# Suncor Decision Confirms Ability to Random Test Is Limited



Following the Supreme Court of Canada's decision in Communications, Energy and Paperworkers Union of Canada, Local 30 v. Irving Pulp & Paper, Ltd. rendered in June 2013, which held that there must be "evidence of a problem with alcohol and drugs" in the workplace in order to justify the use of random alcohol testing of union employees in a dangerous work environment, the Alberta Arbitration Board has released its long- awaited decision in Unifor, Local 707A (the "**Union**") v. Suncor Energy Inc. ("**Suncor**"). The decision related to a grievance the Union had filed against a random alcohol and drug testing policy introduced by Suncor in 2012 (the "**Policy**"). Suncor wanted to randomly test all employees in "safety sensitive" positions for alcohol and drug use. The Union argued that the Policy violated employees' fundamental rights to privacy and respect and dignity in the workplace. The Union was successful up to the Court of Appeal level in initial injunction applications which meant that Suncor was unable to implement the Policy until the Arbitration Board rendered its ruling (and only then subject to the Board's decision).

The issue before the Arbitration Board was whether Suncor had exceeded its management rights in unilaterally implementing a policy to randomly test employees for drugs (by urinalysis) and alcohol (by breath tests). The Arbitration Board analyzed whether the unilaterally imposed Policy was reasonable and, in doing so, considered whether the benefits gained by Suncor in reducing its safety risks were proportional to the harm that would occur to employees by the significant infringement of their privacy rights.

In examining the evidence, the Board determined that the 14 positive alcohol tests over a period of 9 years in a workforce of Suncor's size, was not sufficient to establish that there was a persistent problem of a drinking or drug culture in the workplace which would justify the significant intrusion into the employees'privacy. Also important was the fact that a urinalysis test for drugs was unable to provide evidence on the present impairment of an employee. Therefore, the Policy was held to be unjustified and Suncor is not allowed to introduce it for their unionized employees.

The random testing policy was held by the Arbitration Board to be "an unreasonable exercise of [Suncor's] management rights" because the Policy "…is not targeted as narrowly as possible, does not use the least intrusive or most accurate testing measures available and does not contain provisions for communicating with employees around false positive results."