

REVIEW

A practical guide to labour arbitration procedure

by J.F.W Weatherill
Canada Law Book Inc., 1987
129 pp. Softcover

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THE TERM "PATHFINDER" was adopted during World War II to describe those pilots who led squadrons of planes over Europe, i.e., the pathfinder showed the way. J.F.W. Weatherill has fulfilled the role of one of the foremost pathfinders in the area of Labour Arbitration in Canada. As this method of industrial dispute resolution developed over the last approximate quarter century, the Labour Arbitration Cases and all of the leading texts make constant reference to him and the principles he enunciated in the hundreds of cases he has arbitrated. Many of these principles have become cornerstones of arbitral jurisprudence. Any text by the author of his stature is worthy of serious consideration.

The title correctly sets out the author's objective, i.e., to write a "practical guide to dealing with procedural problems which arise in the course of, or in connection with arbitration proceedings". He carefully enunciates the caveat that he did not seek to write a textbook of law or to create an authoritative source of jurisprudence. He simply, and skillfully, has drawn on his vast experience to create a guide which will be of inestimable value to all those who are concerned with arbitration whether as presenter, nominee or chairperson. Individuals who work in industrial relations departments, or for unions or in appropriate governmental departments will find much worthwhile, even if they are not directly involved with the arbitration process.

There is a tendency amongst lawyers, when they first become involved with the process, to approach it in a similar manner to the adversarial and formalistic process of the judicial system. On the other hand, laypersons often consider that the process is informal and does

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not have either the rigid procedural requirements of the courts or a concern about the rules of evidence. In fact, the process is a marriage (albeit, not always a happy one) of the two concepts. Although there may well be less formality than in courts, a participant (whether a lawyer or a layperson) will find the evidentiary principles are of great significance. One enters a perilous course without a reasonable working knowledge of those principles as they apply in arbitral jurisprudence.

The author helps plot the course by dividing his guide into four general headings, namely: Arrangements prior to the hearing, the Commencement of the hearing, the course of the Evidence and Following the hearing.

Each division is significant. A glimpse of the index shows that consideration and guidance is given to such concerns, *inter alia*, as jurisdiction, adjournments, subpoenas, particulars, production, waiver and the order of proceedings. These can be difficult issues and often arise. Mr. Weatherill defines the issue, states a practical approach and, in most cases, cites authority for his statement.

His most complete chapter is on the topic of evidence -some 58 pages are devoted to considering such topics as, for example, the use of discipline, business, public and medical records, personal notes, hearsay, ambiguity, onus, estoppel and other similar concerns which have created difficulties for practitioners, whether seasoned or neophyte and whether lawyer or layperson. Although obviously written with a view to labour arbitration, this chapter could well serve as a basic, and well written primer about the basic rules of evidence.

A negative that this reviewer finds is that the author might have chosen to clarify some of the subject matters with illustrative factual descriptions. For example, an important issue is estoppel and some 12 pages are devoted to it. It is complex and often controversial issue. A lay reader would grasp the concept much easier if the terms were initially defined by an example, rather than the legalistic wording chosen. Similarly, Mr. Weatherill might have considered using less formalistic language by sharing in an anecdotal fashion some of his vast experience in particular fact situations.

The guide is one which should be in the library of every practitioner or person interested in the field. All will gain from the insight and guidance of the author. It is a well written guide which, notwithstanding Mr. Weatherill's caveat, will undoubtedly become an authoritative addition to the ever expanding area of labour arbitration procedures.