for example, AH877 - *International Brotherhood of Electrical Workers, System Council No. 11 v Canadian Pacific Kansas City Railway*, 2024 CanLII 62438; AH734 - *Teamsters Canada Rail Conference v Canadian National Railway Company*, 2022 CanLII 5833; and AH663 - *Teamsters Canada Rail Conference v Canadian Pacific Railway*, 2019 CanLII 89682.
[236] See, for example, AH805 (Extended Service Runs) and AH657 (Over Hours Disputes).

318. In *Halifax Employers Association*[237], Arbitrator Picher provided a few directions to the parties but otherwise accepted a D&A policy which contained a 32-hour testing window. The provision in that policy containing an 8-hour window for alcohol and 32 hours for drug testing read as follows:

> f. In Post-Incident and Reasonable Cause Testing situations, samples will be collected as soon as possible after the triggering incident, but collection attempts will end 8 hours after the Incident for an alcohol test, and 32 hours after the Incident for a drug test should the employee(s) be unavailable immediately following the incident due to hospitalization or the need to seek immediate medical attention or as the result of an ongoing third party investigation.

319. While not directly on point, Arbitrator Sims in *Interfor Acorn*[238] also dealt with a D&A policy containing a 32-hour window. The issue was whether the employer had cause to test rather than the validity of the policy itself.

320. In *Interfor Acorn*, Arbitrator Sims referenced his earlier award in *Peace County Health*[239] which noted the difference between considering a unilateral policy on a policy grievance and contesting the application of that same policy under KVP:

> There is a limit to what can be decided about a policy in a policy grievance. Some issues, by their nature, must be decided based on individual circumstances and through individual grievances, if necessary. Even if a unilaterally introduced policy is *prima facie* valid under the KVP test, the application of that rule in individual cases must still be reasonable in the circumstances of that case.

321. Based on the above, the arbitrator concludes, for this policy grievance, that the 32-hour window does not violate KVP.

DISPOSITION

322. The arbitrator declares unreasonable the following DAPP sections:

- HR203.1, section 5.1 Pre-Employment and Qualification Testing, to the extent it requires newly hired trainees for safety sensitive or safety critical positions to

[237] *Halifax Employers Association v Council of International Longshoremen's Association*, 2014 CanLII 77081.
[238] *Interfor Acorn v United Steelworkers, Local 2009*, 2020 CanLII 47162
[239] *Peace Country Health v United Nurses of Alberta*, 2007 CanLII 80624

undergo both a pre-employment drug test and a later second drug test prior to qualification;

- HR203.1 imposing a 28-day cannabis ban; and
- HR 203.1, at section 4.1 and Appendix 2, imposing the new lower cut-off thresholds of 4ng/ml and 2ng/ml for OF testing.

323. The arbitrator did not find the other contested DAPP changes unreasonable, at least for the purposes of a policy grievance. The jurisprudence confirms that in future rights arbitrations the Unions' can still contest the reasonableness of the application of CPKC's DAPP to their members.

324. The arbitrator remains seized for any issues arising from the interpretation of this award.

SIGNED at Ottawa this 19th day of June 2026.

_____

Graham J. Clarke
Arbitrator

Appendices: Parties' Attendees

IN THE MATTER OF AN AD HOC ARBITRATION PROCEEDING

Before Arbitrator Graham Clarke, Ottawa

BETWEEN:

TEAMSTERS CANADA RAIL CONFERENCE

– MAINTENANCE OF WAY EMPLOYEES DIVISION;

TEAMSTERS CANADA RAIL CONFERENCE;

TEAMSTERS CANADA RAIL CONFERENCE – RTC;

INTERNATIONAL BROTHERHOOD OF ELECTRICAL

WORKERS – SYSTEM COUNCIL #11;

UNIFOR; and

UNITED STEELWORKERS

(the "Unions")

- and -

CANADIAN PACIFIC KANSAS CITY RAILWAY COMPANY

(the "Company")

UNIONS' POLICY GRIEVANCES

RE: THE COMPANY'S REVISED AND UPDATED DRUG AND ALCOHOL POLICY EFFECTIVE SEPT 1, 2019

UNIONS' APPEARANCE SHEET

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For USW:

Nancy Lapointe - President, Local 1976
Nathalie Lapointe - Area Coordinator, Montreal Region

IN THE MATTER OF AN ARBITRATION CONDUCTED BY THE CANADIAN RAILWAY OFFICE OF ARBITRATION

BETWEEN:

TEAMSTERS CANADA RAIL CONFERENCE – MAINTENANCE OF WAY EMPLOYEES DIVISION

TEAMSTERS CANADA RAIL CONFERENCE

TEAMSTERS CANADA RAIL CONFERENCE – RCTC

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS – SYSTEM COUNCIL #11

UNIFOR, LOCAL 101R

UNITED STEELWORKERS, LOCAL 76

"**Unions**"

AND:

CANADIAN PACIFIC KANSAS CITY

"**Company**" or "**CPKC**"

POLICY GRIEVANCES – ALCOHOL AND DRUG POLICY – CHANGES EFFECTIVE SEPTEMBER 1, 2019 –

CPKC'S APPEARANCE SHEET

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