

# Supreme Court to hear workplace alcohol test appeal

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A union of New Brunswick mill workers arguing that mandatory, random alcohol testing breaches their right to privacy will have their appeal heard by the Supreme Court of Canada Friday.

The top court's eventual decision has the potential to set a precedent for random alcohol tests in the workplace, and employers and unions across the country will be watching closely, said Nathalie Des Rosiers, the general counsel and executive director for the Canadian Civil Liberties Association, which is acting as an intervener.

"We are concerned that this is a new trend in Canada where you have more and more employers who are imposing quite invasive tests and employees have no choice but to

comply because their job is at stake. And it's not always clear that those tests are necessary," Des Rosiers said.

This key test case comes down to balancing workplace safety versus personal privacy, the right of the employee to be free of random breath tests, said Eugene Meehan, a partner at Supreme Advocacy LLP in Ottawa, and former executive legal officer at the Supreme Court.

"Where is the balance? Is the balance a matter of juridical principle, that is, one size fits all? Or is the solution tailor-made to the job?" Meehan said.

In 2006, **Irving Pulp & Paper** — a division of **J.D. Irving, Ltd.** and branch of the powerful New Brunswick Irving family empire — adopted a workplace policy at its Saint John mill that included mandatory random alcohol testing, by breathalyzer, for employees holding safety-



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sensitive positions, according to court documents.

An employee and member of the Communications, Energy and Paperworkers Union of Canada Local 30 was randomly tested and, even though the test revealed a blood-alcohol

level of zero, the union filed a policy grievance to challenge the reasonableness of the procedure.

An arbitration board sided with the union, saying that Irving had failed to establish a need for the policy. But two

lower courts later quashed that decision.

Evidence of an existing alcohol problem in the workplace was not required to support Irving's policy of random alcohol testing, Justice Joseph Robertson said in the 2011 New Brunswick Court of Appeal judgment, noting the mill's pressure boiler has a "high potential" for explosion.

The union filed an appeal application with the Supreme Court in September 2011. The court agreed to hear the appeal last March.

The union will argue that 25 years of arbitral case law rejects the notion that an employer may introduce random alcohol or drug testing without reasonable grounds, according to their factum. Irving will argue that the Court of Appeal's decision, that the board's previous decision was both incorrect and unreasonable, should stand.