

# Alberta Labour & Employment Conference

Evolution of Drug & Alcohol Testing in the  
Workplace



# Agenda

- Latest Developments in Canada
- Law in Alberta
- Alberta Human Rights
- DARRPP

## Latest Developments in Canada

- *Irving Pulp & Paper v CEP, Local 30*, 2013 SCC

## *Irving Pulp & Paper v CEP, Local 30,* 2013 SCC

- Facts:
  - Paper mill
  - Unionized
  - 8 incidents in 15 years

## *Irving Pulp & Paper v CEP, Local 30,* 2013 SCC

### → Facts:

- Imposed drug and alcohol policy

- Random alcohol testing

- Not negotiated with union

## *Irving Pulp & Paper v CEP, Local 30,* 2013 SCC

→ Issue:

- Can an employer of a unionized workforce impose random alcohol testing on its safety sensitive employees under the management rights clause of the collective agreement?

## *Irving Pulp & Paper v CEP, Local 30,* 2013 SCC

- Supreme Court of Canada:
  - Balance interests
    - Workplace safety vs. employee privacy
  - Testing in a dangerous workplace if:
    - Safety sensitive employees
    - Reasonable cause
    - Accident or incident
    - Return after treatment
    - Out-of-control drug culture

## *Irving Pulp & Paper v CEP, Local 30,* 2013 SCC

- Supreme Court of Canada:
  - Not significant evidence of alcohol-related problems
    - 8 in 15 years
    - None from test to arbitration
    - “very low incremental risk of safety concerns based on alcohol-related impaired performance of job tasks at the site”
    - deterrence vs. no abuse to deter



## *Irving Pulp & Paper v CEP, Local 30,* 2013 SCC

→ Held:

- Low safety gains
- Severe privacy impact
- Low evidence of alcohol-related problems
- Unreasonable drug and alcohol policy

## ***Irving Pulp & Paper v CEP, Local 30,*** **2013 SCC**

- Distinguishable:
  - Low evidence of alcohol-related problems
  - Union
  - Exercise of management rights

## *Irving Pulp & Paper v CEP, Local 30,* 2013 SCC

- Non-unionized workplace implications:
  - Justify intrusion on employee privacy
  - Assess the particular risks in the particular workplace
  - Balance safety and privacy issues
  - Inherently dangerous workplace is probably not enough

## Testing in Alberta

- *Alberta HRCC v Kellogg Brown & Root, 2007 ABCA (Chiasson)*

## ***Alberta HRCC v Kellogg Brown & Root, 2007 ABCA (Chiasson)***

### → Facts:

- Construction company in Fort McMurray
- High accident risk
- Post-offer/pre-employment drug test policy
- Chiasson failed drug test
  - Recreational user

## ***Alberta HRCC v Kellogg Brown & Root, 2007 ABCA (Chiasson)***

- Court of Appeal:
  - Chiasson not terminated for perceived drug addiction
  - Policy's purpose to reduce accidents
  - Connection between policy, as applied to recreational users, and purpose

## ***Alberta HRCC v Kellogg Brown & Root, 2007 ABCA (Chiasson)***

→ Held:

→ No breach

→ No accommodation required

# Human Rights

- Dependent users (perceived or actual) protected
- Recreational users not protected
- Accommodation up to undue hardship
- Disclosure and cooperation by employee



## *Bish v Elk Valley Coal Corporation* 2012 AHRC 7

- Facts:
  - Coal mining company in Hinton
  - Stewart was a Plant Loader Operator
  - Post-Incident drug and alcohol (urine) test
  - Stewart failed drug test
    - Dependency
  - Terminated with the option to pursue future employment
    - Policy required disclosure before breach

## ***Bish v Elk Valley Coal Corporation*** **2012 AHRC 7**

- Stewart could reapply after 6 months if:
  - (a) suitable vacancy with the Company;
  - (b) successful completion of rehab program; and
  - (c) he agreed to a 24-month “Recovery Maintenance Agreement” with the Company that contains conditions to ensure a drug-free lifestyle.
  
- If successful in complying with the 24-month Recovery Maintenance Agreement, the Company would reimburse 50% of the program facility cost.

## ***Bish v Elk Valley Coal Corporation*** **2012 AHRC 7**

- Stewart was not fired for disability
- Stewart was fired for failing to stop using drugs and failing to disclose his disability

## Alberta's Drug and Alcohol Risk Reduction Pilot Project (“DARRPP”)

- Independent, multi-stakeholder group
- Random drug testing
  - Safety sensitive sites and positions
  - Privacy, dignity and bodily integrity vs. safety
- Future of DARRPP and random drug testing in Alberta TBD

# The End

→ Thank you.