

# LEGAL ALERT

## LABOUR & EMPLOYMENT LAW

### SUPREME COURT OF CANADA WILL HEAR UNION'S APPEAL OF N.B. DECISION UPHOLDING EMPLOYER'S MANDATORY RANDOM ALCOHOL TESTING POLICY

On March 22, 2012 the Supreme Court of Canada (SCC) decided it will hear the Communications, Energy & Paperworkers Union of Canada's appeal of the N.B. Court of Appeal's decision to uphold Irving Pulp & Paper, Limited's mandatory random alcohol testing policy in its Saint John, N.B. kraft mill. The SCC's decision, giving Canada's highest court's direction to employers, unions and employees on this controversial topic, is greatly anticipated and, depending on the final outcome, could be a "game-changer" for all.

In *Irving Pulp & Paper, Limited v. Communications, Energy and Paper Workers of Canada, Local 30*, the Union challenged the employer's power to unilaterally introduce a drug and alcohol policy that mandated unannounced random alcohol testing of employees in safety sensitive positions in its kraft mill. The Arbitration Board decided those policy provisions were unjustified. The employer successfully challenged the Board's decision in the N.B. Court of Queen's Bench, which upheld the employer's policy. The Union failed in its further appeal to the N.B. Court of Appeal, which confirmed the employer's adoption of the policy was, in the circumstances, justified and its provisions are reasonable.

[Click here](#) to read McInnes Cooper's August 6, 2011 Legal Update about the N.B. Court of Appeal's decision.

The Union asked the SCC to hear its appeal of the N.B. Court of Appeal's decision. Today, the SCC decided it will hear the Union's appeal. As is its practice, the SCC did not provide any reasons. Although no date is set for the SCC to hear the appeal, it will be at least several months; the SCC will likely then take some time to make its decision. Thus, there will be no final word in the immediate future.

Watch here for further updates as they become available.

McInnes Cooper is pleased to assist you with your workplace questions. Please contact any of our offices for further information.

McInnes Cooper offers labour and employment law services in French. We invite you to communicate with one of our bilingual lawyers\* to obtain further information on the content of this newsletter in French, or for any other question arising in your workplace.

McInnes Cooper est fier de vous offrir en français ses services en droit de l'emploi et du travail. Nous vous invitons à communiquer avec un(e) de nos avocat(e)s bilingues\* pour obtenir plus d'information au sujet du contenu de ce communiqué, ou pour toute autre question relative à votre milieu de travail.

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