Workplace Drug Testing: What Alberta's Latest Cases Mean For Employers



Navigating the complexities of drug testing policies in the workplace is crucial, especially in safety-sensitive environments. Recent rulings from the Alberta Court of King's Bench offer valuable insights into how these policies are applied and the obligations of both employers and employees. This article delves into two key cases, providing an overview of the Court's findings and essential takeaways for employers.

Quong v Lafarge Canada Inc

Quong, who had been a Site Supervisor for 41 years, was involved in a minor motor vehicle accident on the worksite. Quong's role as a Site Supervisor was safety sensitive. Post-incident drug testing revealed that he had THC in his body above the threshold set out in the employer's Drug and Alcohol Policy (the "Lafarge Policy"). The Lafarge Policy required Quong to undergo a substance abuse assessment and participate in a substance abuse program ("SAP") as a condition of returning to work, and that he would be required to submit to random drug testing for two years after his return to work. Quong refused and Lafarge subsequently terminated his employment for cause. Quong brought a claim for wrongful dismissal. Quong maintained that he did not have a substance abuse disorder, but rather used cannabis to treat pain.

In its analysis of the claim, the Court concluded that the Lafarge Policy was reasonable and that it formed part of Quong's employment agreement. The Court found that but for Quong's refusal to undergo a substance abuse assessment and participate in the SAP, his employment would not have been terminated. Quong argued that in deciding to terminate him with cause, Lafarge failed to account for his length of employment and history of performance, his age, the seriousness of the harm suffered by the Lafarge, and other factors. He also argued that Lafarge failed to consider progressive discipline short of termination. The Court rejected these arguments and found that because Quong wilfully refused to participate in the SAP and the random drug testing, Lafarge had no alternative but to enforce the Lafarge Policy. Quong had effectively repudiated his employment contract and continued employment was no longer a viable option.

NOV Enerflow ULC v Maude

In this decision, the employer ("NOV") appealed a finding of the Alberta Human Rights Tribunal that it had discriminated against its employee. Maude was a 5.5-year employee who worked in safety-sensitive position. He was subject to periodic drug

testing pursuant to NOV's Dug and Alcohol Testing and Search Policy (the "NOV Policy"). Maude's March 15, 2016 test was found to be "non-negative" for cocaine, and he acknowledged that he had used cocaine 4 or 5 days before the test occurred. His employment was suspended and pursuant to the NOV Policy, he was referred for a substance abuse assessment by a Substance Abuse Professional at Lifeworks, an outside contractor. The assessment concluded that Maude met the criteria for moderate to severe substance abuse disorder. Maude did not believe he had substance use disorder. Lifeworks then required that Maude attend a residential treatment program for substance dependency. Maude sought out the advice of an AHS counsellor and inquired into whether he would attend a three-week intensive outpatient treatment programme instead of the residential treatment programme, and asked the Lifeworks Substance Abuse Professional to discuss the matter with the AHS counsellor. NOV agreed but because of privacy concernsMaude was required to sign a release that would permit that discussion to take place, which he refused to do. He then brought a human rights complaint against NOV.

The Human Rights Tribunal concluded that NOV had incorrectly implemented the NOV Policy, because it found that NOV relied on the Substance Abuse Professional's recommendation of residential treatment as the "only acceptable path forward" and NOV gave no "acceptable explanation for its refusal to consider the complainant's suggestion of attending a day treatment program". The Court concluded that the Human Rights Tribunal had erred in this conclusion, because there was not sufficient evidence before the Tribunal that a day treatment program was a reasonable alternative, as Maude had refused to sign the release that would have permitted Lifeworks to consider that alternative on behalf of NOV. Maude's disagreement with the recommendation and refusal to cooperate stymied NOV's and Lifeworks' attempts to provide him with the accommodation he needed.

Takeaways

These cases both deal with Drug and Alcohol Policies in safety sensitive workplaces. In both cases, the employee did not believe they had a substance use disorder, and employers were attempting to enforce and follow pre-existing policies that would have allowed for the identification and treatment of substance use disorders. In both cases, the decisions of the employees to refuse to comply with the terms and consequences of the policies lead the Court to conclude that the employees in question were either properly terminated with just cause (in the case of *Quong*) or that no discrimination had occurred in the workplace (in the case of *NOV*). These are important decisions that provide a clear indication to employees that even if they don't believe that they have a substance use disorder or if they disagree with treatment recommendations, they are still required to comply with reasonable terms and conditions of their employer's Drug and Alcohol Policy.

For employers, these decisions provide reassurance that as long as their Drug and Alcohol Policy and related actions are reasonable and consistent with their accommodation obligations, Courts will not fault employers for enforcing the terms of such policies.

Links to decisions: *Quong v Lafarge Canada Inc*, 2024 ABKB 340; *NOV Enerflow ULC v Maude*, 2024 ABKB 432

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

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