

Case In Point

Divisional Court Finds Arbitrator's Approach to Pre-Access Drug and Alcohol Testing Reasonable

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The [Divisional Court has dismissed](#) a judicial review application of an arbitration decision that held that pre-access drug and alcohol testing was contrary to the parties' collective agreement and the Ontario *Human Rights Code*. While the Court declined to comment on the *Code*, it upheld Arbitrator Surdykowski's finding that the applicant had violated the collective agreement and was therefore ordered to cease and desist pre-access alcohol and drug testing of employees.

In addressing a policy grievance brought by the United Association of Journeymen, Local 663, Arbitrator Surdykowski applied the Supreme Court of Canada's 2013 decision in *Irving Pulp & Paper v. CEP Local 30*. In particular, the arbitrator noted that the dangerousness of a workplace will not automatically justify the unilateral imposition of random drug or alcohol testing. In fact, as the Supreme Court noted, additional evidence of enhanced safety risks, such as evidence of a general problem with substance abuse in the workplace, is required.

While drug and alcohol testing may still be appropriate and permissible in certain circumstances, such as post-incident and reasonable cause situations, the Divisional Court's decision reinforces the need for evidence of drug and alcohol-related issues in the workplace to justify pre-access testing.