

SUPREME COURT REFUSES TO HEAR RANDOM DRUG & ALCOHOL TESTING APPEAL

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On June 14, 2018, the Supreme Court of Canada granted Suncor a third (but not final) win in the ongoing dispute between Suncor and Unifor Local 707A (the “Union”) over random drug and alcohol testing at certain Suncor oil sands operations (the “Oil Sands Operations”), with the matter to be returned to a fresh arbitration panel.

The dispute began as a result of Suncor’s decision to implement a random drug and alcohol testing policy providing for random drug and alcohol testing of unionized employees in safety-sensitive positions at the Oil Sands Operations.

The Union grieved the decision to implement the policy, and the arbitration board hearing the grievance found that the business interests served by the policy were not sufficient to over-ride employees’ rights to privacy with respect to bodily fluids. Suncor sought judicial review of the arbitration board’s decision from the Alberta Court of Queen’s Bench (“ABQB”). The ABQB quashed the decision of the arbitration board and sent the matter back to be heard by a fresh arbitration panel. Before a new arbitration could be heard, however, the Union appealed the ABQB’s decision to the Alberta Court of Appeal (“ABCA”).

In the 2017 ABCA decision *Suncor Energy Inc. v Unifor Local 707A* [1], (discussed in detail in our November 2017 bulletin [Alberta Decision a Win for Random Drug & Alcohol Testing \(For Now\)](#)), the ABCA found that the arbitration board erred in considering only evidence demonstrating substance abuse problems within the bargaining unit (as opposed to among the general workforce), erred in applying an evidentiary test more stringent than the one set out by the Supreme Court of Canada in *Irving* [2] (requiring particularized, union-specific evidence of substance abuse problems rather than evidence of a general problem with substance abuse in the workplace), and erred by failing to consider all relevant evidence. Accordingly, the ABCA dismissed the appeal and affirmed the ABQB decision to send the matter back to be re-heard by the arbitration board.

Following the release of the ABCA decision, the Union obtained an interim injunction prohibiting Suncor from implementing the drug and alcohol testing policy pending either a fresh arbitration hearing or a successful application for leave to appeal to the SCC. The Union applied for but did not succeed in obtaining leave to

appeal to the SCC; this application was dismissed on June 14, 2018 with no reasons provided.

From here, it will be up to a fresh arbitration panel to consider the proportionality of the drug and alcohol testing policy in light of the privacy concerns raised by the Union.

by Paul Boshyk, Gordana Ivanovic and Kate Robillard, Student-At-Law

[1] 2017 ABCA 313.[ps2id id='1' target=""]

[2] Communications, Energy and Paperworkers Union of Canada, Local 30 v Irving Pulp & Paper Ltd, 2013 SC 34 (CanLII), 2 SCR 458 [ps2id id='2' target=""]

A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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