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Yet Another Development in the Saga of Random Drug and Alcohol Testing at Suncor

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Case Commented On: *Unifor, Local 707A v Suncor Energy Inc.*, [2017 ABQB 752 \(CanLII\)](#)

Recently, the Alberta Court of Queen's Bench (per Justice R. Paul Belzil) granted Unifor, Local 707A (the Union) an interim injunction prohibiting Suncor Energy Inc (Suncor) from implementing its random drug and alcohol testing policy pending either a successful application for leave to appeal to the Supreme Court of Canada or, failing that, the parties holding a fresh arbitration hearing in early 2018.

The litigation process started when in 2003, Suncor introduced a drug and alcohol testing policy. The Union filed a grievance about the policy and the Labour Arbitration Board ruled that the policy was justified based on evidence of drug and alcohol use by Suncor employees (at paras 3-4). This decision was ultimately upheld by the Alberta Court of Appeal and leave to appeal to the Supreme Court was denied (see Jennifer Koshan's earlier [blog post](#) on this case.) Suncor introduced a new random drug and alcohol testing policy in June 2012. The Union applied for and was granted an interim injunction to prohibit Suncor from implementing the policy until a Labour Arbitration Board rendered a decision on the Union's grievance related to the policy (*Communications, Energy and Paperworkers Union, Local 707 v Suncor Energy Inc.*, [2012 ABQB 627 \(CanLII\)](#), per Justice E. Macklin). Suncor next applied to the Alberta Court of Appeal to stay Justice Macklin's order pending an appeal. Justice Jack Watson reviewed the application, and refused to grant Suncor's application for a stay (see my [earlier post](#) on this decision). In addition, Suncor appealed the injunction granted by Justice Macklin to the Alberta Court of Appeal (see *Communications, Energy and Paperworkers Union, Local 707 v Suncor Energy Inc.*, [2012 ABCA 373 \(CanLII\)](#)). Justice M. Bielby and Justice B. O'Ferrall (with Justice J. Côté dissenting) dismissed Suncor's appeal.

The majority of a three-member arbitration panel (one member dissenting) allowed a grievance of the matter on March 18, 2014 (*Unifor v Suncor*, para 10). Suncor next applied to the Alberta Court of Queen's Bench for Judicial Review. Justice B. D. Nixon granted Suncor's application and remitted the matter back to arbitration before a new panel (see: *Suncor Energy Inc v Unifor Local 707A*, [2016 ABQB 269 \(CanLII\)](#)). Unifor appealed Justice Nixon's decision to the Alberta Court of Appeal, and this appeal was dismissed, and the matter was ordered to be remitted to the new panel for arbitration (see *Suncor Energy Inc v Unifor Local 707A*, [2017 ABCA 313 \(CanLII\)](#)). Justice Belzil indicates that the Union has sought leave to appeal the ABCA decision to the Supreme Court of Canada (*Unifor v Suncor*, para 13).

Justice Belzil applies the three-part test for granting an injunction (at para 50):

- a. There is a serious issue to be tried.
- b. Irreparable harm will result if the Injunction is not granted and the Union is successful in its grievance.
- c. The balance of convenience favours granting the Injunction.

As to whether there is a serious issue to be tried, Justice Belzil notes that the parties agree that the Suncor site is dangerous, but they do not agree on anything else (at para 51). He cites the Supreme Court of Canada decision in *Communications, Energy and Paperworkers Union of Canada, Local 30 v Irving Pulp & Paper, Ltd.*, [2013 SCC 34 \(CanLII\)](#) (*Irving*), as having accepted that the dangerousness of a workplace alone does not dispose of the issue of whether random drug and alcohol testing should be allowed; privacy interests must also be considered (at para 54). He concludes that because the parties have very different interpretations of the impact of *Irving*, there are genuine issues to be tried.

Justice Belzil finds that irreparable harm will result if the injunction is not granted, because if the Union is ultimately successful in the arbitration process, the impact of taking bodily samples on the privacy and dignity of the workers cannot be remedied (at paras 57-59).

Finally, Justice Belzil holds that the balance of convenience favours granting the injunction. The workplace at Suncor will still be protected by a number of drug and alcohol policies and practices. Further, if the injunction is not granted and random drug and alcohol testing starts, it will create a chaotic situation if the Union is later successful in the arbitration with the result that Suncor is prohibited from continuing with random drug and alcohol testing. The denial of the injunction will result in the implementation of random alcohol and drug testing without the arbitrators considering all of the evidence (at para 67).

Thus, the over five-year case awaits a full hearing where the privacy rights of the workers are weighed against the safety interests of the employer. The arbitrator will be asked to carefully assess the evidence presented by the Union and Suncor. This may also be complicated by the fact that in the near future, the new rules for legalized marijuana may also have an impact on the balance between privacy and safety in the workplace.

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