

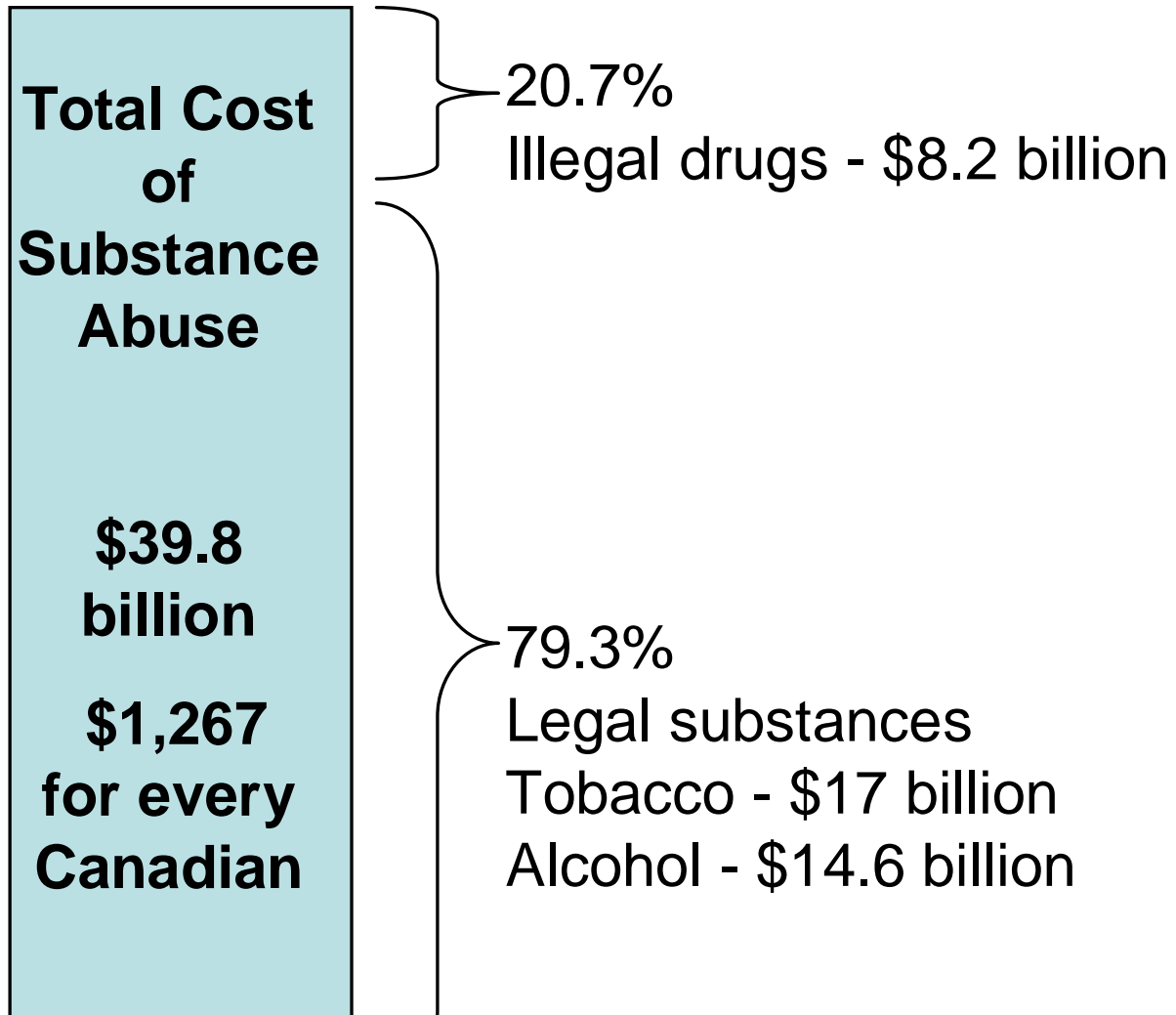
# Addiction Issues and Testing

Labserv Consulting and the MEARIE Group

# Why Would We Consider Testing?

- ▶ Cost
- ▶ Impact on the Business
- ▶ Impact on workers

# Associated Cost with Addiction Issues



# Associated Cost Continued!

Of total cost of substance abuse:

- 22.1% direct costs to economy = health care
- 13.6% direct costs to economy = enforcement, prevention/research and "other costs"
- **61% indirect costs = productivity losses (premature death and disability)**

- ▶ Days in bed 216,581
- ▶ Income Losses \$15.9 Million
- ▶ Dependence Alcohol 311.293 days
- ▶ Illegal Drugs \$21.8 million

# Other Issues To Consider!

- ▶ Poor performance and reduced productivity
- ▶ Increase staff turnover and loss of experienced staff
- ▶ Absenteeism
- ▶ “Presenteeism” - employee at work but under-performing due to alcohol or drug use ( longer lunch, breaks, previous night aftermath)

# Other Issues To Consider!

- ▶ Increase in complaints
- ▶ Damage to an organization's reputation and image
- ▶ Accidents and injuries: alcohol contributes to an estimated 20-25 per cent of workplace accidents
- ▶ Stress and low morale

# Possible Outcomes

- ▶ Discrimination claims **(if not handled properly)**
- ▶ Workplace bullying
- ▶ Theft by employees
- ▶ Health problems
- ▶ Loss of life
- ▶ Rehabilitation costs
- ▶ Higher insurance costs
- ▶ Inefficiency/damage to plant, equipment, other property
- ▶ Reduction of profits

# Employee Issues

- ▶ Employees with drug and alcohol problems can:
  - ▶ suffer increased illness
  - ▶ cause injury to themselves and others
  - ▶ have problems with family, friends, co-workers
  - ▶ have legal issues and financial issues
  - ▶ lose wages or their job
  - ▶ damage their physical and mental health
  - ▶ lose self-esteem/respect



# Employee Issues

- ▶ Compared to non-abusing coworkers, substance abusers are
  - ▶ 10 times more likely to miss work
  - ▶ 3.6 times more likely to be involved in on-the-job accidents - 5 times more likely to injure themselves or another in the process
  - ▶ 5 times more likely to file a worker's compensation claim
  - ▶ 33% less productive
  - ▶ Responsible for health care costs that are 3 times as high.

# Effect on Other Employees

- ▶ Workmates of a drug/alcohol user can be subject to:
  - ▶ work in an unsafe work environment
  - ▶ increased stress
  - ▶ reduced morale
  - ▶ increased risk of injury and interpersonal conflicts, resulting from:
    - covering for colleagues' poor work performance
    - ▶ Do not want to report a coworker to management feeling betrayal of a colleague

# Policy Considerations!

- ▶ DRUG & ALCOHOL POLICY

- ▶ Is it a safety sensitive environment
- ▶ recognizes impairment at work due to alcohol and drug abuse as a health, safety and security problem
- ▶ recognize that the use of illegal drugs and the inappropriate use of alcohol and medications by employees and contract workers can present a serious safety hazard by adversely affecting an individual's ability to perform their job

# Employee Responsibilities

- ▶ Employees reporting for work:
  - ▶ expected to be fit for duty
  - ▶ assist in maintaining a safe work environment
  - ▶ if unfit for duty, must advise their supervisor
  - ▶ work in a safe and lawful manner
  - ▶ comply at all times with the Company's work and safety rules and obligations as set out in the company Policy

# Significant Cases!

- ▶ Entrop v Imperial Oil July 2000 (Court of Appeal Ontario)
- ▶ CEP v Imperial Oil (Nanticoke) (Court of Appeal Ontario May 2009) Picher Arbitrator
- ▶ CEP v Irving Oil Supreme Court of Canada June 2013.
- ▶ Unifor v Suncor March 2014 Arbitration Award (Tom Hodges Arbitrator)

# Nanticoke Award (M.Picher)

- ▶ *No employee can be subjected to random, unannounced alcohol or drug testing, save as part of an agreed rehabilitative program.*
- ▶  *An employer may require alcohol or drug testing of an individual where the facts give the employer reasonable cause to do so.*

# Picher Analysis

- ▶  It is within the prerogatives of management's rights under a collective agreement to also require alcohol or drug testing following a significant incident, accident or near miss, where it may be important to identify the root cause of what occurred.

# Picher Analysis Continued!

□ Drug and alcohol testing is a legitimate part of continuing contracts of employment for individuals found to have a problem of alcohol or drug use. *As part of an employee's program of rehabilitation, such agreements or policies requiring such agreements may properly involve random, unannounced alcohol or drug testing generally for a limited period of time, most commonly two years.* In a unionized workplace the Union must be involved in the agreement which establishes the terms of a recovering employee's ongoing employment, including random, unannounced testing. *This is the only exceptional circumstance in which the otherwise protected employee interest in privacy and dignity of the person must yield to the interests of safety and rehabilitation, to allow for random and unannounced alcohol or drug testing.*



# Picher Award Adopted by the Supreme Court

- ▶ a key feature of the jurisprudence in the area of alcohol or drug testing in Canada is that arbitrators have overwhelmingly rejected mandatory, random and unannounced drug testing for all employees in a safety sensitive workplace as being an implied right of management under the terms of a collective agreement. Arbitrators have concluded that to subject employees to an alcohol or drug test when there is no reasonable cause to do so, or in the absence of an accident or near miss and outside the context of a rehabilitation plan for an employee with an acknowledged problem is an unjustified affront to the dignity and privacy of employees which falls beyond the balancing of any legitimate employer interest, including deterrence and the enforcement of safe practices. In a unionized workplace, such an extraordinary incursion into the rights of employees must be expressly and clearly negotiated. It is not to be inferred solely from general language describing management rights or from language in a collective agreement which enshrines safety and safe practices.

## When Random Testing Might Apply “Picher Award”!

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

# Random Testing Allowed!

- ▶ Two cases allowed random testing because the employer could prove significant abuse occurred in the workplace. These cases are the following:
- ▶ *(Communications, Energy and Paper workers Union, Local 777 v. Imperial Oil Ltd., T. J. Christian, Chair, May 27, 2000, unreported ("Strathcona"))*;
- ▶ *Greater Toronto Airports Authority v. Public Service Alliance of Canada, Local 0004, [2007] C.L.A.D. No. 243 (QL) (Devlin) ("GTAA"))*.

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# Company Responsibility

- ▶ Company

- ▶ The Company will not allow a person to remain at Company workplaces or perform Company work at any place whenever there is reasonable cause to believe the employee is impaired due to alcohol consumption, ingestion of illicit drugs or is improperly using prescription or over-the-counter drugs.

# Employee Expectations

- ▶ Employees are expected to:
  - ▶ Arrive fit for work and remain fit for work.
  - ▶ Consult with their doctor/pharmacist regarding proper use of any medication they are using - determine if medication may have a negative effect on their ability to safely perform their job duties.

# Employee Expectations

- ▶ Employees are expected to:
  - ▶ Advise supervisor or HR representative immediately if taking any medication which may negatively impact their ability to safely perform job duties, and only take medication as prescribed by physician.
  - ▶ Medicinal Marijuana !!!!
  - ▶ Seek advice on appropriate counselling or treatment if they suspect they have a dependency or an emerging substance abuse issue.

# Expectations from other employees!

- ▶ Employees are expected to:
  - ▶ Take appropriate actions to ensure a co-worker does not remain in an unfit condition at work that may endanger the employee, co-workers or others.
  - ▶ This may include contacting the supervisor, safety personnel or Human Resources Representative for confidential advice on what action to take.
  - ▶ Understand that the distribution, possession, cultivation, consumption, offering for sale, sale, or use of alcohol, illegal drugs, drug paraphernalia or the misuse of medications which may affect work performance, is prohibited at Company workplaces.

# Managerial Expectations

- ▶ Managers and Supervisors are expected to:
  - ▶ Monitor and evaluate work performance with an objective of early identification and handling of all performance issues.
  - ▶ Ensure that investigations of work related accidents and incidents are carried out in accordance with the company investigation procedures.



# Managerial Responsibility

- ▶ Managers and Supervisors are expected to:
  - ▶ Refer an employee for a drug and or alcohol test when required to do so under the appropriate policy.
  - ▶ Monitor policy compliance and take appropriate action as required under the appropriate policy.
  - ▶ Confer with the Human Resources Representative on substance abuse issues as appropriate.

# Other Considerations!

- ▶ The Company should always reserves the right to temporarily remove, reassign or suspend any employee pending a determination of fitness for work, assessment of an abuse, dependency or addiction problem or completion of an investigation into a possible violation of their Policy.
- ▶ To help ensure a safe, healthy and productive work environment, the company should reserve the right to request reasonable searches of areas comprising company property, premises or work sites (in the presence of the employee). Only when appropriate and where reasonable cause exists

# What Might Lead To Testing?

- ▶ **Post Incident and Near Miss Testing:**
  - ▶ Purpose: rule out impairment as a potential cause of a significant event:
    - ▶ Fatality or fatalities
    - ▶ An injury to co-workers, themselves, or others.
    - ▶ Damage to the property of the company or one of its clients, contractors, or member of the general public.
    - ▶ Significant environmental damages.
  - ▶ Done with the manager's approval as part of the safety investigation
    - ▶ circumstances of each case taken into consideration before making the decision to test

# What Might Lead To Testing?

- ▶ Reasonable Cause / Suspicion:
  - ▶ Establish Reasonable cause following an investigation
  - ▶ Reasonable cause based on specific event or observation (physical, behavioural, or performance) indicative of probable drug and/or alcohol use, with concurrence of a second person whenever possible

# What Might Be Reasonable Cause?

- ▶ Reasonable cause/Suspicion - Specific factors:
  - ▶ Direct observation of drug and/or alcohol use or possession on the job.
  - ▶ Abnormal conduct or erratic behaviour while at work (+ other factors listed)
  - ▶ Excessive or unexplained absenteeism, tardiness, or deterioration in work performance (+ other factors listed)
  - ▶ Report of current drug or alcohol use at work which has been corroborated
  - ▶ Evidence that employee is currently involved in the use, possession, sale, solicitation or transfer of drugs or alcohol while working or while on the employer's premises or operating the employer's vehicle, machinery or equipment.

# Reasonable Cause Continued!

- ▶ Smell of alcohol or solvents
- ▶ Mood swings or uncharacteristic behaviour
- ▶ Unable to perform/complete normal tasks
- ▶ Unstable on feet
- ▶ A tendency to become confused and irritable
- ▶ Development of problematic relationships
- ▶ Inability to arrived at work on time
- ▶ Frequent, prolonged, and often unexplained absences
- ▶ Involvement in accidents both on and off the job

# Reasonable Cause Continued!

- ▶ Erratic work patterns/reduced productivity
- ▶ Indifference to personal hygiene
- ▶ Overreaction to real or imagined criticism, paranoia
- ▶ Marijuana users: bloodshot/glassy eyes, constant cough
- ▶ Cocaine users: increased energy/enthusiasm (early in), extreme mood swings, paranoid, delusional (later on)
- ▶ Alcohol abusers: morning-after hangovers - productivity declines, signs of physical deterioration

# Suggested Do's and Don'ts!

- ▶ **Do** confer with other management colleagues to review the situation and address next steps before making a final decision.
- ▶ **Do not** play doctor, police officer, psychologist, social worker, counselor or judge.
- ▶ **Do not** make any inappropriate comments regarding the employee's state. Do not accuse the individual of being "stoned" or "drunk", state only what you have observed.



# Suggested Do's and Don'ts

- ▶ **Do not** provoke the employee with threats of severe or extreme discipline; where appropriate, suspend the employee pending further investigation.
- ▶ **Do not** suggest the employee go to the first aid room to sleep it off as something untoward may occur.
- ▶ **Do** keep the employee in a safe area in your view.
- ▶ **Do not** direct or allow the employee to drive home. Either call for someone to come and get the employee or arrange for supervised escort home (and in this regard ensure (where it makes sense) to have someone there to receive the employee).

# Suggested Do's and Don'ts

- ▶ **Do** ensure you keep control of the evidence gathering process by escorting the employee to the testing facility where possible (if not possible, send in a cab and provide a taxi chit). After the testing is complete, either escort the employee home or send him home in a cab (give him a taxi chit).
- ▶ Should the employee become belligerent or extremely difficult, **do** call the police.
- ▶ **Do not** discuss the situation with other employees. If questioned, simply state that this is a situation between the employee and yourself. Keep the situation confidential.

# Quebec Cartier Supreme Court Decision Discussion?

- ▶ In My View, Arbitrators in Ontario Have Got It Wrong???????

Thank you for your Attention!

▶ Questions!