

Cannabis In Safety Sensitive Positions: Guidance From The Alberta Court Of King's Bench



A recent Alberta Court of King's Bench decision upheld an employer's termination of an employee for cause after he failed a drug and alcohol test and failed to agree to a substance abuse plan.

Employers can find some reassurance about the enforceability of their drug and alcohol policies, especially where those policies are reasonable, clear, well-communicated, and consistently applied. Further, where such policies require ongoing remediation to breaches (such as an employee being subject to randomized testing thereafter), an employee has an obligation to cooperate. An employee's failure to cooperate with those policies could justify cause for termination.

The Quong decision

In *Quong v. Lafarge*,¹ the Court dismissed a claim for wrongful dismissal by an employee (Quong), upholding the employer's (Lafarge) decision to terminate for cause.

Lafarge operates a safety sensitive workplace, and Quong refused to participate in the workplace substance abuse plan (SAP) after testing positive for THC following a workplace safety incident. Quong had no prior disciplinary issues, but he declined to participate in the SAP and was subsequently

terminated for cause by Lafarge.

Quong argued that he was wrongfully dismissed by Lafarge and submitted that: (1) Lafarge's drug and alcohol policy (the Policy) was not a term of his employment contract; (2) the SAP and its mandatory two-year period of drug testing was an unjustified invasion of privacy; (3) Lafarge did not act reasonably; and, (4) Lafarge did not have just cause for termination.

Justice Feasby dismissed these arguments. Instead, he found that the Policy was, "reasonable, unambiguous, well published, consistently enforced, and the employee...kn[e]w or ought to have known of the policy including consequences of breach".² Quong had acquiesced to the Policy by his continued employment without protest, rendering the Policy an implied term of his employment contract. Quong had also received annual training on the Policy since 2012 and had even communicated the Policy to other employees in his duties as a Site Superintendent.

Justice Feasby further held that the SAP was not an unjustified invasion of privacy as it existed to determine if an employee had a dependency requiring treatment or accommodation. Even though Quong used cannabis off-premises, Lafarge acted reasonably, as the Policy was intended to promote workplace safety and prevent the risk of drug intoxication at the workplace. Further, even though Quong had no prior disciplinary issues, his "willful refusal" to participate in the Policy constituted a repudiation of his employment contract.

Key takeaways for employers

- An employee's failure to abide by the terms of a drug and alcohol policy could support cause for termination.
- Drug and alcohol policies may be upheld as a term of employment even if they are not expressly included in an

employment contract – especially in safety-sensitive workplaces.

- Employers should review any policies not expressly included within the employment contract, to ensure there are no conflicts or ambiguities arising between the policy and the terms of the employment contract.
- Non-compliance with drug and alcohol policies may have severe consequences for employees. Employers should be mindful to ensure compliance with policies and record and address incidents of non-compliance whenever they arise.
- Employers should carefully schedule, monitor, and track annual training on drug and alcohol policies for employees, as continued long-term employment without protest may lead a court to uphold those policies as a term of employment.

Footnotes

1. *Quong v Lafarge*, 2024 ABKB 340.

2. *Stonham v Recycling Worx Inc*, 2023 ABKB 629 at paras 60–65.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

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