

INDEX

ALTERNATIVE DISPUTE RESOLUTION SYSTEMS

available tools, 35-36
expedited arbitration agreement, 34
grievance mediator, 31
mediation-arbitration process, 31-33
private arbitration process, 28
time lines for, 34
troubleshooter, 33
twin-track process, 34

ARBITRATION

binding, 2
board. *See* BOARD OF ARBITRATION
defined, 1
designing own structure, 30
generally, 1-6
overall view of process, 147-150
reporting of awards, 53-55
rights, 3
role of parties in process, 148-150
statutory alternative procedure
 bypass of collective agreement, 25
 labour relations or settlement officer, 28, 31
 time lines for, 34
subject matter of, 5, 7

ARBITRATOR

account, 112
advantages of sole, 29
appointment of, 29, 147

ARBITRATOR — *continued*

decided cases presented to, 96
function of, 2-3
issuing subpoenas, 50
legal significance, 4
making decision, 107-109
objections to jurisdiction, 61, 63-64
oral decision, 107
overview of role in arbitration process, 147
powers of, 69
presentation of documents to, 59
resolving conflict of evidence, 92-93
selection procedure, 29
written decision, 107

ARGUMENT

final, 104
in chief
 components, 92
 order for, 91
 review of collective agreement, 95
 review of decided cases, 96-100
 review of evidence, 92-95
in rebuttal
 components, 100
 means of rebutting, 101
 order of points in rebuttal, 100-101
 reply to other party's arguments, 102
preparation of, 100
reply, 104

AWARDS

clarification of, by arbitrator, 117
dissenting opinion, 113
enforcement of, 117
finality, 119
form and content, 109
judicial review
 described, 119-121
 determination of standard, 123-126
 grounds for, 126-129
 standards of review, 121-122
release, 112
reporting of, 53-55

AWARDS — *continued*

review by courts, 119-129
setting aside. *See* judicial review

BIAS, 93

BINDING ARBITRATION, 2, 3

BOARD OF ARBITRATION

authority of, 21
composition of, 27
dissenting opinion, 113
executive sessions for making decision, 109-113
selection procedure, 29-30

CHAIRPERSON

appointment of
 by Minister of Labour, 27
 by parties, 28
drafting award, 111

COLLECTIVE AGREEMENT

appointment of chairperson, 25
bypass of, 25
grievance procedure, 10-11
interpretation of, 63, 128
jurisdiction of arbitrator, 61-63
provision for binding arbitration in, 3-4
review of, prior to hearing, 52
statutory alternative to agreed upon procedure, 26
subject-matter of arbitration, 3
terms of, referred to in argument, 98

**COMPENSATION FOR VIOLATION OF COLLECTIVE AGREEMENT
BY EMPLOYER**, 114-116

COMPLAINT STAGE, 7-8

CROSS-EXAMINATION

hostile witness, 145
objection to, 85
preparation, 44
summary of principles, 86
useful principles in, 81-85

CROSS-EXAMINATION — *continued*

techniques and tips, 81

CULMINATING INCIDENT, 138

DISPUTE

determining whether or not arbitrable, 3-4

informal resolution, 7

procedure for handling, set out in collective agreement, 1, 3

DOCUMENTS

assembling for hearing, 47

copies required for hearing, 47

filing of, at hearing, 47, 59

photostatic copies, 47

DOUBLE JEOPARDY, 141

EMPLOYER

breach of time-limit, 17

obligations of, 10

culminating incident, 138

ENFORCEMENT OF AWARDS, 117

ESTOPPEL, 126, 131

EVIDENCE

assembling of, 45

at objection to jurisdiction, 61

conflict of, 92-93

determining whether to call, 88

hearsay, 79

medical, 50-51

notes used as, 48

order of calling, 46, 72

past practice, of, 139

photographs, 48

reply, 86-88

sworn statements as, 142

what can be introduced as, 45

EXAMINATION IN CHIEF, 35-36, 41, 44, 73, 142, 149

FINAL ARGUMENT, 104-105

GRIEVANCE

answers to, 16
article, 10
explanation of problem to supervisor, 8
framing, 11
individual, 9
information to start, 8, 9
meeting
 dialogue, importance of, 13-14
 purpose of, 14-15
 without prejudice discussions, 14
policy, 16, 22
procedure, 10
settlement
 nature of, 22
 terms, 23
 who may accept, 22
time-limits on filing and processing, 17-22
types of, 9

GRIEVOR

admission against interest, 15
compensation for violation of collective agreement by employer, 114
dissatisfaction with union action, 23
duty to mitigate losses, 115
explains problem to supervisor, 7
no compensation for breach of time-limit, 18

HEARING

adjournment after objection to jurisdiction, 62
adviser, 72
after the, 107-109
agreement on facts, 50, 66
appearance sheet, 59
argument in chief. *See* ARGUMENT
argument in rebuttal. *See* ARGUMENT
cross-examination, 80-86
examination-in-chief, 74-79
exclusion of witnesses, 71
final argument. *See* ARGUMENT

HEARING — *continued*

legal issues arising during. *See* LEGAL ISSUES DURING HEARING
location and seating arrangement, 58, 72
notice of, 58
objections to jurisdiction, 63
observers at, 59
opening statement, 64
oral presentation at, style, 64, 80, 81, 102
order of calling evidence, 46, 72
powers of arbitrators, 69
preparation
 agreement on facts, 50, 66
 analysis of issues, 51
 assembling evidence, 45
 interviewing witnesses. *See* INTERVIEWING WITNESSES
 subpoenas, 50
re-examination, 86
rights of employee who may be affected by decision, 117, 124
statement of fact, 41, 49
three stages, 74

HEARSAY EVIDENCE, 79

HOSTILE WITNESS, 78, 145

INTERVIEWING WITNESSES

advise on conduct at hearing, 41
assembling data, 39-40
cross-examination, 40
discussion of testimony, 41
questioning of prospective witness, 40
ten commandments of witness preparation, 41-44
written report at conclusion of oral discussion, 45
written report by supervisor, 38-39

JUDICIAL REVIEW. *See* AWARDS

LACHES, 137

LEGAL ISSUES DURING HEARING

culminating incident, 138
double jeopardy, 141
estoppel
 elements of, 131-132

LEGAL ISSUES DURING HEARING — *continued*

estoppel — *continued*

 issue, 132

 promissory, 134

expert witness, 143

hostile witness, 145

laches, 137

past practice, 139

sworn statements as evidence, 142

view, 143

LEGISLATURE, REQUIREMENTS FOR COLLECTIVE AGREEMENTS, 3-5

MEDIATION-ARBITRATION, 31

MEDICAL EVIDENCE, 50-51

MEDICAL EXPERTS, 143

NOMINEES

 appointment of employer's, 25, 28

 appointment of union's, 25, 28

 dissenting opinion, 113

 role in drafting award, 110-111

 role in reaching decision, 110-111

OPENING STATEMENT, 3, 5, 57, 64

PHOTOGRAPHS, 48

REPLY EVIDENCE, 87

SUBMISSIONS

 argument in chief, 91, 96

 argument in rebuttal, 100-104

SUBPOENAS, 50

TIME-LIMIT

 absence of in collective agreement, 17

 breach of, 18

 effect of arbitrator excusing breach, 19

 extension of time for, 20

TIME-LIMIT — *continued*

for filing and processing grievance, 17
mandatory and directory, 19
waiver of, 18

WITNESSES

check-list of points of evidence to be covered, 46-47
credibility, 42, 44, 71, 77, 84
cross-examination of, 80-86
determining order in which to be called, 46, 72
examination-in-chief, 35-36, 41, 44, 73, 142, 149
exclusion of, 71
hostile, 78, 145
interviewing of. *See* INTERVIEWING WITNESSES
issuing of subpoenas, 50
leading questions, 41, 44, 76, 81
perjury, 72
preparation of. *See* INTERVIEWING WITNESSES
re-examination of, 86
swearing in, 72
using notes, 49