

Seeking guidance from the Supreme Court: Is Worker Drug Testing Okay?

The Alberta Human Rights Commission is turning to the Supreme Court to set the standard for drug and alcohol testing in the employment context. Currently, there are conflicting views on drug and alcohol testing for workers between Alberta and Ontario, causing some uncertainty and confusion in the state of the law on the issue.

The Alberta approach was developed through the case of John Chaisson, beginning in 2002. Mr. Chaisson was dismissed from work at Kellogg Brown & Root after failing a pre-employment marijuana test. He admitted that he had used marijuana five days before work, but maintained that he had never used the drug during work. Nonetheless, the employer had a "zero tolerance" drug policy, and Mr. Chaisson was fired. He took the case to the Alberta Human Rights Commission. A panel convened and decided that the dismissal was not discriminatory, and not wrongful.

Mr. Chaisson appealed the panel's decision, and won in the Alberta Court of Queen's bench. Using the Ontario approach, the judge found that the dismissal based on the zero tolerance policy was discriminatory because it treated him as if he used drugs at work even though the testing was not conclusive on that issue. The employer appealed. In early 2008, a third ruling on the case was handed down by the Alberta Court of Appeal. It upheld the drug and alcohol testing and the dismissal, because the safety concerns of the drug policy outweighed the discriminatory effects.

There has been a call from the Oilsands industry in Alberta and the Petroleum Services Association of Canada for the Provinces to introduce legislation whereby employer drug and alcohol testing policies that are undertaken with safety concerns override any human rights consideration that may arise. It is questionable whether such sweeping legislation could withstand a challenge under the Charter of Rights and Freedoms, considering the s. 15 right to equality. In any case, the Human Rights Commission of Alberta has opted to seek guidance from the Supreme Court of Canada on the issue.

Sources:

- Gordon Jaremko, "Top Court Asked to Settle Worker Drug-Testing Battle" Edmonton Journal (March 7, 2008).
- "Drug Testing Can be Discriminatory" CBC News (June 30, 2006).
- Alberta (Human Rights and Citizenship Commission) v. Kellogg Brown & Root(Canada) Company, 2007 ABCA 426.