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

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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. 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

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