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Alberta Court of Appeal Maintains Injunction Postponing Random Drug Testing

by [Laura Buckingham](#)

The Alberta Court of Appeal, in a 2 to 1 decision released December 5, 2012, has kept an injunction in place to prevent Suncor from implementing random drug testing of employees until a union grievance can be heard.

Earlier this year, Suncor announced plans to begin random drug testing of employees and contractors in safety-sensitive positions. While a drug testing program has been in place for some time, tests were limited to specific situations, such as after an incident. The union representing the affected employees filed a grievance opposing the introduction of random testing. Despite the grievance, Suncor planned to begin random testing of employees on October 15, 2012, before grievance arbitration began. On October 12, the union obtained an injunction preventing random testing until the grievance was resolved. Suncor sought a stay of the injunction pending an appeal, but the stay was denied by a single Justice of the Court of Appeal on October 17. The appeal itself was heard by a three Justice panel of the Court of Appeal on November 28, with the court releasing its decision on December 5.

A majority of the Court of Appeal upheld the injunction, finding the decision to grant the injunction was reasonable. It agreed with the court below that a temporary delay in implementation would not be a great inconvenience to Suncor, noting particularly that Suncor planned a later implementation date for contractors. The majority also found that Suncor had not provided evidence that random testing would significantly improve safety, relative to the current testing program.

Justice Côté dissented from the majority opinion. He would have removed the injunction, and allowed Suncor to implement random testing. He found the risks of an accident are significant, and safety should outweigh union members' privacy interests.

The merits of the random drug testing policy were not squarely before the courts in proceedings on the injunction. The merits will be considered in grievance arbitration, scheduled to begin this month.

In the meantime, the Supreme Court of Canada has heard arguments in a case involving random alcohol testing in a New Brunswick paper mill. The case, *Communications, Energy and Paperworkers Union of*

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Canada, Local 30 v Irving Pulp & Paper, Limited, promises to provide new guidance on the implementation of random drug or alcohol testing in safety-sensitive workplaces. When the Supreme Court releases its decision, it is likely to affect the outcome of Suncor's proposed policy.

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