

# Good case study about employment law

[Health & Medicine](#), [Alcoholism](#)



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## **A Supreme Court of Canada Case on Employment Law**

### Summary of the case

Employee privacy and occupational safety especially in a dangerous workplace have always clashed in the past. Employers always feel the need to perform random drug tests at the workplace, which many argue violates employee privacy. The Supreme Court of Canada only recently released a ruling related to random alcohol and drug tests at the workplace in Canada. The case was between Communications, Energy and Paperworkers Union of Canada, Local 30 v. Irving Pulp & Paper, Limited and was published on June 14, 2013 (Naccaroto 2013).

### **What both sides were arguing**

Irving has a paper mill in Saint John, New Brunswick and due the presence of heavy and dangerous machinery; they felt that adopting a drug and alcohol policy would go a long way in protecting the lives of their workers. The mill introduced random alcohol testing using the Breathalyzer, and this was

implemented under the management rights clause of the collective bargaining agreement. However, this was only applicable for employees who held safety sensitive positions. Naccaroto (2013) states that 10 percent of the workers in these safety sensitive positions were to be randomly selected and those whose tests read more than 0.04 percent would be subjected to disciplinary action.

Shortly after the policy introduction, an individual was selected and tested. Even though the employee was alcohol free, the Communications, Energy, and Paperworkers Union of Canada argued that the policy was unnecessary as it violated privacy rights. In addition, the union also argued that it was an unreasonable exercise of management rights. However, the union did not challenge the whole policy. They left out the part that stated that drug and alcohol testing was warranted in certain situations: if the employer had reason to believe that an employee was impaired while at work or after a work place accident and the employee had voluntarily accepted treatment and monitoring of substance abuse (England 2013).

When the union expressed their concern to the arbitration board, the majority argued that the company did not have sufficient evidence to prove that the employee was impaired at work due to alcohol and his performance posed a risk to the fellow employees. However, Naccaroto (2013) writes that Irving was not satisfied with the ruling and sought a judicial review from the New Brunswick Court of Queen's Bench, which thereafter overturned the decision of the arbitration desk. The Court of Appeal also sided with the New Brunswick Court of Queen's Bench arguing that the employer did not require evidence such as an existing problem or evidence of impaired decision in the

work place if the workplace was a safety sensitive environment. The Communications, Energy, and Paperworkers Union of Canada further appealed this issue to the supreme court of Canada.

### **The Supreme Court of Canada final decision**

A six-judge majority ruled that while the sensitivity of the work place was a relevant consideration when introducing a random drug and alcohol test in the work place, the environmental condition of the work place did not in itself allow an employer to impose such a policy without a preexisting work place problem with substance abuse. Notably, England (2013) argues that the court stated that judicial decisions related to non-unionized workplaces were of little theoretical support and instead based their decision on unilateral random drug and alcohol testing imposed policies.

On further investigation, Naccaroto (2013) noticed that the bench did not put into account the different standards and policies applied in different companies. Instead, they focused on the fact that an employer needed sufficient evidence that revealed reasonable cause exists. Another exception that the bench agreed upon was that a random drug and alcohol test was also allowed after a safety sensitive accident or if the employee had validated a drug and alcohol related problem. They also added that a random alcohol testing with absence of the stated conditions was allowed in extreme circumstances.

Concerning the Irving employee case, England (2013) reveals that the court established that the company was lacking insufficient evidence to support a random drug and alcohol test. Therefore, the SCC found that that the arbitration board had made a reasonable decision when it concluded that the

test was unwarranted, and the imminent gains after the test were minimal. As a result, the privacy of the employees outweighed the results of the random drug and alcohol test.

### **Personal opinion if the SCC decision was right or wrong**

In a period of time that, most governments all over the world are justifying actions that compromise the privacy of their citizens, this decision by the Supreme Court of Canada would not have come at a better time. The ruling by Supreme Court of Canada shows that the people, as well as the judicial system, still believe in their right to privacy. Hardly any reason justifies enough an action that betrays this freedom. The Canadian government, together with other governments, should follow suit. Using these considerations, the Supreme Court of Canada made the right decision to defend the privacy rights of every employee.

### **Future influences at the work place environment**

Although the case was introduced by a unionized workplace, the effects will be felt in all places of work whether unionized or not. In addition, despite the fact that the case was based on an alcohol event, it is reasonable to assume that the same ideologies would extend to the testing of other drugs. Notably, Naccaroto (2013) argues that it is very important to realize that the ruling only dealt with the random testing, but the rest of the drug and alcohol policy was affirmed. This includes the fact that an employer is allowed to test an employee for drugs and alcohol at the workplace if he has evidence showing that the employee was impaired while at work, after an accident

which evidence reveals that the employee might have been impaired, or if the employee is part of an alcohol or drug related rehabilitation program.

## References

England, R. (2013). Supreme Court of Canada squashes random alcohol testing in dangerous workplace: Canadian Employment Law Today. Retrieved from: <http://www.employmentlawtoday.com/articleview/18220-supreme-court-of-canada-quashes-random-alcohol-testing-in-dangerous-workplace>

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