

Court of Appeal Upholds Injunction Against Suncor's Random Drug and Alcohol Testing Policy

March 22, 2018

On February 28, 2018, the Alberta Court of Appeal dismissed Suncor Energy Inc.'s ("Suncor") appeal of an injunction prohibiting Suncor from implementing a policy of random drug and alcohol testing at its mine site located north of Fort McMurray, Alberta.

Suncor has been attempting to implement a random drug and alcohol policy at this site for its unionized employees since 2012. Unifor, Local 707A (the "Union") opposes Suncor's random drug and alcohol testing policy as being an unjustifiable infringement on employees' privacy rights. In 2012, the Union obtained a prior injunction against Suncor, prohibiting the implementation of the random drug and alcohol testing policy pending the Union's grievance, and in 2013, an arbitration board agreed with the Union that Suncor's random drug and alcohol testing policy was unjustified. On judicial review, the Alberta Court of Queen's Bench struck down that decision as being unreasonable, and remitted the matter to a fresh panel for reconsideration. The Union appealed this decision to the Court of Appeal, which agreed with the Alberta Court of Queen's Bench and remitted the matter to a new arbitration. The Union has applied for leave to appeal to the Supreme Court of Canada.

Following the Alberta Court of Appeal decision on the judicial review, Suncor attempted to implement the disputed random drug and alcohol testing policy. The Union applied for a second injunction, which was granted by the Court of Queen's Bench. The reasoning of the Court of Queen's Bench, which was upheld on appeal, was that allowing Suncor to implement its random drug and alcohol testing policy would cause irreparable harm to the privacy and the dignity of the workers, in the event the Union is ultimately successful in the arbitration. The Court found that since Suncor already has a drug and alcohol testing policy in place (one which does not allow random testing), granting the injunction would not result in an unprotected workplace.

In finding that the infringement on employees' privacy rights outweighed Suncor's concerns about workplace safety, the decision upholding the injunction is reflective of the general trend in cases challenging random drug and alcohol testing. As the Court of Appeal noted, "the bulk of the current authority (both case law and arbitration) holds that it is unreasonable to randomly drug test even those employees in safety sensitive positions in a dangerous workplace." A recent example of one such case is the Teck

Coal v United Steelworkers decision out of British Columbia, which we wrote about, [here](#). The Supreme Court's anticipated decision on whether to allow an appeal of the judicial review decision will likely have a significant impact on whether this trend continues.

By

[Lorelle Binnion](#)

Expertise

[Labour & Employment](#), [OHS & Workers' Compensation](#), [Energy - Oil & Gas](#)

BLG | Canada's Law Firm

As the largest, truly full-service Canadian law firm, Borden Ladner Gervais LLP (BLG) delivers practical legal advice for domestic and international clients across more practices and industries than any Canadian firm. With over 800 lawyers, intellectual property agents and other professionals, BLG serves the legal needs of businesses and institutions across Canada and beyond – from M&A and capital markets, to disputes, financing, and trademark & patent registration.

blg.com

BLG Offices

Calgary

Centennial Place, East Tower
520 3rd Avenue S.W.
Calgary, AB, Canada
T2P 0R3

T 403.232.9500
F 403.266.1395

Ottawa

World Exchange Plaza
100 Queen Street
Ottawa, ON, Canada
K1P 1J9

T 613.237.5160
F 613.230.8842

Vancouver

1200 Waterfront Centre
200 Burrard Street
Vancouver, BC, Canada
V7X 1T2

T 604.687.5744
F 604.687.1415

Montréal

1000 De La Gauchetière Street West
Suite 900
Montréal, QC, Canada
H3B 5H4

T 514.954.2555
F 514.879.9015

Toronto

Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada
M5H 4E3

T 416.367.6000
F 416.367.6749

The information contained herein is of a general nature and is not intended to constitute legal advice, a complete statement of the law, or an opinion on any subject. No one should act upon it or refrain from acting without a thorough examination of the law after the facts of a specific situation are considered. You are urged to consult your legal adviser in cases of specific questions or concerns. BLG does not warrant or guarantee the accuracy, currency or completeness of this publication. No part of this publication may be reproduced without prior written permission of Borden Ladner Gervais LLP. If this publication was sent to you by BLG and you do not wish to receive further publications from BLG, you may ask to remove your contact information from our mailing lists by emailing unsubscribe@blg.com or manage your subscription preferences at blg.com/MyPreferences. If you feel you have received this message in error please contact communications@blg.com. BLG's privacy policy for publications may be found at blg.com/en/privacy.

© 2026 Borden Ladner Gervais LLP. Borden Ladner Gervais LLP is an Ontario Limited Liability Partnership.