Index

ARGUING THE CASE—Cont'd

Ethics in arguing Generally, § 8:6 getting personal, § 13:24 **ADMISSIONS** integrity, § 13:23 Grievance procedure, § 4:3 Finding the law, see LEGAL RESEARCH Hearsay exception, § 11:17, 11:18 **BOARD OF ARBITRATION** by party, § 11:17 Appointment through agent, § 11:18 expedited arbitration, § 5:5 ALBERTA LABOUR RELATIONS general rule, § 5:1 CODE ministerial appointments, § 5:3 Generally, APP E2 neutrality of chair, § 5:2 special procedures, § 5:4 ARBITRATION Deliberations, requirements, § 6:7 See also GRIEVANCE PROCEDURE Evidentiary powers Estoppel, see ESTOPPEL admission of evidence, § 11:3 Expedited, § 5:5 exclusion of evidence. § 11:4 Hearings, see HEARINGS hearsay, § 11:14 Hearsay in, § 11:14 rules of evidence, see RULES OF EVI-Notice of proceedings, see NOTICE DENCE Special procedures, § 5:4 Examination of witnesses, § 10:37 Standing, § 7:3 Functus officio. § 7:15 Summary of process, APP PS Jurisdiction, see JURISDICTION OF THE BOARD **ARBITRATORS** Neutrality of chair, § 5:2 See BOARD OF ARBITRATION Nominees bias of, § 6:4 ARGUING THE CASE role of, § 6:1 Arguing the law Oaths, administration, § 10:10 general, § 13:16 Replacement of arbitrators sources of law. § 13:18 generally, § 5:6 arbitration awards, § 13:19 chair, the, § 5:7 court cases, § 13:20 nominees, § 5:8 legal texts, § 13:22 Rules of natural justice, see NATURAL statutes, § 13:21 **JUSTICE** use of precedent, § 13:17 Taking a view, § 10:15.50 Assessing the evidence **BRITISH COLUMBIA LABOUR** circumstantial evidence, see RELATIONS CODE CIRCUMSTANTIAL EVIDENCE Generally, APP E3 credibility, § 13:14 evidentiary factors **BURDEN OF PROOF** affirmative vs. negative, § 13:4 See ONUS OF PROOF direct vs. circumstantial, § 13:6 primary vs. secondary, § 13:3 CANADA LABOUR CODE quality vs. quantity, § 13:5 Generally, APP E1

ADJOURNMENTS

CIRCUMSTANTIAL EVIDENCE

Contemporaneous acts, § 13:10 Failure to testify or explain, § 13:12 Preceding acts, § 13:9 Res ipsa loquitor, § 13:13 Rule in Hodge's Case, § 13:8 Subsequent acts, § 13:11

COLLECTIVE AGREEMENT

Breaches, see GRIEVANCES
Legal requirements
incorporation, § 1:3
memoranda of settlement, § 1:4
writing—signature, § 1:5
Parol evidence rule, § 11:61
Termination of
bridging, § 1:7
continuity, § 1:6
retroactivity, § 1:8

COMPETENCY AND COMPELLABILITY

Witnesses, § 10:8

CONCESSIONS

Grievance procedure, § 4:3

CONTINUING AND ISOLATED GRIEVANCES

See also GRIEVANCES
Defined, § 3:4
Recurring duties
attendance at work, § 3:6
bargaining unit grievances, § 3:9
deduction of union dues, § 3:8
payment of wages and benefits, § 3:7
scheduling, § 3:10
Timeliness, § 3:11

CROSS-EXAMINATION

See also PRESENTATION OF EVI-DENCE, WITNESSES

Discrediting the witness attacking credibility, § 10:29 previous inconsistent statements, § 10:30 tarnishing witness's character, § 10:31

Failure to cross-examine (Rule in Browne v. Dunn), § 10:35

Friendly witness, § 10:34

General suggestions, § 10:28 Restrictions collateral fact rule, § 10:32

CROSS-EXAMINATION—Cont'd

Restrictions—Cont'd harassing witness, § 10:33 Scope and purpose, § 10:27

DIRECT EXAMINATION

See EXAMINATION-IN-CHIEF

DISCHARGE

See also DISCIPLINE
Issue definition, § 4:6
Onus of proof
chronic absenteeism, § 9:18
general, § 9:11

DISCIPLINE

Issue definition, § 4:6 Onus of proof generally, § 9:11 absenteeism, § 9:17, 9:18 disobedience, § 9:16 excuses, § 9:15

DISCLOSURE

See PARTICULARS, PRODUCTION OF DOCUMENTS

DISMISSAL

See DISCHARGE

DISPUTES

See GRIEVANCES

DOCUMENTARY EVIDENCE

See EVIDENCE, PRODUCTION OF DOCUMENTS

Best evidence rule, § 10:47, § 11:31

Common objections introduction of documents, § 10:46 proof of documents, § 10:45

Hearsay exception common law exception, § 11:22 medical reports, § 11:26 notice requirements, § 11:24 procedure, § 11:25 statutory exception, § 11:23

Presentation, § 10:12

EMPLOYMENT

Termination, by employer, see DIS-CHARGE

ENDING THE CASE

See MOTION FOR NON-SUIT

GRIEVANCES

See also ARBITRATION, GRIEVANCE PROCEDURE

Amendment of, § 4:5

Continuing grievances, see CONTINU-ING AND ISOLATED GRIEV-ANCES

General, § 2:1

Isolated grievances, see CONTINUING AND ISOLATED GRIEVANCES

Policy grievances, see POLICY GRIEV-ANCES

Premature, § 3:2

Real and ostensible grievance

general, § 4:8

Settlement, see SETTLEMENT OF GRIEVANCE

Withdrawal of, § 4:10

HEARINGS

See also ARBITRATION, BOARD OF ARBITRATION

Arguing the case, see ARGUING THE CASE

Attendance at, generally, § 8:7

Bifurcation of, § 7:2

Ending the case, see MOTION FOR NON-SUIT

Evidence, see EVIDENCE, PRESENTA-TION OF EVIDENCE, RULES OF EVIDENCE

Fair hearing

attendance of parties, § 6:6

delay in issuing award, § 6:8

deliberations of full board, § 6:7

duty to give reasons, § 13:15

mistrial, declaring, § 6:9

Motion for non-suit, see MOTION FOR NON-SUIT

Notice, § 7:4 to 7:7

Onus of proof, see ONUS OF PROOF

Order of proceeding, § 9:22

Pre-hearing issues, see PRE-HEARING PROCEDURAL ISSUES

Pre-hearing meetings, § 10:2

Preliminary objections, bifurcation, § 7:2 Presentation of evidence, see PRESEN-

TATION OF EVIDENCE

Reasons, § 13:15

Standing, § 7:3

Venue, § 8:5

HEARINGS—Cont'd

Video hearings, **§ 8:11** View, taking a, **§ 10:15.50**

HEARSAY RULE

See also RULES OF EVIDENCE

Arbitrations, in, § 11:14

Defined

implied assertions, § 11:12

non-hearsay statements, § 11:13

problem with hearsay, § 11:11

Exceptions

admissions

by party, § 11:17

through agent, § 11:18

business documents and medical records

common law exceptions, § 11:22

medical reports, § 11:26

notice requirements, § 11:24

procedure, § 11:25

statutory business document exception, § 11:23

declaration against interest, § 11:19 mental or physical state, § 11:20 principled approach, § 11:16 res gestae

contemporaneous statements,

§ 11:30

excited statements, § 11:29 testimony from previous proceedings, § 11:27

HUMAN RIGHTS TRIBUNALS

Concurrent jurisdiction, § 7:12

INTERIM RELIEF

Generally, § 8:10

ISOLATED GRIEVANCES

See CONTINUING AND ISOLATED GRIEVANCES

JUDICIAL NOTICE

Generally, § 11:59

JUDICIAL PROCEEDINGS

Concurrent jurisdiction, § 7:13

JURISDICTIONAL DISPUTES

Human rights tribunals, § 7:12

Judicial proceedings, § 7:13

Labour relations boards, § 7:10

inter-union disputes, § 7:11

JURISDICTIONAL DISPUTES—Cont'd

Other boards of arbitration, § 7:9

JURISDICTION OF THE BOARD

See also BOARD OF ARBITRATION Concurrent jurisdiction, see

JURISDICTIONAL DISPUTES

Functus officio, § 7:15

Preliminary objections, bifurcation of hearing, § 7:2

Res judicata, § 7:14

Status of parties

notice, § 7:4 to 7:7

standing, § 7:3

LABOUR RELATIONS BOARDS

Concurrent jurisdiction, § 7:10 inter-union disputes, § 7:11

LACHES

Timeliness

extension of time limits, § 3:14

LEGAL BURDEN

See ONUS OF PROOF

LEGAL RESEARCH

Generally, § 13:25 to 13:29

Cases

finding cases, § 13:27

reports, § 13:26

understanding citations, § 13:28

Sources of law

arbitration awards, § 13:19

court cases, § 13:20

legal texts, § 13:22

statutes, § 3:2

Statutes, § 13:29

MANITOBA LABOUR RELATIONS ACT

Generally, APP E4

MEDICAL RECORDS

See DOCUMENTARY EVIDENCE, HEARSAY RULE

MOOTNESS

Generally, § 7:16

MOTION FOR NON-SUIT

Election, § 12:2

General, § 12:1

Procedure, § 12:3

Standard of proof, § 12:4

NATURAL JUSTICE

Duty to give reasons, § 13:15

Fair hearing

attendance of parties, § 6:6

delay in issuing award, § 6:8

deliberations of full board, § 6:7 mistrial, declaring, § 6:9

Reasonable apprehension of bias

nominee bias, § 6:4

NEW BRUNSWICK INDUSTRIAL RELATIONS ACT

Generally, APP E5

NON-DISCIPLINARY SANCTIONS

See ONUS OF PROOF

NON-SUIT

See MOTION FOR NON-SUIT

NOTICE

Application of Bradley and Hoogendoorn, § 7:6

Documentary evidence, § 11:24

Judicial notice, § 11:59

Rule in Bradley, § 7:4
Rule in Hoogendoorn, § 7:5

Sufficiency of notice, § 7:7

OATH OR AFFIRMATION

Witnesses, § 10:10

OBJECTIONS

See also RULES OF EVIDENCE

Common objections

assuming facts not proven, § 10:44

best evidence rule, § 10:47

books and records, § 10:48

hearsay, § 10:49

immateriality, § 10:50

introduction of documents, § 10:46

opinions and conclusions, § 10:51

parol evidence rule, § 10:53

privilege, § 10:52

proof of documents, § 10:45

How to, § 10:41

Preliminary, see PRELIMINARY

OBJECTIONS

Relevance problems, § 10:42

Strategy, § 10:40

ONTARIO LABOUR RELATIONS ACT

Generally, APP E8

ONUS OF PROOF

See also EVIDENCE

Absenteeism

chronic, § 9:18

reasonable excuse, § 9:17

Classification, § 9:14

Damages, mitigation, § 9:19

Defences, excuses, § 9:15

Discharge and other discipline, § 9:11

Disobeying orders, § 9:16

General, § 9:20

Location of onus

general principle, § 9:8

introduction, § 9:7

special knowledge, § 9:9

Meaning of onus, § 9:3

Non-disciplinary sanctions, § 9:12

Onus to prove law, § 9:4

Order of proceeding, § 9:22

Promotions, § 9:14

Seniority versus other factors, § 9:13

Shifting onus, § 9:6

Standard of proof, § 9:21

Weight to onus, § 9:5

PARTICULARS

Generally, § 8:2

PERSUASIVE BURDEN

See ONUS OF PROOF

POLICY GRIEVANCES

See also GRIEVANCES

Limitations, § 2:5

Nature, § 2:3

Relief, § 2:4

PRE-HEARING MEETINGS

Generally, § 10:2

PRE-HEARING PROCEDURAL ISSUES

See also PRELIMINARY OBJECTIONS

Adjournment, § 8:6

Attendance at hearing, § 8:7

Interim relief, § 8:10

Particulars, § 8:2

Production of documents, § 8:3

Subpoena duces tecum, § 8:4

Venue, § 8:5

Video hearings, § 8:11

PRELIMINARY OBJECTIONS

See also OBJECTIONS

Bifurcation of hearing, § 7:2

Concurrent jurisdiction

Human Rights Tribunals, § 7:12

judicial proceedings, § 7:13

Labour Relations Boards, § 7:10

inter-union jurisdictional disputes, § 7:11

other arbitration boards, § 7:9

Functus officio, § 7:15

General, § 7:1

Notice, § 7:4 to 7:7

Res judicata, § 7:14

Standing, § 7:3

Waiver and estoppel, application, § 2:6 to 2:8

PRESENTATION OF EVIDENCE

See also ARGUING THE CASE, EVI-DENCE, REOPENING CASE, RULES OF EVIDENCE

Agreed facts, § 10:17

Closing statement, § 10:55

Communication with witnesses, § 10:54

Cross-examination, see CROSS-EXAMI-NATION

Examination-in-chief, see EXAMINA-TION-IN-CHIEF

Examination of witness by arbitrator, § 10:37

General, § 10:1

Objections, see OBJECTIONS

Opening statements, § 10:16

Prehearing meetings, § 10:2

Real evidence

documents, § 10:12

drawings, § 10:14

maps, § 10:13

photographs, § 10:13

plans, § 10:14

video, § 10:13

Re-examination, § 10:36

Reply evidence, § 10:38

Witnesses, see WITNESSES

PRIVILEGE

See also RULES OF EVIDENCE

Confidential information, § 11:56

Grievance procedure, § 11:50

Litigation privilege, § 11:58

PRIVILEGE—Cont'd

Marital communications, § 11:52
Protection against self-incrimination
getting protection at arbitration, § 11:54
using protection at arbitration, § 11:55
Settlement procedure, § 11:50
Solicitor-client, § 11:51
Statutory privilege, § 11:57

PRODUCTION OF DOCUMENTS

See also DOCUMENTARY EVIDENCE Pre-hearing disclosure, § 8:3 Subpoena duces tecum, § 8:4

PROMISSORY ESTOPPEL

See ESTOPPEL

PROOF

See ONUS OF PROOF, STANDARD OF PROOF

REOPENING CASE

Correcting errors, § 12:8 New argument, § 12:7 New evidence, § 12:6

REPETITIVE GRIEVANCES

See CONTINUING AND ISOLATED GRIEVANCES

RES JUDICATA

Generally, § 7:14

RULES OF EVIDENCE

See also EVIDENCE, PRESENTATION OF EVIDENCE

Best evidence rule, § 11:31

Character evidence

character as issue, § 11:45

character to prove another issue

general, § 11:47

similar facts, § 11:48

credibility, § 11:44

Hearsay rules, see HEARSAY RULE

Judicial notice, § 11:59

Know the rules, § 11:7

Legal framework

judicial limitations, § 11:6

labour relations acts

power to admit evidence, § 11:3 power to exclude evidence, § 11:4

relation to evidence act, § 11:5

Opinion evidence

experts, § 11:40

RULES OF EVIDENCE—Cont'd

Opinion evidence—Cont'd judicial findings, § 11:42 ordinary witnesses, § 11:39 polygraph evidence, § 11:41 Parol evidence rule, § 11:61 Prior consistent statements providing context, § 11:36 recent complaints, § 11:37

recent fabrication evidence, § 11:34 res gestae exception, § 11:33

spontaneous exculpatory statements, § 11:35

Privilege, see PRIVILEGE

Relevance, § 11:8

Taking a view, § 10:15.50

SANCTIONS

See DISCHARGE, DISCIPLINE, ONUS OF PROOF

SASKATCHEWAN EMPLOYMENT ACT

Generally, APP E11

SETTLEMENT OF GRIEVANCE

See also GRIEVANCE PROCEDURE, GRIEVANCES

Authority to settle, § 4:12

Electronic communicator, § 4:16

STANDARD OF PROOF

See also EVIDENCE, ONUS OF PROOF Generally, § 9:21
Motion for non-suit, § 12:4

STANDING

Generally, § 7:3

SUBPOENA DUCES TECUM

Generally, § 8:4

TIMELINESS

Continuing and isolated grievances defined, § 3:4 recurring duties attendance at work, § 3:6 bargaining unit grievances, § 3:9 deduction of union dues, § 3:8 payment of wages and benefits, § 3:7 scheduling, § 3:10 timeliness, § 3:11

Extension of time limits

general, § 3:12

TIMELINESS—Cont'd

Extension of time limits—Cont'd laches or estoppel, § 3:14 mandatory or directory time limits, § 3:13

Introduction, § 3:1
Premature grievances, § 3:2

Recurring duties, § 3:10.50 Statutory reform

British Columbia criteria for extension, § 3:19

Canada Labour Code, § 3:20 Ontario

criteria for extension, § 3:17

UNION GRIEVANCES

See POLICY GRIEVANCES

UNIONS

Jurisdictional disputes, § 7:11

VENUE

Generally, § 8:5

VIEW, TAKING A

Generally, § 10:15.50

WAIVER

Application to grievance procedure general, § 2:7
Distinction with estoppel, § 2:8

WITNESSES

See also EVIDENCE, PRESENTATION OF EVIDENCE, RULES OF EVI-DENCE

Communication with, § 10:54
Competency and compellability, § 10:8
Discrediting

cross-examination, § 10:29 to 10:31 own witness, § 10:23

Examination by arbitrator, § 10:37 Exclusion of, § 10:9

Preparation

advice to witness, § 10:6 preparing case, § 10:4 preparing witness, § 10:5 Re-examination, § 10:36

Testimony under oath or affirmation, § 10:10

Unfriendly, § 10:21