IN THE LABOUR COURT OF SOUTH AFRICA
HELD AT CAPE TOWN

CASE NO.: C1126/2002

In the matter between:

IRVIN & JOHNSON LIMITED	Applicant
and	
TRAWLER & LINE FISHING UNION	First Respondent
NATIONAL CERTIFICATED FISHING & ALLIED WORKERS UNION	Second Respondent
THOSE EMPLOYEES OF APPLICANT WHOSE NAMES ARE LISTED IN ANNEXURE "A" HERETO	Third and Further Respondents

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J U D G M E N T

Introduction

[1] The applicant, which employs more than 1100 workers in its trawling division, wishes to arrange for the voluntary and anonymous HIV testing of these employees. It seeks an order declaring that the testing in question does not fall within the ambit of section 7(2) of the Employment Equity Act 55 of 1998 ("the Act"). In the alternative, the

applicant seeks an order that the testing is justifiable as contemplated in section 7(2), subject to certain conditions set out in the notice of motion.

[2] Of the employees in question, about 752 are members of the Trawler & Line Fishing Union while about 90 are members of the National Certificated Fishing & Allied Workers Union. These two unions have filed notices of non-opposition in which they state that they support the application.

[3] A number of the applicant's employees work at sea on the applicant's vessels. These employees undergo extensive training. This applies particularly to employees who are certificated under the Merchant Shipping Act 57 of 1951. South Africa faces an acute shortage of certificated officers.

[4] The applicant believes that it requires information on HIV prevalence in its workforce to assess the potential impact of HIV/AIDS on the workforce; to enable the applicant to engage in appropriate manpower planning so as to minimise the impact of HIV/AIDS mortalities and HIV/AIDS-related conditions on its operation; to enable it to put in place adequate support structures to cater for the needs of employees living with HIV/AIDS; and to facilitate the effective implementation of proactive steps to prevent employees from becoming infected with HIV/AIDS.

[5] The applicant has already instituted various HIV/AIDS education and awareness programmes, the objectives of which are to educate employees about HIV/AIDS; to offer psychological support to employees; to dispel myths and unfounded fears about HIV/AIDS; to encourage employees to go for voluntary testing; and to help employees to make necessary lifestyle changes. The applicant has drafted and implemented an AIDS policy. It has established HIV/AIDS committees to monitor the implementation of the policy. The applicant has arranged for the supply of condoms to its employees from dispensers located at the workplace. It offers counselling to employees living with HIV/AIDS, and has also organised various presentations and concerts of an educational nature. The applicant has an equity committee which has fully endorsed the applicant's HIV/AIDS programmes.

[6] The applicant has been assisted in formulating its HIV/AIDS education and awareness programmes by an enterprise called Connections in association with Vuka (now called Isibindi), a private non-governmental organisation which provides HIV/AIDS support programmes. The applicant states that it is dedicated to applying the principle of non-discrimination against AIDS sufferers. It permits HIV-positive employees to perform their normal duties for as long as they are able to do so. HIV-positive employees who disclose their status to the Connections/Isibindi counsellors are advised of the various non-governmental organisations and clinics that provide

services to HIV sufferers and of the fact that they may, if they wish to do so, consult the applicant's doctor and enrol in the applicant's wellness programme. The latter programme includes weight monitoring, the provision of vitamins, the treatment of opportunistic diseases and counselling.

[7] The applicant wishes to arrange for the voluntary and anonymous testing of its employees, on an ongoing basis, to allow employees to determine their HIV status at any time and to enable the applicant to assess its manpower planning needs on a continuing basis. The conditions of the proposed testing (being the conditions which the applicant intends should be incorporated in any order granted by this Court under section 50(4) of the Act) are as follows:

[a] The Elisa and Abbott tests will be used. (The latter is a rapid test using a small blood sample obtained via a pinprick. The former test involves drawing samples of blood for testing in a pathology laboratory.)

[b] The tests will be conducted voluntarily and with the consent of the individual employees.

[c] The tests will be anonymous, in that samples taken from the individual employees will be identifiable only by a number which will enable the individual employee concerned to enquire about the test results without fear of being identified.

[d] The age and job category of the individual employees being tested will be recorded for purposes of generating statistics of relevance to the applicant in the implementation of its HIV/AIDS policy.

[e] The tests will be conducted on an ongoing basis to enable the applicant to monitor the impact of HIV/AIDS on its workforce and to take appropriate steps to minimise its impact on the applicant's employees.

[f] The tests will be accompanied by appropriate pre-test and post-test counselling.

[g] The tests will be conducted by an independent professional testing agency (Isibindi).

[h] The only information which the testing agency will pass onto the applicant is the percentage and number of employees in the various age and job categories who test positive.

[i] No employee will be discriminated against on the basis of his or her HIV status.

[j] No prejudicial inference will be drawn from the refusal of an employee to submit to testing or from an employee's consent to

testing.

[8] An employee who volunteers for HIV testing will be required to sign a form confirming that he or she has consented to the test and indemnifying the independent agency, the pathologists and the applicant against any claim arising from the test. This form will be completed by the employee with the assistance of an Isibindi counsellor. The employee's name would appear on the form and would thus be known to the Isibindi counsellor. The employee is informed of this fact and may decline to proceed with the testing. The applicant will have no access to these forms, which are retained by the independent agency.

[9] The form is completed as part of the pre-test counselling. Once the pre-test counselling has been completed, the Isibindi counsellor administers the Abbott test, the result of which is known within about 20 minutes. If the test is negative the employee will be counselled on lifestyle habits so as to remain uninfected. Should the test be positive, the employee will be counselled and the Elisa test will be used to confirm the initial result.

[10] The sample used in the Elisa testing is identified only by a number. The number is contained in a sealed envelope. The employee selects the number by drawing a sealed envelope from a container holding a number of sealed envelopes. Each sealed envelope contains three

labels bearing the identical number. The one label is affixed to the sample, another is affixed to a blank sheet retained for control purposes, and the third is kept by the employee. The employee can obtain the result of his or her test from the Isibindi counsellor after two days by presenting the number. No name is required.

[11] The only information which the applicant will obtain concerns the age and job category of the various employees who have been tested. This information will be used for statistical purposes. The categories in respect of which information will be provided to the applicant, and the employee number in each category, are as follows:

Shore-based staff

Age Category	Unskilled	Semi-Skilled	Skilled	Management
16 to 25	3	17	3	0
26 to 35	34	55	17	6
36 to 45	11	54	31	14
46 and over	25	55	28	26

Seagoing staff

Age Category	Unskilled	Semi-Skilled	Skilled	Management
16 to 25	105	45	3	0
26 to 35	209	141	44	59
36 to 45	43	39	18	37
46 and over	8	17	10	33

Relevant legislative provisions

[12] Section 7(1) of the Act prohibits "medical testing" unless legislation permits or requires the testing or unless "it is justifiable in the light of medical facts, employment conditions, social policy, the fair distribution of employee benefits or the inherent requirements of a job". Section 7(2) reads as follows:

"Testing of an employee to determine that employee's HIV status is prohibited unless such testing is determined to be justifiable by the Labour Court in terms of section 50(4) of this Act".

[13] Section 50(4) provides as follows:

> "If the Labour Court declares that the medical testing of an employee as contemplated in section 7 is justifiable, the court may make any order that it considers appropriate in the circumstances, including imposing conditions relating to –
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> (a) the provision of counselling;
>
> (b) the maintenance of confidentiality;
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> (c) the period during which the authorisation for any testing applies; and
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> (d) the category or categories of jobs or employees in respect of which the authorisation for testing applies."

[14] The term "medical testing" is defined in section 1 as including:

> "any test, question, inquiry or other means designed to ascertain, or which has the effect of enabling the employer to ascertain, whether an employee has any medical condition".

[15] Section 7 appears to contemplate that an employer may form and act on its own view as to whether medical testing for conditions other than HIV infection is justifiable, whereas the justifiability of testing for an employee's HIV status must be determined in advance by the Labour Court. Of course, an employer may be wrong in its view concerning the justifiability of a medical test and this may have certain consequences for the employer, but it is only in the case of HIV testing that the issue of justifiability must be determined in advance by the Labour Court. In Hoffmann v South African Airways 2001 (1) SA

1 (CC) the Constitutional Court described people living with HIV/AIDS as "one of the most vulnerable groups in our society" (para 28), and the legislature's concern for this group is reflected *inter alia* in the more stringent requirements for HIV testing imposed by section 7(2).

[16] As Landman J pointed out in Joy Mining Machinery, a Division of Harnischfeger (SA) (Pty) Ltd v National Union of Metal Workers of SA & Others (2002) 23 ILJ 391 (LC), section 7(2) is not happily worded. It contemplates a determination of justifiability in terms of section 50(4) yet the latter section does not in express terms empower the Labour Court to declare testing to be justifiable. Rather, the section sets out the orders that may be made and the conditions which may be imposed *if* the Labour Court has declared the testing to be justifiable. Nevertheless, it is clear that the Labour Court was intended to have, and does have, the jurisdiction to determine the justifiability of medical testing. If the conferral of that power is not necessarily implicit in section 50(4), it would at least fall under section 50(1)(*j*).

[17] The primary relief which the applicant seeks in this case is a declaratory order that the testing which it wishes to arrange does not fall within the ambit of section 7(2). There are two grounds on which such a view might notionally be supported. The first is that the proposed testing is *anonymous* and the second is that it is *voluntary*.

Anonymous testing

[18] Section 7 forms part of a chapter dealing with the prohibition of unfair discrimination. One of the main purposes of the Act is to achieve equity in the workplace by promoting equal opportunity and fair treatment in employment through the elimination of unfair discrimination (see section 2(*a*)). In this context, the purpose of section 7 seems to me to be clear. An employer should not unfairly discriminate against an employee on the basis that the latter suffers from some or other medical condition. One of the ways of reducing the likelihood of such discrimination is to limit the circumstances in which an employer may ascertain the employee's medical condition through testing.

[19] Where employees are tested in such a way that the employer is unable to identify which employees are suffering from the medical condition in question, the risk of discrimination based on medical condition is absent. It would thus not be surprising to find, and would not be in conflict with the broad purpose of the Act, that anonymous testing should fall outside the ambit of section 7. I believe there is support in the language of the Act for this view.

[20] I have already quoted the statutory definition of "medical testing". This is the term used in section 7(1). Section 7(2) refers to "testing", but it is clear from the context that this is simply an abbreviated reference to "medical testing". Section 50(4), to which section 7(2) refers, concerns the orders which the Labour Court can make when it

declares that the "medical testing" of an employee as contemplated in section 7 is justifiable.

[21] The statutory definition of "medical testing" is not a model of clarity. Grammatically, it appears to describe two different situations, namely:

[a] a test designed to ascertain whether an employee has any medical condition;

[b] a test which has the effect of enabling the employer to ascertain whether an employee has any medical condition.

[22] The criterion in the first situation is the *purpose or intention* of the test whereas the criterion in the second situation is its *effect*. In the second situation, a test only constitutes "medical testing" where the effect is to enable the *employer* to ascertain whether the employee has any medical condition. On the other hand, the portion of the definition covering the first situation does not in terms identify the person for whom the test is designed to provide information. However, I have no doubt that this is a consequence of clumsy formulation rather than deliberate design and that the first situation is limited to testing designed to enable the *employer* to ascertain whether an employee has any medical condition. The Act is not concerned with medical testing other than in the context of an employment relationship or a prospective employment relationship.

[23] Accordingly, when section 7(2) prohibits the "testing" of an employee to determine that employee's HIV status, what it is prohibiting is a test which is designed to enable, or which will have the effect of enabling, the *employer* to ascertain the HIV status of an employee. And it is clear from the language of section 7(2) itself that the testing will be prohibited only if the employer is thereby enabled to determine the HIV status of a particular employee (the expression used is "*that* employee's HIV status").

[24] The aforegoing view is based on the language of the Act itself, interpreted in the light of the purpose of the legislation. However, it is a view which is supported, I think, by clause 7.1.8 of the Code of Good Practice: Key Aspects of HIV/AIDS and Employment issued under section 54(1)(*a*) of the Act. This clause is quoted in paragraph 18 of Landman J's judgment in the Joy Mining case. As the learned Judge observed in paragraph 21 of his judgment, clause 7.1.8 of the Code appears to permit anonymous testing (i.e. without the need for an order from this Court). Section 3(*c*) of the Act states that the Act must be interpreted taking into account any relevant code of good practice issued in terms of the Act.

[25] In paragraph 21 of his judgment in the Joy Mining case, Landman J seems to have had reservations about clause 7.1.8 of the Code. Who, he asks, was to decide whether a test would or would not guarantee anonymity and when should this decision be made? It may be that

there will be borderline cases in which views may differ as to whether the test will enable the employer to ascertain the HIV status of an employee, but the existence of borderline cases cannot be a reason for disregarding the fact that the legislature only intended "medical testing" as defined to be hit by section 7. As I have already observed, where medical testing relates to a condition other than HIV status, section 7(1) does not require nor contemplate prior authorisation from the Labour Court. The employer would have to form and act on its own view as to the justifiability of the testing. The fact that there may be borderline cases where the employer will subsequently be found to have been wrong does not alter this fact. In the same way, there may be borderline cases where it is difficult to say whether the HIV testing for which the employer is arranging falls within the ambit of "medical testing" as regulated by section 7(2), but one cannot on this account ignore the fact that not all testing for which an employer arranges is covered by the Act.

[26] In the present case the testing does not have as its *purpose* to enable the applicant to ascertain the HIV status of any identifiable employees. Will this nevertheless be its *effect*? During argument I expressed to Mr *Loxton* (who appeared for the applicant) a concern that in certain of the job categories in the 16 to 25 age group the numbers were very small. In response, he stated that the applicant was willing to combine persons in the 16 to 35 age range in a single group for statistical purposes or alternatively to eliminate the distinction between shore-

based and seagoing staff for purposes of receiving information on the age group 16 to 25. It seems to me that either of these adjustments would be sufficient to eliminate any reasonable possibility that an individual's HIV status could be deduced from the statistical information.

Voluntary testing

[27] Since this conclusion can be reached purely on the strength of the anonymous nature of the testing, it is perhaps not necessary for me to consider the issue whether a test which will enable the employer to ascertain the HIV status of an identifiable employee is permissible without this Court's authority where the testing is voluntary (a question also left open in the Joy Mining case – see para 20). However, I think it is desirable to deal with the issue. Mr *Loxton* put his argument on both bases. Furthermore, if anonymity were the only basis for taking the testing outside the ambit of section 7(2), the applicant would be required (in order to allay the concern mentioned previously) to broaden certain of the categories in which it receives information. If, on the other hand, the voluntary nature of the testing were a further basis for rendering section 7(2) inapplicable, the applicant would be entitled to receive information in the categories initially envisaged, even though in certain categories there might be some risk (though I would still not regard it as high) that the applicant could deduce the HIV status of certain individuals.

[28] I should explain what I mean by compulsory and voluntary testing. Compulsory testing is not limited to the case of taking a sample from an employee by physical force. In the absence of consent, such conduct would amount to an assault, and it would not require any statutory provision in order to render it unlawful. By compulsory testing is meant, in this context, the imposition by the employer of a requirement that employees (or prospective employees – see section 9 of the Act) submit to testing on the pain of some or other sanction or disadvantage if they refuse consent. This is to be contrasted with voluntary testing, where it is entirely up to the employee to decide whether he or she wishes to be tested and where no disadvantage attaches to a decision by the employee not to submit to testing.

[29] In considering the permissibility of voluntary testing, it is perhaps appropriate to observe that the avoidance of discrimination against those infected with HIV is not likely to be best served by encouraging a climate of secrecy. It is one thing to protect employees against compulsory testing. It is quite another thing to place obstacles in the way of voluntary testing. Clause 15.2 of the code to which I have referred recommends that every workplace works towards developing and implementing a workplace HIV/AIDS programme, and it is recommended that the programme should *inter alia* encourage voluntary testing. The programme should also "create an environment that is conducive to openness, disclosure and acceptance amongst all

staff”. Clause 7.2 of the code, while acknowledging an employee’s right to privacy, states that mechanisms should be created “to encourage openness, acceptance and support” for employers and employees who voluntarily disclose their HIV status within the workplace.

[30] If section 7(2) were interpreted as applying to voluntary testing, it would mean that although voluntary testing is regarded in the code as something to be encouraged, an employer would not (without the expense of a court application) be entitled to assist in the attainment of this objective by making its own testing facilities available to its staff.

[31] In determining the sort of medical testing contemplated by section 7(2), I believe some assistance can be derived from a consideration of the provisions of section 7(1). As I have already observed, the latter provision applies to medical testing other than for HIV status. Such testing is prohibited unless legislation permits or requires the testing or unless the testing is justifiable “in the light of medical facts, employment conditions, social policy, the fair distribution of employee benefits or the inherent requirements of a job”. Although the quoted criteria are expressed in fairly broad terms, they appear to refer to considerations which would make it objectively justifiable for an employer to *require* employees to undergo testing. The individual employee’s attitude to the testing is not stated to be a relevant factor and would not seem to be naturally accommodated

within any of the stated criteria of justifiability. It follows that if medical testing under section 7(1) were to include *voluntary* testing, the employee's desire and willingness to undergo the testing would not be relevant in assessing the justifiability thereof. Since there is no procedure for the court to approve testing other than in respect of HIV status, such employees could not be tested at an employer's facility at all (even though keen and willing) unless this were objectively justifiable with reference to the factors listed in section 7(1)(*b*) or unless legislation permitted or required the testing.

[32] I doubt whether this could have been the legislature's intention. There must be many large employers which provide medical or nursing facilities to employees. In the ordinary course of the operation of such facilities, employees who choose to consult the medical or nursing staff would undergo tests or be asked questions designed to ascertain whether they are suffering from some or other medical condition. I do not believe that the legislature could have intended that before assistance could be offered by an employer to such employees a decision would in each case need to be made as to whether the undertaking of medical investigation was objectively justifiable on one or other of the grounds set out in section 7(1)(*b*) of the Act.

[33] There is thus good reason to conclude that the legislature did not intend section 7 to apply to voluntary testing. This is a view which in my opinion is fortified by a consideration of the consequences which

attach to a violation of section 7. Medical testing is not itself an act of discrimination. Section 7 is a pre-emptive measure designed to reduce the risk of discrimination on the grounds of medical condition. Section 10, which deals with disputes concerning chapter II of the Act, appears only to make provision for the referral to the CCMA of disputes concerning alleged *unfair discrimination*. (Section 10(2) requires the referral to be made within six months after the act or omission allegedly constituting unfair discrimination.) If the dispute remains unresolved it may be referred to the Labour Court (section 10(6)(*a*)). In terms of section 50(2) this Court may order compensation or damages for *unfair discrimination*, but there is no jurisdiction to make such an award merely because a person has been medically tested. In terms of section 50(1)(*g*) the Labour Court can impose fines in accordance with schedule 1 for contraventions of certain provisions of the Act, but section 7 is not one of them. A contravention of section 7 is not stated by the Act to be a criminal offence.

[34] It thus appears that a dispute concerning medical testing cannot be referred to the CCMA nor can a contravention of section 7 be visited with a fine or an order for damages or compensation. What then is the consequence of a violation or threatened violation of section 7? Where testing is compulsory and is not objectively justifiable (under section 7(1)) or, in the case of HIV testing, has not been authorised by this Court (under section section 7(2)), an employee would be entitled to approach this Court for an order declaring that the compulsory testing

is prohibited and interdicting same. Where, on the other hand, the testing is voluntary, it is difficult to see what remedy would either be required or be possible. A person who does not wish to be tested and who is not required to undergo testing would have no need for the protection of a declaratory order and an interdict. A person who volunteers for testing would in the nature of things not seek redress. If such an employee were later to regret that he had volunteered for testing, I doubt whether he would have any ground for approaching the Court, given that he volunteered for the testing. If future testing remained voluntary he would require no ongoing protection. And as I have said, the Act does not appear to impose any penalty for a past infraction of section 7 *per se*, so that no effective order could be made at the instance of such an employee.

[35] In short, it seems to me that there are no circumstances in which voluntary medical testing could ever be the subject of legal proceedings or legal redress. This being so, it strikes me as most improbable that voluntary testing was intended to be within the ambit of section 7.

[36] I thus find that section 7 as a whole applies only to compulsory testing (in the sense described above) and does not apply to voluntary testing. Provided testing is truly voluntary, I do not believe it matters whether the initiative for testing comes from the employer or the employees. I imagine that in many instances the initiative might come from the

employer, in the sense that the employer would establish medical facilities and convey to employees that these facilities are available for any members of staff wishing to take advantage thereof.

[37] Support for the view that voluntary testing does not fall within the ambit of section 7(2) is to be found in clause 7 of the code. The provisions of clause 7 are quoted in full in paragraph 18 of Landman J's judgment in the Joy Mining case. Clauses 7.1.4 and 7.1.5 distinguish between "authorised testing" (i.e. cases where the authority of the Labour Court is required under section 50(4)) and "permissible testing" (i.e. where the Labour Court's authority is not required). Under the heading of permissible testing, clause 7.1.5(*a*) provides as follows:

"(*a*) An employer may provide testing to an employee who has requested a test in the following circumstances:

(i) as part of a health care service provided in the workplace;

(ii) in the event of an occupational accident carrying a risk of exposure to blood or other body fluids;

(iii) for the purposes of applying for compensation following an occupational accident involving a risk of exposure to blood or other body fluids."

[38] Admittedly the distinction drawn in the code between authorised and permissible testing must be read subject to clauses 7.1.2 and 7.1.3 of the code, which states as follows:

“7.1.2 Whether s7(2) of the Employment Equity Act prevents an employer-provided health service supplying a test to an employee who requests a test, depends on whether the Labour Court would accept that an employee can knowingly agree to waive the protection in the section. This issue has not yet been decided by the courts.

7.1.3 In implementing the sections below, it is recommended that parties take note of the position set out in item 7.1.2.”

[39] Notwithstanding the warning sounded in clauses 7.1.2 and 7.1.3 of the code, it nevertheless seems clear to me that the framers of the code considered that voluntary testing in the circumstances set out in clause 7.1.5 of the code should be permitted without prior authorisation from the Labour Court. This is something which can be taken into account by this Court in interpreting the Act (see section 3(*c*)).

[40] Clause 7.1.2 suggests that the issue now under consideration turns on whether or not employees can *waive* the protection of section 7(2) (and see also para 20 of the judgment in the Joy Mining case). On the approach I have taken to the matter, the question is not one of waiver but rather whether section 7 properly construed applies to voluntary testing at all. However, if one were instead to take as one’s starting point that all testing falls within the ambit of section 7(2) and then to enquire whether an employee may waive the protection of section 7(2), I think one would arrive at the same answer.

[41] It is a well-established principle of our law that a statutory provision

enacted for the special benefit of any individual or body may be waived by that individual or body, provided that no public interests are involved (see Road Accident Fund v Mothupi 2000 (4) SA 38 (SCA) para 15). Section 7(2) is, as I have said, a pre-emptive measure designed to reduce the risk of discrimination against employees on the grounds of their HIV status. It obviously exists for the benefit of individual employees, and I do not see why an individual employee should not be entitled to waive the protection of the section. It is important to remember, in this regard, that the employee would not be waiving his right to protection against unfair discrimination. He would still enjoy such protection under section 6 of the Act. Medical testing is not in itself an act of unfair discrimination. The Act does not seek to prohibit an employer from knowing an employees' HIV status. After all, an employee is always free to volunteer this information to his employer. In these circumstances, if an employee considers that the benefit to himself in taking advantage of testing offered by his employer outweighs the risk that the employer might thereafter use the information to discriminate against him (something which in any event the employer would be prohibited by section 6 from doing), I do not perceive there to be any public interest standing in the way of such a course. It is also significant that while section 51(3) states that no person may favour, or promise to favour, an employee in exchange for that employee not exercising any right conferred by the Act or not participating in any proceedings in terms of the Act, the waiver of rights by an employee is not in terms prohibited.

Conclusion

[42] I thus conclude that the anonymous and voluntary testing which the applicant wishes to arrange for its employees does not fall within the ambit of section 7(2) and that the applicant does not require the authority of this Court before allowing its employees to be tested. If this conclusion had been reached solely on the basis of the anonymous nature of the testing, some slight adjustment might have been required to the manner in which statistical information is reported to the applicant. However, in the light of the view I have reached on the issue of voluntary testing, it seems to me that such an adjustment is not obligatory.

[43] Since the applicant is, in my view, entitled to the declaratory order sought in paragraph 1 of the notice of motion, it is not necessary to consider the question of justifiability under section 50(4). Mr *Loxton* said that if I was with the applicant in regard to the primary declaratory relief sought, his client did not require the comfort of any further order under section 50(4) *ex abundanti cautela* (assuming such a further order were permissible).

[44] I accordingly grant the following order:

[a] It is declared that the anonymous and voluntary medical testing on the third to further respondents, details of which are set out in the

founding affidavit of Trevor Earl Brodrick, does not fall within the ambit of section 7(2) of the Employment Equity Act 55 of 1998.

[b] No order as to costs is made.

OL ROGERS AJ

C1126/02

Date of Hearing: 13 December 2002

Date of Judgment: 17 December 2002

Applicant's Attorneys: D.A. Loxton

Unopposed Application