



President's Annual Message



This is my second annual message since becoming President and again, first I would like to thank the Board of Directors and all members for their support.

2017 ended up being a busy year for our members and it looks to continue through 2018. It was also a busy year at the end for the provincial government getting legislation passed, including the Construction Lien Amendment Act (Prompt Payment) and the Fair Workplaces, Better Jobs Act.

What can we expect in 2018?

- Voluntary MOL employer health and safety accreditation is coming
- Stricter enforcement by the MOL (fines increasing Jan 1, 2018)
- Regulations for implementing Construction Lien Amendment Act will be introduced by the government
- Training by our industry will be required for the Construction Lien Amendment Act and its regulations
- The industry will be preparing for legalization of Marijuana occurring on July 1
- Negotiations are on the horizon and will likely be starting up in the fall, similar to the last round
- Provincial election June 7th

I hope that everyone met with great success in 2017 and that success extends into a prosperous 2018 for you all.

Bob Grassing
AAO President



UPCOMING - Mathews Dinsdale Seminars/Webinars

Copy the following URL to your browser to register for new sessions or to review archived session:

<http://www.mathewsdinsdale.com> (see right side)

WEBINAR – Marijuana & Workplace Safety – What's an Employer to Do? January 25, 2017

If you have any questions, please call me at 519-671-5930.

Paul Gunning
Executive Director

MATHEWS MINUTE



Drug and Alcohol Testing

The latest legal development on random drug and alcohol testing occurred in December, and it is a disappointing one for employers.

In this case the Employer, Suncor Energy Inc., implemented a Random Testing Policy that had been challenged by their Union. The Random Testing Policy has been the subject of continuous litigation for approximately 6 years. Early on, an arbitrator found that Suncor could not justify randomly testing its employees and struck the policy down. Suncor appealed and, in May 2016, the Alberta Court of Queen's Bench overturned the arbitrator's decision and ordered that a fresh arbitration panel consider the Random Testing Policy. The Union then announced its intention to appeal this decision to the Supreme Court of Canada.

While it engaged in its appeal to the Supreme Court of Canada (which can take years), the Union asked the Alberta Court of Queen's Bench to stop Suncor from implementing the Random Testing Policy until all litigation was completed. The Court agreed, and granted the Union's request.

The effect of this decision is that the Random Testing Policy will be suspended for the foreseeable future, pending the hearing of the matter by the Supreme Court of Canada and/or a new arbitration panel. This can only be viewed as a great win for the Union given the potential for years of further litigation.

In granting the injunction, the Court found that:

- a) Suncor's workers may have their privacy unreasonably invaded if random testing went ahead and that this type of a breach could not be adequately compensated with monetary damages if the injunction was not granted;
- b) Privacy rights of workers are "as important as safety concerns"; and
- c) While safety concerns may be relevant, they are not enough to tip the balance in favour of turning down the Union's request.

These conclusions are directly at odds with the recent decision of the Ontario Superior Court in *Amalgamated Transit Union, Local 113 v Toronto Transit Commission*, 2017 ONSC 2078, in which the Court found that privacy breaches could be remedied through monetary compensation, and that the public interest associated with the serious safety concerns present in the Toronto Transit Commission's workplace outweighed the privacy interest of workers. In the TTC case the Ontario Court had, in our view, properly recognized that the consequences of safety violations were significantly more serious on the safety side than they were on the privacy side. The opposite conclusions reached by the Alberta Court of Queen's Bench in the Injunction Decision are troubling, particularly given that that Court expressly declined to engage in a detailed analysis of expert evidence outlining the nature and extent of the safety concerns at the workplace.

As a result of the Injunction Decision, Suncor will not be able to carry out random drug and alcohol testing until the matter is considered by a new arbitration board or the injunction decision is successfully appealed by Suncor. Given that the original arbitration board took nearly two years to decide the issue of the prohibition on the Random Testing Policy in the first place, random testing could be delayed for a considerable amount of time – likely well past July 1, 2018 when the recreational use of marijuana will become legal in Canada.

Suncor can appeal this decision, and may well do so. As it stands, however, employers should approach any random testing policy with caution and seek legal advice prior to implementing such a program.

